

No. 348482

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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JOHN INGERSOLL,

*Appellant,*

v.

CITY OF MATTAWA,

*Respondent.*

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ON APPEAL FROM GRANT COUNTY SUPERIOR COURT  
Honorable John D. Knodell

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**BRIEF OF APPELLANT**

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Jason W. Anderson, WSBA No. 30512  
Rory D. Cosgrove, WSBA No. 48647  
CARNEY BADLEY SPELLMAN, P.S.  
701 Fifth Avenue, Suite 3600  
Seattle, Washington 98104-7010  
Telephone: (206) 622-8020  
Facsimile: (206) 467-8215  
*Attorneys for Appellant John Ingersoll*

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## I. INTRODUCTION

The Mattawa Police Department hired John Ingersoll in 2009 to serve as a city police officer. The Department praised his performance and increased his salary multiple times in his first three years on the force.

Ingersoll's wife suddenly left with their two young children in May 2012. Three weeks later, his wife filed for divorce and, for the first time, Ingersoll learned that his wife was accusing him of domestic violence. The Department immediately put Ingersoll on nondisciplinary administrative leave pending an investigation. A judge later granted Ingersoll unsupervised visitation with his young children and determined that his wife's domestic-violence accusations were unfounded. Yet the mayor fired Ingersoll based on those unfounded allegations and other alleged conduct that had occurred, in some cases, two years earlier and that had been investigated without resulting discipline.

The Mattawa Civil Service Commission affirmed the mayor's termination decision without affording Ingersoll due process and without complying with the civil-service laws for city police officers.

The Commission denied Ingersoll due process and violated RCW 41.12.090 by (1) faulting him for denying the very misconduct allegations it dismissed; (2) citing, as a basis to uphold termination, purported misconduct by Ingersoll during the hearing that was never brought to his attention or put on the record; (3) despite never charging him with mental unfitness for duty, relying on a hearsay mental fitness-for-duty report that found Ingersoll to have a "personality trait disturbance"; and

(4) dismissing every misconduct allegation but using that unproven and dismissed misconduct to show mental unfitness when the mayor's charging document never notified Ingersoll that such conduct qualified him as mentally unfit for duty.

The Commission's decision is internally inconsistent. The Commission dismissed every misconduct allegation, rejecting the City's proffered evidence as insufficient, and found those unproven allegations to be a "piling up of alleged misconduct in an effort to support termination of employment." Nevertheless, the Commission used the unproven and dismissed misconduct as "background evidence" of unfitness, and found that such misconduct showed Ingersoll's mental unfitness for duty as a police officer. The Commission necessarily did not duly consider all the evidence presented at the hearing. Its decision is arbitrary and capricious as a matter of law and manifestly violated Ingersoll's due-process rights to present a defense and to notice and an opportunity to be heard.

This Court should reverse the superior court's order and remand to the Mattawa Civil Service Commission with directions to reinstate Ingersoll and award him back pay.

## **II. ASSIGNMENTS OF ERROR**

1. The Commission's finding that faulted Ingersoll's purported conduct during the hearing is arbitrary and capricious and denied Ingersoll due process.

2. The Commission's finding that faulted Ingersoll for his testimony "totally denying any wrongdoing" at the hearing violated Ingersoll's due-process right to present a defense.

3. The Commission's decision affirming the mayor's decision to fire Ingersoll for mental unfitness for duty was arbitrary and capricious as a matter of law under RCW 41.12.090 and violated Ingersoll's due-process rights to present a defense and to notice and an opportunity to be heard.

### **III. ISSUES**

1. The Commission faulted Ingersoll for his conduct during the hearing that allegedly showed an "immaturity and inconsistency" regarding his ability to control his actions and emotions. No evidence in the record supports this finding. Ingersoll was never notified that his conduct during the hearing might be used later to support the mayor's termination decision. Is the Commission's finding arbitrary and capricious because no evidence supports it and because, as a matter of due process, Ingersoll had no notice and no opportunity to be heard about his conduct during the hearing?

2. Ingersoll denied all the allegations against him at the hearing to defend against the mayor's termination decision. The Commission faulted him for "totally denying any wrongdoing," despite the Commission's dismissing every misconduct allegation. Does the Commission's decision violate RCW 41.12.090 and Ingersoll's due-process right to present a defense?

3. The mayor never specifically charged Ingersoll with mental unfitness for duty. The Commission dismissed every misconduct allegation against Ingersoll, thus rejecting the City's proffered evidence as insufficient and unproven. Is the Commission's decision affirming the mayor's decision to fire Ingersoll for mental unfitness arbitrary and capricious as a matter of law and contrary to Ingersoll's due-process rights to notice and an opportunity to be heard?

#### IV. STATEMENT OF THE CASE

**A. In 2009, John Ingersoll was hired as a police officer in the Mattawa Police Department. He brought to the Department significant law-enforcement experience. The police chief praised Ingersoll's performance, leading to salary raises approved by the mayor.**

The Mattawa Police Department hired John Ingersoll as a full-time police officer in 2009. CP 1708, 1968, 2079, 2294–95. (Mattawa is a city in Grant County with about 4,500 residents.<sup>1</sup>) Ingersoll brought to the Department six years' experience in law enforcement, having served stints in the King County Sheriff's Office, the U.S. Department of Defense, and the Washington State Department of Corrections. CP 2081, 2283, 2612–14, 2699 ¶ 23, 3157.

In his first two years with the Department, Ingersoll received favorable annual performance reviews. CP 2770–71, 2777–78. In both

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<sup>1</sup> The City of Mattawa (City) is a mayor-council form of government; the mayor and the councilmembers are elected officials. RCW 35A.12.010. The mayor acts as the City's sole "appointing power" and may fire any of the City's civil-service employees "in good faith for cause." RCW 41.12.090; CP 3328.

reviews, the police chief, Steve Jensen, praised Ingersoll's performance. CP 2090, 2116, 2771, 2778. Mayor Judy Esser signed the reviews and raised Ingersoll's salary each year. CP 2771, 2778.

**B. In May 2012, suddenly and without notice, Ingersoll's wife left with their two young children. Concerned about his family's safety and well-being, and unaware of their location, Ingersoll filed a missing persons report two weeks later.**

On May 25, 2012, without notice and while Ingersoll was at work, his wife Tomi suddenly left with their two young children. CP 2037, 2056, 2201-02, 2290, 2562, 2936. That night, Ingersoll learned that a family friend, Reed Plachta, had driven them somewhere. CP 2037-38, 2049-50. Although Plachta gave Ingersoll a phone number to a shelter, he refused to tell Ingersoll specifically where they had gone. CP 2044-45, 2049, 2076, 2129-30. Ingersoll called the number, but the shelter neither confirmed nor denied that his wife and young children were present. CP 2131, 2210-11, 2291. Two days later, Ingersoll was told that Tomi and the children were "on the wet [*i.e.*, west] side[.]" CP 2133.

Concerned about his family's safety and well-being, and unaware of their location, Ingersoll filed a missing persons report two weeks later with the Grant County Sheriff's Office. CP 2059-61, 2129, 2132-33, 2209, 2843-45, 2894. Sergeant Beau Lamens helped Ingersoll file the report and signed it as the "reporting deputy." CP 2061, 2210-11, 2843, 3108. When he filed the report, Ingersoll still did not know where his family was. CP 2133, 2201, 2210.

On June 15, 2012, Tomi filed for divorce. CP 2059, 2206. When he and the Department were both served with divorce papers, Ingersoll learned for the first time that Tomi was accusing him of domestic violence. CP 2059, 2118, 2689–92. These accusations allowed Tomi to get a temporary restraining order against Ingersoll. CP 2118, 2780–83.

Later in the same day Ingersoll was served with the divorce papers, the Department placed him on nondisciplinary administrative leave pending an investigation into the alleged domestic violence. CP 2117–18, 2382, 2754, 2779, 2860, 2872–73. At that time, Ingersoll had no disciplinary record and had never been accused of domestic violence. CP 2091.

**C. Starting in September 2012, the mayor issued a series of *Loudermill* letters to Ingersoll that recommended termination based on alleged conduct that had occurred, in some cases, two years earlier and that had been investigated without resulting discipline.**

On September 12, 2012, Mayor Esser gave Ingersoll a letter charging him with violating Mattawa Civil Service rule X, section 2, subsections A, B, C, and K.<sup>2</sup> CP 2867–69. She recommended firing

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<sup>2</sup> Mattawa Civil Service rule X, section 2, states:

CAUSE OF DISCIPLINARY ACTION. The following may be considered justifiable cause for disciplinary action:

- A. Incompetency, inefficiency, or inattention to or dereliction of duty.
- B. Violation of law, of official rules or regulations, or orders, or failure to obey any lawful or reasonable direction when such failure or violation amounts to insubordination or serious breach of discipline.
- C. Dishonesty, immoral conduct, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to

*(Footnote continued next page)*

Ingersoll based on six allegations: domestic violence, harassment and intimidation, false reporting, off-duty misconduct, falsifying a report, and using a police position for personal gain. CP 2867–69. The mayor did not allege Ingersoll was unfit for duty.

Most of the alleged conduct supporting the termination charges had occurred over two years earlier in 2010 and had been investigated without resulting discipline. For instance, the mayor alleged Ingersoll “intentionally falsified” his police report in an April 2010 DUI incident. CP 2868. Chief Jensen was advised of the incident after it occurred but never disciplined Ingersoll. CP 212, 2114–15, 2916. Another police department independently investigated the incident and recommended no discipline. CP 319, 1500–01, 1507, 2114, 2915.

The mayor also alleged Ingersoll committed misconduct while off duty in May 2010 when he confiscated the wallets of two individuals who possessed fake social-security cards at a gas station. CP 2868. After the incident, Ingersoll was placed on administrative leave pending an investigation. CP 1507, 2070, 2107, 2111, 2916, 3288. The investigation revealed that “there was not enough information to submit [the incident] to the Prosecutor’s Office for possible charges.” CP 376. Chief Jensen

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properly conduct himself; or any willful violation of the provisions of RCW 41.12 or of these rules and regulations.

\* \* \* \*

K. Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

CP 3326–27; RCW 41.12.080 (grounds for discharge of civil-service employee).

discussed the incident with Ingersoll, imposed no discipline, and allowed him to return to duty. CP 2105–07, 2111–14, 2916.

On September 20, 2012, the mayor held a “*Loudermill* hearing”<sup>3</sup> (CP 2902)—a due-process right afforded to civil-service employees that requires an employer to “meet with the employee to discuss the grounds for termination before the dismissal.” BLACK’S LAW DICTIONARY 1090 (10th ed. 2014).<sup>4</sup> The mayor chose not to discipline Ingersoll, but he remained on administrative leave.

In January 2013, the Department hired John Turley as the new police chief following former Chief Jensen’s resignation. CP 1879, 2914–15. Chief Turley began to investigate Ingersoll but found little to no evidence of misconduct in his personnel file. CP 1880–81, 2280, 2380, 2398.

On January 25, 2013, the mayor gave Ingersoll a second letter charging him with violating the same Mattawa Civil Service rule X provisions as before. CP 2991–94. Instead of termination, she recommended suspending Ingersoll without pay. CP 2991. The second letter mainly listed the same misconduct as that alleged in the first letter, when the mayor chose not to discipline Ingersoll after a hearing. *Compare* CP 2867–69, *with* CP 2991–94.

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<sup>3</sup> *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (holding that due process requires the government to provide a civil-service employee both a pre-termination and post-termination hearing to uphold termination).

<sup>4</sup> *Danielson v. City of Seattle*, 108 Wn.2d 788, 795–99, 742 P.2d 717 (1987) (holding that, consistent with *Loudermill*, due process requires notice and an opportunity to be heard before terminating a protected civil-service employee).

The mayor now alleged more misconduct—not conduct occurring since her first letter in September 2012, but earlier conduct about which she knew but chose not to raise in that 2012 letter. CP 2992, 3001. In addition, the mayor required Ingersoll to submit to a mental fitness-for-duty examination, ostensibly to confirm that he was mentally fit to return to duty. CP 2994, 3048; *see also* CP 2280 (letter to city attorney from Chief Turley recommending firing Ingersoll unless he submitted to a fit-for-duty examination).

An independent investigation by another police department revealed that insufficient evidence supported the mayor’s misconduct allegations against Ingersoll for both the DUI and fake social-security-card incidents. CP 2125, 2989.

After a second *Loudermill* hearing in late January 2013, the mayor again chose not to discipline Ingersoll, but he still remained on administrative leave. CP 2278.

Ingersoll agreed to meet with Dr. Mark Mays for a mental fit-for-duty examination. CP 2368. Dr. Mays evaluated Ingersoll and prepared a report. CP 2560–73. In his report, Dr. Mays concluded Ingersoll had a “Personality Trait Disturbance”: a “pattern of behavior in which he behaves in impulsive, self-indulgent, and short-cited ways, . . . [and that] makes him more likely than most people, particularly people in law enforcement, to not maintain appropriate limits, maintain consistent and appropriate behavior, show emotional constraint, or provide accurate reports.” CP 2571. While Dr. Mays did not find that Ingersoll was

mentally unfit for duty as a police officer, he noted that “most law enforcement agencies reviewing these results would consider [him] not to be qualified as fit for duty.” CP 2573.

On April 22, 2013, after having received Dr. Mays’ mental fitness-for-duty report, the City made a separation offer to Ingersoll. CP 3039–47.<sup>5</sup> At that time, the City had not provided Ingersoll a copy of Dr. Mays’ report. CP 3049, 3051.

On May 1, 2013, the Grant County Superior Court in the divorce action awarded Ingersoll unsupervised visitation with his young children and lifted the temporary restraining orders. CP 2119–20, 2391, 3290–91. This action was principally prompted by the guardian ad litem’s declaration (CP 3135–39), with his attached report. CP 3290. The report questioned Tomi’s credibility about her domestic-violence allegations, stating that his “conversations with [Tomi] have raised some red flags.” CP 3139.

Ingersoll rejected the City’s separation offer because it failed to protect his reputation and ability to secure future employment in law

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<sup>5</sup> The separation offer stated in part: (1) Ingersoll would resign his employment with the Mattawa Police Department; (2) the City would pay Ingersoll as severance \$10,000; and (3) the City would limit distribution of his employment information unless Ingersoll signed a waiver with a prospective employer requiring such distribution. CP 3039; *see also* CP 3050 (Mayor Esser’s draft recommendation letter to Ingersoll’s prospective employers (if he had accepted the separation offer), stating in glowing terms how Ingersoll “present[ed] himself well,” “display[ed] a level of confidence commensurate with his years in law enforcement,” “show[ed] his commitment to the City as an active participant in many community endeavors,” was “well known by many of the citizens and ha[d] established numerous personal and professional relationships throughout the community,” and how the mayor would “miss his dedication to the Mattawa community and his commitment to the City of Mattawa demonstrated over the years.”).

enforcement. CP 3051. In rejecting the offer, Ingersoll told the city attorney about the Grant County Superior Court's awarding him unsupervised visitation with his young children and its rejecting Tomi's domestic-violence allegations. CP 3051.

