

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

E-FILED 5/19/2021

_____)
 BOSTON POLICE COMMISSIONER)
 DENNIS WHITE,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON and)
 ACTING MAYOR KIM JANEY,)
)
 Defendants.)
 _____)

Civil Action No. 2184CV01138

**OPPOSITION TO PLAINTIFF’S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendants City of Boston and Acting Mayor Kim Janey (collectively “City”), hereby oppose the motion for temporary restraining order and a preliminary injunction (“Motion”) of Plaintiff, Boston Police Commissioner Dennis White. The Court should deny the Motion because Commissioner White has not and cannot show any of the required elements for injunctive relief, to wit:

1) Commissioner White has failed to show irreparable harm because the City provided (and continues to provide) him with proper notice of and hearing regarding his potential removal as Police Commissioner under the relevant statute and, in any event, his claimed injury is easily remedied by monetary damages and, therefore, not irreparable;

2) Commissioner White has failed to show a likelihood of success on the merits of his claim because he was provided (and continues to be provided) with all the process due him

under the relevant statute's removal provision and the Constitution and explicitly has no right to a *judicial* hearing prior to removal; and

3) Commissioner White has failed to show that the balancing of the harms and the public interest weigh in favor of an injunction because Boston and its citizens would plainly suffer more significant harm by an order requiring the City to keep in place a Police Commissioner whom Acting Mayor Janey believes does not possess the qualities essential to lead the Boston Police Department ("BPD") going forward and which would prevent her from moving ahead with her vision for the BPD as a public safety institution of integrity and accountability.

I. RELEVANT FACTS.

Under the authority of Chapter 322 of the Acts of 1962, on February 1, 2021, Boston's then-Mayor Martin J. Walsh appointed Plaintiff, Dennis White, as Boston Police Commissioner to fill the unexpired term of former Commissioner William Evans that had been partially completed by former Commissioner Willie Gross and will conclude on April 30, 2022.^{1/} See Chapter 322 of the Acts of 1962 (attached hereto as Attachment 1).^{2/} On February 3, 2021, Commissioner White was advised that he was being placed on administrative leave with pay while an investigation was conducted into domestic abuse allegations that were reported to the Boston Police Department ("BPD") in 1993 and 1999. The City engaged Attorney Tamsin R. Kaplan of Davis, Malm & D'Agostino, P.C. to conduct the investigation into the past allegations

^{1/}The Acts 1962, Chapter 322, § 7 provides that the police commissioner is "appointed by the mayor for a term of five years commencing on May first of the year in which he is appointed, except that any vacancy in said office shall be filled for the balance of the unexpired term." Att. 1.

^{2/}Documents attached to this Opposition are designated as Attachments 1 through 6. References to documents attached as exhibits to the Complaint are designated as "Exh." followed by the corresponding letter.

of domestic abuse and related issues, and a final report was issued on April 29, 2021 (“Kaplan Report,” as redacted version of which is attached hereto as Attachment 2).

By letter dated February 25, 2021, Attorney Nicholas B. Carter of Todd & Weld LLP advised the City that he represented Commissioner White. Exh. A. In his letter, Attorney Carter made numerous representations on Commissioner White’s behalf that were not entirely accurate and/or are contradicted by facts found by Attorney Kaplan in her report. For example, after acknowledging the domestic violence complaint brought by his former wife, Attorney Carter stated on Commissioner White’s behalf that “Commissioner White has never otherwise been accused of domestic violence or violence or other inappropriate conduct toward women of any kind.” Exh. A at 1. That statement is inconsistent with the fact that Kaplan reports that there was an earlier incident in 1993 involving a relative living in the White residence.^{3/} Kaplan Report at 1, 5-9. Similarly, Attorney Carter makes the claim that Commissioner White was “exonerated” of all charges even though a charge regarding his judgment was sustained and later filed at Commissioner White’s own request. Kaplan Report at 13-14.

Throughout the investigation, Attorney Carter made allegations regarding the City’s intentions without any factual foundation. For example, on March 2, 2021, he asserted that “Mayor Walsh intended to reinstate Commissioner White as Commissioner.” Exh. B at 1. That assertion is wholly inconsistent with the fact that Mayor Walsh placed Commissioner White on administrative leave with pay, initiated (and continued) the investigation and did not reinstate Commissioner White before he resigned as Mayor. Exh. B at 1; D at Attachment. Acting Mayor

^{3/}Notably, in the 1993 incident, the relative obtained an abuse prevention order against White, while White’s request for an order was denied. Kaplan Report at 6.

Kim Janey inherited the BPD with its Commissioner on administrative leave with pay and the need to resolve that issue upon receipt and review of the Kaplan Report.^{4/}

Further, although Attorney Carter was repeatedly advised by Corporation Counsel Henry Luthin that Commissioner White was not cooperating with the investigation (see, e.g., Exh. D (“You mentioned yesterday that Commissioner White is not cooperating with the independent investigation”)), Commissioner White continued not to cooperate. Exh. D; See also Kaplan Report 2-5; Exh. B. Indeed, as Attorney Luthin explained to Attorney Carter:

The Administration expects the Commissioner to cooperate with Ms. Kaplan. If Commissioner White does not cooperate, then the investigation will be incomplete, and Mayor Janey will make a decision accordingly. The Mayor will not make a decision on Commissioner White’s future until she sees Ms. Kaplan’s report...We look forward to the Commissioner’s cooperation.

