

Cause No. 42421-5-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

LEWIS COUNTY CIVIL SERVICE )  
COMMISSION, LEWIS COUNTY )  
SHERIFF'S DEPARTMENT, and )  
LEWIS COUNTY, )

Appellants )

vs. )

HAROLD SPROUSE, )

Respondents )

11 DEC 22 PM 1:13  
STATE OF WASHINGTON  
BY                       
DEPUTY

COURT OF APPEALS  
DIVISION II

---

BRIEF OF APPELLANT

---

RICHARD H. WOOSTER, WSBA 13752  
Kram & Wooster  
Attorney for Appellants  
1901 South I Street  
Tacoma, WA 98405  
(253) 572-4161

ORIGINAL

**TABLE OF CONTENTS**

	Page(s)
Table of Contents.....	i
Table of Cases.....	ii-iv
I. Introduction.....	1-2
II. Assignment of Error and Issues Pertaining to Assignment of Error.....	2-3
III. Statement of the Case.....	3-16
a. Procedural History of Termination and Appeal.....	3-4
b. Facts Relating to Good Faith Cause for Removal of Employee.....	4-16
IV. Legal Discussion.....	17-42
A. Standard of Review of Superior Court’s Decision is <i>De Novo</i> .....	17
B. The Burden is On the Respondent (Sprouse) to Establish in This Court That the Civil Service Commission Decision Was Not Made in Good Faith, or Was Arbitrary, Capricious or Contrary to Law.....	17-19
C. The Decision Made By the Civil Service Commission Was Made In Good Faith and For Cause and Is Not Arbitrary, Capricious or Contrary to Law.....	19-25
D. Mr. Sprouse’s First Amendment Rights were Not Infringed by this Termination because the Department’s Expectations Regarding His Conduct Were Not Unlawful:.....	25-42
V. Conclusion.....	42-43

APPENDIX

## TABLE OF AUTHORITIES

<u>Table of Cases</u>	<u>Page</u>
<u>Appeal of Butner</u> , 39 Wash.App. 408, 411, 693 P.2d 733, 736 (1985).....	17
<u>Arnett v. Kennedy</u> , 416 U.S. 134, 162-63, 94 S.Ct. 1633, 1648-49, 40 L.Ed.2d 15 (1974).....	28, 36, 37, 38
<u>Benavides v. Civil Service Comm'n</u> , 26 Wash.App. 531, 613 P.2d 807 (1980).....	17, 18
<u>City of Seattle, Seattle Police Dept. v. Werner</u> , 163 Wash.App. 899, 907, 261 P.3d 218, 222) (2011).....	18
<u>Connick v. Myers</u> , 461 U.S. 138 at 148 n.7 & 15 n.10).....	26
<u>Connick v. Myers</u> , 461 U.S. 138, 140, 103 S.Ct. 1684, 1686, 75 L.Ed.2d 708 (1983).....	27, 28, 29, 32, 34, 38, 39, 40
<u>Donovan v. Reinbold</u> , 433 F.2d 738 (9th Cir.1970),.....	34
<u>Eng v. Cooley</u> , 552 F.3d 1062 (9th Cir.2009).....	27, 30
<u>Garcetti v. Ceballos</u> , 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006).....	29, 30, 31, 39, 40
<u>Gertz v. Robert Welch, Inc.</u> , 418 U.S. 323, 340, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974).....	36, 37
<u>Greig v. Metzler</u> , 33 Wash.App. 223, 226, 653 P.2d 1346, 1347 - 1348 (1982).....	17
<u>Hilltop Terrace Homeowner's Ass'n v. Island County</u> , 126 Wash. 2d 22, 29–30, 891 P.2d 29 (1995).....	18
<u>Huppert v. City of Pittsburg</u> , 574 F.3d 696 (9 <sup>th</sup> Cir. 2009).....	31
<u>Hyland v. Wonder</u> , 972 F.2d 1129, 1139 (9th Cir. 1992), <i>cert. denied</i> , ___ U.S. ___, 113 S.Ct. 2337, 124 L.Ed.2d 248(1993).....	33

<i>Johnson v. Multnomah County</i> , 48 F.3d 420, 426 (9th Cir. 1995).....	32, 36, 37
<i>Kendall v. Douglas, Grant, Lincoln &amp; Okanogan Counties Pub. Hosp. Dist. No. 6</i> , 118 Wn.2d 1, 14, 820 P.2d 497 (1991).....	18
<i>Mt. Healthy City School Dist. Bd. of Educ. v. Doyle</i> , 429 U.S. 274, 287, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).....	40
<i>NAACP v. Button</i> , 371 U.S. 415, 433, 83 S.Ct. 328, 337, 9 L.Ed.2d 405 (1963).....	36
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254, 271-72, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964).....	36
<i>Pickering v. Bd. of Education</i> , 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).....	26, 31, 32, 33, 34, 35, 36, 37
<i>Pierce County Sheriff v. Civil Service Com'n of Pierce County</i> , 98 Wash.2d 690, 695, 658 P.2d 648, 651 - 652 (1983).....	19
<i>Rankin v. McPherson</i> , 483 U.S. 378, 390-391, 107 S.Ct. 2891, 2900 - 2901 (1987).....	32, 33
<i>Roth</i> , 856 F.2d at 1407.....	32, 33
<i>Waters v. Churchill</i> , 511 U.S. 661, 671, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994).....	39
<i>White v. State</i> , 78 Wash.App. 824, 832 n.3 (1995).....	26

**Statutes**

RCW 41.14.120.....	1, 2, 17, 20, 21
RCW 41.14.....	2, 41
RCW 9A.72.110.....	14
RCW 9A.42.120.....	14
RCW 41.12.....	17, 41
RCW 7.16.120.....	18
RCW 36.28.010.....	31

RCW 36.28.011 .....	31
RCW 36.28.020 .....	31
RCW 42.41.....	41
RCW 42.41.050.....	41
RCW 41.08.....	41
RCW 41.56.....	41
RCW 41.59.....	41
RCW 53.18.....	41
RCW 54.04.170.....	41
RCW 54.04.180.....	41



upon such ground or grounds.” Rather than conducting the review required under RCW 41.14, the Superior Court substituted its judgment in lieu of the Civil Service Commission’s decision and Ordered the discharged Sheriff’s Deputy reinstated. The Lewis County Sheriff’s Office asserts the Superior Court improperly reversed the Lewis County Civil Service Commission.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

- 1. The Superior Court Erred When It Substituted Its Judgment For that of the Lewis County Civil Service Commission Determining that Mr. Sprouse Made A “Vindictive or Retaliatory Report to the Lewis County Prosecutor’s Office That Has No Basis in Fact” and Finding Such Conduct Was Sufficient Good Cause For Discharge of a Sheriff’s Deputy From the Lewis County Sheriff’s Office.**
  - a. Does the Limited Review Provided By RCW 41.14.120 that “...the order of discharge made by the [Civil Service] commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds” Require the Superior Court To Focus Its Inquiry On the Decision When Reviewing Civil Service Commission Decisions?**
  - b. Did the Superior Court Err When It Substituted Its Judgment For That of the Civil Service Commission that Heard the Evidence and Upheld the Removal of a Disruptive Sheriff’s Deputy?**
  - c. What is the Appropriate Standard For Overturning the Decision of the Civil Service Commission Pursuant to RCW 41.14.120?**
  - d. Was The Decision of the Civil Service Commission To Uphold the Termination of Mr. Sprouse Made in Good Faith For Cause?**

- e. **Did the Discharged Sheriff's Deputy Fail to Establish the Decision of the Civil Service Commission was Arbitrary, Capricious or Contrary to Law?**
- f. **Is Deference Afforded to the Decision of Civil Service Commission Even if the Court Disagrees With the Result?**
- g. **May a Law Enforcement Agency Take Disciplinary Action Against a Sheriff's Deputy Whom Made a False Retaliatory Report that the Sheriff's Office Administration Engaged in Criminal Witness Intimidation With the Intent to "Bring Pressure Down" Upon His Department Without Infringing that Deputy's First Amendment Rights?**
- h. **Should the Decision of the Lewis County Civil Service Commission Affirming the Employee's Termination be Upheld and the Decision of the Superior Court be Reversed?**

### **III. STATEMENT OF THE CASE**

#### **a. Procedural History of Termination and Appeal.**

The Lewis County Sheriff's Office conducted an inquiry into Mr. Sprouse's conduct following his false report alleging criminal conduct by the Sheriff's Administration. Mr. Sprouse was terminated from his position of Deputy Sheriff for that false report and other violations of the Lewis County Sheriff's Office Policies. Mr. Sprouse appealed his termination to the Lewis County Civil Service Commission which held hearings On April 19<sup>th</sup> and 20<sup>th</sup>, 2010 and upheld the termination by written decision on the basis of his false retaliatory reports alleging criminal conduct by members of the Sheriff's Administration. Mr.

Sprouse appealed to the Superior Court which overturned the termination stating "...I am left with a definite and firm conviction that a mistake has been committed on the entire record." SRP2, pg. 13, lns. 20-23.<sup>1</sup> The Lewis County Sheriff's Office asserts the Superior Court failed to meet the required standard to overturn the Lewis County Civil Service Commission and the decision of the Civil Service Commission should be affirmed by this Court.