On May 16, 2013, the mayor gave Ingersoll a third letter (the "charging document") charging him with violating Mattawa Civil Service rule X, section 2, subsections A, B, C, and K. CP 2270–75, 3326–27. She separated the conduct supporting each charge into eight categories: (1) domestic violence; (2) harassment and intimidation; (3) false reporting; (4) off-duty misconduct; (5) falsifying report/dishonesty; (6) use of police position for personal gain; (7) insubordination; and (8) unfitness for duty. CP 2270–75. For the first time, the mayor alleged Ingersoll was unfit for duty based on Dr. Mays' mental fitness-for-duty report (CP 2274), but still never specifically charged him with "[m]ental or physical unfitness." CP 3326. The misconduct supporting the charges in the third letter was the same misconduct alleged in the first two letters for which Ingersoll was never disciplined. *Compare* CP 2270–75, *with* CP 2867–69 (Sept. 2012 letter), *and* CP 2991–94 (Jan. 2013 letter). Ingersoll refuted the allegations in a detailed nine-page letter. CP 2382–90.

**D. In June 2013, the mayor fired Ingersoll. Ingersoll challenged the decision and requested a hearing before the Mattawa Civil Service Commission. The Commission dismissed every misconduct allegation but nonetheless affirmed the mayor's termination decision ultimately on a finding of mental unfitness with which he was never specifically charged.**

On June 3, 2013, following a hearing, the mayor fired Ingersoll. CP 2276–77. Ingersoll challenged the decision and requested a hearing before the Mattawa Civil Service Commission.

That same month, the guardian ad litem issued a report to the superior court in the divorce case, finding no evidence that domestic violence had occurred. CP 3142. The report concluded Ingersoll did not “suffer from any mental health issues.” CP 3140. The report noted that Tomi had been arrested in 2004 for domestic violence, and that she had a borderline personality disorder. CP 3140–42.

The Commission held a five-day hearing to determine if the mayor's termination decision was made in good faith for cause.<sup>6</sup> CP 1608–2251. Despite the mayor's reliance on Dr. Mays' mental fitness-for-duty report in the charging document as the sole evidence supporting Ingersoll's alleged mental unfitness for duty, the City never called Dr.

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<sup>6</sup> At the first day of the hearing, each commissioner denied having any conflict of interest. CP 1613. Moments later, Ingersoll—raising the issue himself—challenged the Commission's makeup and requested the recusal of two commissioners because commissioner Betty Webster was married to a city employee of the public works department and commissioner Diane Hyndman was married to a city council member. CP 1622, 1766, 1773, 1829. Ingersoll also learned that the mayor had appointed commissioner Webster to the Commission about one month before the hearing. CP 1733. At the time, Ingersoll had a pending tort claim for disability discrimination and unlawful retaliation against the City. CP 2539–42. The Commission rejected Ingersoll's challenge to the conflict of interest and its violating the appearance of fairness doctrine, and proceeded with the hearing. CP 1624, 1772–74, 1831.

Mays to testify. Nor did the City call former police chief Jensen, who supervised Ingersoll during the period of time when the alleged misconduct occurred.

After three prior letters issued over a nine-month period and three prior pre-termination *Loudermill* hearings, Mayor Esser—as the City’s sole “appointing power”—could not recall at the hearing before the Commission why she fired Ingersoll and instead deferred to Chief Turley’s testimony. CP 1839–42.

Chief Turley, the City’s main witness, testified that he recommended termination because Ingersoll lied on his employment application to the Mattawa Police Department and filed a false missing persons report. CP 1931–32, 1934–35, 1937–38, 1943–44, 1947, 1956–58, 1975; CP 2270–75 (charging document) (allegation three: false reporting, and allegation five: falsifying report/dishonesty). Chief Turley admitted he did not know if Ingersoll falsified his employment application. CP 1975. In fact, Chief Turley was hired almost four years after Ingersoll began working as a police officer for the Department. Chief Turley did not recommend termination for domestic violence (allegation one), harassment or intimidation (allegation two), off-duty misconduct (allegation four), use of police position for personal gain (allegation six), insubordination (allegation seven), and fitness for duty (allegation eight). CP 1918–19, 1933, 1946–47, 1955–58.

The Commission dismissed every misconduct allegation either for insufficient evidence or because the City knew about the alleged conduct

but chose not to discipline Ingersoll. CP 8–9. The Commission found the allegations “to be a piling up of alleged misconduct in an effort to support termination of employment.” CP 9. Although the Commission dismissed every misconduct allegation, it considered the alleged and unproven misconduct as “background evidence” for fitness for duty. CP 9.

The Commission ultimately affirmed the mayor’s termination decision, but not for the reasons identified by Chief Turley at the hearing (*i.e.*, falsifying his employment application). Instead, the Commission affirmed on an alternative basis, concluding that based on Dr. Mays’ hearsay report, Ingersoll was mentally unfit for duty—even though he was never specifically charged with mental unfitness. CP 10; CP 913; CP 3326. The Commission issued five findings, four of which expressly relied on hearsay evidence: Dr. Mays’ fitness-for-duty report. CP 10.

The Commission first faulted Ingersoll for “totally denying any wrongdoing” while testifying at the hearing and for his conduct during the hearing that purportedly showed an “immaturity and inconsistency” regarding his ability to control his “actions and emotions.” CP 9 (FF 1). Ingersoll was never notified that his conduct during the hearing or his testimony denying any wrongdoing might be used as evidence by the Commission to uphold the mayor’s termination decision. The Commission found: (1) Ingersoll’s conduct in trying to locate the shelter was “poor judgment” and “led to the making of a false missing person[s] report”; (2) Ingersoll’s conduct during a May 2010 incident where he confiscated fake social-security cards showed “poor judgment”; and

(3) Ingersoll “lacked self control” in handling an April 2010 DUI incident. CP 10 (FF 2–4).

**E. Despite the internal inconsistency in the Commission’s dismissing every misconduct allegation but using the dismissed and unproven misconduct as “background evidence” for fitness for duty, the superior court affirmed.**

Ingersoll sought review by the Grant County Superior Court of the Commission’s decision affirming the mayor’s termination decision. CP 4–7. The City cross-appealed the Commission’s decision to dismiss all of the misconduct allegations. CP 1169–71.

The superior court affirmed, concluding that the mayor’s termination decision was made in good faith for cause. CP 3369. (The superior court had earlier denied Ingersoll’s motion seeking a new hearing for due-process and appearance-of-fairness violations. CP 3371; RP (Oct. 28, 2014) 30–31.) The court denied Ingersoll’s reconsideration motion. CP 3378–86; CP 3387, 3399–3400.

Ingersoll timely appealed. CP 3388, 3401.

## V. STANDARD OF REVIEW

RCW 41.12.090 governs this Court’s review of civil-service-commission decisions. *Benavides v. Civil Serv. Comm’n of City of Selah*, 26 Wn. App. 531, 535, 613 P.2d 807 (1980). When a municipality’s appointing power imposes a “severe sanction”—such as termination—on a classified civil-service employee, the disciplinary decision must be made “in good faith for cause.” *Goding v. Civil Serv. Comm’n of King County*, 192 Wn. App. 270, 272, 366 P.3d 1 (2015), *rev. denied*, 185 Wn.2d 1034

(2016). If the civil-service commission upholds the appointing power's decision, the employee may seek judicial review. RCW 41.12.090.

This Court exercises “independent judgment” to determine if the commission's decision was arbitrary and capricious. *Goding*, 192 Wn. App. at 291. Arbitrary and capricious denotes “willful and unreasoning action in disregard of the facts and circumstances.” *Appeal of Butner*, 39 Wn. App. 408, 411, 693 P.2d 733 (1985) (citing *Skagit County v. State, Dep't of Ecology*, 93 Wn.2d 742, 613 P.2d 115 (1980)). A finding or conclusion made without evidence to support it is arbitrary. *State ex rel. Perry v. City of Seattle*, 69 Wn.2d 816, 821, 420 P.2d 704 (1966).

This Court does not separately review findings or conclusions, or weigh or consider the sufficiency of the evidence. *Perry*, 69 Wn.2d at 819; *Goding*, 192 Wn. App. at 290–91. But this Court does review the commission's record and decision as a whole to determine if the commission duly considered all the evidence presented at the hearing, and if the decision was made in disregard of the facts and circumstances. *Goding*, 192 Wn. App. at 291 (citing *Perry*, 69 Wn.2d at 821); *Butner*, 39 Wn. App. at 411.

## **VI. SUMMARY OF THE ARGUMENT**

The Commission's decision affirming the mayor's termination decision was arbitrary and capricious. Ingersoll had a protected property right in continued employment as a city police officer, and could be deprived of that right only if the hearing and termination decision complied with due process and chapter 41.12 RCW.

Due process requires notice of the charges and an opportunity to be heard to allow a civil-service employee a chance to clear his or her name. Ingersoll had no notice that his conduct during the hearing might be used as evidence by the Commission to support the mayor's termination decision. No evidence supports the finding about Ingersoll's purported conduct during the hearing. The Commission could not properly uphold the mayor's termination decision based on Ingersoll's denial of the charges against him. Ingersoll had an absolute right to present a defense, which manifestly included the right to deny the charges. Nor did Ingersoll have notice that he was "[m]entally unfit" for duty, which the Commission ultimately found as the sole basis for affirming the mayor's termination decision.

The Commission's decision is also internally inconsistent. The Commission dismissed every misconduct allegation, thus rejecting the City's proffered evidence, but nevertheless used the alleged and unproven misconduct as "background evidence" to find that Ingersoll was mentally unfit for duty. This is the definition of arbitrary-and-capricious action.

This Court should reverse the superior court's order and remand to the Mattawa Civil Service Commission with directions to reinstate Ingersoll and award him back pay per statute.

## VII. ARGUMENT

### A. **The Commission’s decision affirming the mayor’s decision to fire Ingersoll because he was mentally unfit for duty as a police officer was arbitrary and capricious as a matter of law.**

Ingersoll does not argue that the Commission failed to interpret correctly the evidence or improperly weighed the evidence. *Perry*, 69 Wn.2d at 819 (“Appellate review is not a trial de novo.”). Rather, Ingersoll challenges the Commission’s decision as a whole to show that it was arbitrary and capricious as a matter of law. The Commission’s decision violated RCW 41.12.090 and failed to comport with due process.

Ingersoll had a property interest in continued employment protected by the due-process clauses of both the federal and state constitutions. *Danielson v. City of Seattle*, 108 Wn.2d 788, 796, 742 P.2d 717 (1987); *Bullo v. City of Fife*, 50 Wn. App. 602, 607, 749 P.2d 749 (1988); *Payne v. Mount*, 41 Wn. App. 627, 633, 705 P.2d 297 (1985). He could be fired only if the Commission’s decision complied with due process and RCW 41.12.090. *Appeal of Nirk*, 30 Wn. App. 214, 216, 633 P.2d 118 (1981) (civil-service employee must be given “minimal due process guaranties” before termination).

If the government fires an employee “on charges that call into question his good name, honor[,] or integrity, notice and an opportunity to be heard are essential.” *State ex rel. Swartout v. Civil Serv. Comm’n of City of Spokane*, 25 Wn. App. 174, 182, 605 P.2d 796 (1980); *see also Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). The opportunity to be heard includes the rights to

know the charges and to meet the charges with witnesses and evidence. *Nirk*, 30 Wn. App. at 216. “The purpose of such notice and hearing is to provide the person an opportunity to clear his name[.]” *Codd v. Velger*, 429 U.S. 624, 627, 97 S. Ct. 882, 51 L. Ed. 2d 92 (1977) (internal quotation marks omitted); *Roth*, 408 U.S. at 573 n.12. Absent these rights, a discharged employee’s hearing does not comport with “the elementary standards of fairness and reasonableness,” *Codd*, 429 U.S. at 627, and any termination decision flowing from that hearing is void. *Esmieu v. Schrag*, 88 Wn.2d 490, 497, 563 P.2d 203 (1977).

**1. The Commission’s finding that Ingersoll’s purported conduct during the hearing supported termination was arbitrary and capricious and denied Ingersoll due process.**

The Commission found that Ingersoll’s conduct during the hearing supported termination for mental unfitness. CP 9 (FF 1). A finding made without evidence to support it is, as a matter of law, arbitrary. *Perry*, 69 Wn.2d at 821; *Goding*, 192 Wn. App. at 291. No evidence in the record supports that Ingersoll made “comments during witness testimony” or “stare[d] down citizens” at the hearing. CP 9; RP (June 16, 2016) 57 (City’s counsel conceding at the hearing before the superior court that the record “probably doesn’t reflect that [finding.]”).

The very nature of the Commission’s backward-looking review precludes it from considering *new* reasons to support termination at the hearing. See *Matter of Smith*, 30 Wn. App. 943, 948–49, 639 P.2d 779 (1982) (holding that the commission must confine its investigation to the

reasons set forth as grounds for discharge); *Deering v. City of Seattle*, 10 Wn. App. 832, 837, 520 P.2d 638 (1974) (stating that a civil-service employee’s “fundamental right to ‘notice’ required that the commission’s inquiry be limited to an investigation of the ‘reasons’ given for discharge.”).<sup>7</sup> The court in *Smith* expressly rejected the argument that a civil-service-commission’s decision may be based on reasons “uncovered by the Commission during its own investigation of the charges” and not limited to those reasons advanced by the appointing power. *Smith*, 30 Wn. App. at 946 (finding “scant support . . . for the Commission’s contention that it is free to sift through collateral matters relating to the sheriff’s charges to find its own reasons for discharging an employee.”). The court held that a civil-service commission “must confine its inquiry to those reasons set forth by the appointing power” and “may investigate those reasons but it may not substitute reasons of its own[.]” *Id.* at 948–49.

The Commission here had to determine if the mayor’s termination decision was made in good faith for cause based on conduct that occurred *before* the hearing and for the reasons given in the charging document. RCW 41.12.090; *Goding*, 192 Wn. App. at 291. As in *Smith*, the Commission was not free to justify post hoc the mayor’s termination decision based on Ingersoll’s purported conduct during the hearing. This

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<sup>7</sup> See P. Stephen DiJulio, *Model Civil Service Rules for Washington State Local Governments*, at 107 (3d ed. 2006), <http://mrsc.org/getmedia/0EA044F8-D10F-4EC6-9A37-E2AB0A41B034/m58civserv3.aspx> (rule 10, section 4, subsection E) (“The Commission shall not consider, on appeal, any basis for disciplinary action not previously presented to an employee.”).

finding is arbitrary and capricious as a matter of law and denied Ingersoll due process.

