

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO:
DIVISION:

RICHARD S. GARDNER,

Plaintiff,

v.

VOLUSIA COUNTY, FLORIDA, a political
subdivision of the State of Florida; and
GEORGE RECKTENWALD, Interim
Director Department of Public Protection,

Defendants.

PETITION FOR TEMPORARY AND PERMANENT INJUNCTION

Petitioner RICHARD S. GARDNER petitions the Court for a temporary and permanent injunction against respondents COUNTY OF VOLUSIA and GEORGE RECKTENWALD, Interim Director Department of Public Protection, requiring them to conduct a compliance review hearing pursuant to Section 112.534(1)(c)&(d), Florida Statutes, and alleges:

PARTIES

1. Petitioner RICHARD S. GARDNER is a resident of Volusia County, Florida, and is *sui juris*.

2. Respondent VOLUSIA COUNTY, FLORIDA is a political subdivision of the State of Florida.

3. Respondent GEORGE RECKTENWALD, Interim Director Department of Public Protection and is *sui juris*.

4. RICHARD S. GARDNER ("Captain Gardner") is employed by Volusia County as a Captain in the Volusia County Beach Patrol. As such, Captain Gardner is a law enforcement officer covered by the Law Enforcement Officer's Bill of Rights as set forth in Fla. Stat. §§ 112.532 *et seq.* ("LEO Bill of Rights").

RELEVANT FACTS AND CIRCUMSTANCES

Violation of Section 112.532(1)(d), Florida Statutes

5. On October 18, 2011, Mike Coffin, as Director of the Department of Public Protection, served Captain Gardner with a Notice of Intent to Dismiss ("NOI").¹ Mr. Coffin's NOI began by stating that, "as a result" of Captain Gardner's "actions documented in IA 2011-09297",² Coffin intended to dismiss Captain Gardner "from employment with the County of Volusia."

6. On October 24, 2011, Captain Gardner responded to the NOI.³

7. Mr. Coffin's NOI accused Captain Gardner of, *inter alia*, making two false statements. First, it states: "During the time that you were involved with

¹A copy of the NOI is attached hereto as Exhibit 1.

²A copy of the IA Report is attached hereto as Exhibit 2.

³A copy of Capt. Gardner's 10/24/11 Response to NOI is Exhibit 3.

Officer Gittner, you were asked by a supervisor whether you were having an inappropriate relationship with her, which you denied." That is a false accusation. Although Kevin Sweat, Director of the Division of Beach Safety, had asked Capt. Gardner about a year earlier if he was involved in a relationship with Officer Cara Gittner, Director Sweat asked that question after Captain Gardner and Officer Gittner had broken up. Accordingly, Capt. Gardner replied, "No." Capt. Gardner's response was true. Although the relationship subsequently resumed: (1) Capt. Gardner did not know that would happen at the time he truthfully answered Director Sweat's question, and (2) Director Sweat did not thereafter ask that question again. Director Sweat confirmed these facts on pages 22 through 28 of his December 13, 2011 Sworn Statement.⁴

8. Second, Coffin's NOI states: "More recently, I asked you whether there was anything in your background which could cause embarrassment to the Division and you said, 'No.'" That statement is false. Mr. Coffin never asked Capt. Gardner that question either within or without the internal affairs investigation. The conversation that Coffin referred to was a meeting between Coffin, Director Sweat and Capt. Gardner concerning Coffin's offer to promote Capt. Gardner to Deputy Chief early last year. Contrary to as falsely alleged in his NOI, the question that Coffin really asked Capt. Gardner was: "Obviously, we're in the midst of a

⁴A copy of Director Sweat's 12/13/11 statement is Exhibit 4.

lawsuit here. You realize you're going to be the new head of the beach. You have to understand this is a business so don't take this the wrong way. If you are appointed to Deputy Chief, are we going to find out that you had knowledge of the Simmons and Tameris allegations prior to it being reported?" Capt. Gardner's answer to that question was no—he did not learn of those allegations until the internal investigations were revealed.

