

BEFORE THE BOARD OF POLICE AND FIRE COMMISSIONERS  
OF THE CITY OF MADISON

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Sharon Irwin,  
Complainant

vs.

Police Chief Michael Koval,  
Respondent

and

CONSOLIDATED  
DECISION AND ORDER

Shadayra Kilfoy-Flores  
Complainant

vs.

Police Chief Michael Koval,  
Respondent

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SYNOPSIS

The Statements of Charges in these two cases allege violations by Police Chief Michael Koval of various pertinent standards of conduct established for the Madison Police Department. The charging documents do not specify a proposed penalty, but in final argument the Complainants ask the PFC to impose a disciplinary suspension. Following hearing, legal argument, and deliberations, the PFC found that Chief Koval engaged in misconduct by violating applicable standards of conduct with respect to one incident, but also found that there was no misconduct with respect to the two other incidents averred by Complainants. The PFC has only three options for discipline when it finds misconduct by a sworn officer: suspension, demotion, or discharge. The PFC has determined that the Chief's misconduct in the one incident was not of such a nature to warrant any of those extraordinary disciplinary actions.

DECISION

Complainant Sharon Irwin filed a Statement of Charges against Police Chief Michael Koval ("Respondent") on August 15, 2016. Complainant Shadayra Kilfoy-Flores filed a separate but related Statement of Charges against Respondent on August 22, 2016. Both Complainants filed *pro se* but have subsequently been represented by Atty. Alfred Matano. Respondent is represented by Atty. Lester Pines. By stipulation we consolidated the matters for hearing and argument. Following an evidentiary hearing on November 16, 2016, we continued the matters for the scheduled exchange of written closing argument, completed on January 23, 2016, and for our deliberations. We now issue this decision and order in both matters.

Complainants cite various rules and standards of the Madison Police Department and City of Madison, collectively the "Standards of Conduct," alleged to have been violated by Respondent in three distinct acts or incidents. The existence and authority of the Standards of Conduct are not in dispute and we do not restate them here. The Complainants did a thorough job of quoting them in their Statements

of Charges. Although there are additional and more specific statements contained in the Standards, we view the following basic tenets as being at the heart of the Standards as applicable here:

#### Madison Police Department Code of Conduct

##### Introduction

Police comprise a special class of public employee. In light of the fact that police presence and actions are highly visible examples, of the desired role of police in a free society - guardians of constitutional rights - police conduct must be above reproach and held to high standards of professional behavior. When police conduct is found to be lacking, criticism is deservedly more warranted given the fiduciary relationship of trust established with the community. If community trust is lost, support and respect is diminished, as is the efficacy of police operations.

##### Core Values

**Integrity.** We are committed our work with the highest degree of honesty, integrity and professionalism.

**Human Dignity.** We acknowledge the value of all people and carry out our duties with dignity, respect, and fairness to all. Furthermore, the Department recognizes and respects the value of all human life.

##### Code of Conduct

10. **Courtesy, Respect and Professional Conduct.** Members of the Department shall be courteous and respectful to the public . . . Members of MPD should avoid abusive, profane language and gestures and actions that bring disrespect upon the Department or members of the community.

#### City of Madison Administrative Procedure Memorandum No. 2-33

##### Unacceptable Conduct

A(1). Discourteous or abusive behavior toward a . . . member of the general public.

C(1). Engaging in unruly, abusive, violent, bullying or other threatening or intimidating behavior or language . . .

For the purposes of this discussion we characterize the acts or incidents alleged by Complainants as the Stairwell Incident and the Council Chambers Incident (both from the Irwin Statement of Charges), and the Gun Gesture Incident (from the Kilfoy-Flores Statement of Charges.)

#### Stairwell Incident

In broadest summary, passing over significant differences of nuance and recollection: during the course of a meeting of the Madison Common Council on June 7, 2016, Respondent had occasion to meet and

converse outside the Council chambers with two citizens. Complainants were standing nearby and overhead that conversation, and Complainant Irwin attempted to join in it. Respondent walked with the citizens as they exited the chambers foyer and the City-County Building; Complainants followed them much of the way and Complainant Irwin attempted to engage the two citizens and Respondent in unwanted conversation. Respondent then walked to a stairwell leading to the lower floors of the building and was followed by Complainants, with Complainant Irwin continuing her unwanted attempt to engage Respondent in conversation. Respondent did not converse with Complainants or respond to questions. As Respondent continued down the stairwell, still followed by Complainants, an unrelated third party at the rear of this descending group remarked to Complainant Irwin that she should “Make an appointment” to talk to Respondent, to which Respondent commented to the third party that he would not make an appointment with her and that she was a “raging lunatic.”