**2. The Commission’s finding that faulted Ingersoll for “totally denying any wrongdoing” as a defense to the charges against him at the hearing was arbitrary and capricious and denied Ingersoll due process.**

The Commission found that Ingersoll’s conduct during the hearing showed an “immaturity and inconsistency” in his ability to control his actions and emotions, which included “providing testimony totally denying any wrongdoing.” CP 9 (FF 1). Put another way, because Ingersoll denied the unproven misconduct allegations “pil[ed] up” against him by the mayor, he was somehow mentally unfit for duty as a police officer. CP 9. This finding was arbitrary and capricious as a matter of law and denied Ingersoll due process.

As part of the due-process guarantees provided in RCW 41.12.090, a civil-service employee must be afforded “an opportunity to refute the charge[s],” *Codd*, 429 U.S. at 627, and “an opportunity to present his side of the story” as a defense at a termination hearing. *Danielson*, 108 Wn.2d at 798 (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1491, 84 L. Ed. 2d 494 (1985)). The statute in no way limits the types of defenses that a civil-service employee may assert to refute the charges. That the employee, as part of his defense, denies the charges against him cannot be used as evidence to support termination. Allowing the Commission to use a discharged employee’s defense to the charges against him turns the statute, which allows an employee to present

“his side of the story,” on its head. *Id.* The right to present a defense under RCW 41.12.090 includes the right to “totally deny[] any wrongdoing.” CP 9 (FF 1). Thus, the Commission’s finding that faulted Ingersoll for denying the unproven misconduct allegations as a defense to the charges against him—which the Commission ultimately dismissed—was arbitrary and capricious as a matter of law and denied Ingersoll due process.

**3. Even if the Commission were allowed to consider Ingersoll’s purported conduct during the hearing and his testimony denying any wrongdoing as competent evidence, Ingersoll was never notified that the Commission might use such evidence against him to support the mayor’s termination decision.**

To satisfy due process, a discharged employee must know the precise basis of the discharge. *Porter v. Civil Serv. Comm’n of Spokane*, 12 Wn. App. 767, 773, 532 P.2d 296 (1975). Here, even if the Commission were allowed to consider Ingersoll’s purported conduct during the hearing and his testimony denying any wrongdoing, Ingersoll was never notified that the Commission might use such evidence against him to support the mayor’s termination decision. *Luellen v. City of Aberdeen*, 20 Wn.2d 594, 607, 148 P.2d 849 (1944) (reversing decision by civil-service commission firing police officer; absent knowledge of the specific charges and the opportunity “to meet the charges with witnesses and evidence,” termination was “illegal and of no force of effect.”), *overruled on other grounds by Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 709 P.2d 793 (1985); *cf. State v. Cassill-Skilton*, 122 Wn.

App. 652, 658, 94 P.3d 407 (2007) (holding that the State cannot terminate drug-court participation without giving the defendant an opportunity to contest the termination and without creating a record of the evidence relied on to terminate participation). The Commission's finding that faulted Ingersoll's testimony denying any wrongdoing and his purported conduct during the hearing manifestly violated Ingersoll's due-process rights to present a defense and to notice and an opportunity to be heard.

**4. The Commission's decision to dismiss every misconduct allegation—but use the unproven and dismissed misconduct allegations as “background evidence” to show unfitness for duty—is internally inconsistent and thus arbitrary and capricious.**

The mayor's charging document listed seven allegations supporting termination for misconduct and one allegation supporting termination for unfitness based on Dr. Mays' hearsay report. CP 2270–75. Ingersoll had earlier been investigated by other police departments and by his own supervisor for all these allegations, and no discipline had ever been imposed. CP 376, 1500, 2105–07, 2114–15, 2916. Ingersoll was instead praised for his performance and approved for salary raises by the mayor. CP 2090, 2099, 2116, 2770–71, 2777–78. All of the misconduct alleged in the charging document had been previously alleged in the mayor's two prior disciplinary letters. But after both of those *Loudermill* hearings, the mayor chose not to discipline Ingersoll.

The Commission dismissed all seven misconduct allegations. *Compare* CP 8–10, *with* CP 2270–75. The Commission concluded those

allegations did “not support termination of employment for misconduct” and found them “to be a *piling up* of alleged misconduct in an effort to support termination of employment.” CP 9 (emphasis added).

For instance, the mayor alleged Ingersoll filed a false missing persons report after his wife had suddenly left. CP 2272–73 (allegation number 3). While the Commission had already concluded that insufficient evidence supported this allegation (CP 9), the Commission found his conduct “in attempting to locate the safe house was poor judgment and led to the making of a false missing person report.” CP 10 (FF 2). The mayor alleged Ingersoll committed off-duty misconduct when he seized two men outside of a gas station and confiscated their wallets. CP 2273 (allegation number 4). While the Commission had already concluded that insufficient evidence supported this allegation (CP 9), the Commission found that his conduct at the gas station “also evidence[d] poor judgment.” CP 10 (FF 3). The mayor alleged Ingersoll falsified his police report in a DUI case by preventing a defendant from providing a second breath sample and recording the incident as a refusal. CP 2273 (allegation number 5). While the Commission had already found that insufficient evidence supported this allegation (CP 9), the Commission found that “Ingersoll lacked self control” in the incident. CP 10 (FF 4).

The Commission’s decision to use the unproven misconduct allegations of falsely reporting a missing persons report, off-duty misconduct at a gas station, and falsifying a DUI incident report to find unfitness for duty, when the Commission had just dismissed those

allegations for insufficient evidence, is internally inconsistent and reflects “willful and unreasoning action in disregard of the facts and circumstances.” *Butner*, 39 Wn. App. at 411. To dismiss the misconduct allegations for insufficient evidence but use that unproven misconduct for fitness-for-duty purposes is arbitrary and capricious as a matter of law.

Nor was the Commission’s decision to fire Ingersoll for unfitness for duty supported by any witness at the hearing. For instance, Mayor Esser could not recall why she fired Ingersoll. CP 1839–42. Chief Turley testified that he recommended termination because Ingersoll had falsified his employment application to the Department. CP 1934–38, 1943–44. But Chief Turley admitted he did not know if Ingersoll had falsified his employment application, especially because the Department had hired Ingersoll almost four years before Chief Turley’s arrival. CP 1975. Notably, the Commission found that this allegation about Ingersoll’s employment application was “not supported by sufficient evidence” and did not provide background evidence of fitness for duty. CP 9–10. Nor did the lone fit-for-duty allegation in the charging document incorporate by reference or otherwise mention the seven prior misconduct allegations (*e.g.*, dishonesty, subordination, false reporting) ostensibly supporting termination. CP 2274.

Ingersoll had no notice that the unproven misconduct allegations, which were all dismissed by the Commission, might be used by the Commission as “background evidence” to support an unfitness finding.

The Commission's decision was thus arbitrary and capricious as a matter of law and denied Ingersoll due process.

**5. The only evidence supporting the Commission's decision was Dr. Mays' unsubstantiated mental fitness-for-duty report. But Ingersoll was never charged with mental unfitness for duty, Dr. Mays never testified, and no witness at the hearing corroborated his report, which contained double and triple hearsay.**

Ingersoll was never charged with the “[m]ental . . . unfitness” (CP 3326) that the Commission ultimately found to affirm the mayor's termination decision. This alone requires reversal. *Luellen*, 20 Wn.2d at 607.

Nonetheless, the only evidence presented at the hearing arguably supporting the Commission's decision was Dr. Mays' mental fitness-for-duty report. CP 9; CP 917. Dr. Mays could have, but never testified at the hearing.<sup>8</sup> In his report, Dr. Mays concluded that Ingersoll has a “Personality Trait Disturbance”: a “behavioral pattern [that] is likely to interfere to some degree with social and vocational functioning.” CP 2571. Dr. Mays did not find that Ingersoll was mentally unfit for duty, yet noted that most law-enforcement agencies would consider him to be unfit for duty. CP 2573.

No witness at the hearing corroborated Dr. Mays' unsubstantiated report or otherwise supported the Commission's decision that Ingersoll

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<sup>8</sup> The hearing before the Commission occurred in October 2013. Dr. Mays died in March 2014.

was mentally unfit for duty.<sup>9</sup> While a civil-service commission “is given discretion relative to the admission of evidence,” *Porter*, 12 Wn. App. at 772; *see also* RCW 41.12.040(5) (commission not “bound by the technical rules of evidence.”); *Nirk*, 30 Wn. App. at 217 (same), “some testimonial evidence should be presented corroborating the investigative report[] in order to avoid reliance solely on hearsay and conjecture.” *McDaniel v. State, Dep’t of Social & Health Servs.*, 51 Wn. App. 893, 897, 756 P.2d 143 (1988). Dr. Mays’ report contained “double and triple hearsay” (*see* CP 2560–61, 2573) and never actually found that Ingersoll was mentally unfit for duty. CP 2573. In fact, the “numerous documents” that Dr. Mays reviewed before issuing his report were later determined by the Commission to lack sufficient evidence to support termination. CP 2560–61.

The Commission’s finding that Ingersoll was mentally unfit based solely on Dr. Mays’ hearsay report was arbitrary and capricious as a matter of law. The Commission willfully disregarded the facts and circumstances in reaching its decision when no competent evidence was presented at the hearing to support its ultimate mental-unfitness finding.

**B. Because the Commission violated Ingersoll’s due-process rights and RCW 41.12.090, its decision is void.**

The Commission violated Ingersoll’s constitutional right to due process by failing to notify him that it might rely on his purported conduct

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<sup>9</sup> Ingersoll objected to questioning Chief Turley about Dr. Mays’ hearsay report at the hearing. CP 1935–36, 2002.

during the hearing, and by faulting Ingersoll for denying the mayor's unproven charges against him as part of his defense, to support termination for mental unfitness. The Commission's decision was also internally inconsistent and thus arbitrary and capricious under RCW 41.12.090.

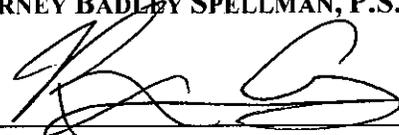
The Commission's decision is void, and the City is not entitled to a rehearing on remand. *Esmieu*, 88 Wn.2d at 497–98 (denial of procedural due process voids all orders based on the faulty hearing); *State ex rel. Roe v. City of Seattle*, 88 Wash. 589, 592, 594, 153 P. 336 (1915) (wrongfully discharged civil-service employee “is entitled to be restored to his former position” under civil-service laws); *Bullo*, 50 Wn. App. at 610 (stating in dicta that if a pretermination hearing would have prevented the employee's discharge, then she “is entitled to reinstatement with back pay and benefits from the date of termination.”); *cf. Dicomes v. State*, 113 Wn.2d 612, 624, 782 P.2d 1002 (1989) (public employee entitled to reinstatement for a discharge that infringed the employee's constitutional right to free speech).

### **VIII. CONCLUSION**

This Court should reverse the Commission's decision affirming the mayor's termination decision and remand to the Commission with directions for full reinstatement and an award of back pay from the effective date of his discharge (June 6, 2013) under RCW 41.06.220.

Respectfully submitted: May 24, 2017.

**CARNEY BADLEY SPELLMAN, P.S.**

By 

Jason W. Anderson, WSBA No. 30512

Rory D. Cosgrove, WSBA No. 48647

*Attorneys for Appellant John Ingersoll*

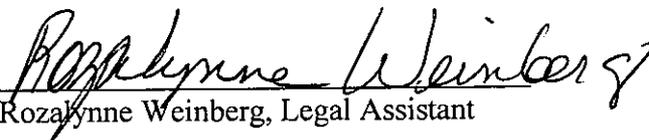
## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document and the *Verbatim Report of Proceedings* on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Robert F. Noe  
Kenyon Disend, PLLC  
11 Front St S  
Issaquah WA 98027-3820  
[bob@kenyondisend.com](mailto:bob@kenyondisend.com)

DATED this 24th day of May, 2017.

  
Rozalynne Weinberg, Legal Assistant

## INDEX TO APPENDICES

- Appendix A:** Mattawa Civil Service Commission's Findings and Decision (CP 8–10)
- Appendix B:** Mayor Esser's May 16, 2013 charging document (CP 2270–75)
- Appendix C:** Dr. Mays' mental fitness-for-duty report (CP 2560–73)
- Appendix D:** Mattawa Civil Service Commission Rules (CP 3316–32)

# **APPENDIX A**

**BEFORE THE CIVIL SERVICE COMMISSION  
FOR THE CITY OF MATTAWA**

JOHN INGERSOLL,

Appellant,

vs.

CITY OF MATTAWA

Respondent.

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)  
) **FINDINGS AND DECISION  
OF THE COMMISSION**  
)  
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) December 3, 2013  
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This matter comes before the Mattawa Civil Service Commission as an appeal by John Ingersoll of his dismissal from employment with the Mattawa Police Department as set forth in a letter to Mr. Ingersoll from Mayor Judy Esser, dated June 3, 2013. The letter of June 3, 2013 incorporates by reference a letter of May 16, 2013 setting forth specific allegations and reasons for terminating Mr. Ingersoll's employment. Both documents were served upon the Civil Service Commission by the mayor, and both documents were served upon Mr. Ingersoll.

A hearing on this matter was held October 1, 2, 3, 4 and 7, 2013. Mr. Ingersoll was present and represented by counsel on all dates set forth.

**APPEARANCES**

*On behalf of Mr. John Ingersoll*

Mr. Steven C. Lacy  
Lacy & Kane, P.S.  
300 Eastmont Avenue  
East Wenatchee, WA 98802

*On behalf of City of Mattawa*

Mr. Robert F. Noe  
5808 A Summitview Avenue, #51  
Yakima, WA 98908

The City presented evidence in support of the allegations set forth in the May 16, 2013 notice to Mr. Ingersoll. At the end of the City's presentation, the Commission dismissed certain portions of the case. Those portions dismissed at the end of the City's case are as follows:

1. Domestic violence. This allegation was dismissed on the basis that there was insufficient evidence to support the violation and the City had knowledge of the allegations from May 2012 and took no disciplinary action as a result of these allegations.
2. Harassment and intimidation/Unprofessional conduct. At the end of the City's case, the Commission dismissed the first full paragraph of allegation number 2 as the police department had knowledge of these incidents, investigated the matters and took no disciplinary action. The second paragraph was not dismissed at the end of the City's case, however, the Commission finds that there is insufficient basis to support termination of employment for the allegations made in paragraph 2. The conduct is alleged to have occurred from December 2011 to June 2012 when Mr. Ingersoll was placed on administrative leave. The staff involved did not report the alleged conduct until February 2013. Believing all of the allegations, appropriate discipline would have been a written warning or short term suspension from employment.

