

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: CHARLES DEAN,) Case No. 07-0646EC
)
Respondent.)
)
_____)

RECOMMENDED ORDER

This cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on July 11 and 12, 2007, in New Smyrna Beach, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: James H. Peterson, III, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: Maureen Sullivan Christine, Esquire
28 Cordova Street
St. Augustine, Florida 32084

STATEMENT OF THE ISSUE

The issues to be resolved in this proceeding concern whether the Respondent, as a member of the City Commission of Oak Hill, Florida, committed a violation of Section 112.313(6), Florida Statutes, by allegedly threatening the police chief's employment status during a verbal altercation.

PRELIMINARY STATEMENT

This cause arose on October 25, 2006, when an Order was issued by the Florida Commission on Ethics (Commission) in which probable cause was found to believe that the Respondent, Charles Dean, violated Section 112.313(6), Florida Statutes, during his tenure as a member of the City Commission of Oak Hill, Florida. The case was forwarded to the Division of Administrative Hearings and the undersigned Administrative Law Judge. A hearing was then scheduled.

Prior to the final hearing the parties submitted a Pre-hearing Stipulation containing joint stipulations of fact. The cause came on for hearing as noticed. At the hearing, the Commission's advocate (Petitioner) called four witnesses: Carol Dean, the Respondent's wife, Michael Ihnkin, a Oak Hill policeman, and Walter Zalisko, the former Oak Hill Police Chief, as well as the Respondent. The Petitioner offered 10 pre-marked exhibits into evidence. The following such exhibits were received into evidence: Exhibit A-2 (certified copy of Oak Hill's City Charter), Exhibit A-3 (photographs A-F), a rough drawing by the Respondent of the Oak Hill Police Department, Exhibit A-4, and Exhibit A-8 (the City of Oak Hill Personnel Police Manual). The Petitioner also introduced A-11 (memo from Chief Zalisko dated November 10, 2004), Exhibit A-12 (Volusia County Sheriff's Office Internal Affairs Document), as

[corroborative hearsay only], Exhibit A-13 (memo from Michael Ihnkin dated May 8, 2006) [corroborative hearsay only], Exhibit A-14 (letter to Chief Zalisko from Mr. Dean), and Exhibit A-15 (a letter from Guy Grasso dated April 21, 2005). The Respondent's counsel called four witnesses: Michael Ihnkin, Charles W. Haynes (a customer of C. Dean's Saddle Shop), Guy Grasso (current Oak Hill Police Chief), and the Respondent. The Respondent introduced the following Exhibits: R-1 (survey of Dean's property), R-4 (a letter from Michael Ihnkin dated October 16, 2006) [corroborative hearsay only], and R-6 (a photograph of the stop sign and the background). Upon concluding the proceeding a transcript thereof was ordered and the parties elected to file proposed recommended orders. An extension of time for filing proposed recommended orders was stipulated to by both counsel and Proposed Recommended Orders were timely filed November 15, 2007. The Proposed Recommended Orders have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. Charles Dean, the Respondent, was elected to the Oak Hill City Commission in the 2004 election and took office in January 2005. He is employed as a Senior Manager of Operations and Management for the Kennedy Space Center and also is a saddle and harness maker, owning C. Dean's Saddle Shop jointly with his

wife, Carol Dean. As an elected public officer, the Respondent is subject to the requirements of Part III, Chapter 112, Florida Statutes, which is the Code of Ethics for public officers and employees with regard to any acts or omissions committed during his tenure in office.

2. The Petitioner, Ethics Commission, is an agency of the State of Florida charged with enforcing the provisions related to ethical standards for public officers and employees embodied in Part III, Chapter 112, Florida Statutes, and for imposing sanctions for violations thereof.

3. The City Commissioners of Oak Hill, including the Respondent, are elected officials accountable to citizens at regular elections and are subject to recall as permitted by law and in accordance with the Oak Hill City Charter. The Commission also appoints heads of departments from among the sitting commissioners. The function of the department heads is to ensure that the department to which they are assigned is running efficiently in carrying out the Commission's directives. The Respondent was appointed as department head of the solid waste department. He had no authority over the police department.

4. According to the Oak Hill City Charter, no individual commissioner, except the appointed department head for a

particular department, is permitted to give directives or orders to any employee, except in cases of emergency.

