

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DAVID J. OBREITER

Plaintiff,

**Case No.
Hon.**

v.

**CHARTER TOWNSHIP OF KALAMAZOO;
CHARTER TOWNSHIP OF KALAMAZOO BOARD OF TRUSTEES;
board members (in their official capacities);
DEXTER A. MITCHELL, Township Manager
(In his official capacity)**

Defendants.

David A. Kotwicki (P56070)

David A. Kotwicki, P.L.C

Attorneys for Plaintiff

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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

COMPLAINT AND JURY DEMAND

Plaintiff David J. Obreiter, by and through his attorneys, David A. Kotwicki, P.L.C, alleges and avers the following:

PRELIMINARY STATEMENT

Plaintiff David Obreiter, former Fire Chief of Defendant Charter Township of Kalamazoo, is a dedicated public servant who has served his country, and community, with distinction and integrity. He was falsely accused, and ultimately terminated, for failure to investigate employee claims of workplace harassment. He was utterly deprived of anything approaching a fair opportunity to defend himself, as the Defendant Township, spearheaded by its Township Manager, Defendant Dexter Mitchell, directed an investigation, which, while purportedly independent, was wholly outcome determinative, as Plaintiff was denied any meaningful opportunity to participate, subjected to a hostile and abusive interrogation, and deprived of crucial evidence required to defend himself. The investigation, and pre-termination hearing process, was a sham. From the onset of the Township's investigation, up to the date of his sudden termination without warning, it was amply clear that Plaintiff was *presumed guilty*. Plaintiff did his best to assert his rights, and protect his career and reputation, having been publicly shamed in the press by a Township Trustee. However, Plaintiff's efforts to secure a fair-post termination process, geared toward reinstating his career and reputation, were ultimately rebuffed. As such, Plaintiff *was wholly deprived Due Process*, and indeed, *his sacred Presumption of Innocence*. He brings this action to rectify these grave injustices.

PARTIES, JURISDICTION & VENUE

1. Plaintiff, David J. Obreiter ("Plaintiff"), resides in Kalamazoo, Kalamazoo County, Michigan.
2. Defendant, CHARTER TOWNSHIP OF KALAMAZOO ("Defendant Township") is the public body of local government that employed Plaintiff, and which made the decision to terminate his employment based on false and unfounded allegations that he failed to investigate allegations of workplace harassment.
3. Defendant Dexter A. Mitchell ("Defendant Mitchell") is the Township Manager of Defendant Township, who spearheaded and directed the investigation into false allegations against Plaintiff, wholly denied him any semblance of Due Process, presumed him guilty, and terminated his employment. He is being sued in his official and individual capacities.

4. Defendant CHARTER TOWNSHIP OF KALAMAZOO BOARD OF TRUSTEES (“Defendant Board”) ultimately ratified the actions taken against Plaintiff in termination of his employment, as, although he was granted a “*Name-Clearing*” hearing, and presented evidence in support of his exoneration and reinstatement before them in an approximately three-hour presentation which occurred on December 5, 2022, ultimately, no formal decision was issued – thus ratifying Plaintiff’s termination, and the due process deprivations which led to it.
5. The events described in this lawsuit arise out of Plaintiff’s employment with the Charter Township of Kalamazoo (“Defendant Township” and took place in Kalamazoo County.
6. The federal claims asserted in this lawsuit are based on violations of 42 U.S.C. § 1983.
7. The state claims asserted in this lawsuit are for mandamus under MCL § MCL 600.4401 *et seq.*
8. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and over state law claims pursuant to 28 U.S.C. § 1367.
9. Venue lies within the Western District of Michigan pursuant to 28 U.S.C. § 1391, as it is the district in which the events giving rise to Plaintiff’s claims took place.
10. The amount in controversy exceeds \$75,000.

STATEMENT OF FACTS

11. Plaintiff David J. Obreiter (hereinafter “Plaintiff”) is fifty-two (52) years old.
12. Plaintiff was born and raised in Kalamazoo, Michigan. Plaintiff has spent his life and career in the service of his country and local community, chiefly in Fire Service.
13. Plaintiff’s passion for Fire Service began at a young age, as a Boy Scout, then Eagle Scout.
14. Earning a fire service merit badge, Plaintiff subsequently joined the Explorer Scouts for (*for Scouts aged 17-21*), and through that program earned his State of Michigan Firefighter certification, at the age of seventeen (17).

15. Taking full advantage of this opportunity, at seventeen (17) years old, Plaintiff applied for employment with the Charter Township of Kalamazoo, as an “*on-call*” Firefighter.
16. Plaintiff was hired and served honorably in this capacity, earning substantial additional Fire Service experience.
17. Plaintiff served as an “*on-call*” Firefighter for the Township on a continual basis (*excepting his four-year period of active duty in the Air Force, see below Infra*) until ultimately, he was hired by the Township as its Fire Chief in 2009.
18. Taking the next logical step on his path of service, Plaintiff served extensively in our country’s military, serving four years in the United States Air Force, and seventeen years in the United States Air National Guard.
19. Plaintiff’s passion for fire service continued to grow during his Air Force Service and he obtained numerous nationally recognized certifications in Fire Service while serving.
20. Due to Plaintiff’s commitment and expertise, he served in a Fire Service capacity throughout his military career, both in the Air Force and Air National Guard, including multiple extensive overseas deployments (*Honduras, Saudi Arabia, Pakistan, and Iraq*) and provided direct fire service support alongside the fire service personnel of the host country.
21. Plaintiff served our country effectively in this capacity, in large part, due to his cultural sensitivity and attunement while serving overseas.
22. Plaintiff ultimately earned an Honorable Discharge and full military retirement.
23. After Plaintiff’s four-year active-duty term of service in the Air Force was completed, while remaining part of the Air National Guard, in line with his commitment, he sought and obtained further public service employment, with the State of Michigan.
24. Plaintiff served the State of Michigan, again as a Firefighter, stationed at the Battle Creek Air National Guard Base.

25. During Plaintiff's employment with the State, he continued his Fire Service education, earning numerous certifications through the Department of Defense (DOD) Fire and Emergency Services Academy.
26. Plaintiff was employed with the State of Michigan for fifteen years, achieving a stellar record of service, and ultimately earning his retirement at the rank of Supervisor and retiring in 2009.
27. In early 2009, while he still employed by the State of Michigan, the Air National Guard deployed Plaintiff to Iraq, to serve a six-month deployment, as Fire Marshal at Sather Air Base, located at Baghdad International Airport.
28. During this deployment, Plaintiff learned an opportunity had opened to become Fire Chief serving the Charter Township of Kalamazoo.
29. Having lived in Kalamazoo all his life, and having served the community throughout, this opportunity would allow Plaintiff to come full circle on his path of service; indeed, serving as Fire Chief for the Township was the culmination of his lifelong dream¹. Plaintiff applied, interviewed, and ultimately earned the position and was hired on October 14, 2009.

PLAINTIFF'S EMPLOYMENT AS FIRE CHIEF BY THE CHARTER TOWNSHIP OF KALAMAZOO – DILIGENT, ETHICAL, AND STEADFAST

30. Plaintiff served the Charter Township of Kalamazoo as its Fire Chief for almost thirteen (13) years, from October 14, 2009, until the date of his termination, September 14, 2022.
31. As Fire Chief for the Charter Township of Kalamazoo, Plaintiff was responsible for the overall management and supervision of four fire stations, consisting of approximately sixty-five (65) personnel -- Ranking Subordinate Officers (*after Plaintiff, the chain of command consisted of Deputy Fire Chief Michael Weidemann, Battalion Chief Jairus Baird, and Battalion Chief Matt Mulac*), supported by ten (10) part-time command officers (*i.e., Assistant chiefs, Captains, Lieutenants*), and approximately sixty (50) firefighters (consisting of eight (8) full & fifty (40) part-time employed firefighters).

¹ Indeed, he shared his passion at the age of sixteen, with the son of then-Fire Chief Jack Gould, who became his friend while working together in a restaurant.

32. At all times during his service as Fire Chief, Plaintiff consistently demonstrated commitment, expertise, attention to detail, and level-headedness leading the Department, irrespective of the gravity of the fire emergency, personnel situation, or otherwise.
33. At all times during his service as Fire Chief, Plaintiff consistently demonstrated commitment to ongoing training and education, both for himself, and within the department.
34. For example, in 2011 Plaintiff earned an Associate's degree in Fire Science, at Kalamazoo Valley Community College, despite the same not being required.
35. Additionally, Plaintiff spearheaded implementation of numerous Fire Service education programs within the Department, emphasizing the dual principles of *safety and readiness*.
36. Moreover, Plaintiff continually requested additional training / educational programs be procured / provided by Defendant Charter Township of Kalamazoo for the Fire Department, *most notably*, regarding prevention of discrimination and/or harassment in the workplace, and investigation of discrimination and/or harassment claims in the workplace.
37. In his role as a supervisor and manager, Plaintiff recognized the necessity of both a unified and complementary team, and an environment in which his subordinates could feel comfortable bringing issues and concerns to his attention.
38. Recognizing that fire service is unavoidably stressful, Plaintiff brought a calm, friendly, and approachable demeanor to his role.
39. In sum, Plaintiff diligently and ethically served the Township of Kalamazoo as Fire Chief, which formed the core of his identity, and provided his livelihood.

Plaintiff is notified of allegations of Inappropriate Treatment made by a Female Firefighter -- Directed at her by a Male Firefighter – He Promptly Directs and Supervises an Investigation in Accordance with Charter Township of Kalamazoo Personnel Policies, Fire Department Standard Operating Guidelines (“SOG”s), and his Training – Plaintiff Directs Prompt and Appropriate Remedial Action – Discipline of the Offending firefighter coupled with Appropriate Notification to the Reporting firefighter -- No Further Incidents are Reported.

40. On the morning of December 4, 2019, Plaintiff (*who was working in his office in the Main Township Offices*) was contacted by phone by his subordinate officer, Battalion Chief Matt Mulac (*who was the Officer in Charge at the Eastwood Fire Station, directly supervising approximately twenty (20) firefighters*).
41. Battalion Chief Mulac notified Plaintiff that a female firefighter, whom he directly supervised, had verbally reported allegations of inappropriate treatment directed at her by a male firefighter also stationed at Eastwood.
42. Battalion Chief Mulac briefed Plaintiff concerning the circumstances of the verbal report made by the reporting firefighter, notifying Plaintiff that she had reported numerous concerns regarding the treatment directed at her.
43. Battalion Chief Mulac also advised Plaintiff that he had requested that the reporting firefighter document her concerns in writing, due to the number of allegations she reported to him, to ensure that all concerns were investigated and addressed in a thorough and appropriate fashion.
44. Battalion Chief Mulac did not inform Plaintiff of the specifics of any of the allegations reported to him during this initial conversation.
45. Plaintiff directed Battalion Chief Mulac to notify him when the reporting firefighter had presented her written documentation of concerns.
46. Plaintiff also advised Battalion Chief Mulac to promptly review the written documentation with the reporting firefighter when she presented it to him, determine what she was alleging, and what she requested to have done to resolve her concerns.
47. Later that afternoon (*approximately 6 hours later*), Battalion Chief Mulac (*while at the Eastwood Fire Station*) phoned Plaintiff and advised him that the reporting firefighter had presented the document to him. Battalion Chief Mulac further advised Plaintiff that he reviewed and discussed the report, *which consisted of just under three pages*, with the reporting firefighter at the time she presented it. **(See Exhibit 1 – First Incident Report, dated 12.4.19)**

48. At Plaintiff's direction, a meeting between himself and Battalion Chief Mulac occurred immediately thereafter at the Eastwood Fire Station.
49. During this meeting, Battalion Chief Mulac provided Plaintiff with a copy of the document, and the two of them reviewed and discussed it in great detail.
50. During this meeting, Plaintiff developed a plan of action to promptly investigate and address the allegations, based upon his understanding of the applicable Charter Township of Kalamazoo policies and procedures, and the Fire Department Chain of Command and Standard Operating Guidelines ("SOGs") in place at the time. **(See Exhibit 2 - Standard Operating Guidelines)**
51. At this point, Plaintiff directed Battalion Chief Mulac to promptly interview the witnesses listed in the reporting firefighter's Incident Report, along with any other employees that may have witnessed the incidents, and to then promptly report back to him.
52. Plaintiff also advised Battalion Chief Mulac that this investigation was the main department priority, second to nothing other than emergency responses.
53. Upon information and belief, Battalion Chief Mulac promptly followed Plaintiff's directive, and interviewed all relevant individuals as directed², within the scope of his professional judgment, informed by his understanding of applicable policies and procedures.
54. Later that afternoon, Battalion Chief Mulac phoned Plaintiff (*who was still working at the Main Township Offices*) and informed him that his interviews were completed and that he had obtained all information available at the time.
55. At this point, Plaintiff promptly drove to Eastwood Fire Station, and met with Battalion Chief Mulac to meet and discuss the results of the interviews, in conjunction with further review of the written report, and discuss potential options regarding further action to be taken. This meeting lasted approximately an hour.

² Every named witness was questioned, and there is no evidence to suggest that any of the interviews were of a cursory nature, prematurely, or inappropriately curtailed.

56. Plaintiff understood, based upon his training, that the key policies governing the situation were the Fire Department *Standard Operating Guidelines*, particularly *SOG #3* in conjunction with the 2014 version of the *Charter Township of Kalamazoo Personnel Policy*.

57. Plaintiff concluded that the essence of the investigation's findings were that inappropriate behavior had been directed at the reporting firefighter by the accused firefighter.

58. However, Plaintiff also concluded that the accounts provided by the witnesses were consistent, to the effect that the accused firefighter's actions, while inappropriate, occurred in the context of back and forth jesting interaction with the reporting firefighter, and only rose to the level of inappropriate "*horseplay*" (*set forth as a type of conduct in SOG#3*), as opposed to more serious violations, such as sexual harassment and/or assault and battery.

59. Therefore, Plaintiff determined that pursuant to *SOG#3*, sufficient evidence had been gathered to take disciplinary action against the accused firefighter but did not rise to the level which would warrant suspension or termination.³

60. Plaintiff also determined that Guidance needed to be issued to the reporting firefighter concerning steps she should take in the event similar incidents occurred in the future, to ensure she promptly reported them, providing opportunity for prompt investigation.

61. In sum, Plaintiff determined the following actions to be necessary:⁷

- a. That the employee identified as *the accused* needed to be notified immediately, in writing, that his actions were not welcome, and that they needed to immediately stop;
- b. That the employee that made the report needed to be promptly notified that the accused firefighter had been spoken to in serious fashion, that no future problems were expected, and also, reminded of the importance of promptly reporting any future incidents, and directions regarding the reporting procedure.⁴

³ Upon information and belief, the reporting firefighter had directly requested to Battalion Chief Mulac that the offending firefighter be notified in writing that his actions were inappropriate – this was done.

⁴ At the time of her First Incident Report, many of the incidents that the reporting firefighter had reported had occurred over the previous six months.

62. Plaintiff then directed that Battalion Chief Mulac prepare *drafts* of the documentation determined to be warranted, and them to his attention for review via email.
63. The next morning, December 5, 2019, when Plaintiff arrived at his office, he checked his email and determined that two separate draft documents had been emailed to him, which he promptly reviewed on his computer.
64. After reviewing both documents, Plaintiff called Battalion Chief Mulac to discuss them, and advised him that both documents needed to include substantially more detail.
65. During this call, focusing first on the documentation to be provided to the accused firefighter, Plaintiff advised more detail needed to be provided regarding: the alleged offending conduct, the applicable Township Policy and Procedure and Fire Department Standard Operating Guidelines (“SOGs”), and a clear directive to cease any conduct which negatively effects other employees.
66. During this call, next focusing on the documentation to be provided to the reporting firefighter, Plaintiff advised that more detail needed to be provided informing her: that her report had been received, that witnesses had been interviewed, and that the accused firefighter been spoken to, and advised that his actions were unacceptable and were expected to immediately cease.
67. After Plaintiff conveyed the above-described crucial points, he and Battalion Chief Mulac worked to revise the draft memorandums, with Plaintiff providing the substantial majority of revisions, considerably strengthening their clarity and emphasis of key points.
68. Ultimately, final memorandums were completed which Plaintiff determined were appropriate to present to and discuss with both firefighters, and he directed that Battalion Chief Mulac promptly do so, and then report back to him.
69. Upon information and belief, Battalion Chief Mulac did so, and reported to Plaintiff that:
- a. The accused firefighter (*who he spoke with that same day, December 5, 2019*) was notified that he was receiving disciplinary action and was provided the Memorandum (**See Exhibit 3 - Disciplinary Notice Issued December 5, 2019**). He signed the same, copies were made, and he was provided a copy and notified that the original would be placed in his personnel file.

- b. The reporting firefighter (*who he spoke with on December 9, 2019, commensurate with her determination of availability upon request*) was read the memorandum (**See Exhibit 4-“Memo of Response” Issued December 5, 2019**), notified that the accused firefighter had been “spoken with in great depth regarding this matter[,]” and also notified that “[f]ollowing our conversations, I [Battalion Chief Mulac] do not anticipate any future instances to take place.”

She was also notified that the memorandum to her was not disciplinary and was strongly encouraged to promptly report any further offending conduct directed at her and provided direction regarding the procedure for any future reports, inclusive of individuals to whom she should report. In turn, she signed the same, copies were made, and she was provided with a copy.

70. After the Memorandums were presented by Battalion Chief Mulac as set forth above, he provided Plaintiff with the signed originals, and Plaintiff took them, in a manila folder to the Township Offices, and presented them, in the folder to HR Director Molly Cole, and advised her that the documents were to be placed in the individuals’ respective personnel files.

71. The above-described actions were directed, supervised, and conducted by Plaintiff in accordance with the then-applicable Township Policies and Procedures and Fire Department Standard Operating Guidelines (“SOGs”) and informed by his training as provided by the Charter Township of Kalamazoo to that point, and by his professional experience and judgment.

72. In sum, as soon as Plaintiff was notified that the reporting firefighter had conveyed her allegations and concerns to Battalion Chief Mulac, he diligently directed and supervised the implementation of prompt and appropriate remedial action.

73. To Plaintiff’s understanding, the actions he directed to be taken were effective, as no further incidents were ever reported to him again, by the reporting firefighter or anyone else.

The reporting firefighter makes a second verbal report to Battalion Chief Mulac which Plaintiff promptly addresses in accordance with Defendant Charter Township of Kalamazoo’s Policy and Procedure.

74. On or about May 28, 2021, the reporting firefighter made a *second verbal report* to Battalion Chief Mulac, expressing her concerns regarding Battalion Chief Mulac’s supervision and management of Eastwood Fire Station.

75. Upon information and belief, the reporting firefighter's *concerns did not involve the type of conduct* which had allegedly been directed at her by the accused firefighter, which *she documented in her First Incident Report*, and which had been fully investigated and addressed.
76. That day, Battalion Chief Mulac reported this second interaction with the reporting firefighter, and the concerns she relayed, to Plaintiff.
77. At Plaintiff's instruction, Battalion Chief Mulac issued a memorandum, titled "*Record of Conversation*" to the reporting firefighter via the internal TexCom system, outlining their discussion, and her options regarding reporting further issues. (See Exhibit 5 - "*Record of Conversation*", dated May 28, 2021), thus ensuring that the reporting firefighter was aware of multiple avenues to report any future concerns she may have had.
78. No further concerns were brought to Plaintiff's attention by the reporting firefighter and, upon information and belief, she brought no further concerns to the attention of Battalion Chief Mulac either.
- The Reporting Firefighter approaches Township Trustee Ashley Glass and requests a meeting to discuss her working environment. Defendant Township Manager Dexter Mitchell attends and directs the meeting. Numerous additional allegations, spanning a three year period, are presented, discussed, then documented in a lengthy Second Incident Report.**
79. Upon information and belief, on or about late January 2022, the reporting firefighter contacted Township Trustee Glass, Township Trustee (*hereinafter "Trustee Glass"*), and requested to meet with her to discuss her experiences, and concerns which she had, regarding working in the Fire Department.
80. Upon information and belief, Trustee Glass asked her if Defendant Charter Township of Kalamazoo's Township Manager, Defendant Dexter Mitchell (*hereinafter "Defendant Mitchell"*)⁵, could attend the meeting.
81. Upon information and belief, neither Trustee Glass nor Defendant Mitchell asked her if Plaintiff could attend the meeting.

82. Plaintiff was not informed of the pending meeting, nor that the reporting firefighter had reported any concerns to Trustee Glass and/or Defendant Mitchell.
83. Upon information and belief, the meeting occurred on or about February 1, 2023, at a local coffee shop, during which the reporting firefighter communicated a series of alleged events, *which spanned an approximately three-year timeframe*, from 2019-2022.
84. Upon information and belief, at the conclusion of the meeting, Defendant Mitchell asked the reporting firefighter to forward any *written reports she had previously prepared* regarding the alleged events to Trustee Glass and himself.
85. Additionally, upon information and belief, Defendant Mitchell *asked her to prepare an additional report, summarizing the alleged events which had been reported during the meeting*.
86. Again, upon information and belief, Defendant Mitchell asked the reporting firefighter to provide this new report, once prepared, to Trustee Glass and himself.
87. Upon information and belief, a little over two weeks later, on or about February 18, 2022, the reporting firefighter presented a second report, (*consisting of eleven single-spaced pages, spanning an approximately two and ½ year timeframe*). (See **Exhibit 6 - Second Incident Report, dated 2.18.22**)⁶
- The Second Incident Report is exponentially lengthier and more detailed than the first, addresses numerous incidents which had not been reported at the time of Plaintiff’s original investigation, and is replete with detail concerning incidents which had been.**
88. In stark contrast to the First Incident Report of 12.4.19, the Second Incident Report is expansive, and meticulously detailed, *almost four times as long*, despite having been submitted more than *two years after the First Incident Report*.
89. Numerous allegations are made by the reporting Firefighter in the Second Report, *which are not even mentioned* in the First Report. For example:

- a. The accused firefighter told her she was “hot” in front of colleagues.

⁶ Note, upon information and belief, *there was also third report produced, of approximately five pages, which was produced subsequent to the February 1, 2022 meeting, but again, substantially revised and expanded.*

- b. The accused firefighter attempted to bar her from being at the fire station.
- c. The accused firefighter yelling at her, and then leaving the station in the presence of Battalion Chief Mulac, who allegedly told her “... *not to have expectations of anyone at the station*”.
- d. Battalion Chief Mulac telling her that she should not be thinking that she had “*ownership*” of the station.
- e. The accused firefighter “*lying*” and Battalion Chief Mulac believed him.
- f. Accusing Captain Chad Baker of objecting to her speaking Spanish.⁷
- g. The accused firefighter allowing a female paramedic to wear his turnout gear and taking pictures.
- h. The accused firefighter repeatedly drove by the station and made noise with his car to bother her.
- i. The accused firefighter yelled at her that the parking lot was his.
- j. The accused firefighter “*sticking his head*” in the room where she was located.
- k. Battalion Chief Mulac telling her that multiple firefighters’ contributions to the department combined did not equate to those of the accused firefighter.
- l. Battalion Chief Mulac referring to the accused firefighter as “*Papa (first name)*,” which she believed to be an insult directed at her.
- m. Battalion Chief Mulac telling her that she should not “*burn her bridges.*”
- n. Battalion Chief Mulac behaving in a hostile manner toward subordinate employees.
- o. Battalion Chief Mulac telling that her none of the employees could meet his standards.
- p. The reporting firefighter alleging that after she submitted her *First Incident Report*, the accused firefighter continued to yell at and intimidate her.

90. Of the above-described incidents set forth in Paragraph 92 above, *none were brought to the attention of Plaintiff in any way, shape or form.*

91. Moreover, there was never an allegation made by the reporting Firefighter that Plaintiff behaved inappropriately, or that he was unapproachable or unresponsive regarding her reporting of allegations in any way.

⁷ Note, upon information and belief, Battalion Chief Mulac did address this issue, directing the employees of Eastwood Fire Station to stop telling others not to speak Spanish.

92. Additionally, there are several examples of much more detailed depictions of incidents which were reported in the First Incident Report in cursory fashion, exponentially increasing the ease with which they could have been investigated.
93. Moreover, there are also numerous factual inaccuracies and contradictions between the First Incident Report and the Second Incident report, which go to the reasonableness of the actions Plaintiff took at the time of his original investigation, including:
- a. The reporting firefighter claiming there was *no follow up, or consequences for the accused firefighter's behavior* – This is not accurate, as the allegations presented were investigated, discipline was issued to the accused firefighter, and the reporting firefighter was provided a Memo summarizing the steps taken and providing guidance for future reports. That discipline was issued was not shared with the reporting firefighter, as Plaintiff understood that doing so would not be appropriate per Kalamazoo Township Policy concerning confidentiality.
 - b. The reporting firefighter claims that harassing behavior continued through the end of 2021. *However, she reported no further incidents after Plaintiff's directing the investigation of her original allegations*, despite having been provided detailed guidance regarding further reporting procedure.
94. The only further report of which Plaintiff was aware occurred on May 28, 2021, when the reporting firefighter met with Battalion Chief Mulac to discuss concerns related to his supervision, and issues involving her co-workers at Station 2. These were never presented in writing.
95. After the meeting, Battalion Chief Mulac reported to Plaintiff what had been discussed. Plaintiff determined that it was important to document this report and further advise the reporting firefighter of protocol to utilize in further reporting. This was done immediately, via the internal Texcom system. **(See Exhibit 5 - "Record of Conversation", dated May 28, 2021)**
96. In her *Second Incident Report*, the reporting firefighter asserts that it would be a “*conflict of interest reporting concerns to Chief Obreiter about Battalion Chief Mulac, if they are close professionally and personally,*” and that she “*doubts that if she had made a complaint due to her incident with (the accused firefighter), anything would have been done.*”

97. However, there is no evidence that Plaintiff engaged in a pattern of favorable treatment toward Battalion Chief Mulac, nor that had the reporting firefighter reported an issue to him concerning Battalion Chief Mulac that he would have failed to act upon it.⁸

98. In stark contrast to the *First Incident Report*, the *Second Incident Report* contains extensive allegations of discrimination, including:

- a. Referring to “*Racist Interactions from Coworkers.*”
- b. Alleging “*Racism has continued*”
- c. Alleging “*People who have been racist ... and not taking me seriously when I presented these concerns*” (Presumably, Battalion Chief Mulac and Plaintiff)

99. Again, Plaintiff never had access to the *Second Incident Report* at the time he conducted his investigation, which he conducted in accordance with Defendant Charter Township of Kalamazoo’s Policy and Procedure, Fire Department Standard Operating Guidelines (“SOG’s”), and the training he received, based on the information available, or reasonably available, at the time.

Plaintiff is abruptly, and falsely, accused of failure to investigate allegations of harassment, and is subjected to a sham, cursory investigation, featuring an ambush-style interrogation, and no meaningful opportunity to present exonerating evidence, geared toward a preconceived outcome – his termination.

100. On the morning of Monday, February 28, 2022, Defendant Dexter Mitchell, in his capacity as Township Manager, asked Plaintiff if he had any time to talk that day. Plaintiff advised of his availability, and a time to meet was set for 2:00 pm.

101. Defendant Mitchell provided no indication of the purpose of the meeting.

102. At approximately 1:50 pm, Defendant Mitchell and Gerald Alexander, a Private Investigator retained by the Charter Township of Kalamazoo, whom Plaintiff had never met, arrived at his office door

⁸ Additionally, the Texcom Message, sent as a follow-up to the meeting the reporting firefighter requested with Battalion Chief Mulac addresses this very concern, as it presents two reporting alternatives for her - directing her to report to Deputy Chief Weidemann or Plaintiff. No reports were made either individual.

at the Township Offices, and Defendant Mitchell advised him that they would like to talk to him in the large conference room.

103. Plaintiff grabbed his meeting notepad from his desk and followed them across the hall to the room. Defendant Mitchell briefly introduced Plaintiff to Mr. Alexander.

104. At this point, Investigator Alexander advised Plaintiff that they were there to investigate a “*Hostile Work Environment Complaint*” made by a fire department employee.

105. Investigator Alexander advised Plaintiff that the complaint was *twelve pages long*, and was full of disparaging information about himself, Battalion Chief Mulac, and the operations of the fire department.

106. At this point, Defendant Mitchell read Plaintiff a *Garrity*⁹ rights warning and advised him that this was an administrative investigation. Defendant Mitchell, while remaining present, then turned the floor over to Investigator Alexander.

107. Investigator Alexander, possessing what appeared to be a written outline, immediately began interrogating Plaintiff, in an aggressive and hostile fashion, marked by an elevated vocal tone which often devolved into yelling.

108. Investigator Alexander continually referred to the alleged 12-page complaint and appeared to be randomly questioning Plaintiff concerning allegations in it.

109. While Plaintiff does not recall the exact allegations he was questioned on, due to his increased anxiety caused by Investigator Alexander’s hostile and aggressive tone, he made it unequivocally clear that he had never heard of the majority of the incidents in question.

110. Shockingly, Plaintiff was never allowed, despite repeatedly requesting the same, to review the alleged 12-page Complaint; Thus, he was deprived of any reasonable opportunity to gather his thoughts

⁹ **Garrity Rights** protect public employees from being **compelled to incriminate themselves** during investigatory interviews conducted by their employers. This protection stems from the **Fifth Amendment** to the United States Constitution. See, e.g., [Garrity Rights - Garrityrights.org](http://Garrityrights.org)

and attempt to refresh his recollection concerning *allegations which were at that point approximately two and a half years old, and review those which were entirely new to him.*

111. Again, Investigator Alexander spoke in a loud, accusatory manner during the entire Interrogation.

112. Plaintiff repeatedly tried, to no avail, to deescalate the tone in order to allow for a two-sided discussion.

113. However, when it was apparent his de-escalation efforts had no effect, Plaintiff adopted a firmer tone, hoping Investigator Alexander would listen. Nonetheless, his hostile tone only escalated.

114. At one point, Investigator Alexander *pointed his finger directly at Plaintiff and yelled:*

- **“You knew about it! And You Did Nothing!!”**

115. This abusive tone continued for approximately 30 minutes. Despite this unwarranted, unprofessional, barrage of hostility by the investigator, Plaintiff kept his composure, and calmly responded, clarifying:

- a. That he was familiar with some of the alleged incidents
- b. That there had been an investigation conducted
- c. That a three-page incident report had been submitted by the reporting firefighter, at the request of Battalion Chief Mulac.
- d. That the allegations had been investigated, inclusive of witnesses being interviewed.
- e. That written Disciplinary Documentation had been issued to the accused firefighter, and
- f. Non-Disciplinary Documentation summarizing the investigation, and providing guidance for future reporting of allegations, had been issued to the reporting firefighter.

116. In response, Investigator Alexander, seemingly stunned, *admitted that he had no knowledge of the First Incident Report, the Disciplinary Notice issued to the accused firefighter, or the Guidance Documentation issued to the reporting firefighter back in 2019.*

117. Shocked that the assigned Investigator was *wholly unaware of the existence of the central documentation in the matter*, yet was yelling conclusory accusations at him, Plaintiff, wanting to ensure

that the Investigator had an accurate picture of what action he had taken, offered to immediately walk to his office, a few doors away, and obtain copies.

118. Inexplicably, Investigator Alexander stated: **“That won’t be necessary at this time.”** and advised Plaintiff that he had no further questions.

119. The interrogation meeting lasted approximately an hour, during which Plaintiff was neither advised of details of any of the allegations, nor allowed to ask any questions.

120. At the conclusion of the bombastic Interrogation, Investigator Alexander opined that the matter, **“Had Wheels and Could Go Someplace,”** and, that it would be **“Embarrassing for You Guys When It Hits the Newspapers.”**

121. **In sum, Plaintiff was wholly deprived of Due Process during the Interrogation:**

- a. He was provided no notice that he would be interrogated, the contemplated subject matter, or any opportunity to prepare.
- b. He was provided no documents for review prior to, or during the interrogation, most notably, the alleged 12-page Complaint.¹⁰
- c. He requested but was denied the opportunity to promptly retrieve crucial documentation, which would have substantiated his promptly investigating and issuing disciplinary and explanatory documentation to the principal parties.¹¹
- d. The questioning itself was hostile, loud, aggressive, and intimidating, giving Plaintiff little time to reflect, gather his thoughts, attempt to discern what he was being accused of, and answer intelligibly.

122. Defendant Mitchell, in his role of spearheading and directing the investigation, wholly approved, condoned and sanctioned this hostile and aggressive approach, with no regard whatsoever to Plaintiff’s Due Process rights -as such, Plaintiff was provided no meaningful opportunity to defend himself.

¹⁰ The document was ultimately produced to Counsel, on July 13, 2022, but the objectivity of any examination concerning the same was already ruined, and thus, the investigation is irreparably tainted.

¹¹ This willful and deliberate indifference to exonerating evidence on the part of the Investigator serves as a powerful inference in support of Plaintiff’s position – **The investigation’s outcome was preconceived, geared toward finding multiple serious violations on his part, irrespective of the evidence.**

123. At the conclusion of the meeting, Defendant Mitchell ordered Plaintiff not to discuss the matter with anyone, which although premised to protect confidentiality, as a practical matter, severely impaired Plaintiff from gathering exculpatory information.
124. Over the course of the next several months, despite feeling that he had already been presumed guilty of serious allegations without having had a meaningful understanding of what he was accused of, much less an opportunity to defend himself, Plaintiff cooperated fully in follow up communications with Defendant Mitchell, Investigator Alexander, and the Township's legal counsel as they continued the investigation.
125. During this timeframe, Plaintiff did his best to provide information to demonstrate that the actions he had taken were wholly appropriate and warranted by Kalamazoo Township and Fire Department Policy and Procedure.
126. On March 1, 2022, Investigator Alexander interviewed Battalion Chief Mulac, and Plaintiff, as his supervisor, was directed to advise him of his Garrity rights, then leave the meeting.
127. Upon information and belief, during this approximately two-hour meeting, Battalion Chief Mulac provided Investigator Alexander with a copy of the reporting firefighter's *First Incident Report*, as well as unsigned copies of the written Memorandums issued to both firefighters.
128. After the meeting was concluded, Plaintiff briefly met with Investigator Alexander, who provided him with a list of approximately twelve (12) people that he wished to interview in his investigation. He directed Plaintiff to gather employee contact information for him, and coordinate employee schedules for the interviews.
129. During this brief meeting, Plaintiff witnessed a phone call between Investigator Alexander and Defendant Mitchell, wherein Investigator Alexander stated that copies of the documentation had been provided.

130. At this point, Plaintiff clearly heard Defendant Mitchell asking Investigator Alexander if he was sure that Plaintiff and/or Battalion Chief Mulac hadn't simply typed up the documents twenty minutes before he arrived.
131. Plaintiff was shocked that Defendant Mitchell had so clearly presumed him guilty, to the point that he would make the accusation that he would fabricate documents which he had already offered (*and was refused*) to promptly provide during his own interrogation.
132. At this point Investigator Alexander advised Defendant Mitchell that he was on his way to the Township Offices to discuss the investigation with him further.
133. Plaintiff returned to his own office, also at the Township Offices, and did his best to focus on his work.
134. Approximately 45 minutes later, Plaintiff heard Defendant Mitchell and Investigator Alexander leaving the building.
135. Approximately 10 minutes thereafter, Defendant Mitchell entered Plaintiff's office, holding a pistol in a case, and told Plaintiff he wanted to show it to him, because he knew Plaintiff liked guns.
136. Defendant Mitchell then opened the case and handed the pistol to Plaintiff.
137. Stunned given the circumstances, Plaintiff did his best to remain calm, cleared the pistol to ensure it was not loaded, aimed it in a safe direction, then handed it back to Defendant Mitchell with the magazine removed.
138. Defendant Mitchell then made some small talk with Plaintiff and left his office.
139. On March 1, 2022, Plaintiff met with Investigator Alexander to discuss the list of witnesses that he had requested to interview. Plaintiff provided him with a list of contact numbers for each person and had scheduled the listed individuals for interviews on the dates Investigator Alexander had requested, a three-day span covering a Wednesday, Thursday and Friday.
140. Upon information and belief, during the three day interview process, the Offending Firefighter provided a copy of his signed Disciplinary Memorandum to Investigator Alexander.

141. On or about March 5, 2022, after the Witness Interviews were completed, Investigator Alexander directed Plaintiff and Battalion Chief Mulac prepare a joint document, setting forth what the steps the two of them took in investigating the allegations made by the reporting firefighter from the moment they became aware of allegations.

142. They promptly did so, and produced a document and submitted the document on March 9, 2022
(See Exhibit 7 - “Response to Request for Information Regarding Investigation”)

143. Additionally, ostensibly as part of the investigation, Defendant Mitchell required Plaintiff to accompany him in searching the Township personnel files, to determine whether copies of the documentation issued to the two Firefighters had been placed in their personnel files - no copies of the documents were found in either employee’s personnel file.

144. Shortly thereafter, Investigator Alexander advised Plaintiff that Defendant Mitchell had called the former Executive Administrative Assistant Ms. Molly Cole, and that she advised him that she did not recall seeing them. Investigator Alexander also relayed that Defendant Mitchell stated that Ms. Cole would have remembered the documents, since her daughter had a similar experience.

145. Nonetheless, on or about mid-December 2019, contemporaneous with their issuance, Plaintiff had given the documents, which were confidential, to the Executive Assistant, in a manila folder with directions that they be filed in the applicable personnel files.

146. During the week of March 14, 2022, Plaintiff reached out to Defendant Mitchell 3-4 times, to ask if there were any updates on the status of the investigation.

147. Defendant Mitchell advised Plaintiff that there were no updates and that the information was attorney/client privileged, so he could not discuss anything with him, despite his having repeatedly, yet selectively, involved Plaintiff in the investigation.

148. On or about March 28, 2022, Battalion Chief Mulac found copies of the signed documents issued to both firefighters and notified Plaintiff.

149. Plaintiff promptly notified Investigator Alexander, promptly met with Investigator Alexander and Defendant Mitchell, and provided the documents.
150. Investigator Alexander copied the documents and provided the original copies to Defendant Mitchell to place in the respective employee personnel files.
151. Upon information and belief, during early April, 2022, Defendant Mitchell and Investigator Alexander continued to conduct meetings with various individuals within the Department.
152. On or about Tuesday, April 12, 2022, Plaintiff was ordered by Defendant Mitchell to report to the Township's Labor and Employment Attorney's office, located in Kalamazoo, on Friday, April 15 at 10:30 am.
153. Plaintiff asked Defendant Mitchell if there were any details that were to be discussed so he could be prepared for the meeting; Defendant Mitchell advised him that there were no details available.
154. Plaintiff arrived at the attorney's office on April 15th at the assigned time; present were the attorney and Defendant Mitchell. Plaintiff was questioned by the attorney for approximately two hours, in an interrogation style akin to a deposition.
155. The meeting lasted approximately two hours, but yet again, Plaintiff was not allowed to ask questions regarding the status or findings of the investigation, nor was he allowed to review or discuss any information gathered in the investigation; Thus, Plaintiff remained deprived of a meaningful opportunity to determine what the actual allegations against him were, and to meaningfully defend himself.
156. On or about April 21, 2022, Plaintiff was directed by Defendant Mitchell to send the Township's Labor and Employment attorney all of the computer files that were in his possession relating to his drafts of the Memorandums issued to the accused (*Disciplinary*) and reporting (*Notification*) firefighters, inclusive of emails exchanged between himself and Battalion Chief Mulac containing drafts, revisions, *et. al.*; He promptly did so, sending all versions of the documents which had been drafted, exchanged, revised, and finalized.

157. On or about April 22, 2022, doing his best to focus on his duties but becoming increasingly concerned and anxious, Plaintiff again asked Defendant Mitchell if there were any available updates; Defendant Mitchell flatly responded that he had been busy, and did not have time to work on the investigation or think about it.

158. On or about April 25, 2022, Plaintiff was asked by Defendant Mitchell to provide the annual personnel assessments for 2019, 2020 and 2021 for the accused firefighter.

159. Plaintiff advised him that 2019 and 2020 had been turned in to the new Administrative Assistant for filing and that the 2021 assessments were being worked on. However, none of the assessments for 2018, 2019 or 2020 could be found in the files. It was later determined that they, along with most other township records, had been sent to an off-site contractor to be scanned.

160. Due to a family situation that occurred out of stated, Plaintiff took time off, from on or about April 27, 2022 through May 9, 2022. However, during this time, he received multiple telephone calls from Fire Department Officers and Firefighters, expressing concern about the investigation and the way in which they were being treated by Investigator Alexander.

161. As Plaintiff had been directed not to discuss the investigation but remained responsible for managing the department and upholding morale, he advised the individuals that he would address their concerns when he returned from vacation.

162. On or about May 6, 2022, Plaintiff returned to town and contacted the Officer who had reached out to him while he was out of state. The individual requested a meeting with Plaintiff to discuss the matter, which occurred Monday, May 9th, at 9:00 am.

163. At this meeting, the Officer advised Plaintiff of his concerns, and that other members of the department had similar concerns.

164. Plaintiff advised him that there was nothing he could do, as he was prohibited from discussing the investigation, and suggested utilizing the chain of command in reporting further concerns, up to and including the Township Supervisor.

165. On or about May 23, 2022, Defendant Mitchell emailed Plaintiff, at approximately 4:45 pm requesting a copy of all of the Kalamazoo Township Fire Department Standard Operating Guidelines (“SOG’s”), the Policies and Procedures which directly governed the Fire Department. As Plaintiff was out of his office, he promptly returned and did so.

166. The month of June passed with no further updates on the status of the investigation, despite Plaintiff’s persistent efforts to obtain the same, as his anxiety continued to increase, along with the overall stress level in the department.

167. Under the circumstances, Plaintiff, increasingly concerned and anxious about the ongoing deprivation of his due process rights, increasingly fearful that he had been presumed guilty of serious allegations he did not even understand, having had no opportunity to review any alleged evidence in support of them, and fearful that his employment was in jeopardy, and his reputation was being irreparably tarnished, began consulting with legal counsel on or about June 8, 2022.

168. During this timeframe, via his counsel, Plaintiff began to request information from Defendant Charter Township of Kalamazoo, via contact and engagement with its Labor and Employment Counsel.

169. Plaintiff, via his counsel, requested all documentation and materials compiled in the investigation, including, most importantly, the twelve-page *Second Incident Report* which Plaintiff still had not seen, and the *Investigative Report* which allegedly was being and/or had already been prepared and completed by Investigator Alexander - as, *absent the opportunity to review this report and its findings*, Plaintiff would have no meaningful opportunity to determine what the specific allegations against him were, in order to rebut them.

170. Ultimately, on or about July 12, 2022, *Plaintiff’s counsel was provided a copy of the Second Incident Report, but not the Investigation Report.*¹²

¹² However, given the timing of issuance of the *Pre-Determination* documentation on July 21, 2022, (*see below*), this belated production of the *Second Incident Report* was too little too late, long after it was already found that he had engaged in *Misconduct*.

171. Also in early July, Plaintiff was informed, by Assistant Chief Todd Dunfield, that the accused firefighter had received a “*Pre-Determination Hearing*” notice letter, issued by Defendant Mitchell, which stated allegations against him, and scheduled a meeting with Defendant Mitchell, to occur approximately a week later, indicating that he would be allowed to present exonerating information in his defense before Defendant Mitchell would determine whether he violated policy and/or law, and whether discipline, up to and including discharge, was warranted.