The third paragraph of allegation number 2 was dismissed by the Commissioners at the end of the City's case as no evidence was presented to support this allegation.

The allegation set forth in the fourth paragraph of number 2 was also dismissed as the matter had been previously investigated by Moses Lake Police Department and no discipline was imposed.

The final paragraph of allegation number 2 was also dismissed at the end of the City's presentation as no evidence was presented regarding this matter.

7. Insubordination. This allegation was dismissed as the preponderance of the evidence did not support insubordination. It was dismissed at the end of the City's case.

As to the remaining allegations, which include the sixth paragraph of allegation number 2, allegation number 3, allegation number 4, allegation number 5, allegation number 6, the Commission finds these allegations were not supported by sufficient evidence or were known by the department and no prompt disciplinary action was taken, the allegations are unrelated in time and content. The allegations appear to be a piling up of alleged misconduct in an effort to support termination of employment.

Although the allegations set forth in these paragraphs do not support termination of employment for misconduct, the conduct in question does provide background evidence regarding fitness-for-duty and, for purposes of this decision, are considered by the Commission.

## FINDINGS

The Commission finds the following:

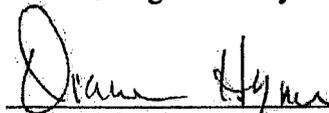
1. The conduct of Mr. Ingersoll during the hearing showed an immaturity and inconsistency regarding your ability to control your actions and emotions. This included comments during witness testimony, attempts to stare down citizens at the hearing and providing testimony totally denying any wrongdoing on his part.

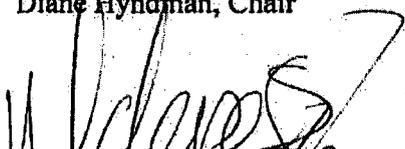
2. Mr. Ingersoll's lack of acceptance that his wife and children were in a safe house, the location of which would not be disclosed, based upon his law enforcement training, should have been an acceptable explanation. The very nature of a safe house is anonymity. The Commission finds Mr. Ingersoll's conduct in attempting to locate the safe house was poor judgment and led to the making of a false missing person report. This conduct is consistent with findings in a fitness-for-duty examination regarding self-indulgent behaviors and inconsistency regarding his position as a police officer.
3. Mr. Ingersoll's conduct in an incident involving two Hispanic gentlemen at Ken's Corner also evidences poor judgment. The Commission finds the incident shows a disregard of the boundaries between his private capacity and that of a police officer. Recognizing a police officer has police powers 24 hours of the day, does not justify seizing property and then leaving the scene of the incident without calling for assistance by an on-duty police officer. This conduct evidences the type of inconsistent police performance referenced in the fitness-for-duty letter of April 3, 2013.
4. Substantial testimony was heard regarding the testing on a DUI case. The Commission does not find the testing protocol to be the relevant issue; however, the Commission does find the testimonies of the other officers present indicate Mr. Ingersoll lacked self control in dealing with this matter, which again evidences behavior described in the fitness-for-duty exam.
5. The Commission finds the report of Dr. Mays to be credible and the assessment to be consistent with conduct as stated above.

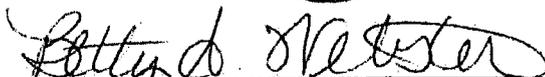
#### DECISION

It is the decision of the Mattawa Civil Service Commission the preponderance of the evidence establishes that as of June 3, 2013, Mr. Ingersoll was not fit for duty as a police officer and termination of his employment was appropriate under Civil Service Rule X, Section 2, Subsections A, C and K.

The undersigned certify this decision to the appointing authority.

  
Diane Hyndman, Chair

  
Wendy Lopez, Commissioner

  
Betty Webster, Commissioner

# **APPENDIX B**

May 16, 2013

Officer John Ingersoll  
203 Fairway Place S.  
Mattawa, WA 99349

HAND DELIVERED

Dear Officer Ingersoll:

This letter is written pursuant to the Mattawa Civil Service Commission rules. The purpose of this letter is to place you on notice of a proposed discipline which I intend to impose as the Mayor and appointing authority for police department personnel.

At this point, I am convinced it is more likely than not that you have violated the Mattawa Police Procedures and Policies and the City Police Civil Service Rules and that your conduct in doing so is of such a nature that you should be terminated.

The charges against you are as follows: That you violated Civil Service Rule X Section 2, Cause of Disciplinary Action, subsections A, B, C and K. You violated those rules as follows:

Subsection A provides:

Incompetency, inefficiency, or inattention to or dereliction of duty.

Subsection B provides:

Violation of law, of official rules or regulations, or orders, or failure to obey any lawful or reasonable direction when such failure or violation amounts to insubordination or serious breach of discipline.

Subsection C provides:

Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself; or any willful violation of the provisions of Chapter 41.12 RCW or of these rules and regulations.

Subsection K provides:

Any other act or failure to act which in the judgment of the Civil Service Commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

The conduct which supports the charges includes the following:

1. Domestic violence

According to court documents and witness statements, you have physically assaulted your wife, Tomi Ingersoll, on repeated occasions, most recently on May 20, 2012. In addition, on that same date while in uniform and on duty, you un-holstered your loaded service pistol, held it to your head and threatened to shoot yourself in front of your wife. I understand from our previous meetings, as well as your written correspondence, that you dispute these allegations and assert that your wife is lying. To date, I have been provided no documentation or evidence to support your position other than your bare assertions that your wife is lying and/or that you did not commit the above mentioned acts.

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**CP 002270**

Such conduct violates Subsections B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department's Policies and Procedures and state law.

2. Harassment and intimidation/Unprofessional conduct

According to court documents, police reports and witness statements, you have engaged in an ongoing pattern of harassment and intimidation towards various citizens of Mattawa, including your wife. This includes verbal harassment, threats, and the use of your position as a police officer unrelated to your official duties to intimidate and harass citizens. Examples of this conduct include contacting the individual who transported your wife and kids to the domestic violence shelter in an attempt to find out where they were, contacting your neighbor (Richard Long) and demanding that he sign an affidavit for you and, when he refused, threatening him and his family, and inappropriate use of language including profanity and threats during citizen contacts in your official capacity as police officer (e.g. June, 2010 citizen complaint regarding rude and intimidating behavior, witnessed in part by a fellow officer; January, 2011 citizen complaint arising from traffic stop complaining of rude and demeaning behavior; July, 2011 citizen complaint regarding comments of a sexual nature). Despite your continued denial of any of these events, I find no basis to believe that any of these citizen complaints are false.

According to the female staff at City Hall, you have engaged in an inappropriate pattern of sexual harassment from December, 2011 through June, 2012 when you were placed on administrative leave. This conduct includes having the female staff look at pictures of you in a Speedo which you displayed for them on Diane Martinez' computer by accessing a You Tube video of yourself; requesting one of the female staff to play solitaire on your phone, which has cards with your picture naked from the waist up and, when the staff member refused to do so, leaving your phone on Anabel Martinez' desk; telling the female staff how "well endowed" your mother said you were at birth; insisting that Robin Newcomb feel your "abs" to show them how "buff" you were; inquiring of the female staff members what other men had that you did not; questioning female staff members about whether they became jealous when their husbands looked at other women; and asking numerous times for the phone number of Anabel Martinez. As a result of your conduct, members of the female staff felt harassed, intimidated, and threatened and made it a practice to only leave the office in pairs and never asked that you accompany them individually to their cars after hours. This conduct violates the Civil Service Rules, state laws against harassment, and the City's personnel policies (Section 1.3, Sexual Harassment).

Further, the school psychologist/counselor, Nancy Osier, at Saddle Mountain Elementary School reported similar conduct to Chief Turley on February 14, 2013. Specifically, one female staff member reported that you "invaded her space", "gave her the creeps", "looked her up and down" while talking to her, and made her extremely uncomfortable. She reported her concerns to her supervisor, Mia Benjamin, who instructed her to "not be alone" with you as she had received other complaints of your "being too friendly" with school staff members. This individual also reported that you cornered a young child in the Saddle Mountain Elementary School gymnasium after the child allegedly offended your daughter. This was observed by a former teacher at the school, Nora Sala. Although this incident was not witnessed by the school counselor, it was corroborated by the school principal, Mr. Mullen, who advised that he personally spoke with you about your actions and instructed that it not happen again. Mr. Mullen further advised that you spent an inordinate amount of time at the school and that while there, you used your position as a police officer to exert undue influence over others, making school

employees and students uncomfortable. To quote Mr. Mullen, “. . . Officer Ingersoll had confused the staff as he was always at the school . . . he was extremely over protective and overly involved . . . both inside and outside with the students . . . he made everyone uncomfortable.” Last, a para-pro at the school advised that you made inappropriate physical contact with her at her home when you ran your fingers through her hair while standing very close to her. Ms. Kathy Oliver advised that you and her son were at her home when she returned from having a massage late one afternoon. Her son asked if she would like to join you and him to get something to eat. She thanked him for the invitation but declined stating that she was a mess after the massage and her hair was oily. Ms. Oliver advised that just after saying that, you came very close to her and ran your hand and fingers through her hair. Ms. Oliver was extremely uncomfortable with your conduct, stating that it “creeped her out”. She said that was the last time you were at her house. While you may consider that this off-duty conduct is irrelevant to your work performance, I include it because I believe it corroborates the similar complaints I have received from city staff and citizens arising from your workplace conduct; in other words, your misconduct both on and off duty appears to be consistent.

Additionally, you were previously placed on administrative leave in May, 2010 during an investigation into allegations of unprofessional conduct, civil rights violations, and potential criminal conduct. Although I have no reason to believe that the complaints were not credible, no disciplinary action was taken at the conclusion of the investigation by the Moses Lake Police Department only because the victims could not be located to corroborate the complaints. Wrongful detention, search, and seizure raise issues regarding possible civil rights violations which can result in significant liability for the city.

Throughout your tenure with the department, you have exhibited a volatile disposition not only with your coworkers, but also with officers from outside agencies as well as the citizenry. I have received numerous complaints from civilians about your behavior, all of which you deny. I have also received numerous complaints from your coworkers and officers from other law enforcement agencies. Indeed, your nickname with other law enforcement personnel is “Scary 8”, and several outside officers have expressed reservations about patrolling our area when you are on duty. This volatile and hostile disposition was again displayed just recently when Chief Turley and Corporal Valdivia had contact with you at City Hall on April 26, 2013. During this contact, you refused to listen to the Chief or Corporal Valdivia and you were argumentative, confrontational, and insubordinate which resulted in your being ordered to leave the premises.

Last, I received a written complaint from Joyce Edie, publisher of the local Mattawa Area News newspaper, on May 13, 2013 advising that you called her and threatened her if she published anything she received from the City about you. Ms. Edie explained that you warned her that you were sure she “didn’t want to ruin a man’s career by printing things in the paper.” Ms. Edie ended your telephone conversation because she felt threatened by your contact and comments. Again, this conduct is entirely unacceptable and corroborates the consistent complaints I have received from citizens and co-workers regarding your behavior.

Such conduct violates Subsections A, B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department’s Policies and Procedures and state law.

### 3. False reporting

You filed three false missing persons reports on June 8, 2012 with the Grant County Sheriff’s Office for your wife, son and daughter, signed under certification that the information was true and correct to the best of your knowledge. At the time you filed those reports, you

knew that your wife and kids had been transported to a domestic violence shelter at an undisclosed location on May 25, 2012. Your knowledge is confirmed by Chief Jensen's communication to you on May 25, 2012 that your family had been transported to a shelter, your call to MACC that same day to find out a phone number for their location, and your ensuing numerous phone calls to the domestic violence shelter requesting that messages be left for your wife and kids. Further, Mr. John Mullen of Saddle Mountain Elementary School advised Chief Turley that you contacted the school's secretary in person, trying to find information on the whereabouts of your kids after Chief Jensen informed you they had been taken to a safe shelter. The secretary was so concerned about your behavior that she reported it to Mr. Mullen. You have previously attempted to justify your actions through written explanation however I continue to find that your conduct violates Subsections A, B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department's Policies and Procedures and state law.

#### 4. Off duty misconduct

According to witness statements and court documents, you have engaged numerous times in inappropriate off duty personal conduct unbecoming a police officer and which brings discredit to the Mattawa Police Department. This conduct includes physical violence, domestic violence, use of profane and threatening language, severe intoxication, and inappropriate citizen contact (e.g., seizure of two gentlemen outside of gas station/Ken's Corner, display of service weapon and confiscation of wallets, incidents reported by school district personnel described above). Such conduct violates Subsections A, B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department's Policies and Procedures and state law. While you may consider that this off-duty conduct is irrelevant to your work performance, I believe that it corroborates the similar complaints I have received from city staff and citizens arising from your workplace conduct; in other words, your misconduct both on and off duty appears to be consistent.

#### 5. Falsifying report/Dishonesty

According to witness statements, you intentionally falsified your officer's report in a DUI case involving a defendant Santiago Degante by preventing the defendant from providing a second breath sample and recording the incident as a refusal. In interviews with investigators, you have admitted that you listed the incident as a refusal even though the suspect did not refuse.

Thus, I can only conclude that your conduct resulted from (a) an intentional act to falsify the report, (b) a gross neglect of duties, or (c) gross incompetence. Such conduct violates Subsections A, B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department's Policies and Procedures and state law.

In reviewing what personnel file documents have been located, I note that you affirmatively and without any equivocation represented in your application to the City that you "resigned in good standing" from the King County Sheriff's Department on April 24, 2009. You signed this application certifying that all answers were "true, accurate and complete" and that you understood "that the falsification, misrepresentation or omission of fact on this application will be cause for denial of employment or immediate termination of employment, regardless of when or how discovered."

On April 20, 2009, you were given a Memorandum from Major David Germani, Precinct #3 Commander, advising you that the Special Board convened to evaluate your performance and, "after a thorough review and discussion of your overall performance by all your trainers, it was the unanimous consensus that your overall performance does not meet PTO

program standards that you would not benefit from further training. It was further recommended that your employment with the Sheriff's Office be terminated. I have decided to uphold the decision of the Special Board, and by receipt of this memo you are hereby terminated from the Sheriff's Office." I believe that the representation contained in your employment application that you resigned in good standing constitutes a falsification, misrepresentation, or omission of a very material fact. I further believe that this misrepresentation constitutes an act of dishonesty and an intentional falsification of a document. Had the City known that you failed to meet the performance and training standards at the King County Sheriff's Department and were terminated, the City would have conducted further investigation into your previous work history and would likely not have hired you.