5. The Respondent, in his testimony, indicated his awareness of those limitations on his authority as a city commissioner in his contact with city employees. In his position at the Kennedy Space Center employed by NASA, the Respondent is a Senior Manager of utilities and supervises some 900 employees. He thus has professional awareness and experience in dealing with personnel matters such as employee suspensions, terminations and the like.

6. The Complainant, Walter Zalisko, was hired by a majority vote of the City Commission to be Chief of Police for the City of Oak Hill. He was hired on July 29, 2004, before the Respondent's election to the City Commission. He was hired with the charge of elevating the professional standing and status of the City of Oak Hill Police Department.

7. Soon after he took office in January 2005, the Respondent encountered difficulties in his relationship with Chief Zalisko. This occurred over the manner in which then Chief Zalisko handled the suspension and termination of Oak Hill City Police Department Officer Dee Williams. At a City Commission meeting on April 18, 2005, the Respondent took issue with the fact that Chief Zalisko had unilaterally suspended Officer Williams from her position, without pay, pending an

internal audit, rather than bringing that decision before the City Commission for a vote. After the Respondent raised the issue at that meeting, the City Commission voted to reinstate Officer Williams's pay pending the internal audit results.

8. In reality the Respondent objected to the procedure used by then Chief Zalisko against Officer Williams, rather than the actual decision to terminate the officer. In fact, the Respondent ultimately voted to terminate Officer Williams from the Oak Hill Police Department.

9. In any event, after the April 18, 2005, City Commission meeting, then Chief Zalisko was angry that the Respondent had questioned his authority to suspend Officer Williams without pay in front of the City Commission. While walking back from the City Commission meeting Chief Zalisko called the Respondent a derogatory name and stated to other police officers that he was "going to get him."

10. Apparently various members of the community communicated to the Respondent that Chief Zalisko was very upset with him and was "having him watched." Officer Winston of the police department came to the Respondent's shop and told the Respondent that the Chief was "out to get him and was watching his shop and having officers take photographs of cars parked at his shop."

11. Sometime in June 2005 the Respondent received a telephone call from an anonymous caller advising him that Chief Zalisko was watching his saddle shop and having police officers take photos of cars parked there. This person was later revealed to be Sergeant Guy Grasso who replaced Zalisko as the current Chief of Police for Oak Hill and who testified in the hearing. Chief Grasso contacted the Respondent after Chief Zalisko ordered officers, including Grasso, to keep cameras in their police cars and photograph and ticket cars parked illegally at the Respondent's shop.^{1/} As shown by Advocate's Exhibit A-3 (A-F) a series of photographs (A-F) of cars parked at the Respondent's business, photographs indeed, were taken. Although Chief Zalisko initially denied that he had done so, or ordered it done, he also testified that he took some of the photographs, but thought that Officer Ihnkin or Officer Winston had taken the remainder of the photographs. In any event, both Officer Ihnkin's and Chief Grasso's testimony as well as that of Chief Zalisko, shows that photographs of cars parked in front of the Respondent's shop were taken, and implicitly would only have been taken upon then Chief Zalisko's order.

12. Officer Ihnkin testified that Chief Zalisko told police officers prior to October 11, 2005, to write tickets for cars parked in front of Dean's Saddle Shop and to take photographs of the cars there. The current Chief of Police, Guy

Grasso, also testified that before October 11, 2005, then Chief Zalisko had ordered all officers to take photographs of cars parked at the Respondent's saddle shop business and to give tickets to cars parked there.

13. Chief Zalisko had discussions with members of the police department concerning the application of Section 316.945, Florida Statutes (the parking violation statute) as it pertained to the Respondent's shop and its location. An issue arose about the location of a stop sign at the corner of U.S. 1 and East Halifax Avenue, concerning the legality of cars parked in relation to the sign. Officer Ihnkin testified that he pointed out to Zalisko that the statute required that a car be parked 30 feet on the approach to the stop sign (presumably a minimum of 30 feet distance from the sign) and that cars parked on U.S. 1 in front of the saddle shop were actually behind the stop sign so they could not be on the approach to it and were therefore legally parked. Officer Ihnkin relates that Chief Zalisko opined that any car parked in front of the saddle shop was illegally parked and should be cited. Both Chief Grasso and Officer Ihnkin's testimony regarding the conversations they had with Chief Zalisko about the applicability of the above statute to parking in the vicinity of the saddle shop is corroborated by Chief Zalisko's opinion that it is not legal to park in front of

Dean's Saddle Shop on U.S. 1 or on the East Halifax side of the shop.