**b. Facts Relating to Good Faith Cause for Removal of Employee.**

Upset (Report of Proceedings 38, Lines 3-19; RP 44, ln 6-RP 44, ln. 5; RP 252, ln. 20 – RP 253, ln. 6) over a minor letter of reprimand (Sheriff's Ex. 4), Hal Sprouse accused the Lewis County Sheriff's Administration of a criminal conspiracy to engage in witness tampering (RP 39, lns. 14-17; RP 75, lns. 16-25). Ignoring the advice of several supervisors that his allegations did not establish criminal conduct (RP 39, ln. 14 – RP 41, ln. 19; RP 42, lns. 5-19; ; RP 77, lns. 3-21; RP 84, lns. 1-9; RP 138, lns. 16-19; RP 260, lns. 15-25; RP 261, lns. 10-20; RP 262, lns. 19 – RP 263, ln. 17; RP 189, lns 8-23), Sprouse defied a directive not to discuss the issue, other than with his Guild representatives, until he met

---

<sup>1</sup> Reference to the Report of the Proceedings Before the Superior Court shall be denominated SRP1 for verbatim report of proceedings on January 13, 2011 and SRP2 for superior court proceedings on July 15, 2011 and RP for the Verbatim Report of Proceedings (RP) Before the Civil Service Commission on April 19, 2010 and RP2 for RP of April 20, 2010).

with a supervisor later that day. (RP 46, ln. 17-RP 47, ln. 14; RP 34, lns. 1-6; RP 49, lns. 20-25; RP 53, lns. 17-24; RP 55, ln. 24, RP 56, ln. 1; RP 62, lns. 8-23; RP 72, lns. 14-18; RP 134, lns. 14-22; RP 232, lns. 17-24; RP 243, lns. 16-25; RP 244, 1-9). Mr. Sprouse reported his false allegations of criminal conduct to the “on-call” deputy prosecutor (RP 30, ln. 1 – RP 31, ln. 14; RP 145, lns. 6-19). Mr. Sprouse admitted that he made the call to the deputy prosecutor because “I wanted to bring pressure down on the Department.” (RP 250, lns. 24-25)

Sprouse’s letter of termination specifically noted: “It is also evident you used your position as a Sheriff’s Deputy in an attempt to use the criminal process to retaliate against persons in the Office with whom you had a disagreement regarding a personal, personnel matter....your actions appeared to have been a deliberate attempt to cast a negative light upon the Office by abusing your position of authority as a Sheriff’s Deputy to attempt to initiate a groundless, criminal investigation in a matter in which you were personally involved.” (Sheriff’s Ex. 29, pg. 2).

The Civil Service Commission’s Decision upholding the termination noted: “That right [to report a crime], however, does not extend to a vindictive or retaliatory report to the Lewis County Prosecutor’s Office that has no basis in fact, and we, after considering all the evidence in the case, have determined that that is what occurred here.” Decision After Hearing, pg. 6, lns. 8-11.

Sprouse withheld the fact he had made such a report when he was interviewed by Sgt. Smith regarding his allegations and to whom he had reported them and did not disclose the fact he had disobeyed the directive to limit his discussion to his Guild representatives until his meeting with the investigating supervisor, Sgt. Smith. (RP 139, ln. 24- RP 141, ln.11 - RP 142, ln17)

Mr. Sprouse's unfounded allegations of criminal conduct by the Lewis County Sheriff's Administration triggered a referral from the County Prosecutor to both the Washington State Attorney General and the Washington State Patrol to investigate his allegation that the Lewis County Sheriff's Administration was engaging in criminal conduct. (RP 79, ln. 24 – RP 81, ln. 7; RP 221, ln 1-17; RP 222, ln 16 – RP 223, ln. 16) The Washington State Patrol investigated and quickly confirmed that there was no factual basis to support Mr. Sprouse's baseless allegations of criminal misconduct of Witness Tampering or Witness Intimidation by the Lewis County Sheriff's Administration. (RP 80, ln. 8 – RP 82, ln. 11: RP 198, ln. 12 – RP 200, ln. 16)(Sheriff's Ex. 9, Ex. 12). Mr. Sprouse abused his position as a Sheriff's deputy to attempt to initiate criminal charges in retaliation for a minor disciplinary action against him with which he did not agree. Chief Sieber characterized Sprouse's false allegations of criminal conduct by Sheriff's Administration personnel as a "worst case scenario." (RP. 180, lns. 8- 24.)

Following a comprehensive investigation into Mr. Sprouse's conduct, several violations of Lewis County Sheriff's Office rules and standards of conduct were found and the recommendation for termination was approved by Chief of Staff Walton (Sheriff's Ex. 29) and the Lewis County Civil Service Commission affirmed the decision was in good faith for cause. Decision after the Hearing.

Hal Sprouse was terminated from his position as a Deputy Sheriff for Lewis County because an investigation found violations of established rules of conduct. (Sheriff's Ex. 29) Mr. Sprouse had been untruthful to his supervisor by withholding information he had reported his allegations to a deputy prosecutor; insubordinate by failing to adhere to a directive not to discuss an issue with anyone other than his Guild representative or Guild attorney until he met with his Sergeant at a meeting scheduled in a few hours; he used his position as a Deputy Sheriff to retaliate for a minor disciplinary reprimand by alleging criminal conduct by Sheriff's Administrative Personnel; and using his position as a Deputy Sheriff to portray the Lewis County Sheriff's Office in a negative light in retaliation for an 18 month timed letter of reprimand (RP 253, lns. 3-13). (Sheriff's Exs. 4 & 29).

Sprouse asserted false and malicious allegations of a criminal conspiracy by the Lewis County Sheriff's Office because he was angry when on October 14, 2009, he was issued an 18 Month timed letter of

reprimand for failing to properly secure an official case report that he had brought to his residence. (Sheriff's Ex. 4) Mr. Sprouse's failure to secure the report resulted in that report being viewed by his adult son and his son's live in girlfriend who also resided on Mr. Sprouse's property, but in a different structure. (Sheriff's Ex. 3, pg. 5)(RP 103, ln. 8 – RP 104, ln. 18; RP 106, lns. 1-18)

Both Mr. Sprouse's son and his son's girl friend are convicted felons with felony convictions related to identity theft. (RP 104, lns. 7-18) The compromised report contained personal information including dates of birth, addresses, home and work phone numbers, general physical descriptions of several persons which could be helpful in identity theft. (RP 103, lns. 4-7; RP 112, ln. 17 – RP 113, ln. 4). As a result of the unauthorized access to the report it was necessary for the Lewis County Sheriff's Office personnel to contact persons named in the compromised report warning them their personal information had been compromised and to be vigilant of their credit reports. Further, the failure to secure the report identified a potential scenario that if repeated could compromise the integrity of Lewis County Sheriff's Office information and pose a threat of unauthorized disclosure of official information. (RP 211, ln. 9 – RP 212, ln. 8).

Sprouse suffered no loss of pay or benefits from the letter of reprimand. (RP 256, ln. 11-16) By its own terms the letter would be

removed from Mr. Sprouse's personnel file if no similar conduct occurred over the next 18 months. (Sheriff's Ex. 4).

That October 14, 2009 disciplinary action is only relevant because the evidence will show that Mr. Sprouse's anger at having been reprimanded motivated Hal Sprouse to engage in the course of conduct resulting in his termination.<sup>2</sup>

After receiving the letter of reprimand, Mr. Sprouse was angry. (RP 38, Lines 3-19; RP 44, ln 6-RP 44, ln. 5; RP 252, ln. 20 – RP 253, ln. 6) Mr. Sprouse told several persons, including his Sergeants that he was angry about having received a letter of reprimand and angry that Chief Brown and Commander Aust had spoken to Sprouse's son and his son's girlfriend about how their fingerprints came to be on the agency's internal report. (Id.) When Sgt. Snaza reported for duty on October 17, 2009, Mr. Sprouse indicated that he needed to speak with him immediately. (RP 37, ln. 16 – RP 17, ln. 2). Upon meeting with Sgt. Snaza, Mr. Sprouse indicated that he was angry and upset about getting reprimanded and that he felt the investigation of his handling of the compromised report was harassment and witness tampering. (RP 38, ln. 3 – RP 40, ln. 11) Sgt.

---

<sup>2</sup> Mr. Sprouse asserts that because the compromised report at issue in the October 14, 2009 letter of reprimand related to interactions involving Sheriff's Mansfield's grandchild, that the matters described in the compromised report are therefore relevant. However, Mr. Sprouse's role in that investigation was minimal and does not suggest any reason to preclude him from any investigation into that event. It is believed that the only reason Mr. Sprouse was raising those allegations is for political purposes (RP 43, ln. 19 – RP 44, ln.8) and a desire to muddy the waters regarding Sprouse's own misconduct.

Snaza informed Mr. Sprouse that he did not see anything malicious or inappropriate in the investigation and that Mr. Sprouse should discuss the issue with the Guild representative. (Id.)(Sheriff's Ex. 7).

Mr. Sprouse then contacted Detective Sgt. Breen on October 18, 2009. (RP 74, ln. 21 – RP 75, ln. 2.) Mr. Sprouse indicated he was upset at having been reprimanded and indicated that he believed the investigation of him was criminal witness tampering and harassment because he had taken the initial report connected to an issue the Guild generated involving an investigation of Sheriff Mansfield related to events that occurred well after Mr. Sprouse's initial report. (RP 75, lns. 5 – 25.)