6. Use of police officer position for personal gain

You have used your influence and position as a police officer inappropriately for personal gain, as is evident in your recent conduct involving your domestic situation. This includes using your official position to track down the location of your family at a domestic violence shelter, contact with MACC to elicit contact information for personal use only, accessing Spillman to obtain information for personal use, and demanding an affidavit from your neighbor to support your position in your domestic litigation. The Grant County Sheriff's office personnel were so concerned about your conduct that they encrypted the information in order to prevent you from accessing it through Spillman. Although you denied any such behavior to both Sgt. Lewis and Alan Key, given your motive and pattern of conduct I find your denial to be incredible and I find the information supplied by the Sheriff's staff to be more credible.

Such conduct violates Subsections A, B, C and K above and further violates Chapter 10.00.00 of the Mattawa Police Department's Policies and Procedures and state law.

7. Insubordination

Interim Chief Turley issued you a disciplinary notice dated February 13, 2013 for your failure to follow specific direction regarding receipt of your second Loudermill letter.

Although former Chief Jensen may not have previously disciplined you for your above referenced actions, I find that discipline is warranted. As you are aware from my previous letters, your original personnel file is missing. While I have been able to retrieve certain documents from other locations, because the original file is still missing I am unable to reference any documentation of previous discipline.

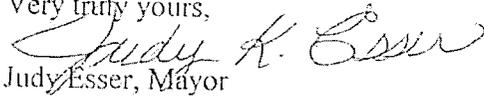
8. Fit for duty examination

At my direction, you were examined by Dr. Mark Mays to assess your fitness for duty and Dr. Mays provided a report dated April 3, 2013 detailing his findings. You have been provided a copy of Dr. Mays report in its entirety, and I will not repeat its conclusions in this letter in order to retain the confidentiality of the report as a medical record exempt from public disclosure. Although I understand that you dispute Dr. Mays' findings, I believe that his findings support a determination that you are not qualified as fit for duty pursuant to Subsections A, C and K above. You may meet with me and Chief Turley at City Hall at noon on May 23, 2013, to present whatever information or evidence you wish me to consider before I make my final decision regarding the level of discipline I will impose against you. You may have someone accompany you to this hearing. This is an informal hearing process designed to permit you to refute any of the allegations against you and to allow you to provide any evidence you believe to be relevant before final action is taken. This is not an adversarial hearing and if you have someone

accompany you, that person is not entitled to be an advocate. If you wish to review any of the documents contained in your current personnel file prior to meeting with me, please contact Chief Turley as soon as possible in order to arrange a time when you can do so. I note that in your letter delivered to the City Attorney on May 6, 2013, you request to see 13 documents referenced in the Mays report that you have not seen. You failed to identify those documents so I do not know which documents you are requesting; however, you may review those documents at City Hall by making a request through Chief Turley.

At the conclusion of the hearing, I will consider all the facts and information I have been provided and make my final decision as to what discipline should be imposed against you as a result of the above violations. That discipline may include termination depending upon my final review of all the relevant evidence.

Very truly yours,



Judy Esser, Mayor

cc: Civil Service Commission  
City Attorney  
Police Chief

# **APPENDIX C**

MARK MAYS, Ph.D., J.D.

PSYCHOLOGY

Medical Center Building

820 S. McClellan St, Suite 414

Spokane, Washington 99204

**Telephone** (509) 624-4800

*Facsimile* (509) 624-4806

*Email* [markmays@markmays.com](mailto:markmays@markmays.com)

April 3, 2013

John Turley, Chief of Police  
City of Mattawa  
521 E. Government Road  
Mattawa, WA 99349

RE: John Ingersoll

Dear Mr. Turley,

Thank you very much for the compliment of referring John Ingersoll to me for a fitness for duty evaluation. My evaluation included a review of numerous documents that you provided me regarding Mr. Ingersoll, two extended clinical interviews, and psychological testing routinely employed for evaluations such as this. At issue is Mr. Ingersoll's capacity to continue to function in his role as a police officer for The City of Mattawa.

He has been an employee there for several years, hired by your predecessor who is no longer the chief of police. You assumed this position in January of this year. At that time Officer Ingersoll had already presented some questions about his capacity to function, and, in fact, had two Loudermill hearings to terminate his employment. Nonetheless, he still remains on administrative leave, and the outcome of the psychological evaluation is relevant to the decision regarding his future with the police department there.

I was provided numerous documents regarding Mr. Ingersoll. These included:

- The investigation by the Cities Insurance Association of Washington dated December 28, 2012;
- Correspondence to Officer Ingersoll dated September 12, 2012 in reference to the first Loudermill hearing;
- Correspondence to Officer Ingersoll dated January, 2013 regarding the second Loudermill hearing;
- Statement of Officer Valdivia dated February 14, 2013 regarding Officer Ingersoll;
- Correspondence to Katherine Kenison, Attorney at Law, regarding Mr. Ingersoll's behavior, dated February 14, 2013;

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- A January 4, 2013 statement by Robin Newcomb;
- A February 13, 2013 formal written warning notice to John Ingersoll from you;
- An October 2, 2011 report of Officer Valdivia regarding John Ingersoll;
- John Ingersoll's application for employment in the Mattawa Police Department dated May 13, 2009;
- Report apparently dated January 29, 2013 (15 pages) regarding Officer Ingersoll's behavior;
- Records of the King County Sheriff's office indicating termination of Mr. Ingersoll dated April 20, 2009;
- Declaration of Summer Chavez dated July 4, 2012;
- Declaration of Tomi Ingersoll dated July 5, 2012;
- Declaration of Tomi Ingersoll dated June 15, 2012 with exhibits of communications reportedly from John Ingersoll;
- Declaration of Robert Winters dated June 13, 2012;
- Phone records of John Ingersoll;
- Missing person report dated June 8, 2012 afforded by John Ingersoll;
- Investigation by the Mattawa Police Department of allegations of harassment made on the part of John Ingersoll;
- Agency assist investigative report of Sergeant Lewis of the Moxe Police Department resulting in an internal investigation of John Ingersoll, with attachments; and
- Evaluation, testing, and notes of Richard Stride, PsyD, who performed an evaluation relevant to parenting ability.

I have reviewed these records, and re-reviewed them prior to completing this report. Ancillary records such as this are very helpful in such an evaluation, but more for forming hypotheses to investigate or identify areas of concern that require particular attention. As with these documents, they are often a combination of verifiable factual assertions, non-verifiable factual assertions ("he said, she said" with no other parties present), as well as narrative portrayals that are deeply interwoven with the author's perspective and attitude. (The difference between describing someone as "principled" versus "stubborn", and whether a person is described as "charming" or "manipulative," often depends in large degree on the attitudes or sentiments one holds towards the person described.) I do not consider reports, particularly in such situations as contentious divorces or child custody issue, to be necessarily factually correct or precise, but whether factually correct or not, they are still relevant for forensic review in a situation such as this. If nothing else, multiple characterizations suggest the potential for a pattern of behavior which needs to be evaluated during the course of the psychological evaluation.

John Ingersoll was extremely cooperative with the evaluation. He signed an informed consent and release, which is attached. He provided me information regarding his

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personal history. He was the sole reporter for this information, but would seem to be generally verifiable or refutable by recourse to public records and his report of factual information seemed credible.

He was born in Little Rock. His mother and father were alive and together during his developing years. His father was a pilot in the Air Force and retired at the rank of Brigadier General when John Ingersoll was 19 years old. He is now working for Boeing. His mother was mostly at home, but did some work as a travel agent.

In his family of origin was a brother six years his senior, a Lt. Colonel in the Air Force in Afghanistan, speaking several languages and having graduated from the Air Force Academy. His sister, four years his senior, is married with a number of children. A graduate of Pacific Lutheran University as an engineer, she is now working in the ministry in Virginia with her husband.

He is in the process of divorce from a marriage of 13 years, with two children, a 10-year-old girl and a 5-year-old boy. He describes a history of meeting his wife when he was working at age 19 and she was attending community college in the Running Start Program. Both he and she completed college degrees, hers at the University of Washington in English Literature, his at Central Washington University in Criminal Justice. He had enlisted in the military, but had two seizures that resulted in his discharge. These occurred in 1999 and 2004, but he has had none since, apparently well controlled on medications. He also reports a diagnosis of an Attention Deficit Disorder.

I asked about a family history that might predict problems for him as an adult. He says that there is no known history of problems with depression, psychiatric treatment or hospitalization, or physical or sexual abuse. Asked how discipline was handled when they were children they would "typically talk things out" and he was "rarely slapped."

There was a history of alcohol problems in his family, it seems, and he says that his father at one time had a problem with excessive use of alcohol. He says that his father does not use alcohol excessively now. He admits that he himself has had a problem with binge drinking on weekends prior to the separation from his wife on May 27, 2012, describing this as something of a "wake up call," as it were. He says that he has never used any drugs, ever, and knows of no history of this in his family of origin. No one in his family of origin has been arrested, nor has he. He says that his wife was arrested in Tacoma for domestic violence when she tried to stab him.

He reports a background history that includes no significant behavioral problems as a teen, criminal problems as an adult, or habit problems such as compulsive gambling or the like. When asked if he had been evaluated prior to the police academy in regards to his work as a King County Sheriff, he said that he had been psychologically evaluated

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and completed a polygraph, and did well on both of those, as evidenced by his being hired.

He describes his relationship with his spouse as one with occasions of intense conflict, but he is adamant that his behavior is being misreported and over-reported by his wife for purposes of child custody. He says that she is alleging things which are inaccurate, but also hard to disprove. He does agree that there were conflicts over some of her writings, and admits to excessively using alcohol, but believes that he has been both a good father and a good husband, and believes that others, such as his family members, would so state. He notes that a Guardian ad Litem has allowed his children to continue visitation with him in an unsupervised way, and contends that the Guardian ad Litem found many of his wife's reports to lack some credibility.

At the start of the interview he was asked why he was being evaluated, and he says that his problems arise from people believing his wife's allegations, not from any misconduct separate from this or behavior as a police officer. He says that some people have said some things, but small town departments, he implies, can be quite political with alliances formed for various reasons (not his specific words). He suggests that the officers who have made statements about him were people with whom he has worked and people who have problems of their own, perhaps less than credible regarding their view of the standards of appropriate police work. Asked specifically if he would be receiving this psychological evaluation were his wife not to have made these allegations, he says that he would not. He attributes the difficulties and other people's perception of his work as a law enforcement officer almost totally arising from his wife's allegations.

Following the interview he completed psychological testing. The first of these tests is the Shipley Institute of Living Scale. This is a measure of cognitive, or thinking, processes. It consists of two subtests, one measuring verbal skills, the other measuring abstract problem solving skills. In most well-functioning individuals, scores on these two subtests are fairly compatible. However, at times of certain forms of neurological and psychiatric decline, the relatively more fragile abstract problem solving skills will deteriorate more quickly than the comparatively more stable verbal skills. Differing performance on these two subtests might, therefore, be suggestive of difficulties in abstract functioning associated with a thinking disorder or a decline in thinking processes from an organically based condition. Although this is but a screening test, and its results must be interpreted tentatively, it does provide some helpful data. In addition to exploring declines in abstract functioning, it also provides a measure of literacy and a fairly rough estimate of intelligence, an estimate somewhat more precise at approximately the normal range. A characteristic of this test is it tends to underestimate notably high levels of intellectual functioning and may be similarly less precise with very low scores.

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The Shipley scores show a somewhat above average level of verbal ability, a somewhat below average score on verbal abstraction, and an average score on non-verbal abstraction. The disparity between these scores indicates a likely impairment or highly probable impairment in his cognitive functioning, particularly at times of stress. This can be compatible with an attention deficit disorder, slight neuropsychological problems as an artifact of seizures or other conditions, but indicates an average level of intelligence, but with some potential for the intrusion of cognitive problems, possibly leading to poor judgment at times of stress.

I had Mr. Ingersoll complete the PDS, the Paulhaus Deception Scale. The PDS is designed to assess socially desirable responding. One can respond to psychological test items in a favorable way, rather than in a more representative way, either as a result of a temporary tendency caused by situational demands (as may be prompted by a desire to appear good on a singular evaluation) or as a trait like tendency that is apparent whenever the individual gives self reports. The PDS attempts to measure whether impression management has occurred by an individual describing themselves in overly positive terms, and the basis for this. There are two subscales to this test, one which measures Impressive Management, which is a tendency to give an inflated self description to an audience, the other labeled Self Deceptive Enhancement, viewed as a tendency to give inflated self descriptions both to one's self and to others.

His PDS scale of 8 is a normal range score, suggesting that he has likely cooperated with the evaluation.

The Michigan Alcohol Screening Test/Drug Assessment Screening Test (MAST/DAST) is a quick screening test of symptoms associated with severe impairment secondary to alcohol or drug use. Scales above 6 warrant concerns about drug and alcohol complicating the clinical picture. Mr. Ingersoll's test score of 18 is a very high score, indicating that alcohol or drug use has almost certainly touched his life in some way, historically if not at present. Please note that this test does not measure one's current level of drinking, but only one's past history of drinking and the likelihood of future difficulties.

Given his very high score on the MAST he was given the SASSI. This is a brief screening device that helps identify individuals with a high probability of a substance abuse disorder. Subscales also provide clinically useful information regarding an individual's attitude towards the assessment, defensiveness, emotional pain, ability to acknowledge problems, and a risk of legal problems. This test shows a very high probability of his having a substance dependence disorder, and not merely a less significant substance abuse disorder.

He completed the Minnesota Multiphasic Personality Inventory-II, the MMPI-2. This is the most standardly employed psychological test of its kind. It measures behavioral and emotional functioning on a variety of dimensions, as well as providing a number of measurements of test taking attitude, or test validity. Though these dimensions are somewhat more historic than those currently employed in the diagnostic nomenclature, the use of this test is more than justified by the literally tens of millions of administrations and perhaps twenty five thousand published research studies employing this test.

