

# FISHBACK DOMINICK

ATTORNEYS AT LAW

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\* FLORIDA BAR BOARD CERTIFIED IN  
CITY, COUNTY AND LOCAL GOVERNMENT

January 31, 2013

VIA Express Delivery

Bruce C. Campbell, City Manager  
City of Flagler Beach  
105 2<sup>nd</sup> Street  
Flagler Beach, Florida 32136

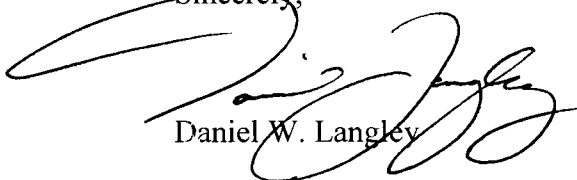
**RE: Summary of Findings of Fact and Determination**

Dear Mr. Campbell:

I have completed my investigation into the allegations against Chief Martin Roberts, Assistant Chief Shane Wood, Captain Steve Wood, and Jacob Bissonnette. Please find enclosed my Summary of Findings of Fact and Determination dated January 31, 2013. Further, please find enclosed nine compact disc containing audio files of the sworn interviews taken during the investigation and another compact disc obtained from the Flagler County Sheriff's Department containing radio communication concerning the structure fire on December 14, 2012.

I appreciate the City's trust in me on this matter.

Sincerely,

  
Daniel W. Langley

Enclosures

**CITY OF FLAGLER BEACH**  
Employment Investigation

IN RE:           MARTIN ROBERTS  
                  STEPHEN W. WOOD  
                  SHANE S. WOOD  
                  JACOB BISSONNETTE

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**SUMMARY OF FINDINGS OF FACT AND DETERMINATION**

On January 4, 2013, I was retained by the City of Flagler Beach (the “City”) to serve as an independent and impartial investigator to perform investigations and make factual findings and determinations to the City regarding allegations raised against four City Fire Department personnel about events occurring on December 14, 2012 and on or about December 24 and 25, 2012. I have not been asked to provide, nor have I provided in this summary, any recommendations concerning employment decisions, as such is within the purview of the City’s management.

This summary constitutes my findings of fact and determinations based on the sworn testimony and other evidence obtained during my investigation. During my investigation, among other things, I questioned under oath the four accused and seventeen other individuals, including those that submitted written allegations against the accused. The following people were questioned by me under oath (not listed in any particular order):

Chief Martin Roberts	Robert (Bobby) Pace
Assistant Chief Shane Wood	Corey Butts
Captain Stephen (Steve) Wood	Dustin Synder
Jacob Bissonnette	Robbie Creal
Diane Wood	Barbara (Barb) Haspiel
David Kennedy	Robert Wiemann
Steve Cox	Roy Johnson
Ray Turkish	Andy Thomas
James Moses	Libby Kania
Sergeant David Blank	Commissioner Marshall Shupe
Sergeant Frank Parrish	

Further, I have read the written statements of the accusers and written statements or summaries prepared by City human resources, management and others, reviewed video from the Fire Station cameras taken on December 24, 2012 and listened to Fire Department radio communication related to the structure fire on the night of December 14, 2012, and reviewed alcohol related City policies.

### Statement of the Issue

My task was to determine whether the following allegations are true.

#### *December 14, 2012*

It was alleged that during the City Fire Department Christmas party on December 14, 2012 that Steven W. Wood (a/k/a Steve Wood) who is a volunteer Captain of the Fire Police unit and employed by the City as a sanitation truck driver, consumed alcoholic beverages and left the party to respond to a structure fire in a City vehicle – Tower Truck 11. Further, it was alleged that Chief Martin Roberts of the Fire Department also consumed alcohol during the Fire Department Christmas party on December 14, 2012 and left the party to respond to a structure fire in a City vehicle – Chief 11 SUV. Additionally, it was alleged that Chief Martin Roberts directed Steven Wood to respond to the structure fire with Tower Truck 11 even though Chief Roberts knew Steven Wood had consumed alcohol at the Christmas party.

#### *December 24 & 25, 2012*

It was alleged that Assistant Chief, Shane Wood and Jacob Bissonnette of the City Fire Department stored alcoholic beverages in their shift's refrigerator, and after their shifts ended on December 25, 2012 that they each consumed alcohol in the Fire Station kitchen. During the investigation it was also alleged that on December 24, 2012, Shane Wood and Jacob Bissonnette purchased two mason jars of an alcoholic beverage from an off-duty Flagler County Deputy Sheriff while on City property (Fire Station 11 parking lot) and that such alcohol were the same alcoholic beverages stored in their shift's refrigerator and consumed on premises at Fire Station 11 the following day. Based on the preponderance of the evidence, I do hereby make the following findings:

## Findings of Fact

1. Martin Roberts is the Chief of the City of Flagler Beach Fire Department and is the commanding officer of all career and volunteer firefighters and the volunteer Fire Police Unit members.
2. Martin Roberts has been employed as the Fire Department Chief for approximately 7 years (since October 2005). Chief Robert's normal shift is Monday to Friday 9:00 a.m. to 5:00 p.m., although he may be called to duty anytime during an emergency.
3. Shane Wood is the Assistant Chief of the City of Flagler Beach Fire Department. Shane Wood is the commanding officer when he is on shift and Chief Roberts is absent. Shane Wood has been employed by the City for approximately 16 years (since October 1997) as a firefighter and EMT in the position of Assistant Chief. Prior to his employment with the City, Shane Wood served for approximately 6 years as a volunteer firefighter and EMT with the Fire Department.
4. Steve Wood is a City employee with the Sanitation Department (since January 2004) and a long serving volunteer firefighter and the Captain of the Fire Police Unit. Steve Wood is a trained firefighter and frequently operates Tower 11 (aerial truck) as its primary driver. As a volunteer firefighter, Steve Wood does not work any particular shift with the Fire Department, however, when available, Steve Wood can be called upon to respond to an emergency.
5. Jacob Bissonnette is a career firefighter and EMT with the City of Flagler Beach Fire Department. Bissonnette has been employed with the City for approximately 6 years (since December 2006).
6. Other than Chief Roberts and Assistant Chief Shane Wood in Chief's absence, there appears to be the lack of a formal chain of command structure when both Chief and Assistant Chief are absent from the Fire Station. The Fire Department customarily operates under an informal chain of command during the absence of the Chief and Assistant Chief, which typically involves the senior-most career firefighter present during a shift being in charge.
7. Other than Chief Roberts, full time Fire Department personnel are assigned to work in one of three 24-hour shifts every third day from 8:00 a.m. to 8:00 a.m. the following day. These three shifts are commonly referred to as "Shift A," "Shift B," and "Shift C."
8. Volunteer firefighters and EMTs join each of the three Shifts from time to time when available.