172. Upon information and belief, accused firefighter’s Pre-Determination Hearing occurred on or about July 7, 2022, and a few days later, Defendant Mitchell sent an email notice, which Plaintiff received (*all recipients unknown*), advising that the accused firefighter was no longer employed by the Township of Kalamazoo.

173. On or about Thursday, July 21, 2022, at 9:45 p.m., *without warning*, Plaintiff received the following email from Defendant Mitchell:

From: Dexter A. Mitchell <manager@ktpw.org>
Sent: Thursday, July 21, 2022 9:45:14 PM
To: Dave Obreiter <FireChief@ktpw.org>
Subject: predetermination hearing

Dave,
Please read the attachment.

Dexter A. Mitchell
Township Manager - Kalamazoo Charter Township
1720 Riverview Drive, Kalamazoo, MI 49004-1056
Office: 1 (269) 381-8085 | Fax: 1 (269) 381-6930
www.ktpw.org

174. Attached to the email was a typed document on Charter Township of Kalamazoo Letterhead, Issued by Defendant Mitchell, providing notice of a scheduled “*Pre-Determination Hearing for Chief David Obreiter*” (**See Exhibit 8** - “*Pre-Determination Hearing for Chief David Obreiter Record*”, *dated August 5, 2022*¹³)¹⁴

¹³ Note, the Notice was issued on July 21, 2022, and scheduled a Pre-Determination Hearing for July 27, 2022. However, Plaintiff counsel requested an adjournment, which was agreed to, and a new hearing date was scheduled for August 11, 2022.

175. The four and ½ page, single spaced document contained a panoply of alleged “*findings of violations of misconduct*”, allegedly stemming from the investigation, which allegedly revealed that Plaintiff:

“...[F]ailed to properly investigate and take appropriate action concerning these serious violations. You will have the opportunity to provide all relevant information you want me to consider before I determine whether you violated policy and/or law, and if so, whether discipline up to and including discharge is warranted.”

176. The section of the document under the heading “**VIOLATIONS**” consisted of numerous “*findings*” regarding Plaintiff’s alleged violations of Kalamazoo Township Policy and federal and State Law¹⁵, cited below as follows:

- a. **NON-FEASANCE. MCLA 750.478 Willful neglect of duty; public officer or person holding public trust or employment.**
 1. Presumably, Plaintiff was determined to have willfully neglected his duty, and committed a crime, which carried potential imprisonment. He vehemently denies the same as baseless and wholly contrary to the evidence, which compels the conclusion that he fulfilled his duty *to the best of his ability and judgment in accord with his training and existing Township Policy.*
- b. **BREACH OF FIDUCIARY DUTIES:** See, among other sources, Restatement (Third) of Agency (2006) Employees owe general fiduciary duties of loyalty and performance to their employers. Employees are required to act loyally for the employer’s benefit in all matters connected with the employment relationship. [.]
 1. This violation deemed Plaintiff had violated concepts enumerated in a legal treatise. He denies any such violation, as he wholly adhered to the applicable Charter Township of Kalamazoo Policies, which were in existence at the time of the alleged violations. **The applicable policy states, in pertinent part:**

¹⁴ Upon information and belief, on or about July 21, 2022, Battalion Chief Mulac also received a “*Pre-Determination Hearing*” notice from Defendant Mitchell, and his Pre-Determination Hearing occurred on or about July 25, 2022. Plaintiff had no discussion concerning requiring a Pre-Determination Hearing for Battalion Chief Mulac and had no involvement or discussion of any kind with Battalion Chief Mulac concerning the hearing itself, in regard to preparation or otherwise. Battalion Chief Mulac was represented by his own legal counsel, and Plaintiff wished to avoid any appearance of collusion or impropriety. Ultimately, Battalion Chief Mulac was terminated on the same day as Plaintiff.

¹⁵ Glaringly absent, is any reference to, or analysis of, any actual Workplace Discrimination Law, concerning Discrimination, Sexual Harassment, or Retaliation. Indeed, *Federal Title VII of the Civil Rights Act of 1964 (Title VII), Michigan’s Elliot-Larsen Civil Rights Act (ELCRA)*, or any other relevant employment discrimination law is touched on in any fashion. *This omission is critical*, as legal analysis of Plaintiff’s conduct should hinge on whether he took “*prompt and appropriate remedial action*,” based on the information reasonably available to him.

**Kalamazoo Township Fire Department
Standard Operating Guide #3
Subject: Discipline**

...

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:
 - a) Proper conduct
 - b) Improper conduct
 - c) Violation of policy procedure
 - d) Insufficient Evidence
 - e) Unfounded complaint
2. If discipline is required, every effort will be made to respond to the deficiency with training and or counseling.
3. Violations of any of the provisions of the Charter Township of Kalamazoo and/or fire department standard operating guides, directives or procedures shall be the subject of disciplinary action up to and including discharge.
4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary action with due regard for the nature of the offense and the member's previous record of conduct. The Fire Chief, Deputy Chief or Battalion Chief may initiate actions a-c, the Fire Chief will initiate action d-g.
 - a) Written Reprimand
 - b) Restriction of activities or privileges
 - c) Requirement of Restitution
 - d) Demotion
 - e) Suspension
 - f) Probation
 - g) Discharge.....
6. All offenses, regardless of action taken, shall be acknowledged over the signature of the member receiving the disciplinary action. *When the offense calls for suspension, a copy of the report will be forwarded to the Township Personnel Director. In the event that the offense calls for discharge, this will be made in the form of a recommendation to the Township Personnel Director for action.*

.....

-
2. Plaintiff followed Standard Operating Guide #3 to the letter – When it was brought to his attention that there were allegations made, he directed and supervised an investigation, examined the allegations which were placed in writing, directed that witness interviews be conducted, and based on the information obtained, determined discipline was warranted, but did not rise to the level of suspension or discharge. Discipline was issued to the accused firefighter, and guidance documentation was issued to the reporting firefighter, advising what actions were taken, and providing guidance for reporting future incidents. *Despite having received no training whatsoever concerning conducting workplace*

harassment / discrimination investigations, Plaintiff took prompt and appropriate remedial action¹⁶, and no further incidents were brought to his attention.

- c. **Plaintiff was also determined to have committed a multitude of violations of Kalamazoo Township Policies and Procedures under the headings:**

8. SAFETY, ETHICS, AND CONDUCT (failure to follow)¹⁷

8.1 COMMITMENT TO SAFETY

8.2 WORKPLACE VIOLENCE PREVENTION

8.5 UNACCEPTABLE CONDUCT

4. TERMS OF EMPLOYMENT

(failure to uphold)

4.1 EQUAL OPPORTUNITY AND COMMITMENT TO DIVERSITY

I

8.6 HARASSMENT POLICIES

8.6.1 TOWNSHIP OF KALAMAZOO SEXUAL HARASSMENT POLICY

8.6.2. OTHER HARASSMENT

8.6.3 HARASSMENT AND COMPLAINT PROCEDURE

1. Without exception, all of the above policies were simply stated verbatim, in boilerplate form, with no description whatsoever of how Plaintiff had allegedly violated them, much less, any reference to any substantiating evidence.

- d. **Plaintiff was also determined to have violated multiple Kalamazoo Fire Department Standard Operating Guide (“SOG”) provisions under the headings:**

- **KALAMAZOO TOWNSHIP FIRE DEPARTMENT STANDARD OPERATING GUIDE #1 SUBJECT: GENERAL EMPLOYMENT**
- **STANDARD OPERATING GUIDE #3 SUBJECT: DISCIPLINE**

1. **In the same vein, the above SOG policies were simply recited verbatim in boilerplate fashion, absent any explanation of how they may have been violated.**

¹⁶ In general, remedial action is considered adequate if it is “reasonably calculated to end the harassment.” *Katz v Dole*, 709 F2d 251, 256 (4th Cir 1983). A significant factor in determining whether the employer’s remedial measures are adequate to avoid liability is whether the measures put an end to any further complaints of harassment by the offending individual. *Vermett v Hough*, 627 F Supp 587, 607 (WE Mich 1986).

¹⁷ These alleged Policy and Procedure violations utilized the updated August 2021 Charter Township of Kalamazoo Policies and Procedures, as opposed to those in effect at the time of the alleged violations, which were issued on October 13, 2014. In *Ex Post Facto* fashion, Plaintiff was held responsible for violating policies which were not in existence at the time of the relevant incidents.

2. However, Plaintiff specifically utilized and cited these SOGs, along with #3 (*fully stated above herein*) and #17 in the Disciplinary Notice issued to the accused firefighter. In sum, he reviewed them, and applied them to the best of his understanding based upon the information available at the time as obtained in the investigation he directed and supervised.

e. Ultimately, the Notice of Pre-Determination document reached damning conclusions against Plaintiff, set forth as follows¹⁸:

FINDINGS: FAILURE TO PROPERLY INVESTIGATE AND TAKE APPROPRIATE ACTION, AS REQUIRED BY POLICY AND LAW, TO ADDRESS FIREFIGHTER -----'S CLAIMS OF ASSAULT, BATTERY, SEXUAL HARASSMENT, SEXUAL HARASSMENT, AND/OR HOSTILE WORK ENVIRONMENT BASED ON GENDER, RACE, COLOR, OR ETHNICITY.

A thorough, competent, and neutral investigation conducted by GBA Investigations and Security Consulting, LLC and follow-up communications led to the inescapable conclusion that Firefighter _____'s demeanor toward Firefighter _____, the only woman of color in the fire department at the time, was threatening, demeaning and harassing. He yelled at her, committed assault and battery, called her "hot" and generally treated her differently than he acted toward other male firefighters. Indeed, he admitted that he struck Firefighter _____.¹⁹

On one occasion, when Firefighter _____ was speaking Spanish in his presence, Firefighter _____ admitted he told her to "speak English."

The evidence from the GBA Investigation established that Firefighter _____ violated several policies and laws. The "preliminary investigation" in 2019 was less than 24 hours and it was determined only that "there have been a number of low-level inappropriate interpersonal interactions between Firefighter _____ and _____ over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone's race, color, religion, sex, national origin, age, disability or genetic information discovered."

Despite identifying the investigation as "preliminary," on December 5, 2019, one day after receiving the complaint from Firefighter _____, apparently no further action was taken to investigate the allegations. You failed to produce any e-mail or notes that you stated you received from Battalion Chief Mulac.

The report to Firefighter _____ on December 5, 2019, which you approved, reported that "a few key findings have been identified. Among those, the lack of professional and respectful treatment between

¹⁸ Redactions added by the undersigned counsel.

¹⁹ Relative to the allegation that the accused firefighter "struck" the reporting firefighter, Plaintiff's Investigation revealed that the accused firefighter had lightly slapped the reporting firefighter's face with a bundled pair of leather gloves, in response to her having thrown a shirt at him. To his knowledge, the witnesses interviewed characterized the incident as his having lightly slapped her with the gloves in response to her having thrown the shirt at him. Under the circumstances, inclusive of the fact that she reported no injury, and no witness observed any red mark evidence of injury, Plaintiff determined, that although the conduct was unacceptable, the evidence fit the definition of "horseplay", set forth in Standard Operating Guide #1, rather than a more serious conclusion of Assault and Battery.

coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors.”

The documentation, which you approved, fails to identify who engaged in this unprofessional and disrespectful treatment “between coworkers.” In fact, the letter to Firefighter _____ can be interpreted as a rebuke of her failure to come forward to “timely” report the allegations of assault, battery, and unlawful harassment. As you know from the Township-sponsored harassment, discrimination, and retaliation training you attended in 2013, 2015, and 2017 an employee is not required to report such misconduct. Rather, it is the obligation of the employer to prevent such misconduct if the supervisors knew or should have known about the harassment. You as Chief had been informed about this harassment. Despite the “key findings” of a “lack of professional and respectful treatment between coworkers”, which was acknowledged had been going on “over the past six months,” you took no disciplinary action against anyone, including Firefighter _____, who freely admitted to the independent investigator that he slapped Firefighter _____ across the face, which the evidence established left a red mark on her face. Your failure to learn about this egregious act of violence against a coworker, let alone the other assaults, establishes the fundamental failure of the investigation. Your failure to thoroughly investigate these complaints, whether because of negligence or incompetence or a desire to protect a member of the “tight-knit profession,” and failure to take appropriate action against Firefighter _____ evidences your neglect of duty, breach of fiduciary duties, and violations of the policies which required you to provide a safe, violence-free workplace and to protect Firefighter _____ against unlawful harassment.

In addition, your failure to disclose the complaints, “preliminary investigation” and failure to take appropriate action to the Township Manager or other representative denied the Township the opportunity to conduct a thorough and timely investigation and take the appropriate action required under the circumstances.

177. Plaintiff was shocked and devastated to review the Predetermination Documentation, as it was replete with unfounded allegations of serious violations, *up to and including a crime*, and cited no evidence whatsoever in support of the damning allegations against him, which went directly to his character for professionalism and integrity, earned over the course of a lengthy and stellar career spent in the service of his country and community – in sum, he felt scapegoated.

178. Plaintiff vehemently denied each and every allegation and conclusion reached, which were *reached wholly without his having received a modicum of Due Process, denials of which included, but not were not limited to:*

a. Lack of Provision of Appropriate Documentation –

1. Most notably, Plaintiff was not allowed to review “*The evidence from the GBA Investigation*”, upon which the entire Pre-Determination Notice documentation was premised.
2. *Deprivation of the Second Incident Report* submitted by the reporting Firefighter, until it was too late to have any impact on his ability to gather exonerating evidence.

- b. The Investigation was disjointed, lacked thoroughness, and was conducted in an unjustifiably hostile manner, in which Chief Obreiter was wholly denied Due Process.
 - 1. Most notably, he was subjected to an oppressive interrogation conducted in a manner that was, as opposed to “independent”, clearly outcome determinative.
- c. Being prohibited from discussing the investigation, or his understanding of the allegations, which prohibited both his ability to gather exonerating information, or even defend his reputation as rumors spread through the department, and necessarily, the community.
- d. Being held responsible, in official Kalamazoo Township Documentation, of having committed a series of offenses so severe, despite their simultaneously vague and conclusory nature, that his reputation was irreparably damaged.
- e. Being held responsible, indeed, scapegoated, for having not discovered alleged incidents which were never reported or brought to his attention, in any way, shape or form, despite his best efforts to direct an investigation pursuant to Kalamazoo Township and Fire Department Policy, as it existed, applied to the information brought to his attention, and/or reasonably available or discoverable to him via interviews of pertinent witnesses, which he ordered, based on the limited training provided to him.²⁰
- f. Being judged to have neglected his duty to investigate based on hindsight investigation stemming from the voluminous Second Incident Report, which, while not in existence at the time of his investigation, was undoubtedly held against him in Ex Post Facto fashion. This second report was submitted more than two years after the first, and almost four times as long.
- g. Particularly painful for Plaintiff was the suggestion in the Predetermination Documentation that he acted “based on incompetence or a desire to protect a member of the “*tight-knit profession*,” which utterly flew in the face of his character and integrity.

179. After reading the Predetermination Documentation, it was abundantly clear to Plaintiff that proverbial writing was on the wall was indelibly, and negatively, etched in regard to his employment as Fire Chief with Defendant Charter Township of Kalamazoo, and likely, any future in the fire service, which had been the culmination of his lifelong dream.

180. Nevertheless, Plaintiff persevered, in the hope that if he were fully prepared for the Pre-Determination Hearing, and presented a thorough synopsis of the evidence of which he was aware, despite having been denied access to the crucial evidence during the entire investigation, and the

²⁰ Indeed, Plaintiff had been provided no training whatsoever regarding how to investigate allegations of harassment or discrimination, and no written policy regarding the methodology to do so existed either. His training was limited to general definitions of what constituted discrimination or harassment. Upon information and belief, at the time of the alleged incidents, there was also no policy regarding how to report discrimination or harassment.

“findings” having been documented in such damning fashion, that he would be able to preserve his employment and career.

181. In so doing, he worked with his counsel to prepare and present documentation to submit to Defendant Charter Township of Kalamazoo, Defendant Mitchell, and the Township’s Labor and Employment Counsel.

182. The documentation was submitted on August 9, 2022, in advance of the hearing, which was to occur on August 11, 2022.

183. **The document was titled:**

“Preliminary Response to Documentation Concerning Pre-Determination Hearing for Fire Chief David Obreiter, Scheduled for 8.11.22 at 1 p.m.; Request for Appropriate Documentation Necessary for Fully Preparing his Defense; Request for Reasonable Continuance of Pre-Determination Hearing to Review Requested Documentation;” (See Attached Exhibit 9 – *Predetermination Response Documentation, incorporated by reference herein*)

184. The document was voluminous, and as responsive as possible to the myriad allegations leveled against Plaintiff. However, Plaintiff’s ability to develop arguments in support of his exoneration remained hamstrung, as, despite numerous requests made via his counsel, he was not provided the crucial documentation necessary to rebut the allegations in the Pre-Determination Document. Specifically, he was never provided with any material compiled during the Investigation - prior to “*Findings*” having been reached.

185. Although, after numerous requests, he was ultimately provided a copy of the *Second Incident Report (on or about July 12, 2022)* the allegations had already been used as the basis of the investigation, Investigative Report conclusions, and Pre-Determination “*Findings*”. Therefore, Plaintiff had to attempt to discern and rebut allegations against him, which had already been investigated and determined absent any meaningful opportunity on his part to participate – *an irreparable deprivation of Due Process*.

186. Moreover, despite numerous requests, *he was never provided any Documentation or any other*

Evidence compiled in the investigation conducted by Investigator Alexander / GBA Investigations and
pg. 33 COMPLAINT AND JURY DEMAND - DAVID J. OBREITER v. CHARTER TOWNSHIP OF KALAMAZOO;
CHARTER TOWNSHIP OF KALAMAZOO BOARD OF TRUSTEES; board members (in their official capacities);
DEXTER A. MITCHELL, Township Manager (in his official capacity)

Security Consulting, LLC, most crucially, *a copy of the Investigative Report*. This deprivation forced him to attempt to ascertain and rebut any conclusions reached without seeing any supporting evidence – *again, an irreparable deprivation of Due Process*.

187. The Pre-Determination hearing occurred as scheduled at the Charter Township of Kalamazoo Offices, in a conference room. Present were Plaintiff, Defendant Mitchell, the Township’s Labor and Employment Counsel, and Plaintiff’s counsel.

188. During the Pre-Determination hearing, bearing in mind the voluminous documentation already presented, and the fact that the requested documentation had not been provided, Plaintiff’s presentation chiefly focused on his reiterating the steps he had taken during the investigation, requests for renewed and ongoing training, and his commitment to the Charter Township of Kalamazoo Fire department, career as Fire Chief, and, requests that Defendant Mitchell evaluate his character and commitment, and act accordingly in his decision regarding his employment.

189. The Pre-Determination hearing, which lasted approximately an hour, was cordial and congenial. Plaintiff left very optimistic that his job was secure.

A month passes, and on September 14, 2022, without any warning whatsoever, Plaintiff is terminated in the middle of his fire service shift.

190. Over the next month after the Pre-Determination hearing of August 11, 2022, Plaintiff, received no updates regarding the outcome of the hearing, any contemplated decisions from Defendant Mitchell.

191. However, all seemed to be going smoothly and returning to normal within the department. Although he remained very anxious due to the uncertainty, and worried of the potential consequences, as always, he focused on his duties, and was optimistic. Overall, tension began to deescalate within the Department,

192. Plaintiff also noticed that during this timeframe, Defendant Mitchell acted in a cordial, indeed friendly manner toward him.

193. However, on the afternoon of September 14, 2022, abruptly and without any warning whatsoever, Plaintiff was terminated, in a shocking and humiliating fashion.
194. At approximately 2:50 p.m. that afternoon, Defendant Mitchell entered Plaintiff's office holding a yellow folder, accompanied by Lisa VanDyke, his Executive Assistant.
195. Defendant Mitchell asked Plaintiff if he "*had a minute*", and Plaintiff replied "*yes*".
196. Defendant Mitchell and his assistant sat in the two chairs in front of Plaintiff's desk, and at this point, Defendant Mitchell opened the folder and flatly informed Plaintiff that he had his Memo of termination of employment with Kalamazoo Township.
197. Defendant Mitchell then read the entire document word for word to Plaintiff. (See **Exhibit 10 – Memo – Termination of employment with Kalamazoo Township**)
198. **The termination reasons, set forth below, are damning, and go to the core of Plaintiff's sense of duty, integrity, and professionalism:**
- “As the Township Manager, I authorized an investigation stemming from a report filed with me earlier this year regarding allegations of sexual and ethnic harassment and/or intimidation by a member of the fire department. After the completion of the investigation, and the predetermination hearing, I have determined that your inaction was serious and/or willful neglect in the performance of duty as a department head for Kalamazoo Charter Township and constitutes willful neglect of your duties as Fire Chief of the Township. Under section five of your employment contract number 4: I have deemed you to be in violation of the Township of Kalamazoo harassment policy. (See Exhibit 10 – Memo – Termination of employment with Kalamazoo Township)**
199. At this point, Defendant Mitchell shifted gears, and asked Plaintiff if he had any other equipment or items not listed on memo to be returned to the department, and Plaintiff stated that he probably did, and would check over the next few days to arrange to return them.
200. Defendant Mitchell then asked Plaintiff to initial a copy of the Memo, and Plaintiff requested Defendant Mitchell initial a copy of the memo as well, which he did.
201. At this point, Defendant Mitchell handed Plaintiff back his copy, stood up, and exited his office, saying nothing further.

202. Shocked, devastated, and reeling from his sudden termination, and the false and damning reasons for it, Plaintiff nevertheless kept his composure, and realizing that he had no transportation other than a departmental vehicle, calmly asked Defendant Mitchell if he was planning on giving him a ride home, or if he should ask someone else.

203. Defendant Mitchell responded that Police Sergeant Smith was in the hallway outside his office and would take him home.

204. Sgt. Smith then walked into Plaintiff's office, apologized that he was involved and stated that took no pleasure in the task.

205. Plaintiff thanked him and advised him that, while he was extremely angry that there would be no problems whatsoever.

206. Sgt. Smith said that he expected nothing different, thanked Plaintiff and told him to take his time collecting his things and that he would be back shortly to help him take his items out to his car.

207. Sgt. Smith returned in about 10 minutes, helped Plaintiff with his items, and then went out to Plaintiff's work vehicle.

208. Sgt. Smith then moved his car near Plaintiff's work vehicle, assisted Plaintiff with a few items, and then drove him home.

209. While driving Plaintiff home, Sgt. Smith told him:

"Listen to me, the walls are thin, your termination was done against the advice of the township legal counsel."

210. ***Sgt. Smith then clearly and directly repeated this comment again***, and the two of them continued to Plaintiff's house.

211. On the arrival of the two men at Plaintiff's house, Sgt. Smith helped Plaintiff unload his things. Plaintiff had already provided his work laptop computer, cell phone, building keys and key fob to Sgt. Smith. Plaintiff had also left his fire service radio in his work truck, and left his pager, ID card, township credit card, petty cash envelope and all other files and items on his desk before he left.

Devastated by his termination and the likely destruction of his lifelong career in Fire Service, Plaintiff is determined to clear his name – He promptly submits a formal request for Reinstatement and also, a request for “Due Process/Name Clearing Hearing.”

212. Having served Defendant Township for virtually the entirety of his career, Plaintiff did not abandon the hope that he could obtain justice – the clearing of his name and full reinstatement to his position – via appealing the decision to the Township.

213. In this regard, two days after his termination, via his counsel, Plaintiff submitted a formal request for reinstatement to the Township’s Labor and Employment Counsel, stating as follows:

Chief Obreiter has authorized me to convey a formal request for reinstatement to his position. Please share the same with your Client, inclusive of Township Manager Mitchell, and also, all Members of the Township Board.

Bearing in mind that the Township Board Members were not the decision makers in Chief Obreiter’ termination, I would respectfully suggest that they should at the very least be informed of his willingness to return to his position.

In short, Chief Obreiter is absolutely shocked and devastated by his termination. Serving the Township as its Fire Chief was, and remains, his lifelong dream.

To the extent there is any interest on the part of your client to discuss potential reinstatement, please let me know as soon as possible.

214. Unfortunately, upon information and belief this request for reinstatement was not seriously considered.

215. However, Plaintiff persisted, continuing to make requests for the documentation sought in his Redetermination Response materials, and ultimately, on November 20, 2022, making a **formal request for a Full Special Meeting and full Due Process “Name-Clearing” Hearing** to be scheduled before the full Board for consideration of his *Request for Reinstatement*. (See Exhibit 11 – Request for Due Process “Name-Clearing” Hearing)

216. Plaintiff also requested that copies of his Pre-Determination Response Documentation, inclusive of the Exhibits contemporaneously submitted with that material, be provided to each member of the Board of Trustees for consideration, and also placed in his personnel file.

217. Plaintiff's request for a Due Process "Name-Clearing" Hearing, was ultimately granted, and the public hearing before the Charter Township of Kalamazoo Board of Trustees was scheduled for December 5, 2022.

218. In the interim, on or about October 24, 2022, the Township Board of Trustees voted to release the full investigation report, which Plaintiff had long sought in his efforts to exonerate himself and protect his career and reputation, to the public. The same was published in full, in the press. In conjunction with this publication, Plaintiff was also provided a copy, via counsel. (See **Exhibit 12 – GBA Investigations Investigation Report**)

219. On review of the report, in conjunction with his humiliation in it having been released to the press before he had any opportunity to review it, it immediately became clear to Plaintiff that, rather than being the result of an "independent" investigation, the report was fatally flawed and riddled with inaccuracies, that irreparably skewed the outcome against him.

220. By way of example only:

- a. Several of the people Plaintiff specifically requested to be interviewed, on the basis of his understanding that they had available information, were not.
- b. There were actually not two, but three incident reports:
 1. The *First Incident Report* – again, the only one provided or known to Plaintiff, on which he based his investigation.
 2. A Five-page rough draft provided by the reporting firefighter, upon information and belief, at the request of Defendants Mitchell and Glass; and finally
 3. The 11 page *Second Incident Report*.

Fundamental notions of Due Process, indeed simple fairness, dictate that Plaintiff should not have been held responsible for failing to investigate a series of evolving allegations to which he was never aware, and which he could not reasonably discover.

- i. The document which appears to be notes of the interview of Plaintiff is inaccurate.

- ii. There is no evidence whatsoever to support the notion that Plaintiff would be unwilling or indifferent to an individual who reported concerns of workplace discrimination or harassment, much less, engage in a cover-up to protect the accused firefighter.
- iii. The investigation reveals that the reporting firefighter was interviewed extensively by Defendant's Mitchell and Glass (as a Trustee, acting wholly outside the chain of command) yet, there is no information, compelling or otherwise, to substantiate their decision not to involve Plaintiff, as Fire Chief, in the first place.
- iv. The investigation, ultimately, provides no conclusions or recommendations whatsoever, much less, any suggesting Plaintiff engaged in in any "Violations", much less the grave violations for which Defendant Mitchell chose to terminate him.
- v. Notably, one of the interviewees notes the fact that the Township had not conducted diversity training in several years.
- vi. The 3 page - Joint Statement by Plaintiff and his Battalion Chief is included, details exactly how allegations were brought to their attention, and exactly what was done to investigate, the basis for their respective roles in the investigation, the incidents investigated with specificity, the conclusions found, the justifications for the actions taken, and the policies and procedures followed.

221. In sum, the Report, while providing no actual findings or conclusions per se, much less any which would support violations, wholly comports with the information provided by Plaintiff.

222. The Hearing before the Board occurred on December 5, 2022, commencing at 6:00 p.m.

223. As the hearing was open to the public, it was preceded by a public comment section, in which many members of the community spoke.

224. After the public comment section, Plaintiff, with the assistance of counsel, presented Plaintiff's case for exoneration and reinstatement to the full Board, in a presentation which lasted approximately three hours.²¹

225. During Plaintiff's presentation, he spoke extensively regarding his actions in conducting the investigation, his understanding of policies, and his history in fire and public service.

²¹ The entire meeting of the Kalamazoo Township Board of Trustees - December 5, 2022 Kalamazoo Township Special Meeting was recorded and is accessible at: [CloudCast v3 \(telvue.com\)](#)

226. At the conclusion of Plaintiff's presentation, he thanked the Board and those present for the opportunity to be heard, and via counsel, respectfully requested his reinstatement.
227. After Plaintiff's presentation, contrary to normal procedure, a second public comment section was added.
228. On December 7, 2022, two days after the hearing, Plaintiff, via counsel, sent a request that a Motion for his reinstatement be brought at the next regular meeting of the Board, scheduled for December 12, 2022. **(See Exhibit 13 – Formal Request – Motion for Reinstatement)**
229. However, despite continually, cordially, and patiently reaching out to follow up on the request via his counsel, no response was given, and no further action was taken.
230. Ultimately, on March 9, 2022, Plaintiff received notification, via a voice mail left to his counsel, informing him that the Board had voted to seek new leadership at the Fire Department.

LEGAL ALLEGATIONS

**COUNT ONE - Violation of Procedural Due Process Liberty Interest in Good Name and Reputation
(vs. Defendants CHARTER TOWNSHIP OF KALAMAZOO;
CHARTER TOWNSHIP OF KALAMAZOO BOARD OF TRUSTEES;
board members (in their official capacities);
DEXTER A. MITCHELL, Township Manager
(In his official capacity)**

231. Previous paragraphs adopted by reference.
232. **The Fourteenth Amendment to the United States Constitution provides:**
- Section 1 - No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;***
233. **The Michigan Constitution of 1963 provides:**
- § 17 Self-incrimination; due process of law; fair treatment at investigations. Sec. 17. No person shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty or property, without due process of law.* The right of all individuals, firms, corporations and voluntary associations to *fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.* History: Const. 1963, Art. I, § 17, Eff. Jan. 1, 1964. Former constitution: See Const. 1908, Art. II, § 16.**

234. As set forth in the above allegations incorporated herein, Plaintiff was deprived of a liberty interest without due process

235. As a public employee, Plaintiff had a liberty interest in his good name and reputation as they related to his continued employment as Fire Chief of Defendant Charter Township of Kalamazoo.

236. Additionally, as a contractual employee, having entered into a contract with Defendant Township in 2009, *albeit with an "at will" clause*, as a practical matter, Plaintiff enjoyed guaranteed continued employment as long as he performed effectively under the terms of the contract, which he did. Thus, Plaintiff affirmatively avers that, in addition to the liberty interest in his good name and reputation, he had a property right in his employment under the 14th Amendment of the U.S. Constitution.

237. As set forth more fully in the above allegations, Defendants infringed upon Plaintiff's Due Process Liberty interest when:

- a. They falsely accused him of accusations which impugned his good name, honor, integrity, and professionalism.
- b. They deprived him of the right to defend himself against the false allegations;
- c. Subjected him to a sham investigation with a preconceived outcome, premised on allegations he had never seen and had no reasonable opportunity to discover, coupled with an abusive and hostile interrogation;
- d. Deprived him of any meaningful opportunity to review alleged evidence arrayed against him when he could meaningfully impact the investigation and defend himself, prior to findings having been reached.
- e. Unjustly terminated his employment, for alleged reasons which would absolutely foreclose similar employment opportunities;
- f. Then ratified that decision, by refusing to act in the face of overwhelming evidence in support of his exoneration, in the context of a Due Process / "*Name Clearing*" hearing, which occurred before the full Township Board and members of the public.

g. Defendants publicly affirmed the false reasons for Plaintiff's termination to the press and public, to the permanent detriment of Plaintiff's reputation and future employability in his chosen career, in which he had demonstrated unswerving diligence, integrity and professionalism.

238. At all relevant times herein, Defendants acted in their official capacities when they acted as set forth above herein. In so doing, they deprived Plaintiff of his constitutional liberty interest in his good name and reputation and his property right to continued employment by terminating his employment for, and publicly and falsely accusing him, and labeling him, of having failed to perform his duties in investigating allegations of workplace discrimination and harassment as alleged herein.

239. These defendants deprived Plaintiff of his Due Process rights as he was wholly deprived of any meaningfully adequate notice of the charges against him, the evidence, the documentation on which the charges were based, or any other investigative documentation, most notably, the inherently flawed investigation report.

240. Plaintiff was provided nothing in the way of detail which would allow him effectively discern, much less rebut the allegations made against him.

241. He was prohibited from discussing the matter with anyone, thereby effectively depriving Plaintiff of any opportunity to question or obtain witnesses on his behalf.

242. Plaintiff was not given additional detail about the charges until Notice of Pre-Determination Hearing was issued, and the "*findings*" of "*violations*" which had already been reached against him.

243. Plaintiff was not provided Investigator Alexander / GBH's Investigation report, which actually vindicated him, until after he was terminated, and the damage had already been irreparably effected to his career, and reputation.

244. Plaintiff did not otherwise have a meaningful time or meaningful time and/or opportunity to respond to these charges, as the Investigation spanned approximately seven and ½ (7.5) months, yet his opportunity to respond to the Notice of Pre-Determination "*Findings*" was a fraction of this time, and he was deprived the crucial documentation necessary to do so.

245. Plaintiff's attempts to appeal and further be heard, despite overwhelming evidence presented before and during the "*Due Process*" / "*Name Clearing*" hearing, were denied, thus officially and publicly ratifying the false and destructive allegations that formed the basis of his termination.

246. At all relevant times, these defendants were acting under color of state law.

247. At all relevant times, in their official capacities as Township Manager, board members, and collectively as the Charter Township of Kalamazoo and Charter Township of Kalamazoo Board of Trustees, these defendants were executing official Township Policy, by making edicts or acts depriving Plaintiff of his constitutional rights, representing the official policy of the Township and the Board, by making, and ratifying, unsubstantiated, gravely damaging findings that were made in utter contravention of the relevant evidence, Township and Fire Department policy and procedure regarding such investigations, and then, falsely and irreparably finding Plaintiff had committed grave acts of dereliction of his duty in failing to investigate allegations of workplace discrimination and harassment, casting the death knell to any hope that he could be employed in a Fire Department leadership position, much less as a Fire Chief in the future.

248. Accordingly, these defendants are liable to Plaintiff pursuant to 42 USC § 1983 for their deprivation of Plaintiff's constitutional rights and damaging him as alleged herein and below.

**COUNT TWO – Mandamus
(vs. Defendants Charter Township of Kalamazoo and
Charter Township of Kalamazoo Board of Trustees)**

249. Previous paragraphs adopted by reference.

250. As an alternative count, should it be found that Plaintiff has no legal remedy, he seeks mandamus against defendant Board to compel them to reverse the decisions made against him:

- a. (1) that he Violated the Charter Township of Kalamazoo's Harassment Policy, by failing to investigate allegations of workplace discrimination and/or harassment, or in any other manner.

b. and (2) that he be terminated from his position as Fire Chief, and that he be fully reinstated with full backpay, benefit losses, and any other remedies determined to be appropriate and just, including an award reasonable and actual attorney's fees and expenses.

251. The extraordinary remedy of mandamus is proper, under MCL 600.4401 *et seq.*, only when the Plaintiff has shown a clear legal right to the performance of a specific duty by the defendant and the defendant has an incontrovertible legal duty to act in the manner requested; in addition, there must be a lack of an adequate legal remedy.

252. In this case, the Plaintiff has shown a clear legal right that under no interpretation of the law should he have been found responsible for "*serious and/or willful neglect in the performance of duty ... as Fire Chief ... in violation of the Township Kalamazoo harassment policy....*", in any way, shape or form, and because his termination was erroneously based on that finding, the Charter Township of Kalamazoo and/or the Charter Township of Kalamazoo Board of Trustees has an incontrovertible legal duty to reverse the decisions against him, as described in paragraph 251.

253. These Defendants' failures to act in accordance with Plaintiff's clear legal rights, and its incontrovertible legal duty, has caused Plaintiff considerable damages, and entitles him to those damages and the specific relief of mandamus, should he have no other adequate legal remedy.

CONCLUSION

Plaintiff, former Kalamazoo Township Fire Chief David Obreiter, took the allegations made by the former firefighter in his department very seriously and would never tolerate any form of discrimination or harassment in the department. He investigated in accordance with his professional judgment, based on the allegations reported, and the information reasonably available to him.

His livelihood and reputation, built over the course of a lifetime of service, and as a member of his community, have been taken from him, and by extension, his family. He respectfully requests that this honorable Court allow him the opportunity to restore them.

DAMAGES SOUGHT

254. Previous paragraphs adopted by reference.
255. **As a direct and proximate result of defendants' actions, Plaintiff suffered damages exceeding \$75,000, as follows:**
- a. ***Economic Damages*** – lost wages, lost earning opportunity, lost value of benefits, including but not limited to value of future retirement benefits, attorney fees, incidental and consequential damages.
 - b. ***Non-Economic Damages*** – harm to reputation, emotional distress, mental anguish and continuing mental anguish, denial of social pleasures and enjoyment, inconvenience, embarrassment, ridicule, humiliation, and outrage.

JURY DEMAND

Plaintiff hereby demands a jury trial as to each of his causes of action against Defendants.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests this honorable court grant him:

- a. **In excess of \$75,000 damages against defendants, as warranted by the law and the proofs, including:**
 - i. **economic and non-economic damages as described above;**
 - ii. **the greatest possible combination of non-economic and exemplary damages;**
 - iii. **punitive or special damages as permitted by law;**
- b. **costs and pre- and post- judgment interest as permitted by law;**
- c. **attorney fees as permitted by 42 USC 1988 (b) and otherwise under law;**
- d. **declaratory, injunctive, and/or other prospective relief, as permitted by law and equity;**
- e. **the specific remedy of mandamus, if he is found to have no other adequate legal remedy, to compel the Defendants Charter Township of Kalamazoo and/or Charter Township of Kalamazoo Board of Trustees to perform their ministerial duty to reverse the erroneous findings against the Plaintiff; and**
- f. **other remedies as are just, appropriate, and permitted by law or equity.**

Respectfully submitted,

By: /s/ David A. Kotwicki
David A. Kotwicki, P.L.C
David A. Kotwicki (P56070)
Attorney for Plaintiff
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Shelby Township, MI 48317
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Dated: September 14, 2023

COPY

Jennifer Gonzalez

12/04/19

I'm writing this incident report to provide detailed information of things in its timeline that was discussed to Battalion Chief Matt Mulac on 12/04/19 in the morning with another individual, Rick Trott.

When I first starting officially started at the Kalamazoo Township Fire Department Station 2, I was scared that this job isn't for me or that I was very behind from my peers that were hired with me. I wanted to make sure this is a job that I wanted to be in before I decided to officially commit before I got off my probationary period. I made the effort to come in every day throughout the week for about 6-7 hours to make sure I knew the equipment on the rigids, I understood the guidelines, and the type of environment I would be in with my co-workers.

As I went to the station frequently for running calls and learning, I was able to get to know the personnel there more. Rick Trott bring one of the drivers who sat there usually I was able to talk to him, hoping that I would learn more to know that this was career I wanted to pursue. I felt in the beginning that things were normal. We talked about regular things like what to do on this type of call or how that worked. Things that a new person would ask and expect someone of 17 years on the job.

Unfortunately, that didn't last long. Right before I got off probation Trott was being very rude to me. He yelled at me when I was working on my probationary sheet as I was getting help from another co-worker. I wasn't sure why and I was confused because I never wronged him in anyway and I thought this person was somewhat of a mentor. I decided to confront Trott about why he yelled at me, but he stated that he was mad at the other individuals that were at the station for acting like idiots (Andrew McCann, Brian Tenbrink, and Eddie Medina). He never really told me the real reason that answer he gave me didn't make sense to me. He was superior to me at the station I let it go since the job was what matters.

A week and a half before I got off probation in the month of July I had another issue with Trott. Trott, Medina, and I were coming back from a rescue call and I was speaking spanish to Medina. We both were talking about someone that I knew that was personal. Trott got very mad and said that he didn't want me to speak spanish anymore and to stop that bullshit. I got mad and told him that he wasn't going to tell me not to speak my native language and he didn't own the station to tell me how I should speak. Trott was very angry at what I said. Later I found out that he had lied and made a complaint to my Battalion Chief that I was insulting him in spanish. Medina told our Battalion Chief the story of what actually happened since the one Trott said was fabricated. I got very angry when I found out that he lied on my name to get me in trouble. I thought it was stupid becuase he didnt know how to understand spanish to say what he had said and that he was being inmature for his age and level of experience.

After that incident I stopped talking to him for over a month. I felt like I was an issue and no one wanted me there. I still didn't know why I was having so many issues with this individual who I thought was supposed to help me. I thought maybe I didn't belong there and I stopped talking to lots of people at the station. I felt like I couldn't trust anyone. I would purposely stop going to some calls to avoid going there and missed a training to not be there. I was the new girl at the station with the least experience overall compared to an older male who had 17 years on the job who had an opinion. I didn't think I had a valid opinion in the workplace. There were times when Medina and I were outside talking in the parking lot and Trott would pass by multiple times or act like he was going to turn into the parking lot when he passed by the station. My co-worker and I thought it was very unusual that he was doing that. I never knew why he did that but it was pretty weird to me. I wasn't sure if he was trying to mess with me even though I wasn't talking to him at that time

A month and a half of not talking to Trott, I talked to him because I had to for the job. It was more to tolerate that he was the supervisor when he was on shift. I just wanted to go to work and have things run smoothly on scene or off scene.

There were recent interactions last month and this month I was getting from Trott that were not appreciated. Our Battalion Chief was on vacation and Todd Dunfield was the driver that day last month. We all had just came back from a call and I was trying to collect all the shammies that were used to wash 812. As I was walking I could see Trott from my peripheral view coming towards me but I just kept walking. He suddenly came in front of me with his shammie and stepped closer to me and pressed the shammie that was in his left hand against the left side of my chest. I painfully reacted to it because it hurt really bad because that was a sensitive part of chest. All he did was look at me and walked away. There were people around, from what I could remember McCann and Medina were in that area. But only Medina was able to get somewhat of a view while McCann never made a comment or mentioned what happened so I wasn't able to know if he even noticed it. I really didn't know what to do about it. I just thought it was really weird and I just pretended like it never happened and I didn't want to bring it up because I didn't want to bother my Battalion Chief with a different issue with the same person again while he was on vacation.

I was able to tell Todd Dunfield about what happened that day a week later. Dunfield told me to be careful with him and said that he didn't even trust Trott with his daughter alone when his daughter would come up to the station and that he always thought he was unusual.

That same month about two weeks later when Todd Kowalski was sitting. We all came back from a call. Kowalski, Trott, Medina, and I were in the sit room. Trott said something to me that I didn't like. Trott then gets up from his sit near the computer and had the stick that was used to hold up one of the windows in the room in his hand. He comes to the other side of the room and tries to hit my ass pretty much. He wasn't able to because I stopped him. No one said anything to him about it. Or they just ignored it because they didn't care or it was uncomfortable to bring up. I just ignored it because I didn't want to cause issues. I was getting annoyed by the treatment I was getting from Trott.