I would like to alert any who might subsequently read this report that psychological testing has many strengths as well as numerous limitations. It provides us with hypotheses which need to be confirmed against other sources of diagnostic data, such as knowledge of one's medical status, interview impressions, information regarding past history and behavioral reports. Further, testing is somewhat pathology focused and may not document notable areas of strengths. Nor may testing reflect moderator variables, the influence of such factors as education or social and economic status which may have an effect upon the display of even accurately measured underlying personality patterns. Accordingly, it is most important for people to recall that testing hypotheses must be considered somewhat tentative, and must be viewed as statistical possibilities, rather than "facts." This is particularly important in reviewing narrative reports which may have more of "the ring of truth" than is justified. With these cautions kept in mind, I provide the relevant sections of the computer generated narrative report, below:

#### ***PROFILE VALIDITY***

*This is a highly defensive profile of questionable clinical validity. The client was extremely reluctant to disclose personal information and tended to minimize personal faults. It is likely that his uncooperativeness and rigid defensiveness resulted in an underestimate of his problems.*

*The client appears to be quite unwilling or unable to view himself psychologically and has little insight into his behavior. Individuals with this level of defensiveness do not view themselves as being in need of behavior change. They typically do not seek psychological treatment on their own and are reluctant to get very involved if they are pushed into therapy. The following narrative report should not be considered an accurate appraisal of the individual's current level of personality functioning, although it may provide suggestions about problem areas that should be further evaluated.*

*Individuals with this level of defensiveness, as reflected in his high K score, tend to admit few symptoms. Thus, his content scale scores are likely to underrepresent his actual problems...He approached the test items with a somewhat naive view that everyone is good. This is reflected in his endorsement of many items on the Beliefs in Human Goodness subscale. He*

*attempted to present himself as having only positive views of other people, such as that they are usually honest, sincere, and supportive. Moreover, he obtained a high elevation on S3 (Contentment with Life), suggesting that he wants to appear to others as happy and contented with his present situation.*

#### **SYMPTOMATIC PATTERNS**

*The clinical scale prototype used in the development of this narrative included a prominent elevation on Pd. The client is somewhat immature and impulsive, a risk-taker who may do things others do not approve of just for the personal enjoyment of doing so. He is likely to be viewed as rebellious. He tends to be generally oriented toward thrill seeking and self-gratification. He may occasionally show bad judgment and tends to be somewhat self-centered, pleasure-oriented, narcissistic, and manipulative. He is not particularly anxious and shows no neurotic or psychotic symptoms.*

#### **INTERPERSONAL RELATIONS**

*Individuals with this profile pattern tend to be rather likable and personable and may make a good first impression. His tendency to take personal risks and to act out at times may make it somewhat difficult to maintain close relationships.*

*Quite outgoing and sociable, he has a strong need to be around others. He is gregarious and enjoys attention. Personality characteristics related to social introversion-extraversion tend to be stable over time. The client is typically outgoing, and his sociable behavior is not likely to change if he is retested at a later time. His personal relationships are likely to be somewhat superficial. He appears to be rather spontaneous and expressive and may seek attention from others, especially to gain social recognition.*

The Personality Assessment Inventory (PAI) is a psychological test which attempts to measure both diagnostic possibilities as well as interpersonal behavior. Clinical scales measuring emotional conditions, such as anxiety and depression, as well as more severe clinical states, such as schizophrenia and paranoia, are provided, as are scales measuring personality features such as anti-social and borderline disorders and drug and alcohol problems. Scales measuring openness to treatment, propensity towards aggression, and interpersonal styles of dominance and warmth are also calculated. Validity scales assess test taking attitude, and show a tendency to answer inconsistently or attempt to convey either an unrealistically negative or positive impression. The test is a newer test, statistically validated on a wide range of adults. This test also provides a computer generated interpretive report which provides the test authors' interpretation of the

significance of various scale elevations. With the above mentioned cautions kept in mind, I provide the narrative hypotheses produced by computer scoring below:

### *Validity of Test Results*

*The PAI provides a number of validity indices that are designed to provide an assessment of factors that could distort the results of testing. Such factors could include failure to complete test items properly, carelessness, reading difficulties, confusion, exaggeration, malingering, or defensiveness. For this protocol, the number of uncompleted items is within acceptable limits.*

*Also evaluated is the extent to which the respondent attended appropriately and responded consistently to the content of test items. The respondent's scores on these scales suggest that he did attend to item content in responding to PAI items; however, there may have been some idiosyncratic responses to particular items that could affect test results. Thus, the interpretive hypotheses that follow in this report should be reviewed cautiously.*

*The degree to which response styles may have affected or distorted the report of symptomatology on the inventory is also assessed. Certain of these indicators fall outside of the normal range, suggesting that the respondent may not have answered in a completely forthright manner; the nature of his responses might lead the evaluator to form a somewhat inaccurate impression of the client based upon the style of responding described below. With respect to positive impression management, the client's pattern of responses suggests that he tends to portray himself as being relatively free of common shortcomings to which most individuals will admit, and he appears somewhat reluctant to recognize minor faults in himself. Given this apparent tendency to repress undesirable characteristics, the interpretive hypotheses in this report should be reviewed with caution. Although there is no evidence to suggest an effort to intentionally distort the profile, the results may underrepresent the extent and degree of any significant findings in certain areas due to the client's tendency to avoid negative or unpleasant aspects of himself.*

*Despite the level of defensiveness noted above, there are some areas where the client described problems of greater intensity than is typical of defensive respondents. These areas could indicate problems that merit further inquiry. These areas include: stress in the environment; alcohol abuse or dependence; and history of antisocial behavior.*

*With respect to negative impression management, there is no evidence to suggest that the respondent was motivated to portray himself in a more negative or pathological light than the clinical picture would warrant.*

### ***Clinical Features***

*The PAI clinical profile reveals no marked elevations that should be considered to indicate the presence of clinical psychopathology. Scores on one or more scales do, however, show moderate elevations that may reflect sources of difficulty for the person. These potential problem areas are described below.*

*The respondent reports that alcohol use has caused occasional problems in his life. These problems may involve difficulties in interpersonal relationships, problems on the job, and/or the use of alcohol to reduce stress.*

*According to the respondent's self-report, he describes NO significant problems in the following areas: unusual thoughts or peculiar experiences; problems with empathy; undue suspiciousness or hostility; extreme moodiness and impulsivity; unhappiness and depression; unusually elevated mood or heightened activity; marked anxiety; problematic behaviors used to manage anxiety; difficulties with health or physical functioning.*

### ***Self-Concept***

*The self-concept of the respondent appears to involve a generally stable and positive self-evaluation. He is normally a confident and optimistic person who approaches life with a clear sense of purpose and distinct convictions. These characteristics are valuable in that they allow him to be resilient and adaptive in the face of most stressors. He describes being reasonably self-satisfied, with a well-articulated sense of who he is and what his goals are.*

### ***Interpersonal and Social Environment***

*The respondent's interpersonal style seems best characterized as one of autonomy and balance. With both interpersonal scales scoring in the average range, his assertiveness, friendliness, and concern for others is typical for that of normal adults.*

*In considering the social environment of the respondent with respect to perceived stressors and the availability of social supports with which to deal with these stressors, his responses indicate that both his recent level of stress and his perceived level of social support are about average in comparison to normal adults. The reasonably low stress environment and the intact social support system are both favorable prognostic signs for future adjustment.*

He also completed the NEO Personality Inventory-3. The NEO Inventories provide a comprehensive and detailed assessment of adult and adolescent personality based on the Five-Factor Model (FFM) of personality. The NEO-3 is a concise measure of these five major factors, or domains, of personality and the most important traits or facets that define each domain. The NEO Inventory is a measure of general personality traits that have demonstration utility in clinical, applied, and research settings. Keeping the above mentioned cautions kept in mind, the relevant sections of the computer generated narrative report are provided, below:

#### ***Validity Indices***

*Validity indices (i.e., A and C questions, total number of items missing, and response set) are within normal limits.*

#### ***Basis of Interpretation***

*This report compares the respondent to other adult men. It is based on self-reports of the respondent.*

*At the broadest level, personality can be described in terms of five basic dimensions or factors...*

#### ***Global Description of Personality: The Five Factors***

*The most distinctive feature of this individual's personality is his standing on the factor of Agreeableness. People who score in this range are typically good-natured and treat people with courtesy and respect. They are sympathetic and tend to be lenient with others. In group interactions, they are more likely to cooperate than to compete. They are trusting and straightforward. People might describe them as helpful and generous.*

*This person is low in Neuroticism. Individuals scoring in this range are emotionally well-adjusted and infrequently experience episodes of psychological distress. They are not sensitive or moody, and have few complaints about life. They feel secure and have a generally high level of*

*self-esteem. Friends and neighbors of such individuals might characterize them as calm and even-tempered in comparison with the average person.*

*Next, consider the individual's level of Conscientiousness. Men who score in this range work toward their goals in a deliberate manner. They have a relatively high need for achievement. They are well organized and reliable and carry through on their commitments. They have good self-discipline and take their obligations seriously. Raters describe such people as careful and hardworking.*

*This person is average in Extraversion. Such people enjoy other people but also have periods when they prefer to be alone. They are average in level of energy and activity, and experience a normal amount of pleasant and cheerful feelings.*

*Finally, the individual scores in the average range in Openness. Average scorers like him value both the new and the familiar, and have an average degree of sensitivity to inner feelings. They are willing to consider new ideas on occasion, but they do not seek out novelty for its own sake.*

### ***Clinical Hypotheses: Axis II Disorders and Treatment Implications***

*The NEO-PI-3 is a measure of personality traits, not psychopathology symptoms, but it is useful in clinical practice because personality profiles can suggest hypotheses about the disorders to which patients are prone and their responses to various kinds of therapy. This section of the NEO-PI-3 Interpretive Report is intended for use in clinical populations only. The hypotheses it offers should be accepted only when they are supported by other corroborating evidence.*

#### ***Axis II Disorders***

*Personality traits are most directly relevant to the assessment of personality disorders coded on Axis II of the DSM-IV. The most common personality disorder in clinical practice is Borderline, and...the patient is unlikely to have a Borderline Personality Disorder.*

Summary of Testing: My personal interpretation of the NEO is in agreement with the conclusions formed by the computer generated report. I also view the PAI as interpreted correctly based upon test responses, but would caution the reader to note that these two tests are less sturdy in assessing pathology than lengthier tests such as the MMPI.

My interpretation of the MMPI leads to more concerns regarding John Ingersoll's reliability and consistent functioning as a police officer than the general population interpretative report hypotheses would reflect. The interpretive hypotheses, above, are provided for objectivity, but should be remembered as referring to overall psychological functioning, not a person's ability to function in a particular role, particularly one with specific demands and criteria for psychological functioning. To note, as the test does, that the person may be somewhat "immature and impulsive" and may "occasionally show bad judgment and tends to be somewhat self-centered, pleasure oriented, and narcissistic and manipulative" may be character traits which would not disqualify one from a position in sales or even artistic endeavors, yet are highly problematic in law enforcement.

**SUMMARY AND DISCUSSION:** My synthesis of the information, including his reported history, observations and inferences made from the clinical interview, as well as a review of the information provided me and his test results, are consistent. They lead me to conclude that John Ingersoll has a Personality Trait Disturbance, a pattern of behavior in which he behaves in impulsive, self-indulgent, and short-sighted ways, a pattern of behavior which makes him more likely than most people, particularly people in law enforcement, to not maintain appropriate limits, maintain consistent and appropriate behavior, show emotional constraint, or provide accurate reports. I believe that he would be likely to overreact to his immediate circumstances at the expense of consideration of his role and the long term consequences of his behavior. He is inclined to disregard the distinction and limit of boundary between who he is and the job he occupies. This conclusion is compatible with the allegations of his behavior, characterized as questionable for an off-duty police officer, and implications that he may rely on his role and authority as a police officer for personal goals. This raises serious questions regarding his fitness for duty as a police officer.

It is important to understand what a personality trait disturbance indicates. The term "personality" refers to a person's ongoing and continuing patterns of behavior. It refers to a person's characteristic ways of reacting to their environment, displaying emotions, and interacting with others. It indicates a propensity or greater likelihood of behavior than is found in other people. Personality might be compared to the climate, rather than to the weather. It may be more likely to rain in Seattle than Arizona, but it can rain in both locations, although with different frequencies. The diagnosis of a Personality Trait Disturbance indicates that these patterns of behavior, the behavioral "climate," as it were, is a behavioral pattern which is likely to interfere to some degree with social and vocational functioning. A diagnosis of a Personality Disorder indicates a more severe term, a diagnosis of patterns of behavior that interfere significantly with social and vocational functioning, indicating a greater degree of dysfunction than found in a Personality Trait Disturbance.

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This finding is compatible with the screening testing done in Alaska which did not show a psychiatric illness which would preclude parenting. These findings, as well, do not indicate that a person who is unable to parent with care and safety, nor does it indicate that a person would not be able to function well in a variety of other non-law enforcement occupational pursuits. Were these medical tests, they would indicate a person with a slightly elevated temperature, still below that level characterized as a fever, and with a slightly elevated blood count indicating the likelihood of an infection. Neither of which would preclude a person from interacting with the public, but they do indicate that it would be unwise for them to interact with a medically fragile patient. So, too, with a personality trait disturbance. It does not limit a person from functioning in a host of arenas, but does limit their ability to function *consistently*, which is a drawback in occupations which demand consistency of behavior.

(It should be remembered that these conclusions cannot be used out of context at a child custody matter, since they only reflect the characteristics and traits of one parent, and may lead to mistaken inferences regarding the comparative psychological characteristics of parents as they affect the best interest of a child. To have information on only one part of a child custody evaluation, one which shows some difficulties, may be much like concluding that a car has some problems, such as poor fuel efficiency and noisy brakes, but generally one that can run with a reasonable degree of reliability. This may be a deficiency, but there is often a mistaken inference that the other parent may be better functioning, when, to continue with the analogy, the other car may not run at all. Even though this information is provided only to you, information such as this may become reviewed or considered in other contexts, and these limitations need to be acknowledged.)

I do not see an Axis I psychiatric condition such as depression, anxiety, a bipolar disorder, or any other major psychiatric illness. I do not believe that John Ingersoll qualifies for the more severe diagnosis of a Personality Disorder. I think this pattern of behavior predicted by the testing and interview data is quite consistent with the reports and allegations, however.

I also am struck by the description in the evaluation in Alaska in which the evaluator concluded that John Ingersoll is prone to denial. I believe that to be the case, and think that he does not fully appreciate how his behavior has contributed to the circumstances to which he is reacting, how it is different than that which is true for most law enforcement officers, nor that he is attentive to or sensitive to the interpersonal effect of his role when he defines interactions as more personal.

He also carries the diagnosis of Alcohol Dependence in reported sustained remission (less than one year). I would note that alcohol tends to amplify whatever personality trait issues may be true for a person. One of my colleagues wrote a book that included a phrase that I enjoy - "The problem with growing older is that we become more like we

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are." So, too, does intoxication amplify our personal characteristics, and if they are problematic characteristics or traits, as is found in the testing, alcohol intoxication makes them even more pronounced and evident.