The Lewis County Sheriff's Office was investigated by the Attorney General's Office upon a complaint by the Sheriff's Guild (RP 238-39) that the Office it did not refer a runaway complaint regarding the Sheriff's son's girlfriend to an outside agency. The girlfriend, age 16 had recently given birth to a baby and was residing in a house on the Sheriff's property with the Sheriff's son. (RP 234) Mr. Sprouse had played a minor role in that incident and had offered to the girl's parents to pick up the girl and return her to them. The parents refused that offer. (RP 239).

The confidential sheriff's reports were released to the newspaper by unknown persons. (RP 241) Mr. Sprouse indicated that he believed the entire Sheriff's Administration was involved in witness tampering because he was investigated regarding who had handled compromised

internal reports entrusted to Mr. Sprouse. (RP 78, Ins. 2-15). The release of the report was a felony. (RP2, pg 2-3, Exhibit 30).

Sgt. Breen informed Mr. Sprouse that Sgt. Breen saw nothing improper in the Sheriff's investigation, that Sgt. Breen did not see any illegal conduct by Sheriff's personnel (RP 76, ln. 19- RP 77, ln. 10) and he told Mr. Sprouse if he continued to have strong concerns about the issue related to his discipline he should either speak to the Guild or the Guild's attorney or take his concerns to Chief Criminal Deputy Gene Sieber. (RP 78.) Mr. Sprouse indicated he could not present his concerns to Chief Sieber because Mr. Sprouse believed the entire Sheriff's Administration was part of the issue. (RP 78, Ins. 6-15). (Sheriff's Ex. 6) Sgt. Breen reported his conversation to Commander Aust on October 21, 2009. (Sheriff's Ex. 6).

As a result of Sgt. Breen's report, Sgt. Smith was directed by Chief Sieber to look into the allegations made by Mr. Sprouse that "Commander Aust and Chief Brown had violated the law (Witness Tampering) in connection with interviewing his (Mr. Sprouse's) son and son's girlfriend." (Sheriff's Ex. 8).

Early on the morning of Saturday, October 24, 2009, in preparation for Mr. Sprouse's interview with Sgt. Smith, Mr. Sprouse was informed by Sgt. Snaza that he was not to speak to anyone regarding his allegations, other than his Guild representatives, until he had a meeting with Sgt.

Smith that afternoon. (RP 46, Ins. 12- RP 48, In. 5)(Sheriff's Ex. 15).

This type of directive was the usual and customary practice in the Sheriff's Office. (RP 270, In. 1-19.)

Rather than adhering to the directive not to discuss the issue, other than with his guild representative, until his meeting with Sgt. Smith, Mr. Sprouse became angry as he believed that as a law enforcement officer no one could order him not to report what he thinks is criminal activity to the appropriate authority. (RP 232, Ins. 3- 233, In. 12.)(Sheriff's Ex. 28, pg. 7, last paragraph – pg. 8).

When Mr. Sprouse met with Sgt. Smith, he was unable to articulate any alleged criminal behavior by Sheriff's Office Administrators. (RP 137, Ins. 16 PR 138-139)(Sheriff's Ex. 10) Sgt. Smith discussed with Mr. Sprouse his concerns. Sgt. Smith informed Mr. Sprouse that what he was reporting did not support allegations of witness tampering or other unlawful behavior. (RP 138, In 16-19) Sgt. Smith further advised Mr. Sprouse that if he continued to have concerns about the disciplinary action, he should discuss the issue with the Guild or the Guild's attorney and that he should not make unfounded allegations of criminal misconduct (RP 168, Ins. 4-11) and that disciplinary consequences could arise from addressing personal grievances outside of agency policy and that he should consult with his Guild attorney to "keep him out of the grease" on this issue as it would be inappropriate to make unfounded allegations of

criminal misconduct against the Office's Administrators. (RP 138, ln. 16 – RP 139, ln. 23; RP 161, lns. 1-22)(Sheriff's Ex. 10).

Sgt. Smith verified with Mr. Sprouse that nobody directly or indirectly told Mr. Sprouse to lie, exaggerate, or tell a specific version of events to the Washington State Patrol investigators. (Sheriff's Ex. 10, Investigative notes re: October 24, 2009.)(RP 138, lns. 2-19) Sprouse was further questioned if he was told to evade, avoid or otherwise absent himself from meeting with WSP investigators or any meeting, hearing or future hearing. Sprouse admitted that no such actions occurred. (Id.)(Sheriff's Ex. 10, Investigative notes re: October 24, 2009).

Sgt. Smith reports his inquiry of Mr. Sprouse on this topic as follows:

I asked Deputy Sprouse if anyone directly or indirectly told him to lie, exaggerate, or tell a specific version of events to WSP investigators. Sprouse replied no. I asked Sprouse if he was told to evade, avoid, or otherwise absent himself from meeting with WSP investigators, or any meeting, hearing or future hearing. Sprouse replied no.

Sheriff's Ex. 10, Investigative notes re: October 24, 2009.

Sprouse acknowledged in a pre-disciplinary meeting that he had not been subject to any such actions directing him to lie, or otherwise not cooperate with WSP investigators. (Sheriff's Ex. 3; pg. 19; Ex.10). He acknowledge in his hearing testimony as well. (RP 264, lns. 7-16).

Sprouse's allegation of Intimidating a Witness RCW 9A.72.110 and Tampering with a Witness RCW 9A.72.120 are felonies. Copies of these statutes are included in the appendix.

Significantly, Sgt. Snaza, Sgt. Breen and Sgt. Smith all advised Mr. Sprouse that they saw no misconduct or illegal action by the Sheriff's Administration. (RP 39, ln. 14 – RP 41, ln. 19; RP 42, lns. 5-19; ; RP 77, lns. 3-21; RP 84, lns. 1-9; RP 138, lns. 16-19; RP 260, lns. 15-25; RP 261, lns. 10-20; RP 262, lns. 19 – RP 263, ln. 17; RP 189, lns 8-23). Sgt. Smith further advised Mr. Sprouse since he had not made false allegations outside the chain of command and only discussed the issue with his Sergeants and the Guild, Sgt. Smith saw no misconduct by Mr. Sprouse. (RP 136, lns. 14-22; RP 140, lns. 3-25). Mr. Sprouse did not correct Sgt. Smith's understanding of his conduct to disclose that he had already contacted the on call deputy prosecuting attorney to report witness tampering by the Sheriff's Administration using an unpublished cell phone number available to law enforcement personnel.(Id.)(RP 32, lns. 2-8)(Sheriff's Ex. 10).

Mr. Sprouse was aware that the main issue that Sgt. Smith was looking into was to whom Mr. Sprouse had made allegations of criminal behavior by Sheriff's Administrative personnel. (RP 135, ln. 13- RP 136, ln. 1." (Sheriff's Ex. 28, pg. 7). Sgt. Smith stated that he told Mr. Sprouse: "What I was conducting the fact finding into was had he gone

outside the agency, as far as disclosing any allegations of criminal behavior by members of the Sheriff's Office." (RP ln. 23- Rp. Ln.1) Yet Mr. Sprouse did not correct Sgt. Smith when Sgt. Smith indicated to Mr. Sprouse that he saw no problem with Mr. Sprouse's conduct since he had only discussed his concerns with two Sergeants in his chain of command. (RP 136, Ins.7-22).(Sheriff's Exs. 10; 18, pg. 10). Sgt. Smith regarded that behavior as untruthful and deceptive. (RP 140, Ins. 3 -17). The Civil Service disagreed and felt the record did not support the allegation of untruthfulness. Decision after Hearing, pg. 5, Ins. 12-19.

Mr. Sprouse violated Lewis County Sheriff's Office Code of Ethics. (Sheriff's Ex. 29, pg. 43) Mr. Sprouse knew Sgt. Smith was seeking to determine to whom disclosures of Mr. Sprouse's unfounded allegations of criminal misconduct by Sheriff's Administrative personnel had been made and made no effort to impart that he had been insubordinate and had reported allegations of criminal misconduct to a deputy prosecutor shortly after being instructed not to discuss the issue with anyone other than his Guild representative until he met with Sgt. Smith in the early afternoon. (RP 245, Ins. 12-17). Sgt. Smith had removed the restriction upon Mr. Sprouse from discussing the issue further during the course of that meeting, but had advised Mr. Sprouse to consult with the Guild attorney to avoid creating problems by making false allegations of criminal conduct against senior members of the

Sheriff's Administration. (RP 138, ln 16 – 139, ln. 18; RP 141, lns. 20 – RP 142, ln. 24).

It was subsequently learned by Sgt. Breen (Sheriff's Ex. 9) that prior to meeting with Sgt. Smith, Sprouse had made a report of criminal conduct to an "on call" deputy prosecutor, Jonathon Richardson which triggered an investigation by the Washington State Patrol (WSP) (RP 140, lns. 2-17)(Sheriff's Ex. 9; Ex. 12; Ex. 13) which the WSP found no factual basis to support Sprouse's allegations. (RP 80, ln. 8 – RP 82, ln. 11: RP 198, ln. 12 – RP 200, ln. 16)(Sheriff's Ex. 9, Ex. 12). This revelation triggered an investigation into Mr. Sprouse's conduct regarding the false, retaliatory report of witness tampering and witness intimidation against the Sheriff's Administration. (Sheriff's Ex. 11; Ex. 14). Sprouse admitted that he called the "on-call" deputy prosecutor because he was angry he was told not to speak to anyone other than his Guild representatives pending the meeting (RP 243, ln. 16- 244, ln. 25)(Sheriff's Ex. 3, pg. 22). and he wanted to "bring pressure down on the Department." (RP 250, ln. 24-25).