On 12/03/19, I went to the station after a call. Many people came to the station for the call. Barber, Malcom Jones, Medina, Tenbrick, Trott, Shawn Gallagher, Al, and I and other I'm not sure I remember. I was talking to Gallagher and Trott throws the new shirts we were given at the back of his head saying he didn't like the shirt and didn't want it. I grabbed the shirt from the floor and throw it at his lap and told him that I didn't like what he had done and that it was disrespectful. Later majority of everyone left there was Medina, Tenbrick, Trott, and I left in the sitting room. Trott later throws a rubber band at me to get my attention for I don't know what reason. I ignore it. Later he comes up to me and he grabs the gloves that we were given and smacks my face. I was very angry. All I'm gonna say was that I really wanted to take care of the issue myself and it probably would have gotten me fired from the Township for the actions I wanted to do. Medina told me to not because it wasn't worth it and that I was gonna get in trouble and to talk to our Battalion Chief which I did do the next day.

I'm honestly tired of the inappropriate treatment I'm getting from Trott. It's not getting any better even when I've talked to him in the past to now even when I ignored it. I feel like my gender plays a big part of it. Lots of time I wish I wasn't who I was because then I would get that treatment. My gender shouldn't be the reason why I get treated like that or my race. It's getting more physical and I can only tolerate so much until I decide to take care of it myself. But because I care about the job I decided to commit to I didn't. I wanted to make the right choice even though that wasn't my initial reaction that situation yesterday. I get more uncomfortable because I know he's just staring at me all the time. I still don't know what I did to make him hate me or feel that way. I'm tired of it. I would like it taken care of because I'm not gonna work in Township like that. Others have told me that since I've started he's been acting strange about me and I never knew it until he started causing issues. All I want is for this to be over because a grown man shouldn't be acting like a kid to someone like my age. I shouldn't be making an incident report. I shouldn't be uncomfortable. I shouldn't be touched the way I was touched or talked to the way I talked to by Trott. All I was is a situation to this to end because I've been in situations like this before and only I could take care of it because people didn't want to speak up or do anything about it and it's gotten really old for me. I hope you can help solve this before another female comes in to go through the same situation and before it escalated into something worse.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Jennifer Gonzalez', with the word 'COPY' written in a stylized, outlined font to the right of the signature.

Jennifer Gonzalez.

KALAMAZOO TOWNSHIP FIRE DEPARTMENT

STANDARD OPERATING GUIDE #3

DATE: 3/2010

SUBJECT: DISCIPLINE

PURPOSE: To establish guidelines and procedures regarding disciplinary procedures and maintaining acceptable conduct by Township of Kalamazoo Fire Department personnel.

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:
 - a.) Proper conduct
 - b.) Improper conduct
 - c.) Violation of policy procedure
 - d.) Insufficient evidence
 - e.) Unfounded complaint
2. If discipline is required, every effort will be made to respond to the deficiency with training and/or counseling.
3. Violations of any of the provisions of the Charter Township of Kalamazoo and/or fire department standard operating guides, directives or procedures shall be the subject of disciplinary action up to and including discharge.
4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary action with due regard for the nature of the offense and the member's previous record of conduct. The Fire Chief, Deputy Chief or a Battalion Chief may initiate actions a-c, the Fire Chief will initiate actions d-g.
 - a.) Written Reprimand
 - b.) Restriction of activities or privileges
 - c.) Requirement of restitution
 - d.) Demotion
 - e.) Suspension
 - f.) Probation
 - g.) Discharge
5. Any member of the fire department may be suspended or dismissed for any of the following list of offenses which is not to be considered as all inclusive.
 - a.) Use of or under the influence of intoxicants or illegal drugs while on duty
 - b.) Thievery
 - c.) Immoral or indecent conduct that would be offensive to the average citizen
 - d.) Insubordination
 - e.) Refusing an order from an officer
 - f.) Leaving a response or incident scene early without permission of the officer in charge

STANDARD OPERATING GUIDE #3

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- g.) Giving, releasing or posting in any form fire department personnel and/or emergency response information (including photos taken during response activities) to unauthorized persons. All inquiries should be directed to the officer in charge.
 - h.) Loss of valid Michigan Motor Vehicle Operator's license
 - i.) Misuse or abuse of fire department equipment
 - j.) Failure to use the established chain of command, involving matters or procedures pertaining to fire department operations
 - k.) Loaning out fire department identification or equipment to unauthorized persons
 - l.) The neglect or evasion of official duties and responsibilities
 - m.) Responding to a incident in a careless and/or reckless manner
 - n.) Failure to complete required minimum training and/or emergency responses
 - o.) Any conduct which brings discredit to the fire department
 - p.) Abuse of leave time or absence without leave
 - q.) Unsatisfactory work performance
 - r.) Failure to follow Standard Operating Guides and/or Township policy
 - s.) Intentional damage to Township equipment and/or personal property of coworkers
6. All offenses, regardless of action taken, shall be acknowledged over the signature of the member receiving the disciplinary action. When the offense calls for suspension, a copy of the report will be forwarded to the Township Personnel Director. In the event that the offense calls for discharge, this will be made in the form of a recommendation to the Township Personnel Director for action.
7. In the event a member feels that the disciplinary action taken against the member was unjust for any reason, they may appeal the action using the following procedure.

First Step: Promptly discuss the problem with the Department Head. The Department Head shall orally communicate his/her decision to the employee.

Second Step: If the problem is not resolved in the First Step, the employee may put the problem in writing and submit it to the Personnel Director within three (3) working days of receiving the Department Head's oral decision. The Personnel Director shall review the problem and communicate his/her decision in writing to the employee.

Third Step: If the problem is still unresolved, the employee may submit a request in writing for a discussion with the Policy and Administration Committee within three (3) working days of the Personnel Director's written decision. The Policy and Administrative Committee shall communicate its decision in writing to the employee.

STANDARD OPERATING GUIDE #3

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Fourth Step: If the problem is still unresolved, the employee may submit the problem in written form with complete details of the incident within three (3) workdays of receipt of the Policy and Administration Committee's written decision to the Township Clerk. The Township Clerk shall forward the written problem to the Charter Township of Kalamazoo Board for resolution. The Charter Township of Kalamazoo Board's decision shall be final.

To: Rick E. Trott (FF/EO)

From: Matt Mulac (B.C.)

CC: Dave Obreiter (Fire Chief)

Re: Notice concerning professional conduct

12/04/2019

Rick,

This serves as your reminder that you are to conduct yourself in a manner towards other personnel that is in accordance with the Township of Kalamazoo personnel policy. This also is notice to cease and desist any behavior that negatively effects other employees. This includes, but is not limited to physical contact with other personnel (actual or implied), creating an unwelcoming environment towards other employee(s), or any other action that can be construed as unprofessional in the workplace or public.

Acknowledged by:

Matt Mulac

Battalion Chief

Signature:

Date:

Rick E. Trott

Firefighter / E.O.

Signature:

Date:

To: Rick E. Trott (FF/EO)
From: Matt Mulac (B.C.)
Re: Memo of Notice regarding and concerning professional conduct while acting in an official capacity with the Township of Kalamazoo Fire Department.
Date: 12/04/2019

Rick,

On Wednesday, December 4, 2019, fire department command staff were made aware of multiple incidents in which your interpersonal skills were questioned over the past few weeks. The Township of Kalamazoo Fire Department strives to provide for a fair, equitable, safe and professional atmosphere for all employees.

The command staff will be conducting a preliminary investigation regarding this matter, this serves as an official reminder that you are to conduct yourself in a manner towards other personnel that is in accordance with the Township of Kalamazoo personnel policies. This is also written notice to discontinue any behavior that negatively effects other employees. This includes, but is not limited to unwanted physical contact or innuendos, creating an unwelcoming environment towards other employee(s), or any other action that can be construed as unprofessional in the workplace or public.

To reaffirm your expectations as a Township of Kalamazoo Fire Department Employee, please refer to KTFD Standard Operating Guides, specifically SOG's numbers 1, 3 and 17. As a reminder, all SOG's may be found on TexCom.

As the preliminary investigation progresses, I will be making contact with you to discuss specific instances and to seek any information regarding this matter that you may have. Please feel free to contact me if you have any questions.

Acknowledged by:

Matt Mulac,
Battalion Chief

Date

Rick Trott
Firefighter/Driver

Date

CC: Chief Dave Obreiter
Firefighter Rick Trott
Personnel File, Rick Trott

To: Gerard Alexander, Investigator
From: Fire Chief Dave Obreiter and Battalion Chief Matt Mulac
RE: Response To Request For Information Regarding Investigation
Date: March 9, 2022

This document is being written as a joint document by Fire Chief (FC) Battalion Chief (BC) Mulac to provide information regarding an ongoing investigation. This document contains information directed toward specific parts of the investigation and should not be construed as all occurrences that have occurred during the covered timeframe. This response addresses the actions regarding the three (3) page incident report and the TexCom posting on June 1, 2021. Any additional information that is needed will be provided as requested.

Early in the day on December 4, 2019, Firefighter (FF) Gonzalez contacted BC Mulac in person to report concerns regarding FF Rick Trott. After discussing the concerns with FF Gonzalez, BC Mulac asked her to put her concerns in writing with as much description as possible due to the detail and length of discussion. FF Gonzalez returned later in the day with a 3-page signed copy of her concerns. BC Mulac contacted FC Obreiter to notify him of the situation. FC Obreiter stopped by the Eastwood Fire Station to review the statement provided by FF Gonzalez. Discussion regarded formulating a plan to seek information regarding the happenings of the items listed in the memo. As BC Mulac was directly engaged in the operations of the station, FC Obreiter advised BC Mulac to review the statement from FF Gonzalez and speak with identified witnesses regarding the stated instances.

The incident that took place between FF Trott and Gonzalez on December 3, 2019 was reported in accordance to Kalamazoo Township Fire Department (KTFD) Standard Operating Guide #3, Discipline. Witnesses reported consistently that the observed interaction was done in a horseplay type manner, done in jest and was not construed with any criminal intent, not done to express anger, inflict retribution or done knowingly to cause any distress or physical harm to the best of their recollection at that time.

The other instances outlined in FF Gonzalez's three (3) page statement had not been directly reported to BC Mulac or FC Obreiter. FC Obreiter does recall that he had heard something related to the Spanish speaking incident sometime after the incident while speaking with a member (unknown) of the department in an unrelated general conversation. At that time, the date of the incident was unknown and there was no indication at that time that any official intervention was needed.

BC Mulac determined that there were no witnesses regarding the chamois incident. The date of the incident was unable to be determined and there were no recollections or reflections provided that would allow or lead BC Mulac that any other information was available to follow up on.

It was however determined that there was now a reported and documented trend of activity affecting the morale, welfare and department operations between FF Gonzalez and FF Trott that needed to be addressed.

BC Mulac met with FC Obreiter to discuss the findings and review the incident report to ensure all concerns were addressed. It was a mutual determination in accordance to KTFD SOG #3, the severity and method of discipline was determined as follows:

- The statement provided by FF Gonzalez was a cumulative list of events spanning the course of approximately five months. It was determined that timelier notification would have allowed command staff to intervene at the first indication of problems and provide for a directed need to monitor future interactions accordingly.
- BC Mulac had not been previously notified by FF Gonzalez or by any other coworker of any incidents that were included in the statement that was provided to him. The only issues witnessed prior to this notification were occasional generalized interpersonal issues, which were never observed to be at a level that required intervention until the report.
- It was determined that had FF Trott been notified that his actions, even while done in jest but unappreciated, that his actions could be construed as inappropriate. It was also noted that no other command staff were notified or requested to make notification to FF Trott on behalf of FF Gonzalez.
- There were no indications or coworker reports that the unwanted interactions reported by FF Gonzalez were directed to her by FF Trott in any manner covered by a protected person or status.
- Based on the information provided by witnesses and coworkers, we were unable to determine that the interpersonal problems or conflicts were one sided, or that the severity of any incident met the criteria outlined in KTFD SOG's, requiring any furtherance of discipline.
- It was determined that FF Gonzalez has made a written request to BC Mulac to notify FF Trott that his actions are inappropriate and that she would like BC Mulac to make notification to FF Trott.

After reviewing all related information, it was determined that appropriate discipline for FF Trott would be to give him immediate written notification that his actions were unwanted and that he should cease and desist. The specifics were outlined in the memo of notice dated December 4, 2019. FF Trott met with BC Mulac on December 5, 2019 and was given a copy of the memo. FF Trott was also verbally counseled on proper workplace etiquette that was effective immediately and moving forward. FF Trott signed a copy of the memo to acknowledge receipt.

On December 5, 2019, BC Mulac met with FF Gonzalez to provide her with a Memo of Response regarding her written statement that she provided on December 3, 2019. During the meeting, discussions relating to the incident report were reviewed. FF Gonzalez was reminded that timely reporting of incidents is key in utilizing progressive discipline procedures. She was notified that BC Mulac had interactions regarding the incident report with FF Trott and that she should notify BC Mulac immediately if there were any additional incidents with FF Trott. In accordance with the Township of Kalamazoo Personnel Policy, BC Mulac could not notify FF Gonzalez what disciplinary actions were taken, as such disclosure would violate Section 5.28 pertaining to "Release of Personnel Records to a Third Party". FF Gonzalez was provided a copy of the memo. At this time, a signed copy acknowledging receipt of said memo is unavailable.

Since the December 5, 2019 meeting with both FF Gonzalez and FF Trott, there have been no additional or new notifications of any incidents or inappropriate conduct. There have also been no official or unofficial inquiries regarding the status of the incident report or findings.

On the morning of May 28, 2021, FF Gonzalez requested to meet with BC Mulac regarding an issue. FF Gonzalez notified BC Mulac (in a generalized form) that she did not like the way that BC Mulac treated and talked to station personnel and herself. After listening to FF Gonzalez, BC Mulac summarized all of her concerns for accuracy and confirmed that it included all concerns. BC Mulac asked if she felt understood (by him) and that her concerns were addressed accordingly. FF Gonzalez confirmed. BC Mulac also asked if there was any other issues or concerns to be made aware of at that time. FF Gonzalez did not bring forth any additional concerns or complaints. When it was confirmed by both parties that they "were all good" and satisfied with the results of the conversation, FF Gonzalez left the Station. BC Mulac contacted FC Obreiter to up channel the reported concern as the reported concern involved him. FC Obreiter advised BC Mulac to summarize the receipt of concerns from FF Gonzalez with a private TexCom message including FC Obreiter, BC Mulac and FF Gonzalez as recipients. The memo was sent to provide all parties with receipt of the conversation, concerns addressed within, and provide FF Gonzalez with additional steps should her concerns reoccur in the future. FC Obreiter did follow up with Assistant Chief Dunfield and found no concern that needed to be documented with BC Mulac. FC Obreiter did give BC Mulac a reminder to maintain his usual professionalism and to contact him immediately if he was becoming more stressed than normal or if he needed anything. This reminder was not due to the incident, it is a usual reminder that FC Obreiter conveys on all employees on a regular supportive basis.

Please contact either or both of us should you have any questions, require explanation of any details or if you need additional information regarding any other part of your investigation.

Respectfully,

Dave Obreiter, Fire Chief

Date

Matt Mulac, Battalion Chief

Date

8/8/22, 10:13 PM

TexCom - Print

Record of conversation

Posted By Matt Mulac on Tuesday, June 1, 2021 @08:47

Good morning Jennifer,

This memo is to serve as record of our conversation from 05-28-2021 @ 0730 hours at Station 8-2. During that conversation I was given, and acknowledged, your notice of issues that you found to be of concern and in need of correction by me. In accordance with Township of Kalamazoo policy, after due notification is made any further concerns or complaints shall be taken to Administration higher than person involved. In this case, any further or future conversation of this matter needs to be immediately brought to either Deputy Chief Mike Weidemann or Fire Chief David Obrieter. A copy of this will be printed and placed in an envelope in your mailbox as well.

Respectfully,

Matt Mulac

Battalion Chief

Read Verification

| | |
|-------------------|---------------------|
| Jennifer Gonzalez | No |
| Dave Obreiter | Jun 1, 2021 @ 10:51 |

Kalamazoo Township Written Incident Timeline

Jennifer Gonzalez

02/18/22

- **April 1 2019: My official first day at Kalamazoo Township Fire Department.**

-I had went to the KVCC academy due to scheduling issues instead of the Kalamazoo County Academy KTFD normally sends their employees. The other new employees that applied and interviewed in June 2018 and they were officially hired at the Kalamazoo Township. It was decided my leadership that I should go through KVCC for the academy first and pass the exams, then I would be hired by KTFD. Unfortunately, I did not pass the last practical and went through Pennfield FD (Calhoun County) to retest in March 2019. Once I passed the state exam, I was officially hired at Kalamazoo Township Fire Department and ready to start on April 1, 2019 at the Eastwood station (2). I was 18 years old when I started. I wanted to take advantage of the opportunity I was given to learn and grown in the fire service at my age to help me in the future. I felt that I was behind my other peers that were hired at KTFD as I did not know I was already farther ahead, I decided to dedicate my own time around the station to understand the job as much as possible. I took the job as a firefighter and medical first responder seriously as I have dedicated almost four years of college to that career path currently. I would be at the station no matter who was sitting that day and ask questions about anything that would help me through my probationary period (I finished in August 2019). I had respect for everyone there as they were more knowledgeable and experienced. I also recognized that I was knew and had to earn my place and respect.

Incident with Rick Trott

- **Approx. June/July 2019: The first issue with Rick Trott had yelled at me. I was in the bay with Andrew McCann, Brian Tenbrink, and Eddie Medina. Rick was the sit driver. I was talking to group of people there. Rick storms out of the bay and walks into the sit/living room. I ask him a question and he tell me to leave him alone. I am very confused because I do not recall doing anything at all to upset Rick. I told Battalion Chief Matt Mulac about the interaction. He told me to figure out between Rick. I went to Rick and asked if I had done anything to offend him in any way. He tells me he was upset at the guys and not at me. I was given an apology, but he never gave me a reason, but I was the only one that got yelled at. This would continue multiple occasions towards me as time went on at my time at KTFD.**

-I was a very confused to what I did and was not given a reason. I was the only women of color at the time out of the whole department and at the station. I treated everyone professional and never done anything to offended anyone intentionally in any way to the point they'd yell at me, so of course I did what I had to do which was be professional and be direct. I did not think it would occur or be a big issue later or reoccurring, but it only towards me as time went on.

- **Approx. July 2019: I am not sure when this incident occurred exactly but I do know it was in the summer. But Brian Tenbrink, Eddie M, Rick T, and I were in the sit room. A**

man and women were talking their dog and we all had a view. I do not remember who commented that the woman outside with her dog was "hot." Then were all talking still and Rick say that I was hot. And immediately it got very awkward. Brian T started pacing back and forth worried and he told Rick that is not okay to say and everything as Eddie and I were very uncomfortable and silent. So right after Brian, Eddie, and I leave and go into the parking lot and talk about how it was weird he said that.

-The incident above I did not include this in my written incident looking back I think this incident is important. I never wanted that comment and I never asked for it. I also very engaged in any type of conversation with Rick alone at that level. It was strictly professional and about the fire service. That is all we talked about. I do want to clarify before I get any questions, I never wore anything inappropriate to the station or on calls. The only time Matt told me to not wear a certain clothing which was leggings, and I stopped wearing them even though when I wore leggings, I would wear a long shirt at times. But I never complained when Matt told me and I completely understood and complied.

- **Approx. July/August 2019:** Rick was on his shift at the station. There was a call and Eddie and I walk into the station. Rick had either went to the back room right behind the bay. I sat in the sit room. Eddie comes back and told me Rick did not want him or myself there. He was not given a reason, so we left. Eddie told Matt about what had. Matt was not happy to see that Rick had kicked us out of the station when we had not done anything to offend him. I believe Matt did speak to him on that issue.

-After this event, occurred Eddie and I felt displaced and uncomfortable. I was extremely confused again why I was being targeted. Eddie and I were the only Hispanics in KTFD. I was very disappointing for me and frustrating that as someone who was highly active in the fire department I was being told not to be at the station. I both felt that I did not fit in, or I had done something wrong but could not figure out myself why I was being treated like that. I started to find myself slowly not enjoying my time at KTFD.

- I cannot recall the specific time it was, but it was before COVID protocols in February 2020. I cannot recall the conversation prior that I had with Rick, but I had mentioned this with my meeting with the Board of Trustees meeting I had. Rick had yelled at me and left the station. I went to sit in the sit room in the chair that was right next to the computer. Matt was right across from me in a chair where the table was. When I sat down after he heard and witnessed Rick yelling at me, he told me not to have expectations of anyone at the station.

-I did not say anything back to Matt when he told me this statement. I did not defend myself because I thought it was weird that he told me that. My initial thought when I came to work at KTFD was that firefighter or any type of first responder has these characteristics that make them great people. That is a perception everyone thinks of firefighters. I did have expectations that the people I worked with had integrity, were honest, respectful, caring, and humble. I was again the only person that was yelled at by Rick and no one else. Matt did not correct Rick's behavior. It was more of me having to face the reality of that is just what I should really expect versus what I had thought.

Racist interactions from coworkers, time span of incidents between Summer 2019 - 2021

- **The first incident was with Rick in the mid/late summer of 2019 approximately to my memory of the time it occurred. Eddie and I were in 852 (the rescue vehicle) and Rick was the sit driver that day. We had finished a medical call and Rick was going to the put gas in the vehicle at the speedway on the corner of Nazareth and Guil Road. I was speaking Spanish to Eddie, who was sitting in the passenger side of the vehicle. Rick got very upset and turns back to look at me and told us to stop speaking Spanish. I got upset when he told me to stop speaking Spanish so I told him he was not going to tell me or what I could speak or to stop. The next day after that interaction with Rick, we came back from a call and Matt was sitting that day. I was sitting on the couch and Matt was sitting on the chair next to the computer. Eddie was present in the sit room also. Matt tells me that he found out what happened and said in the terms of that I should not be thinking that I have ownership of the station. I was upset still about the incident and what Matt told me. Eddie explained to Matt that Rick told him and I to not speak Spanish and that Rick was not happy when I told him I would not stop. Matt told Eddie that Rick said that we were talking about him in Spanish and that is why he told us to stop.**

-In the incident, I was very upset. Eddie and I were never talking about Rick in Spanish. I would not understand how Rick would think that when we never mentioned his name, nor does he understand Spanish. I was not happy that Rick lied, and I was upset that Matt believed him.

-I am not sure if Matt ended up talking to Rick about that incident. But I do remember Matt telling everyone to stop telling other to stop speaking Spanish as a whole.

- **Another incident I endured was when I was talking to Eddie in Spanish at the station after a call about to leave. Rick and Joe Landerville heard us talking and they tell us to stop speaking Spanish. Essentially because it was America and the main language was English. They thought again that we were talking about them. We were not talking about them.**

-Eddie and I were very upset at their commons as they came out of nowhere. Rick and Joe Landerville were very insistent about what they thought about us talking Spanish. Eddie and I told them that it did not make sense for them to say that because Spanish is a common language in America. We both were very upset about the comments. I was not happy with being told to do something when it was not causing any harm to anyone with speaking a language I had known since I was young.

- **Another incident regarding some racist interactions was when Eddie and I were sitting in the sit room speaking Spanish again after a call. Captain Chad Baker was the sit driver that evening. As Eddie and I were speaking Spanish, Chad out of nowhere says stop**

with your Spanish bullshit. Chad had told us to stop speaking Spanish in another incident. Chad would tell us that he was under the impression that we were talking about him or others. Again, we were not talking about anyone at the station. I cannot recall who Eddie told from the all the incidents, but I do remember he told one of those individuals if he were talking about them, he would have talk to him in English not Spanish.

-I was upset about the interactions. It is disappointing and offensive to hear people who have had many years and authority to a degree tell me as a Mexican that Eddie nor I cannot speak Spanish. When there are calls where there has been a need for any of us to speak Spanish, they have never told any of us to stop. Our language is only useful to them when they need it to be for their benefit. Otherwise, they get offended without a reason or feel the need to voice their discomfort without a cause of not allowing the only two Hispanic employees at the time to not speak Spanish.

- **Summer/Early fall 2019:** This is an incident that I was told about from Eddie Medina the day of I remember I was not able to go to the structure fire because I had schoolwork to catch up on. There was a structure fire, and it was able to be contained and extinguished. Life EMS paramedics were on scene. Rick lets one of the female paramedics wear his turnout gear. Rick and the paramedic who is wearing his turn out gear decide to take pictures of themselves (there is a policy regarding photos at Kalamazoo Township). The paramedic goes into the house and Matt starts yelling as he was upset at seeing a paramedic who is not an employee of KTFD wearing turnout gear. The Life EMS paramedic takes Rick's gear off and leaves. After that incident, the next day there was a call I went to. Many people noticed that Rick left all his gear at the station. Matt said he was supposed to work soon because Rick was scheduled. His gear was there for three days at minimum. I am not sure what exactly happened after that, but Rick came back and held his responsible as a sit driver since that day. I cannot recall him ever getting suspended.

-From my knowledge, the paramedic has gotten in serious trouble.

- **Late Summer 2019 – 2021 - time span:** Andrew M, Eddie, Rick, Brian and I would usually be the ones to part on the side of where Matt's garage was at. When Eddie and I would talk after a call, Rick would leave and then keep driving past a couple times. Eddie and I thought it was very creepy to us. This happened many times, although not every day it did happen on multiple occasions since I worked there. On those times, when he was upset at us for whatever his own reason was, he would drive off really fast out the parking and make a lot of noise with his car to bother us. I recall he did the same thing when I let the new probationary firefighter Anthony Lee in my car to go to a call last year. When I was in the sit room talking to Eddie Rick would leave and then then stick his head in the living room where I was at and then leave for no reason of forgetting something. The last time this occurred was in October as I had to help Eddie with how to get credits for his medical first responder license so he could do it on his own time.

-In these instances, I felt uncomfortable, and Eddie expressed he was uncomfortable any time that has occurred. We would be the only ones he did that too. I haven't heard of him doing that to anyone else. I felt it was a form of intimidation or just a way to make me feel uncomfortable.

- **November 2019: Incidents with Rick occurred in November 2019 where he physically assaulted/touched inappropriately.**

Reference to written incident report written December 4, 2019

First incident: We had come back from a call. I went to put chamois away that we use to wipe the vehicles with after they have been in service. I can recall Eddie was in the back putting chamois away where the rack was. Eddie was the closest in the area. I believe some people were out in the bay but not in that specific area to see where the incident occurred. So, I had put some chamois away as Eddie is putting the rest away, I walked away and stood right next to the ladder (842) facing toward the bay doors. Rick walks up to me without saying a word to me with a chamois rolled up in his hand in a fist. He pushed it against my right breast. When he did that it hurt, and I said out loud "ouch/ow" because it did hurt me. Then Rick walked away. Then Eddie walked up and asked what happened. I can't remember if Eddie saw but I know he did hear me say "ouch/ow" and went to check what happened. But Eddie did know it was Rick who was in the area we were at after I said that.

Second incident: I can't recall if it was a broom stick or a wooden stick that was in the sit room. I remember that it was typically placed on a cafe table where the radio is, and pager charger are that was closest to the pull-out bed on the wall. Rick tried to hit my butt with it out of nowhere. There were witnesses I can't recall the others that were there, but I do remember Todd Kowalski sitting on recliner chair looking at the tv which was a few feet away with a potential side view of what happened based on where Rick and I were standing. He did not say anything nor did anyone else present.

Third incident: This took place in the sit room at the station. Rick was sitting on the chair where the computer was. I was sitting across from him. Brian was sitting on the recliner and next to him was I believe Eddie sitting on the coffee table. We all were talking, and it was normal. Chief Obrieter had purchase white gloves for us to use for the entire department. Rick gets up and has the gloves in his hand and slapped me twice. I never asked him to come close to me. I never asked him to do that. He went back to his seat in the chair. I remember just sitting there getting very mad. Then Rick was telling me to hit him back. I did want to do something, and Eddie was telling me to not do anything, and it was not worth it. Then Rick starts laughing and saying that I wouldn't be able to hurt him and that he would fight me and throw me in the trash. The two other people present started laughing. Then everyone left. Eddie told Matt what happened and Matt told Eddie to tell me to write a report of the incident, so I did.

- **December 4, 2019, Written incident paper was given to Mulac just before leaving in the ladder for the Galesburg Christmas Parade (2019). Todd Dunfield, Eddie, Ben B, Javi H, and I participated in the parade for Eastwood taking ladder (842). All the participating fire departments met at the parking lot of a Galesburg school. Before the parade officially began, Fire Chief Obreiter was there just before he had a County Chiefs meeting. Chief Obrieter pulled me aside for a few minutes at the parade in the parking lot about the situation of my incident report against Rick. I honestly can't recall what he said, all I know is that it was regarding that incident about Rick. That was the last time he had discussed the situation with Obrieter. I did see Matt in his office, and he read it and was surprised, and he said he didn't understand why no one did anything. That was the last time I had talked to Matt about the incident. So, there was nothing about what was going to happen next, process, or any updates. No updates or follow ups or additional questioning to me about anything since I submitted my incident report has Rick received any consequences.**
- **Mid/ Late December 2019: Another time I was approach about the incident was when there was a two-story residential structure fire on Worden st in Comstock. Everyone was gathering their things on scene and Todd Dunfield pulls me aside on the street. He tells me that he found out what happened and why didn't I tell him. I didn't say anything really because it was embarrassing for me to have endured what Rick was causing on me.**

COVID protocols were sent on texcom on February 28th, 2020. These protocols change our response to calls. We only responded to calls not to the stations after a call, limiting interaction.

-I have still been the only one still that has been yelled at by Rick with no cause even after the whole incident of harassment in 2019 to even the latest being towards the end of 2021 to the point I do not even speak to Rick. I have tried to move on and be professional as I have realized he still has not been held accountable for the severe actions he as inflicted on me. He has continued to try to intimidate me even after my complaint was made known. I do not even feel comfortable going to the station or a call if he and I were alone. This has affected my work performance and attendance. I do not even feel that even if I had gone to leadership that anything would have been done even now if they did not take me seriously when I made a complaint even from the racism that has continued before and after the harassment. I was highly active when I started for an exceptionally long time. I almost lost my passion and drive to work in the fire service due to my experiences with Rick and how management has taken them. I have thought about quitting after the incident was not taken seriously. I assumed the entire time after I made my written report that some point something would be done as I have never been in a situation where was continually being targeted and with the type of harassment I went through. Even in the previous job, I never has anyone treat me different for who I was. All I wanted to do was to gain experience at my age, earn my respect, respect others, fit in, and be a good employee since I want a career in the public safety. I thought I could trust leadership at Kalamazoo Township Fire Department to help me as I have never done anything that would have negatively impacted the Department, nor have I had a write up ever. I never asked for anyone to touch me or yell at me nor have I ever spoke or acted inappropriately towards anyone. I know that in all the incidents that occurred to me would not have had occurred if I was

not a woman or Hispanic. If I looked like everyone else or management, I would have had the harassment in the first place. I would be genuinely concerned for any women or person of color that would join. I just wonder if it were someone else or if any of leadership had gone through the harassment I went through, that the outcome would have been different than mine.

Incident with Battalion Chief Matt Mulac

-I wanted to make a point to say that I had always respected Matt Mulac as he was my Battalion Chief. I would have open conversations with him at time about how I could be better and he would answer respectfully. My annual reviews typically were good. I have never received a write up for my behavior. Matt told me that he saw a lot of potential in me in my annual review in April 2021 and he did not expect me to stay at KTFD and saw me working in a bigger fire department.

- May 28th 2021: I decided on my own will that I wanted to meet with meet with Matt about interactions and behavior such as belittling people or getting upset at people. I wanted to converse with about this as I view personally that a leader's actions and values sets the tone and example for his subordinates.

My experiences with Matt personally have been for example;

There was a time when Rick yelled at me for, I'm not even sure what again. But it was only towards me. Rick leaves the station and I sit in the chair next to the computer. Matt was sitting across from me and witness that Rick had yelled at me. Matt looks straight at me and say that I shouldn't have expectations of people here. That was it and I didn't know how to react or say to Matt.

Another time Matt told Andrew M, Eddie M, and I that all of us combined did not measure up to Rick's contribution even though we never said anything to undermine Rick work. Andrew only made fun of his dog and Matt just thought it was justified to say that. During the interview Matt denied that happening and said it was the opposite.

Another example was in early February 2020. We had come back from a rescue call and I can recall who all went to the call. But this was after my incident report was made and known about Rick. People used to refer Rick as papa Rick to me which was weird but as many people were saying that I did not say anything as everyone said it referring that Rick was older than my own father's age but no one was saying it that any more for since the incident. Matt looked at me while I was cleaning 852 with the Chamois and said that phrase to me and we weren't even talking about him nor do I even believe Rick was there. I most definitely took it as an insult. Even if Matt may not have wanted it to be an insult, the incident of harassment with Rick was still two months fresh and there were no updates of anything. So, I had signed out and went to

my car crying and did not go to calls for a couple days. I remember I had thought about taking time off away but I never ended up doing it as it was my only source of income at that time.

Matt would tell me also that I shouldn't "burn my bridges" when I was the only one trying to be professional towards those people he referred to as the "bridge" had done inappropriate/unprofessional things to me because they didn't get to take advantage of me or get their way with me.

So back to my meeting that I have with Matt in May 28, 2021. My first words were that I respected him as my Chief and that I wanted him to know that so he knew I wasn't being rude. I just had felt that I could have a transparent and open conversation where feedback was be given to him. I felt as a leader or even as an employee, one should be able to receive feedback for improvement of one's growth. I had been in a conversation with others saying Matt Mulac that gets upset for no reason and take it out his frustration out on them even though no one at the moment did anything wrong on a call. I of course would understand if Matt was ever upset at anyone with a cause, but at time there would not be any means for him to be upset or make fun of someone. I told him with these conversations it can be harder to talk to him about because it was different. He told me that it was actually all of us as employees who were at fault and we couldn't meet his standards. I could tell he was not happy from his body language, but I figured it was an uncomfortable conversation for him to have. It was a respectful conversation between the two of us. He asked me at the end "if I was good?" I said yes, I was, and I asked him the same question, and he said he was good. I felt that the conversations went well and I thought maybe me talking to him could make him reflect as should everyone should.

- June 1st Approx. I receive this message on Texcom and a written letter with the same message with the Fire Chief attached to the message;

Texcom message:

"Good morning, Jennifer,

This memo is to serve as record of our conversation from 05-28-2021 @ 0730 hours at Station 8-2. During that conversation I was given, and acknowledged, your notice of issues that you found to be of concern and in need of correction by me. In accordance with Township of Kalamazoo policy, after due notification is made any further concerns or complaints shall be taken to Administration higher than person involved. In this case, any further or future conversation of this matter needs to be immediately brought to either Deputy Chief Mike Weidemann or Fire Chief David Obrieter. A copy of this will be printed and placed in an envelope in your mailbox as well."

Respectfully,

Matt Mulac

Battalion Chief

- In the month of June 2021, I was informed of what Mulac said about to the assistant chief of our station, Todd Dunfield, about the meeting on May 28, 2021 from Eddie. Eddie explained to me that Todd D told him to go to the station. Eddie is the one that was able to engage in conversation about Todd D in the conversation, he later told me as it was said to be confidential from Todd.

-Eddie tells me about what Todd D told him. I honestly was in shock. I did not expect that at all from Matt that he would lie. I thought that Matt and I were good at the end of our meeting as we both gave reassurance to each other. It definitely made me not feel comfortable that he felt the need to lie and not tell the truth. I only wondered as time passed on who else he lied to and who actually would even believe it when I have never displayed behavior of being demanding or highly of myself. I was disappointed that Todd D didn't even want me to find out and if he even bothered to confront Matt about lying about that. I really did respect Todd D a lot since I had first officially joined KTFD. Since I have been there, Todd has been good to me, helped me with my projects when I was majoring in Fire Science, he even shared his food with me, and I felt I could go to him for advice. I am just disappointed he didn't want me to know what Matt said. Maybe he did it so I wouldn't stress out and I understand that, but Matt is in a leadership/management position and what he did saying that about me was not professional. There is a conflict of interest in going to Fire Chief about Mulac if they are close professionally and personally. I do not trust that Matt would be honest about the issue because he could simply lie and he would be trusted by the Fire Chief because of their relationship and title. I would doubt anything would have been done if I made a complaint due to my incident with Rick. He had reassured me in our meeting in May 2021 that if we were good. We both said we were good, but now I have no trust in Matt now as my supervisor. I do not want my reputation damaged since Matt felt it was okay to lie to another person about our meeting and my character. I have never had a write up at KTFD or a sit down about my behavior. Another reason that it concerns me that Matt would do this is from a conversation I had previously with him at an annual review. I asked out of curiosity before this incident occurred, if he didn't like someone at the station and a job needed to call for verification of employment or asking for an employee, what do he say to them? He said he would just say he does not want to speak about the person. It makes it harder for me to even want to work or go to anything involving KTFD when there are people in positions who intentionally have harassed me, have been racist, not taken me seriously when I presented these concerns, people are not held accountable, and can't trust my own Battalion Chief to help me now.

- I am also concerned to why I had to find out from a third party if anyone has questions about me rather than coming to contact me myself. An example of this situation is I was also told that Bronson called to verify employment at Kalamazoo Township Fire Department. Someone must have been curious to know either Matt told Todd D to find out if I was working there. So, Todd D asked Eddie if I was working there. Eddie did not say I did as it doesn't regard him, but Todd D did not believe him. Others have also asked where have I been or why I am not around anymore, I never had a meeting from Matt or about my whereabouts or meetings about my attendance. I have not been received an email, call, or text regarding that or a checkup from anyone. Whenever someone did ask me, it was never as specific as when they asked Eddie. I

always been like this since I started. It should not concern anyone what I do on my personal time and I do not share any personal if it doesn't deal with KTFD.

- **Approx. fall of 2021, I parked in the parking lot and I was getting my gear. It was the parking spot that was next to the flag pole. Rick was speeding into the parking lot. He got off and I told him why are you driving like that you could have hit me? He yelled at me saying I was in his parking lot and walked away towards the station. That is the last time I ever talked to him. He has been upset before about the parking spot, but no body owns the parking spot. I was pretty much done with trying to be professional because after my written incident report was known to leadership, Rick would still yell at only me or intimidated me. I really tried to do my best since the leadership thought that Rick's behaviors must have been fit to stay. I would have thought that is not a type of person the organization as a whole would want in his role at KTFD. It is hard for me to believe a man his age would continue to be unprofessional towards me when I had been trying to work with him. I don't talk to him now even when I go on calls rather, he is the supervisor on a call or not due to all those reasons.**

It personally makes it harder for me to want to go to my Fire Chief or Battalion Chief that I still feel uncomfortable about Rick due to see anything was done with that incident. Rick still has tried to intimidate me when he felt the need to for no reason, tell me not to speak Spanish, and yell at me even after the harassment incident was made known. I have tried to be professional even after the incident but Rick doesn't even try to the point that I had to stop talking to him.

Here is other reason that have also stopped me that I have noticed with management;

I have heard Matt say he did not want a certain employee to be a sit driver ever as long as he was a Battalion Chief at Eastwood because he does not like him or for whatever his reasoning was. I am not sure why but I thought it was unprofessional and very inappropriate although Rick is allowed to continue to be a sit driver after all that he has done to me when it was extremely severe.

Another reason is there was medical call for an overdose call where policy was not followed.

-All these things make me feel that have occurred make me lose trust in leadership that they will ever take me or any serious matter seriously. I just don't know or feel comfortable or confident anymore causing my calls to decline. I don't feel that I am protected or valued as an employee at Kalamazoo Township Fire Department. It has impacted my ability to go to calls and training and has almost made me quit. That thought has been in my mind daily to quit for a long time. I almost lost interest in the fire service as a career after doing to school to earn my fire science degree and pursue a full-time career in the future. I feel uncomfortable even driving past the station because of what the organization stand for and values. I don't know what other people may have had issues or what has pushed off as insignificant, but this is concerning to me as an employee and concerning to me for any future employees specifically female and people of

color. I felt compelled for the past months to say something to the Board of Trustee because of how my treatment continues to have been since majority of my time at KTFD. I have done my part to be professional and respectful after every negative behavior I have dealt with against me for how I look like. I have dealt with harassment, racist comments about speaking Spanish, and seen how management does not take their employees seriously. If I was not a woman or Hispanic, I know that I would not have been through the treatment I went through. I do not believe that anyone that is an employee at the KTFD should be working in an environment such as what I dealt with in nearly my three years working there.

Other notes

-Diversity training has last taken place in May 9th 2017 as I have checked the past training schedules. I cannot see past year 2017 of training to see if there has been other Diversity training in Texcom.

To: Gerard Alexander, Investigator
From: Fire Chief Dave Obreiter and Battalion Chief Matt Mulac
RE: Response To Request For Information Regarding Investigation
Date: March 9, 2022

This document is being written as a joint document by Fire Chief (FC) Battalion Chief (BC) Mulac to provide information regarding an ongoing investigation. This document contains information directed toward specific parts of the investigation and should not be construed as all occurrences that have occurred during the covered timeframe. This response addresses the actions regarding the three (3) page incident report and the TexCom posting on June 1, 2021. Any additional information that is needed will be provided as requested.

Early in the day on December 4, 2019, Firefighter (FF) Gonzalez contacted BC Mulac in person to report concerns regarding FF Rick Trott. After discussing the concerns with FF Gonzalez, BC Mulac asked her to put her concerns in writing with as much description as possible due to the detail and length of discussion. FF Gonzalez returned later in the day with a 3-page signed copy of her concerns. BC Mulac contacted FC Obreiter to notify him of the situation. FC Obreiter stopped by the Eastwood Fire Station to review the statement provided by FF Gonzalez. Discussion regarded formulating a plan to seek information regarding the happenings of the items listed in the memo. As BC Mulac was directly engaged in the operations of the station, FC Obreiter advised BC Mulac to review the statement from FF Gonzalez and speak with identified witnesses regarding the stated instances.

The incident that took place between FF Trott and Gonzalez on December 3, 2019 was reported in accordance to Kalamazoo Township Fire Department (KTFD) Standard Operating Guide #3, Discipline. Witnesses reported consistently that the observed interaction was done in a horseplay type manner, done in jest and was not construed with any criminal intent, not done to express anger, inflict retribution or done knowingly to cause any distress or physical harm to the best of their recollection at that time.

The other instances outlined in FF Gonzalez's three (3) page statement had not been directly reported to BC Mulac or FC Obreiter. FC Obreiter does recall that he had heard something related to the Spanish speaking incident sometime after the incident while speaking with a member (unknown) of the department in an unrelated general conversation. At that time, the date of the incident was unknown and there was no indication at that time that any official intervention was needed.

BC Mulac determined that there were no witnesses regarding the chamois incident. The date of the incident was unable to be determined and there were no recollections or reflections provided that would allow or lead BC Mulac that any other information was available to follow up on.

It was however determined that there was now a reported and documented trend of activity affecting the morale, welfare and department operations between FF Gonzalez and FF Trott that needed to be addressed.

