

# Administration

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November 3, 2016

Ms. Jennifer Stagg  
16 Riviere Lane  
Palm Coast, Fl. 32164

Subject: Results of Pre-Determination Hearing

Dear Ms. Stagg:

This letter is a follow up to your Pre-Disciplinary Hearing that was held on Monday, October 31, 2016 which convened at 10:46 a.m. and continued to Wednesday, November 2, 2016 at 8:02 a.m. to consider the violations of the Flagler County Personal Policy and Procedures, Chapter 13, which you were made aware of by a memorandum dated October 26, 2016. The following is the result of that hearing:

It has been determined by me, the Hearing Officer, based upon the testimony and evidence presented, including that of your own, substantiates the following findings:

- **Section 13, Group 2, Number 6:** Failure to report a request for information or receipt of a subpoena from a law firm or an attorney for a matter relating to County Business.

**Does not support the finding** that you are in violation of the above Flagler County Policies and Procedures.

- **Section 13, Group 2, Number 11:** Tardiness.

**Supports the finding** that you are in violation of the above Flagler County Policies and Procedures – Evidence presented demonstrates that not only was tardiness an issue addressed by Mr. Garten. Evidence was also presented from your prior supervisors, Troy Harper and Kevin Guthrie, which also documented the tardiness issues. Both, Mr. Garten and Mr. Guthrie testified at the hearing regarding holding meetings with you to discuss the tardiness. They both also allowed you to select the specified time for reporting to work. Further, the documentation demonstrated your continued inability to adhere to the modified agreed upon plan.

Note: Regarding hours worked, please know that working evening and weekend meetings are part of the job description associated with the position and as such,

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**District 1**  
Charles Ericksen, Jr.

**District 2**  
Frank Meeker

**District 3**  
Barbara Revels

**District 4**  
Nate McLaughlin

**District 5**  
George Hanns

compensation is built into the salary. In order to serve the citizenry, a number of positions with the County work evenings and weekends.

Furthermore, in accordance with the Fair Labor Standards Act:

*Rights of Exempt Employees*

An exempt employee has virtually “no rights at all” under the FLSA overtime rules. About all an exempt employee is entitled to under the FLSA is to receive the full amount of the base salary in any work period during which s/he performs any work (less any permissible deductions). Nothing in the FLSA prohibits an employer from requiring exempt employees to “punch a clock,” or work a particular schedule, or “make-up” time lost due to absences. Nor does the FLSA limit the amount of work time an employer may require or expect from any employee, on any schedule. (“Mandatory overtime” is not restricted by the FLSA).

Again, to feel that you have the ability to not adhere to the agreed upon modified plan for your work hours of 8 to 5 supports the finding.

- **Section 13, Group 2, Number 12:** Chronic (un-excused) absenteeism.

**Supports the finding** that you are in violation of the above Flagler County Policies and Procedures – Evidence presented demonstrates chronic absenteeism during the time period from March 30<sup>th</sup> – October 17<sup>th</sup>.

Note: Regarding hours worked, please know that working evening and weekend meetings are part of the job description associated with the position and as such, compensation is built into the salary. In order to serve the citizenry, a number of positions with the County work evenings and weekends. This does not entitle a team member to not show up on a regular basis without obtaining prior approval from the supervisor.

Furthermore, in accordance with the Fair Labor Standards Act:

*Rights of Exempt Employees*

An exempt employee has virtually “no rights at all” under the FLSA overtime rules. About all an exempt employee is entitled to under the FLSA is to receive the full amount of the base salary in any work period during which s/he performs any work (less any permissible deductions). Nothing in the FLSA prohibits an

employer from requiring exempt employees to “punch a clock,” or work a particular schedule, or “make-up” time lost due to absences. Nor does the FLSA limit the amount of work time an employer may require or expect from any employee, on any schedule. (“Mandatory overtime” is not restricted by the FLSA).

Again, you feel that you have the ability to not obtain prior approval or make contact with your supervisor supports the finding.

- **Section 13, Group III, Number 7:** Insubordination by the refusal to perform work assigned or to comply with written or verbal instructions of a supervisor.

**Supports the finding** that you are in violation of the above Flagler County Policies and Procedures – Based on documentation during Hurricane Matthew, you were assigned as Planning Section Chief for the Flagler County Emergency Operation Center as evident on a number of documents including the sign in sheet for duty. Therefore, to testify as to not knowing your role during the emergency because Mr. Garten did not advise you is concerning. Your absence created a gap in the required continuity and efficiency to allow the planning section to run more efficiently. Additionally, as the Planning Section Chief and Trainer for the organization, it is noted that you did not submit any Activity Logs/ ICS 214 forms for the event.

- **Section 13, Group III, Number 10:** Immoral, unlawful, improper conduct or indecency which would tend to affect the employee’s relationship to their job, fellow workers, reputation, or goodwill in the community.

**Does not support the finding** that you are in violation of the above Flagler County Policies and Procedures.

- **Section 13, Group III, Number 21:** Making or publishing false, vicious, or malicious statements concerning any employee, supervisor, the County or its operation.

**Does not support the finding** that you are in violation of the above Flagler County Policies and Procedures.

- **Section 13, Group III, Number 26:** Conduct Unbecoming a Public Employee (to include whether on or off the job, that adversely affect the employee’s ability to perform his current job, or which adversely affects the department’s ability to carry out its assigned mission).

**Does not support the finding** that you are in violation of the above Flagler County Policies and Procedures.

Let it be noted that as the hearing officer, after due consideration and deliberation, I did not make this decision unconscientiously. I have thoroughly reviewed all of the information associated with the hearing. Based on the evidence and testimony submitted I did not fully support the recommendation for termination due to the conflicts between testimony and the documentation by both parties which could not be resolved by me within the time allotted by the pre-disciplinary procedures.

However, it is my assessment based upon the documentation and testimony presented during the hearing that you refuse to adhere to an agreed upon modified work schedule. Therefore, consider this as the next step in progressive discipline resulting in an immediate five (5) day suspension without pay. Furthermore, consider this as a written notification that any further unexcused tardiness or unexcused absenteeism will result in further disciplinary action up to and including termination.

As it relates to Section 13 Group III, Number 7, a joint performance improvement plan will be developed providing an opportunity to ensure your success. This plan will be developed within the next 30 days in coordination with your supervisor and the human resources director. It is critical to your success that you conduct yourself in a professional collaborative manner with the entire team. Any indication to contrary will result in further disciplinary action up to and including termination.

You are important to our organization and the department and have the ability to help ensure both are successful.

Should you not agree with this written decision, you have the right to appeal in accordance with the procedure contained in the Flagler County Personnel Policies and Procedures. If you have any questions, please contact Joe Mayer, Human Resource Director at (386) 313-4033.

Regards,



Sally Sherman, Deputy County Administrator/Hearing Officer  
Flagler County, Board of County Commissioners

c: Joe Mayer, Human Resources  
Stephen Garten, Public Safety Emergency Manager