The Sheriff's Office (Ex. 29) and the Civil Service Commission determined that Mr. Sprouse's conduct justified his termination from his position as a Sheriff's Deputy in good faith and for cause. Decision after hearing, pg. 6, ln. 8 – pg. 8, ln.4.

#### **IV. LEGAL DISCUSSION**

**A. Standard of Review of Superior Court’s Decision is *De Novo*.**

Appellate review under is de novo only in the sense this court independently examines the administrative record, exclusive of the trial court's findings. *Appeal of Butner* , 39 Wash.App. 408, 411, 693 P.2d 733, 736 (1985)(discussing similar review under RCW 41.12).

Mr. Sprouse bears the burden of proving under RCW 41.14.120 that “...the order of ... discharge made by the commission, ... was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds.” RCW 41.14.120. and to reverse the Lewis County Civil Service Commission this Court must independently determine the Commission acted not in good faith or arbitrarily, capriciously, or contrary to law. *Benavides v. Civil Service Comm'n*, 26 Wash.App. 531, 613 P.2d 807 (1980).

**B. The Burden is On the Respondent (Sprouse) to Establish in This Court That the Civil Service Commission Decision Was Not Made in Good Faith, or Was Arbitrary, Capricious or Contrary to Law.**

Mr. Sprouse bears the burden in this review to establish that the decision of the Civil Service was not made in good faith, this court reviews record from the Civil Service Commission and not the findings of the superior court. *Greig v. Metzler*, 33 Wash.App. 223, 226, 653 P.2d 1346, 1347 - 1348 (1982) and must independently determine the Commission acted arbitrarily, capriciously, or contrary to law before it

may set aside the Civil Service decision. *Benavides v. Civil Service Comm'n*, 26 Wash.App. 531, 613 P.2d 807 (1980). This Court reviews *de novo* whether the decision below was contrary to law and whether the factual determinations are supported by substantial evidence. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wash.2d 22, 29–30, 891 P.2d 29 (1995). Substantial evidence is the existence of a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. *Hilltop*, 126 Wash.2d at 34, 891 P.2d 29. The Court reviews the record of the Civil Service Commission and is not to substitute its judgment for the Commission's. *City of Seattle, Seattle Police Dept. v. Werner*, 163 Wash.App. 899, 907, 261 P.3d 218, 222 (2011)(Discussing review in case brought up under the right of review specified in RCW 7.16.120). An agency action is arbitrary and capricious where it is willful and unreasoning, 'taken without regard to or consideration of the facts and circumstances surrounding the action. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wn.2d 1, 14, 820 P.2d 497 (1991).

This narrow scope of review imposes a heavy burden on Mr. Sprouse to show the Lewis County Civil Service Commission action was arbitrary and capricious and if there is room for two opinions, the decision

of the Lewis County Civil Service Commission must stand, even if the reviewing court disagrees with the Commission's decision or would have reached a different result. *Pierce County Sheriff v. Civil Service Com'n of Pierce County*, 98 Wash.2d 690, 695, 658 P.2d 648, 651 - 652 (1983). Because of the requirement that the court not supplant the decision of the Civil Service Commission that administrative decision must stand unless it was not made in good faith or was arbitrary, capricious or contrary to law. The Decision of the Lewis County Civil Service Commission is entitled to deference on review.

**C. The Decision Made By the Civil Service Commission Was Made In Good Faith and For Cause and Is Not Arbitrary, Capricious or Contrary to Law.**

If Mr. Sprouse was willing to use his official position to "bring pressure down upon the [Sheriff's] Department" (RP 250, lns. 24-25) because he was upset with a minor disciplinary action, the Lewis County Sheriff's Office and the Civil Service Commission have legitimate concerns regarding how those traits and behavior could manifest themselves out in the field of law enforcement where citizen's lives and citizen's civil liberties may hinge upon a law enforcement officer's actions, reports and access to the criminal justice system and the power with which a Sheriff's Deputy is entrusted by virtue of his position.

In this case, the Commission after having the opportunity to see the demeanor of witnesses and hear the live testimony, considered the facts and circumstances of the charges and made a carefully reasoned decision that cannot properly be characterized as arbitrary and capricious action. The evidence in the record supports the Commission's decision to uphold the termination of Mr. Sprouse for his retaliatory actions.

Mr. Sprouse admitted that he made the call to the deputy prosecutor alleging criminal conduct by the Sheriff's Administration because "I wanted to bring pressure down on the Department." (RP 250, lns. 24-25). The Civil Service Commission acted in good faith when it made the determination that Mr. Sprouse filed the false complaint "deliberately and in retaliation for the disciplinary action imposed on him for not properly securing the incident report read by his son and his son's girlfriend. It is our further conclusion that this action caused a groundless criminal investigation to occur and was an abuse of his position as a law enforcement officer. This action ...irreparably eroded the confidence that the Lewis County Sheriff and his command staff have in Deputy Sprouse." Civil Service Decision, pgs 6-7.

This appeal requires an interpretation of RCW 41.14.120 which provides as follows:

**41.14.120. Removal, suspension, demotion, or discharge--  
Procedure—Appeal**

No person in the classified civil service ... shall be ... discharged except for cause ... Any person so ...discharged ... may ... demand for an investigation .... The investigation shall be confined to the determination of the question of whether ... discharge was made in good faith for cause. After such investigation the commission shall render a written decision ...

All investigations made by the commission pursuant to this section shall be by public hearing....If order of ...discharge is concurred in by the commission or a majority thereof, the accused may appeal therefrom to the superior court... **The court shall thereupon proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, demotion, or discharge made by the commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds.** The decision of the superior court may be appealed to the supreme court or the court of appeals.

RCW 41.14.120 (emphasis supplied)

Mr. Sprouse's behavior violates the expectation that Lewis County Sheriff's Office members will demonstrate "Courteous and Respectful Behavior Toward Positions of Authority. Members shall be subordinate and display courtesy and respect in words, deeds, gestures and actions towards personnel holding higher level of official authority." LCSO Policy 1.05.110, Twenty One Uniform Standards of Conduct (Sheriff's Ex. 26, pg. 15, ¶19).

Mr. Sprouse was angry (RP 38, Lines 3-19; RP 44, ln 6-RP 44, ln. 5; RP 252, ln. 20 – RP 253, ln. 6) and he abused his position to make

unfounded, official allegations of criminal behavior. (RP 31, lns. 6-14)

He was angry with an order to limit his discussion to Guild representation pending meeting with Sgt. Smith and he disregarded it and made groundless allegations of widespread criminal activity by the Sheriff's Administration, and then withheld information that he had done so when he spoke with Sgt. Smith a couple of hours later. Sprouse himself acknowledged his behavior was not appropriate: "Again, my whole intent through the whole thing was to go up the chain of command and do it the way it's supposed to be done." (Sheriff's Ex. 3, pg. 10, last paragraph). "I did not care what the outcome was...I wanted to bring pressure down on the [Sheriff's] department." (RP 250, lns. 24-25)

The Sheriff's Rules of Conduct "Enforcement Guidelines" note that where the employer-member relationship is seriously damaged termination is the appropriate sanction. (Sheriff's Ex. 26, pg. 19, ¶19). Supervisors from Sergeants all the way to the Sheriff indicated that Mr. Sprouse's conduct in this matter has so eroded their trust in his ability to honor the mission and goals of the Lewis County Sheriff's Office that any sanction short of termination would jeopardize order and discipline in the organization and that they lack confidence in Mr. Sprouse's ability to function as a commissioned law enforcement officer. (RP 111, ln.23 – RP 113, ln. 4; RP 118, ln. 20 –RP 125, ln. 7; RP143, ln. 3 – 147, ln. 24; RP 180, ln. 13 – RP 181, ln. 3)

When a law enforcement officer uses their position of authority to retaliate against others by attempting to initiate baseless, criminal charges for their own personal grievance the integrity of the Law Enforcement agency is threatened and the Lewis County Sheriff's Office's mission "To make a positive difference for members of our community by seeking and finding ways to affirmatively promote, preserve and deliver a feeling of security, safety and quality service" is thwarted and undermined. Sprouse's retaliatory behavior reflects poorly upon Mr. Sprouse, it impacted the relationships with the Washington State Patrol and the Prosecutor's Office and within the Sheriff's Office such that Mr. Sprouse's continued employment with the Lewis County Sheriff's Office would have undermined effective law enforcement operations.

Chief Seiber notes, he determined that Mr. Sprouse's conduct was "a clear retaliation on Mr. Sprouse's part in connection with him receiving recent discipline. He became frustrated with the appeal process and intentionally went outside the agency and caused embarrassment and damaged the reputation of the [LCSO] and our employees." (Sheriff's Ex. 24, pg. 4) (RP 180, lns 13-20). Chief Seiber notes that Mr. Sprouse's conduct damaged relationships between the LCSO, the State Patrol, Attorney General's Office, Lewis County Prosecuting Attorney's Office and the Guild Membership.