BC Mulac met with FC Obreiter to discuss the findings and review the incident report to ensure all concerns were addressed. It was a mutual determination in accordance to KTFD SOG #3, the severity and method of discipline was determined as follows:

- The statement provided by FF Gonzalez was a cumulative list of events spanning the course of approximately five months. It was determined that timelier notification would have allowed command staff to intervene at the first indication of problems and provide for a directed need to monitor future interactions accordingly.
- BC Mulac had not been previously notified by FF Gonzalez or by any other coworker of any incidents that were included in the statement that was provided to him. The only issues witnessed prior to this notification were occasional generalized interpersonal issues, which were never observed to be at a level that required intervention until the report.
- It was determined that had FF Trott been notified that his actions, even while done in jest but unappreciated, that his actions could be construed as inappropriate. It was also noted that no other command staff were notified or requested to make notification to FF Trott on behalf of FF Gonzalez.
- There were no indications or coworker reports that the unwanted interactions reported by FF Gonzalez were directed to her by FF Trott in any manner covered by a protected person or status.
- Based on the information provided by witnesses and coworkers, we were unable to determine that the interpersonal problems or conflicts were one sided, or that the severity of any incident met the criteria outlined in KTFD SOG's, requiring any furtherance of discipline.
- It was determined that FF Gonzalez has made a written request to BC Mulac to notify FF Trott that his actions are inappropriate and that she would like BC Mulac to make notification to FF Trott.

After reviewing all related information, it was determined that appropriate discipline for FF Trott would be to give him immediate written notification that his actions were unwanted and that he should cease and desist. The specifics were outlined in the memo of notice dated December 4, 2019. FF Trott met with BC Mulac on December 5, 2019 and was given a copy of the memo. FF Trott was also verbally counseled on proper workplace etiquette that was effective immediately and moving forward. FF Trott signed a copy of the memo to acknowledge receipt.

On December 5, 2019, BC Mulac met with FF Gonzalez to provide her with a Memo of Response regarding her written statement that she provided on December 3, 2019. During the meeting, discussions relating to the incident report were reviewed. FF Gonzalez was reminded that timely reporting of incidents is key in utilizing progressive discipline procedures. She was notified that BC Mulac had interactions regarding the incident report with FF Trott and that she should notify BC Mulac immediately if there were any additional incidents with FF Trott. In accordance with the Township of Kalamazoo Personnel Policy, BC Mulac could not notify FF Gonzalez what disciplinary actions were taken, as such disclosure would violate Section 5.28 pertaining to "Release of Personnel Records to a Third Party". FF Gonzalez was provided a copy of the memo. At this time, a signed copy acknowledging receipt of said memo is unavailable.

Since the December 5, 2019 meeting with both FF Gonzalez and FF Trott, there have been no additional or new notifications of any incidents or inappropriate conduct. There have also been no official or unofficial inquiries regarding the status of the incident report or findings.

On the morning of May 28, 2021, FF Gonzalez requested to meet with BC Mulac regarding an issue. FF Gonzalez notified BC Mulac (in a generalized form) that she did not like the way that BC Mulac treated and talked to station personnel and herself. After listening to FF Gonzalez, BC Mulac summarized all of her concerns for accuracy and confirmed that it included all concerns. BC Mulac asked if she felt understood (by him) and that her concerns were addressed accordingly. FF Gonzalez confirmed. BC Mulac also asked if there was any other issues or concerns to be made aware of at that time. FF Gonzalez did not bring forth any additional concerns or complaints. When it was confirmed by both parties that they "were all good" and satisfied with the results of the conversation, FF Gonzalez left the Station. BC Mulac contacted FC Obreiter to up channel the reported concern as the reported concern involved him. FC Obreiter advised BC Mulac to summarize the receipt of concerns from FF Gonzalez with a private TexCom message including FC Obreiter, BC Mulac and FF Gonzalez as recipients. The memo was sent to provide all parties with receipt of the conversation, concerns addressed within, and provide FF Gonzalez with additional steps should her concerns reoccur in the future. FC Obreiter did follow up with Assistant Chief Dunfield and found no concern that needed to be documented with BC Mulac. FC Obreiter did give BC Mulac a reminder to maintain his usual professionalism and to contact him immediately if he was becoming more stressed than normal or if he needed anything. This reminder was not due to the incident, it is a usual reminder that FC Obreiter conveys on all employees on a regular supportive basis.

Please contact either or both of us should you have any questions, require explanation of any details or if you need additional information regarding any other part of your investigation.

Respectfully,

Dave Obreiter, Fire Chief

Date

Matt Mulac, Battalion Chief

Date



Kalamazoo Charter Township
1720 Riverview Drive
Kalamazoo, MI 49004
Phone: (269) 381-8085

TO: Fire Chief, David Obreiter
FROM: Dexter Mitchell, Township Manager
DATE: July 21, 2022
RE: Pre-Determination Hearing for Chief David Obreiter

A Pre-determination Hearing is scheduled for, July 27, 1:00 PM at Kalamazoo Township Hall. This hearing is to allow you to respond to the findings of misconduct arising from an independent internal investigation into allegations of assault and battery, attempted battery, and unlawful harassment against Firefighter Trott filed by Firefighter Gonzalez. The investigation revealed that you failed to properly investigate and take appropriate action concerning these serious violations. You will have the opportunity to provide all relevant information you want me to consider before I determine whether you violated policy and/or law, and if so, whether discipline up to and including discharge is warranted.

An independent investigation conducted by GBA Investigations and Security Consulting, LLC and communications from and with you have produced the following findings regarding Kalamazoo Township policy and federal and state law violations. Based on the evidence, you are charged with the following violations:

VIOLATIONS:

NON-FEASANCE

MCLA 750.478 Willful neglect of duty; public officer or person holding public trust or employment. penalty.

Sec. 478. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

BREACH OF FIDUCIARY DUTIES:

See, among other sources, Restatement (Third) of Agency (2006)

Employees owe general fiduciary duties of loyalty and performance to their employers. Employees are required to act loyally for the employer's benefit in all matters connected with the employment relationship. While performing duties, employees must act with the care, competence, and diligence exercised by similarly situated employees. Employees also have a duty to provide information, i.e. duty of disclosure, relevant and material to the employment and its functions. The requirements of fiduciary duties owed by an employee increase, becoming even more demanding, as the employee rises within the organization to higher levels of employment.

8. SAFETY, ETHICS, AND CONDUCT (failure to follow)

8.1 COMMITMENT TO SAFETY

Protecting the safety of our employees and visitors is the most important aspect of running the Township. All employees have the opportunity and responsibility to contribute to a safe work environment by using commonsense rules and safe practices and by notifying management when any health or safety issues are present. All employees are encouraged to partner with management to ensure maximum safety for all.

8.2 WORKPLACE VIOLENCE PREVENTION

The Township is committed to providing a safe, violence-free workplace for our employees. Due to this commitment, we discourage employees from engaging in any physical confrontation with a violent or potentially violent individual or from behaving in a threatening or violent manner. Threats, threatening language, or any other acts of aggression or violence made toward or by any employee will not be tolerated. A threat may include any verbal or physical harassment or abuse or attempts to intimidate others.

All Township employees bear the responsibility of keeping our work environment free from violence or potential violence. Any employee who witnesses or is the recipient of violent behavior should promptly inform their Department Head. All threats will be promptly investigated. No employee will be subject to retaliation, intimidation, or discipline as a result of reporting a threat in good faith under this guideline.

Any individual engaging in violence against the Township, its employees, or its property will be prosecuted to the full extent of the law. All acts will be investigated, and appropriate action will be taken. Any such act or threatening behavior may result in disciplinary action up to and including termination.

8.5 UNACCEPTABLE CONDUCT

Township employees are routinely in the public eye. This list sets forth rules governing general conduct and identifies behavior that will subject the employee to discipline. This list is not all-inclusive, and other appropriate Township standards of conduct or rules may be in existence or established.

4. TERMS OF EMPLOYMENT (failure to uphold)

4.1 EQUAL OPPORTUNITY AND COMMITMENT TO DIVERSITY

The Township is an Equal Opportunity Employer and provides equal employment opportunities to all employees and applicants for employment without regard to race, color, sex, age, religion, national origin, ancestry, height, weight, marital status, familial status, veteran status, citizenship, handicap/disability, gender identity, sexual orientation, genetic information, or as otherwise in accordance with all Federal or State law, or local regulations. Furthermore, the Township will take affirmative steps to ensure the fulfillment of this policy. The Township will, however, hire only those individuals who are legally authorized to work in the United States of America.

The Township expressly prohibits any form of unlawful employee harassment or discrimination based on any of the characteristics mentioned above. Improper interference with the ability of other employees to perform their expected job duties is absolutely not tolerated

8.6 HARASSMENT POLICIES

8.6.1 TOWNSHIP OF KALAMAZOO SEXUAL HARASSMENT POLICY

Sexual harassment of employees in any form is unacceptable conduct that will not be tolerated. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of

a sexual nature. No management representative, elected official, supervisor, officer, or another employee shall threaten or insinuate, either explicitly or implicitly

8.6.2 OTHER HARASSMENT

Kalamazoo Township does not condone or allow harassment, and Kalamazoo Township expects all of its employees to conduct themselves with dignity and with respect for their co-workers and others.

Kalamazoo Township should complain to the same persons, and according to the same procedures, as is provided in section 8.6.3 below. The Township will promptly investigate all allegations of improper harassment and will take the appropriate corrective action.

8.6.3 HARASSMENT AND COMPLAINT PROCEDURE

Upon receipt of the complaint, a prompt and impartial investigation will be conducted. The totality of the circumstances, nature of the incident, and the context in which the alleged incident(s) took place will be thoroughly investigated. Any employee who has been found to have violated this policy may be subject to appropriate discipline, up to and including discharge.

KALAMAZOO TOWNSHIP FIRE DEPARTMENT STANDARD OPERATING GUIDE #1 SUBJECT: GENERAL EMPLOYMENT

PURPOSE: To establish general employment guidelines and public conduct expectations for persons employed as a firefighter with the Township of Kalamazoo.

1. The Charter Township of Kalamazoo is an Equal Opportunity Employer and prohibits discrimination based on race, color, sex, age, religion, national origin, height, weight, marital status, familial status, veteran status, citizenship, handicap/disability, gender identity, sexual orientation, genetic information, or as otherwise in accordance with all Federal or State law or local regulations.
2. Personnel are expected to conduct themselves in a manner that will enhance the reputation of the Fire Department and the Township of Kalamazoo. Horseplay while representing the Township of Kalamazoo is not acceptable behavior. Persons involved in an incident caused by horseplay will be responsible for damages. Persons demonstrating poor conduct may suffer disciplinary actions according to incident severity, up to and including termination.

STANDARD OPERATING GUIDE #3 SUBJECT: DISCIPLINE

PURPOSE: To establish guidelines and procedures regarding disciplinary procedures and maintaining acceptable conduct by Township of Kalamazoo Fire Department personnel.

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:
 - a.) Proper conduct
 - b.) Improper conduct

- c.) Violation of policy procedure
- d.) Insufficient evidence
- e.) Unfounded complaint

3. Violations of any of the provisions of the Charter Township of Kalamazoo and/or fire department standard operating guides, directives, or procedures shall be the subject of disciplinary action up to and including discharge.

4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary actions with due regard for the nature of the offense and the member's previous record of conduct.

5.

- o.) Any conduct which brings discredit to the fire department

FINDINGS: FAILURE TO PROPERLY INVESTIGATE AND TAKE APPROPRIATE ACTION, AS REQUIRED BY POLICY AND LAW, TO ADDRESS FIREFIGHTER GONZALEZ'S CLAIMS OF ASSAULT, BATTERY, SEXUAL HARASSMENT, SEXUAL HARASSMENT, AND/OR HOSTILE WORK ENVIRONMENT BASED ON GENDER, RACE, COLOR, OR ETHNICITY.

A thorough, competent, and neutral investigation conducted by GBA Investigations and Security Consulting, LLC and follow-up communications led to the inescapable conclusion that Firefighter Trott's demeanor toward Firefighter Gonzalez, the only woman of color in the fire department at the time, was threatening, demeaning and harassing. He yelled at her, committed assault and battery, called her "hot" and generally treated her differently than he acted toward other male firefighters. Indeed, he admitted that he struck Firefighter Gonzalez.

On one occasion, when Firefighter Gonzalez was speaking Spanish in his presence, Firefighter Trott admitted he told her to "speak English."

The evidence from the GBA Investigation established that Firefighter Trott violated several policies and laws. The "preliminary investigation" in 2019 was less than 24 hours and it was determined only that "there have been a number of low-level inappropriate interpersonal interactions between Firefighter Gonzalez and Rick Trott over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone's race, color, religion, sex, national origin, age, disability or genetic information discovered."

Despite identifying the investigation as "preliminary", on December 5, 2019, one day after receiving the complaint from Firefighter Gonzalez, apparently no further action was taken to investigate the allegations. You failed to produce any e-mail or notes that you stated you received from Battalion Chief Mulac.

The report to Firefighter Gonzalez on December 5, 2019, which you approved, reported that "a few key findings have been identified. Among those, the lack of professional and respectful treatment between coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors."

The documentation, which you approved, fails to identify who engaged in this unprofessional and disrespectful treatment "between coworkers." In fact, the letter to Firefighter Gonzalez can be interpreted as a rebuke of her failure to come forward to "timely" report the allegations of assault, battery, and unlawful harassment. As you know from the Township-sponsored harassment, discrimination, and retaliation training you attended in 2013, 2015, and 2017 an employee is not required to report such misconduct. Rather, it is the obligation of the employer to prevent such misconduct if the supervisors knew or should have known about the harassment. You as Chief had been informed about this harassment.

Despite the “key findings” of a “lack of professional and respectful treatment between coworkers”, which was acknowledged had been going on “over the past six months,” you took no disciplinary action against anyone, including Firefighter Trott, who freely admitted to the independent investigator that he slapped Firefighter Gonzalez across the face, which the evidence established left a red mark on her face. Your failure to learn about this egregious act of violence against a coworker, let alone the other assaults, establishes the fundamental failure of the investigation. Your failure to thoroughly investigate these complaints, whether because of negligence or incompetence or a desire to protect a member of the “tight-knit profession,” and failure to take appropriate action against Firefighter Trott evidences your neglect of duty, breach of fiduciary duties, and violations of the policies which required you to provide a safe, violence-free workplace and to protect Firefighter Gonzalez against unlawful harassment.

In addition, your failure to disclose the complaints, “preliminary investigation” and failure to take appropriate action to the Township Manager or other representative denied the Township the opportunity to conduct a thorough and timely investigation and take the appropriate action required under the circumstances.

DAVID A. KOTWICKI, P.L.C.

ATTORNEY AT LAW

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Shelby Township, MI 48317

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dk@michemplaw.com

TO: Kurt P. McCamman, Esq.
Labor Counsel -
Charter Township of Kalamazoo

Mr. Dexter A. Mitchell
Township Manager -
Charter Township of Kalamazoo
c/o Attorney McCamman

FROM: David A. Kotwicki, Esq.

Counsel for:
David J. Obreiter
Fire Chief,
Charter Township of Kalamazoo

DATE: August 9, 2022

RE: Preliminary Response to Documentation Concerning Pre-Determination Hearing for Fire Chief David Obreiter, Scheduled for 8.11.22 at 1 p.m.;

Request for Appropriate Documentation Necessary for Fully Preparing his Defense;

Request for Reasonable Continuance of Pre-Determination Hearing to Review Requested Documentation

Dear Attorney McCamman and Township Supervisor Mitchell:

Charter Township of Kalamazoo Fire Chief David J. Obreiter, respectfully submits the following as his Preliminary Response to Documentation Concerning Pre-Determination Hearing for Fire Chief David Obreiter, Scheduled for August 11, 2022 at 1 p.m.¹

I. **INTRODUCTION** –

David J. Obreiter is fifty years old. He was born and raised in Kalamazoo, Michigan. From an early age, he has felt a strong call of service both to his country and local community. This sense of service and duty was formed in David Obreiter early on, as he passionately pursued his interest in scouting, starting at the age of seven in the Cub Scouts, proceeding through the Boy Scouts, and ultimately achieving the rank of Eagle Scout as a teenager. His passion for fire service began in the Boy Scouts, as he earned a fire service merit badge, and subsequently joined the Explorer Scouts for (*for Scouts aged seventeen through twenty-one*). As an Explorer Scout, he had the opportunity to earn his State of Michigan Firefighter certification at the age of seventeen.

Taking full advantage of this opportunity, in 1989, at the age of seventeen, David Obreiter applied for employment with the Charter Township of Kalamazoo, as an “*on-call*” Firefighter. He served honorably in this capacity, earning substantial additional Fire Service experience. He served as an “*on-call*” Firefighter for the Township on a continual basis (*excepting his four-year period of active duty in the Air Force, see below Infra*) until ultimately, he was hired by the Township as its Fire Chief in 2009.

Taking the next logical step on his path of service, David Obreiter served extensively in our country’s military, serving four years in the Air Force, and seventeen years in the Air National Guard, ultimately earning a military retirement. His passion for fire service continued and grew during his Air Force Service. He obtained numerous nationally recognized certifications in Fire Service while serving in the Air Force. Due to commitment and expertise, he served in a Fire Service capacity throughout his military career, *both in the Air Force and Air National Guard. In fact, he served on multiple extensive overseas deployments (to Honduras, Saudi Arabia, Pakistan, and Iraq)* and provided direct fire service support alongside the fire service personnel of the host country. He served our country effectively in this capacity, in large part, due to his cultural sensitivity and attunement while serving overseas.

After his four-year active-duty term of service in the Air Force was completed, while remaining part of the Air National Guard, David Obreiter sought and obtained further public service employment, with the State of Michigan, serving in the capacity of Firefighter, stationed at the Battle Creek Air National Guard Base. During his employment with the State, he continued his education in Fire Service, earning numerous certifications through the Department of Defense (DOD) Fire and Emergency Services Academy. He was employed with the State of Michigan for fifteen years, achieving a stellar record of service, and ultimately earning his retirement at the rank of Supervisor and retiring in 2009.

In early 2009, while still employed by the State of Michigan, the Air National Guard overseas deployed David Obreiter, to Iraq, to serve a six-month deployment, to serve as Fire Marshal at Sather Air Base, located at the Baghdad International Airport. During this deployment, he learned that an opportunity had opened to become Fire Chief serving the Charter Township of Kalamazoo.

¹ The hearing had originally been scheduled for July 27, 2022, at 1 p.m., but Counsel requested an adjournment.

Having lived in Kalamazoo all his life, and having served the community throughout, this opportunity would allow David Obreiter to come full circle on his path of service. In sum, serving as Fire Chief for the Township was the culmination of his lifelong dream².

He promptly pursued his dream with reflection and seriousness, completing and submitting his application, and providing his Resume and extensive supporting documentation. He earned an interview, which occurred in July, approximately two weeks after he returned from his deployment. His interview, which took place at the Township Offices before the entire Township Board, the Police Chief and Township Legal Counsel. David Obreiter thoroughly prepared for his interview, doing his best to study the anticipated subject matter. The interview lasted more than an hour, as he was given extensive opportunity to answer questions posed and answer any questions he may have had concerning the position as well. He acquitted himself well, and ultimately earned the position and was hired on October 14, 2009.

Over the almost thirteen years he has served the Charter Township of Kalamazoo as its Fire Chief, Chief Obreiter has repeatedly proven that the initial faith placed in him on his hiring was well-placed. He has consistently demonstrated commitment, expertise, attention to detail, and calm level-headedness leading the Department, irrespective of the gravity of the fire emergency. Moreover, he has demonstrated commitment to ongoing training and education, both for himself, and within the department. By way of example, while the same was not required given his level of certification, he earned an associate degree in Fire Science in 2011, at Kalamazoo Valley Community College. He has spearheaded the implementation of numerous Fire Service education programs within the Department over the course of his tenure, placing emphasis on the dual principles of safety and readiness.

Regarding his duty of personnel supervision and management, recognizing the necessity of a unified and complementary team, and an environment in which his subordinates can feel comfortable bringing issues and concerns to his attention, Chief Obreiter brings a calm, friendly, and approachable demeanor to his role. Recognizing that fire service is deadly serious, and stressful by nature, his leadership style is typified by openness and geniality to the largest extent possible.

In his personal life, Chief Obreiter has demonstrated the same level of steadfastness and commitment which defines his professional life. He has been married to his wife, Natalia, also an Air Force veteran, for 28 years. Chief Obreiter met Natalia while both were deployed in Honduras. Natalia (*Surname Marin*) is of 100% Mexican descent. Thus, she is wholly fluent in Spanish, and regularly utilizes it in conversation, both in the US and abroad. Moreover, Chief Obreiter and his wife have traveled extensively to Mexico, to spend significant time with the Mexican half of their family. They share two stepchildren (*son Kurtis and daughter Alejandra*), both from her previous marriage.

In sum, Chief Obreiter is a serious man, imbued with Integrity, Honor, and Decency. He is a consummate professional and serving the Township of Kalamazoo as Fire Chief goes to the core of his identity and allows him to provide for his family.

While he vehemently denies the allegations and conclusions lodged against him in the Pre-Determination Hearing Documentation (*see below Infra*), he recognizes that the power rests within the Township, and asks that it devote the same level of seriousness and reflection in reviewing the Response set forth herein, and thus, deciding the course of his future, that he has amply demonstrated over the course of his tenure.

² Indeed, he shared his passion at the age of sixteen, with the son of then-Fire Chief Jack Gould, who became his friend while working together in a restaurant.

II. The Documentation Received – Notice of Predetermination Hearing for Chief David J. Obreiter

The Notice of Predetermination Hearing documentation consists of five single-spaced pages. It consists of numerous allegations, intertwined with cursory descriptions of investigative findings. *Minimal references to any evidentiary support, at best, are provided.*

Moreover, various legal and/or policy citations are noted, including *Michigan Criminal Statutes, Charter Township of Kalamazoo Policies and Procedures (the majority not even in effect at the time of the alleged incidents), the Restatement of Agency, Et. Al.* Wholly absent, is any basis or explanation for why a given Policy, Statute and/or Common law legal doctrine was selected in support of the alleged violations.

Also glaringly absent, is any reference to, or analysis of, any actual Workplace Discrimination Law, concerning Discrimination, Sexual Harassment, or Retaliation. Indeed, *Federal Title VII of the Civil Rights Act of 1964 (Title VII), Michigan's Elliot-Larsen Civil Rights Act (ELCRA)*, or any other relevant employment discrimination law is touched on in any fashion.

This omission is critical, as appropriate legal analysis of Chief Obreiter's conduct should hinge on whether he took *"prompt and appropriate remedial action," based on the information reasonably available to him*, in ordering and supervising the investigation of Firefighter Gonzalez' report of conduct allegedly committed by Firefighter Rick Trott. Chief Obreiter respectfully submits, that he clearly and unequivocally did exactly that, to the best of his ability, based on the training he received from the Township, in conjunction with his own professional judgment.

Concerning the purpose of the hearing, it is stated:

This hearing is to allow you to respond to the findings of misconduct arising from an independent internal investigation into allegations of assault and battery, attempted battery, and unlawful harassment against Firefighter Trott filed by Firefighter Gonzalez. The investigation revealed that you failed to properly investigate and take appropriate action concerning these serious violations. You will have the opportunity to provide all relevant information you want me to consider before I determine whether you violated policy and/or law, and if so, whether discipline up to and including discharge is warranted. (Emphasis supplied)

Notably absent from this directive, is a fair and just opportunity for Chief Obreiter to *review all relevant information obtained during the Investigation, which the Township Manager ostensibly utilized in reaching the conclusions set forth in the Predetermination Hearing Documentation.* Indeed, Chief Obreiter was never provided the same during the Investigation (*Most notably, an extensive, eleven-page, single-spaced report of allegations made by Firefighter Gonzalez*)³, prior to Findings having been reached, or subsequently, to allow him a reasonable opportunity to prepare for the pending hearing. As these allegations could not be more serious, and go to the core of his honesty, decency, and professionalism, his career and reputation are wholly at stake. As such, the Investigation, and Predetermination Process as a whole, lacks minimal and appropriate Due Process, and thus, is fatally flawed.

In addition to the Township's failure to provide Chief Obreiter the *crucial Second Incident Report* submitted by Firefighter Gonzalez in advance of Interrogation, *he has never been provided any Documentation and/or*

³ This report was ultimately provided to Counsel, but long-after Chief Obreiter had already been Interrogated concerning it, in hostile and aggressive fashion, by the Investigator, resulting in substantial, uncorrectable failures on the part of the Township to provide minimal Due Process. See below, *infra*.

Evidence compiled in the Investigation conducted by GBA Investigations and Security Consulting, LLC.⁴ Indeed, the entire investigation was conducted, and damaging conclusions reached against Chief Obreiter, *without providing him any, much less timely, opportunity to review and examine the alleged evidence against him.* Under the circumstances, any suggestion that the investigation was independent or neutral lacks credibility, and Chief Obreiter has been irreparably deprived of even minimal Due Process. This deprivation is blatant, and irreversible, given that his career, reputation, and future, hinge upon the outcome of this matter. See further, *infra*. Ultimately, if the Township has any intention of attempting to rectify its' Due Process Violations, it *must adhere, at a bare minimum, to the reasonable requests made herein.* See further, *infra*.

Bearing the above in mind, Chief Obreiter submits this document as his:

- *Preliminary Response to Documentation Concerning Predetermination Hearing*
- *Request for Appropriate Documentation Necessary for Fully Preparing his Defense*
- *Request for Reasonable Continuance of the Pre-Determination Hearing*

III. PRELIMINARY RESPONSE TO DOCUMENTATION CONCERNING PREDETERMINATION HEARING:

A. INTRODUCTION: Chief Obreiter's Response is Premised on His Knowledge of Reasonably Available Pertinent Facts

First, it is crucial to note, that *Two Incident Reports were submitted by Firefighter Gonzalez, documenting allegations against Firefighter Trott*

B. The *First Incident Report, dated 12.4.19*

This incident report is comparatively short (*three single-spaced pages*) and *was prepared by Firefighter Gonzalez at the Request of Battalion Chief Mulac.* Specifically, after Battalion Chief Mulac interviewed her initially, on his own initiative, he requested that Firefighter Gonzalez prepare a written report of events. At this point, Battalion Chief Mulac brought the issues to the attention of Chief Obreiter, who directed BC Mulac interview her a second time, after she had submitted the requested documentation to him. Firefighter Gonzalez submitted the First Incident Report, and Battalion Chief Mulac interviewed her a second time, based on the information she had reduced to writing. He then reported the results of the interview to Chief Obreiter, who directed him to interview the named Witnesses. Again, this is the only document Chief Obreiter had access to in conducting his investigation, and thus the only roadmap he could follow. (See Attached Exhibit 1 - *First Incident Report, dated 12.4.19*)

C. The *Second Incident Report, dated 2.18.22*

Upon information and belief, *Ms. Gonzalez prepared this second report, presumably at the direction of the Township Manager, after she met with him in late January 2022.*⁵ Needless to say, it is voluminous and detailed (*consisting of eleven single-spaced pages*). (See Attached Exhibit 2 - *Second Incident Report, dated 2.18.22*)

⁴ *Whether prior, during, or subsequent to that investigation.*

⁵ *Chief Obreiter does not know whether the meeting was requested by Firefighter Gonzalez, or the Township Manager.*

Chief Obreiter had no knowledge of or access to this document during the investigation he conducted. Moreover, despite multiple requests on his part, he was never allowed to review it, either prior to or during the investigation conducted by *GBA Security Consulting, LLC*. Nevertheless, this document was utilized in the aggressive and hostile interrogation to which Chief Obreiter was subjected by Investigator Alexander.⁶ *See below infra.*

D. CHIEF OBREITER'S INVESTIGATION WAS CONDUCTED ON THE BASIS OF THE FIREFIGHTER GONZALEZ' FIRST INCIDENT REPORT

1. Firefighter Gonzalez' First Incident Report – Dated 12.4.19 –

The original report, overall, is cursory, vague, and lacks significant detail in describing crucial incidents. Moreover, there are multiple instances wherein Firefighter Gonzalez indicates that she chose not to report an incident, because she “*did not want to cause issues.*”

However, there is *no evidence whatsoever* that Chief Obreiter, whether personally, or via instruction to subordinates, *ever attempted to discourage Firefighter Gonzalez*, or anyone else, from reporting incidents of alleged misconduct or harassment. Moreover, there is no evidence whatsoever, that, when Firefighter Gonzalez ultimately reported her concerns to Battalion Chief Mulac, that Chief Obreiter did anything whatsoever to discourage her from doing so, or short-cut any investigation of the same. Rather, the evidence is to the contrary – Chief Obreiter directed an internal investigation to the best of his ability, despite not having received any training concerning the same.

In sum, as soon as Chief Obreiter was placed on notice that Firefighter Gonzalez had reported her concerns to Battalion Chief Mulac, and the actions the latter had taken in requesting she prepare a written report, Chief Obreiter directed BC Mulac to conduct a second interview of her and report the findings to him. Upon receiving the completed Incident Report, Battalion Chief Mulac again interviewed Firefighter Gonzalez as directed, and then conferred with Chief Obreiter, so that they could jointly review the Incident Report, discuss the interviews which had been conducted of Firefighter Gonzalez, and the next steps to take going forward.

After his joint review of Firefighter Gonzalez' written report with Battalion Chief Mulac, inclusive of discussing the second interview of her, Chief Obreiter directed him to interview all witnesses she listed, to obtain their account of pertinent facts. To Chief Obreiter's understanding, Battalion Chief Mulac interviewed all witnesses she named, utilizing her incident report as the basis for questioning them.

After the interviews were conducted, Chief Obreiter Battalion Chief Mulac met for a second discussion, for approximately an hour, to discuss the results of the interviews, in conjunction with further review of the written report, and potential options for actions pursuant to the applicable *Standard Operating Guidelines, particularly SOG #3*, which they understood to govern the situation.⁷

The essence of the investigation's findings were that inappropriate behavior had in fact been directed at Firefighter Gonzalez by Firefighter Trott. However, the accounts provided by the Witnesses were consistent, to the effect that Firefighter Trott's actions, while inappropriate, were committed in jest, and

⁶ During Chief Obreiter's interrogation, *Investigator Alexander admitted that he knew nothing about the existence of an original 3-page Report*. Chief Obreiter offered to obtain a copy of the original Report for Mr. Alexander but was told it was *not necessary*.

⁷ Battalion Chief Mulac did not provide notes to Chief Obreiter.

rose to the level of inappropriate horseplay (*as specifically set forth as a type of inappropriate conduct in SOG#3*), as opposed to more serious violations, such as sexual harassment and/or assault and battery.

Therefore, Chief Obreiter determined, in conjunction with SOG#3, that sufficient evidence had been gathered to take disciplinary action against Firefighter Trott but did not rise to the level which would warrant suspension or termination.⁸

He also determined that Guidance needed to be issued to Firefighter Gonzalez concerning steps she should take in the event similar incidents occurred in the future, to ensure she reported them, providing opportunity for prompt investigation.

E. AFTER DIRECTING THE INVESTIGATION INTO FIREFIGHTER GONZALEZ' REPORTED INCIDENTS, CHIEF OBREITER TOOK PROMPT AND APPROPRIATE REMEDIAL ACTION:

1. Firefighter Trott was issued a Disciplinary Notice on December 5, 2019

The notice advised him that behavior which negatively effects other employees, including “*unwanted physical contact or innuendos, creating an unwelcoming environment toward other employees*” would not be tolerated – In essence, the writeup directly addressed Firefighter Gonzalez’ concerns as Chief Obreiter understood them, and served notice to Firefighter Trott that they were to cease – i.e., “*Prompt and Appropriate Remedial Action*”.⁹ (See Attached Exhibit 3 - Disciplinary Notice Issued December 5, 2019)

⁸ Firefighter Gonzalez had also directly requested to Battalion Chief Mulac that Firefighter Trott be notified, in writing, that his actions were inappropriate – this employee request for remedial action was fulfilled, in the form of the Written Disciplinary Notice issued to Firefighter Trott.

Note also, that the Disciplinary Action Notice was initially prepared by Battalion Chief Mulac, who then sent the same to Chief Obreiter for review. In turn, Chief Obreiter revised the document, considerably strengthening it. Both drafts were previously provided by Chief Obreiter, both to the Investigator and Legal Counsel.

⁹ Appropriate Remedial Action

An employer is not obligated to choose the remedial action advocated by the employee. *Blankship v Parke Care Ctrs*, 123 F3d 868, 874 (6th Cir 1997), *cert denied*, 522 US 1110 (1998); *Schemansky v California Pizza Kitchen, Inc*, 122 F Supp 2d 761, 779 (ED Mich 2000). In general, remedial action is considered adequate if it is “reasonably calculated to end the harassment.” *Katz v Dole*, 709 F2d 251, 256 (4th Cir 1983). As the Sixth Circuit observed in *Hawkins v Abheuser-Busch, Inc*, 517 F3d 321, 342-343 (6th Cir 2008), “companies that take affirmative steps reasonably calculated to prevent and put to an end to a pattern of harassment—such as personally counseling harassers, sending them letters emphasizing the company’s policies and the seriousness of the allegations against them, and threatening harassers with serious discipline if future allegations are substantiated—are more likely to be deemed to have responded appropriately.”

A significant factor in determining whether the employer’s remedial measures are adequate to avoid liability is whether the measures put an end to any further complaints of harassment by the offending individual. *Vermett v Hough*, 627 F Supp 587, 607 (WE Mich 1986). As the court wrote in *Spicer v Virginia*, 66 F3d 705, 711 (4th Cir 1995), “[w]hen presented with the existence of illegal conduct, employers can be required to respond promptly and effectively, but when an employer’s remedial response results in the cessation of the complained of conduct, liability must cease as well.”

Additionally, and contemporaneously, Battalion Chief Mulac extensively counseled Firefighter Trott concerning appropriate Workplace Conduct.

2. Firefighter Gonzalez was provided a “Memo of Response” on December 9, 2019

Collaboratively prepared by Chief Obreiter and Battalion Chief Mulac, and documenting the investigative steps taken (*witness interviews*), the conclusions reached (*inappropriate behavior which did not rise to the level of discrimination*) and advising her that Firefighter Trott had been spoken to, and that it was expected that similar incidents would not occur in the future. (See Attached Exhibit 4 - “Memo of Response” Issued December 5, 2019)

The Memo also addressed the importance of prompt and detailed reporting of allegations and generally emphasized the importance of positive collaboration among team members.

Firefighter Gonzalez was not disciplined, admonished, chastised, or, most critically to this inquiry, discouraged from reporting any similar incidents in the future – *in fact, she was encouraged to do so, flying in the face of any notion that her protected activity was discouraged and/or squelched.*

3. Chief Obreiter’s Actions, in Directing and Concluding the Investigation, Taking Disciplinary Action Against Firefighter Trott, Providing Guidance to Firefighter Gonzalez, and Taking Appropriate Steps to Preserve the Record Were Entirely Appropriate, and Warranted by Charter Township of Kalamazoo Fire Department Policy

Contrary to the assertion in the Predetermination Hearing Documentation, any suggestion that Chief Obreiter failed to report and/or covered up the allegations / investigation he directed, is utterly false.

Rather, the policy in place at the time, STANDARD OPERATING GUIDE #3 – DATE: 3/2010 – SUBJECT DISCIPLINE, states, in pertinent part:

“When the offense calls for suspension, a copy of the report will be forwarded to the Township Personnel Director. In the event that the offense calls for discharge, this will be made in the form of a recommendation to the Township Personnel Director for action. (See Attached Exhibit 5 - STANDARD OPERATING GUIDE #3 – DATE: 3/2010 – SUBJECT DISCIPLINE)

As Chief Obreiter, having directed an investigation to the best of his ability, determined that discipline was warranted, but did not rise to the level of suspension or discharge, such notification of the Township Personnel Director / Manager was not warranted.¹⁰

Moreover, termination of an offending employee is not necessary where the employer’s alternate actions are sufficient to prevent continued harassment. See, e.g., *Fleenor v Hewitt Soap Co*, 81 F3d 48 (6th Cir) *cert denied*, 519 US 863 (1996), the harassment occurred during a two-week period, after which the employer reprimanded the coworker and the harassment stopped.

Taken together, these cases recognize that an employer cannot guarantee an environment completely free from all harassment and cannot always act instantly, the crux being reasonable and appropriate.

¹⁰ (See Attached Exhibit 6 – Response to Request for Information Regarding Investigation, March 9, 2022, a document prepared collaboratively by Chief Obreiter and Battalion Chief Mulac) This document summarizes the investigative steps taken and the bases for the same, as requested by Investigator Alexander.

Additionally, Chief Obreiter turned in a copy of the Disciplinary Notice issued to Firefighter Trott, along with the Memo issued to Firefighter Gonzalez, in a manila folder to the Administrative Secretary, Molly Cole, for filing in their respective Personnel Files, per his understanding of policy. He also advised her that the documents pertained to personnel actions and needed to be placed in the personnel files.

Chief Obreiter was challenged on this fact later during the investigation, subsequent to his interrogation. He was advised by Investigator Alexander that the documents could not be found in the Personnel Files. He advised that Ms. Cole, having been questioned by the Township Manager, did not remember having been provided the documents, and would have, because of “what happened to her daughter at school.”

This conversation, apparently being utilized to establish that Chief Obreiter did not provide the documentation for filing as he stated, was double hearsay. Moreover, Investigator Alexander provided no further explanation regarding the alleged discussion between Ms. Cole and the Township Manager, what she allegedly said to him, what he may have revealed to her¹¹, or how she could have remembered reading documents, which were given to her in a plain manila folder, and described by Chief Obreiter as Personnel Actions, which were confidential, and which she was presumably not to review as part of her job duties.

Setting aside the absence of any motive by Chief Obreiter to fabricate this exchange, as he had in fact participated in the creation, revising, and issuance of the documents in question at the time stated, and required their signature by the employees in question, and that merely filing documents in a personnel file does nothing to bring them to the attention of anyone, *assuming confidentiality is kept*, there were multiple layers of Due Process Deprivations to note here, in conjunction with a major flaw in the investigation:

- The conversation between the Township Manager and Ms. Cole. Again, Chief Obreiter had no opportunity to question Ms. Cole (*who had long since retired, and likely wished no post-employment involvement*), much less hear her explanation himself.
- Chief Obreiter in fact forwarded the contemporaneous emails he sent at the time of the incidents, with the pertinent documentation attached, unaltered, to Investigator Alexander, and Labor Counsel McCamman, as requested, on April 21, 2022. This action is completely contrary to, and disproves, the allegation in the Notice of Predetermination Documentation that “*you failed to produce any email or notes that you stated you received from Battalion Chief Mulac*” (See Attached Exhibit 7 – Emails to Investigator Alexander and Counsel)

As it appears Chief Obreiter is being accused of falsifying documentation to make it appear he conducted more investigation than he did and/or cover up what he failed to do:

- Independent Forensic Analysis of the Computers Utilized by Chief Obreiter and Battalion Chief Mulac is Warranted –

Chief Obreiter’s honesty concerning the timely drafting, editing, and distribution of the central documents would be easily established by a qualified forensic examiner conducting an audit of the Fire Department Computers. Due Process requires that such an audit be conducted, and that Chief Obreiter’s Counsel be fully involved in selection of the Forensic Examiner, and creation of an agreeable scope for the examination.

¹¹ Chief Obreiter is understandably concerned that confidentiality concerning allegations against him may have been breached.

F. THROUGH NO FAULT OF CHIEF OBREITER, FIREFIGHTER GONZALEZ' TWO INCIDENT REPORTS ARE STARKLY DIFFERENT, IN DEPTH, SCOPE, AND DETAIL -- IT IS PATENTLY UNJUST, AND DEPRIVES CHIEF OBREITER DUE PROCES, TO UTILIZE THE SECOND REPORT TO DETERMINE IN HINDSIGHT THE LEVEL OF INVESTIGATION HE SHOULD HAVE CONDUCTED IN ITS ABSENCE

Firefighter Gonzalez' Second Incident Report, dated 2.18.22 – Again, this Incident Report, upon information and belief, was prepared at express Request of the Township Manager Mitchell, after meeting with Firefighter Gonzalez on or about January .25, 2022.

In stark contrast to the First Incident Report of 12.4.19, the Second Incident Report is expansive, and meticulously detailed, *approximately four times as long*. Given the paucity of detail in the First Report, it can only be concluded that Firefighter Gonzalez had significant assistance in preparation of the Second. Despite being submitted *two years, two months, and fourteen days after the first report, it is expansive*.

Wholly New Allegations, and Expanded Accounts of Prior Reports

Moreover, there are countless incidents delineated in the Second Report, which are not even mentioned in the First Report. For example:

- Firefighter Trott telling her she was “hot” in front of colleagues
- Firefighter Trott attempting to bar her from being at the fire station.
- Firefighter Trott yelling at her, and then leaving the station in the presence of Battalion Chief Mulac, who allegedly told her “*not to have expectations of anyone at the station*”
- Battalion Chief Mulac telling her that she should not be thinking that she had ownership of the station.
- Rick “lying” and Battalion Chief Mulac believing him
 - Note, Battalion Chief Mulac did tell “*everyone*” to stop telling others not to speak Spanish.

- Accusing Captain Chad Baker of objecting to her speaking Spanish
- Firefighter Trott allowing a female paramedic to wear his turnout gear and taking pictures
- Firefighter Trott repeatedly driving by the station, making noise with his car to bother her.
- Firefighter Trott “*sticking his head*” in the room where she was located
- Battalion Chief Mulac telling her that multiple firefighters’ contributions to the department combined did not equate to those of Firefighter Trott.
- Battalion Chief Mulac referring to Firefighter Trott as “Papa Rick,” which she believed to be an insult directed at her.
- Battalion Chief Mulac telling her that she should not “*burn her bridges.*”
- Battalion Chief Mulac having a tendency behaving hostile toward subordinate employees.
- Battalion Chief Mulac telling her none of the employees could meet his standards

There are also depictions of incidents alluded to in the First Report in cursory fashion, which are set forth in a highly detailed fashion, such as:

- The alleged glove slapping incident - *Firefighter Trott telling her he would fight her and throw her in the trash.*

Whether inadvertent or not, there are also numerous factual inaccuracies and contradictions as well, most notably:

- Firefighter Gonzalez claiming there was no follow up, or consequences for Firefighter Trott's behavior:
 - The issues were investigated, discipline was issued to Firefighter Trott, and Firefighter Gonzalez was provided a Memo summarizing the investigation and providing her guidance for future reports, if she continued to experience the same type of treatment. Firefighter Trott's discipline was not shared with Firefighter Gonzalez, as Chief Obreiter understood that doing so would not be appropriate per Kalamazoo Township Policy.
- Firefighter Gonzalez claims that the harassing behavior continued through the end of 2021. However, she reported no further incidents after Chief Obreiter's investigation of her original allegations, despite having been provided detailed written guidance imploring her to do so. *Without evidence, Firefighter Gonzalez simply asserts that if she had gone to leadership, nothing would have been done.*¹²
- On May 28, 2021, Firefighter Gonzalez had a meeting with Battalion Chief Mulac, which she had requested. After the meeting, Battalion Chief Mulac reported to Chief Obreiter what had been discussed. Chief Obreiter determined that it was important to have documentation of Firefighter Gonzalez' concerns, and to further advise her the protocol she should utilize in reporting further concerns. *Again, he encouraged transparency and attempted to ensure that any issues were reported, so they could be addressed. If anything, this prompt and appropriate action demonstrates heightened sensitivity on the part of Chief Obreiter to addressing her concerns.*¹³ (See Attached Exhibit 8 – Texcom Message)
- Firefighter Gonzalez reports that in the Fall of 2021, Firefighter Trott yelled at her to the effect *that the parking lot was his – the same was never reported.*
- Firefighter Gonzalez reports that after she submitted her written incident report to leadership (*First Incident Report*), *Firefighter Trott continued to yell at and intimidate her – the same was never reported.*
- In this vein, Firefighter Gonzalez asserts that it would be a “*conflict of interest reporting concerns to Chief Obreiter about Battalion Chief Mulac, if they are close professionally and personally,*” and that she “*doubts that if she had made a complaint due to her incident with (Firefighter Trott), anything would have been done.*”

¹² The same is speculative, and contradictory, as, the issues she reported were investigated and action was taken.