14. There were four or five incidents before October 11, 2005, while the Respondent was at his shop, when he was contacted by officers from the police department about cars parked in front of the shop. There was never an incident where the officer was rude to him, the contacts were friendly and the Respondent always voluntarily had the cars moved.

15. Kelly's Bait and Tackle Shop and Shell Gas Station is a nearby business which has a stop sign on U.S. 1 next to the business. The Respondent observed cars parked around that stop sign and the gas station actually dispensing gas to cars which technically were on the right-of-way of U.S. 1. Neither the cars nor the business was ever cited or told to move the cars, according to the Respondent. Whether or not this was true the Respondent felt that he was being harassed by Chief Zalisko by having his business targeted and not other businesses. The fact that people were telling him, rightly or wrongly, that he was being watched by the police chief and that customers were having to move their cars from his shop, when other businesses were not being so closely watched, or supervised by the police department fed the Respondent's feelings of harassment on the part of then Chief Zalisko.

16. On October 10, 2005, a City Commission meeting was held at which the Respondent once again took issue with the way Chief Zalisko handled the promotion of Sergeant Shaffer to lieutenant. The City of Oak Hill operates by resolution, and before anyone could be promoted to the position of lieutenant the city needed to pass a resolution creating that position. On October 7, 2005, before the City Commission had voted on whether to create the lieutenant's position, Chief Zalisko issued a press release announcing that Officer Shaffer had been promoted to lieutenant. The Respondent took issue with Chief Zalisko at the City Commission meeting for announcing to the newspaper that the promotion had been made, when in fact it had not. Chief Zalisko became angry with the Respondent and raised his voice on that occasion. The Respondent actually approved having Officer Shaffer promoted to lieutenant, but was at odds at Chief Zalisko over the procedure that Chief Zalisko had used. Chief Zalisko's anger at the Respondent from the events of the October 10th City Commission meeting is corroborated by Advocate's Exhibit 6, in which Zalisko describes the Respondent's conduct at the October 10th meeting as "ruining Lieutenant Shaffer's day" by unnecessary "show boating."

17. On October 11, 2005, Officer Ihnkin observed a car parked in front of Dean's Saddle Shop. He thought it might be illegally parked, but rather than issue a citation he went into

the shop and asked the owner of the car to move it, which the owner readily did. Officer Ihnkin stated that the sales lady, who actually was the Respondent's wife, stopped him while he was in the store and accused him and the police department of harassing them and interrupting her sale. Mrs. Dean and witness Charlie Haynes, a good friend of the Dean's niece and nephew, both testified that the officer behaved in a gruff rude manner toward Mrs. Dean. Officer Ihnkin denied being rude or unprofessional or that he raised his voice.

18. Mrs. Dean testified that she primarily runs the shop, with some help from her husband. She had never encountered any problems with parking around the shop, according to her testimony, until the Respondent questioned Chief Zalisko about policy and procedures regarding the Williams suspension incident. After that she maintains police officers would come to the shop and tell customers to move their cars. The customers complied with it. Mrs. Dean maintains that during that same time period no other businesses in the vicinity were having parked cars moved. She also states that she observed Chief Zalisko sitting in his patrol car watching her business with binoculars. These incidents purportedly occurred between February and October of 2005.

19. In any event, at the end of the October 11, 2005, incident in the store, Office Ihnkin left the saddle shop after

the customer complied with his request to move the car without issuing a traffic citation or a written warning.

20. Later that afternoon the Respondent came to the saddle shop after work. Mrs. Dean explained what had happened and told the Respondent that the officer had been rude.

21. The Respondent told his wife that he would find out about the situation and went to the police station. Upon arriving at the Oak Hill Police Station, the Respondent confronted Chief Zalisko in his office regarding the incident at Dean's Saddle Shop earlier that day. The Respondent asked the chief why the officer had been rude to his wife and the chief responded by telling him that the officer had not been rude.

22. During the conversation regarding the incident with Officer Ihnkin at the saddle shop, the Respondent told Chief Zalisko that "you work for me." Chief Zalisko maintains in his testimony that he responded that he did not work for the Respondent, but that he worked for the city commission as a whole. The Respondent went on to criticize the way the chief was running the police department and told the chief that he did not feel that he was following proper procedures.