9. At all times relevant to this investigation, Shane Wood and Jacob Bissonnette were assigned together to work Shift A. Robert (“Bobby”) Pace and Dustin Snyder were assigned together to work Shift B. David Kennedy and Stephen Cox were assigned together to work Shift C.

10. The Fire Department also has a volunteer-based group of non-firefighters designated as the Fire Police Unit, which members are called upon to direct traffic during emergencies, and mostly arrive on scene in their personal vehicles.

11. There is a high degree of intra-department discord between several full-time employees of the Fire Department. There are generally two cliques or factions within the Fire Department’s full time employment ranks – faction 1 – Shane Wood and Jacob Bissonnette, and faction 2 – Bobby Pace, Dusty Snyder, David Kennedy and Stephen Cox.

12. The intra-department discord described herein is a major problem affecting the operations of the Fire Department, and such shows a lack of organizational control within the Fire Department.

13. The faction 2 group generally believes that Chief Roberts shows favoritism to faction 1- Shane Wood and Jacob Bissonnette, along with Department volunteers, Steve Wood and Diane Wood, Shane Wood’s father and mother. The faction 1 group – which are the subject of this investigation believe that the faction 2 group submitted the allegations to City management that are the subject of this investigation in an attempt to get Chief Roberts, Steve Wood, Shane Wood and Jacob Bissonnette terminated so that the members of faction 2 receive promotions to Chief (Bobby Pace) and to three newly created lieutenant positions (Dustin Snyder, David Kennedy and Stephen Cox).

14. Faction 1 members assert that before the alcohol-related allegations were raised against them, (i) Bobby Pace was being investigated by Jacob Bissonnette at Chief Robert’s instruction for potentially falsifying time sheets of an individual on probation serving community service, (ii) Jacob Bissonnette gave Bobby Pace a heads-up warning about the investigation which angered Bobby Pace, and (iii) thereafter, Bobby Pace marshaled faction 2 members and certain volunteer firefighters to submit written allegations to City management over the head of Chief Roberts in order to avoid potential punishment for the alleged falsification of records and to obtain a promotion.

15. It is my understanding that City management is investigating the allegations against Bobby Pace referenced in Paragraph 14 independent of my investigation. I include such information in this report as it is relevant (but not dispositive) to the issue of the motives of individuals making the allegations against the accused.

16. Chief Roberts (parroting similar statements made by his attorney<sup>1</sup> during my interview with Chief Roberts) claims that the allegations against him are part of a retaliatory scheme by City Manager Bruce Campbell to get back at Chief Roberts for making an age discrimination claim against Bruce Campbell on or about July 9, 2012.<sup>2</sup>

17. Chief Roberts testified he and Jacob Bissonnette first learned of the potential falsification of records by Bobby Pace on January 2, 2013 from a person with the Flagler County Probation Office who called the fire station to inquire about the time sheets of a community service worker who performed work at fire station. January 2, 2013 is just two days prior to the four accused being placed on suspension by the City Manager pending the results of the investigation. By that date, City management had already received allegations against Chief Roberts, Steve Wood, Shane Wood and Jacob Bissonnette.

18. Further, on the night of the structure fire and Christmas party (December 14, 2012) and in the days following (between December 15th to 19th), Chief Roberts himself had received verbal complaints from David Kennedy, Dustin Snyder, and Ray Turkish concerning the events of December 14th. So, it appears implausible for the allegations against Bobby Pace referenced in Paragraph 14 to be ill-motive for bringing the allegations against Chief Roberts, Steve Wood, Shane Wood and Jacob Bissonnette.

19. While Bobby Pace had discussions with various members of the Fire Department who brought their concerns to him for advice and Bobby Pace ultimately submitted a written

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<sup>1</sup> The attorneys for the accused had suggested as part of my investigation that I interview certain City employees that have heard statements after the four accused employees were suspended suggesting that the City Manager has already made his mind up on intended employment decisions concerning the accused before this investigation has been concluded. I do not find the nature of such potential testimony to be relevant as to whether the four accused did or did not do the things they are accused of doing by the complainants. Employment decisions are not within the scope of this investigation nor part of this Summary of Findings of Fact and Determination.

<sup>2</sup> According to the conclusions and recommendations of the investigator who reviewed the age discrimination claim by Chief Roberts, the investigator found no merit to Chief Roberts' claim of age discrimination by Bruce Campbell. See City of Flagler Beach, Florida Age Discrimination Investigation report dated August 20, 2012 prepared by Jeffrey J. Finn.

complaint to the City management along with other written complaints by various Fire Department personnel, Bobby Pace was initially hesitant to get involved. Bobby Pace was not the original impetus that pushed to light the matters subject to this investigation concerning the events of December 14, 2012.

20. The persons who pushed the concerns forward that led to the written allegations being submitted to the City management were collectively, David Kennedy, Dustin Snyder, Stephen Cox and volunteer Ray Turish. It appears that these individuals were genuinely concerned about the health and safety issues involved and the reputation of the Fire Department.