¹³ Regarding this issue, Firefighter Gonzalez claims to have been told by Firefighter Eddie Medina, that Assistant Chief Todd Dunfield told him, that Battalion Chief Mulac had said something disparaging about her / the meeting with her conducted on May 28th. She also indicates that she was shocked that Battalion Chief Mulac had “*lied.*” *Never mentioned in any way, is what Chief Mulac allegedly said, yet she reports that it was unprofessional, despite not knowing what he allegedly said.*

This allegation is triple hearsay, and in any event the allegation, whatever it is, bears no relationship to Chief Obreiter in any way, shape, or form. He was never notified of the same.

However, there is no evidence that Chief Obreiter engaged in a pattern of favorable treatment toward Battalion Chief Mulac, and, as Firefighter Gonzalez never reported an issue to Chief Obreiter concerning Chief Mulac, wholly speculative, and unfair to Chief Obreiter. Additionally, the Texcom Message, sent as a follow-up to the meeting Firefighter Gonzalez requested with Battalion Chief Mulac, addresses this very concern, providing the exact type of safeguard in reporting which she expressed concern about.

Heightened and Expanded Allegations of Discrimination on the Basis of Race, Sex, and National Origin

It is also noteworthy, and curious, that Firefighter Gonzalez' Second Incident Report is replete with references to Discrimination – inclusive of racism, national origin discrimination, and sexism. Indeed, the report is riddled with discrimination law-oriented buzzwords, all of which were wholly absent from the First Report, such as:

- “Only woman of color”
- “Racist Interactions from Coworkers.”
- “Only Hispanics in KTFD”
- “As a Mexican”
- “Racism has continued”
- “People who have been racist ... and not taking me seriously when I presented these concerns”
(Presumably, Battalion Chief Mulac and Chief Obreiter)

While Chief Obreiter and Counsel contend that the clear sea change in depictions of events and attributions of motive are due to the contemplation of litigation, the mere fact that they are now added does not make them credible.

More centrally, there is no evidence whatsoever to support the slimmest of inferences that Chief Obreiter is racist, or, that he conducted the investigation concerning Firefighter Gonzalez' harassment reports in a negligent manner, much less, that he engaged in any coverup of her allegations, whether to protect Firefighter Trott, Battalion Chief Mulac, or anyone else, much less, to advance any sense of racial or ethnic bias of any kind – he harbors no such bias.

Again, as noted above, his wife of nearly 28 years, like Firefighter Gonzalez, is of Mexican National Origin, and routinely speaks Spanish. During the investigation, Investigator Alexander never bothered to explore the potentiality of Chief Obreiter actually harboring any discriminatory animus, and a cursory review of his Chief Obreiter's personal and family background would have promptly disproved the same. This failure alone, calls the credibility, and findings, of the Investigation, into serious question.

Utilization of the Second Incident Report in the Investigation Presents a Classic *Ex Post Facto* Problem, Which Eviscerated Chief Obreiter's Right to Due Process:

Of Course, *as the Second Incident Report did not exist at the time of his original investigation*, Chief Obreiter could not have used it as the basis for the same. Had he been contemporaneously provided a document with this level of specificity *he would have necessarily expanded the scope of the investigation*. However, minimal fairness dictates he is not punished for “*failing*” to investigate its allegations.

Nevertheless, it is abundantly clear, that the allegations in the Second Incident Report are inextricably intertwined with the allegations leveled against Chief Obreiter now. Indeed, it was used in his Interrogation (*absent any opportunity for review*), and he was accused of failing to investigate incidents

documented therein, despite never having seen it, or even having heard of the vast majority of the incidents. In sum, in classic *Ex Post Facto* fashion, Chief Obreiter is being held responsible for not knowing or discovering, despite receiving no training concerning investigating workplace discrimination complaints, information documented in an 11-page treatise, when he was only actually presented with a 3-page primer.

Indeed, despite his repeated requests, the Second Incident Report was never provided to Chief Obreiter during the investigation conducted by GBA Investigations and Security Consulting, LLC., whether prior or subsequent to his interrogation, or completion of GBA's investigation report (*which he has also never seen*). Thus, he has had minimal opportunity to actually determine what he is being accused of failing to investigate. Thus, he was wholly deprived of any opportunity to attempt to refresh his recollection, determine context, etc.

Indeed, Chief Obreiter only discovered the Second Incident Report even existed when he was subjected to a surprise Interrogation by Investigator Alexander on February 28, 2022, utilizing this document. Investigator Alexander stated that there was a "12-page Complaint" documenting incidents he "*knew about... and did nothing!*" See below, *Infra*.

IV. CHIEF OBREITER WAS DEPRIVED OF ANY SEMBLANCE OF DUE PROCESS DURING THE INVESTIGATION CONDUCTED BY THE TOWNSHIP, VIA ITS AGENT GBA INVESTIGATIONS AND SECURITY CONSULTING LLC., DIRECTLY RESULTING IN WHOLLY FALSE AND UNJUSTIFIABLE CONCLUSIONS BEING REACHED AGAINST HIM

Numerous, Irreversible, Deprivations of Due Process Occurred During the Investigation, including, but not limited to:

A. NO DOCUMENTS WERE PROVIDED TO CHIEF OBREITER EITHER PRIOR TO OR DURING THE INVESTIGATION, INCLUDING:

1. **Ms. Gonzalez' "Second Incident Report" Dated – 2.18.22 – See above, Supra.**
2. **Witness Statements / Notes Taken During Witness Interviews –**

During the investigation conducted by GBA Investigations and Security Consulting, LLC., Chief Obreiter was provided no information concerning who was interviewed, what was asked, and had no access to any documents prepared or produced in conjunction with the same, whether *Witness Statements, Interview Transcripts, Notes, Et. Al.*

3. **No Investigative Report, whether Preliminary or Final –**

This report, ostensibly prepared by *GBA Investigations and Security Consulting, LLC.* at the behest and direction of the Township Manager¹⁴, has never been provided to Chief Obreiter for review.

¹⁴ Chief Obreiter vehemently disagrees with any characterization by the Township of its investigation as "*Independent.*" The Township selected, hired, and paid the Investigation Firm. The Township served as the chief source of information which formed the basis of the investigation. *Any direction concerning the scope of the investigation was provided by the Township alone.*

Minimal notions of Due Process require that Chief Obreiter be allowed to review the Investigative Report, as this is the only possible way to thoroughly respond to / challenge the investigation findings in any meaningful way. Indeed, if the investigation was truly independent, the Township should have no qualms in providing a copy of the report to Chief Obreiter's counsel, whether under an appropriate protective Order and/or "Attorney's Eyes Only" type agreement. This comports with the general principle that sunlight is the best disinfectant.

B. THE INTERROGATION OF CHIEF OBREITER WAS SUPERFICIAL, HOSTILE, AND INEFFECTIVE

On the morning of Monday, February 28, 2022, the Township Manager asked Chief Obreiter if he had any time to talk that day. Chief Obreiter advised of his availability, and a time to meet was set for 2:00 pm. The Township Manager provided no indication of the purpose of the meeting.

At approximately 1:50 pm, the Township Manager and Investigator Alexander, whom Chief Obreiter had never met, showed up at his office door, and the Township Manager advised him that they would like to talk to him in the big meeting room. Chief Obreiter grabbed his meeting notepad from his desk and followed them across the hall to the big meeting room. The Township Manager briefly introduced Chief Obreiter to Investigator Alexander.

Investigator Alexander advised Chief Obreiter that they were there to investigate a "*Hostile Work Environment Complaint*" by a fire department employee. Investigator Alexander advised Chief Obreiter

In this regard, Chief Obreiter asserts that a truly independent investigation would necessarily involve him as well, coupled with his being provided a modicum of opportunity to examine and evaluate the strength / credibility of any evidence arrayed against him, prior to any investigative outcome and/or determination. In addition to its' patent lack of independence, Chief Obreiter contends that the investigation was patently unfair, and conducted with the preconceived outcome that he was guilty. Federal Caselaw is replete with comparable examples. See, e.g.:

Robinson v. Marshfield, 2020 U.S. App. Lexis 4789 (1st Cir.), at 9 (*relying on the conclusions of a sham investigation is pretextual*); Davignon v. Hodgson, 524 F.3d 91, 107 (1st Cir. 2008) (after conducting an investigation, the employer credited the word of one person of the contradictory testimony of two other people);

MCAD and Savage v. Massachusetts Rehabilitation Commission, 2016 Mass. Comm. Discrim. 15, at 63-64 (*not neutral investigator wrote report deferential to employer's position without interviewing the plaintiff or the principal parties. "The failure to conduct a fair, thorough and unbiased investigation can also be evidence of pretext."*).

McCaw v. Potter, (2006 U.S. Dist. LEXIS 61774) which opines that *an inadequate investigation may constitute a form of retaliation*, p. 176.

Smothers v. Solvay Chemicals, Inc., F.3d , No. 1: 2014 WL 211820 at **9-10 (10th Cir., Jan 21,2014)(*Inadequate and unfair investigation where employer fails to give employee chance to respond supports inference of discrimination*).

that the complaint was twelve pages long, and was full of disparaging information about himself, Battalion Chief Mulac, and the operations of the fire department.

The Township Manager then read Chief Obreiter a *Garrity rights* warning and advised him that this was an administrative investigation. The Township Manager then turned the floor over to Investigator Alexander.

Immediately thereafter, Investigator Alexander, possessed of what appeared to be a prepared written outline, immediately began interrogating Chief Obreiter, in an aggressive and hostile fashion, marked by an elevated vocal tone which often devolved into yelling.

Investigator Alexander continually referred to the alleged 12-page Complaint and appeared to be randomly questioning Chief Obreiter concerning allegations in it. Although he does not recall the exact items he was questioned on, due to his increased anxiety caused by Investigator Alexander's hostility, Chief Obreiter made it very clear, that he had never heard of the majority of the incidents in question.

Yet, Chief Obreiter was never allowed, despite repeatedly requesting the same, to review the 12-page Complaint. Thus, he was deprived of any reasonable opportunity to gather his thoughts and attempt to refresh his recollection concerning events which were now two and a half years old.

Again, Investigator Alexander spoke in a loud, accusatory manner during the entire Interrogation. Chief Obreiter repeatedly tried, to no avail, to deescalate the tone in order to allow for a two-sided discussion. When it was apparent this had no effective, Chief Obreiter also attempted to adopt a firm tone, hoping Investigator Alexander would listen. Nonetheless, Investigator Alexander's hostility only escalated. At one point, Investigator Alexander pointed his finger directly at Chief Obreiter and yelled:

"We have 12 Pages of Allegations Against the Fire Department of Discrimination and Hostile Work Environment, She Reported it in 2019, and You knew about it! And You Did Nothing!!"

This abusive tone continued for approximately 30 minutes. Despite this unwarranted, unprofessional, barrage of hostility by the Investigator, Chief Obreiter kept his composure, and calmly responded, clarifying:

- That he was familiar with some of the alleged incidents
- That there had been an investigation conducted
- *That a three-page incident report had been submitted by Firefighter Gonzalez, at the request of his Battalion Chief, Matt Mulac*
- *That the Allegations had been investigated, inclusive of Witnesses being interviewed*
- *Written Disciplinary Documentation had been issued to Firefighter Trott, and*
- *Non-Disciplinary Documentation Summarizing the Investigation, and providing guidance for future reporting of allegations, had been issued to Firefighter Gonzalez.*

In response, Investigator Alexander, seemingly stunned, admitted that he had no knowledge of *Firefighter Gonzalez' First Incident Report, the Disciplinary Notice documentation issued to Firefighter Trott, and the Guidance Documentation issued to Firefighter Gonzalez in 2019!*

Shocked that the assigned Investigator was *blithely unaware of the existence of the central documentation in the matter*, yet was apparently bent on yelling conclusory allegations at him, Chief Obreiter, wanting to ensure that the Investigator had at least a semblance of an accurate picture of what action he had taken,

offered to immediately walk to his office and obtain copies, but inexplicably, was told: “That won’t be necessary at this time,”¹⁵ and that he had no further questions.

At the conclusion of the bombastic and disjointed Interrogation, Investigator Alexander opined that the matter, *“Had Wheels and Could Go Someplace,”* and, that it would be *“Embarrassing For You Guys When It Hits the Newspapers.”* These gratuitous comments hardly demonstrated a measured or professional assessment, much less, the type of clear-eyed, dispassionate, evidence gathering methodology appropriate to a complex workplace sexual harassment investigation.¹⁶

In sum, Chief Obreiter was provided no Due Process whatsoever during the Interrogation:

- He was provided no notice that he would be interrogated, or any opportunity to prepare
- He was provided no documents for review prior to, or during the interrogation, most notably, the alleged 12-page Complaint. *The document was later produced to Counsel, on July 13, 2022, but the objectivity of any examination concerning the same was already ruined, and thus, the investigation is irreparably tainted.*
- Tellingly, although Chief Obreiter requested to be allowed to promptly retrieve the documentation which would substantiate his promptly conducting an investigation and issuing disciplinary and explanatory documentation to the principal parties, he was denied the opportunity.

This willful and deliberate indifference to exonerating evidence on the part of the Investigator serves as a powerful inference in support of Chief Obreiter’s position – *The investigation’s outcome was preconceived, geared toward finding multiple serious violations on his part, irrespective of the evidence.*

V. THE TOWNSHIP’S GROSS DEPRIVATIONS OF DUE PROCESS TO CHIEF OBREITER VIOLATE STATE LAW

The Michigan Supreme Court, in *Bauserman v. Unemployment Insurance Agency, Docket No. 160813,* reached a landmark decision on July 26, 2022, *ruling that there is a right to sue the State for damages when it deprives a citizen of their right to due process. (See Attached Exhibit 9 - Syllabus – Bauserman Decision; Copy of Constitution 1963, Article I, Sec. 17)*

Specifically, the Court Held:

“Plaintiffs seek redress of the alleged deprivation of their property without notice or an opportunity to be heard in violation of Const 1963, art one, § 17. This Court bears the authority and ultimate responsibility to enforce our state’s Constitution and to ensure that rights have remedies. When the language of the Constitution itself does not delegate that responsibility to another branch of government and when the Legislature has not enacted an adequate alternate remedy for the constitutional violation, we will recognize and enforce a monetary-damages remedy. We agree that plaintiffs have alleged a cognizable constitutional-tort claim for which they may recover money damages, and we agree with the lower courts that the Agency was properly denied summary

¹⁵ Which begs the question – *If not then, When?*

¹⁶ The Investigator’s abrasive, ambush-style interrogation was directly contradictory to the nuanced, methodical, fact-intensive approach warranted by Workplace Discrimination Investigations.

disposition. We remand the case to the Court of Claims for further proceedings not inconsistent with this opinion."

Moreover:

"Absent clear language in the Constitution or a legislatively crafted remedy, we hold that people who have been deprived of a constitutional right deserve to seek redress through the courts, regardless of whether their harm was inflicted pursuant to state custom or policy."

Additionally, the Court made clear, that a constitutional-tort action for monetary damages against the state exists except in two specific circumstances:

1. When the Constitution has delegated to another branch of government the obligation to enforce the constitutional right at issue or
2. When another branch of government has provided a remedy that the Supreme Court considers adequate. (*An alternative remedy is adequate when it is at least as protective of a particular constitutional right as a judicially recognized cause of action would be*).

While the *Bauserman* holding addresses *State, as opposed to Municipal, deprivations of Due Process*, it is axiomatic to conclude that the Court would not issue such a sweeping ruling in a Due Process case concerning State action without being similarly disposed to rule favorably on behalf of municipal employees similarly deprived of their basic Due Process Rights.

Indeed, the language of the Due Process Clause of Michigan's Constitution, which is part of the Declaration of Rights therein, provides, in pertinent part that:

Const. 1963, Article I, Sec. 17 - "No person shall be ... deprived of life, liberty, or property without due process of law. The right of all individuals .. to fair and just treatment in the course of ... executive investigations and hearings shall not be infringed."

In sum, as amply demonstrated herein, Chief Obreiter has been deprived of fair and just treatment in the course of this investigation, and minimal notions of Due Process have not been fulfilled by the Township. Therefore, Chief Obreiter respectfully submits that his requests set forth below are both amply reasonable and fully warranted under the circumstances.

VI. CHIEF OBREITER'S DUE PROCESS REQUESTS FOR PERTINENT DOCUMENTATION PURSUANT TO THE BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT, MCL 423.501 et. seq. AND THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S. Code § 552

Although Chief Obreiter contends that the Due Process failures set forth above are irreparable at this point, any reasonable attempt to rectify them absolutely requires he be provided all potentially relevant documentation concerning the allegations lodged against him. Otherwise, he is wholly deprived of a full and fair opportunity to defend himself, his livelihood, and his personal and professional reputation.¹⁷

¹⁷ Chief Obreiter has already suffered significant reputational losses, as the fact that he has been *under investigation for the past six months, and indeed, the subject matter of the investigation, has spread, through the Fire Department and the Charter Township of Kalamazoo*. On countless occasions, he has been approached by subordinates and colleagues, who have either sought information concerning the investigation and/or expressed support (*or lack thereof*) for him.

Minimally Necessary Documentation, sufficient to provide Chief Obreiter the Opportunity to Prepare for the Pre-Determination Hearing, includes, but is not limited to:

1. Chief Obreiter's Complete Personnel Record, Inclusive of Any and All Documentation Utilized in Support of Any Past or Pending Personnel Action, Including Any Investigative Materials Compiled by the Township Relevant to the Issues to Be Addressed in the Predetermination Hearing

In addition to the basic norm of Due Process that a person should be able to review evidence arrayed against them, Michigan's Bullard-Plawecki Employee Right to Know Act, *MCL 423.501 et. seq.*; *MCL 423.508*, specifically provides that *an employee is absolutely entitled to review a complete copy of their personnel record.* *MCL 423.503.*

The act defines "personnel record" as:

"a record kept by the employer that identifies the employee, to the extent that the record is used or has been used, *or may affect or be used, relative to that employee's qualifications for employment, promotion... or disciplinary action.*"

Thus, per the Act's plain language, Investigation Materials concerning alleged misconduct, which could have a negative impact on employment, fall squarely within the definition of "personnel record," and thus, the employee's right to review the same. Of course, in addition to his right to review the materials, Chief Obreiter is requesting a complete copy as well, via Counsel. *See e.g., MCL 423.504.*

Thus, Chief Obreiter's Bullard-Plawecki Act Personnel Record Request Includes, but is not limited to:

- a. Complete copies of any Preliminary and Final Investigative Report(s) prepared by *GBA Investigations and Security Consulting, LLC.* (Whether in Handwritten or ESI Form).
- b. Any Preliminary Investigative Memorandums or Summaries (Whether in Handwritten or ESI Form).
- c. Complete copies of any Materials Utilized or Obtained by *GBA Investigations and Security Consulting, LLC.* in the conduct of its investigation Summaries (Whether in Handwritten or ESI Form), including, but not limited to:
 - i. Any Witness Statements Obtained
 - ii. Any Transcripts of Witness Interviews Conducted
 - iii. Any Recordings of Witness Interviews Conducted
 - iv. Any Notes Prepared contemporaneously or subsequent to Witness Interviews
 - v. The Investigator's CV
 - vi. Copies of any (*reasonably redacted*) pertinent investigation reports, i.e., those encompassing any other Workplace Discrimination / Sexual Harassment Investigations he has conducted within the last five years.

Chief Obreiter has also suffered substantial emotional distress, anxiety, insomnia, increased irritability, and overall loss of the ability to relax and enjoy his life. He has obtained medical treatment for the same in the recent past. Concerningly, his relationship with his wife and family have suffered as well.

- vii. Complete copy of any *Report / Material / Metadata obtained in any Forensic Audit of Township Computers, If Any, Conducted to Ascertain Timing of Preparation of Pertinent Documentation, including, but not limited to:*
1. Disciplinary Notice Issued to Firefighter Trott by Battalion Chief Mulac At Direction of Chief Obreiter - December 5, 2019
 2. “Memo of Response” Issued to Firefighter Gonzalez on December 9, 2019
- viii. Copies of Any and All Notes, Memoranda, Et. Al. Prepared and/or Possessed by Township Manager Mitchell (*Whether in Handwritten or Computerized / ESI Form*) concerning the Investigation, and/or which refer to Chief Obreiter in any way, shape, or form.
- ix. Copies of Any Memorandum’s Provided by Counsel to Kalamazoo Township Regarding the Investigation And/or Recommending Any Personnel Action Concerning Chief Obreiter¹⁸
- x. OPPORTUNITIES TO EXAMINE CRITICAL WITNESSES CONCERNING INVESTIGATION - Given the ample Due Process Failures set forth above, Counsel requests the opportunity to question two individuals, under oath and/or recorded, with Counsel for the Township Present:
1. The Township Manager, Dexter Mitchell
 2. The Township’s Investigator, Gerard Alexander

¹⁸ It amply clear, that although the ostensible purpose of the investigation is determining if Chief Obreiter, committed “Violations” in investigating allegations made by Firefighter Gonzalez, it is also purposed to defend / insulate the Township from potential liability in any litigation she may pursue. Thus, any recommendations made by counsel during the investigation are made in furtherance of this purpose. Therefore, if Firefighter Gonzalez pursued litigation against the Township, the Attorney-Client privilege would not attach to these communications. *See, e.g.:*

Angeline v. Xerox Corp., No. 09-CV-6019, 2011 WL 4473534, at *2 (W.D.N.Y. Sept. 26, 2011), reconsideration denied, No. 09 Civ. 6019, 2012 WL 537492 (W.D.N.Y. Feb. 17, 2012) (“[T]he clear majority view is that when a Title VII defendant affirmatively invokes a *Faragher- Ellerth* defense that is premised, in whole in or part, on the results of an internal investigation, the defendant waives the attorney-client privilege and work product protections for not only the report itself, but for all documents, witness interviews, notes and memoranda created as part of and in furtherance of the investigation.”) (collecting cases).

Of course, no litigation is pending in this matter, and the privilege would be waived in the event Firefighter Gonzalez pursued the same. However, the same principles which support waiver of the privilege in the case of litigation brought by Firefighter Gonzalez (*i.e., the Township positing that it conducted a fair and appropriate investigation*) apply with special force to Chief Obreiter’s Defense to allegations that he did not.

Under the circumstances, Counsel is willing to stipulate to receipt of any said materials pursuant to an “Attorney’s Eyes Only” agreement and would agree to destroy the same when this matter is concluded.

xi. **COPIES OF ANY AND ALL DOCUMENTATION ESTABLISHING THAT CRITICAL AND RELEVANT TRAINING WAS CONDUCTED CONCERNING:**

1. **Preventing Discrimination and/or Harassment in the Workplace** – Upon information and belief, *none has been provided since 2017, within the Township or the Fire Department.*
2. **Reporting Discrimination and/or Harassment** – Upon information and belief, *none has been provided since 2017, within the Township or the Fire Department.*¹⁹
3. **Investigating Employee Reports of Discrimination and Harassment** – Upon information and belief, *no training whatsoever concerning this crucial duty, upon which the Township bases its conclusions of “Violations” against Chief Obreiter, has ever been provided to him, or other Fire Department employees.*²⁰

VII. CHIEF OBREITER’S NOTICE OF LITIGATION HOLD

The undersigned Counsel expects that the Charter Township of Kalamazoo will preserve, retain, and otherwise not destroy or alter, any relevant documents, including those outlined above in accordance with all applicable court rules, including *MCR 2.313(D)*.

Thus, the Township is hereby notified to advise all representatives, officers, and employees to refrain from any destruction, movement and/or deletion of information related directly, or indirectly, to Chief Obreiter and his employment including all categories of documentation / materials listed above herein.

This litigation hold should include information compiled/obtained/stored throughout the employment period of Chief Obreiter with the Charter Township of Kalamazoo and continue throughout the pending period of negotiation and/or litigation in this matter, whether the information in question is currently stored onsite or offsite or is kept as a hard copy or is electronically stored.

The Township’s compliance with this litigation hold is expected, and shall remain in force, until such time as prospective litigation among the parties is completed and/or released by the parties.

¹⁹ Firefighter Gonzalez was never provided training concerning reporting Discrimination or Harassment, buttressing the appropriate nature of the Memorandum issued to her.

²⁰ **Directly on point is the following Case Law Excerpt Regarding Effective Sexual Harassment Policies:**

"**An effective harassment policy should at least:** [1] require supervisors to report incidents of sexual harassment; [2] permit both informal and formal complaints of harassment to be made; [3] provide a mechanism for bypassing a harassing supervisor when making a complaint; and [4] *provide for training regarding the policy.* *Gallagher v. C.H. Robinson Worldwide*, 567 F.3d 263, 275 (6th Cir. 2009); *Clark v. UPS*, 400 F.3d 341, 349-350 (6th Cir. 2005).

Moreover, **the failure to train employees on implementation of the policy defeats the first element of, and thus the Faragher/ Ellerth defense, regardless of whether the failure to train was the cause of the failure to take action.** *Bishop v. Woodbury Clinical Laboratory*, 2010 WL 1525922, p. 4 (M.D. Tenn. 2010).

VIII. Request for Reasonable Continuation of Pre-Determination Hearing, to Afford Chief Obreiter Reasonable Time to Review Requested Documentation After Provision of Same, And Preparation of Supplemental Response(s) as Warranted

IX. Request for Full Evidentiary Hearing Before the Full Township Board, Regarding All Items Set Forth Herein In the Event Discipline of Any Kind Is Imposed Against Chief Obreiter

X. Request That Copies Of This Document Be Provided to All Board Members for Prompt Review and Consideration In the Event Discipline of Any Kind Is Imposed Against Chief Obreiter

XI. Request that Copies of This Documentation Be Placed In Chief Obreiter's Official Personnel Record, pursuant to Bullard-Plawewski Employee Right to Know Act - MCL 423.501 Et. Seq.

XII. PRELIMINARY REBUTTAL TO SPECIFIC ALLEGATIONS SET FORTH IN NOTICE OF PREDETERMINATION HEARING – CHIEF OBREITER DIRECTED THE INVESTIGATION INTO FIREFIGHTER TROTT'S ALLEGATIONS BE CONDUCTED BASED ON HIS UNDERSTANDING OF APPLICABLE CHARTER TOWNSHIP OF KALAMAZOO POLICIES AND PROCEDURES, INCLUDING FIRE DEPARTMENT STANDARD OPERATING GUIDES, IN COMPORT WITH THE TRAINING HE RECEIVED AND HIS PROFESSIONAL JUDGMENT

Per the Notice of Predetermination Hearing, the following findings regarding Kalamazoo Township policy and Federal and State law violations were allegedly made by the Township Manager, and Chief Obreiter has been Charged with said Violations. Incorporating by Reference all Factual Responses and Legal Arguments Set Forth herein, and Reserving the Right to Supplement his responses as additional information is provided by the Township pursuant to the above requests, Chief Obreiter responds to the alleged violations as follows:

A. ALLEGED VIOLATIONS:

NON-FEASANCE. MCLA 750.478 Willful neglect of duty; public officer or person holding public trust or employment. penalty.

Sec. 478. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

RESPONSE: Chief Obreiter denies this allegation in total. Citation of this statute is inapposite, as he committed no crime whatsoever. Moreover, the statute requires a showing of *Willful (i.e., deliberate and intentional), neglect of duty. It is a specific intent crime, not mere inadvertence, or negligence. Moreover, as noted above, there is no evidence whatsoever to suggest that Chief Obreiter neglected his duties in connection to the Investigation into Firefighter Gonzalez' allegations. Rather, he fulfilled them to the best of his ability and judgment in accord with his training and existing Township Policy.*

BREACH OF FIDUCIARY DUTIES: See, among other sources, Restatement (Third) of Agency (2006)

Employees owe general fiduciary duties of loyalty and performance to their employers. Employees are required to act loyally for the employer's benefit in all matters connected with the employment relationship. While performing duties, employees must act with the care, competence, and diligence exercised by similarly situated employees. Employees also have a duty to provide information, i.e., duty of disclosure, relevant and material to the employment and its functions. The requirements of fiduciary duties owed by an employee increase, becoming even more demanding, as the employee rises within the organization to higher levels of employment.

RESPONSE: Chief Obreiter denies this allegation in total, and vehemently objects to language from a Generalized Legal Treatise being used to support a violation of any kind, as opposed to utilizing the applicable Charter Township of Kalamazoo Policies, which were in existence at the time of the alleged violations.

The applicable policy states, in pertinent part:

**Kalamazoo Township Fire Department
Standard Operating Guide #3
Subject: Discipline²¹**

...

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:
 - a) Proper conduct
 - b) Improper conduct
 - c) Violation of policy procedure
 - d) Insufficient Evidence
 - e) Unfounded complaint
2. If discipline is required, every effort will be made to respond to the deficiency with training and or counseling.
3. Violations of any of the provisions of the Charter Township of Kalamazoo and/or fire department standard operating guides, directives or procedures shall be the subject of disciplinary action up to and including discharge.
4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary action with due regard for the nature of the offense and the member's previous record of conduct. The Fire Chief, Deputy Chief or Battalion Chief may initiate actions a-c, the Fire Chief will initiate action d-g.
 - a) Written Reprimand
 - b) Restriction of activities or privileges
 - c) Requirement of Restitution
 - d) Demotion
 - e) Suspension
 - f) Probation
 - g) Discharge.....
6. All offenses, regardless of action taken, shall be acknowledged over the signature of the member receiving the disciplinary action. *When the offense calls for suspension, a copy of the report will be forwarded to the Township Personnel Director. In the event that the offense calls for discharge, this will be made in the form of a recommendation to the Township Personnel Director for action.*

.....

²¹ See Attached Exhibit 5

Chief Obreiter in conducting the investigation, reviewing the evidence gathered and ultimately determining that written disciplinary action was warranted against Firefighter Trott, followed Standard Operating Guide #3 to the letter, and took prompt and appropriate remedial action addressing the matter.

Specifically, upon it being brought to his attention that Firefighter Gonzalez had made allegations, Chief Obreiter directed and supervised an investigation, the steps of which are delineated herein. *See Supra*.

Again, as he determined, utilizing his discretion, based on the investigation conducted into the allegations Firefighter Gonzalez had reduced to writing, that discipline was warranted, but did not rise to the level of suspension or discharge, discipline was issued to Firefighter Trott. Moreover, guidance for reporting future incidents was issued to Firefighter Gonzalez to ensure the same would occur in the future to the largest extent possible. *See above Supra*.

In sum, Chief Obreiter followed Township and Fire Department Policy to the letter, and took his duties in conducting the investigations, and issuing discipline, with the utmost seriousness. After the discipline was issued to Firefighter Trott, Firefighter Gonzalez made no further reports.

To the extent that outside legal guidance should be utilized in determining if Chief Obreiter violated Township Policy and Procedure, as noted above, it is appropriate to examine pertinent Case Law concerning Workplace Sexual Harassment.

In general, remedial action is considered adequate if it is “reasonably calculated to end the harassment.” *Katz v Dole*, 709 F2d 251, 256 (4th Cir 1983). As the Sixth Circuit observed in *Hawkins v Abheuser-Busch, Inc*, 517 F3d 321, 342-343 (6th Cir 2008), “companies that take affirmative steps reasonably calculated to prevent and put to an end to a pattern of harassment—such as personally counseling harassers, sending them letters emphasizing the company’s policies and the seriousness of the allegations against them, and threatening harassers with serious discipline if future allegations are substantiated—are more likely to be deemed to have responded appropriately.” A significant factor in determining whether the employer’s remedial measures are adequate to avoid liability is whether the measures put an end to any further complaints of harassment by the offending individual. *Vermett v Hough*, 627 F Supp 587, 607 (WE Mich 1986).

As the court wrote in *Spicer v Virginia*, 66 F3d 705, 711 (4th Cir 1995), “[w]hen presented with the existence of illegal conduct, employers can be required to respond promptly and effectively, but when an employer’s remedial response results in the cessation of the complained of conduct, liability must cease as well.”

In sum, despite the absence of training provided to Chief Obreiter in conducting Workplace Discrimination / Harassment Investigations, his investigation, and action taken, satisfied not only Kalamazoo Township Fire Department Policy, but rose to the level of prompt and appropriate remedial action pursuant to State and Federal Law.

8. SAFETY, ETHICS, AND CONDUCT (failure to follow)

GENERAL OBJECTION - All alleged violations set forth below utilize the August 2021 Charter Township of Kalamazoo Policies and Procedures, *absent any reason, compelling or otherwise*, as opposed to the Personnel Policies in effect at the time of the alleged violations, which were issued on October 13, 2014. The same is grossly unfair - In sum, Chief Obreiter, is *Ex Post Facto*, being held responsible for alleged non-adherence to policies which did not exist at the time of the relevant incidents.

To the extent that the Township asserts that any modifications since 2014 were minor, *the same underscores the fact that the applicable policies, and none other, should be utilized.* This general principle of equity applies with special force in the context of Chief Obreiter's career and reputation being at stake.

In sum, there is no conceivable justification for utilizing current (*presumably more stringent*) standards for past conduct. Thus, all allegations below, and any findings stemming from them, should be withdrawn.²²

In any event, without waiving the above-stated objections, Chief Obreiter's Response, is that his actions were entirely appropriate, and fully consistent with Charter Township of Kalamazoo Policies, whether 2014 or 2021, and with Federal and State Law Governing Anti-Discrimination / Harassment.

Addressing each allegation with specificity:

8.1 COMMITMENT TO SAFETY

Protecting the safety of our employees and visitors is the most important aspect of running the Township. All employees have the opportunity and responsibility to contribute to a safe work environment by using commonsense rules and safe practices and by notifying management when any health or safety issues are present. All employees are encouraged to partner with management to ensure maximum safety for all.

RESPONSE: This Policy was not in effect at the time of the alleged incidents. In any event, Chief Obreiter denies this allegation in total. While he is always receptive to additional training, he submits, as delineated herein, he fulfilled his duties in connection to the Investigation into Firefighter Gonzalez' allegations to the best of his ability and judgment in accord with his training and existing Township Policy, and his actions rose to the level of prompt and appropriate remedial action pursuant to State and Federal Law.

8.2 WORKPLACE VIOLENCE PREVENTION

The Township is committed to providing a safe, violence-free workplace for our employees. Due to this commitment, we discourage employees from engaging in any physical confrontation with a violent or potentially violent individual or from behaving in a threatening or violent manner. Threats, threatening language, or any other acts of aggression or violence made toward or by any employee will not be tolerated. A threat may include any verbal or physical harassment or abuse or attempts to intimidate others.

All Township employees bear the responsibility of keeping our work environment free from violence or potential violence. Any employee who witnesses or is the recipient of violent behavior should promptly inform their Department Head. All threats will be promptly investigated. No employee will be subject to retaliation, intimidation, or discipline as a result of reporting a threat in good faith under this guideline.

Any individual engaging in violence against the Township, its employees, or its property will be prosecuted to the full extent of the law. All acts will be investigated, and appropriate action will be taken. Any such act or threatening behavior may result in disciplinary action up to and including termination.

RESPONSE: This Policy was not in effect at the time of the alleged incidents. Chief Obreiter denies this allegation in total. Again, as delineated herein *Supra*, based on the information available to him, utilizing best efforts to obtain the same, his fulfilled his duties in connection to the Investigation into Firefighter Gonzalez' allegations to the best of his ability and judgment in accord with his training and existing

²² It is also noteworthy, that after implementation of the Revised / Updated Policies and Procedures in 2021, *no training concerning the same, of any kind, was ever conducted.*

Township Policy. Indeed, his actions rose to the level of prompt and appropriate remedial action warranted by State and Federal Law.

8.5 UNACCEPTABLE CONDUCT

Township employees are routinely in the public eye. This list sets forth rules governing general conduct and identifies behavior that will subject the employee to discipline. This list is not all-inclusive, and other appropriate Township standards of conduct or rules may be in existence or established.

RESPONSE: This Policy was not in effect at the time of the alleged incidents. In any event, Chief Obreiter denies this allegation in total, noting that there are no specific matters addressed in the allegation pertaining to him. Again, he submits that, as delineated in full herein, Chief Obreiter fulfilled his duties in connection to the Investigation into Firefighter Gonzalez' allegations to the best of his ability and judgment in accord with his training and existing Township Policy, and his conduct rose to the level of prompt and appropriate remedial action pursuant to State and Federal Law.

4. TERMS OF EMPLOYMENT (failure to uphold)

4.1 EQUAL OPPORTUNITY AND COMMITMENT TO DIVERSITY

The Township is an Equal Opportunity Employer and provides equal employment opportunities to all employees and applicants for employment without regard to race, color, sex, age, religion, national origin, ancestry, height, weight, marital status, familial status, veteran status, citizenship, handicap/disability, gender identity, sexual orientation, genetic information, or as otherwise in accordance with all Federal or State law, or local regulations. Furthermore, the Township will take affirmative steps to ensure the fulfillment of this policy. The Township will, however, hire only those individuals who are legally authorized to work in the United States of America.

The Township expressly prohibits any form of unlawful employee harassment or discrimination based on any of the characteristics mentioned above. Improper interference with the ability of other employees to perform their expected job duties is absolutely not tolerated

RESPONSE: This Policy was not in effect at the time of the alleged incidents. In any event, Chief Obreiter denies this allegation in total.

For absolute clarity, Chief Obreiter is absolutely and unequivocally committed to Equal Opportunity and Workplace Diversity. His commitment has developed over time, and is deep rooted, based on his knowledge and experience gained in serving our country (*both in the Air Force and Air National Guard*), and during his lengthy, sterling career as a firefighter. He has collaborated extensively with diverse teams over the course of his career, and prides himself on his commitment to workplace equality.

Again, while in the military, he served on multiple extensive overseas deployments (*to Honduras, Saudi Arabia, Pakistan, and Iraq*) and served our country with cultural sensitivity and attunement.

Of vital importance to this inquiry, Chief Obreiter has consistently and overwhelmingly demonstrated his commitment to diversity during his employment. He has done his level best as Chief to ensure that the racial, ethnic, and gender composition of the department reflects the overall community. While vague allegations have been made to the effect that Chief Obreiter somehow lacks racial / ethnic / gender sensitivity, his actions speak powerfully to the contrary.

Chief Obreiter's commitment to a diverse department is set forth below:

Kalamazoo Township Fire Department – List of Fire Department Employees that are Female and / or of Diverse Ethnicity Employed from 2019 to Present Date. Chief Obreiter, serving on the Interview Panel, and as the highest-ranking officer within the department, *was instrumental in the hiring each of the employees listed below, and thus, the diversification of the department.*

| Name | Gender | Ethnicity | Start Date | End Date |
|-----------------------|---------------|-------------------|-------------------|-----------------|
| Rachel Baird | Female | White | 5-7-2012 | Current |
| Demonte Spann | Male | Black | 9-1-2018 | Current |
| Megan Martin | Female | White | 11-1-2020 | Current |
| Jennifer Gonzalez | Female | Hispanic | 4-1-2019 | July 2022 |
| Joe Coudron | Male | Hispanic | 1-15-2018 | Current |
| Anthony Lee-El | Male | Black | 11-1-2020 | Current |
| Eddie Medina | Male | Hispanic | 1-1-2017 | Current |
| Malcolm Jones | Male | Black | 9-1-2018 | 4-1-2020 |
| Javier Jinojsa | Male | Hispanic | 9-1-2019 | 11-15-20 |
| Teresa Weidemann | Female | White | 11-1-1997 | Current |
| Elizabeth Kowalski | Female | White | 9-1-2019 | Current |
| Jordyn Pillars | Female | Hispanic | 9-1-2019 | 8-20-20 |
| Mike Rotgers | Male | Mid. East. | 1-18-2012 | Current |

Moreover, as noted above, Chief Obreiter has heightened personal sensitivity to potential discrimination against Women of Hispanic descent, given his marital and family background.

In sum, Chief Obreiter is demonstrably committed to Equal Opportunity and Diversity, both in his capacity as Fire Chief and otherwise. He has done everything within his power to uphold the same within the department. Chief Obreiter vehemently denies that he somehow failed to properly investigate / take appropriate action concerning reports of discrimination / harassment / workplace violence, whether due to alleged lack of sensitivity or otherwise.

8.6 HARASSMENT POLICIES

8.6.1 TOWNSHIP OF KALAMAZOO SEXUAL HARASSMENT POLICY

Sexual harassment of employees in any form is unacceptable conduct that will not be tolerated. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature. No management representative, elected official, supervisor, officer, or another employee shall threaten or insinuate, either explicitly or implicitly

8.6.2 OTHER HARASSMENT

Kalamazoo Township does not condone or allow harassment, and Kalamazoo Township expects all of its employees to conduct themselves with dignity and with respect for their co-workers and others.

Kalamazoo Township should complain to the same persons, and according to the same procedures, as is provided in section 8.6.3 below. The Township will promptly investigate all allegations of improper harassment and will take the appropriate corrective action.

8.6.3 HARASSMENT AND COMPLAINT PROCEDURE

Upon receipt of the complaint, a prompt and impartial investigation will be conducted. The totality of the circumstances, nature of the incident, and the context in which the alleged incident(s) took place will be thoroughly investigated. Any employee who has been found to have violated this policy may be subject to appropriate discipline, up to and including discharge.

RESPONSE TO ALLEGATIONS CONCERNING HARASSMENT POLICIES 8.6.(1)-(3): *Although, again, the non-applicable 2021 policies are simply listed above, and there is no reference to how, and to what degree, they may have been allegedly violated by Chief Obreiter, he vehemently denies the same.*

Again, as stated herein, Chief Obreiter in conducting the investigation, reviewing the evidence gathered, and ultimately determining that written disciplinary action was warranted against Firefighter Trott, fully comported with Township Harassment Policy in existence at the time, and applicable Fire Department Standard Operating Guides. He took his duties to prevent discrimination, harassment, and retaliation with the utmost seriousness, and his actions in conducting the investigation (*despite having received no training regarding the same*) and implementing discipline, also rose to the legally required level of prompt and appropriate remedial action pursuant to State and Federal Law. See above, Supra.

Again, it cannot be overstated, that after the discipline was issued to Firefighter Trott, Firefighter Gonzalez made no further reports, despite having been provided clear written guidance regarding reporting any similar incidents in the future.²³

KALAMAZOO TOWNSHIP FIRE DEPARTMENT STANDARD OPERATING GUIDE #1 SUBJECT: GENERAL EMPLOYMENT

PURPOSE: To establish general employment guidelines and public conduct expectations for persons employed as a firefighter with the Township of Kalamazoo.