23. During the course of the heated conversation of about 10 minutes duration the subject of the promotion of Lieutenant Shaffer came up once again. The Respondent indicated his displeasure at the way Chief Zalisko had handled the matter of

the promotion of Lieutenant Shaffer. The Respondent maintains that he did not raise the issue of Lieutenant Shaffer's promotion during this conversation because he did not want to upset Lieutenant Shaffer once again as had been done the night before at the city commission meeting. Lieutenant Shaffer was present during this conversation between the Respondent and Chief Zalisko in the police station.

24. Regardless of who brought up the Lieutenant Shaffer promotion issue again, it is undisputed that in the conversation the Respondent made the comment, "I am coming after your job, and I am going to work hard to get rid of you." This comment was made near the end of the conversation when the Lieutenant Shaffer promotion was being discussed.

25. The evidence does not reflect that the Respondent ever approached Officer Ihnkin concerning the way that he felt the officer had treated Mrs. Dean at the saddle shop on the day in question. The evidence does not indicate that he directed Chief Zalisko to do anything regarding parking citations or violations at his shop. He never issued any orders or directives to Chief Zalisko during that conversation at the police station. It is undisputed that both Chief Zalisko and the Respondent were speaking to each other with raised voices, arguing during this conversation. The conversation or argument lasted approximately 10 minutes whereupon the Respondent left the police station.

26. The Respondent admitted in his testimony at final hearing that he made the comments to Chief Zalisko in both his official capacity as a city commissioner and in his capacity as a private citizen.

27. Chief Zalisko in his testimony stated that he felt uncomfortable with the way the Respondent approached him during the argument in the police station. He testified that it was the second time the Respondent has threatened his job and he felt that he could go through with the threat and that he was misusing his position "for some personal gain to his saddle shop."

28. Chief Zalisko further acknowledged that the Respondent never told him not to enforce the traffic laws at his shop, or that everybody should be ticketed, but the chief testified that the fact that the Respondent was complaining to him in his office and the fact that he was a commissioner sent him a signal that the Respondent was looking "for some preferential treatment." It is clear that during the conversation the Respondent told the chief that the chief "worked for him" in the context of the Ihnkin incident. It is also clear that the Respondent knew at the time of the confrontation that he should not use his official position to confront Chief Zalisko and threaten his job, regardless of whether it was about the parking situation or what the Respondent believed about the way the

chief managed the police department, including the Lieutenant Shaffer promotion incident. The Respondent understood the limitations and restrictions of both the city charter and the code of ethics.

29. City commissioners are accountable to the citizens and the Respondent was the appointed head of the Solid Waste Department therefore he had no authority to issue orders or directives concerning the police department. Parenthetically, there is no evidence that he actually did that. Under the city charter no individual commissioner, except the commissioner who is an appointed department head, may give directives to employees of a commissioner's assigned department.

30. The Respondent sought to justify his behavior on October 11, 2005, by alleging that he felt that Chief Zalisko had been harassing him. The totality of the evidence of record indicates that there is some validity to the contention that Chief Zalisko was harassing the Respondent, even in the face of the fact that no actual tickets or warnings were issued for parking violations adjacent to the Respondent's saddle shop. The evidence, however, clearly and convincingly demonstrates that the Respondent, while a member of the Oak Hill City Commission, went to the office of the police chief and threatened the police chief concerning his employment status, after a police officer had notified the Respondent's wife of a

parking violation in front of their business, and his wife had conveyed to the Respondent the message that the officer had been rude to her. The Respondent, both as a private citizen and as a city commissioner, made direct threats of retaliation against Chief Zalisko concerning his employment.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

32. Section 112.322, Florida Statutes (2007), and Florida Administrative Code Rule 34-5.0015, authorize the Commission on Ethics to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (the code of ethics for public officers and employees).

33. The burden of proof is on the party asserting the affirmative of the issue in these proceedings. See Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dept. of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). The Commission in this proceeding is asserting the affirmative and seeking to change the status quo by attempting to show that the Respondent has violated Section 112.313, Florida Statutes. The Ethics Commission proceedings which seek recommended penalties against

a public officer or employee require proof by clear and convincing evidence. See Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Clear and convincing evidence has been held to be that evidence which is credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses lacking in confusion as to the facts in issue. The evidence should be of such weight as to produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations. See In Re: Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

34. Section 112.313(6), Florida Statutes provides:

MISUSE OF PUBLIC POSITION.- No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

35. The term "corruptly" is defined by Section 112.312(9), Florida Statutes as follows:

Corruptly means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is

inconsistent with the proper performance of his or her public duties.