Chief of Staff, Steve Walton concurred in this assessment. (Sheriff's Ex. 29)(RP 187 ln. 2 – RP205, ln. 22). The Concerns expressed throughout the chain of command regarding Mr. Sprouse's vindictive allegations of criminal conduct by the Sheriff's Administration are succinctly stated in the Lewis County Sheriff's Offices' business necessity for the requirement of Standard 19 of the Office's Twenty-One Uniform Standards of Conduct: "Courteous and Respectful Behavior Toward Positions of Authority:"

Management requires subordinates to display respect and courtesy to higher positions because it provides a sense of order as well as serves as a tangible indication that subordinates are willing to subordinate personal priorities, goals, and objectives to the needs and mission of this Office. *In addition, the willingness and ability of a member to subordinate personal interests and to display respect and courtesy to a supervisor is a reasonable assessment of the member's capabilities to set aside personal feelings and priorities when dealing with citizens.* (emphasis supplied).

(Sheriff's Exhibit 26, pg. 15)

Accusing the administration of the Lewis County Sheriff's Office of being a criminal enterprise, engaged in witness tampering and/or witness intimidation without any factual or legal basis to support that charge and using his position as a deputy sheriff to initiate a criminal investigation into such allegations is grounds for termination. (RP 204 ln. 2 – RP 205, ln. 22).

When a member of law enforcement makes a complaint that fellow deputies and elected officials are engaging in illegal conduct, those allegations carry significant weight. It impacts the public's perception of those accused. Citizens are less likely to abide by the lawful directives of members of a rogue law enforcement agency and falsely attempting to create such a perception places law enforcement personnel at risk.

The Lewis County Civil Service Commission correctly determined: "That right [to report a crime], however, does not extend to a vindictive or retaliatory report to the Lewis County Prosecutor's Office that has no basis in fact, and we, after considering all the evidence in the case, have determined that that is what occurred here." Decision After Hearing, pg. 6, lns. 8-11. This Court should uphold the Lewis County Civil Service decision as having been made in good faith and for cause.

The record is devoid of any inference that the Commission's decision was made in bad faith, without careful consideration of the evidence, was contrary to law or was the product of some improper motivation. Mr. Sprouse has not even attempted to show that the Civil Service Commission decision was made in bad faith.

**D. Mr. Sprouse's First Amendment Rights were Not Infringed by this Termination because the Department's Expectations Regarding His Conduct Were Not Unlawful.**

Mr. Sprouse is asserting that he had an unequivocal First Amendment right to abuse his position as a Sheriff's Deputy to make an official report of witness intimidation and witness tampering to the "on call" deputy prosecuting attorney that was completely devoid of factual merit. Mr. Sprouse's rights are appropriately limited under current First Amendment standards of the behavior an employer may expect when they engage in speech connected to their duties.

Public Employees have certain rights of freedom of speech under the First Amendment which protect them against adverse employment actions arising from their exercise of those free speech rights. *See Pickering v. Bd. of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968). In his pre-disciplinary meeting with Chief Seiber, Mr. Sprouse asserted he felt the directive not to talk about the issue until he met with Sgt. Smith was an illegal order. He did not refine why he felt that way other than the statement he felt it was an illegal order and he had a right to report illegal activity to the prosecutor's office. (Sheriff's Ex.3 pg. 13-15); However, a public employee's first amendment rights are not as expansive as those of a private citizen. Further, the complained of behavior did not rise to "illegal activity" and Mr. Sprouse had been advised by at least two of his supervisors that the conduct did not amount to witness intimidation or witness tampering. (RP 38, ln. 3-RP 40, ln. 11; RP 74, ln. 21-RP 77, ln 10; RP 138, lns. 16-19; Sheriff's Ex 6, 7, 10)

The inquiry into whether the employee's speech is entitled to constitutional protection is itself a two-prong test composed of the public concern test and the interest balancing test. *White v. State*, 78 Wash.App. 824, 832 n.3 (1995). Both are questions of law for the court to resolve. *White*, 78 Wash.App. at 832 (citing *Connick v. Myers*, 461 U.S. 138 at 148 n.7 & 15 n.10).

Mr. Sprouse's concerns dealt with a personal, personnel dispute. Several supervisors informed Mr. Sprouse that they did not see unlawful activity or malicious motive in the LCSO's investigation, Mr. Sprouse's assertion he had a good faith belief illegal activity occurred that allows him the unfettered ability to assert baseless criminal charges in his capacity as a deputy sheriff without consequences is not supported by the facts or law.

Recently, in *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir.2009), the 9<sup>th</sup> Circuit distilled the Supreme Court's prior holdings on this issue into "a sequential five-step" inquiry: (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5)

whether the state would have taken the adverse employment action even absent the protected speech.

In *Connick v. Myers*, 461 U.S. 138, 140, 103 S.Ct. 1684, 1686, 75 L.Ed.2d 708 (1983) the Court held that when employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment. Where an employee's concerns relate to a personnel grievance, they are matters of personal concern and not matters of public concern. Mr. Sprouse's concerns dealt with his own personal grievance. Mr. Sprouse admitted that nobody attempted to prevent him from testifying or encouraged him to provide false testimony. (Sheriff's Ex. 10, Investigative notes re: October 24, 2009.)(RP 138, Ins. 2-19).

“To this end, the Government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs. This includes the prerogative to remove employees whose conduct hinders efficient operation and to do so with dispatch. Prolonged retention of a disruptive or otherwise unsatisfactory employee can adversely affect discipline and morale in the work place, foster disharmony, and ultimately impair the efficiency of an office or agency.” *Connick* 461 U.S. at: 151 (citing to *Arnett v. Kennedy*, 416 U.S. 134, 94 s.Ct. 1633 (1974).

When close working relationships are essential to fulfilling public responsibilities, a wide degree of deference to the employer's judgment is appropriate. *Connick*, 416 U.S. at 151-152. Furthermore, the employer is not required to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action. A stronger showing may be necessary if the employee's speech more substantially involved matters of public concern. Also, important in *Connick* is that if the issue is a matter of personal concern to the employee the speech is not protected. Here Mr. Sprouse's concerns are personal, "what happened to me." He was upset over his minor discipline and that his handling of report was the subject of an inquiry. Such concerns are not entitled to protection.

Currently, the most significant Supreme Court case on government employee free speech is *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006). There the Supreme Court held that the employer has broad latitude in controlling speech made by the employee in the course and scope of their duties. In *Garcetti*, Mr. Ceballos was a Senior Deputy Prosecutor who became convinced L.A. County Sheriff's deputies had lied to obtain a search warrant. After being directed by his supervisors to drop the issue because it appeared to lack merit, Ceballos

persisted trying to make an issue of his concerns. The Court decided because his concerns related to his official duties he had no claim.<sup>3</sup>

The controlling factor in Ceballos' case is that the employee's expressions were made pursuant to his duties as a deputy prosecutor. That consideration, the fact that Ceballos spoke as a prosecutor fulfilling a responsibility to advise his supervisor about how best to proceed with a pending case distinguishes Ceballos' case from those in which the First Amendment provides protection against discipline. The Court held that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. Proper application of our precedents thus leads to the conclusion that the First Amendment does not prohibit managerial discipline based on an employee's expressions made pursuant to official responsibilities.

Even if such a concern about his discipline was elevated to a matter of public concern, as explained in *Eng*, “the [employee] bears the burden of showing the speech was spoken in the capacity of a private citizen and not a public employee.” 552 F.3d at 1071 (citing *Ceballos*, 547 U.S. at 421-22, 126 S.Ct. 1951).

---

<sup>3</sup> The Court did find some of Ceballos remarks made to a Hispanic Bar Association as falling outside his official duties and remanded to address those remarks.

Here Mr. Sprouse made his call to the “on-call” Deputy Prosecutor using an unpublished number available to law enforcement personnel related to their official duties. Mr. Sprouse acknowledged in his final Loudermill hearing that he felt the directive not to speak to anyone other than his Guild representative “violated everything I’ve ever stood for in my law enforcement career.” The call was made during his work day. He reported what he asserts was criminal conduct. Since Mr. Sprouse asserts he was reporting what he perceived to be criminal misconduct, he cannot divorce that report from his official responsibilities. Pursuant to *Garcetti* and its progeny, his job related speech is not protected under the First Amendment. See generally, *Huppert v. City of Pittsburg*, 574 F.3d 696 (9<sup>th</sup> Cir. 2009) holding that police officer’s statements made in the course of an investigation that was being run by the District Attorney into corruption in the Pittsburg Police Department were uttered in the course of their employment and not entitled to protection.

In *Huppert*, 574 F.3d at 705-709, plaintiff police officer's speech was made as part of his official duties because it was either made at the direction of his supervisors or was speech made pursuant to specific duties that California statutes impose on police officers.

Under Washington law, reporting criminal activities were among Mr. Sprouse’s official duties under the authority delegated to him from the Sheriff specified under RCWs 36.28.010; 36.28.011; and 36.28.020.

If it is determined that Mr. Sprouse's concerns were a matter of personal concern and/or uttered in his capacity as a deputy sheriff, the First Amendment inquiry ends.

If it were determined that Mr. Sprouse's concerns over his letter of reprimand addressed matters of public concern and were not uttered by him as a law enforcement officer, the inquiry may continue. In *Pickering*, the Supreme Court stated that in First Amendment cases against a state entity, "[t]he problem ... is to arrive at a balance between the interests of the[employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).