Clinical psychologists measure things, much as one might measure how high it is an individual can jump. It is up to others to set the bar over which one must jump. My data indicates that John Ingersoll has measurable and likely ongoing difficulties in functioning, compatible with some of the allegations and reports made about his interpersonal difficulties, poor reputation, and aspects of his behavior which others describe as problematic but which he denies. Regardless of his history, the evaluation suggests a likelihood for future difficulties in consistent functioning. Whether the degree of his impairments and limitations in consistently and appropriately functioning as a law enforcement officer are of a level as to disqualify him from service is an administrative, not a psychological, decision. I can say that most law enforcement agencies reviewing these results would consider John Ingersoll not to be qualified as fit for duty.

I hope this information is clear and responsive to your needs to for information regarding John Ingersoll. If I can clarify or expand upon any of the above, please do not hesitate to contact me.

I swear and affirm that the above reflects my true and complete professional opinion. I make this statement under penalties of perjury under the laws of the State of Washington, and based upon my own personal knowledge. I am a psychologist licensed to practice in the State of Washington. Dated this 3<sup>rd</sup> day of April, 2013, in Spokane, Washington.

Sincerely,



Mark Mays, PhD, JD  
Clinical Psychologist  
Attorney at Law

MM/rts

# **APPENDIX D**

RULES OF THE MATTAWA POLICE CIVIL  
SERVICE COMMISSION

RULE 1 GENERAL PROVISIONS

SECTION 1. ORGANIZATION. The members of the Civil Service Commission shall be appointed by the Mayor and shall serve in conformity with the provisions of RCW 41.12. The commission shall, at the first regularly scheduled meeting on even numbered years, elect a chairman. Should a Chairman resign or be removed from the position prior to the expiration of his term, the commission, upon appointment of a new member, shall proceed to the election of a new chairman.

SECTION 2. POWERS AND DUTIES. The Civil Service Commission shall:

- A. Adopt rules for the regulation of personnel administration within the Police Department.
- B. Approve minutes of its own meetings and records of its procedures.
- C. Provide for the holding of competitive tests, under the supervision of the Secretary/Chief Examiner to determine the relative qualifications of persons for employment in the police department and the preparation of a list of ranked, eligible candidates and certification of same.
- D. Conduct all civil suits necessary for the proper enforcement of RCW 41.12 and these rules and regulations.
- E. Provide for investigations and hearings on challenges arising from the administration of RCW 41.12 and these rules and regulations.
- F. Investigate and report on all matters relating to the enforcement and effect of RCW 41.12 and these rules and regulations.
- G. Have such powers and duties as are imposed upon the commission by RCW 41.12.

SECTION 3: RULES AND REGULATIONS. Rules of the Civil Service Commission shall be adopted by a majority vote of the members of the commission at any regular or special meeting. The commission, or any member thereof, may propose a rule or an amendment to a rule at any time. However, all other persons must submit any proposed rule of amendment to the Secretary/Chief examiner at least one week in advance of the meeting at which the proposal is to be considered. The rules of the commission may be amended in the same manner as adopting a rule. The commission may apply such principles as it deems desirable in determining cases which are not clearly determined by rules adopted by them. The Civil Service

Commission has the power to interpret its rules. Rules in effect at the time of any event being considered by the mission shall be applied to such event.

SECTION 4: MEETINGS. All meetings of the commission shall be public except that, upon unanimous vote, the commission may meet in executive session as provided by law. All activities of the commission shall be conducted in a manner which is in total compliance with what is commonly referred to as the OPEN PUBLIC MEETING ACT OF 1971, AS AMENDED, of the State of Washington, (RCW 42.30) The commission shall hold scheduled meetings as required by law. The time and place for regular meetings will be determined by the commission. Unscheduled or special meetings may be called at any other time by the chairman, any two members or the Secretary/Chief Examiner. Two members shall constitute a quorum and two affirmative votes shall be required for the passage of any official business. The Secretary/Chief Examiner shall attend all meetings, record the votes taken and how the commissioners voted, and shall prepare the minutes and present the minutes and present them to the commission for approval at the next regular meeting. Robert's rules of order shall be the final authority on all questions of procedure in parliamentary law not otherwise provided by these rules and regulations.

SECTION 5: SEVERABILITY. If any of these rules and regulations or portions thereof are declared by a court of competent jurisdiction to be illegal or unconstitutional, the part declared illegal and/or unconstitutional shall be deemed severable and such shall not effect the remaining rules and regulations.

#### RULE II. SECRETARY/CHIEF EXAMINER

SECTION 1. SELECTION. The Secretary/Chief Examiner shall be the Mayor of the Town of Mattawa.

SECTION 2. DUTIES. The Secretary/Chief Examiner shall:

- A. Attend and record all meetings of the commission.
- B. Administer the provisions of RCW 41.12 and these rules and regulations, except those functions and duties reserved to the Civil Service Commission.
- C. Provide for the holding and administration of competitive examinations with the necessary procedural matters.
- D. Perform all lawful and necessary duties delegated by the commission and all functions essential to the effective administration of the Civil Service system.

#### RULE III. CLASSIFICATIONS

SECTION 1. NEW POSITIONS. The Secretary/Chief Examiner upon being notified of the establishment of a new position shall certify no eligibles to such position until an appropriate eligibility list is established therefor.

SECTION 2. RECLASSIFICATION. Reclassification of positions shall not be used for the purpose of avoiding the provisions here in regarding promotions or demotions.

#### RULE IV. APPLICATION PROCEDURES AND APPLICANTS

SECTION 3. ANNOUNCEMENT OF VACANCY. Whenever there is a need, the Mayor shall advise the commission that a vacancy exists, and the Mayor shall request the name and address of qualified applicants for the vacancy. The commission shall direct the Secretary/Chief Examiner to invite qualified persons to apply for employment and for admission to the examination to be scheduled to create an eligibility list. The invitation to apply shall be by public notice, and shall specify:

- A. The title and salary range of the position.
- B. A brief outline of the duties of the position.
- C. The minimum qualifications required.
- D. The location where application may be made.
- E. The final date upon which applications will be accepted.

SECTION 2. APPLICATION FORMAT. Applications must be made on forms supplied by the commission or in such other format as may be prescribed by the commission which shall include fingerprints. All applications must be signed by the applicant.

SECTION 3. APPLICATION REVIEW. The Secretary/Chief Examiner shall review each application to insure qualification under the minimum standards as contained in these rules and regulations for further review (i.e., background investigation, etc.) The Secretary/Chief Examiner will forward the application to the Chief of Police, who shall file his findings with the Secretary/Chief Examiner.

SECTION 4. MINIMUM STANDARDS. In order to identify a level of qualifications, the commission establishes the following as minimum standards. To be considered for examination, an applicant must:

- A. Be a citizen of the United States.
- B. Possess a valid driver's license.
- C. Have attained the age of 21 years at the time of the

examination.

- D. Possess a high school diploma or GED equivalent.
- E. Be in good health sufficient to qualify for attendance at the basic training program sponsored by the Washington Criminal Justice Training Commission.
- F. Possess good moral character.
- G. Every commissioned officer must be able to make a forcible arrest.

No application will be considered if the applicant is a relative of any elected city official, a City department head, or full-time member of the Police Department.

SECTION 5. NON-ACCEPTANCE OF APPLICANT. If the Secretary/Chief Examiner determines that an applicant does not meet the qualifications as established by the commission, the applicant shall be notified promptly in writing sufficiently prior to the scheduled examination so that he may attempt to supply additional information prior to the examination. Should the determination not be made prior to the examination, the applicant shall be allowed to compete in the examination and the commission shall make the final decision as to whether the applicant's name shall be included on the eligibility list.

After acceptance, the Secretary/Chief Examiner may reject an application or, after examination, may disqualify a successful candidate. This action may be taken whenever an applicant or eligible is found to lack any of the minimum standards established for the class or position. Additional causes for rejection and/or disqualification shall be as outlined in Rule X. Section 2 of these rules and regulations.

#### RULE V. EXAMINATIONS

SECTION 1. SCOPE. All examinations shall be practical and shall consist only of subjects which will fairly determine the capacity of persons examined to perform the duties of the position to which an appointment is to be made.

SECTION 2. CHARACTER. The qualification and fitness of candidates shall be determined either by individually or in a group by one or more of the following methods:

- A. Written test.
- B. Oral tests of knowledge or ability.
- C. Physical tests of strength, stamina, agility or

dexterity.

- D. Psychological tests conducted under fully competent guidance.
- E. Interviews covering general qualifications, education, training and/or experience.
- F. Evaluation of education, training, experience, or qualifications as shown by the application, or by other information submitted, or by the record.

SECTION 3. PREPARATION AND ADMINISTRATION. All examinations shall be prepared and administered by or under the supervision of the Secretary/Chief Examiner following the general direction of the Civil Service Commission. The Secretary/Chief Examiner may, at his/her discretion, delegate the administration of examinations, or any portions thereof, to such qualified and unbiased persons as he deems advisable.

SECTION 4. COMMISSION REVIEW. All aspects of the preparation and administration shall be subject to review by the Civil Service Commission.

SECTION 5. IDENTITY OF EXAMINEES. The identity of individuals taking competitive written examinations shall be concealed from the examiners by the use of an identification number which shall be used on all test papers. Any paper having the name of the candidate or any other identifying mark may be rejected and the candidate so notified. In non-written examinations, every precaution shall be taken to ensure that the identity of examinees shall not be used in any manner which may be prejudicial.

SECTION 6. VETERAN'S CREDIT. In such competitive examinations, the commission shall make available to all veterans, as defined in RCW 41.04.010, a credit of ten percent (10%). Requests to claim veteran's credit must be filed in writing with the Secretary/Chief Examiner prior to the beginning of the examination process.

SECTION 7. PASSING SCORE. A total passing score on an examination shall be seventy-five (75%). Each such examination must be passed prior to proceeding to the next examination. The physical fitness examination will be a pass/fail examination and shall not be included on the aggregate percentage.

SECTION 8. NOTIFICATION OF GRADE AND RANK. Each examinee shall be notified by mail of the results of the examination, and if he received a passing score, of his relative position of the eligibility list.

SECTION 9. PROMOTIONAL EXAMINATION. As the needs of the city and the Police Department may require, promotional examinations

may be conducted on an unscheduled basis. The character of such examinations will be considered open and applications will be accepted from any qualified individual, however when a position is reclassified as a higher position, resulting in the loss or diminution in number of a lower position, the Commission may limit the promotional examination to those employees of the lower position which is being lost or diminished. All applications for a promotional position must meet the following minimum requirements:

A. In order to be eligible to take the promotional examination for sergeant, an applicant must have two (2) years experience as a patrolman, must have graduated from the Basic Law Enforcement school, and must have acquired at least half of the college credits necessary to receive a two year degree in police science or social science.

*deleted by  
Motion of Commission  
on 3/22/45 mtg →*

B. In order to be eligible to take the promotional examination for any position within the department higher than sergeant, an applicant must have three (3) years experience as a law enforcement officer, ~~and must have acquired a 2 year degree in police science or social science.~~

*Sie Ed  
Chong*

#### RULE VI. ELIGIBILITY LISTS

SECTION 1. ESTABLISHMENT OF ELIGIBILITY LISTS. Eligibility lists shall be prepared which rank individuals qualified for certification to appointing authorities based upon the results of examinations.

SECTION 2. DURATION. Eligibility lists shall be valid for one (1) year following the date of formal establishment by the commission unless abolished sooner by the commission.

SECTION 3. REMOVAL OF NAMES FROM LISTS. The name of any person appearing on an eligibility list may be removed by the Secretary/Chief Examiner if the candidate fails to respond to a notice of certification, if he declines an appointment without reason satisfactory to the commission, or if he cannot be located by postal authorities. In the case of such removal, the Secretary/Chief Examiner shall notify in writing the candidate affected at his last known address. The name of the person so removed may be reinstated only if satisfactory explanation of the circumstances is made to the commission. The names of persons on promotional employment lists who resign from the service shall be automatically dropped from the list.

SECTION 4. NOTICE OF ADDRESS CHANGE. Each individual on the eligibility list shall be responsible for notifying the Secretary/Chief Examiner of a change of address.

Failure to do so may cause the removal of his name from the eligibility list.

SECTION 5. REVOCATION OF LISTS. An employment and promotional list may be revoked by the Secretary/Chief Examiner when, upon direction of the commission or appointing authority, plainly inadequate results have been obtained through the examination process. The Secretary/Chief Examiner may also cause revocation because of fraud, errors, or obviously inappropriate standards prescribed in connection with the examinations. Upon a revocation of any of the above reasons, the Secretary/Chief Examiner shall cause a new examination to be held which will result in the creation of an appropriate eligibility list.

#### RULE VII. APPOINTMENTS

SECTION 1. APPOINTING AUTHORITY. The appointing authority shall be the Mayor for all positions within the police department.

SECTION 2. BASIS FOR APPOINTMENT. All appointments within the police department, whether entry level or promotional shall be made solely on merit, efficiency and fitness which shall be ascertained by open competitive examination and impartial investigation. The appointing authority shall have the power to appoint under the rule of three. Under the rule of three, the top three names on the eligibility list will be certified to the appointing authority. The appointing authority may then appoint, after interview, and at his request, the administration of a polygraph examination (as provided by RCW 49.44.120), the candidate he deems best qualified for the position. If the appointing authority does not deem the top three names acceptable for appointment, he shall direct the Secretary/Chief Examiner to conduct a new examination and establish a new eligibility list. In addition, the appointing authority is empowered to bypass the rule of three and select anyone on the eligibility list, if said selection is necessary to comply with provisions of the city's affirmative action policy.

SECTION 3. CERTIFICATION OF ELIGIBLES. Upon request by the appointing authority, the Secretary/Chief Examiner shall certify to him the eligibility list. The appointing authority shall also be furnished copies of each application and any other appropriate information of record on the persons certified.

SECTION 4. APPOINTMENT ACCEPTED OR DECLINED. Whenever a candidate who has been certified for appointment fails to

answer an inquiry of the Secretary/Chief Examiner of the appointing authority within ten (10) days, he may be deemed to have declined employment and may be removed from the eligibility list. If the candidate accepts the appointment he must present himself to the Secretary/Chief Examiner. The Secretary/Chief Examiner may require that candidates take and pass the medical and physical examinations in accordance with the requirements of the Law Enforcement and Fire Fighters Retirement Act. Candidates shall then be appointed after the Secretary/Chief Examiner receives final approval from the Director of the Washington State Law Enforcement and Firefighters Retirement System.