36. In order for it to be concluded that the Respondent violated Section 112.313(6), Florida Statutes, the Commission on Ethics must establish the following elements: (1) The Respondent must have been a public officer or employee; (2) the Respondent must have (a) used or attempted to use his or her official position or any property or resources within his or her trust, or (b) perform his or her official duties; (3) the Respondent's actions must have been taken to secure a special privilege, benefit or exemption for himself or herself or others; (4) the Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting himself or herself or another person from some act or omission which was inconsistent with the proper performance of his or her public duties.

37. It has been stipulated that the Respondent was a member of the Oak Hill City Commission at times pertinent hereto, and is subject to the requirements of Part III, Chapter 112, Florida Statutes. Thus the first element referenced above of a violation of the quoted statutory provision, has been established.

38. It must also be shown that the Respondent used or attempted to use his public position. While the Respondent may

argue that he, acting alone, did not have the power to take action against Chief Zalisko, all that is required is that an attempt to use one's public position to secure a special privilege, benefit, or exemption be made. In that regard, the Respondent admits that during his confrontation with Chief Zalisko on October 11, 2005, concerning the Officer Ihnkin incident, the Respondent told Chief Zalisko, "You work for me." The evidence also clearly shows that the Respondent told the chief that day, "I am coming after your job, and I am going to work hard to get rid of you." The Respondent admitted those statements he made to Chief Zalisko were made both in his capacity as a private citizen and as a city commissioner. Chief Zalisko clearly felt that the Respondent, as a city commissioner, was threatening his job.

39. The Commission on Ethics has held that "the mere invocation of one's status as a public official may constitute a use of office." See Final Order in Public Report In Re: Tom Ramiccio, 23 FALR 895, 902 (Fla. Commission on Ethics 2000) [DOAH No. 00-265EC], affirmed per curium, 792 So. 2d 471 (Fla. 4th DCA 2001).

40. This evidence concerning the statements made during the conversation on October 11, 2005, clearly show that the Respondent used or at least attempted to use his position. The evidence also clearly demonstrated that he attempted to use his

position or office to secure some benefit, privilege or exemption for himself. Although only an attempt need be shown, that evidence revealed that many, if not all, of his threatening statements to Chief Zalisko were related to parking enforcement at his business. The context of the Respondent's statements declaring that Chief Zalisko worked for him, during the conversation regarding parking enforcement and his further pronouncement that he did not like the way the chief managed the police department and that he would work hard to get rid of him, leaves little doubt that he intended to intimidate Chief Zalisko with the power of his position, in part in an attempt to influence the way the parking laws were being enforced around his business. Therefore, the statutory requisite that his actions were done in an attempt to secure some special benefit has been met (although, to the extent Chief Zalisko focused his enforcement attention on the Respondent's business location, his conduct warrants scrutiny as well).

41. In consideration of the admitted statements by the Respondent to Chief Zalisko during their confrontation it has been shown that the Respondent acted with the requisite wrongful intent, albeit very transitory and in the heat of anger, as is defined in Section 112.312(9), Florida Statutes. Indeed, the Commission on Ethics has opined in CEO 91-38 (CEO's are found at www.ethics.state.fl.us) that even identification of oneself as a

city council member in correspondence may be inappropriate, depending on the context. Specifically, the Commission on Ethics has concluded that it would be inappropriate for a public official to identify himself as a council member in a letter "being sent to settle a strictly private dispute with a debtor or creditor." CEO 91-38, page 2. In the case of In Re: Jimmy Whaley, 28 FALR 2267 (Florida Commission on Ethics 1997) [DOAH No. 97-143EC], where a city commissioner's "choice of words and tone of voice" evidenced his intent to misuse his official position, the Respondent's choice of words in the instant situation, stating that Chief Zalisko "worked for him" and that he was "coming after the [police chief's] job" was clearly designed to intimidate Chief Zalisko. He was attempting to intimidate the chief with the power of his position as a city commissioner during their confrontation regarding the parking enforcement issue around the Respondent's business and that is the way he was understood by Chief Zalisko.