21. The evidence shows that the written allegations arose from the bottom of the chain of command to the City Manager, not *vice versa*. Thus, I find no merit in Chief Roberts' claim that the written allegations against him are part of a retaliatory scheme by the City Manager.

22. Regardless of the motives of Bobby Pace and others who submitted written complaints to the City management concerning the allegations subject to this investigation, I find the testimony of such individuals during my investigation to be credible<sup>3</sup>, especially in light of the fact that their testimony is corroborated by other testimony and evidence.

#### *Events of December 14, 2012*

23. On December 14, 2012, the Fire Department held a Christmas party (or holiday party) at Friends Café located at 220 South Flagler Beach Avenue. The Christmas party started at approximately 6:00 p.m. Friends Café is fairly close to and is on the same street as Fire Station.

24. Friends Café is a breakfast and lunch restaurant which is typically closed after lunch service around 2:00 p.m. Friends Café was closed to the public at the time of the Fire Department Christmas party.

25. The Flagler Beach Volunteer Firemen's Association, Inc. (the "Volunteer Association") made arrangements for the venue, a disc jockey, food and non-alcoholic beverages for the party. In addition to serving as the venue for the Christmas party, Friends Café catered the event.

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<sup>3</sup> As noted in Paragraph 78, Shane Wood and Jacob Bissonnette admitted to acquiring alcoholic beverages while on duty, in uniform and on City property during the afternoon of December 24, 2012, and thereafter consuming an alcoholic beverage within the fire station after shift change on the morning of December 25, 2012. Therefore, the credibility of the complainants is bolstered by the fact they were spot on concerning the events of December 24 and 25, 2012.

Diane Wood, a volunteer with the Fire Police Unit and wife of Steve Wood also assisted with organizing the party.

26. Neither the Volunteer Association nor the Fire Department supplied alcoholic beverages for the Christmas party. No evidence presented indicates that Friends Café typically sells or serves alcoholic beverages or provided alcohol for consumption during the Christmas party.

27. It was understood by Fire Department volunteer and career personnel that alcohol could be brought to the party for consumption (i.e. bring your own alcohol). Several people brought and consumed alcoholic beverages at the party.

28. Shift C, the Fire Department shift on duty during the Christmas party, comprised of Shift Leader firefighter David Kennedy, firefighter Steve Cox and volunteer firefighters Ray Turkish, Corey Butts and James Moses.

29. Prior to arriving at the Christmas party the volunteer firefighters joining Shift C for the evening were informed by Shift Leader David Kennedy that if they intended to consume alcoholic beverages at the Christmas party they had to change out of uniform and could not work with Shift C or respond to any emergency calls pursuant to Department Standard Operating Procedure.

30. On the day of the Christmas party, Steve Wood was working his Sanitation Department job and sometime after his shift ended, and before the Christmas party started (sometime mid-afternoon on December 14<sup>th</sup>), Wood went to the fire station to fill up a cooler with ice for use at the Christmas party later that evening. Steve Wood lives fairly close to the fire station and often comes to the fire station when not called to duty in order to obtain ice from the fire station's ice machine for personal use. Steve Wood claims that such is common practice by Fire Department members.

31. On the afternoon of December 14, 2012, Shift C Leader David Kennedy witnessed Steve Wood at Fire Station 11 with a cooler of beer filling it with ice to take to the Christmas party. Kennedy described the contents of the cooler as brown beer bottles with a blue label.

32. Steve Wood attended the Fire Department Christmas party and arrived early with his wife, Diane Wood at approximately 5:00 p.m. They arrived early to Friend's Café in order to help set-up for the party.



33. Steve and Diane Wood brought with them to the party a cooler of beer in 12 o.z. brown bottles (likely Busch brand), apple cider moonshine in a mason jar that they represent was purchased at a retail store in Tennessee while on vacation and a platter of cherries and another fruit soaked in apple cider moonshine. There is no evidence suggesting that such apple cider moonshine brought to the Christmas party by Steve Wood and Diane Wood was illegally made, sold or purchased.

34. Diane Wood and Steve Wood claim that they also brought a six pack of Busch NA (non-alcoholic) beer to the party in the cooler for Steve Wood to consume; however, I do not find such claim to be credible.

35. Prior to the start of the Christmas party, Steve Wood was outside of Friends Café in the parking lot assisting individuals with bringing in supplies for the party and at one point was witnessed to be consuming a bottle of beer in the parking lot by Bobby Pace. Steve Wood claims that he was consuming Busch NA (non-alcohol) beer from a brown bottle in the parking lot before the party started.

36. Shift C (Kennedy, Cox, Turish, Butts and Moses) arrived to the Christmas party around 6:30 p.m. and parked Engine 11 directly across the street from Friends Café in front of the police station. Shift C members were present at the party until the structure fire emergency call came in around 9:40 p.m. None of the members of Shift C consumed alcohol at the Christmas party.

37. Chief Martin Roberts attended the Fire Department Christmas party and arrived approximately at 6:15 p.m. and was present until approximately 9:40 p.m.

38. Assistant Chief Shane Wood was also present at the Christmas party, who had arrived with his fiancé shortly after the party started between 6:00 p.m. to 6:30 p.m. Shane Wood was not on duty during the Christmas party nor did he respond to the structure fire emergency that evening.

39. Robbie Creal was present at the Christmas party. Creal is a retired Fire Department Chief and currently serves as a volunteer firefighter with the Fire Department. Creal did not respond to the structure fire emergency that evening. I find Robbie Creal to be a credible witness concerning the events of December 14, 2012.