It should be stated that Complainant Irwin is the grandmother of Tony Robinson, an individual killed by a Madison police officer on March 6, 2015. That shooting has been the subject of investigation and significant controversy. It was also the subject of litigation brought by the estate of Tony Robinson. At the time of the June 7, 2016, Common Council meeting, Respondent had been directed by legal counsel in that litigation not to discuss any aspect of the matter. Complainant Irwin has persistently and vociferously challenged Respondent and the Police Department to comment on the matter publicly despite being aware that neither the Department nor the Respondent are able to comment thereon. These challenges were the basis of Complainant Irwin’s persistent and unwanted commentary to Respondent in the Stairwell Incident on June 7, 2016. Complainant Irwin describes herself as “...a vet with PTSD...”

Respondent openly acknowledged that he used the phrase “raging lunatic,” and apologized for that statement. Respondent was correct in stating in his testimony that the comments were inappropriate and unacceptable. We regard the comments made in the Stairwell Incident to be a violation of applicable Standards of Conduct.

The PFC fully agrees with both the language and the spirit of the Standards of Conduct. The PFC, in its limited range of authority (hiring, promotions, discipline), continually attempts to ensure that all sworn officers, from patrol officers to the chief, fully understand, appreciate, and adhere to those Standards. We hire the Police Chief. In our role of hiring the City of Madison Police Chief, we expected our Police Chief, as the leader of the Department to serve as an example for the entire Department, and always be beyond reproach no matter how frustrated or how harassed he or she may feel. Respondent failed in this instance.

However, we regard the comments as isolated and literally unique within the Respondent’s record of service. As stated above, we expect from our Police Chief a higher standard than reflected in his comments made in Complainant Irwin’s presence, and in fact we perceive that he does act consistently to that higher standard. Respondent’s unacceptable statement in the Stairwell Incident is an aberration, not part of a pattern. He has apologized publicly, on our record. We understand that Complainants do not accept his apology, and they certainly are not required in any way to do so.

Under Section 62.13(5) of the Wisconsin Statutes, the PFC has only three options for discipline when it determines that a sworn officer has engaged in misconduct: suspension, demotion, or discharge. All of those options are extraordinary and severe in nature. Less severe options that a Police Chief could impose on his or her subordinates, for example requiring counseling or issuing a formal reprimand, are not available to us. Although we conclude that Respondent's comments made in the Stairwell Incident do in fact constitute misconduct, we also conclude that such misconduct does not warrant any of the extraordinary disciplinary actions available to us.

#### Gun Gesture Incident

Complainant Kilfoy-Flores' Statement of Charges emphasizes this incident, which is also referred to in the Irwin Statement of Charges. Kilfoy-Flores especially perceived a motion of the Respondent's hand toward his hip as a threatening gesture to his sidearm. We simply are not persuaded that such a gesture was made by the Respondent.

#### Council Chambers Incident

All parties returned to the Council chambers after the events of the Stairwell Incident and after considerable delay Complainant Irwin took her turn in testifying to the Council. She did not adhere to the 3-minute time limit, and after the timing-buzzer sounded Respondent, who was present in the chambers at his usual staff seat, struck the desktop with his hand three times to signal to the presiding Council President that Irwin's time had run. We viewed a videotape of this incident in our record and we conclude that this action by the Respondent was not unreasonable or indecorous, did not violate any Police Department rule or standard, and did not cause a disruption to the Council proceedings. It is noteworthy that Respondent was not admonished by the Council President. We find no misconduct by the Respondent with respect to this incident.

We have examined several technical and formal issues that might bear on our decision in such a matter as this, such as the application of the statutory "Seven Standards of Just Cause" in proceedings brought by citizen aggrieved persons rather than by a Chief. However, we have reached our decision based directly on the evidentiary facts as presented to us on the record and in our hearing, and reflecting our views of the credibility of the witnesses.

This DECISION AND ORDER is our disposition of the matter brought to us and should not be construed as a finding or comment on any other matter or on any other issue not presented to us on the record in this matter.

ORDER

On the entire record in these proceedings, including the foregoing the Statements of Charges in these matters are each dismissed, with prejudice.

*Approved following deliberations, and  
filed with the Secretary this 14 day of March, 2017*

MADISON BOARD OF POLICE AND FIRE COMMISSIONERS

/s/  
Comm. Wesley Sparkman, President

/s/  
Comm. Craig Yapp, Secretary

/s/  
Comm. Nia Enemuoh-Trammell

/s/  
Comm. Fabiola Hamdan

/s/  
Comm. George Kamperschroer

distribution:  
Commissioners, Counsel