Under the balancing test, the employer must bear the burden of establishing that its interests outweigh those of the employee. *Johnson v. Multnomah County*, 48 F.3d 420, 426 (9th Cir. 1995).

Application of this balancing test entails a factual inquiry into such matters as whether the speech (i) impairs discipline or control by superiors, (ii) disrupts co-worker relations, (ii) erodes a close working relationship premised on personal loyalty and confidentiality, (iv) interferes with the speaker's performance of her or his duties, or (v) obstructs the routine operations of the office. *Rankin v. McPherson*, 483 U.S. 378, 388, 107 S.Ct. at 2899; *Connick*, 461 U.S. at 1692-3; *Roth v.*

*Veteran's Admin.*, 856 F.2d 1401, 1407; *Hyland v. Wonder*, 972 F.2d 1129, 1139 (9<sup>th</sup> Cir. 1992).

In weighing the employer's interest in discharging an employee based on any claim that the content of a statement made by the employee somehow undermines the mission of the public employer, some attention must be paid to the responsibilities of the employee within the agency. The burden of caution employees bear with respect to the words they speak will vary with the extent of authority and public accountability the employee's role entails. *Rankin v. McPherson*, 483 U.S. 378, 390-391, 107 S.Ct. 2891, 2900 - 2901 (1987). Noting that McPherson's status as a clerical employee was significant when she made a statement to a fellow clerical worker in the constable's office regarding an assassination attempt on President Reagan. *Id.* at 390-392; 2900-01. Where, as here, an employee serves a law enforcement role and a public contact role, the danger to the agency's successful functioning from that employee's speech is enhanced and damage caused by casting unfounded allegations of criminal conduct is more significant than if Mr. Sprouse had been a Sheriff's clerical employee, parks employee or a road maintenance worker.

An allegation that the Sheriff's administration is engaged in criminal behavior carries substantially greater weight coming from a Sheriff's Deputy than someone without law enforcement credentials. That

the allegation is made by someone within the very Sheriff's Office about which the false allegations are uttered is accorded even greater potential to disrupt the mission of the Sheriff's Office and the relationships necessary for the Lewis County Sheriff's Office to fulfill its mission.

A Lewis County Sheriff's Office Deputy asserting that the entire administration is engaged in a criminal conspiracy has a tremendous capacity to erode close personal working relationships necessary for the effective functioning of that agency. Such allegations, even if groundless, have great potential to erode public trust in the agency and impair the Sheriff's Office relationship with other law enforcement agencies and its partners in the criminal justice system.

The fact that Mr. Sprouse's allegations were factually untrue further undermines the protection, if any, to which his speech is entitled. In *Pickering, supra*, a school board urged the Supreme Court to hold that a teacher's statements were not constitutionally protected unless he spoke "factually and accurately, commensurate with his education and experience." 391 U.S. at 568-69, 88 S.Ct. at 1735. The teacher, on the other hand, urged the Court to rule that employees' statements on matters of public concern were protected unless they were made with knowledge that they were false or with a reckless disregard for the truth. *Id.* at 569, 88 S.Ct. at 1735. The Supreme Court expressly declined to "lay down a general standard against which all such statements may be judged." *Id.*

*Donovan v. Reinbold*, 433 F.2d 738, 742 (9th Cir.1970), considering a similar situation where a public employee was alleged to have written libelous articles. Following *Pickering*, the court stated that such speech might be beyond First Amendment protection if the particular expression inhibits the efficient discharge of the employee's duties, or if the employee's position lends substantially greater credence to the expression than would be accorded to that of a member of the general public. In this case, Mr. Sprouse's status as a Sheriff's Deputy causes his allegations of witness tampering or witness intimidation by the Lewis County Sheriff's Office to be given such credence a State Patrol investigation was undertaken. That the State Patrol immediately determined Sprouse's allegations were groundless provides ample support that Sprouse's allegations were false, disruptive and retaliatory justifying his termination.

Both *Pickering* and *Donovan* were decided prior to the Supreme Court's decision in *Connick*. Prior to *Connick*, determining whether speech was protected involved a single balancing test between the First Amendment interest in uninhibited speech and the public employer's interest in administrative efficiency. The *Pickering* balancing test did not attempt to first consider whether the speech was *per se* unprotected as a matter void of public concern. Thus, the public employer was always required to show at least some interference with its interests before it

could penalize employees for their speech. The “matter of public concern” test attempts to identify those cases in which the First Amendment protection of the speech is so insubstantial that the employer need show no countervailing interest at all before the employer may repress it.

Neither the intentional lie nor the careless error materially advances society's interest in ‘uninhibited, robust, and wide-open’ debate on public issues.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974). However, while false statements are not deserving, in themselves, of constitutional protection, “erroneous statement is inevitable in free debate, and ... it must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need ... to survive.’ ” *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964) (quoting *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 337, 9 L.Ed.2d 405 (1963)). For this reason, constitutional protection is afforded some false statements. In determining the level of protection to such statements, the Supreme Court has traditionally balanced the interest in creating a “breathing space” for speech against the competing governmental interests associated with preventing injurious false statements. Thus, in deciding what latitude a State has in creating causes of action for defamation, the Supreme Court has weighed the legitimate State interest in compensating victims of

defamatory falsehoods against the First Amendment interest in promoting vigorous public debate. *Gertz*, 418 U.S. at 341-42, 94 S.Ct. at 3007-08.

The 9<sup>th</sup> Circuit has concluded that recklessly false statements are not *per se* unprotected by the First Amendment when they substantially relate to matters of public concern. Instead, the recklessness of the employee and the falseness of the statements should be considered in light of the public employer's showing of actual injury to its legitimate interests, as part of the *Pickering* balancing test. *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 421 -427 (9<sup>th</sup> Cir.1995).

*See Arnett v. Kennedy*, 416 U.S. 134, 162-63, 94 S.Ct. 1633, 1648-49, 40 L.Ed.2d 15 (1974) (stating that the Court had no difficulty in concluding that the *Pickering* balancing test weighed in favor of the government in a case in which an employee made recklessly false allegations of bribe-taking by his superiors).

In *Arnett* the employee was brought up on five charges, "the most serious of the charges was that appellee 'without any proof whatsoever and in reckless disregard of the actual facts' known to him or reasonably discoverable by him had publicly stated that Verduin and his administrative assistant had attempted to bribe a representative of a community action organization with which the OEO had dealings." *Id.* at 416 U.S. 134, 137, 94 S.Ct. 1633, 1636 (U.S. Ill., 1974). [The Court stated in regard to this baseless allegation]: "We have no hesitation, as did the District Court, in saying that on the facts alleged in the administrative charges against appellee, the appropriate tribunal would infringe no constitutional right of appellee in concluding that there was 'cause' for his discharge. *Pickering v. Board of Education*, 391 U.S., at 569, 88 S.Ct.,

at 1735. Nor have we any doubt that satisfactory proof of these allegations could constitute ‘such cause as will promote the efficiency of the service...’

*Arnett v. Kennedy* 416 U.S. 134, 162-163, 94 S.Ct. 1633, 1648 (1974).

The First Amendment does not protect employees who hold positions of trust and confidence when they make reckless allegations of criminal conduct against their employer and supervisors from disciplinary sanction taken in response to the employee’s groundless accusations of criminal conduct.

The Lewis County Sheriff’s Office has established all the elements an employer needs to show to justify termination of an employee. Mr. Sprouse’s deliberate disregard of a supervisory directive not to discuss the issue before meeting with Sgt. Smith is a direct challenge to Lewis County Sheriff’s Office’s authority. His conduct has generated considerable friction in the Lewis County Sheriff’s Office. Many supervisors and line employees question Mr. Sprouse’s veracity and motivation in this issue. The Guild President reportedly stated to management: “... We are trying to get him under control...” (Exhibit 24, pg. 5) Mr. Sprouse’s actions have created a rift not only within the Lewis County Sheriff’s Office but with outside agencies as well. His report resulted in a referral to the Washington Attorney General’s office and the Washington State Patrol.

His actions interfere with the performance of his duties as the Sheriff’s Office legitimately questions how Sprouse will react in certain situations and if he will use the privileges of his office as a Deputy Sheriff

as a tool to retaliate against those against whom he perceives a grievance. The Lewis County Sheriff's Office has been distracted by this issue and important issues have been interfered with while these issues are investigated and evaluated. Concerns continue on whether this employee can be trusted to be truthful and forthcoming about key facts. This in turn may impact criminal matters both pending and past. Those concerns touch on his performance of his duties and the routine operations of the Lewis County Sheriff's Office.

When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom. See, *e.g.*, *Waters v. Churchill*, 511 U.S. 661, 671, 114 S.Ct. 1878, 128 L.Ed.2d 686 (1994) (plurality opinion) (“[T]he government as employer indeed has far broader powers than does the government as sovereign”). Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services. *Cf. Connick, supra*, at 143, 103 S.Ct. 1684 (“[G]overnment offices could not function if every employment decision became a constitutional matter”). Public employees, moreover, often occupy trusted positions in society. When they speak out, they can express views that contravene governmental policies or impair the proper performance of governmental functions. Sheriff's Deputies

hold positions of utmost public trust. Sprouse's false accusations were damaging.