40. Volunteer firefighter and Volunteer Association President Roy Johnson was present at the Christmas party. Roy Johnson indicated that he had actively and openly supported Chief Roberts, Assistant Chief Shane Wood and Jacob Bissonnette during a previous investigation into

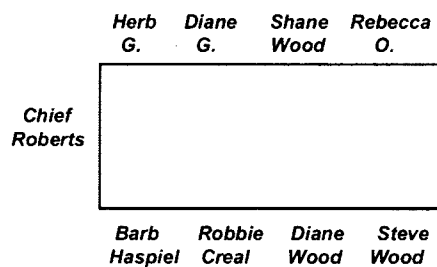
allegations concerning out-of-state visits to see fire trucks and suppression equipment of various vendors. Chief Roberts and Steve Wood confirmed that Roy Johnson was previously a strong supporter of Chief Roberts. I find Roy Johnson to be an extremely credible witness concerning the events of December 14, 2012.

41. Sergeant David Blank with the City's Police Department stopped by the Fire Department Christmas party to get a bite to eat. Sergeant Blank was on duty that evening and later assisted with traffic control at the scene of the structure fire. Sergeant Blank testified that he gets along with pretty much all members of the Fire Department, including the four accused. I find Sergeant David Blank's testimony concerning the events of December 14 & 24, 2012 to be credible.

42. Robert Wiemann who is a volunteer firefighter (since August 2008) was also in attendance at the Christmas party. Wiemann typically volunteers one day a week and works with all three shifts. I find Robert Wiemann to be a credible witness concerning the events of December 14, 2012.

43. At the party, Chief Roberts and Steve Wood were sitting at the same table towards the rear of Friends Café along with Diane Wood, Robbie Creal, Shane Wood and his fiancé, and a couple that was invited to the party by the Woods. Chief Roberts was sitting at the head of the table and could easily view all persons sitting at the same table.

44. The following is a diagram of the seating placement<sup>4</sup> at Chief Roberts' and Steve Wood's table during the Christmas party:



45. Steve Wood claims that he consumed five 12 o.z. bottles of Busch non-alcoholic beers during the course of the evening (between approximately 5:30 p.m. to 9:40 p.m.). Steve Wood and Diane Wood claim the Steve Wood does not consume alcoholic beverages anymore because

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<sup>4</sup> This seating chart is based on the testimony of Steve Wood. In light of testimony of Chief Roberts, it is possible that Steve Wood and Rebecca O. may have switched places at one point during the evening, but such would not alter the findings of this investigation.

of a health condition<sup>5</sup> he has, and that instead he regularly drinks non-alcoholic beer, such as Busch NA.

46. However, based on the preponderance of the evidence Steve Wood was drinking regular alcoholic Busch beers on the night of December 14, 2012. Based on credible eyewitness testimony from David Kennedy, Robbie Creal, Corey Butts, Roy Johnson, Sergeant David Blank and Bobby Pace, Steve Wood consumed alcoholic beverages at the Christmas party, including beer out of brown bottles and one beer out of a can, at least one sip of moonshine, and he consumed a few cherries soaked in moonshine.

47. Multiple credible witnesses saw Steve Wood holding a beer can or a brown beer bottle and consuming alcoholic beer inside the café and outside in the parking lot in front of the café. Roy Johnson and Robbie Creal both witnessed Steve Wood take a sip of the apple-cider moonshine from a mason jar. In addition to seeing Steve Wood consume beer, Robbie Creal who was sitting at the same table as Chief Roberts and Steve Wood, witnessed Steve Wood eat some moonshine-soaked cherries.

48. Such finding that Steve Wood consumed alcoholic beverages at the Christmas party is further supported by admissions made by Steve Wood that he had been drinking beer at the Christmas party to City Manager Bruce Campbell and Libby Kania when Steve Wood was notified that he was being placed on administrative leave on January 4, 2013<sup>6</sup>. During the January 4, 2013 meeting, Steve Wood also indicated his intent to resign as a volunteer to the Fire Department. If Steve Wood had only been drinking non-alcoholic beer at the Christmas party, it is curious as to why Steve Wood would not have told the City Manager during the January 4<sup>th</sup> meeting that he was drinking non-alcoholic beer at the Christmas party.

49. Assuming for the sake of argument that Steve Wood had been only been drinking non-alcoholic beer at the Christmas party as claimed by Steve and Diane Wood, such is still a malt beverage containing up to approximately 0.5% alcohol.<sup>7</sup> Drinking five Busch NA (non-

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<sup>5</sup> Steve Wood testified that he is a diabetic and that alcoholic beverage consumption is bad for his health, and therefore he only drinks non-alcoholic beer. When asked about why he consumes non-alcoholic beer which contains .05% alcohol if alcohol is bad for his health, he replied, that he had not really thought about that before. It is part of the human condition for people to consume things that are not the best choice for their health.

<sup>6</sup> This finding is supported by testimony from Steve Wood and City Human Resources Manager, Libby Kania.

<sup>7</sup> See Definition of “drug” under the Drug-Free Workplace Act. § 112.0455(10)(d), Fla. Stat.

alcoholic) 12 o.z. beers during the Christmas party would still place a slight amount of alcohol in Wood's system before responding to a fire emergency in a large and heavy aerial fire truck.

50. Other than testimony from himself and his wife, Diane Wood<sup>8</sup> and son, Shane Wood, and testimony from Chief Roberts, Steve Wood did not produce any evidence (receipts, video, photographs, etc.) that he was drinking Busch NA at the party. Regardless of whether Steve Wood was drinking Busch NA or regular alcoholic Busch beer, there is credible testimony that Steve Wood also consumed apple cider moonshine and cherries soaked in moonshine during the Christmas party.

51. The total amount of alcohol consumed by Steve Wood during the evening of December 14, 2012 is inconclusive. Based on eyewitness testimony, including those who witnessed Steve Wood consuming alcohol at the Christmas party, at no time did Steve Wood appear to be exhibiting signs of intoxication. Thus, there is not a preponderance of evidence showing that Steve Wood was intoxicated or beyond the legal blood-alcohol limit (criminal DUI standard) when he left the Christmas party and drove Tower 11 to the scene of the structure fire.