- SECTION 5. SECONDARY APPOINTMENTS FROM ELIGIBILITY LISTS. At such times as additional vacancies occur within the police department, the police chief will advise the Secretary/Chief Examiner in writing. The Secretary/Chief Examiner will then certify the continuing eligibility list to the appointing authority. Conforming to the appointment procedures detailed in Section 2 above, the appointing authority will direct the Secretary/Chief Examiner to notify the qualified eligible(s) of the vacancy and invite them for interview or offer appointment.
- SECTION 6. EMERGENCY APPOINTMENT. To meet the immediate requirements of an emergency condition which threatens life or property, the appointing authority may employ any person or persons who he may be legally empowered to appoint without restriction of civil service law and rules. Such employment shall be limited to the duration of the emergency period.
- SECTION 7. PROVISIONAL APPOINTMENT. A provisional appointment may only be made in the absence of an appropriate eligibility list. In such a case the appointing authority may select a person meeting the minimum qualifications for nomination to the commission. The commissioners shall interview, or may cause any other method to determine whether the nominee possesses the necessary experience, training and other qualifications for the position. If satisfactory, his name shall be certified to the appointing authority for provisional appointment and his application accepted for an examination to establish an eligibility list for the position. As soon as possible, the Secretary Chief Examiner shall cause to be held an examination which will result in the creation of an appropriate eligibility list. This appointment terminates upon appointment of employee from eligibility list.
- SECTION 8. TEMPORARY ASSIGNMENT. In making temporary appoint-

ments, the appointing authority shall make a request to the Secretary/Chief Examiner in the manner provided for regular appointments, but shall indicate the time at which it is estimated that the position will terminate. The Secretary/Chief Examiner shall notify the person or persons appearing on the appropriate list indicating the nature of the position and its duration, to learn who may be willing to accept a temporary assignment. In the event no person on the eligibility list expresses a willingness to accept temporary appointment, the appointing authority may exercise his prerogative to initiate a provisional appointment.

SECTION 9. LIMITS TO PROVISIONAL OR TEMPORARY APPOINTMENTS. No provisional or temporary appointment shall continue for a period exceeding six (6) months, and no person shall receive more than one such appointment in any twelve (12) month period. No time spent as a provisional or temporary appointee shall be credited to a probational period, or be utilized for computing any privilege accruing under civil service law or these rules and regulations.

#### RULE VIII. PROBATIONARY PERIOD

SECTION 1. PURPOSE. The probationary period is an integral part of the examination process. It shall be utilized as an opportunity to observe the employee's work, to provide special training, to assist the employee in adjustment to his new position, and as an aid in making the decision to reject any employee whose work performance or personal conduct is unsatisfactory.

SECTION 2. DURATION AND TERMINATION-ENTRANCE. The entrance probation period shall be 12 months, due to the widely fluctuating job demands required of officers at different times of the year. At any time during the twelve (12) month entrance probation period the appointing authority may terminate an appointment if, during the performance test thus afforded, upon observation or consideration of the performance of duty, he is found unfit or unsatisfactory; provided, however, that the appointing authority shall forthwith notify the commission in writing of any such termination of employment, specifically stating reasons for unfit or unsatisfactory performance. Such action by the appointing authority is not subject to appeal.

No entrance probationary employee will be allowed to hold a job with an outside employer or be self-employed. No permanent employee shall hold a job with an outside employer or be self-employed without first having secured written approval from the police chief

and from the appointing authority. No approval for outside employment shall be granted unless injuries or illness related to outside employment are covered by the Workman's Compensation Act of the State of Washington or other comparable insurance. A certificate of insurance will be filed with the Secretary/Chief Examiner.

The promotion probation period shall be 12 months, due to the widely fluctuating job demands required of employees at different times of the year.

SECTION 3. DURATION AND TERMINATION-PROMOTION. At any time during the twelve (12) month promotional probationary period, the appointing authority may terminate a promotional appointment, if, during the performance test thus provided, upon observation or consideration of the performance of duty, he is found unfit or unsatisfactory for the new appointment; provided however, that the appointing authority shall forthwith notify the commission in writing of any such termination of a promotional appointment, specifically stating reasons of unfitness or unsatisfactory performance. The appointed employee shall have the right to revert to a position in his last held permanent class. Such action by the appointing authority is not subject to appeal.

SECTION 4. ACTION NOT REQUIRED. If no action is taken by the appointing authority to terminate or reduce in rank a probationary employee during the probation period, the employee shall be deemed to have satisfactorily completed the probational period and his appointment shall be permanent.

SECTION 5. REMOVAL FROM ELIGIBILITY LIST. If an appointment is not made permanent because of dissatisfaction with employee's performance during the probationary period and the employee is terminated or reduced in rank, he shall no longer be on the eligibility list for that position.

#### RULE IX. MAINTENANCE OF STANDARDS

SECTION 1. PURPOSE. In order to promote a well-balanced efficient, and competent police department, it is expected that all personnel within the classified service shall maintain the standards of qualification they had to meet for initial employment.

SECTION 2. MENTAL FITNESS. Each member of the department's classified service shall be ready to accept assignments of training which shall be designed to increase or at the minimum, maintain his level of competency,

efficiency, and attention to duty.

SECTION 3. PHYSICAL FITNESS. Each member of the department's classified service may be required to take and pass a standard physical fitness examination annually, which shall be designed to increase, or at the minimum, maintain his level of competency, efficiency and attention to duty.

SECTION 4. DISCIPLINARY ACTION. Any member of the department who fails to maintain an acceptable level of mental and physical fitness may be subject to a reduction in rank or dismissal from the department.

#### RULE X. DISCIPLINARY ACTION

SECTION 1. TENURE OF EMPLOYMENT. No full time employee of the police department who shall have been permanently appointed into the civil service under provisions of RCW 41.12 and these rules and regulations, shall be suspended, terminated or reduced in rank except for cause.

SECTION 2. CAUSE OF DISCIPLINARY ACTION. The following may be considered justifiable cause for disciplinary action:

- A. Incompetency, inefficiency, or inattention to or dereliction of duty.
- B. Violation of law, of official rules or regulations, or orders, or failure to obey any lawful or reasonable direction when such failure or violation amounts to insubordination or serious breach of discipline.
- C. Dishonesty, immoral conduct, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself; or any willful violation of the provisions of RCW 41.12 or of these rules and regulations.
- D. Acceptance for individual personal use of a fee or gift of any kind in the course of work other than that accorded the public generally.
- E. Mental or physical unfitness for the position which the employee holds. *revised*
- F. Drunkenness or use of intoxicating liquors, narcotics, or any other controlled substance or liquor to such extent that the use thereof inter-

fers with the efficiency or mental or physical fitness of the employee or which precludes the employee from properly performing the function and duties of any position under civil service.

- G. Drinking intoxicating liquors or using debilitating drugs while on duty.
- H. Conviction of a felony, or conviction of a misdemeanor, involving moral turpitude.
- I. Misuse of public funds.
- J. Falsifying reports or records.
- K. Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

SECTION 3. PROCEDURE FOR TERMINATION, SUSPENSION OR REDUCTION IN RANK. Disciplinary action shall only be initiated against an employee by the appointing authority and only upon written accusation of the appointing authority, or any citizen or taxpayer. A written statement of such accusation in general terms shall be served upon the employee and a duplicate filed with the civil service commission.

SECTION 4. DEMAND FOR INVESTIGATION. Any full-time, permanent employee so terminated, suspended or reduced in rank may file a written demand for an investigation in the manner delineated in rule XI of these rules and regulations.

#### RULE XI. INVESTIGATION, HEARING AND APPEAL

SECTION 1. RIGHT TO AN INVESTIGATION. Any permanent employee subject to these civil service rules who is terminated, suspended or reduced in rank may, within ten (10) days from the time of his termination, suspension or reduction in rank, file with the Secretary/Chief Examiner a written demand for an investigation.

SECTION 2. COMMISSION TO INVESTIGATE. Within a reasonable time after the demand for an investigation is filed with the Secretary/Chief Examiner, the commission shall cause an investigation to be held. Such investigation shall be conducted by and before the entire commission. Commissioners and the chief examiner

shall have power to administer oaths, and subpoena and require attendance of witnesses and the production by them of books, papers, documents and accounts and also to cause the deposition of witnesses residing within and without the state.

SECTION 3. NATURE AND NOTICE OF HEARING. All investigations made by the commission pursuant to the provisions of these rules and regulations shall be had by public hearing, after reasonable notice to the employee of the time and place of such hearing.

SECTION 4. SCOPE OF INVESTIGATION. The commission's investigation shall be confined to the determination of the question of whether such termination, suspension or reduction in rank was or was not made for political or religious reasons and was or was not made in good faith for cause, and shall be conducted according to the provisions of RCW 41.12.

SECTION 5. APPEALING COMMISSION'S DECISION. The employee may appeal the decision of the commission to the court of original and unlimited jurisdiction of the county wherein he resides. Such an appeal shall be served on the commission within thirty (30) days after the entry of their decision and shall be processed according to the provisions of RCW 41.12.

SECTION 6. BASIS OF APPEAL HEARING. The court hearing on such appeals shall be confined to the determination of whether the judgment made by the commission was or was not made in good faith and no appeal to such court shall be taken except upon such grounds.

#### RULE XII. DEFINITIONS

SECTION 1. DEFINITIONS. As used in these rules and regulations, the following mentioned terms shall have the following described meanings:

- A. Appointing Authority: The Mayor.
- B. Cause: Any action or inaction which the civil service commission determines appropriate justification for disciplinary action, including termination, suspension or reduction in rank within the police department.
- C. Certification: Process of the Secretary/Chief Examiner relaying to the appointing authority, upon requisition, the names of the individuals ranked highest on the eligibility list.
- D. Disciplinary action: The termination, suspension

or reduction in rank of any employee within the police department.

E. Permanent employee: An employee who has completed the probationary period for the class of his present position.

F. Probation: The working examination period during which the employee is required to demonstrate his ability and capacity to perform the duties of the position to which he is appointed.

G. Promotion: The movement of an employee for a position in one class to another class imposing increased duties and responsibilities, requiring greater pay and qualifications and providing a higher maximum rate of pay.

*Motion  
or  
deleted and  
to Commission  
3/22/95 raty*

H. Reduction in rank: The movement of an employee from one class to another class having a lower maximum rate of pay.

I. Relative: As related to rule IV, Section 4, a relative shall be considered to be a father, mother, spouse, brother or sister (full, half, or in-law), aunt, uncle, niece, nephew or first cousin.

J. Rule of Three: The selection for appointment from the top three candidates on the eligibility list.

K. Termination: The involuntary cessation of employment with the Town for cause.

L. Suspension: A temporary removal from duty with or without pay of an employee for the purpose of investigation of accusations brought against an employee.

APPROVED AND ADOPTED BY THE MATTAWA CIVIL SERVICE COMMISSION  
THIS 9th DAY OF NOVEMBER, 1994.

*Marty Charvat*  
COMMISSIONER

*Donald A. Gorman*  
COMMISSIONER

*Joseph B. Lutz*  
COMMISSIONER

*Jerry H. Esser*  
SECRETARY/CHIEF EXAMINER

# TOWN OF MATTAWA

P.O. Box 965

Mattawa, Washington 99344

Phone (509) 932-4037

June 24, 1994

Mr. Jerald Dunn  
P. O. Box 1383  
Mattawa, WA 99344

Re: Civil Service Commission

Dear Jerry:

As you are aware, you have been appointed to serve on our Civil Service Commission, along with Marty Charvet and Joyce Leitz. One will serve a 2 year term, one a 4 year term and one a 6 year term. Mayor Esser would like you three to decide who gets which term.

I am enclosing a copy of the summary of duties of the commissioners for your information. The commission is required to meet at least monthly, even if no business needs to be done; all meetings, hearings, workshops, etc. must be open for public attendance (but are not entitled to speak). Once a regular time and place is established for its meetings, there is no need to advertise each meeting.

I have a "Basic Training for Civil Service Commissions in Washington" handbook here at Town Hall if anyone would like to borrow it (at least until there is some training offered by AWC).

Sincerely,



Phyllis Kinsman,  
Clerk/Admin.

CP 003330

TOWN OF MATTAWA

CIVIL SERVICE COMMISSION MINUTES

March 22, 1995

Call to Order: The meeting was called to order at 7:00 p.m. by Chairman Martin Charvet.

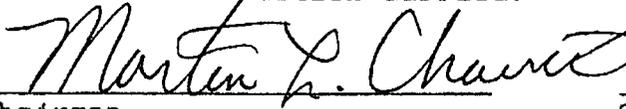
Roll Call: Commission present: Martin Charvet, Joyce Leitz and Jerald Dunn. Others: Judy Esser and Randy Blackburn.

Minutes: Motion by Dunn, 2nd by Charvet, to approve minutes of 2/22/95 meeting; motion carried.

Old Business: Commission requested Phyllis to call Grant County Civil Service Commission to check on status of the county-wide joint testing agreement form.

New Business: Motion by Leitz, 2nd by Dunn, to amend the Rules of the Mattawa Police Civil Service Commission by deleting the lines "and must have acquired at least half of the college credits necessary to receive a two year degree in police science or social science" under Rule V. Examinations, in Section 9, Subsection A, page 6, and by deleting the lines "requiring greater pay and qualifications and providing a higher maximum rate of pay" under Rule XII. Definitions, Section 1, Subsection G, page 14; motion carried.

Adjournment: Motion Leitz, 2nd by Dunn, to adjourn at 7:55 p.m.; motion carried.

  
Chairman

  
Secretary

AMENDMENT TO THE RULES OF THE MATTAWA POLICE

CIVIL SERVICE COMMISSION

The Rules of the Mattawa Police Civil Service Commission are hereby amended to read as follows:

RULE V. EXAMINATIONS

SECTION 6: VETERAN'S & RESERVE'S CREDIT. In such competitive examinations, the commission shall make available to all veterans, as defined in RCW 41.04.010, and reserves who are solo and in good standing with the police department for one year, a credit of ten percent (10%). Requests to claim veteran's and/or reserve's credit must be filed in writing with the Secretary/Chief Examiner prior to the beginning of the examination process.

APPROVED AND ADOPTED BY THE MATTAWA CIVIL SERVICE COMMISSION THIS 23rd DAY OF AUGUST, 1995.

Martin L. Charvet  
COMMISSIONER

Paul A. Dwyer  
COMMISSIONER

Joyce B. Leitz  
COMMISSIONER

Judy K. Esser  
SECRETARY/CHIEF EXAMINER

**CARNEY BADLEY SPELLMAN**

**May 24, 2017 - 2:36 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 34848-2  
**Appellate Court Case Title:** John Ingersoll v City of Mattawa  
**Superior Court Case Number:** 14-2-00011-8

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