Under both *Connick v. Meyer* and *Garcetti*, Mr. Sprouse's speech is not protected. His concern dealt with discipline that he had received for failing to properly secure a report which under *Connick* shifts it into the nature of a personal dispute notwithstanding Mr. Sprouse's false characterization of the concern as one of criminal conspiracy within the Sheriff's administration. Like the Deputy Prosecutor in *Garcetti*, Mr. Sprouse disregarded directives from his supervisors not to misuse his official position to make allegations of criminal misconduct against the entire administration of the Lewis County Sheriff's Office. Mr. Sprouse was instructed to use the Guild grievance channel to address his concerns. Rather than taking a path available to him, he defiantly reported his baseless allegations to a deputy prosecutor. This has resulted in referral to the Attorney General and WSP. This resulting disruption in the Lewis County Sheriff's Office is such that termination is appropriate.

*Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) indicates the 'trier-of-fact' should determine whether the firing would have occurred without the protected conduct." The Lewis County Sheriff's Office's manual indicates that both of these acts, in and of themselves, support a termination.

Mr. Sprouse has marked as exhibits Washington's "Local Government Whistleblower Protections, RCW 42.41 et. Seq. Those statutes are not applicable because by their own terms they do not relate to personnel actions.

"Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180. RCW 42.41.020(1)(b).

The Whistleblower Statute further excludes any local government that has adopted a program for reporting improper governmental actions. RCW 42.41.050. Lewis County has adopted such a program in 2001. Both the State law, RCW 42.41 et. seq. and Lewis County's "Whistleblower Policy" require the report to be made in good faith. Both exclude non-discriminatory personnel actions. Both further require reports to be made directly to the Prosecuting attorney, among others and are not triggered by reports to deputy prosecuting attorneys or other

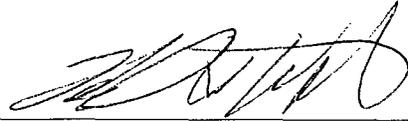
subordinate employees. Mr. Sprouse never made a whistleblower complaint and his attempt to recast it as a whistleblower complaint should be rejected.

## V. CONCLUSION

Mr. Sprouse was upset he received a letter of reprimand. He used his position as a Deputy Sheriff to retaliate against those with whom he was upset by making unsubstantiated criminal charges. He acted with reckless disregard for the truth of his false allegations. His allegations impaired the effective operation of the Lewis County Sheriff's Office and eroded working relationships within the organization and outside the Lewis County Sheriff's Office. His behavior fell below what the administration reasonably believed it should expect from an employee and calls into question his ability to properly carry out the mission of the Lewis County Sheriff's Office in the future. Mr. Sprouse's continued retention on the Lewis County Sheriff's Office will be disruptive and allegations against Mr. Sprouse are such as would constitute such cause as will promote the efficiency of the service by his removal from the Lewis County Sheriff's Office. The Decision of the Commission upholding the termination decision should be affirmed, it was made in good faith, for cause and the appellant has not shown the Commission acted arbitrarily, capriciously, or contrary to law.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of December,

2011.

A handwritten signature in black ink, appearing to read 'R. H. Wooster', written over a horizontal line.

Richard H. Wooster, WSBA 13752  
Attorney for Appellants

## **APPENDIX**

1. Decision after Hearing dated April 27, 2010
2. RCW 9A.72.110  
RCW 9A.72.120  
RCW 41.14.120  
RCW 36.28.010  
RCW 36.28.011  
RCW 36.28.020

# **APPENDIX 1**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**BEFORE THE LEWIS COUNTY SHERIFF'S  
CIVIL SERVICE COMMISSION  
STATE OF WASHINGTON**

In the Matter of Deputy Hal Sprouse

LEWIS COUNTY DEPUTIES GUILD, )  
 )  
 Appellant, )  
 )  
 and )  
 )  
 LEWIS COUNTY SHERIFF, )  
 )  
 Respondent. )

DECISION AFTER  
HEARING

THIS MATTER came before the Lewis County Civil Service Commission (hereinafter "Commission") on April 19 and 20, 2010, for a hearing on the appeal by Hal Sprouse, Deputy Sheriff of a termination order effective January 15, 2009, for calling the on-duty Deputy Prosecuting Attorney to report what he alleged to be the crimes of Intimidation and Tampering with a Witness, himself, by the command authorities of the Lewis County Sheriff's Office. In addition, it was alleged that he was untruthful with Sergeant Pat Smith when being interviewed concerning his allegations by not revealing that he had contacted the Prosecuting Attorney's office concerning those allegations. The Lewis County Sheriff further

1 alleges that this conduct violated the chain of command of the Sheriff's Office,  
2 was insubordinate, and was an abuse of his position as a law enforcement officer.

3 After careful consideration of the evidence presented, and although we  
4 find that Deputy Sprouse's telephone call to the Prosecuting Attorney did not  
5 violate the chain of command nor was it insubordinate and further that it was not  
6 proved that he was untruthful with Sergeant Smith, his action in calling the  
7 Deputy Prosecuting Attorney on-call was without a good faith belief that a crime  
8 was committed, was retaliatory for his 18-month letter, was vindictive in nature,  
9 and that the penalty of termination was imposed in good faith for just cause.

10 This unfortunate situation began in March 2009, when the Lewis County  
11 Sheriff and the Lewis County Sheriff's Office failed to bring in an outside agency  
12 to respond to the report of a runaway child living on the Sheriff's property.  
13 Deputy Sprouse was asked by Chief Criminal Deputy Seiber to investigate that  
14 complaint. Deputy Sprouse felt at the time, and justifiably so, that he was placed  
15 in an awkward position. The subsequent investigation by the Washington  
16 Attorney General's Office, which was requested by the Lewis County Prosecuting  
17 Attorney, found that as a result of this matter not having been referred to an  
18 outside agency, a number of LCSO employees willfully neglected to perform their  
19 duties, including Sheriff Mansfield. While that investigation was pending, in  
20 August of 2009, a copy of the Sheriff's report on the runaway at the Sheriff's  
21 property was leaked to *The Chronicle*. An investigation revealed that Deputy  
22 Sprouse properly had a copy of the report at his residence, and when that copy  
23 was retrieved, it contained the fingerprints of Deputy Sprouse's son and son's  
24 girlfriend. Because the report was otherwise password-protected, and would have  
25 been available only to a limited number of members of the Lewis County

1 Sheriff's Office, including the sergeants, rather than send a sergeant to talk with  
2 the son and son's girlfriend, Commander Aust and Chief Civil Deputy Brown  
3 were dispatched to do so. That investigation did not lead to any conclusions with  
4 respect to who had leaked the report to *The Chronicle*. What it did result in,  
5 though, was an 18-month timed letter of reprimand given to Deputy Sprouse for  
6 not properly securing the report at his home. That disciplinary action is currently  
7 on appeal and has not been resolved.

8         The evidence indicates that Deputy Sprouse was quite upset by the 18-  
9 month letter of reprimand and discussed on numerous occasions with his  
10 immediate supervisor Sergeant Snaza, this anxiety and belief that he was being  
11 intimidated as a potential witness in any action that might be brought against the  
12 Sheriff. Sergeant Snaza recommended to him that he contact the Lewis County  
13 Sheriff's Guild concerning this situation, but also told him that, in his opinion,  
14 nothing that Deputy Sprouse told him amounted to the crime of Intimidating a  
15 Witness or Tampering with a Witness. Sergeant Snaza relayed Deputy Sprouse's  
16 concerns to Sergeant Pat Smith, who set up an interview with Deputy Sprouse for  
17 the afternoon of October 24, 2009, a Saturday. That morning, Sergeant Snaza  
18 advised Deputy Sprouse of that meeting and that he (Sergeant Snaza) was told to  
19 communicate to Deputy Sprouse that he should not discuss this with anyone other  
20 than his Guild representative, pending the interview with Sergeant Smith.  
21 Between that conversation and the interview with Sergeant Smith, Deputy  
22 Sprouse called the on-call Deputy Prosecuting Attorney Jonathan Richardson and  
23 advised him that he felt that the crimes of Intimidating a Witness and Tampering  
24 with a Witness were being committed by senior members of the Lewis County  
25 Sheriff, including Chief Brown, Commander Aust and Chief Seiber. This caused

1 Mr. Richardson to contact the Prosecuting Attorney Michael Golden, who quite  
2 properly referred the matter to the Washington State Patrol, which was currently  
3 investigating the runaway incident. After a very limited inquiry, the Washington  
4 State Patrol decided that no further action on Deputy Sprouse's allegations would  
5 be taken.

6 At the afternoon conference with Sergeant Smith, on October 24, 2009,  
7 Deputy Sprouse told Sergeant Smith that he was feeling harassed and intimidated  
8 by the internal investigation concerning the incident report released to *The*  
9 *Chronicle*, and in particular that he felt that he, as a potential witness in the  
10 Sheriff's matter, was being intimidated. Sergeant Smith advised Deputy Sprouse  
11 to contact his Guild attorney for guidance and advice. He further told Deputy  
12 Sprouse that he didn't see any facts which would support any criminal acts by any  
13 of the command staff, including Chief Brown and Commander Aust. The  
14 interview was not recorded and both Sergeant Smith and Deputy Sprouse admit  
15 that they could not remember the exact words exchanged between the two.  
16 Deputy Sprouse did not reveal that he had called Deputy Prosecuting Attorney  
17 Richardson, nor did Sergeant Smith specifically ask Deputy Sprouse if he had  
18 discussed it with anyone else other than Detective Sergeant Breen and Sergeant  
19 Snaza.