9. Director Sweat confirmed in his sworn statement that Coffin never asked Capt. Gardner the broad question contained in his NOI. (Sweat, pp.32-33, 71-72). Also, Director Sweat and Deputy Director Petersohn⁵ both swore that Coffin did not ask Petersohn that general question when Coffin interviewed him for the same position. Both Sweat and Petersohn testified that Coffin's question to Petersohn was also directly related to the Simmons and Tameris case. (Sweat, pp.32-33, 71-72; Petersohn 12/6/11 Sworn Statement, pp.13-14). What Coffin did, then, was replace a question he did ask with a question that he did not ask in order to make it look like Capt. Gardner gave a false answer, *i.e.*, Coffin manufactured evidence in order to harm Capt. Gardner. That conduct constitutes "Official misconduct" proscribed by criminal statute Section 838.022, which provides, in relevant part, that: "It is unlawful for a public servant, with corrupt intent...to cause harm to another, to: [] Falsify, or cause another person to falsify, any official

⁵A copy of Petersohn's 12/6/11 Sworn Statement is Exhibit 5.

record or official document; ..." Coffin's sworn testimony to the contrary in his 12/13/11 "sworn statement"⁶ is false as evidenced by the sworn testimony of Captain Gardner,⁷ Director Sweat and Deputy Director Petersohn.

10. Coffin's inclusion of these false allegations in his NOI is not only Official Misconduct, but is also a violation of the LEO Bill of Rights provision that an officer must be provided all statements and other evidence to be used against him prior to the investigative interview. Section 112.532(1)(d) provides:

The law enforcement officer . . . under investigation must be informed of the nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, . . . must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. . . .

11. Capt. Gardner requested this information in writing and only received the following witness interviews: P. Winters (09/23/2011), C. Gittner (09/29/2011), M. Greene (10/03/2011), and R. Gardner (10/06/2011).⁸ No one

⁶A copy of Coffin's 12/13/11 Sworn Statement is attached hereto as Exhibit 6.

⁷A copy of Capt. Gardner's 10/6/11 Sworn Statement is attached hereto as Exhibit 7.

⁸The Sworn Statements of Paige Winters, Cara Gittner and Mindy Greene are attached hereto as Exhibits 8-10, respectively.

provided Captain Gardner the manufactured evidence Coffin relied upon in his NOI.

12. This violation was intentional. First, Coffin lied. That is intentional conduct. Second, the conversations that Coffin twisted and then injected into his NOI were not part of the IA investigation, nor were they part of the final IA report. Coffin went out of his way to include these false allegations in his NOI since there was not enough evidence in the IA Report to justify his self-serving decision to turn Captain Gardner into a scapegoat for the "anonymous" letter and other pressures Coffin and the County are under. *See Exhibit 3*. This is evidenced by the fact that the NOI draft dated 10/17/11⁹ does not contain the allegations of making a false statement. Coffin decided to add more "evidence" to his NOI after seeking input from the County Attorney's office. That is evidence of intent.¹⁰ People do not unintentionally manufacture evidence to bolster an otherwise unsupportable decision. Simply put, Coffin made up and injected additional "evidence" after the investigation was over with the intent to harm Captain Gardner.

13. Captain Gardner asserted this intentional violation of his rights under the LEO Bill of Rights in his response to the NOI, but, rather than cure the

⁹A copy of the 10/17/11 NOI draft is attached as Exhibit 11.

¹⁰Further evidence of intent is found in the various ways Coffin manipulated the evidence in his NOI as addressed in Exhibit 3.

violation, Volusia County unlawfully re-opened its investigation into Captain Gardner in order to bolster its “case” to fire him.

Violations of Section 112.532(4)(a) and Section 112.533(1)(a)

14. Section 112.532(4)(a) provides in relevant part:

(4)(a) Notice of disciplinary action.--A dismissal . . . may not be taken against any law enforcement officer . . . unless the law enforcement officer . . . is notified of the action and the reason or reasons for the action before the effective date of the action.

15. Section 112.533(1)(a) provides, in relevant part:

(1)(a) Every law enforcement agency . . . shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement . . . officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. When law enforcement . . . agency personnel assigned the responsibility of investigating the complaint prepare an investigative report or summary, regardless of form, the person preparing the report shall, at the time the report is completed:

1. Verify pursuant to s. 92.525 that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief.

2. Include the following statement, sworn and subscribed to pursuant to s. 92.525:

“I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes.”

The requirements of subparagraphs 1. and 2. shall be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges. . . . (e.s.).