52. It is undisputed that Steve Wood left the Christmas party at Friends Café around 9:40 p.m. to pick up the Tower 11 and drove Tower 11 alone to the scene of the structure fire on the evening of December 14, 2012.

53. Before responding to the structure fire, Steve Wood radioed to seek permission to bring Tower 11 to structure fire. Thereafter, the dispatcher asked Chief Roberts whether he wanted Tower 11 to respond to the structure fire and Chief Roberts stated, "tell him to start this way and we'll see what we got." Chief Roberts was right behind Engine 11 on the way to the structure fire and knew that the entire crew of Shift C was in route to the structure fire on Engine 11 when the dispatcher called about Tower 11 responding. Based on all the testimony received, including

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<sup>8</sup> Diane Wood's testimony was the first time that I heard the claim Steve Wood was consuming non-alcoholic beer at the Christmas party. I found Diane Wood's testimony concerning the events of December 14, 2012 not credible. During questioning Diane Wood exhibited characteristics consistent with someone not being honest. She would often look away from me when answering questions including looking up and away and she turned to her lawyer a few times before answering (as to search for an answer), even though her lawyer did not once object any question asked. Her voice changed tone when answering a few tough questions related to alcohol consumption by her husband. Diane Wood appeared nervous and very defensive, and was quick to assert a witch hunt against her husband. She accused Fire Police Unit volunteer, Barbara Haspiel of also drinking at the Christmas party and later responding to the structure fire to direct traffic in a manner that implied she felt that it was wrong for Barbara Haspiel to get away with something that her husband was not.

that of Steve Wood, Chief Roberts knew that Steve Wood would be operating Tower 11 on evening of December 14, 2012 when Chief Roberts authorized “him” [Steve Woods] to respond to the structure fire in Tower 11. Further, it is clear from the evidence that Chief Roberts knew that Steve Wood was on scene working the structure fire.

54. There is a preponderance of evidence showing that Steve Wood had alcohol in his bloodstream while driving Tower 11 to and from and working the scene of the structure fire on December 14, 2012.

55. Chief Roberts was sitting at the head of the table where Steve Wood was sitting during the course of the Christmas party, and was in proximity to and had a direct line of sight to see Steve Wood consuming alcohol during the evening.

56. Several witnesses expressed that given the relatively small size of the interior of Friends Café and Chief Roberts’ proximity to Steve Wood during the Christmas party, there is no way Chief Roberts did not see Steve Wood drinking alcohol that evening.

57. Chief Roberts testified that during the same evening of the structure fire (December 14, 2012) David Kennedy expressed to Chief Roberts a concern that Steve Wood had been drinking alcoholic beverages at the Christmas party and inappropriately responded to the structure fire.

58. Chief Roberts testified that he has previously ordered Fire Department personnel pursuant to the City’s drug and alcohol free workplace requirements to get drug tested when he suspected someone to be under the influence. Upon David Kennedy expressing his concern about Steve Wood’s alcohol consumption earlier in the evening and the seriousness of such allegation/concern, Chief Roberts could (and should) have required Steve Wood to be immediately tested for alcohol in his system. However, Roberts failed to order Steve Wood to be alcohol tested.

59. Steve Wood testified that in the days following the Christmas party, Chief Roberts spoke to him about consuming alcohol at the Christmas party, and that Chief Roberts dealt with the situation. Chief Roberts claims that he spoke with Steve Wood on two separate occasions - on December 15<sup>th</sup> and December 16<sup>th</sup> - to admonish Steve Wood concerning the Fire Department Standard Operating Procedure regarding the consumption of alcohol due to the complaints he had received initially from David Kennedy, then from Dustin Snyder and Ray Turish. Chief Roberts claims that such admonishment was not due to the fact that he believed Steve Wood had consumed alcohol at the Christmas party, but just as a cautionary measure for future reference;

such seems incredible in light of the testimony received from Steve Wood, Dustin Snyder and Ray Turish.

60. On December 19, 2012, Dustin Snyder and Ray Turish jointly spoke with Chief Roberts about their concerns that Steve Wood had consumed alcoholic beverages at the Christmas party and responded to the structure fire in Tower 11 under the influence of alcohol. Chief Roberts told Snyder and Turish that Steve Wood had been drinking alcoholic beverages, but that Steve Wood was feeling fine and was alright to respond to the structure fire. Further, Chief Roberts explained that he had given Steve Wood a verbal reprimand for his actions on December 14<sup>th</sup> and that these events would never happen again. Further, Chief Roberts admitted to Snyder and Turish that Chief Roberts had also consumed alcohol at the Christmas party and he was feeling fine when responding to the structure fire, so there was nothing to worry about.

61. Barbara Haspiel, a volunteer with the Department's Fire Police Unit arrived to the Christmas party at approximately 6:30 p.m. Barbara Haspiel brought a bottle of Prosecco wine, which is a sweet bubbly wine. A Prosecco wine typically has an alcohol content of 12.5% to 13.5% alcohol.

62. Barbara Haspiel testified that she consumed a small quantity of Prosecco wine herself that evening and that she also twice poured wine (approximately 6 o.z.) into a plastic solo cup for Chief Roberts to consume. Other persons interviewed testified that Haspiel poured wine into a plastic cup for Chief Roberts to consume.

63. Although Barbara Haspiel states that she did not personally see Chief Roberts drinking the wine from the plastic cup, both Roy Johnson and Robert Wiemann saw Chief Roberts drink the wine that Haspiel poured for Chief Roberts. From the credible testimony received, the amount of wine consumed by Chief Roberts appeared to be of a normal amount for a reasonable person enjoying wine with dinner. Robbie Creal testified that he saw Chief Roberts holding the cup of wine Haspiel poured for him and that he believes Chief Roberts had two cups of wine during the Christmas party.