20 Within the next week, based upon an off-hand conversation with a WSP  
21 detective, it was learned that Deputy Sprouse had contacted Deputy Prosecuting  
22 Attorney Richardson. A further investigation was begun and Deputy Sprouse  
23 readily admitted that he had contacted Mr. Richardson after being advised not to  
24 talk with anyone by Sergeant Snaza.

25 The further investigation resulted in the termination of Deputy Sprouse.

1           The termination letter, dated January 15, 2010, from Chief Walton to  
2 Deputy Sprouse, in summary, cites four reasons for termination: 1)  
3 insubordination by disobeying the directive to not discuss the matter with anyone  
4 pending the meeting with Sergeant Smith; 2) a disregard of the chain of command  
5 by discussing the matter with Deputy Prosecuting Attorney Richardson and not  
6 going to supervisory personnel with his complaints prior to doing so; 3)  
7 dishonesty and untruthfulness with regard to failing to inform Sergeant Smith that  
8 he had contacted the Prosecuting Attorney's Office when meeting with Sergeant  
9 Smith on the afternoon of October 24, 2009; and 4) using his official position to  
10 retaliate without any basis in fact for his allegations of criminal misconduct by  
11 members of the Command Staff, as communicated to Mr. Richardson.

12           With respect to the allegation of untruthfulness and dishonesty, in Deputy  
13 Sprouse's meeting with Sergeant Smith, the Commission cannot find by a  
14 preponderance of the evidence that Deputy Sprouse was untruthful or dishonest.  
15 Both participants in the conversation admit that neither could recall the exact  
16 words used and Sergeant Smith further admits that he did not specifically ask  
17 Deputy Sprouse who else he had talked to concerning this matter. The allegation  
18 in Chief Walton's January 15, 2010 letter to Deputy Sprouse that he deliberately  
19 misrepresented facts is not born out by the evidence presented.

20           The allegation that Deputy Sprouse was insubordinate and violated the  
21 chain of command depends on whether a Deputy Sheriff in the Lewis County  
22 Sheriff's Office has a right to report to the Lewis County Prosecuting Attorney  
23 the commission of a crime being committed by other members of the Lewis  
24 County Sheriff's Office without informing his supervisors, or doing so in defiance  
25 of an order to speak with no one concerning the matter. A Lewis County Deputy

1 Sheriff has taken an oath to support the laws of the state of Washington and if he  
2 or she has a good faith belief that a crime is being committed, no one, including  
3 his supervisors, can order that deputy to not report the crime to the Lewis County  
4 Prosecutor's Office or to condition said report on informing his supervisors. No  
5 Lewis County Deputy Sheriff or any other employee subject to civil service  
6 protection in the Lewis County Sheriff's Office should ever feel that they cannot  
7 make a good faith report of a crime being committed by anyone.

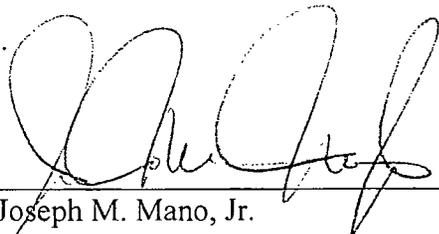
8 That right, however, does not extend to a vindictive or retaliatory report to  
9 the Lewis County Prosecutor's Office that has no basis in fact, and we, after  
10 considering all of the evidence in the case, have determined that that is what  
11 occurred here.

12 Deputy Sprouse testified that he reviewed both the Intimidating a Witness  
13 and Tampering with a Witness statutes prior to his making a report to Mr.  
14 Richardson on October 24, 2009. Also prior to doing so, he discussed his  
15 allegations with Sergeant Breen and Sergeant Snaza and was told that it was their  
16 opinion that no crime had been committed. Despite this knowledge and without  
17 any basis in fact, he reported these allegations to the Prosecuting Attorney's  
18 Office and asked that they be investigated, although he knew at that point that  
19 there were no facts to support any type of criminal action by any member of the  
20 Command Staff. It is our finding that he did so deliberately and in retaliation for  
21 the disciplinary action imposed on him for not properly securing the incident  
22 report read by his son and son's girlfriend. It is our further conclusion that this  
23 action caused a groundless criminal investigation to occur and was an abuse of his  
24 position as a law enforcement officer. This action, in our determination,  
25



1 County Sheriff's Office to the Prosecuting Attorney and did so in retaliation for  
2 disciplinary action taken against him previously, and further that that conduct is  
3 grounds for serious disciplinary action and therefore the termination was imposed  
4 in good faith for just cause.

5 DONE this 27<sup>th</sup> of April, 2010.



6  
7  
8 Joseph M. Mano, Jr.  
Chairman  
9 Lewis County Civil Service Commission

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## **APPENDIX 2**

RCW 9A.72.110  
Intimidating a witness.

(1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;
- (b) Induce that person to elude legal process summoning him or her to testify;
- (c) Induce that person to absent himself or herself from such proceedings; or
- (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

(a) "Threat" means:

(i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(ii) Threat as defined in \*RCW 9A.04.110(27).

(b) "Current or prospective witness" means:

(i) A person endorsed as a witness in an official proceeding;

(ii) A person whom the actor believes may be called as a witness in any official proceeding; or

(iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.

(c) "Former witness" means:

(i) A person who testified in an official proceeding;

(ii) A person who was endorsed as a witness in an official proceeding;

(iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or

(iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.

(4) Intimidating a witness is a class B felony.

(5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense.

[2011 c 165 § 2; 1997 c 29 § 1; 1994 c 271 § 204; 1985 c 327 § 2; 1982 1st ex.s. c 47 § 18; 1975 1st ex.s. c 260 § 9A.72.110.]

Notes:

**\*Reviser's note:** RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

**Intent -- 2011 c 165:** "In response to *State v. Hall*, 168 Wn.2d 726 (2010), the legislature intends to clarify that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness." [2011 c 165 § 1.]

**Finding -- 1994 c 271:** See note following RCW 9A.72.090.

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

**Severability -- 1982 1st ex.s. c 47:** See note following RCW 9.41.190.

RCW 9A.72.120  
Tampering with a witness.

(1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself or herself from such proceedings; or

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

(2) Tampering with a witness is a class C felony.

(3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense.

[2011 c 165 § 3; 1994 c 271 § 205; 1982 1st ex.s. c 47 § 19; 1975 1st ex.s. c 260 § 9A.72.120.]

Notes:

**Intent -- 2011 c 165:** See note following RCW 9A.72.110.

**Finding -- 1994 c 271:** See note following RCW 9A.72.090.

**Purpose -- Severability -- 1994 c 271:** See notes following RCW 9A.28.020.

**Severability -- 1982 1st ex.s. c 47:** See note following RCW 9.41.190.

## RCW 41.14.120

## Removal, suspension, demotion, or discharge — Procedure — Appeal.

No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted, or discharged except for cause, and only upon written accusation of the appointing power or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, discharged, or demoted may within ten days from the time of his removal, suspension, discharge, or demotion file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. Upon receipt of the written demand for an investigation, the commission shall within ten days set a date for a public hearing which will be held within thirty days from the date of receipt. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion, or discharge was made in good faith for cause. After such investigation the commission shall render a written decision within ten days and may affirm the removal, suspension, demotion, or discharge, or if it finds that removal, suspension, demotion, or discharge was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which he was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission so provides, be retroactive, and entitle such person to pay or compensation from the time of the removal, suspension, demotion, or discharge. The commission upon such investigation, in lieu of affirming a removal, suspension, demotion, or discharge, may modify the order by directing the removal, suspension, demotion, or discharge without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay. The findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to this section shall be by public hearing, after reasonable notice to the accused of the time and place thereof, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. If order of removal, suspension, demotion, or discharge is concurred in by the commission or a majority thereof, the accused may appeal therefrom to the superior court of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice, make, certify, and file such transcript with the court. The court shall thereupon proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, demotion, or discharge made by the commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds. The decision of the superior court may be appealed to the supreme court or the court of appeals.

[1984 c 199 § 1; 1982 c 133 § 1; 1971 c 81 § 102; 1959 c 1 § 12 (Initiative Measure No. 23, approved November 4, 1958).]

RCW 36.28.010  
General duties.

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

(3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

(4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;

(5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;

(6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

[2009 c 549 § 4050; 1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

RCW 36.28.011  
Duty to make complaint.

In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

[1963 c 4 § 36.28.011. Prior: 1955 c 10 § 1. Cf. Code 1881 § 2801, part; 1869 p 264 § 311, part; RRS § 4173, part.]

RCW 36.28.020

Powers of deputies, regular and special.

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

[2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]



J. David Fine  
Lewis County Prosecutor  
345 West Main Street 2<sup>nd</sup> Floor  
Chehalis WA 98532

Rick Cordes  
2625 B Parkmount Lane SW  
Olympia WA 98502

Steven D. Walton  
Chief of Staff  
Lewis County Sheriff's Office  
345 West Main Street  
Chehalis, WA 98532-1900

I declare under penalty of perjury under the laws of the State of Washington and of the United States that the foregoing is true and correct.

Signed at Tacoma, Pierce County, Washington this 21st day of December, 2011.

  
\_\_\_\_\_  
Connie DeChaux

Kram & Wooster, Attorneys at Law  
1901 South I Street  
Tacoma WA 98405  
(253) 572-4161  
(253) 572-4167 fax