16. Coffin intentionally violated these laws when he directed Director Sweat to tell Capt. Gardner on October 13, 2011 that Capt. Gardner would be fired on October 14th at 5:00 pm if he did not resign beforehand. Coffin admitted he gave that order, even though the NOI was not finalized until October 18th and even though he had not "notified [Gardner] of the action and the reason or reasons for the action before the effective date of the action" per Section 112.532(4)(a) and had not complied with any of the requirements of Section 112.533(1)(a).¹¹ This is a confession violation.

17. Director Sweat dutifully summoned Captain Gardner to his office on October 13th and informed Capt. Gardner that: "They told me that they intend to dismiss you" and that they said Capt. Gardner had until 5:00 Friday, October 14, and not one minute later, to resign or be fired. Capt. Gardner asked "Who's they?".

¹¹(Coffin 12/13/11 Sworn Statement, p.15)Coffin also admitted that he decided to dismiss Capt. Gardner during a "meeting" on 10/10/11, that included Coffin Jim Ryan, and Director Sweat. (Coffin p.14). Capt. Dofflemyer's IA report was not finalized until 10/12/11, at the soonest. Thus, Coffin decided to fire Capt. Gardner before the IA report was finalized. Coffin also swore that Director Sweat agreed with Coffin's decision, but Director Sweat's testimony refutes that. Director Sweat was clear that the decision was Coffin's and that Coffin was taking his recommendation all the way to the County Manager. (Sweat pp.77-78). This violated of Dept. Standards Directive 27.01.31 for adjudicating allegations of misconduct by a person other than the Director of the Beach Safety Division.

Director Sweat said that when he asked Coffin who made the decision, Coffin told him "You don't need to know...it's done." Capt. Gardner then asked what policy he violated and Sweat said he did not know.¹² (Sweat, p.74).

18. Thus, in addition to the violations of law set forth above, Coffin's conduct also violated numerous sections of County code. In addition to those cited above and in response to the NOI, Coffin's conduct also violated Merit Rule 86-427, Merit Rule 86-451, and Departmental Standard Directive 27.01.24. Coffin and the County also violated the due process policies in place by usurping Director Sweat's authority to make the decision pursuant to Departmental Standards Directive 27.01.33. As Director of the Division of Beach Safety and Capt. Gardner's immediate supervisor, it was Director Sweat's decision as to what adverse employment action to take, if any, assuming just cause. The fact that Coffin violated these numerous sections of County code in his effort to fire Capt. Gardner is further evidence that his violations of Capt. Gardner's rights under the LEO Bill of Rights were intentional. As Director of the Dept. of Public Protection, Coffin was fully aware of these code sections as he violated them.

19. Capt. Gardner asserted these intentional violations of his rights under the LEO Bill of Rights in his response to the NOI, but, rather than cure them,

¹²That was a violation of Dept. Standards Directive 27.01.24.

Volusia County allowed the perpetrator of the violations to unlawfully re-open the investigation into Capt. Gardner in order to bolster the "case" to fire him.

Violation of Section 112.532(6)(b)

20. As alleged above, rather than cure the violations of Captain Gardner's rights under the LEO Bill of Rights, the County allowed Coffin, the perpetrator of those violations and official misconduct alleged in the NOI, to re-open the investigation into Captain Gardner. Specifically, after the investigation into Capt. Gardner had concluded and the IA report had been finalized, and after Coffin issued the NOI, to which Captain Gardner responded on 10/24/11, Coffin notified Captain Gardner, by letter dated 10/25/11, that he was re-opening the investigation.¹³

21. Coffin's letter stated that he was re-opening the investigation because Capt. Gardner's response to the NOI brought forward information which Coffin said "merits further review for purposes of due process". Coffin elaborated in his sworn interview by stating that it was his decision to reopen the investigation and his intent was to "give Capt. Gardner a full, fair, and complete investigation of the charges against him." (Coffin, p.6). Coffin added that he wanted to reopen the investigation "because Kaney had alleged Official Misconduct." (Coffin, p.7).

¹³A copy of Coffin's 10/25/11 letter is attached as Exhibit 12.

22. None of these “reasons” constitute lawful grounds upon which to open a closed internal affairs investigation. F.S. § 112.532(6)(b) provides in part:

(b) An investigation against a law enforcement officer or correctional officer may be reopened . . . if:

1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the predisciplinary response of the officer.