1. The Charter Township of Kalamazoo is an Equal Opportunity Employer and prohibits discrimination based on race, color, sex, age, religion, national origin, height, weight, marital status, familial status, veteran status, citizenship, handicap/disability, gender identity, sexual orientation, genetic information, or as otherwise in accordance with all Federal or State law or local regulations.
2. Personnel are expected to conduct themselves in a manner that will enhance the reputation of the Fire Department and the Township of Kalamazoo. Horseplay while representing the Township of Kalamazoo is not acceptable behavior. Persons involved in an incident caused by horseplay will be responsible for damages. Persons demonstrating poor conduct may suffer disciplinary actions according to incident severity, up to and including termination.

RESPONSE TO ALLEGATIONS CONCERNING STANDARD OPERATING GUIDE #1: *Although, again, the policies are simply listed above, and provide no reference to how, and to what degree, they may have been allegedly violated by Chief Obreiter, he vehemently denies the same.*

²³ Note, any suggestion that this documentation, which strongly encouraged Firefighter Gonzalez to promptly report any such concerns in the future, *somehow constituted chastisement of her*, is the epitome of straining to shift blame to Chief Obreiter from the Township, which failed to conduct proper training. To the contrary, it is arguably unlikely that Firefighter Gonzalez would have even submitted the extensive Second Incident Report, dated 2.18.22 she prepared, absent this strong direction.

As set forth above, Chief Obreiter relied upon this Standard Operating Guide in crafting the Disciplinary Notice issued to Firefighter Trott. The policy specifically cites “horseplay” as a category of unacceptable conduct. Chief Obreiter disciplined Firefighter Trott for horseplay, while warning that further violation would not be tolerated, as opposed to issuing a finding that Firefighter Trott had committed workplace violence, assault, and battery, et. al., because the evidence gathered did not warrant the same. See *Supra*.

To now hold Chief Obreiter *Ex Post Facto* responsible for failing to investigate information never provided to him, despite best efforts on his part to thoroughly gather the same, renders the concept of Due Process null and void. See above, *Supra*.

STANDARD OPERATING GUIDE #3
SUBJECT: DISCIPLINE

PURPOSE: To establish guidelines and procedures regarding disciplinary procedures and maintaining acceptable conduct by Township of Kalamazoo Fire Department personnel.

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:

- a.) Proper conduct
- b.) Improper conduct
- c.) Violation of policy procedure
- d.) Insufficient evidence
- e.) Unfounded complaint

3. Violations of any of the provisions of the Charter Township of Kalamazoo and/or fire department standard operating guides, directives, or procedures shall be the subject of disciplinary action up to and including discharge.

4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary actions with due regard for the nature of the offense and the member’s previous record of conduct.

5.

- o.) Any conduct which brings discredit to the fire department

RESPONSE TO ALLEGATIONS CONCERNING STANDARD OPERATING GUIDE #3: See above, *Supra*, wherein the policy above is set forth, and addressed, in response to the “Breach of Fiduciary Duty” allegation.

FINDINGS: FAILURE TO PROPERLY INVESTIGATE AND TAKE APPROPRIATE ACTION, AS REQUIRED BY POLICY AND LAW, TO ADDRESS FIREFIGHTER GONZALEZ’S CLAIMS OF ASSAULT, BATTERY, SEXUAL HARASSMENT, SEXUAL HARASSMENT, AND/OR HOSTILE WORK ENVIRONMENT BASED ON GENDER, RACE, COLOR, OR ETHNICITY.

A thorough, competent, and neutral investigation conducted by GBA Investigations and Security Consulting, LLC and follow-up communications led to the inescapable conclusion that Firefighter Trott’s demeanor toward Firefighter Gonzalez, the only woman of color in the fire department at the time, was threatening, demeaning and harassing. He yelled at her, committed assault and battery, called her “hot” and generally treated her differently than he acted toward other male firefighters. Indeed, he admitted that he struck Firefighter Gonzalez.

On one occasion, when Firefighter Gonzalez was speaking Spanish in his presence, Firefighter Trott admitted he told her to “speak English.”

The evidence from the GBA Investigation established that Firefighter Trott violated several policies and laws. The “preliminary investigation” in 2019 was less than 24 hours and it was determined only that “there have been a number of low-level inappropriate interpersonal interactions between Firefighter Gonzalez and Rick Trott over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone’s race, color, religion, sex, national origin, age, disability or genetic information discovered.”

Despite identifying the investigation as “preliminary,” on December 5, 2019, one day after receiving the complaint from Firefighter Gonzalez, apparently no further action was taken to investigate the allegations. You failed to produce any e-mail or notes that you stated you received from Battalion Chief Mulac.

The report to Firefighter Gonzalez on December 5, 2019, which you approved, reported that “a few key findings have been identified. Among those, the lack of professional and respectful treatment between coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors.”

The documentation, which you approved, fails to identify who engaged in this unprofessional and disrespectful treatment “between coworkers.” In fact, the letter to Firefighter Gonzalez can be interpreted as a rebuke of her failure to come forward to “timely” report the allegations of assault, battery, and unlawful harassment. As you know from the Township-sponsored harassment, discrimination, and retaliation training you attended in 2013, 2015, and 2017 an employee is not required to report such misconduct. Rather, it is the obligation of the employer to prevent such misconduct if the supervisors knew or should have known about the harassment. You as Chief had been informed about this harassment. Despite the “key findings” of a “lack of professional and respectful treatment between coworkers”, which was acknowledged had been going on “over the past six months,” you took no disciplinary action against anyone, including Firefighter Trott, who freely admitted to the independent investigator that he slapped Firefighter Gonzalez across the face, which the evidence established left a red mark on her face. Your failure to learn about this egregious act of violence against a coworker, let alone the other assaults, establishes the fundamental failure of the investigation. Your failure to thoroughly investigate these complaints, whether because of negligence or incompetence or a desire to protect a member of the “tight-knit profession,” and failure to take appropriate action against Firefighter Trott evidences your neglect of duty, breach of fiduciary duties, and violations of the policies which required you to provide a safe, violence-free workplace and to protect Firefighter Gonzalez against unlawful harassment.

In addition, your failure to disclose the complaints, “preliminary investigation” and failure to take appropriate action to the Township Manager or other representative denied the Township the opportunity to conduct a thorough and timely investigation and take the appropriate action required under the circumstances.

RESPONSE TO “FINDINGS” SECTION –

GENERAL RESPONSE: Chief Obreiter vehemently denies every allegation and conclusion set forth above, and affirmatively submits that he has been wholly denied Due Process (*Via Lack of Provision of Appropriate Documentation, Oppressive / Interrogation, et. al.*), and that he is being scapegoated, *Ex Post Facto*, for the Township’s failure to provide crucial Training in the *Areas of Prevention, Reporting, and Investigation of Workplace Discrimination*.

Additionally, the “Findings” above are vague and conclusory, and fail to cite the specific policies Chief Obreiter has been deemed to violate.

As such, incorporating all averments set forth *Supra*, while reserving the right to supplement this response as additional requested documentation / material is appropriately provided by the Township, Chief Obreiter responds to each paragraph, and provides an overall summation, below:

A thorough, competent, and neutral investigation conducted by GBA Investigations and Security Consulting, LLC and follow-up communications led to the inescapable conclusion that Firefighter Trott's demeanor toward Firefighter Gonzalez, the only woman of color in the fire department at the time, was threatening, demeaning and harassing. He yelled at her, committed assault and battery, called her "hot" and generally treated her differently than he acted toward other male firefighters. Indeed, he admitted that he struck Firefighter Gonzalez.

RESPONSE: The Investigation was disjointed, lacked thoroughness, and was conducted in an unjustifiably hostile manner, in which Chief Obreiter was wholly denied Due Process.

The conclusions reached concerning Firefighter Trott as set forth above were not discovered in Chief Obreiter's Investigation, despite best efforts, as set forth in detail herein. *Supra*.

The allegations regarding yelling, assault, and battery (*although addressed with comparatively minimal, and markedly different, detail in Firefighter Gonzalez' First Incident Report*) were investigated and determined inconclusive, based on interviews of pertinent witnesses.

The allegation that she was called "hot" was not raised, and Firefighter Trott was admonished in his disciplinary notice to treat everyone appropriately, and equally.

Relative to the alleged admission that Firefighter Trott "struck" Firefighter Gonzalez, Chief Obreiter's Investigation revealed that Firefighter Trott, in fact, lightly slapped Firefighter Gonzalez' face with a bundled pair of leather gloves, in response to her having thrown a shirt at him. Although she characterizes the same as a "smack" in her report, the witnesses interviewed characterized the incident as his having lightly slapped her with the gloves in response to her having thrown the shirt at him. Under the circumstances, inclusive of the fact that she reported no injury, and no red mark(s) or evidence of a forceful striking was observed or reported by anyone, Chief Obreiter determined, that although the conduct was unacceptable, and that a Disciplinary Notice was warranted, the evidence fit with the definition of "horseplay", as delineated in (See Attached Exhibit 10 - Standard Operating Guide #1), rather than a more serious conclusion of Assault and Battery.

Again, neither Chief Obreiter, Nor His Battalion Chief had the Luxury of Reviewing the Second Incident Report, dated 2.18.22.

On one occasion, when Firefighter Gonzalez was speaking Spanish in his presence, Firefighter Trott admitted he told her to "speak English."

RESPONSE: This issue was promptly addressed. Firefighter Gonzalez' in her Second Incident Report, dated 2.18.22, notes that Battalion Chief Mulac told "everyone to stop telling other to stop speaking Spanish as a whole." This directly contradicts any notion that such reports were ignored or otherwise not taken seriously.

The evidence from the GBA Investigation established that Firefighter Trott violated several policies and laws.

RESPONSE: Chief Obreiter cannot address what the alleged evidence from the GBA investigation established, as he has been wholly deprived the opportunity to review it.

However, he submits that his actions, in directing the investigation were wholly appropriate and comported with existing Township Policy, and constituted prompt and appropriate remedial action, based on the information reasonably available to him, which he did his best to obtain under the circumstances.

Chief Obreiter readily admits that he would benefit from training concerning conducting Workplace Discrimination / Harassment Investigations, but he vehemently rejects any notion that he failed to take his duties as he understood them seriously.

The “preliminary investigation” in 2019 was less than 24 hours and it was determined only that “there have been a number of low-level inappropriate interpersonal interactions between Firefighter Gonzalez and Rick Trott over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone’s race, color, religion, sex, national origin, age, disability or genetic information discovered.”

RESPONSE: Chief Obreiter, in conducting the investigation, reviewing the evidence gathered, and ultimately determining that written disciplinary action was warranted against Firefighter Trott, followed Standard Operating Guide #3 to the letter.

That the investigation took “less than 24 hours” is of no moment, as Chief Obreiter acted in accordance with the information reasonably available, which he tried to obtain to best of his ability. Indeed, after Battalion Chief Mulac initially reported the matters which warranted investigation to Chief Obreiter, he treated the same as the top priority, directing the Battalion Chief that, other than emergency responses, addressing the issue was paramount. Relative to the conclusions of his investigation, which were based on the information reasonably available, he stands by them.

Despite identifying the investigation as “preliminary”, on December 5, 2019, one day after receiving the complaint from Firefighter Gonzalez, apparently no further action was taken to investigate the allegations.

RESPONSE: The Township’s places emphasis on Chief Obreiter’s use of the word “preliminary” (*cited out of context to buttress its’ position that he failed to take action*), notwithstanding that, again, upon hearing that Firefighter Gonzalez had made allegations against Firefighter Trott, Chief Obreiter promptly directed and supervised a thorough investigation and took disciplinary action against Firefighter Trott, and remedial, educational action directed to Firefighter Gonzalez. *See above, Supra.*²⁴

In sum, Chief Obreiter followed Township and Fire Department policy to the letter and took his duties in conducting the investigation into Firefighter Gonzalez’ allegations, and issuing discipline to Firefighter Trott, with the utmost seriousness. He also determined it was necessary to promptly provide written guidance to Firefighter Gonzalez, outlining the importance, and methodology, of reporting similar incidents in the future. After the discipline was issued to Firefighter Trott, Firefighter Gonzalez made no further reports of similar conduct.

In sum, Chief Obreiter’s actions constituted the very definition of prompt and appropriate remedial action.

You failed to produce any e-mail or notes that you stated you received from Battalion Chief Mulac.

RESPONSE: False – the emails in question were promptly provided, both to Investigator Alexander and Township Labor Counsel Kurt McCamman on April 21, 2022, as requested. See Exhibit 7.

Moreover, during his Interrogation, Chief Obreiter offered to produce copies of Firefighter Gonzalez’ *First Incident Report*, the *Disciplinary Notice* documentation issued to Firefighter Trott, and the *Guidance Documentation* issued to Firefighter Gonzalez in 2019, as Investigator Alexander stated that he was not aware of any of this documentation. Yet, inexplicably, his offer was rebuffed as “not necessary at this time.”

²⁴ Every named witness was questioned, and there is no evidence to suggest that any of the interviews were of a short shrift / cursory nature, much less, prematurely, or inappropriately curtailed.

The report to Firefighter Gonzalez on December 5, 2019, which you approved, reported that “a few key findings have been identified. Among those, the lack of professional and respectful treatment between coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors.” The documentation, which you approved, fails to identify who engaged in this unprofessional and disrespectful treatment “between coworkers.”

RESPONSE: No failure occurred, and no such requirement exists. Moreover, to the largest extent possible, specific names, and disciplinary actions taken, were kept out of the documentation issued, for purposes confidentiality. This is consistent with Chief Obreiter’s understanding of *Personnel Policy Section 5.28*, which governed Release of Personnel Records to a Third Party. (See Attached Exhibit 11 - *Personnel Policy Section 5.28*)

In any event, Firefighter Trott was issued a written Notice of Discipline, Firefighter Gonzalez was advised in writing that he was “*spoken with in great depth regarding this matter[,]*” and also notified that “[f]ollowing our conversations, I [Battalion Chief Mulac] do not anticipate any future instances to take place.”

Any reasonable reading of this language makes it clear that the discussion conducted was stern and serious, and a reasonable inference can be drawn, without a waiver of confidentiality, that discipline was issued.

In fact, the letter to Firefighter Gonzalez can be interpreted as a rebuke of her failure to come forward to “timely” report the allegations of assault, battery, and unlawful harassment. As you know from the Township-sponsored harassment, discrimination, and retaliation training you attended in 2013, 2015, and 2017 an employee is not required to report such misconduct.

RESPONSE: Any such “*rebuke*” interpretation serves an agenda unsupported by the facts, and is patently unreasonable, unfair, and indeed, defamatory to Chief Obreiter’s professional and personal character.

Although Chief Obreiter is apparently admonished relative to training he attended, no such training has occurred since 2017. Moreover, and *critically central to this inquiry, no training whatsoever, concerning How To Investigate Allegations of Workplace Harassment, has ever been provided by the Township, whether in person via Sessions/Workshops, Online/Remote, or Otherwise.*

Rather, it is the obligation of the employer to prevent such misconduct if the supervisors knew or should have known about the harassment. You as Chief had been informed about this harassment. Despite the “key findings” of a “lack of professional and respectful treatment between coworkers”, which was acknowledged had been going on “over the past six months,” you took no disciplinary action against anyone, including Firefighter Trott, who freely admitted to the independent investigator that he slapped Firefighter Gonzalez across the face, which the evidence established left a red mark on her face.

RESPONSE: While Chief Obreiter of course recognizes the obligation of the employer to prevent misconduct, again, he affirmatively states that he took every step within his understanding of policy and overall judgment to conduct a prompt, thorough, and appropriate investigation – *See Supra*.

The conclusion that Chief Obreiter “took no disciplinary action against anyone, including Firefighter Trott,” is utterly false. Chief Obreiter directed that Firefighter Trott be issued a written Notice of Discipline – this occurred, on December 4, 2019, and Chief Obreiter directed that the documentation be placed in Firefighter Trott’s Personnel File, handing the same to Administrative Secretary Molly Cole.

Regarding Firefighter Trott’s “*freely admitting*” to the (*Township’s Agent, See Supra*) Investigator that he slapped Firefighter Gonzalez, Chief Obreiter has been provided no access whatsoever to information allegedly gleaned in that investigation.

Moreover, during the Investigation conducted by Chief Obreiter, Interviews of Firefighter Gonzalez, Firefighter Trott, and Pertinent Witnesses did not bear this out, or that Firefighter Gonzalez suffered any “red mark” or injury – *she reported no injury of any kind*. This substantial disparity in investigative conclusions was not due, in any way shape or form, to indifference by Chief Obreiter.

In sum, after being placed on notice that there by Battalion Chief Mulac that Firefighter Gonzalez had brought issues to his attention, and that, at his request, submitted documentation of relevant incidents²⁵, Chief Obreiter conducted an appropriate investigation, inclusive of multiple interviews of Firefighter Gonzalez, and witnesses she identified.

Nevertheless, Chief Obreiter is now being harshly and unfairly judged, his career presumably at stake, based on a *Second Incident Report, dated 2.18.22, submitted two years, two months, and fourteen days after the first. This report is eleven full single-spaced pages in length. Despite the significant passage of time from the alleged occurrences, this report is replete with detail and context which was wholly absent from the first report, although, there are ample, and crucial contradictions. See Supra.*

Your failure to learn about this egregious act of violence against a coworker, let alone the other assaults, establishes the fundamental failure of the investigation. Your failure to thoroughly investigate these complaints, whether because of negligence or incompetence or a desire to protect a member of the “tight-knit profession,” and failure to take appropriate action against Firefighter Trott evidences your neglect of duty, breach of fiduciary duties, and violations of the policies which required you to provide a safe, violence-free workplace and to protect Firefighter Gonzalez against unlawful harassment.

RESPONSE: Chief Obreiter conducted and supervised a thorough investigation, in conjunction with his Battalion Chief, which included review and discussion of documentation submitted by Firefighter Gonzalez, multiple interviews of her, and interviews of pertinent witnesses.

The investigation was conducted as warranted by, and fully in conformity with, applicable Township and Fire Department Policy and Chief Obreiter’s exercise of appropriate discretion and judgement.

The Witnesses in question were interviewed, and the information gathered resulted in and warranted the action taken – *Written Discipline to Firefighter Trott and Notification/ Clarification to Firefighter Gonzalez* regarding reporting similar allegations in the future.

No further incidents, concerning Firefighter Trott or anyone else, were ever reported by Firefighter Gonzalez to Chief Obreiter, nor were any such allegations ever brought to his attention.

Despite receiving no training concerning the conduct of discrimination / harassment investigations, Chief Obreiter acquitted himself well, and his actions constituted prompt and appropriate remedial action.

The insinuation, wholly absent evidence, that Chief Obreiter would deliberately act in dereliction of his duty, whether to “*protect a member of the ‘tight knit-profession’*” or otherwise, is defamatory character assassination, and underscores the gross deprivation of Due Process to which he has been subjected.

To attempt, now, to hold Chief Obreiter responsible for *supplemental and/or new allegations, made almost two and ½ years after the First Incident Report, of which he had no knowledge, or, in fairness, any reasonable*

²⁵ Despite this request, which included no pressure to prepare the report quickly, the report Firefighter Gonzalez produced, although it allegedly included events which took place over the previous six months, was comparatively short, amounting to a bit less than three pages, and lacking substantial detail. This is not Chief Obreiter’s fault or responsibility in any way.

ability to discover (assuming their actual occurrence) amounts to textbook *Ex Post Facto* punishment. The same applies to baseless use of policies which were not even in effect at the time of the incidents in question.

In addition, your failure to disclose the complaints, “preliminary investigation” and failure to take appropriate action to the Township Manager or other representative denied the Township the opportunity to conduct a thorough and timely investigation and take the appropriate action required under the circumstances.

RESPONSE: Chief Obreiter failed to disclose nothing. He followed Standard Operating Guide #3 to the letter. As he determined that suspension or termination of Firefighter Trott was not warranted, he was not required to disclose the complaints or investigation. *See Supra.* The Township now seeks to hold Chief Obreiter accountable for “*failure to disclose*” (i.e., *concealment*), while the plain language of its own policy mandates otherwise.

At the risk of undue repetition, Chief Obreiter took prompt and appropriate remedial action in directing and conducting the investigation, took appropriate action in disciplining Firefighter Trott, and in the provision of guidance regarding the reporting of future incidents to Firefighter Gonzalez. His actions were effective, as no further reports of any kind were ever brought to his attention.

CONCLUSION:

Chief Obreiter has been Denied Due Process, and indeed, *his sacred Presumption of Innocence.* From the onset of the Township’s investigation, it has been made amply clear that he was instead, *presumed guilty.* The way he was treated during his surprise interrogation speaks volumes to that fact. Moreover, he has, thus far, been deprived of anything approaching a meaningful opportunity to defend himself, compelling the conclusion that the outcome of the investigation, and potential action against him, was preconceived.


Although attempting to discern the motives for the Township’s conduct toward him necessitates a certain degree of speculation, Chief Obreiter affirmatively submits, that the Township’s Investigation, Predetermination Hearing, and Potential Disciplinary action it may take against him, appear to be an attempt to assign blame to him, in the interest of limiting liability in the event that Firefighter Gonzalez takes legal action. However, whether Firefighter Gonzalez takes legal action or not, Chief Obreiter’s actions amply rose to the level required by his duties, applicable policy and procedure, and State and Federal Law.

Given that, and his exemplary record of loyal and honorable service to the Township, he does not deserve to be scapegoated as a bad and/or negligent actor, irrespective of whether the same may ultimately benefit the Township’s legal position. Honesty, Loyalty, and Honor are all two-way streets in which expedience must have no place.

Chief Obreiter deserves Full, not partial, Due Process, and an honest and through opportunity to truly review the alleged evidence arrayed against him, and address it, with full assistance of his chosen Counsel. He is fully committed to achieving full and total exoneration and vindication of his reputation. In light of his strong and steadfast commitment to his profession, his family, and his reputation, he requires and deserves nothing less.



Memo

From: Dexter A. Mitchell, Township Manager 
To: David J. Obreiter, Fire Chief
Date: September 14, 2022
Subject: Termination of employment with Kalamazoo Township

Effective immediately upon receipt of this memo, your employment with Kalamazoo Charter Township will be terminated. As the Township Manager, I authorized an investigation stemming from a report filed with me earlier this year regarding allegations of sexual and ethnic harassment and/or intimidation by a member of the fire department. After the completion of the investigation, and the predetermination hearing, I have determined that your inaction was serious and/or willful neglect in the performance of duty as a department head for Kalamazoo Charter Township and constitutes willful neglect of your duties as Fire Chief of the Township. Under section 5 of your employment contract number 4: I have deemed you to be in violation of the Township of Kalamazoo harassment policy.

I am requesting that you initiate a copy of this memo stating that you have received a copy of the memo and that I have read it to you. By initialing this memo in no way is it a sign that you agree with the statements written in this memo but that the memo was explained to you.

Your rights to continue coverage under COBRA will be provided to you by mail from our plan administrator. You can contact MERS at 1 (800) 767-6377 regarding your retirement plan distribution options.

As the Township Manager, I am instructing you to do the following things:

- You are instructed not to log into any Township computers, any personal files on your computers will be sent to you upon your request.
- You are instructed to turn over all keys, and key fobs that pertain to any Kalamazoo Township properties and/or buildings, this would include but not be limited to any uniforms or regalia furnished to you by the Township.
- You are instructed to turn in your Township I.D. badge along with any Township vehicles.

In the above instructions are there any items not accounted for that are property of Kalamazoo Township?

Yes or No

Your final paycheck will be provided to you, as determined by the Kalamazoo Charter Township Employee Handbook.

Should you have further questions, please contact me at (269) 381-8085 ext. 123 or email me at manager@ktpw.org.

DAVID A. KOTWICKI, P.L.C.

ATTORNEY AT LAW
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Shelby Township, MI 48317
Phone (586) 739-9888
Fax: (586) 739-9892
dk@michemplaw.com

November 20, 2022

TO: Ms. Roxanne C. Seeber, Esq.
Township Attorney
Via Email: seeber@michigantownshiplaw.com

Kurt P. McCamman, Esq.
Labor Counsel
Charter Township of Kalamazoo
Via Email: McCamman@MillerCanfield.com

Donald D. Martin, Supervisor – c/o Attorney Seeber
Mark E. Miller, Clerk – c/o Attorney Seeber
Sherine M. Miller, Treasurer– c/o Attorney Seeber
Steven C. Leuty, Trustee– c/o Attorney Seeber
Lisa M. Moaiery, Trustee– c/o Attorney Seeber
Clara D. Robinson, Trustee– c/o Attorney Seeber
Ashley M. Glass, Trustee– c/o Attorney Seeber
Dexter A. Mitchell, Township Manager – c/o Attorney Seeber

FROM: David A. Kotwicki, Esq.
Counsel for:
David J. Obreiter,
Former Fire Chief

CC: David J. Obreiter,
Former Fire Chief

**RE: FORMAL REQUEST FOR SPECIAL MEETING AND FULL
“DUE PROCESS” / “NAME-CLEARING” HEARING TO BE
PLACED ON THE BOARD AGENDA, TO CONSIDER
FORMER FIRE CHIEF DAVID OBREITER’S
REINSTATEMENT REQUEST, AND OTHER PERTINENT
ISSUES CONCERNING THE SAME.**

Dear Township Attorney Seeber:

I represent former Fire Chief David J. Obreiter.

Please consider this document to be my request, on former Chief Obreiter’ s behalf, for:

- ***A Full Special Meeting and full Due Process “Name-Clearing” Hearing*** to be scheduled before the full Board in the near future, for consideration of ***former Chief Obreiter’ s Request for Reinstatement, which was originally made on September 16, 2022,*** and other pertinent issues, which I will explain in greater detail in subsequent documentation in the near future.

Please promptly provide a copy of this request to **Donald D. Martin, Supervisor, Mark E. Miller, Clerk, and all other Board members of the Charter Township of Kalamazoo.**

Upon the anticipated scheduling of the requested meeting, which I am requesting take place on or shortly after December 2, 2022, *as I am recovering from spinal surgery and remain on restrictions,* I will shortly thereafter provide more extensive, additional materials for review and consideration by the Full Board. I will be sure to provide ample time for review of the same prior to the ***Special Meeting / Due Process “Name-Clearing” Hearing,*** and will provide copies *to yourself and Attorney Kurt McCamman,* with whom I have interacted extensively regarding this matter thus far, to be shared with the full Board, the Township Manager, and any other pertinent individuals.

In the meantime, as I await your response to this request, I am also requesting that copies of former Chief Obreiter’ s:

- **PRE-DETERMINATION RESPONSE DOCUMENTATION, INCLUSIVE OF EXHIBITS, originally submitted on August 9, 2022:**
 - **Promptly be provided, inclusive of attached exhibits, to each Board Member.**
 - **Be Placed in his Personnel File, Pursuant to the Bullard-Plawecki Employee Right to Know Act, MCL 423.501 et. seq.**

Thank you for your attention to this matter, and I look forward to hearing from you, and the granting of former Chief Obreiter' s *Request for Full Special Meeting and Full Due Process "Name-Clearing" Hearing* in the near future.

Respectfully submitted,

David A. Kotwicki, Esq.

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**On Call Firefighter
Hostile Work Environment
Kalamazoo Township Fire Department, Kalamazoo, MI**

On February 14, 2022, [REDACTED], Hispanic female, DOB: [REDACTED]; was interviewed following her interview with Kalamazoo Township Trustee ASHLEY GLASS and DEXTER MITCHELL, Kalamazoo Township Manager. [REDACTED] was made aware of the identity of this Investigator, agreed to be interviewed and provided the following information.

[REDACTED] explained she has been an on call Fire Fighter for the Kalamazoo Township Fire Department since April 1, 2019. [REDACTED] explained in her meeting with Trustee GLASS and Manager MITCHELL she identified several different incidences wherein she believes she is a victim of harassment in the work place. She identified the issues in a timeline report requested by Manager MITCHELL when she was interviewed by Trustee GLASS. During this interview she detailed the events as they occurred. See attachment, Timeline 1 dated 2/4/22.

[REDACTED] also identified in further detail concerning each incident to this Investigator. [REDACTED] identified all persons that were involved in various forms of harassment over a 2 year period of time. She specifically identified [REDACTED] as the initial person who began harassing her. Following this information, she named other firefighters who were present during these incidences and specific knowledge of them. [REDACTED] explained at the time she was hired, she was the only Hispanic female in the department. The Fire Department did have another Hispanic male, [REDACTED] who was a supportive coworker to [REDACTED]. [REDACTED] can substantiate many of the incidences that involved [REDACTED]. Most of the incidences occurred while he was present or nearby. [REDACTED] explained [REDACTED] is willing to speak with this Investigator confirming this information.

[REDACTED] then went through the specific items in Timeline 1 in great detail. The lengthy interview was captured in this Investigator's notes. At the end of the interview, this Investigator told [REDACTED] that in event she may recall any more specific information not mentioned in her timeline to contact this Investigator and the information will be added to her

interview. Much to this Investigator's surprise, [REDACTED] advised she is completely revamping Timeline 1 with additional information, including the conversation and information obtained with this Investigator on February 14, 2022. See attachment Timeline 2 dated 2/18/22.

On February 15, 2022 [REDACTED] telephonically contacted this Investigator and informed him that she feels that if this issue is investigated she could be the victim of retaliation and stated she is planning filing a leave of absence from the Department. This Investigator explained to [REDACTED] that he could not advise her what to do that would have to be solely her decision.

On February 17, 2022 [REDACTED] telephonically contacted this Investigator and advised she did file for a leave of absence with Battalion Chief [REDACTED]

[REDACTED] advised this Investigator she has recalled more details concerning the lengthy interview on February 14, 2022 regarding the issues. [REDACTED] explained she took Timeline 1 and added more details and has finished an additional timeline 2, which she intends to furnish this Investigator on February 18, 2022. During this conversation, she explained the incident report that she filed on December 4, 2019 with Chief [REDACTED] she did not mention that at the Christmas Parade being held in Galesburg, MI wherein the Township Fire Department participated in, Fire Chief [REDACTED] approached her in the presence of [REDACTED] and informed her that he is aware of the incident report she filed. [REDACTED] explained that when the Chief approached her she was taken back (surprised) and she could not readily recall what the conversation was other than him telling her he knew about the incident report. See attachment Timeline 2 page 6 dated 2/18/22.

A particular interest to this Investigator was the fact that [REDACTED] and her Timeline 1 identified an incident report concerning the harassment she has been receiving while on duty as a fire fighter at the station. [REDACTED] explained she typed this incident report on her computer, made copies and gave a copy to Battalion Chief, [REDACTED] on or about December 4, 2019. [REDACTED] advised she was under the impression that this report was going to be furnished to Fire Chief [REDACTED]. After she furnished this report to Chief [REDACTED] she received no update or follow up of any type from any of the command Chiefs. [REDACTED] assumed that at some point something would be done but it wasn't.

[REDACTED] was asked if she had a copy of this incident report, she explained she does not. She typed it on her then laptop in December 2019 and because of other school issues she deleted the report. She did say all of the above mentioned incidences in Timeline 1 were identified in the incident report.

Concerning Timeline 2, [REDACTED] requested this Investigator review all of her interactions with Battalion Chief [REDACTED]. She stated she went into greater detail in her Timeline 2 than in Timeline 1. She also provided Kalamazoo Township Fire Department Standard Operating Guide #3 dated March 2010 concerning discipline. [REDACTED] explained certain fire fighters are treated differently than she is. She is extremely disappointed in that she wants to be a fire fighter and the experiences that have happened to her will make it difficult to

return because she fears that she will be in different forms retaliated upon and she does not want to endure this.

██████████ stated she will make herself available upon request and requested that her coworker ██████████ should be contacted as well as all of the firefighters mentioned in her timeline.

- Kalamazoo Township Written Incident Timeline #2 – Dated 2/18/22 – Prepared by ██████████ listed on pages 4-14 of this report.
- Kalamazoo Township Fire Department SOG #3 Dated 3/2010 – Subject: Discipline listed on pages 15-17 of this report.
- Email 2/2/22 from ASHLEY GLASS, TRUSTEE to DEXTER MITCHELL Re: Interview of ██████████ 2/1/22 listed on pages 18-20 of this report.
- Email received February 4, 2022 from ██████████ to DEXTER MITCHELL with Timeline #1 listed on pages 21-25 of this report.
- Fire Chief ██████████ interview on 2/28/22 listed on page 26 of this report.

Kalamazoo Township Written Incident Timeline

02/18/22

- April 1 2019: My official first day at Kalamazoo Township Fire Department.

-I had went to the KVCC academy due to scheduling issues instead of the Kalamazoo County Academy KTFD normally sends their employees. The other new employees that applied and interviewed in June 2018 and they were officially hired at the Kalamazoo Township. It was decided my leadership that I should go through KVCC for the academy first and pass the exams, then I would be hired by KTFD. Unfortunately, I did not pass the last practical and went through Pennfield FD (Calhoun County) to retest in March 2019. Once I passed the state exam, I was officially hired at Kalamazoo Township Fire Department and ready to start on April 1, 2019 at the Eastwood station (2). I was 18 years old when I started. I wanted to take advantage of the opportunity I was given to learn and grown in the fire service at my age to help me in the future. I felt that I was behind my other peers that were hired at KTFD as I did not know I was already farther ahead, I decided to dedicate my own time around the station to understand the job as much as possible. I took the job as a firefighter and medical first responder seriously as I have dedicated almost four years of college to that career path currently. I would be at the station no matter who was sitting that day and ask questions about anything that would help me through my probationary period (I finished in August 2019). I had respect for everyone there as they were more knowledgeable and experienced. I also recognized that I was knew and had to earn my place and respect.

Incident with

- Approx. June/July 2019: The first issue with [redacted] had yelled at me. I was in the bay with [redacted] was the sit driver. I was talking to group of people there. [redacted] storms out of the bay and walks into the sit/living room. I ask him a question and he tell me to leave him alone. I am very confused because I do not recall doing anything at all to upset [redacted]. I told Battalion Chief [redacted] about the interaction. He told me to figure out between [redacted] I went to [redacted] and asked if I had done anything to offend him in any way. He tells me he was upset at the guys and not at me. I was given an apology, but he never gave me a reason, but I was the only one that got yelled at. This would continue multiple occasions towards me as time went on at my time at KTFD.

-I was a very confused to what I did and was not given a reason. I was the only women of color at the time out of the whole department and at the station. I treated everyone professional and never done anything to offended anyone intentionally in any way to the point they'd yell at me, so of course I did what I had to do which was be professional and be direct. I did not think it would occur or be a big issue later or reoccurring, but it only towards me as time went on.

- Approx. July 2019: I am not sure when this incident occurred exactly but I do know it was in the summer. But [redacted] and [redacted] were in the sit room. A

man and women were talking their dog and we all had a view. I do not remember who commented that the women outside with her dog was "hot." Then were all talking still and say that I was hot. And immediately it got very awkward. started pacing back and forth worried and he told that is not okay to say and everything as and I were very uncomfortable and silent. So right after and leave and go into the parking lot and talk about how it was weird he said that.

-The incident above I did not include this in my written incident looking back I think this incident is important. I never wanted that comment and I never asked for it. I also very engaged in any type of conversation with alone at that level. It was strictly professional and about the fire service. That is all we talked about. I do want to clarify before I get any questions, I never wore anything inappropriate to the station or on calls. The only time told me to not wear a certain clothing which was leggings, and I stopped wearing them even though when I wore leggings, I would wear a long shirt at times. But I never complained when told me and I completely understood and complied.

- Approx. July/August 2019: was on his shift at the station. There was a call and and I walk into the station. had either went to the back room right behind the bay. I sat in the sit room. comes back and told me did not want him or myself there. He was not given a reason, so we left. told about what had. was not happy to see that had kicked us out of the station when we had not done anything to offend him. I believe did speak to him on that issue.

-After this event, occurred and I felt displaced and uncomfortable. I was extremely confused again why I was being targeted. and I were the only Hispanics in KTFD. I was very disappointing for me and frustrating that as someone who was highly active in the fire department I was being told not to be at the station. I both felt that I did not fit in, or I had done something wrong but could not figure out myself why I was being treated like that. I started to find myself slowly not enjoying my time at KTFD.

- I cannot recall the specific time it was, but it was before COVID protocols in February 2020. I cannot recall the conversation prior that I had with , but I had mentioned this with my meeting with the Board of Trustees meeting I had. : had yelled at me and left the station. I went to sit in the sit room in the chair that was right next to the computer. was right across from me in a chair where the table was. When I sat down after he heard and witnessed yelling at me, he told me not to have expectations of anyone at the station.

-I did not say anything back to when he told me this statement. I did not defend myself because I thought it was weird that he told me that. My initial thought when I came to work at KTFD was that firefighter or any type of first responder has these characteristics that make them great people. That is a perception everyone thinks of firefighters. I did have expectations that the people I worked with had integrity, were honest, respectful, caring, and humble. I was again the only person that was yelled at by and no one else. did not correct behavior. It was more of me having to face the reality of that is just what I should really expect versus what I had thought.

Racist interactions from coworkers, time span of incidents between Summer 2019 - 2021

- The first incident was with [redacted] in the mid/late summer of 2019 approximately to my memory of the time it occurred. [redacted] were in 852 (the rescue vehicle) and [redacted] was the sit driver that day. We had finished a medical call and [redacted] was going to the put gas in the vehicle at the speedway on the corner of Nazareth and Gull Road. I was speaking Spanish to [redacted] who was sitting in the passenger side of the vehicle. [redacted] got very upset and turns back to look at me and told us to stop speaking Spanish. I got upset when he told me to stop speaking Spanish so I told him he was not going to tell me or what I could speak or to stop. The next day after that interaction with [redacted] we came back from a call and [redacted] was sitting that day. I was sitting on the couch and [redacted] was sitting on the chair next to the computer. [redacted] was present in the sit room also. [redacted] tells me that he found out what happened and said in the terms of that I should not be thinking that I have ownership of the station. I was upset still about the incident and what [redacted] told me. [redacted] explained to [redacted] that [redacted] told him and I to not speak Spanish and that [redacted] was not happy when I told him I would not stop. [redacted] told [redacted] that [redacted] said that we were talking about him in Spanish and that is why he told us to stop.
- In the incident, I was very upset. [redacted] and I were never talking about [redacted] in Spanish. I would not understand how [redacted] would think that when we never mentioned his name, nor does he understand Spanish. I was not happy that [redacted] lied, and I was upset that [redacted] believed him.
- I am not sure if [redacted] ended up talking to [redacted] about that incident. But I do remember [redacted] telling everyone to stop telling other to stop speaking Spanish as a whole.

- Another incident I endured was when I was talking to [redacted] in Spanish at the station after a call about to leave. [redacted] and [redacted] heard us talking and they tell us to stop speaking Spanish. Essentially because it was America and the main language was English. They thought again that we were talking about them. We were not talking about them.
- [redacted] and I were very upset at their commons as they came out of nowhere. [redacted] and [redacted] were very insistent about what they thought about us talking Spanish. [redacted] and I told them that it did not make sense for them to say that because Spanish is a common language in America. We both were very upset about the comments. I was not happy with being told to do something when it was not causing any harm to anyone with speaking a language I had known since I was young.
- Another incident regarding some racist interactions was when [redacted] and I were sitting in the sit room speaking Spanish again after a call. Captain [redacted] was the sit driver that evening. As [redacted] and I were speaking Spanish, [redacted] out of nowhere says stop

with your Spanish bullshit. had told us to stop speaking Spanish in another incident. would tell us that he was under the impression that we were talking about him or others. Again, we were not talking about anyone at the station. I cannot recall who told from the all the incidents, but I do remember he told one of those individuals if he were talking about them, he would have talk to him in English not Spanish.

-I was upset about the interactions. It is disappointing and offensive to hear people who have had many years and authority to a degree tell me as a Mexican that nor I cannot speak Spanish. When there are calls where there has been a need for any of us to speak Spanish, they have never told any of us to stop. Our language is only useful to them when they need it to be for their benefit. Otherwise, they get offended without a reason or feel the need to voice their discomfort without a cause of not allowing the only two Hispanic employees at the time to not speak Spanish.

- Summer/Early fall 2019: This is an incident that I was told about from the day of I remember I was not able to go to the structure fire because I had schoolwork to catch up on. There was a structure fire, and it was able to be contained and extinguished. Life EMS paramedics were on scene. lets one of the female paramedics wear his turnout gear. and the paramedic who is wearing his turn out gear decide to take pictures of themselves (there is a policy regarding photos at Kalamazoo Township). The paramedic goes into the house and starts yelling as he was upset at seeing a paramedic who is not an employee of KTFD wearing turnout gear. The Life EMS paramedic takes gear off and leaves. After that incident, the next day there was a call I went to. Many people noticed that eft all his gear at the station. said he was supposed to work soon because was scheduled. His gear was there for three days at minimum. I am not sure what exactly happened after that, but came back and held his responsible as a sit driver since that day. I cannot recall him ever getting suspended.

-From my knowledge, the paramedic has gotten in serious trouble.

- Late Summer 2019 – 2021 - time span: and I would usually be the ones to part on the side of where garage was at. When and I would talk after a call, would leave and then keep driving past a couple times. and I thought it was very creepy to us. This happened many times, although not every day it did happen on multiple occasions since I worked there. On those times, when he was upset at us for whatever his own reason was, he would drive off really fast out the parking and make a lot of noise with his car to bother us. I recall he did the same thing when I let the new probationary firefighter in my car to go to a call last year. When I was in the sit room talking to would leave and then then stick his head in the living room where I was at and then leave for no reason of forgetting something. The last time this occurred was in October as I had to help with how to get credits for his medical first responder license so he could do it on his own time.

-In these instances, I felt uncomfortable, and expressed he was uncomfortable any time that has occurred. We would be the only ones he did that too. I haven't heard of him doing that to anyone else. I felt it was a form of intimidation or just a way to make me feel uncomfortable.

- November 2019: Incidents with occurred in November 2019 where he physically assaulted/touched inappropriately.

Reference to written incident report written December 4, 2019

First incident: We had come back from a call. I went to put chamois away that we use to wipe the vehicles with after they have been in service. I can recall was in the back putting chamois away where the rack was. was the closest in the area. I believe some people were out in the bay but not in that specific area to see where the incident occurred. So, I had put some chamois away as is putting the rest away, I walked away and stood right next to the ladder (842) facing toward the bay doors. walks up to me without saying a word to me with a chamois rolled up in his hand in a fist. He pushed it against my right breast. When he did that it hurt, and I said out loud "ouch/ow" because it did hurt me. Then walked away. Then Eddie walked up and asked what happened. I can't remember if saw but I know he did hear me say "ouch/ow" and went to check what happened. But did know it was who was in the area we were at after I said that.

Second incident: I can't recall if it was a broom stick or a wooden stick that was in the sit room. I remember that it was typically placed on a cafe table where the radio is, and pager charger are that was closest to the pull-out bed on the wall. tried to hit my butt with it out of nowhere. There were witnesses I can't recall the others that were there, but I do remember sitting on recliner chair looking at the tv which was a few feet away with a potential side view of what happened based on where and I were standing. He did not say anything nor did anyone else present.

Third incident: This took place in the sit room at the station. was sitting on the chair where the computer was. I was sitting across from him. was sitting on the recliner and next to him was I believe sitting on the coffee table. We all were talking, and it was normal. Chief had purchase white gloves for us to use for the entire department. gets up and has the gloves in his hand and slapped me twice. I never asked him to come close to me. I never asked him to do that. He went back to his seat in the chair. I remember just sitting there getting very mad. Then was telling me to hit him back. I did want to do something, and was telling me to not do anything, and it was not worth it. Then starts laughing and saying that I wouldn't be able to hurt him and that he would fight me and throw me in the trash. The two other people present started laughing. Then everyone left. told what happened and told to tell me to write a report of the incident, so I did.