64. Chief Roberts stated that he took one drink of a beverage Barbara Haspiel poured for him into a plastic cup. Roberts claims he did not like the beverage which was bubbly and tasted like 7-UP, so he set the cup to the side and did not have any more. Chief Roberts claims Barbara Haspiel represented to Chief Roberts that such beverage was non-alcoholic and he did not know the identity of the beverage. Chief Roberts admits that Haspiel later poured more of the same

beverage into his plastic cup. Such beverage referred to by Chief Roberts is the Prosecco wine Barbara Haspiel poured for Chief Roberts. I do not find credible Chief Roberts' testimony that Haspiel duped him into drinking Prosecco wine, nor that he only had one sip of the wine.

65. Chief Roberts admitted that he consumed one moonshine-soaked cherry but he allegedly did so without knowing it had been soaked in alcohol.

66. There is a preponderance of evidence showing that Chief Roberts consumed alcoholic beverages (wine) and at least one moonshine-soaked cherry at the December 14, 2012 Christmas party.

67. While there are written statements claiming that on December 19, 2012 Chief Roberts admitted to Snyder and Turish that Roberts was sipping moonshine during the Christmas party, there is no eyewitness testimony stating that anyone witnessed Roberts consuming moonshine at the party. Chief Roberts testified that at one point during the evening he held the mason jar containing moonshine in order to smell it, but did not consume the moonshine.

68. The total amount of alcohol consumed by Chief Roberts during the evening of December 14<sup>th</sup> is inconclusive, but a reasonable inference is between 6 o.z to 12 o.z. of Prosecco wine and a small quantity of moonshine by eating the moonshine-soaked cherry.

69. Based on eyewitness testimony, including those who witnessed Chief Roberts consuming alcohol at the Christmas party, at no time did Chief Roberts appear to be exhibiting signs of intoxication. Thus, there is not a preponderance of evidence showing that Chief Roberts was intoxicated or beyond the legal blood-alcohol limit (criminal DUI standard) when he left the Christmas party and drove his Chief 11 SUV vehicle to the scene of the fire and took command of the fire scene.

70. At approximately 9:40 p.m. on December 14, 2012, Shift C was notified of the structure fire and preceded to Engine 11 to respond to the call. As Shift C Leader, David Kennedy was about to exit the front door of Friends Café he told Chief Roberts not to let anyone who had been drinking to respond to the fire. Although Chief Roberts did not respond to Kennedy, the testimony indicates that Chief Roberts heard Kennedy's statement to him.<sup>9</sup>

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<sup>9</sup> Chief Roberts admitted that David Kennedy made this or a similar statement. Additionally, Chief Roberts claims that he make an announcement to the crowd at Friends Café that for personnel whom had been drinking not to respond to the structure fire; this claim is unsupported by any other testimony and appears contrary to testimony given by witnesses who were present that night.

71. Chief Roberts ignored such sound advice by Kennedy, and instead, while having alcohol in his system Chief Roberts left the Christmas party to respond to the structure fire in his City issued Chief 11 SUV vehicle.

72. Further, even though Steve Wood consumed alcohol at the Christmas party and Chief Roberts was aware of such alcohol consumption, Chief Robert gave Steve Wood permission to respond to the structure fire with Tower 11.

73. Upon arriving on scene, Chief Roberts assumed command of the fire scene while having alcohol in his system, and further allowed Steve Wood to operate and man Tower 11 at the scene of the structure fire on the evening of December 14, 2012.

74. While giving testimony during this investigation, Diane Wood and Steve Wood alleged that Barbara Haspiel responded to the fire scene on December 14<sup>th</sup> after consuming alcohol at the Christmas party. Steve Wood said that he saw Haspiel drinking wine at the Christmas party and later saw her directing traffic at the scene of the structure fire. Steve Wood said she responded to the scene in her personal vehicle with emergency lights and wearing her Department gear. Steve Wood said that it is likely the Shift C crew did not see Barbara Haspiel directing traffic on scene.

75. Sergeant David Blank with the Flagler Beach Police Department responded to the emergency and was on scene directing traffic. Sergeant Blank also testified that Barbara Haspiel was directing traffic at the scene of the structure fire on December 14, 2012. Chief Roberts testified that he did not see Barbara Haspiel at the scene, but later saw Haspiel at the fire station after the structure fire had been extinguished signing in to receive credit for time she spent volunteering that evening.

76. Barbara Haspiel testified that she left the Christmas party early (before the fire emergency call came in) and went home to take a shower. Barbara Haspiel did not mention responding to the fire emergency. I interviewed Barbara Haspiel before Diane Wood and Steve Wood made these allegations against Barbara Haspiel, so I did not ask her whether she responded to the fire emergency. There is probable cause to investigate volunteer Fire Police Unit member, Barbara Haspiel for responding to an emergency while alcohol being present in her system.

77. The events of December 14, 2012 show poor judgment by Chief Roberts and evidence of a lack of organizational control within the Fire Department.



*Events of December 24 and 25, 2012*

78. During my interviews with Assistant Chief Shane Wood and Jacob Bissonnette, they each admitted to facts consistent with the allegations against them and the testimony previously given to me by Bobby Pace, Dustin Snyder and Sergeant David Blank and further corroborated by video taken from a Fire Department camera on December 24, 2012.

79. Sergeant Frank Parish verified the authenticity of the video concerning the events of December 24, 2012 that he retrieved from the fire station and logged into evidence. Further, Sergeant David Blank reviewed such video and verified and explained the images contained on the video, which he was able to do since he was present in the fire station parking lot on December 24, 2012 and Blank's image was captured on the video. There is a great deal of certainty as to the findings concerning the events of December 24 and 25, 2012.