23. None of the statutory grounds are present here. Coffin’s October 25th letter re-opening the investigation did not point to any “significant new evidence” that had “been discovered” since the investigation closed, nor did it point to any evidence that “could not have reasonably been discovered in the normal course of [the] investigation” or evidence that resulted from Captain Gardner’s response to the NOI. In fact, Coffin’s letter did not refer to any evidence at all. There is good reason for that—no such qualifying evidence exists.

24. Capt. Gardner’s response to the NOI did not constitute “new evidence”. Nothing in that response was new, except the allegations of wrongful conduct on the part of Coffin and others. That does not constitute grounds to re-open an already closed investigation into Capt. Gardner. Instead, it is grounds to open investigations into the new allegations of misconduct of Coffin and others.

25. Indeed, Coffin's confession that he wanted to reopen the investigation "because Kaney had alleged Official Misconduct" is an admission that his re-opening of his investigation into Captain Gardner was not pursuant to the statute but, rather, was an act of self-preservation and unlawful retaliation. He re-opened the investigation in an attempt to clear himself and, also, since the first investigation did not yield sufficient grounds to terminate Captain Gardner, to find new evidence to use against him. Re-opening the investigation into Captain Gardner is obviously an act of bad faith on the part of Coffin and the County.

26. It was confirmed on December 16, 2011, when Captain Gardner reviewed the so-called "new" evidence, that none of the evidence pertaining to Captain Gardner was new and could have been sought during the investigation before it was closed.¹⁴ The only "new" line of questioning was into Captain Gardner's on-duty calls and texts with Officer Gittner on their personal cell phones. The investigators, however, could have attempted to discover this evidence the first time. The first investigation included a review of their county cell phone records.

¹⁴See Smith's 12/13/11 letter (Ex. 13) and the post-NOI witness interviews: J. Anderson 10/28/11 (Ex. 14), Ofc. T. McGibeny 11/22/11 (Ex. 15), Capt. M. Greene 11/22/11 (Ex. 16), Ofc. J. Andrews 12/05/11 (Ex. 17), Ofc. P. Winters 12/05/11 (Ex. 18), Ofc. A. Ethridge 12/05/11 (Ex. 19), P. Casey 12/06/11 (Ex. 20), Dep. K. McDaniel 12/06/11 (Ex. 21), Dep. Chief Petersohn 12/06/11 (Ex. 5), Officer C. Gittner 12/09/11 (Ex. 22), Capt. T. Marris 12/09/11 (Ex. 23), Director Sweat 12/13/11 (Ex. 4), M. Coffin, Jr. 12/13/11 (Ex. 6).

27. The investigators in the "re-opened" investigation have also revisited the prior IA finding that Captain Gardner did not supervise Officer Winters in an effort to change that finding.¹⁵ They are also trying to establish that Captain Gardner supervised Officer Gittner, even though that allegation was previously investigated and the IA report did not find it to be true.¹⁶ It is plainly evident from the post-NOI interviews that the investigators are trying to alter the IA report. That constitutes a violation of Section 838.022(1), Florida Statutes, which prohibits officials from falsify any official document, or causing another to alter any official document.

28. For any or all of the reasons alleged above, the re-opening of the investigation was intentional and unlawful. This violation has not been cured.

¹⁵In addition to Smith representing the County and Nancye Jones, the Sheriff's lawyer, representing Coffin, they are both also serving as investigators. Smith confirmed this in his 12/13/11 letter wherein he wrote: "The continuation of [Capt. Gardner's] investigation is now being conducted by me, Nancye Jones, and Captain Nikki Dofflemyer." See also 12/9/11 Statement of C. Gittner, pp. 5-6, where Smith states: "[O]n most days I'm the deputy county attorney in charge of litigation....Today my job is to continue the investigation into some allegations which were made about Captain Gardner...My job is to investigate."; 12/9/11 Statement of Marris, p. 5, where Smith states: "Obviously, you've been advised that normally I don't do these. I'm here because this is an important matter to the County. My job is to conduct as thorough an investigation as I can."; and 11/22/11 Greene Statement, p. 5, where Captain Dofflemyer states in the presence of Smith: "Mr. Larry Smith is also present. He will be the lead investigator for this portion of the interview."

¹⁶Also, Director Sweat confirmed that Capt. Gardner did not supervise either Winters or Gittner. (Sweat pp. 12-14, 41-42).