- December 4, 2019, Written incident paper was given to [redacted] just before leaving in the ladder for the Galesburg Christmas Parade (2019). and I participated in the parade for Eastwood taking ladder (842). All the participating fire departments met at the parking lot of a Galesburg school. Before the parade officially began, Fire Chief [redacted] was there just before he had a County Chiefs meeting. Chief [redacted] pulled me aside for a few minutes at the parade in the parking lot about the situation of my incident report against [redacted]. I honestly can't recall what he said, all I know is that it was regarding that incident about [redacted]. That was the last time he had discussed the situation with [redacted]. I did see [redacted] in his office, and he read it and was surprised, and he said he didn't understand why no one did anything. That was the last time I had talked to [redacted] about the incident. So, there was nothing about what was going to happen next, process, or any updates. No updates or follow ups or additional questioning to me about anything since I submitted my incident report has [redacted] received any consequences.
- Mid/ Late December 2019: Another time I was approach about the incident was when there was a two-story residential structure fire on Worden st in Comstock. Everyone was gathering their things on scene and [redacted] pulls me aside on the street. He tells me that he found out what happened and why didn't I tell him. I didn't say anything really because it was embarrassing for me to have endured what [redacted] was causing on me.

COVID protocols were sent on texcom on February 28th, 2020. These protocols change our response to calls. We only responded to calls not to the stations after a call, limiting interaction.

-I have still been the only one still that has been yelled at by [redacted] with no cause even after the whole incident of harassment in 2019 to even the latest being towards the end of 2021 to the point I do not even speak to [redacted]. I have tried to move on and be professional as I have realized he still has not been held accountable for the severe actions he as inflicted on me. He has continued to try to intimidate me even after my complaint was made known. I do not even feel comfortable going to the station or a call if he and I were alone. This has affected my work performance and attendance. I do not even feel that even if I had gone to leadership that anything would have been done even now if they did not take me seriously when I made a complaint even from the racism that has continued before and after the harassment. I was highly active when I started for an exceptionally long time. I almost lost my passion and drive to work in the fire service due to my experiences with [redacted] and how management has taken them. I have thought about quitting after the incident was not taken seriously. I assumed the entire time after I made my written report that some point something would be done as I have never been in a situation where was continually being targeted and with the type of harassment I went through. Even in the previous job, I never has anyone treat me different for who I was. All I wanted to do was to gain experience at my age, earn my respect, respect others, fit in, and be a good employee since I want a career in the public safety. I thought I could trust leadership at Kalamazoo Township Fire Department to help me as I have never done anything that would have negatively impacted the Department, nor have I had a write up ever. I never asked for anyone to touch me or yell at me nor have I ever spoke or acted inappropriately towards anyone. I know that in all the incidents that occurred to me would not have had occurred if I was

not a woman or Hispanic. If I looked like everyone else or management, I would have had the harassment in the first place. I would be genuinely concerned for any women or person of color that would join. I just wonder if it were someone else or if any of leadership had gone through the harassment I went through, that the outcome would have been different than mine.

Incident with Battalion

-I wanted to make a point to say that I had always respected [redacted] as he was my Battalion Chief. I would have open conversations with him at time about how I could be better and he would answer respectfully. My annual reviews typically were good. I have never received a write up for my behavior. [redacted] told me that he saw a lot of potential in me in my annual review in April 2021 and he did not expect me to stay at KTFD and saw me working in a bigger fire department.

- May 28th 2021: I decided on my own will that I wanted to meet with [redacted] about interactions and behavior such as belittling people or getting upset at people. I wanted to converse with [redacted] about this as I view personally that a leader's actions and values sets the tone and example for his subordinates.

My experiences with [redacted] personally have been for example;

There was a time when [redacted] yelled at me for, I'm not even sure what again. But it was only towards me. [redacted] leaves the station and I sit in the chair next to the computer. [redacted] was sitting across from me and witness that [redacted] had yelled at me. [redacted] looks straight at me and say that I shouldn't have expectations of people here. That was it and I didn't know how to react or say to

Another time [redacted] told [redacted] and I that all of us combined did not measure up to [redacted] contribution even though we never said anything to undermine [redacted] work. [redacted] only made fun of his dog and [redacted] just thought it was justified to say that. During the interview [redacted] denied that happening and said it was the opposite.

Another example was in early February 2020. We had come back from a rescue call and I can recall who all went to the call. But this was after my incident report was made and known about [redacted]. People used to refer [redacted] as papa [redacted] to me which was weird but as many people were saying that I did not say anything as everyone said it referring that [redacted] was older than my own father's age but no one was saying it that any more for since the incident. [redacted] looked at me while I was cleaning 852 with the Chamois and said that phrase to me and we weren't even talking about him nor do I even believe [redacted] was there. I most definitely took it as an insult. Even if [redacted] may not have wanted it to be an insult, the incident of harassment with [redacted] was still two months fresh and there were no updates of anything. So, I had signed out and went to

my car crying and did not go to calls for a couple days. I remember I had thought about taking time off away but I never ended up doing it as it was my only source of income at that time.

would tell me also that I shouldn't "burn my bridges" when I was the only one trying to be professional towards those people he referred to as the "bridge" had done inappropriate/unprofessional things to me because they didn't get to take advantage of me or get their way with me.

So back to my meeting that I have with [redacted] in May 28, 2021. My first words were that I respected him as my Chief and that I wanted him to know that so he knew I wasn't being rude. I just had felt that I could have a transparent and open conversation where feedback was be given to him. I felt as a leader or even as an employee, one should be able to receive feedback for improvement of one's growth. I had been in a conversation with others saying I that gets upset for no reason and take it out his frustration out on them even though no one at the moment did anything wrong on a call. I of course would understand if [redacted] was ever upset at anyone with a cause, but at time there would not be any means for him to be upset or make fun of someone. I told him with these conversations it can be harder to talk to him about because it was different. He told me that it was actually all of us as employees who were at fault and we couldn't meet his standards. I could tell he was not happy from his body language, but I figured it was an uncomfortable conversation for him to have. It was a respectful conversation between the two of us. He asked me at the end "if I was good?" I said yes, I was, and I asked him the same question, and he said he was good. I felt that the conversations went well and I thought maybe me talking to him could make him reflect as should everyone should.

- June 1st Approx. I receive this message on Texcom and a written letter with the same message with the Fire Chief attached to the message;

Texcom message:

"Good morning, [redacted]"

This memo is to serve as record of our conversation from 05-28-2021 @ 0730 hours at Station 8-2. During that conversation I was given, and acknowledged, your notice of issues that you found to be of concern and in need of correction by me. In accordance with Township of Kalamazoo policy, after due notification is made any further concerns or complaints shall be taken to Administration higher than person involved. In this case, any further or future conversation of this matter needs to be immediately brought to either Deputy Chief [redacted] or Fire Chief [redacted]. A copy of this will be printed and placed in an envelope in your mailbox as well."

Respectfully,

Battalion Chief

- In the month of June 2021, I was informed of what [redacted] said about to the assistant chief of our station, [redacted], about the meeting on May 28, 2021 from [redacted] explained to me that [redacted] told him to go to the station. [redacted] is the one that was able to engage in conversation about [redacted] in the conversation, he later told me as it was said to be confidential from [redacted]

- [redacted] tells me about what [redacted] told him. I honestly was in shock. I did not expect that at all from [redacted] that he would lie. I thought that [redacted] and I were good at the end of our meeting as we both gave reassurance to each other. It definitely made me not feel comfortable that he felt the need to lie and not tell the truth. I only wondered as time passed on who else he lied to and who actually would even believe it when I have never displayed behavior of being demanding or highly of myself. I was disappointed that [redacted] didn't even want me to find out and if he even bothered to confront [redacted] about lying about that. I really did respect [redacted] a lot since I had first officially joined KTFD. Since I have been there, [redacted] has been good to me, helped me with my projects when I was majoring in Fire Science, he even shared his food with me, and I felt I could go to him for advice. I am just disappointed he didn't want me to know what [redacted] said. Maybe he did it so I wouldn't stress out and I understand that, but [redacted] is in a leadership/management position and what he did saying that about me was not professional. There is a conflict of interest in going to Fire Chief about [redacted] if they are close professionally and personally. I do not trust that [redacted] would be honest about the issue because he could simply lie and he would be trusted by the Fire Chief because of their relationship and title. I would doubt anything would have been done if I made a complaint due to my incident with [redacted]. He had reassured me in our meeting in May 2021 that if we were good. We both said we were good, but now I have no trust in [redacted] now as my supervisor. I do not want my reputation damaged since [redacted] felt it was okay to lie to another person about our meeting and my character. I have never had a write up at KTFD or a sit down about my behavior. Another reason that it concerns me that [redacted] would do this is from a conversation I had previously with him at an annual review. I asked out of curiosity before this incident occurred, if he didn't like someone at the station and a job needed to call for verification of employment or asking for an employee, what do he say to them? He said he would just say he does not want to speak about the person. It makes it harder for me to even want to work or go to anything involving KTFD when there are people in positions who intentionally have harassed me, have been racist, not taken me seriously when I presented these concerns, people are not held accountable, and can't trust my own Battalion Chief to help me now.

- I am also concerned to why I had to find out from a third party if anyone has questions about me rather than coming to contact me myself. An example of this situation is I was also told that Bronson called to verify employment at Kalamazoo Township Fire Department. Someone must have been curious to know either [redacted] told [redacted] to find out if I was working there. So, [redacted] asked [redacted] if I was working there. I [redacted] did not say I did as it doesn't regard him, but [redacted] did not believe him. Others have also asked where have I been or why I am not around anymore, I never had a meeting from [redacted] or about my whereabouts or meetings about my attendance. I have not been received an email, call, or text regarding that or a checkup from anyone. Whenever someone did ask me, it was never as specific as when they asked [redacted]. I

always been like this since I started. It should not concern anyone what I do on my personal time and I do not share any personal if it doesn't deal with KTFD.

- Approx. fall of 2021, I parked in the parking lot and I was getting my gear. It was the parking spot that was next to the flag pole. [redacted] was speeding into the parking lot. He got off and I told him why are you driving like that you could have hit me? He yelled at me saying I was in his parking lot and walked away towards the station. That is the last time I ever talked to him. He has been upset before about the parking spot, but no body owns the parking spot. I was pretty much done with trying to be professional because after my written incident report was known to leadership, [redacted] would still yell at only me or intimidated me. I really tried to do my best since the leadership thought that behaviors must have been fit to stay. I would have thought that is not a type of person the organization as a whole would want in his role at KTFD. It is hard for me to believe a man his age would continue to be unprofessional towards me when I had been trying to work with him. I don't talk to him now even when I go on calls rather, he is the supervisor on a call or not due to all those reasons.

It personally makes it harder for me to want to go to my Fire Chief or Battalion Chief that I still feel uncomfortable about [redacted] due to see anything was done with that incident. [redacted] still has tried to intimidate me when he felt the need to for no reason, tell me not to speak Spanish, and yell at me even after the harassment incident was made known. I have tried to be professional even after the incident but [redacted] doesn't even try to the point that I had to stop talking to him.

Here is other reason that have also stopped me that I have noticed with management;

I have heard [redacted] say he did not want a certain employee to be a sit driver ever as long as he was a Battalion Chief at Eastwood because he does not like him or for whatever his reasoning was. I am not sure why but I thought it was unprofessional and very inappropriate although is allowed to continue to be a sit driver after all that he has done to me when it was extremely severe.

Another reason is there was medical call for an overdose call where policy was not followed.

-All these things make me feel that have occurred make me lose trust in leadership that they will ever take me or any serious matter seriously. I just don't know or feel comfortable or confident anymore causing my calls to decline. I don't feel that I am protected or valued as an employee at Kalamazoo Township Fire Department. It has impacted my ability to go to calls and training and has almost made me quit. That thought has been in my mind daily to quit for a long time. I almost lost interest in the fire service as a career after doing to school to earn my fire science degree and pursue a full-time career in the future. I feel uncomfortable even driving past the station because of what the organization stand for and values. I don't know what other people may have had issues or what has pushed off as insignificant, but this is concerning to me as an employee and concerning to me for any future employees specifically female and people of

color. I felt compelled for the past months to say something to the Board of Trustee because of how my treatment continues to have been since majority of my time at KTFD. I have done my part to be professional and respectful after every negative behavior I have dealt with against me for how I look like. I have dealt with harassment, racist comments about speaking Spanish, and seen how management does not take their employees seriously. If I was not a woman or Hispanic, I know that I would not have been through the treatment I went through. I do not believe that anyone that is an employee at the KTFD should be working in an environment such as what I dealt with in nearly my three years working there.

Other notes

-Diversity training has last taken place in May 9th 2017 as I have checked the past training schedules. I cannot see past year 2017 of training to see if there has been other Diversity training in Texcom.

KALAMAZOO TOWNSHIP FIRE DEPARTMENT

STANDARD OPERATING GUIDE #3

DATE: 3/2010

SUBJECT: DISCIPLINE

PURPOSE: To establish guidelines and procedures regarding disciplinary procedures and maintaining acceptable conduct by Township of Kalamazoo Fire Department personnel.

1. Any complaint against a fire department member shall be investigated and a conclusion of fact reached which will be as follows:
 - a.) Proper conduct
 - b.) Improper conduct
 - c.) Violation of policy procedure
 - d.) Insufficient evidence
 - e.) Unfounded complaint
2. If discipline is required, every effort will be made to respond to the deficiency with training and or counseling.
3. Violations of any of the provisions of the Charter Township of Kalamazoo and or fire department standard operating guides, directives or procedures shall be the subject of disciplinary action up to and including discharge.
4. Any fire department member violating these rules and regulations may be subject to any of the following disciplinary action with due regard for the nature of the offense and the member's previous record of conduct. The Fire Chief, Deputy Chief or a Battalion Chief may initiate actions a-c, the Fire Chief will initiate actions d-g.
 - a.) Written Reprimand
 - b.) Restriction of activities or privileges
 - c.) Requirement of restitution
 - d.) Demotion
 - e.) Suspension
 - f.) Probation
 - g.) Discharge
5. Any member of the fire department may be suspended or dismissed for any of the following list of offenses which is not to be considered as all inclusive.
 - a.) Use of or under the influence of intoxicants or illegal drugs while on duty
 - b.) Theft
 - c.) Immoral or indecent conduct that would be offensive to the average citizen
 - d.) Insubordination
 - e.) Refusing an order from an officer
 - f.) Leaving a response or incident scene early without permission of the officer in charge

STANDARD OPERATING GUIDE #3

Page 2 of 3

- g.) Giving, releasing or posting in any form fire department personnel and or emergency response information (including photos taken during response activities) to unauthorized persons. All inquiries should be directed to the officer in charge.
 - h.) Loss of valid Michigan Motor Vehicle Operator's license
 - i.) Misuse or abuse of fire department equipment
 - j.) Failure to use the established chain of command, involving matters or procedures pertaining to fire department operations
 - k.) Loaning out fire department identification or equipment to unauthorized persons
 - l.) The neglect or evasion of official duties and responsibilities
 - m.) Responding to a incident in a careless and or reckless manner
 - n.) Failure to complete required minimum training and or emergency responses
 - o.) Any conduct which brings discredit to the fire department
 - p.) Abuse of leave time or absence without leave
 - q.) Unsatisfactory work performance
 - r.) Failure to follow Standard Operating Guides and or Township policy
 - s.) Intentional damage to Township equipment and or personal property of coworkers
6. All offenses, regardless of action taken, shall be acknowledged over the signature of the member receiving the disciplinary action. When the offense calls for suspension, a copy of the report will be forwarded to the Township Personnel Director. In the event that the offense calls for discharge, this will be made in the form of a recommendation to the Township Personnel Director for action.
7. In the event a member feels that the disciplinary action taken against the member was unjust for any reason, they may appeal the action using the following procedure.

First Step: Promptly discuss the problem with the Department Head. The Department Head shall orally communicate his/her decision to the employee.

Second Step: If the problem is not resolved in the First Step, the employee may put the problem in writing and submit it to the Personnel Director within three (3) working days of receiving the Department Head's oral decision. The Personnel Director shall review the problem and communicate his/her decision in writing to the employee.

Third Step: If the problem is still unresolved, the employee may submit a request in writing for a discussion with the Policy and Administration Committee within three (3) working days of the Personnel Director's written decision. The Policy and Administrative Committee shall communicate its decision in writing to the employee.

STANDARD OPERATING GUIDE #3

Page 3 of 3

Fourth Step: If the problem is still unresolved, the employee may submit the problem in written form with complete details of the incident within three (3) working days of receipt of the Policy and Administration Committee's written decision to the Township Clerk. The Township Clerk shall forward the written problem to the Charter Township of Kalamazoo Board for resolution. The Charter Township of Kalamazoo Board's decision shall be final.

From: |
To: |
Subject: |
Date: |
Attachments:

From: |
Sent: |
To: |
Subject:

DO NOT open attachments or click links from unknown or unexpected emails.

Thank you so much for summarizing this, I would say it is accurate – I would only add that the overall discomfort related to conversation and interactions within the station seemed to be related to a lack of respect and professionalism being exhibited by those considered to be leaders within the team.

Trustee. Charter Township of Kalamazoo

E:
W:

If, at first, the idea is not absurd, then there is no hope for it. – Albert Einstein

From:
Sent: Wednesday,
To: A

Subj

I will ask : to make sure that I have captured the essence of our meeting with and if any information is inaccurate, misleading or left out please correct me by adding it to this email.

It is my understanding that reached out to Trustee to set up a meeting with her to discuss some issues she had with the Fire Department. Trustee then, asked if it would be okay if Manager could come to

the meeting, [redacted] agreed. The first meeting was set for Friday, January 28, 2022 however that meeting was rescheduled for February 1, 2022.

On February 01, 2022 at approximately 10:00 AM, Trustee [redacted] met at 5 Lakes Coffee. To discuss some concerns and issues that [redacted] had from 2019 -2022 with regards to an "uncomfortable environment" (this was a term that [redacted] used) at the Eastwood Fire Station on East Main in Kalamazoo Township. [redacted] is a paid on call firefighter who works for Kalamazoo Charter Township. [redacted] stated that she is currently [redacted] years old, according to our conversation and to the best of her memory this started when she was approximately [redacted] years old in

I have asked [redacted] to forward any written reports that she has to me and Trustee [redacted]. I have also asked [redacted] to put in writing her statements that she made to trustee [redacted] and myself. I am sending this email out prior to receiving [redacted] documentation. [redacted] stated that she had communications through texecom which is an app that firefighters in this area used to communicate with each other. I also asked for a copy of that communication through texecom. As I unfold some of the highlights from our conversation with [redacted] it will become clearer as to why I need to document the things that I do on behalf of Kalamazoo Charter Township.

- [redacted] first incident that she spoke to us about was directed at [redacted] After a fire call in 2019 (I do not recall which month at this time) [redacted] and several others paid on call fire fighter including [redacted] returned to clean the Fire truck with chamois. At this time [redacted] describes [redacted] having the Chamois in his hand and with his fist closed and knuckles out. [redacted] pushed the chamois into her chest in the breast area.
- On a different occasion [redacted] stated that her and [redacted] (Mexican male as described by [redacted]) were at the Eastwood fire station speaking Spanish to each other, and was told not to speak Spanish in the station. [redacted] was also clear to point out that when on calls her or him have been asked to translate Spanish to English and vice versa.
- [redacted]; also recalls of an incident with [redacted] hitting [redacted] in the face with a pair of gloves that [redacted] had in his hands. I am not clear if this incident was reported to [redacted] the Battalion Chief for Eastwood. I am also not clear if this was part of her conversation with [redacted] or if there was any follow up with regards to a pair of gloves hitting her in the face.
- [redacted] also spoke of a time where she was talked to with regards to the men at Eastwood fire station not knowing how to act around a woman who responds to so many calls. I cannot recall who addressed her with this conversation. However, I did ask if it was regarding language as in cussing. I believe [redacted] answer was it was just an uncomfortable feeling.
- [redacted] was reluctant to talk to Trustee [redacted] and me with regards to this incident. [redacted] stated "I get upset when I talk about this" According to [redacted] was sweeping or holding a broom in his hand and hit [redacted] with the broom on her bottom. I am not clear if this incident was reported to her Battalion Chief [redacted] or anyone else in command.

Notes

I would like to point out that we are actively starting this investigation because [redacted] verbally communicated to Me and Trustee [redacted] two Township officials that she was not happy with the outcome. I believe [redacted] stated that this event took place in 2019 and she did not have an answer until July of 2021 (about 18 months). She initially stated that she received that answer in July of 2020. I am concerned with the lengthy time between [redacted] answer in July of 2021 in her scheduling a follow up meeting with her and Trustee [redacted] in January of 2022. [redacted] also stated that she may seek legal advice with regard to the incidents listed above and the outcome. On additional outcome that [redacted] stated was for [redacted] not to work for Kalamazoo Township any longer. I did ask if options were available such as [redacted] moving [redacted] stations or her moving stations. [redacted] did not think that that would be an acceptable outcome. Her additional concern was that the Battalion Chief [redacted] would say something to future employers in a negative light toward her or her work ethic.

- [redacted] was concerned the Chief [redacted] is close and goes on vacations with [redacted]

- was also concerned with supervisor reach out to him

Being too close to the situation as to why she did not

This email may not cover all of the information that was stated in our meeting with (, I also understand that this email is written with only one side and no evidence as to who has been spoken to and what actions have been taken.

Board of Trustee;

This is the timeline you asked for from our meeting that took place on February 1st at approximately at 10:10am at Five Lakes Café on West Main.

My official first day at Kalamazoo Township Fire Department was April 1, 2019.

Things were fine at KTFD until before I was off my probationary period about June/July 2019 where issues with [redacted] had started. When [redacted] was beginning to talk aggressive or yell to me for no reason whenever I was speaking to [redacted]. Prior to this, I always came during the day no matter who sat or was on shift that day to help work on my probation sheet.

I told [redacted] about interaction. [redacted] told me that we needed to fix it between

I went to [redacted] he said he apologized and it was nothing I did wrong that he was annoyed at the other three people present...

-He actually kicked both [redacted] and I out the station once because he did not want us there. I'm not sure if that's in the report but this did occur and I never was sure why.

I believe to my memory [redacted] told I [redacted] about [redacted] kicking us out of the station and did talk to [redacted] about that.

Racism

-He told [redacted] that one time while we came back in rescue from a call to stop speaking Spanish. I told him I was not going to stop; we weren't even talking about him. He tells [redacted] that [redacted] and I were talking about him in Spanish. [redacted] tells [redacted] and I the next day when we sat in the sit room after a call without [redacted] present that I was being rude to [redacted] and [redacted] and I were talking about him in Spanish. [redacted] explained that that is not what really occurred and it was [redacted] that told us not to speak Spanish at all. I am not sure if anything came about that as [redacted] continued to tell [redacted] and I to stop speaking Spanish as time went on. This was along with [redacted] and [redacted] who told us to stop speaking our Spanish bull**** because we only needed to speak English. They thought we were speaking about them when we were not. even said if he was speaking about them, he would say it to them and say it in English.

I have no received any more comments about speaking Spanish as I do not go to calls nor talk to those individuals when I do go or have a spoken Spanish

The incident with the picture at the structure fire. (I'm not sure when it took place in the month of 2019). I can remember it was when it was warm outside. [redacted] was a witness and [redacted] was present talking to [redacted]. I can't recall hearing if any incident report or suspension as during the time I was going to calls.

There was a structure fire and [redacted] let a paramedic from Life EMS put his firefighter gear on while [redacted] was inside the home. [redacted] and the paramedic took pictures together. I am not sure which phone the pictures were taken or if deleted. The paramedic with the gear on went inside and [redacted] got very upset. The paramedic took the gear off and left the scene. [redacted] left his gear at the station and was not present for three days. It was known he told [redacted] he was never going back. Someone convinced him to come back and he did. I never recalled any suspension. Paramedic who was with the paramedic who dress in [redacted] turnout gear did mention she got in big trouble as [redacted] made a complaint to Life Ems.

I did forget to mention this in the meeting but it should be in the written incident report: When I would talk to [redacted] outside in the parking lot, [redacted] would pass by many times even after he left to watch us talking. This occurred many times it would be day or night if he had passed by for whatever reason.

Incidents with [redacted] occurred in November 2019 were he physically assaulted/touched inappropriately.

Reference to written incident report

-had a cloth in his hand in the Bay Area and punched me with it against my breast. It did hurt and someone saw and heard what happened.

-I can't recall if it was a broom stick or a stick that was in the sit room but he tried to hit my butt with it. There was witness.

-He had a glove and he had smacked me with it.

December 4 2019

-Written incident paper was dropped off to [redacted]

-No updates or follow ups about anything since then about any consequences that [redacted] may have received. I assumed at some point something would be done.

COVID protocols February 28th 2020 that change our response to calls. We only responded to calls not to the stations after a call.

May 28th 2021

-Meeting with [redacted] about interactions and behavior such as belittling people or getting upset at people but not giving a reason to why.

My experiences personally have been that when [redacted] yelled at me, he told me I shouldn't have expectations of people here.

He told [redacted] that all of us combined did measure up to [redacted] contribution even though we never said anything to undermine [redacted] only made fun of his dog and [redacted] just said that. During the interview [redacted] denied that happening and said it was the opposite.

I have been in conversation with others saying [redacted] that gets upset for no reason and take it out his frustration out on them even though no one at the moment did anything wrong on a call.

Texcom message:

"Good morning,

This memo is to serve as record of our conversation from 05-28-2021 @ 0730 hours at Station 8-2. During that conversation I was given, and acknowledged, your notice of issues that you found to be of concern and in need of correction by me. In accordance with Township of Kalamazoo policy, after due notification is made any further concerns or complaints shall be taken to Administration higher than person involved. In this case, any further or future conversation of this matter needs to be immediately brought to either Deputy Chief [redacted] or Fire Chief [redacted]. A copy of this will be printed and placed in an envelope in your mailbox as well."

Respectfully,

Battalion Chief

In the month of June 2021, I was informed of what [redacted] said about to [redacted] from [redacted] told [redacted] not to tell me about the conversation he had with [redacted].

I can't recall the date or time but it was in the fall of 2021, I parked in the parking lot and was getting my gear. [redacted] was speeding into the parking lot. He got off and I told him why are you driving like that you could have hit me? He yelled at me saying I was in his parking lot and walked away towards the station. That is the last time I ever talked to him. I don't talk to him now even when I go on calls rather, he is the supervisor on a call or not.

That caused a significant decline to my calls and training due to the hostile working environment. I tried to make an effort and be as professional as I can but I felt between learning that and getting [redacted] from time to time trying to intimidate me as time went on as we were at the station again when COVID protocols allowed us to come back to the station.

It personally makes it harder for me to want to go to the Fire Chief if I still feel uncomfortable about [redacted] and did not see anything was done with that incident. [redacted] still has tried to intimidate me when he felt the need to for no reason. I have tried to be professional even after the incident but [redacted] doesn't want to.

There is a conflict of interest in going to Fire Chief about [redacted] if they are close professionally and personally. I do not trust that [redacted] would be honest about the issue as there is a power unbalance. He had reassured me in our meeting in May 2021 that if we were good. We both said we were good, but now I have no trust in [redacted] now as my supervisor. I am very disappointed.

I do not want my reputation screwed as once I had a conversation with [redacted] I have never a write up at KTFD or a sit down about my behavior.

I asked if he didn't like someone at the station and a job needed to call for verification of employment what do you say to them? He said he would just say he does not want to speak about the person.

I have heard [redacted] say out loud he did not want a certain employee to be a sit driver ever as long as he was a Battalion Chief at Eastwood because he does not like him. I am not sure why but I thought it was unprofessional and very inappropriate although [redacted] is allowed to continue to be a sit driver after all that he has done to me.

Another reason why I didn't feel like I could go to [redacted] or the Fire Chief not only because [redacted] was still employed after all he did since I have been there but another instance: a former firefighter who had to resign due to medical issues had gotten Narcan he got from Walgreen; he had used it on a patient. I am not sure what happened with that incident at the end.

If [redacted] has told [redacted] things that were not true that I was coming to his office and being demanding and I thought I was better than everyone although I was respectful and told him I respected him because he was my boss. I am concerned what or who else he may be saying these things to. I am also concerned to why I had to find out from a third party instead from himself or [redacted]. I was also told that Bronson called to verify employment at Kalamazoo Township Fire Department. [redacted] told [redacted] to find out if I was working there. So, [redacted] asked [redacted] if I was working there. [redacted] did not say I did but [redacted] did not believe him. I never had a meeting from [redacted] about my whereabouts or meetings about my attendance. I have not been received an email, call, or text regarding that or a checkup.

I just don't know or feel comfortable or confident anymore causing my calls to decline. I don't feel that I am protected or valued as an employee at Kalamazoo Township Fire Department. It has impacted my ability to go to calls and training and has almost made me quit. That thought has been in my mind daily to quit. I feel uncomfortable even driving past the station. I don't know what other people may have had issues or what has pushed off as insignificant, but this is concerning to me as an employee and concerning to me for any future employees specifically female and people of color. I almost lost interest in the fire service as a career after doing to school to earn my fire science degree and pursue a career. I felt compelled for the past months to say something because of how my treatment continues to have been since majority of my time at KTFD.

Other notes

-Diversity training has last taken place in May 9th 2017 as I have checked the past training schedules. I cannot see past year 2017 of training to see if there has been other Diversity training in Texcom.

On February 27, 2022 Fire Chief _____, Kalamazoo Township Fire Department, contact telephone: _____ was interviewed. Present at this interview was Township Manager _____ who read the Chief the Garrity Warning – Garrity Rights. _____ agreed to the interview and provided the following information:

_____ was advised that a hostile work environment complaint was made by on call Firefighter _____. He was advised that the written complaint was made to Trustee _____ and Township Manager _____ is currently assigned to Station 2 of the Fire Department. The initial allegations began in the fall of 2019. _____ was initially surprised of this allegation and stated he could not recall specifically the incidences when they occurred in 2019. He was aware that there was a Spanish speaking issue among the firefighters but he believed that was settled by the Battalion Chief. _____ explained he would have to review his records as well as the records of Fire Station 2.

_____ was asked if he had ever had a conversation with _____ concerning any type of hostile work environment. _____ stated he knows who on call Firefighter _____ is, he has had group conversations with the firefighters where she was involved but he has not had any conversations about a hostile work environment occurring at Station 2. _____ advised he would have to search his records again for what specific information he may have had presented to him.

_____ was specifically asked if he had a conversation with _____ at the Galesburg Christmas Parade that occurred in December 2019. _____ stated he did not have a conversation with her specifically about any type of hostile work environment. _____ stated he would again have to contact the Battalion Chief and determine if there are any records concerning the complaint filed by _____.

_____ was advised that this Investigator would have to interview several of the firefighters at Station 2 and was asked where the interviews could occur in private. It was suggested that the interviews be taken place at the Fire Station located near the fairgrounds. Arrangements were tentatively scheduled for these interviews.

Following this meeting, CHIEF _____ contacted this Investigator and stated he has located some memos and other paperwork at Station 2 and requested that this Investigator be at Station 2 in the morning, 3/1/22. _____ explained he would administer the Garrity warning to all firefighters who needed to be interviewed.

On March 1, 2022, [redacted], Battalion Chief, Station 2, Kalamazoo Township Fire Department, contact telephone: [redacted] was interviewed. Prior to the interview starting, Chief [redacted] was advised of the Garrity Warning by Chief [redacted]. Chief [redacted] agreed to be interviewed and provided the following information. Fire Chief [redacted] left the interview.

[redacted] was advised that Firefighter [redacted] filed a hostile work environment claim with Township officials concerning her treatment that has occurred here at Station 2. [redacted] was asked if he could provide any information regarding this allegation. [redacted] agreed and stated that on December 4, 2019 he recalls contacting her and detailing several issues in which she believed she was a victim of various improper and hostile working conditions. [redacted] stated he asked [redacted] to prepare an incident report concerning these incidences to him. [redacted] complied and provided a copy of the complaint to [redacted].

The report identifies the interactions she had primarily with Firefighter [redacted] and also interactions with other firefighters who may have witnessed the incidences. The report cited several different issues beginning with [redacted] yelling and acting very rude towards [redacted]. The report also spoke about [redacted] speaking Spanish and was told to stop along with an incident where she was smacked in the face with gloves, pushing his fists with a shammie into her chest and while in the sit room, [redacted] had a stick in his hand and tried to strike her in her buttocks.

[redacted] was questioned regarding his interaction with [redacted] regarding his leadership and getting upset "at people," and that he should set a better tone and examples for subordinates. [redacted] in further conversations with [redacted] disagreed with her comparing [redacted] to her and Firefighters [redacted] and [redacted]. He wanted to convey to her his standards of being a leader may be different than her understanding. Following this meeting [redacted] did say he was "cool" about the conversation and she did say she was "cool" about the conversation. [redacted] confirmed the telcom message that he sent to [redacted] and he made a record of the conversation, see below.

Listed below are copies of the following documents:

- [redacted] initial incident report 12-4-2019
- First Draft of Memo dated 12-4-2019 to [redacted]
- Memo dated 12/4/2019 to [redacted] a written notice to discontinue behaviors
- Memo dated 12/5/2019 to [redacted]
- [redacted] Performance Development Assessment – 4-6-2021
- Record of Conversation with [redacted] 5-28-21
- Leave of Absence Memo 2-16-22

12/04/19

I'm writing this incident report to provide detailed information of things in its timeline that was discussed to Battalion Chief on 12/04/19 in the morning with another individual,

When I first starting officially started at the Kalamazoo Township Fire Department Station 2, I was scared that this job isn't for me or that I was very behind from my peers that were hired with me. I wanted to make sure this is a job that I wanted to be in before I decided to officially commit before I got off my probationary period. I made the effort to come in every day throughout the week for about 6-7 hours to make sure I knew the equipment on the rigids, I understood the guidelines, and the type of environment I would be in with my co-workers.

As I went to the station frequently for running calls and learning, I was able to get to know the personnel there more. I bring one of the drivers who sat there usually I was able to talk to him, hoping that I would learn more to know that this was career I wanted to pursue. I felt in the beginning that things were normal. We talked about regular things like what to do on this type of call or how that worked. Things that a new person would ask and expect someone of 17 years on the job.

Unfortunately, that didn't last long. Right before I got off probation was being very rude to me. He yelled at me when I was working on my probationary sheet as I was getting help from another co-worker. I wasn't sure why and I was confused because I never wronged him in anyway and I thought this person was somewhat of a mentor. I decided to confront about why he yelled at me, but he stated that he was mad at the other individuals that were at the station for acting like idiots. He never really told me the real reason that answer he gave me didn't make sense to me. He was superior to me at the station I let it go since the job was what matters.

A week and a half before I got off probation in the month of July I had another issue with . I , and I were coming back from a rescue call and I was speaking spanish to . We both were talking about someone that I knew that was personal. got very mad and said that he didn't want me to speak spanish anymore and to stop that bullshit. I got mad and told him that he wasn't going to tell me not to speak my native language and he didn't own the station to tell me how I should speak. was very angry at what I said. Later I found out that he had lied and made a complaint to my Battalion Chief that I was insulting him in spanish. told our Battalion the story of what actually happened since the one said was fabricated. I got very angry when I found out that he lied on my name to get me in trouble. I thought it was stupid becuase he didnt know how to understand spanish to say what he had said and that he was being inmature for his age and level of experience.

After that incident I stopped talking to him for over a month. I felt like I was an issue and no one wanted me there. I still didn't know why I was having so many issues with this individual who I thought was supposed to help me. I thought maybe I didn't belong there and I stopped talking to lots of people at the station. I felt like I couldn't trust anyone. I would purposely stop going to some calls to avoid going there and missed a training to not be there. I was the new girl at the station with the least experience overall compared to an older male who had 17 years on the job who had an opinion. I didn't think I had a valid opinion in the workplace. There were times when [redacted] and I were outside talking in the parking lot and [redacted] would pass by multiple times or act like he was going to turn into the parking lot when he passed by the station. My co-worker and I thought it was very unusual that he was doing that. I never knew why he did that but it was pretty weird to me. I wasn't sure if he was trying to mess with me even though I wasn't talking to him at that time

A month and a half of not talking to [redacted] I talked to him because I had to for the job. It was more to tolerate that he was the supervisor when he was on shift. I just wanted to go to work and have things run smoothly on scene or off scene.

There were recent interactions last month and this month I was getting from [redacted] that were not appreciated. Our Battalion Chief was on vacation and [redacted] was the driver that day last month. We all had just came back from a call and I was trying to collect all the shammies that were used to wash 812. As I was walking I could see [redacted] from my peripheral view coming towards me but I just kept walking. He suddenly came in front of me with his shammie and stepped closer to me and pressed the shammie that was in his left hand against the left side of my chest. I painfully reacted to it because it hurt really bad because that was a sensitive part of chest. All he did was look at me and walked away. There were people around, from what I could remember [redacted] and [redacted] were in that area. But only [redacted] was able to get somewhat of a view while [redacted] never made a comment or mentioned what happened so I wasn't able to know if he even noticed it. I really didn't know what to do about it. I just thought it was really weird and I just pretended like it never happened and I didn't want to bring it up because I didn't want to bother my Battalion Chief with a different issue with the same person again while he was on vacation.

I was able to tell [redacted] about what happened that day a week later. [redacted] told me to be careful with him and said that he didn't even trust [redacted] with his daughter alone when his daughter would come up to the station and that he always thought he was unusual.

That same month about two weeks later when [redacted] was sitting. We all came back from a call. [redacted] and I were in the sit room. [redacted] said something to me that I didn't like. [redacted] then gets up from his sit near the computer and had the stick that was used to hold up one of the windows in the room in his hand. He comes to the other side of the room and tries to hit my ass pretty much. He wasn't able to because I stopped him. No one said anything to him about it. Or they just ignored it because they didn't care or it was uncomfortable to bring up. I just ignored it because I didn't want to cause issues. I was getting annoyed by the treatment I was getting from [redacted]

On 12/03/19, I went to the station after a call. Many people came to the station for the call. [redacted] and I and other I'm not sure I remember. I was talking to [redacted] and [redacted] throws the new shirts we were given at the back of his head saying he didn't like the shirt and didn't want it. I grabbed the shirt from the floor and throw it at his lap and told him that I didn't like what he had done and that it was disrespectful. Later majority of everyone left there was [redacted] and I left in the sitting room. [redacted] later throws a rubber band at me to get my attention for I don't know what reason. I ignore it. Later he comes up to me and he grabs the gloves that we were given and smacks my face. I was very angry. All I'm gonna say was that I really wanted to take care of the issue myself and it probably would have gotten me fired from the Township for the actions I wanted to do. [redacted] told me to not because it wasn't worth it and that I was gonna get in trouble and to talk to our Battalion Chief which I did do the next day.

I'm honestly tired of the inappropriate treatment I'm getting from [redacted] It's not getting any better even when I've talked to him in the past to now even when I ignored it. I feel like my gender plays a big part of it. Lots of time I wish I wasn't who I was because then I would get that treatment. My gender shouldn't be the reason why I get treated like that or my race. It's getting more physical and I can only tolerate so much until I decide to take care of it myself. But because I care about the job I decided to commit to I didn't. I wanted to make the right choice even though that wasn't my initial reaction that situation yesterday. I get more uncomfortable because I know he's just staring at me all the time. I still don't know what I did to make him hate me or feel that way. I'm tired of it. I would like it taken care of because I'm not gonna work in Township like that. Others have told me that since I've started he's been acting strange about me and I never knew it until he started causing issues. All I want is for this to be over because a grown man shouldn't be acting like a kid to someone like my age. I shouldn't be making an incident report. I shouldn't be uncomfortable. I shouldn't be touched the way I was touched or talked to the way I talked to by [redacted] All I was is a situation to this to end because I've been in situations like this before and only I could take care of it because people didn't want to speak up or do anything about it and it's gotten really old for me. I hope you can help solve this before another female comes in to go through the same situation and before it escalated into something worse.

Thank you for your time.

To: (FF/EO)

From: (B.C.)

CC: (Fire Chief)

Re: Notice concerning professional conduct

12/04/2019

This serves as your reminder that you are to conduct yourself in a manner towards other personnel that is in accordance with the Township of Kalamazoo personnel policy. This also is notice to cease and desist any behavior that negatively effects other employees. This includes, but is not limited to physical contact with other personnel (actual or implied), creating an unwelcoming environment towards other employee(s), or any other action that can be construed as unprofessional in the workplace or public.

Acknowledged by:

Battalion Chief

1st
Draft

Signature:

Date:

Firefighter / E.O.

Signature:

Date:

To: (FF/EO)
From: (B.C.)

Re: Memo of Notice regarding and concerning professional conduct while acting in an official capacity with the Township of Kalamazoo Fire Department.

Date: 12/04/2019

On Wednesday, December 4, 2019, fire department command staff were made aware of multiple incidents in which your interpersonal skills were questioned over the past few weeks. The Township of Kalamazoo Fire Department strives to provide for a fair, equitable, safe and professional atmosphere for all employees.

The command staff will be conducting a preliminary investigation regarding this matter, this serves as an official reminder that you are to conduct yourself in a manner towards other personnel that is in accordance with the Township of Kalamazoo personnel policies. This is also written notice to discontinue any behavior that negatively effects other employees. This includes, but is not limited to unwanted physical contact or innuendos, creating an unwelcoming environment towards other employee(s), or any other action that can be construed as unprofessional in the workplace or public.

To reaffirm your expectations as a Township of Kalamazoo Fire Department Employee, please refer to KTFD Standard Operating Guides, specifically SOG's numbers 1, 3 and 17. As a reminder, all SOG's may be found on TexCom.

As the preliminary investigation progresses, I will be making contact with you to discuss specific instances and to seek any information regarding this matter that you may have. Please feel free to contact me if you have any questions.

Acknowledged by:

| | | | |
|-----------------|------|--------------------|------|
| _____ | Date | _____ | Date |
| Battalion Chief | | Firefighter/Driver | |

CC: Chief I
Firefighter
Personnel File,

Final copy

To: Firefighter
From: Battalion Chief
Re: Memo of Response
Date: 12/05/2019

COPY

On Wednesday, December 4, 2019, you contacted me regarding numerous purported inappropriate interpersonal instances regarding Township of Kalamazoo Fire Department employee dating from approximately July 2019 to present. The Township of Kalamazoo Fire Department strives to provide for a fair, equitable, safe and professional atmosphere for all employees and takes pride with maintaining compliance as an Equal Opportunity Employer.

I have conducted a preliminary investigation regarding this matter and have talked to both parties involved and a few of the witnesses that you have listed. Upon completion of the preliminary investigation, it has been determined that there have been a number of low-level inappropriate interpersonal interactions between you and over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone's race, color, religion, sex, national origin, age, disability or genetic information discovered.

After speaking with you, and some of your listed witnesses, a few key findings have been identified. Among those, the lack of professional and respectful treatment between coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors.