42. The Respondent's words and actions that day, together with the Respondent's understanding of the limitations imposed on his interactions with city employees in his capacity as a city commissioner, show his wrongful intent on that brief, transitory occasion.

43. The Respondent was clearly upset during the confrontation; therefore, his comments should be understood with

that consideration in determining their import or the weight to be ascribed to them. The Respondent had wrongful intent when he made the comments at issue, given his past hostile relationship with Chief Zalisko, his beliefs concerning the chief's mismanagement of personnel practices in the police department and his beliefs concerning the chief's apparent selective law enforcement directed at him and his business. The comments are somewhat understandable, while not totally excusable. As noted by the Commission on Ethics in its Final Order and Public Report in In Re: Fred Peel, 15 ALR 1187 (Florida Commission on Ethics 1992):

It is possible for the corrupt intent required by the statute to be formed instantaneously, and a premeditated plan for securing a special benefit is not required by the statute. Even a reflective reaction may rise to the level of corrupt intent, depending on the circumstances.

Id.; See also In Re: Lisa Marie Phillips, DOAH Case No. 05-1607EC (Florida Commission on Ethics 2006) (Recommended Order page 13, paragraph 33, adopted in Final order on April 21, 2006).

44. The evidence shows that the Respondent knew at the time that he made the intimidating statements referenced above that they were "wrongful" and were made for the purpose of influencing the enforcement of parking regulations in an effort to benefit himself or his business. They were inconsistent with

the proper performance of his public duties. The Respondent has admitted that the statements made regarding parking enforcement, regarding police management (particularly the promotion of Lieutenant Shaffer incident or issue) were made in the Respondent's public capacity as a city commissioner. See Recommended Order in In Re: Tom Ramiccio, 23 FALR 895, 909 (Florida Commission on Ethics 2000) [DOAH Case No. 00-265EC], affirmed per curiam, 792 So. 2d 471 (Fla. 4th DCA 2001) found that the context in which remark was made indicated intention to threaten in a manner that was inconsistent with the Respondent's performance of his public duties); cf, In Re: Al Paruas, DOAH Case No. 04-3831EC (Florida Commission on Ethics 2005) (where a city commissioner was found to have misused his office when he had a meeting with the police chief and police officer during which the commissioner expressed his displeasure with the police department and suggested that the policemen should apologize and take the ticket back).

45. In summary, the clear and convincing evidence demonstrates that the Respondent violated Section 112.313(6), Florida Statutes, by using his position to threaten and/or intimidate Chief Zalisko and that, as a member of the City Commission of Oak Hill, he violated Section 112.313(6), Florida Statutes (2007), by threatening the police chief concerning his employment after a police officer notified the Respondent's wife

of a parking violation in front of the Respondent's business. It is determined that, in a transitory, isolated way, during the heat of anger, the Respondent made these threats in a manner inconsistent with the proper performance of his public duties and thus with the wrongful intent required in the above-quoted statutory definition. It is not, however, to be concluded that the Respondent is by nature and regular practice in his public duties or in his life as a private citizen carrying out his public duties or his private business in a corrupt, wrongful manner.

46. Public officials who have misused their position are subject to varying penalties including reprimand, public censure, suspension from office, removal from office, impeachment, forfeiture of no more than one-third salary per month for no more than 12 months, and a civil penalty not to exceed \$10,000.00. See § 112.317, Fla. Stat. (2007). In consideration of the total circumstances shown by the above findings of fact, especially the shared faults and responsibilities in the relationship between former Chief Zalisko and the Respondent, and particularly the Respondent's contrition and candor in describing honestly the circumstances of the incidents in question, related in the above findings of fact, a minimal penalty is warranted.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and the arguments of the parties, it is, therefore,

RECOMMENDED that a final order and public report be entered by the Florida Commission on Ethics finding that the Respondent Charles Dean, violated Section 112.313(6), Florida Statutes (2007), and imposing a civil penalty of two hundred dollars.

DONE AND ENTERED this 31st day of January, 2008, in Tallahassee, Leon County, Florida.



P. MICHAEL RUFF
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2008.

ENDNOTE

1/ Some of this testimony as to conversations with the Respondent and Officer Winston or (then) Officer Grasso and the Respondent are hearsay. They were only admitted as testimony to explain how the Respondent came to have an awareness of the parking enforcement situation and the impetuous for his

following course of conduct, not for the truth of the matters asserted in those hearsay conversations.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.