Violation of Section 112.532(5)

29. As alleged in paragraph 25, Coffin's re-opening of the investigation constitutes unlawful retaliation against Capt. Gardner for his response to Coffin's NOI. That is an intentional violation of Section 112.532(5): "No law enforcement officer...shall be discharged; disciplined; ... or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this part."

30. This LEO Bill of Rights violation has not been cured.

Violation of Section 112.532(1)(g)&(i)

31. On December 7, 2011, Deputy Director Joseph Pozzo, expressly as part of the internal affairs investigation of Capt. Gardner, issued an unlawful order that purported to require Capt. Gardner to produce personal cell phone records.¹⁷

32. On December 12, 2011, Captain Gardner, through counsel, responded to Pozzo's unlawful order by asserting that the order was unlawful and requesting that Pozzo explain the authority that he believes justifies his unlawful order.¹⁸

33. On 12/13/11, investigator Smith responded by letter to Capt. Gardner's 12/12/11 letter wherein Smith, *inter alia*, threatened disciplinary action up to dismissal if Capt. Gardner did not produce his personal cell phone records.¹⁹

¹⁷A copy of Pozzo's 12/7/11 order is attached as Exhibit 24.

¹⁸A copy of Capt. Gardner's 12/12/11 response is Exhibit 25.

¹⁹See Investigator Smith's 12/13/11 letter at Exhibit 13.

34. Also on 12/13/11, and notwithstanding that Pozzo had already received Capt. Gardner's December 12th response, through counsel, to his unlawful order, *Mr. Coffin's* secretary called Captain Gardner and told him that Pozzo wanted Captain Gardner in Pozzo's office at 9:00 the next morning and that Captain Gardner was to have his personal cell phone records with him.

35. On the morning of December 14th, Captain Gardner was informed that the meeting with Pozzo was postponed until 2:00 that afternoon.

36. Also on the morning of December 14th, at 10:14 am, Captain Gardner emailed Pozzo another response to his unlawful order.²⁰

37. Capt. Gardner reported to Pozzo's office at 2:00 pm later that day, as ordered, and produced certain personal phone records that his 12/14/11 response to Pozzo's unlawful order (which Pozzo had received over 3 ½ hours earlier) said would be produced. Notwithstanding that Pozzo had already received Capt. Gardner's written responses to his unlawful order to produce personal cell phone records, Pozzo proceeded to interrogate Capt. Gardner about the records he did not produce as well as Capt. Gardner's understanding of Pozzo's unlawful order. Evidently finding the truth inconvenient, Pozzo intentionally mischaracterized the facts by characterizing the records that Capt. Gardner produced as the full extent of

²⁰The 12/14/11 response is attached hereto as Exhibit 26. Even if Pozzo's order were not spawned from the unlawfully and maliciously re-opened investigation, it would still be unlawful for the reasons set forth in the December 14th letter.

Captain Gardner's response to his unlawful order even though, by that time, Captain Gardner had already responded to Pozzo's unlawful order, through counsel, twice.

38. During the interview, Captain Gardner repeatedly invoked his right to counsel, but Pozzo kept asking questions anyway. This was an intentional violation of Section 112.532(1)(i), which provides: "At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service."

39. Moreover, Pozzo's interview was not recorded in intentional violation of Section 112.532(1)(g).

Violation of Section 112.534(1)(b)

40. Investigator Smith scheduled a second interview of Captain Gardner to occur on December 16, 2011, this time as part of the "re-opened" investigation. Captain Gardner attended with counsel.

41. After reviewing the evidence produced before the inspection, Captain Gardner, through counsel asserted the uncured violations of his rights under the LEO Bill of Rights set forth above and requested that the agency head be notified.

42. Investigator Smith nevertheless proceeded to interrogate Captain Gardner. This was a blatant and intentional violation of Captain Gardner's rights provided by Section 112.534(1)(b), which provides:

If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation. *Once this request is made, the interview of the officer shall cease*, and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation. (e.s.)