I have spoken with in great depth regarding this matter. Following our conversations, I do not anticipate any future instances to take place. If any future instances regarding any purported inappropriate treatment of activities occur, you are to immediately tell the individual that the (specific) treatment and/or activity is unwanted and ask them to immediately stop the interaction. As soon as possible and practical, but within 24 hours, the incident needs to be reported to myself or Chief

As a reminder, the fire department is a tight-knit profession, it is imperative that we maintain a high level of trust, interaction and communication within all ranks of the organization. It is evident that the reported activities have been going on for nearly six months in a less than adult-like fashion. While this is no excuse for the prolonged treatment in this instance, early communications and professional dialog between all involved employees and fire department command staff would have greatly reduced the personal and professional impact of everyone involved.

This is also an official reminder that we are to conduct ourselves in a manner that is in accordance with the Township of Kalamazoo personnel policies. To reaffirm our expectations as a Township of Kalamazoo Fire Department Employee and to further enhance the overall team efforts of the department, KTFD Standard Operating Guides may be found on TexCom.

Acknowledged by:

| | | | |
|-----------------|------|-------------|------|
| | Date | | Date |
| Battalion Chief | | Firefighter | |

CC: Chief
Firefighter.
Personnel File, .

TOWNSHIP OF KALAMAZOO FIRE DEPARTMENT

PERFORMANCE DEVELOPMENT ASSESSMENT

Name: _____

| |
|---|
| <input checked="" type="checkbox"/> Supervisor Assessment <input type="checkbox"/> Self Assessment |
|---|

Position: _____ er

Hire date: _____ Department #: 8205

Assessment Purpose: Annual
 Probationary 6 12 Months NA
 Other
 Initial _____

Evaluating supervisor: _____

Assessment period:
 01-01-2020 * Thru 12-31-2020

Date of last assessment: _____

| | |
|--------------------------|--|
| OUTSTANDING | (5): Performance consistently exceeds all expectations |
| EXCELLENT | (4): Performance consistently meets and often exceeds expectations |
| SATISFACTORY | (3): Performance consistently meets expectations |
| NEEDS IMPROVEMENT | (2): Performance meets some, but not all expectations |
| UNSATISFACTORY | (1): Unsatisfactory performance; meets few or no expectations |

Note: Reference Kalamazoo Township Fire Department *Performance Development Assessment Utilization Guideline*, for further definitions of these factors.

| FIELD PERFORMANCE | | | | | JOB KNOWLEDGE SKILLS | | | | | | |
|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------------------------|
| 5 | 4 | 3 | 2 | 1 | 5 | 4 | 3 | 2 | 1 | N/A | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Stress Conditions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Non-stress conditions |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Firefighting skills |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Medical skills |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Self-initiated activities |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Situation management |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Community interaction |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Team player |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Written Documentation |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Radio/Communications use |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Fire codes/Laws/Ordinances |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Driving – POV and Apparatus |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Apparatus use/EO |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Equipment use/Maintenance |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Departmental procedures |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Appearance |
| INTERPERSONAL SKILLS | | | | | FIREFIGHTER SAFETY | | | | | | |
| 5 | 4 | 3 | 2 | 1 | 5 | 4 | 3 | 2 | 1 | | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Fire Ground |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Rescue/EMS |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | General |

| ATTENDANCE | MINIMUM REQUIRED CERTIFICATIONS | | | | | | | | | | | | |
|--|--|-----------------|----------|----------|---------------|---|------------|------------|---|--------------|----------|----------|--|
| <p>Dates covered: 01-01-2020_ thru 12-31-2020__</p> <p>5 4 3 2 1</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Response % <u>48</u></p> <p>Hours made/available <u>457</u> / <u>958</u></p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Training % <u>71</u></p> <p>Hours made/available <u>60</u> / <u>84</u></p> | <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">CERTIFICATION</th> <th style="text-align: left; border-bottom: 1px solid black;">CURRENT</th> <th style="text-align: left; border-bottom: 1px solid black;">EXPIRES</th> </tr> </thead> <tbody> <tr> <td>MFR/EMT/Medic</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td>_____</td> </tr> <tr> <td>CPR</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><u>01-21</u></td> </tr> </tbody> </table> <p style="border-top: 1px solid black; margin-top: 5px;">OUTSIDE AND ADDITIONAL TRAINING COMPLETED</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div> | CERTIFICATION | CURRENT | EXPIRES | MFR/EMT/Medic | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | _____ | CPR | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <u>01-21</u> | | | |
| CERTIFICATION | CURRENT | EXPIRES | | | | | | | | | | | |
| MFR/EMT/Medic | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | _____ | | | | | | | | | | | |
| CPR | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <u>01-21</u> | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Response</th> <th style="text-align: left; border-bottom: 1px solid black;">Training</th> </tr> </thead> <tbody> <tr> <td>5 = >40%</td> <td>5 = >86%</td> </tr> <tr> <td>4 = 30-40%</td> <td>4 = 76-85%</td> </tr> <tr> <td>3 = 20-29%</td> <td>3 = 66-75%</td> </tr> <tr> <td>2 = 10-19%</td> <td>2 = 56-65%</td> </tr> <tr> <td>1 = <10%</td> <td>1 = <55%</td> </tr> </tbody> </table> | Response | Training | 5 = >40% | 5 = >86% | 4 = 30-40% | 4 = 76-85% | 3 = 20-29% | 3 = 66-75% | 2 = 10-19% | 2 = 56-65% | 1 = <10% | 1 = <55% | |
| Response | Training | | | | | | | | | | | | |
| 5 = >40% | 5 = >86% | | | | | | | | | | | | |
| 4 = 30-40% | 4 = 76-85% | | | | | | | | | | | | |
| 3 = 20-29% | 3 = 66-75% | | | | | | | | | | | | |
| 2 = 10-19% | 2 = 56-65% | | | | | | | | | | | | |
| 1 = <10% | 1 = <55% | | | | | | | | | | | | |

Page 1 of 2

PERFORMANCE DEVELOPMENT ASSESSMENT

PROFESSIONAL DEVELOPMENT (ie: special team or committee assignments, suggested training plan)

IMPROVEMENT ACTION PLAN (A rating of 1 or 2 requires the implementation of an Improvement Action Plan with measurable objectives)

COMMENTS ON EMPLOYEE'S PERFORMANCE (Identify any accomplishments /deficiencies not included on the Performance Development Assessment)

Consistent and dependable to complete tasks given. Accepting of new roles and responsibilities. After starting with high drive and desire, _____ has settled into a pattern of slower growth in her knowledge, skills, and abilities. Developing more dynamic communication skills will serve benefit personally and professionally. _____ should look for opportunities for training in areas of her interest.

EMPLOYEE COMMENTS

EMPLOYEE SIGNATURE

DATE

FIRE DEPT. SUPERVISOR SIGNATURE

04-06-2021

DATE

REVIEWED BY FIRE CHIEF: _____
INITIALS

FILED IN MEMBERS PERSONNEL FILE: _____
DATE

Record of conversation

Posted By:

Good morning

This memo is to serve as record of our conversation from 05-28-2021 @ 0730 hours at Station 8-2. During that conversation I was given, and acknowledged, your notice of issues that you found to be of concern and in need of correction by me. In accordance with Township of Kalamazoo policy, after due notification is made any further concerns or complaints shall be taken to Administration higher than person involved. In this case, any further or future conversation of this matter needs to be immediately brought to either Deputy Chief _____ or Fire Chief _____. A copy of this will be printed and placed in an envelope in your mailbox as well.

Respectfully,

Battalion Chief

Read Verification


| | |
|---|----|
| | No |
| I | J |

3/1/22, 2:41 PM

LOA Request fo:

Wed 2/16/2022 3:37 PM

To: :

 1 attachment (147 KB)

02-16-2022 LOA Request J. Gonzalez.pdf;

Good afternoon,

I contacted me earlier in the day to request a meeting @ 1515 hours for reasons of submitting a leave of absence request. Upon meeting I made sure was aware of the policy and procedure concerning leaves. She acknowledged that she understood and completed the attached request. I have no further details other than what was written by, also inquired of her general well being and asked if there was anything additional that we (myself or the Township et al) could do for her to be of help. Jen replied that she was "well" and that nothing additional would be necessary. This concluded our meeting. Please contact me with any further questions also aware that you will contact her for questions or clarifications if so needed.

Respectfully,

Follow Up Interviews with Chief [redacted] and Chief [redacted]

During the week of 3/1-3/4/22, interviews were conducted with firefighters at Station 2 of the Fire Department. In these interviews, CHIEF [redacted] was requested to read the Garrity Warning to each of the firefighters, which he did, they all agreed to be interviewed. Following the warning being issued, Chief [redacted] left the room. Firefighters were interviewed and at the end of each interview, this Investigator informed each of the firefighters of the possibility of any type of retaliation concerning this investigation could be construed as a possible civil or criminal action against them. They all agreed and stated they understood.

Following the conducting the interviews, Chief [redacted] and Chief [redacted] were requested to explain the Fire Department's policies and procedures as they relate to hostile work environment claims. Chief [redacted] and Chief [redacted] agreed and provided a response to this request regarding this investigation. Attachments below.

KTFD

From: f
To: c
Subject: f
Date: ~
Attachments: f

Sorry again for the delay, we finally were able to find a time when we were both awake and not out running errands! I locked myself out of both my work laptop and work computer in my office yesterday. We had to get started on the shop computer here, so we pass worded the document. I am unable to un-pass word it, so the code is to open the attachment.

I have attached a "draft" of the information that you have requested. I am not asking you to put words in our mouth or direct us, but I would like you to review the document in general terms to make sure that we have included everything that you have asked us to provide.

If it looks good, we will get you a signed and properly dated copy. Our arts and crafts abilities are limited here, so you will either get a copy signed looking like two third graders used their finger to sign it on the computer touch screen, or we can fax you a clean pen signed copy.

While working on the documents and having general discussions relating to future fire department operations, we have started a list of changes that we have noticed are probably due. Please let us know if you intend to include any suggested changes or short comings in your report so we can provide you with a few things that would help within our operation directly.

Thanks again for the due diligence and the countless hours and efforts that you have put in to the investigation, it is greatly appreciated!

Take care, call me if you need anything.

To:
From: Fire Chief [redacted] and Battalion Chief [redacted]
RE: Response To Request For Information Regarding Investigation
Date: March 9, 2022

This document is being written as a joint document by Fire Chief (FC) [redacted] Battalion Chief (BC) [redacted] to provide information regarding an ongoing investigation. This document contains information directed toward specific parts of the investigation and should not be construed as all occurrences that have occurred during the covered timeframe. This response addresses the actions regarding the three (3) page incident report and the TexCom posting on June 1, 2021. Any additional information that is needed will be provided as requested.

Early in the day on December 4, 2019, Firefighter (FF) [redacted] contacted BC [redacted] in person to report concerns regarding FF [redacted]. After discussing the concerns with FF [redacted] BC [redacted] asked her to put her concerns in writing with as much description as possible due to the detail and length of discussion. FF [redacted] returned later in the day with a 3-page signed copy of her concerns. BC [redacted] Contacted FC [redacted] to notify him of the situation. FC [redacted] stopped by the Eastwood Fire Station to review the statement provided by FF [redacted]. Discussion regarded formulating a plan to seek information regarding the happenings of the items listed in the memo. As BC [redacted] was directly engaged in the operations of the station, FC [redacted] advised BC [redacted] to review the statement from FF [redacted] and speak with identified witnesses regarding the stated instances.

The incident that took place between FF [redacted] and [redacted] on December 3, 2019 was reported in accordance to Kalamazoo Township Fire Department (KTFD) Standard Operating Guide #3, Discipline. Witnesses reported consistently that the observed interaction was done in a horseplay type manner, done in jest and was not construed with any criminal intent, not done to express anger, inflict retribution or done knowingly to cause any distress or physical harm to the best of their recollection at that time.

The other instances outlined in FF [redacted] three (3) page statement had not been directly reported to BC [redacted] or FC [redacted]. FC [redacted] does recall that he had heard something related to the Spanish speaking incident sometime after the incident while speaking with a member (unknown) of the department in an unrelated general conversation. At that time, the date of the incident was unknown and there was no indication at that time that any official intervention was needed.

BC [redacted] determined that there were no witnesses regarding the chamois incident. The date of the incident was unable to be determined and there were no recollections or reflections provided that would allow or lead BC [redacted] that any other information was available to follow up on.

It was however determined that there was now a reported and documented trend of activity affecting the morale, welfare and department operations between FF [redacted] and FF [redacted] that needed to be addressed.

BC met with FC to discuss the findings and review the incident report to ensure all concerns were addressed. It was a mutual determination in accordance to KTFD SOG #3, the severity and method of discipline was determined as follows:

- The statement provided by FF was a cumulative list of events spanning the course of approximately five months. It was determined that timelier notification would have allowed command staff to intervene at the first indication of problems and provide for a directed need to monitor future interactions accordingly.
- BC had not been previously notified by FF or by any other coworker of any incidents that were included in the statement that was provided to him. The only issues witnessed prior to this notification were occasional generalized interpersonal issues, which were never observed to be at a level that required intervention until the report.
- It was determined that had FF been notified that his actions, even while done in jest but unappreciated, that his actions could be construed as inappropriate. It was also noted that no other command staff were notified or requested to make notification to FF on behalf of FF
- There were no indications or coworker reports that the unwanted interactions reported by FF were directed to her by FF in any manner covered by a protected person or status.
- Based on the information provided by witnesses and coworkers, we were unable to determine that the interpersonal problems or conflicts were one sided, or that the severity of any incident met the criteria outlined in KTFD SOG's, requiring any furtherance of discipline.
- It was determined that FF has made a written request to BC to notify FF that his actions are inappropriate and that she would like BC to make notification to FF

After reviewing all related information, it was determined that appropriate discipline for FF would be to give him immediate written notification that his actions were unwanted and that he should cease and desist. The specifics were outlined in the memo of notice dated December 4, 2019. FF met with BC on December 5, 2019 and was given a copy of the memo. FF was also verbally counseled on proper workplace etiquette that was effective immediately and moving forward. FF signed a copy of the memo to acknowledge receipt.

On December 5, 2019, BC met with FF to provide her with a Memo of Response regarding her written statement that she provided on December 3, 2019. During the meeting, discussions relating to the incident report were reviewed. FF was reminded that timely reporting of incidents is key in utilizing progressive discipline procedures. She was notified that BC had interactions regarding the incident report with FF and that she should notify BC immediately if there were any additional incidents with FF. In accordance with the Township of Kalamazoo Personnel Policy, BC could not notify FF what disciplinary actions were taken, as such disclosure would violate Section 5.28 pertaining to "Release of Personnel Records to a Third Party". FF was provided a copy of the memo. At this time, a signed copy acknowledging receipt of said memo is unavailable.

On March 2, 2022, _____, Firefighter Station 2, Kalamazoo Township, Telephone contact: _____ was interviewed regarding his knowledge of a hostile work environment involving _____. After being advised of his Garrity Rights by Chief _____, he agreed to provide the following information.

_____, a Hispanic male, began his on call firefighter position in December 2017. In 2019, he developed a coworker relationship with _____, a Hispanic female. Initially when _____ was hired, she was very passionate, wanting to be a good public safety officer to the point where she would come to the fire station and not be paid to continue to advance her career. _____ at first was being mentored by _____. After a short period of time with _____ she began reaching out to other seasoned firefighters to again learn more about a fire fighting career. _____ spoke with _____ several times a week and wanted to go with me on various fire service calls.

Sometime in June or July 2019, _____ and other firefighters were in the sit room when _____ came into the sit room and out of nowhere, _____ told after she asked a question to leave the room. No one understood why that action occurred or why _____ was upset with _____. The next incident _____ recalls, _____ and _____ were on a call and both were speaking in Spanish concerning their schooling and other issues relating to the fire service. _____ who was driving the vehicle immediately yelled at both of them and told them to stop speaking Spanish in his presence. _____ refused and said they were not speaking about him and since this issue of speaking Spanish came up then, it continued throughout the fire station with other firefighters telling both of them not to speak Spanish around them. _____ would consistently yell at _____ and this went on for several weeks. Finally, it reached the Battalion Chief _____ attention and stopped all the firefighters concerning speaking Spanish including him and _____.

Following the Spanish speaking situation, again _____ myself and _____ and a few other firefighters were in the sit room and someone observed a female and a male walking with their dog. Someone said the female was "hot," and for some reason _____ told everyone that _____ was "hot." _____ and _____ felt uncomfortable and _____ believes _____ began pacing and telling _____ that was not ok. He did have a conversation with _____ about this encounter.

_____ advised he and _____ spoke often regarding numerous different issues and how _____ seems to be a "favorite" around the fire house and he could do no wrong. _____ stated that sometime in the fall of 2019 he went with _____ to a structure fire where a life female paramedic was on scene with them. _____ removed his fire gear and dressed the female paramedic with this gear and they went into the structure after the fire was out. Apparently they wanted to take a photograph of each other. Chief _____ was on scene and was extremely upset at _____. _____ left the scene and left his gear at the station house and after a few days he returned and there was no disciplinary action taken by management towards _____.

_____ identified the fact that as mentioned above he and _____ usually spent a great deal of time in the parking lot outside the fire station after a fire call. Again, many

different conversations about many different subjects. [redacted] when he left the station would drive his pickup truck around the station several times to intimidate both him and [redacted]. Evidently, [redacted] believes he has an assigned parking space in the parking lot and he gets very upset when someone parks in it or near it. One time he almost stuck them with his vehicle and on unknown number of occasions he would "lay down rubber."

[redacted] confirmed sometime in November 2019, [redacted] struck [redacted] with a shammie in his fist in her upper chest area. [redacted] did not see the actual striking however he did hear [redacted] yell ouch! [redacted] later told [redacted] it did hurt. When [redacted] came into the room, [redacted] immediately left. [redacted] stated that initially in late 2019 he did not believe or suspect any racist attitudes, however as time went on and the yelling continued with the physical conduct, conducted by [redacted] now believes it was racially motivated. The yelling at [redacted] for no reason, the physical abuse, the harassment in the parking lot, convinced him that it was racial.

[redacted] went on and confirmed an issue involving a stick that held up the front window of the fire station. [redacted] explained that he was not in the sit room when [redacted] evidently had this stick in his hand and he swatted it at [redacted] [redacted] told him of the incident shortly after it happened that she believed it was [redacted] intent to strike her in the buttocks area but she moved.

[redacted] explained he was present when all of the firefighters received gloves to assist them in handling the fire hoses. After each firefighter was given a pair, he observed [redacted] walk up and physically slap her in the face. He believes he did it twice but not sure, however it left a red mark on [redacted] cheek. [redacted] stated he is aware that [redacted] filed an incident report with the Battalion Chief concerning these incidences but the Township policy precludes sharing any administrative action taken against an employee to a 3rd party. [redacted] stated [redacted] was extremely frustrated with the fact that no administrative action was taken against [redacted] which caused her to not confide in the management on any following issues that occurred after December 4, 2019. Between December 2019 until at least February 2020, [redacted] continued to yell at [redacted] at a high tone pitch for no reason. The continuation of the driving in the parking lot issue and the reactions causing her to lose her passion to become a better firefighter and not being valued by members of the fire department. [redacted] was so disappointed that when she did get called for an assignment she would answer the assignment and immediately leave the fire station when they returned. [redacted] stated she didn't feel protected and it impacted her ability to go to calls and training classes.

[redacted] explained in his opinion because of that she was slowly losing her passion to stay in the fire service, especially at Station 2.

On March 2, 2022, [redacted], Assistant Battalion Chief, Station 2, Telephone contact: [redacted] years in the fire service and primarily works the day shift, was interviewed concerning his knowledge of a hostile work environment concerning [redacted]. [redacted] was read his Garrity Warning by Chief [redacted], he agreed to be interviewed and provided the following information.

[redacted] explained because of his position in the department he was not immediately involved in the incidences that occurred in 2019. He later learned of the allegations concerning [redacted] and when he did learn of them it was after she followed her incident report. He has since this issue, no knowledge of any more recent incidences. He did however ask about the incident and she did not want to respond to him. Since the pandemic, she has not been communicating with firefighters here in the station. He was aware that they were talking Spanish, [redacted] and [redacted], and they were asked to both stop. He did not see any racial issues.

[redacted] explained the firefighters at Station 2 are like family and yes when [redacted] was showing a lack of interest, he inquired with firefighter [redacted] on how she was and was she involved in any other type of employment. [redacted] explained we do that with all of our firefighters when we don't hear from them after a period of time. [redacted] explained the fire department has a firefighters association and [redacted] is the secretary of this organization and she works directly beside him in their meetings. For some unknown reason, she shut down communicating with everyone at the fire station.

[redacted] concluded by stating this investigation of a hostile work environment has never happened in the fire department and it is having a terrible morale effect on everyone.

On March 2, 2022, [redacted] Fire Marshall, Kalamazoo Township, Telephone Contact: [redacted] was interviewed regarding him being in the sit room when [redacted] took the window stick out of the window and attempted to strike [redacted]. [redacted] stated he was sitting in the sit room watching TV in one of the large lounge chairs and did not see the incident. He did state had he seen it he would have taken action.

On March 2, 2022, [redacted], Firefighter, Kalamazoo Township, Telephone Contact: [redacted], was interviewed regarding him overhearing [redacted] and [redacted] speaking Spanish and saying something to the effect, "knock that bullshit off." [redacted] responded by saying he never spoke ill to any person in the department. He further stated he does not recall this incident.

On March 4, 2022, [redacted] Firefighter, Kalamazoo Township, Telephone contact: [redacted], was interviewed regarding him being in the parking lot when [redacted] would consistently drive past the station and intimidate [redacted] with his truck. [redacted] advised he has no information about [redacted] driving recklessly or around the parking lot of the station.

On March 4, 2022, _____, Firefighter, Kalamazoo Township, Telephone _____ contact: _____ was interviewed regarding asking _____ to stop speaking Spanish around the fire station. _____ did ask _____ to stop talking in Spanish because most of the firefighters thought they _____ and _____ were talking about them in Spanish when he later found out they were not. _____ further stated he has been in the parking lot and has observed _____ driving around. He understood that Chief _____ told _____ to stop.

_____ further stated the firefighters care about each other and when they don't see or hear from them for a period of time there is questions asked to their well-being. _____ explained when _____ started as a firefighter she was very interested and wanted to learn and improve her desire to become a firefighter. _____ explained he has not seen her for the last 6 or 8 months and prior to that for some reason she did show up at fires however she left immediately upon returning to the station. _____ explained for some reason she started slowing down in regards to her appearing at the station. _____ stated he did remember seeing her get hit with a pair of gloves by _____ and this caused her to have a mark on her face. _____ stated he does not know why _____ did it. He does not know if the command was advised of this incident. _____ concluded by stating he does recall telling people to leave him alone but he did not think anything of it other than he acts weird around people a lot.

On March 4, [redacted] year employee of the Kalamazoo Township Fire Department, Firefighter, Telephone contact: [redacted] was interviewed regarding an investigation regarding a hostile work environment. [redacted] was advised that this complaint was filed by [redacted]. He was read his Garrity Warning by Chief [redacted] he agreed to be interviewed and provided the following information:

The interview began with this Investigator inquiring if he ever told [redacted] to stop speaking Spanish in his presence. [redacted] responded, "I don't recall telling her to stop speaking Spanish, I told her to speak English." [redacted] was then asked, if he struck [redacted] with a chamois (shammie) in his fist into her chest area. [redacted] responded, "That is completely out of my character for me to do that." [redacted] was then asked if he ever struck [redacted] with a pair of gloves in her face. [redacted] responded, [redacted] shot a rubber band at him, I didn't like that shit, I went over and swatted her face with my hand." [redacted] was asked if he ever swatted a broom handle type stick at [redacted] in the sit room. [redacted] advised he never swatted at her or anyone else.

[redacted] was then asked during the time he was at the fire station, has he continuously yelled at [redacted] for any reason. [redacted] explained he may have yelled at her while on a scene but not at the station.

[redacted] was then asked if he reviewed a memo of notice dated 12/4/2019, see below, regarding and concerning professional conduct while acting in an official capacity with the Township of Kalamazoo Fire Department, [redacted] stated yes and he had a copy of it at home. He stated he will go home and bring it right back. [redacted] stated he understood the memo was about him swatting [redacted] in the face with his hand. He then stated all the other issues were not stated in this letter.

Concerning the written reprimand from Chief [redacted] when [redacted] signed the memo, "really yelled at me concerning these issues." [redacted] signed the memo and understood it was a verbal warning.

Concerning him saying something about her being "hot," [redacted] responded, "she is a child (18) and would not have done it and if I said it, it was out of context." [redacted] explained he does not remember saying anything about clothing being worn under their turnout gear.

[redacted] explained he has no reason to constantly yell at her and for someone to say that since February of 2020, I don't remember yelling at her about anything. I always complimented her about her work.

Regarding the photo incident with the paramedic wearing his gear, Chief [redacted] let me have it with both barrels and the number of policies he claimed I violated. [redacted] stated during his employment at the fire station he has received no favoritism or given a break by the command staff. He has received the above mentioned notice but prior to that he has not received any verbal or written notifications of bad conduct.

Concerning the driving around [redacted] and [redacted] in the parking lot, [redacted] stated he does recall seeing both of them in the parking lot even as late as 3:00 or 4:00 in the

morning. He stated he has spoken with them because the parking spot by the flagpole was given to me by a retired firefighter and they would continuously park there to annoy me. said he never intended to intimidate them for any reason and doesn't specifically recall driving around them more than 3 or 4 times at night. denied treating and different because they are both Hispanic. The interview was then terminated.

To: (FF/EO)

From: (B.C.)

Re: Memo of Notice regarding and concerning professional conduct while acting in an official capacity with the Township of Kalamazoo Fire Department.

Date: 12/04/2019

On Wednesday, December 4, 2019, fire department command staff were made aware of multiple incidents in which your interpersonal skills were questioned over the past few weeks. The Township of Kalamazoo Fire Department strives to provide for a fair, equitable, safe and professional atmosphere for all employees.

The command staff will be conducting a preliminary investigation regarding this matter, this serves as an official reminder that you are to conduct yourself in a manner towards other personnel that is in accordance with the Township of Kalamazoo personnel policies. This is also written notice to discontinue any behavior that negatively effects other employees. This includes, but is not limited to unwanted physical contact or innuendos, creating an unwelcoming environment towards other employee(s), or any other action that can be construed as unprofessional in the workplace or public.

To reaffirm your expectations as a Township of Kalamazoo Fire Department Employee, please refer to KTFD Standard Operating Guides, specifically SOG's numbers 1, 3 and 17. As a reminder, all SOG's may be found on TexCom.

As the preliminary investigation progresses, I will be making contact with you to discuss specific instances and to seek any information regarding this matter that you may have. Please feel free to contact me if you have any questions.

Acknowledged by:

Date
Battalion Chief

Date
Firefighter/Driver

CC: Chief
Firefighter
Personnel File,

On March 4, 2022, _____, Township Manager, Kalamazoo Township, was contacted regarding the personnel files of the Township regarding _____ and _____ was advised that concerning the incident report, _____ was given a memo of notice regarding his professional conduct while acting in an official capacity, which is identified above. The copy identifies a copy of this being sent to his personnel file. Concerning _____, following the December 4, 2019 incident report, she was sent on December 5, 2019 a memo of response and a copy to her personnel file. The significance of this memo is that she was informed that if a new incident occurred she needs to report it within 24 hours of the incident. _____ searched their personnel files and neither of these two documents were contained therein.

On March 7, 2022, _____ was contacted by this Investigator, and presented a copy of the memo of response (attached above to Chief _____ interview) dated December 5, 2019. _____ responded by stating she has never seen this memo and had she seen it she would have signed it. _____ further stated this is the reason why that all of the harassment she received since her initial report was not reported to the command staff.

GBA
Investigation and Security Consulting Services

[REDACTED]

**Attorney-Client Confidentiality
Privileged Communication
Attorney-Work Product**

[REDACTED]

**On Call Firefighter
Hostile Work Environment
Kalamazoo Township Fire Department, Kalamazoo, Michigan**

On Sunday, May 1, 2022, Deputy Battalion Chief [REDACTED] was telephonically contacted at telephone number [REDACTED] to set up a meeting with him on Monday, May 2, 2022. [REDACTED] who has received two voice mail messages from this Investigator, returned this Investigator's call. [REDACTED] was advised this Investigator was following up on questions regarding a conversation he had with Firefighter [REDACTED]. [REDACTED] was advised this was a continuation of the past interview we had on March 2, 2022.

[REDACTED] was specifically questioned regarding a statement he allegedly made to [REDACTED] regarding his, [REDACTED] daughter, about when she came to the fire station and [REDACTED] was there at the same time. [REDACTED] explained that because he is the Deputy Battalion Chief, he was made aware of the complaint [REDACTED] filed about Firefighter [REDACTED]. To get [REDACTED] to speak with him, she told him she did not speak about the incident at that initial contact. [REDACTED], in an effort to convince [REDACTED] that he was concerned about the information he had learned and wanted [REDACTED] to speak with him, he told [REDACTED] in words to the effect that he did not trust [REDACTED], especially when his daughter who is almost the same age as [REDACTED], that he would not allow her to be around [REDACTED]. Again, he was trying to convince her that he was willing to listen to her about what she had reported to the Battalion Chief [REDACTED].

[REDACTED] was disappointed that [REDACTED] did not confide in him when these events were occurring. He only used the statement about his daughter to gain [REDACTED] trust so she would talk to him. This conversation occurred sometime in December 2019.

[REDACTED] was advised considering the statements he made, it was not necessary to meet on May 2, 2022. [REDACTED] advised this investigation has seriously hurt the moral of all the firefighters at Station 2.

On May 1, 2022, [REDACTED], Firefighter, Kalamazoo Township, Tx: [REDACTED] was telephonically contacted to set up a meeting with him on Monday, May 2, 2022. This Investigator left a voicemail. [REDACTED] returned the call and inquired what the meeting was going to be about. This Investigator informed him that it was a continuation of the interview that occurred on March 4, 2022. This Investigator was following up on the situation that he was in attendance with [REDACTED] and other firefighters in the sit room sometime in July 2019. Allegedly, [REDACTED] and [REDACTED] observed a female walking her dog outside the fire station. Someone yelled out that the female walking her dog was "hot." At this point after [REDACTED] made the comment, firefighters [REDACTED] and [REDACTED] became uncomfortable at which time [REDACTED] looked at [REDACTED] and said she was "hot" as well. At this point, according to [REDACTED] began pacing back and forth and he looked at [REDACTED] and said, "that is not ok." [REDACTED] and [REDACTED] immediately left the room and went outside to the parking lot.

[REDACTED] was asked if he recalled this event to which he responded, I do not recall this incident. [REDACTED] was asked if he joined [REDACTED] and [REDACTED] who were in the parking lot. [REDACTED] advised we generally go out to the parking lot after we go on service calls, and we talk just about everything. We have spoken about [REDACTED], and he is consistently weird on how he interacts with his fellow firefighters. [REDACTED] concluded by stating he honestly does not recall the above event.

GBA
Investigation and Security Consulting Services, LLC

[REDACTED]

**Attorney-Client Confidentiality
Privileged Communication
Attorney-Work Product**

[REDACTED]

**On Call Firefighter
Hostile Work Environment
Kalamazoo Township Fire Department, Kalamazoo, MI**

On March 31, 2022 [REDACTED], was recontacted regarding her signature on a Memo of Response from [REDACTED], Battalion Chief, and dated December 5, 2019. [REDACTED] was shown a copy of the above mentioned memo and asked if the signature appearing at the bottom was hers. The copy of this memo was found by Battalion Chief [REDACTED] on March 28, 2022 in an unmarked folder in a cabinet at Fire Station number 2. [REDACTED] reviewed this copy and advised yes it was her signature but she could not remember the circumstances about the memo when I signed it. She does not recall what was specifically said by the Battalion Chief [REDACTED] when she signed it.

[REDACTED] read the memo and stated in paragraph 2 she did not like what the memo said about any incidences of discrimination not being found because it is not true. Attached is a copy of the memo in which she highlighted and initialed.

[REDACTED] advised she wanted to inform this Investigator about an unrelated event that occurred in July 2019. [REDACTED] stated when she was finishing her probation period with the Fire Department, she was befriended by fellow firefighter [REDACTED], and both worked out at the gym and constantly talked about fire science.

Sometime later, following a training session at the department, [REDACTED] was exhausted, sat down and put her head in her hands. During this time, [REDACTED] found out that he had passed his probation period and now was a firefighter. [REDACTED] was being congratulated by fellow firefighters and they were giving each other high fives. [REDACTED] stated she did not immediately raise her head, and upon [REDACTED] seeing this he said in anger, "why don't you go and kill yourself." [REDACTED] explained she immediately got up and left and does not know what happened to him only to learn later that [REDACTED] was telling everybody he had been written up for this incident. [REDACTED] explained she was never told that [REDACTED] was written up by any command staff or even asked about what happened. [REDACTED] stated she believes that [REDACTED] wanted to start a personal relationship with her to which at the time she never even thought about it. [REDACTED] stated she wanted this Investigator to be aware of this incident.

~~XX~~ page
2

[[REDACTED] was asked if she ever heard [REDACTED] mentioned at the fire station. Meaning the [REDACTED]. She advised she did hear it mentioned in the fire station but does not know the circumstances of why it was being mentioned but believes it was "stupid." [REDACTED] advised her, [REDACTED] ph, the three Hispanics who worked at the fire station did not start this labeling. She does not know how it started.]]

To: [redacted], Firefighter
From: [redacted] Battalion Chief
Re: Memo of Response
Date: 12/05/2019

COPY

[redacted]
On Wednesday, December 4, 2019, you contacted me regarding numerous purported inappropriate interpersonal instances regarding Township of Kalamazoo Fire Department employee [redacted] dating from approximately July 2019 to present. The Township of Kalamazoo Fire Department strives to provide for a fair, equitable, safe and professional atmosphere for all employees and takes pride with maintaining compliance as an Equal Opportunity Employer.

I have conducted a preliminary investigation regarding this matter and have talked to both parties involved and a few of the witnesses that you have listed. Upon completion of the preliminary investigation, it has been determined that there have been a number of low-level inappropriate interpersonal interactions between you and [redacted] over the past six months. At no time during the investigation were any instances of discrimination against an employee because of anyone's race, color, religion, sex, national origin, age, disability or genetic information discovered. JB

After speaking with you [redacted] and some of your listed witnesses, a few key findings have been identified. Among those, the lack of professional and respectful treatment between coworkers and lack of effective, timely and adult-like communications have been identified as some of the major contributing factors.

I have spoken with [redacted] in great depth regarding this matter. Following our conversations, I do not anticipate any future instances to take place. If any future instances regarding any purported inappropriate treatment of activities occur, you are to immediately tell the individual that the (specific) treatment and/or activity is unwanted and ask them to immediately stop the interaction. As soon as possible and practical, but within 24 hours, the incident needs to be reported to myself or Chief [redacted].

As a reminder, the fire department is a tight-knit profession, it is imperative that we maintain a high level of trust, interaction and communication within all ranks of the organization. It is evident that the reported activities have been going on for nearly six months in a less than adult-like fashion. While this is no excuse for the prolonged treatment in this instance, early communications and professional dialog between all involved employees and fire department command staff would have greatly reduced the personal and professional impact of everyone involved.

This is also an official reminder that we are to conduct ourselves in a manner that is in accordance with the Township of Kalamazoo personnel policies. To reaffirm our expectations as a Township of Kalamazoo Fire Department Employee and to further enhance the overall team efforts of the department, KTFD Standard Operating Guides may be found on TexCom.

Acknowledged by:

[redacted]
Battalion Chief

12-9-19
Date

[redacted]
Firefighter

2/09/19

CC: Chief [redacted]
Firefighter [redacted]

On March 29, 2022, [REDACTED], Address: [REDACTED];
Tx: [REDACTED], former Firefighter for KTFD, August 2018 – May 2020 was interviewed regarding his knowledge of [REDACTED] and working with her at the Fire Department.

[REDACTED] was advised that a complaint had been filed wherein [REDACTED] advised she had been a victim of a hostile work environment at Station 2 of the Fire Department. [REDACTED] agreed to be interviewed and provided the following information.

[REDACTED] stated he is well acquainted with [REDACTED] and she and he spoke often about becoming an EMT and what the requirements to be certified are. He knows her to be an outstanding employee, always on site to learn about her firefighting endeavors.

When asked if he was aware of any physical or verbal actions taken by other employees at Fire Station 2, [REDACTED] stated he did not see nor was told of any type of abuse either physical or verbal taken against [REDACTED]. [REDACTED] identified [REDACTED] and her were the best of friends and he suggested that this Investigator speak with him. [REDACTED] concluded by stating if he did see or learn of any type of hostilities toward [REDACTED] he would have certainly advise the Battalion Chief.

On March 29, 2022, [REDACTED], Retired, Address: [REDACTED], MI; Tx: [REDACTED], was interviewed regarding his working relationship with [REDACTED]. [REDACTED] was advised a complaint was filed by [REDACTED] that she believes she is a victim of a hostile work environment that occurred at Station 2. [REDACTED] agreed to be interviewed and provided the following information.

[REDACTED] stated he was retired from the Fire Department but did work with [REDACTED] as well as two other Hispanic employees. He knows [REDACTED] as being a very capable person who always was willing to get involved with all of the firefighters at Station 2. [REDACTED] stated she is very young and when she first came to the fire station, she spent her own time learning the job. She was very close friends with two other Hispanic firefighters, [REDACTED] and [REDACTED]. [REDACTED] was asked if observed or heard of any acts taken by other firefighters that could be considered as creating a hostile work environment. He stated he does not have any information regarding [REDACTED] possibly being a victim of any physical or verbal attacks directed toward her by any other firefighters.

[REDACTED] advised he did recall [REDACTED] spent a great deal of time in the parking lot after completing a call. This happened several times and she was with [REDACTED] and [REDACTED] a lot. He could not provide any additional information.

On March 30, 2022, [REDACTED] telephonically contacted this Investigator and stated he remembered that all of the firefighters were together in the sit-room, [REDACTED] and [REDACTED] were speaking Spanish and someone jokingly referred to them as being the [REDACTED]. [REDACTED] advised that the tone of the conversation was in a jovial manner but this set [REDACTED] off and recalls [REDACTED] telling them to stop speaking Spanish in the fire station. [REDACTED] advised that [REDACTED] is very sincere about his job, he knows the job well but he has not been promoted for the length of time he has been there and he does not know why the Battalion Chief hasn't promoted him.

On April 1, 2022, Deputy Chief, [REDACTED], Kalamazoo Township Fire Department, was contacted and interviewed regarding his knowledge of a complaint filed by Firefighter [REDACTED]

██████████ involving a hostile work environment at Station 2. Present at this interview was Township Manager DEXTER MITCHELL who was requested to advise Deputy Chief ██████████ of the Garrity Warning Rights. ██████████ agreed to be interviewed and provided the following information.

██████████ was asked if he had any knowledge of the ongoing investigation concerning Firefighter ██████████, he said no. He is familiar with her and he met her through various training sessions. ██████████ was shown a texcom message sent to ██████████ by Battalion Chief ██████████. ██████████ read this message and stated that ██████████ never contacted him about any issues she was having nor did Battalion Chief ██████████ contact him about the message. ██████████ stated it appears he was left out of the loop. ██████████ then discussed various procedures conducted by the Fire Department in terms of evaluation of firefighters. He also stated the Fire Department has not had any diversified training for several years. ██████████ was asked if he would keep this interview confidential to which he agreed.

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December 7, 2022

TO: Ms. Roxanne C. Seeber, Esq.
Township Attorney
Via Email: seeber@michigantownshiplaw.com

Kurt P. McCamman, Esq.
Labor Counsel
Charter Township of Kalamazoo
Via Email: McCamman@MillerCanfield.com

Donald D. Martin, Supervisor – c/o Attorney Seeber
Mark E. Miller, Clerk – c/o Attorney Seeber
Sherine M. Miller, Treasurer– c/o Attorney Seeber
Steven C. Leuty, Trustee– c/o Attorney Seeber
Lisa M. Moaiery, Trustee– c/o Attorney Seeber
Clara D. Robinson, Trustee– c/o Attorney Seeber
Ashley M. Glass, Trustee– c/o Attorney Seeber
Dexter A. Mitchell, Township Manager – c/o Attorney Seeber

FROM: David A. Kotwicki, Esq.
Counsel for:
David J. Obreiter,
Former Fire Chief

CC: David J. Obreiter,
Former Fire Chief

**RE: FORMAL REQUEST BY FORMER FIRE CHIEF DAVID
OBREITER THAT A MOTION FOR HIS FULL
REINSTATEMENT BE BROUGHT AT THE NEXT REGULAR
MEETING OF THE CHARTER TOWNSHIP OF
KALAMAZOO BOARD OF TRUSTEES SCHEDULED FOR
DECEMBER 12, 2022.**

Dear Township Attorney Seeber:

I would appreciate your conveying to the full Board, as I did at the meeting, Former Chief Obreiter's great appreciation for granting him the opportunity to present the truth concerning his actions to the full Board, and members of the public, at the Special Meeting which occurred the evening of December 5th.

The opportunity for Former Chief Obreiter to speak directly in Appeal to the Board concerning his actions and present the crucial evidence in favor of his full exoneration was wholly necessary and appreciated. Unfortunately, he had been deprived of the opportunity to review evidence against him and present his side of the story for far too long. This Special Meeting was a necessary, and crucial, first step toward the restoration of his career, reputation, and standing in the community.

With great appreciation for the attention and patience the Board provided to us at the meeting, **I respectfully submit that the evidence overwhelmingly supports the following:**

- **Former Chief Obreiter served Kalamazoo Township with diligence, dedication, and integrity.**
- **He took the allegations made by the former firefighter in his department very seriously and would never tolerate any form of discrimination or harassment in the department.**
- **He conducted an investigation in accordance with his professional judgment, based on the allegations reported, and the information reasonably available to him.**
- **He followed Township Policies and Procedures, despite minimal training provided to him by the Township; notwithstanding, his actions were the essence of the necessary "Prompt and Appropriate Remedial Action" one in his position must take.**
- **Review of the Township's Investigation Report, which he long sought the opportunity to review, most importantly, before his termination, not only provides no substantiation whatsoever of the charges for which former Chief Obreiter was terminated, but completely exonerates him and vindicates his conduct.**
- **He was deprived of this opportunity, and the sacred Constitutional Right to Due Process, that anyone facing the loss of their livelihood should be given.**

Now, having heard the evidence, the Board must promptly act, and restore former Chief Obreiter, the true embodiment of the words “*public servant*”, to his position, forthwith and without further delay.

Only through the Board taking this prompt and courageous action, can the life-altering damage to former Chief Obreiter, economically, reputationally, and emotionally (*both to him and his family*), which exponentially increase by the day, begin to be remediated.

Former Chief Obreiter fully understands, that undertaking this necessary corrective action is by no means easy. However, ultimately, it is the right thing to do. Moreover, there needn't be a false choice -- between ensuring that victims of discrimination are protected and honored and protecting the career and reputation of an honorable and diligent public servant.

Failing to fully and promptly reinstate Former Chief David Obreiter to his position allows the continuance, and ultimately constitutes an endorsement of, a grave injustice.

Please promptly provide a copy of this request to all members of the Charter Township of Kalamazoo Board of Trustees and confirm to me that the same has been done.

Respectfully submitted,

David A. Kotwicki, Esq.

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