80. On December 24, 2012, Assistant Chief Shane Wood and Jacob Bissonnette (Shift A) reported to duty at 8:00 a.m. During that morning, Jacob Bissonnette contacted Lieutenant (Lt.) Greg Weston, with the Flagler County Sheriff's Department to make arrangements for Lt. Weston to sell and deliver to Bissonnette an apple pie favored faux-moonshine alcoholic beverage that Lt. Weston mixed and boiled down at home using 100 proof grain alcohol purchased at a retail store, sugar and other store-bought ingredients. Thus, the alcohol at issue concerning the allegations against Shane Wood and Jacob Bissonnette is not moonshine; more like a homemade cocktail or alcoholic mixture.

81. On the afternoon of December 24, 2012, Sergeant David Blank who was on duty pulled into Fire Station 11 parking lot with his duty vehicle and thereafter stood in the parking lot talking with Jacob Bissonnette and Shane Wood and Mark Reeves, a person they knew who used to work for a local law enforcement agency.

82. Shortly thereafter, Lt. Weston arrived to Fire Station 11 in what appears to be his private vehicle (Chevy S10 truck). Lt. Weston was not in uniform and was off-duty according to the testimony given.

83. In the presence of Assistant Chief Shane Wood and Sergeant David Blank, Jacob Bissonnette purchased two mason jars of alcohol wrapped in paper towels (Lt. Weston's homemade cocktail) from Lt. Weston while in the parking lot of the fire station (City property).

Bissonnette purchased the two jars of alcohol for \$10. Both Shane Wood and Jacob Bissonnette were on duty and in uniform when this alcohol transaction occurred on fire station property.

84. Thereafter, Jacob Bissonnette took the two jars of alcohol into the fire station and stored them in the Shift A refrigerator in the Fire Station kitchen, and went back out to the parking lot to continue talking with Lt. Weston, Shane Wood, Sergeant David Blank and Mark Reeves. Shortly thereafter, the group disbursed.

85. On the morning of December 25, 2012, right before the shift change between Shift A and Shift B occurred, Shift B members, Bobby Pace and Dustin Snyder were bringing in Christmas dinner supplies. Upon placing groceries in the Shift A refrigerator, Bobby Pace and Dustin Snyder discovered the two mason jars of alcohol that were placed there by Jacob Bissonnette.

86. After the shift change occurred between Shift A and Shift B slightly after 8:00 a.m., December 25, 2012, Assistant Chief Shane Wood and Jacob Bissonnette while in the presence of Bobby Pace and Dustin Snyder recovered the mason jars filled with alcohol from the Shift A refrigerator and they (Wood and Bissonnette) each took a sip from one of the two mason jars. Then Shane Wood and Jacob Bissonnette closed the mason jar lid and took both mason jars home with them.

87. The preponderance of the evidence shows that while on duty, in uniform and on Fire Department property, Jacob Bissonnette purchased alcoholic beverages from Lt. Weston and stored such alcohol on Fire Department property. Further, Assistant Chief Shane Wood knowingly and willingly allowed Jacob Bissonnette to purchase said alcohol while on duty, in uniform and while on Fire Department property.

88. Further, preponderance of the evidence shows that while in uniform and in Fire Station 11, but not on shift, both Assistant Chief Shane Wood and Jacob Bissonnette consumed alcohol.

89. The events of December 24 and 25, 2012 show further evidence of the lack of organizational control within the Fire Department.

#### *Alcohol Related Policies*

90. Based on the interviews with career and volunteer firefighters (that are not the subject to the investigation), there is a clear understanding that the City has a zero tolerance policy when it comes to the presence of alcohol in one's body while responding to an emergency or going on

shift and that such policy is of paramount importance due to the inherent dangers in the duties performed by firefighters both to themselves, their crew, other responding emergency service agencies and to members of the public. There is also a clear understanding that alcohol is not permitted on City property, including within the fire station.

91. Chief Roberts testified that all Fire Department personnel have access to Standard Operating Procedures on their computer and are told to review and understand such procedures.

92. The City requires new employees to sign Notice to Employees and Job Applicants concerning the City's Drug Free Workplace Policies & Procedures. The first paragraph of such Notice provides that, "it is the position of the City of Flagler Beach that it is a condition of employment to refrain from reporting to work or working with the presence of drugs or alcohol in your body."

93. On October 21, 1997, Shane Wood signed the Notice to Employees and Job Applicants concerning the City's Drug Free Workplace Policies & Procedures.

94. On January 22, 2004, Steve Wood signed the Notice to Employees and Job Applicants concerning the City's Drug Free Workplace Policies & Procedures.

95. On October 10, 2005, Martin Roberts signed the Notice to Employees and Job Applicants concerning the City's Drug Free Workplace Policies & Procedures.

96. On December 28, 2006, Jacob Bissonnette signed the Notice to Employees and Job Applicants concerning the City's Drug Free Workplace Policies & Procedures.

97. Section 112.0455, Florida Statutes, the "Drug-Free Workplace Act" defines "drug" to include alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors. Further subsection (10)(d) of the Drug-Free Workplace Act permits an employer to establish reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of those rules.

98. Section 633.816, Florida Statutes, of the Florida Firefighters Occupational Safety and Health Act, provides that:

"Each firefighter employee of a firefighter employer covered under [the Act] shall comply with rules adopted by the division and with reasonable workplace safety and health standards, rules policies, procedures, and work practices established by the firefighter employer and the workplace safety committee. A firefighter

employee who knowingly fails to comply with this subsection may be disciplined or discharged by the firefighter employer.”

According to 633.820, Florida Statutes, the provisions of the Florida Firefighters Occupational Safety and Health Act, including § 633.816, Fla. Stat., apply to volunteer firefighters and volunteer fire departments.

99. Section 2-231(a), City of Flagler Beach Code of Ordinances provides:

“The sale, use, acceptance, possession or being under the influence of alcohol or controlled substances (per Florida Law; e.g. heroin, LSD, barbiturates, amphetamines, marijuana, cocaine, etc.) on city compensated time, on city property, or in/on any city building, facility, or equipment may result in disciplinary action, up to and including termination.”