43. Unlike during the unlawful interview in Pozzo's office, this time Captain Gardner had counsel present who, despite protests by Smith, were able to stop Smith's intentional violation of Capt. Gardner's rights before it continued further.²¹

Violation of Section 112.534(1)(b)

44. On December 20, 2011, Pozzo sent Capt. Gardner an inter-office memorandum wherein he stated that Capt. Gardner was guilty of insubordination due to: (1) his refusal to comply with Pozzo's unlawful order to produce personal cell phone records; and (2) his assertion of his rights under the LEO Bill of Rights at the outset of this "second" interview on 12/16/11.²²

²¹A copy of the 12/16/11 transcript is attached hereto as Exhibit 27.

²²A copy of Pozzo's 12/20/11 memo is attached hereto as Exhibit 28.

45. This was an intentional violation of Section 112.534(1)(b):

If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation. Once this request is made, the interview of the officer shall cease, *and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.* (e.s.)

This statute is not a secret and the violation of it was not unintentional.

46. By letter dated 12/23/11, the County Attorney appears to have attempted to cure the second of the two violations alleged in paragraph 44 by stating: "Captain Gardner's declination to be interviewed will not be considered insubordination and a ground for discipline".²³ Whether it does so or not is a question for the compliance review panel pursuant to Section 112.534. The letter does not purport to cure the other violation alleged in para. 44, nor does it purport to cure any of the many other violations of Capt. Gardner's rights alleged herein.

Violation of Section 112.534(1)

47. On 12/20/11, Smith sent Captain Gardner a letter wherein he advised Captain Gardner that his claims of violations of his rights under the Police Officer's Bill of Rights are "unfounded". Specifically, Smith wrote: "We have determined that these claims are unfounded." Smith's 12/20/11 letter also advises

²³A copy of the County Attorney's 12/23/11 letter is Exhibit 29.

Capt. Gardner that he has “decided to submit the additional witness statements and documentary evidence to the appointing authority for a final disciplinary action.”²⁴

48. On December 21, 2011, pursuant to Section 112.534(1)(c), Capt. Gardner provided respondents with his “Written Notice of Intentional Violations of Capt. Gardner’s Rights Under the Police Officer’s Bill of Rights.”²⁵

49. By letter dated 12/23/11 to Interim Director Recktenwald and others, Capt. Gardner reminded them of his Written Notice of Violations and demand for a compliance review hearing to address the violations within the statutory deadline of ten working days.²⁶ This letter expressly sought confirmation of the County’s intent to conduct a compliance review hearing as required under the LEO Bill of Rights.

50. Instead of complying with the statute, the County Attorney sent a letter wherein he advised that respondents refused to conduct a compliance review hearing. *See Exhibit 29.*

51. Captain Gardner responded to this letter by letter dated December 20, 2011, wherein he stated that he disagreed with the County’s position that it is not required to comply with Section 112.534, Florida Statutes.²⁷

²⁴This constitutes a continued violation of Section 112.532(6)(b) since the “re-opened” investigation is unlawful. A copy of this letter is attached as Exhibit 30.

²⁵A copy of the Written Notice of Violations is Exhibit 31.

²⁶A copy of this letter is attached hereto as Exhibit 32.

²⁷A copy of this letter is attached hereto as Exhibit 33.

52. Respondents' refusal to conduct the required compliance review hearing constitutes an uncured, intentional violation of Section 112.534, which requires that such claims be adjudicated in a compliance review hearing before a compliance review panel within ten (10) working days.

Violations of Sections 112.534(1), 112.532(b)(6), 112.533(1)(a),
112.532(4)(a) and 112.532(5)

53. Rather than conduct the required compliance review board hearing, the County, on January 17, 2012, provided Captain Gardner a Notice of Dismissal ("NOD"), signed by Interim Director Recktenwald, dated January 13, 2012.²⁸ This is a continuing violation of the County's refusal to comply with Section 112.534(1) by not conducting the required compliance review hearing before proceeding further with its investigation and before taking adverse action as alleged above.

54. The NOD begins by stating that it provides notice of Captain Gardner's dismissal as the result of his actions documented in the IA report, *i.e.*, IA 2011-09-297. The very next paragraph of Recktenwald's NOD, however, states that his decision is based upon the review of information obtained as a result of the unlawfully re-opened investigation. Then, in direct contradiction of his immediately preceding sentence, Recktenwald again states that he is dismissing Captain Gardner as the result of his actions documented in IA 2011-09-297. Recktenwald then proceeds to cite, as grounds for dismissal, information the

²⁸A copy of the Notice of Dismissal is attached as Exhibit 34.