100. Section 2-270, City of Flagler Beach Code of Ordinances provides that the following is a Group III Offense subject to up to discharge for first offense:

“(15) Using alcohol and/or controlled substance or being under the influence of same on the city’s premises and/or on working time. Possession or sale of alcohol or controlled substance on the city’s vehicles or buildings and/or during work time.”

101. City management provided me with the City of Flagler Beach Fire Department Standard Operating Procedures issued on January 1, 2008, which states in pertinent part:

Section 100.02 Attention to Duties

“2. The lack of honesty, motivation, emotional stability, sound judgment, industry, alertness, power to observe, initiative, energy, intelligence, ability to get along with co-workers or with the public, or unsatisfactory performance of duties shall be evidence of incompetence.”

Section 100.03 Rules of Conduct

1. ALL MEMBERS SHALL:
  - A. Follow S.O.P. Manual and written directives of Flagler Beach Fire Rescue and the Flagler Beach Board of City Commissioner.
  - D. Always conduct themselves to reflect credit of the department.
  - H. Be concerned and protective of each member’s welfare.
  - I. Operate safely and use good judgment.

- L. Be careful of department equipment and property.
2. MEMBERS SHALL NOT:
- A. Engage in any activity that is detrimental to the department
  - E. Use alcoholic beverages, debilitating drugs, or any substance that could impair their physical or mental capacities while on duty.

Section 1300.01 Guidelines

- Provides that conduct unbecoming Fire Service Personnel is a disciplinary offense subject to 1-day suspension to dismissal.
- Provides that failure to comply with Standard Operating Procedures is a disciplinary offense subject to oral reprimand to dismissal.
- Provides that the possession, sale, transfer or use of alcohol or drugs on the job is a disciplinary offense subject to 3-day suspension to dismissal for first offense and such contains a reference to the City's policy on drug-free workplace.
- Provides that being under the influence of alcohol or drugs while on the job is a disciplinary offense subject to 3-day suspension to dismissal for first offense and such contains a reference to the City's policy on drug-free workplace.
- Provides that violation of city ordinances, rules, regulations or policies is a disciplinary offense subject to oral reprimand to a 3-day suspension.
- Provides that a willful violation of city ordinance, rules regulations or policies is a subject to written reprimand to a 3-day suspension.

Section 1300.02 Definition of Offenses

Provides a definition of possession, sale, transfer or use of alcohol or drugs on the job as "the possession, sale, distribution or use of alcoholic beverages or non-prescribed or illegal drugs on County [sic] property and/or during working activities and/or while using a city vehicle. Includes the unlawful use of controlled substances, the unlawful possession or sale of alcohol or controlled substances, and the storage or bringing into any city facility or premises alcohol or controlled substances. It should be noted that an employee may be disciplined for any criminal law violation associated with alcohol or substance abuse. However, the possession or storage of alcohol or controlled substances which are required to be possessed, sold, or transferred in the performance of official duties, or held as evidence, or are prescribed drugs for illness of the employee does not constitute a violation of this offense. Sworn law enforcement officers or duty officers

will be dismissed for the unlawful possession, use, sale or transfer of drugs as defined in Florida State Statutes.”

I rely on representations from City management that these Standard Operating Procedures are current and validly issued.

#### Determination

102. Jacob Bissonnette violated Section 2-231(a), City of Flagler Beach Code of Ordinances by purchasing, accepting, and possessing alcohol while on City (fire station) property and on City compensated time, and by using alcohol while on City property. Further, such actions are violations of Fire Department Standard Operating Procedures Section 100.02(2) and Section 100.03(1)A.,D. & I. and (2)A. and generally conduct unbecoming fire service personnel.

103. Shane Wood violated Section 2-231(a), City of Flagler Beach Code of Ordinances by accepting and possessing alcohol while on City (fire station) property and on City compensated time, and by using alcohol while on City property. Further such actions are violations of Fire Department Standard Operating Procedures Section 100.02(2) and Section 100.03(1)A.,D. & I. and (2)A. and generally conduct unbecoming fire service personnel.

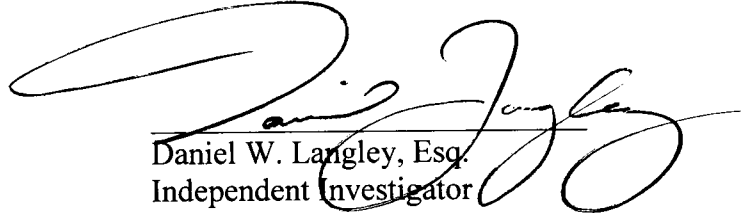
104. The term “being under the influence of alcohol” as used in the City Code of Ordinances is not the same standard as a criminal DUI; the City’s zero tolerance policy (Drug Free Workplace) uses such standard as meaning the presence of any alcohol in the body is a violation. Firefighters and EMTs are held to a higher standard than the general public. The presence of any alcohol in a firefighter’s or EMT’s body when responding to an emergency, driving a large and heavy vehicle at high speeds, performing fire suppression duties, and/or being in command of emergency responders during an emergency situation is unacceptable and endangers themselves, their fellow Fire Department members, other agencies’ first responders, and the general public.

105. Steve Wood violated Section 2-231(a), City of Flagler Beach Code of Ordinances by being under the influence of alcohol while operating City equipment. Further such actions are violations of Fire Department Standard Operating Procedures Section 100.02(2) and Section 100.03(1)A.,D., H., I. & L. and (2)A. & E. and generally conduct unbecoming fire service personnel.

106. Chief Martin Roberts violated Section 2-231(a), City of Flagler Beach Code of Ordinances by being under the influence of alcohol while operating City equipment and by

authorizing Steve Wood to respond to a structure fire while using City equipment. Further, such actions are violations of Fire Department Standard Operating Procedures Section 100.02(2) and Section 100.03(1)A., D., H., I. & L. and (2)A. & E. and generally conduct unbecoming fire service personnel.

Respectfully submitted this 31st day of January, 2013.



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