County obtained after Coffin unlawfully re-opened the investigation on October 25, 2011. For example, the NOD relies upon the personal cell phone records it extorted from Officer Gittner in December under all sorts of threats even though its order to her to produce those records was unlawful. The NOD also draws conclusions that are inconsistent with the IA report that the NOD states provides the basis for the decision. For example, the NOD concludes that Captain Gardner was a supervisor of Officers Winters and Gardner, but the IA report concluded otherwise. Director Sweat confirmed that Captain Gardner was not their supervisor in his sworn statement. (See Exhibit 4, pp. 12-14, 41-42). Among other things, this constitutes a continuing violation Section 112.532(b)(6), *i.e.*, the County's unlawful re-opening of the investigation that concluded with IA 2011-09-297.

55. Although the County re-opened the investigation and obtained addition information that it cites to as grounds for dismissal, it did not issue a new IA report in violation of Section 112.533(1)(a), quoted in paragraph 15 *supra*.

56. The County also did not provide another notice of intent in violation of Section 112.532(4)(a), quoted in paragraph 16 *supra*. The County is required to provide a notice of intent that documents the facts upon which it intends to take

adverse action. The NOI that Coffin issued on October 18, 2011, did not include all of the information contained in Recktenwald's NOD.²⁹

57. The NOD is also retaliatory in continuing violation of Section 112.532(5).

58. The NOD is also a continuing violation of Section

59. The County should be enjoined to conduct a compliance review hearing into these additional violations of even date with this Petition.

60. Captain Gardner only has ten (10) days from the date of this Petition to file a notice of appeal pursuant to the County's Merit System Rules and Regulations. (See NOD.) Captain Gardner needs a temporary injunction before then.

COUNT I – TEMPORARY INJUNCTION

61. Petitioner incorporates paragraphs 1 through 60 herein.

62. Captain Gardner seeks a temporary injunction that enjoins Respondents to conduct a compliance review hearing concerning the intentional violations of Captain Gardner's rights under the LEO Bill of Rights as required by Section 112.534, Florida Statutes.

²⁹The old evidence has already been responded to. See Exhibit 3. The "evidence" obtained since the unlawful re-opening of the investigation cannot be used for the reasons set forth herein.

63. There exists a likelihood of irreparable harm. Captain Gardner has a clear legal right to have a compliance review panel consider the violations of his rights under the LEO Bill of Rights. Respondents refuse to perform their clear statutory duty to conduct such a hearing. If Petitioner does not petition this Court for injunctive relief, he will forever lose those rights.

64. There is no adequate remedy at law since there is no right to damages against the employer for violations of the LEO Bill of Rights. *Sylvester v. City of Delray Beach*, 584 So.2d 214 (Fla. 584 So.2d 214 (Fla. 4th DCA 1991). The exclusive remedy for a violation of the statutory rights is injunctive relief. *Id.*

65. There is a substantial likelihood that Capt. Gardner succeeds on the merits since the Respondents' duties under Section 112.534 are clear cut, yet they refused to perform those duties to the irreparable detriment of Captain Gardner.

66. Captain Gardner is entitled to a temporary mandatory injunction since his clear legal right to a compliance review hearing has been violated, irreparable harm is threatened and there is a lack of an adequate remedy at law. *Shaw v. Tampa Elec. Co.*, 949 So.2d 1066, 1069 (Fla. DCA 2007).

67. The granting of a temporary injunction will not disserve the public interest. This is not a case where individual rights must "yield to the paramount rights of the general public". It is common for law enforcement officers to seek injunctive relief when their rights under the LEO Bill of Rights are violated.

WHEREFORE, Petitioner prays that the Court enter a temporary injunction enjoining Respondents to conduct the required compliance review hearing before proceeding further in their investigation and/or discipline of Captain Gardner.

COUNT II – PERMANENT INJUNCTION

68. Petitioner incorporates paragraphs 1 through 67.

69. In light of the above, Petitioner is entitled to a permanent injunction enjoining Respondents to conduct the required compliance review hearing before proceeding further in their investigation and/or discipline of Captain Gardner.

WHEREFORE, Petitioner prays that the Court enter a permanent injunction enjoining Respondents to conduct the required compliance review hearing before proceeding further in their investigation and/or discipline of Captain Gardner.

Dated January 17th, 2012.

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