April 6, 2021 Email from Luthin to Carter, attached hereto as Attachment 3. Thereafter, Attorney Carter suggested that Commissioner White would “as an accommodation to Mayor Janey” participate in the investigation.^{5/} Exh. F at 2.

On April 15, 2021, Commissioner White, while still on administrative leave, appeared for his interview with Attorney Kaplan from the Commissioner’s office at BPD Headquarters. Kaplan Report at 4. During that interview, as chronicled by Attorney Kaplan in her report and Attorney Carter’s letter of April 19, 2021 to Corporation Counsel Luthin, Commissioner White

^{4/}Under M.G.L. c. 41, § 97D, “[a]ll reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police department in a manner that shall assure their confidentiality....” Further, a violation of § 97D is subject to criminal penalties. Hence, the documents submitted under cover of Attorney Carter’s March 19, 2021 letter (Exh. E) from a former police officer Mary-Ann Riva (Ret.), who had been involved in the investigation of the domestic violence charges in 1998-99, should not have been filed as a public document. Moreover, the fact that a retired detective has access to documents regarding a confidential police matter from 1998-1999 also raises serious questions and concerns about where and from whom those documents were obtained. In any event, at a minimum, those documents should have been filed under seal and should not have been made public.

^{5/}Although Attorney Kaplan sought disclosure and consent forms to complete a background check at the outset of her investigation (Kaplan Report at 1), it was not until this April 6, 2021 letter that Commissioner White agreed to a release for the City to review his CORI. Exh. F.

did not fully cooperate. April 19, 2021 Letter from Carter to Luthin, attached hereto as Attachment 4. Moreover, as found by Attorney Kaplan, Attorney Carter “provided commentary relating to the subject matter of the investigation and offered what he asserted was factual information, including attempts to modify statements made by Commissioner White.” Kaplan Report at 4. As a result, Attorney Kaplan requested, but Commissioner White refused her request for a second interview or conversation. Kaplan Report at 5.

Attorney Kaplan describes in her report the fact that numerous current and former members of the BPD refused to be interviewed and one retired officer told her that he had received five phone calls directing that he not talk. Kaplan Report at 5.

Based on Attorney Kaplan’s report, on May 14, 2021, Acting Mayor Janey gave Commissioner White a letter notifying him of the City’s intent to dismiss him and provided him an opportunity to meet with her and provide his perspective at 3:00 p.m. that day. May 14, 2021 Letter from Janey to White attached hereto as Attachment 5. At 3:00 p.m., Attorney Carter advised by email that Commissioner White would not be attending. May 14, 2021 Email from Carter to Luthin attached hereto as Attachment 6.

Assuming that the Court does not issue an in injunction, within 48 hours of the Court’s decision, the City intends to renew its offer to Commissioner White (and his attorney) to meet with the Acting Mayor to provide any information he wishes her to consider before making her final decision.

II. LEGAL STANDARDS FOR A PRELIMINARY INJUNCTION.^{6/}

Injunctive relief is an extraordinary remedy and courts should use it cautiously and sparingly. Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982); see also 3 Moore's Federal Practice, § 65.20 (Matthew Bender 3d ed.) ("a preliminary injunction is an extraordinary remedy that may be granted only by a clear demonstration by a plaintiff of the merits of such a request") (internal citations omitted). Against this backdrop, to sustain its burden of proving that a preliminary injunction should issue, a plaintiff must show: "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001) (quoting Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980)).

An injunction is all the more extraordinary here, where the party sought to be enjoined is the government. See, e.g., Perella v. Mass. Tpk. Auth., 55 Mass. App. Ct. 537, 539 (2002); Long Term Care Pharmacy Alliance v. Ferguson, 17 Mass. L. Rep. 537, 2004 Mass. Super. LEXIS 120, *2 (Mar. 5, 2004). As such, when a party seeks to enjoin governmental action, the court must "also consider whether the grant of an injunction would adversely affect the public interest." Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004); see also Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984) (in enjoining government, court is "required to

^{6/}"The standards used to consider a request for a temporary restraining order is [sic] the same as that used for a preliminary injunction." G6 Hosp. Prop. LLC v. Town of Braintree Bd. of Health, No. CV 17-0882, 2017 WL 3573659, at *4 (Mass. Super. July 25, 2017) (citing Quincy Cablesystems, Inc. v. Sully's Bar, Inc., 640 F. Supp. 1159, 1160 (D. Mass. 1986)). Therefore, the City's arguments against a preliminary injunction also serve as arguments against Plaintiff's request for a temporary restraining order.

determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.”).

III. COMMISSIONER WHITE CANNOT MEET ANY OF THE REQUIREMENTS FOR A PRELIMINARY INJUNCTION AGAINST THE CITY.

A. Commissioner White Cannot Show Irreparable Harm.

As an initial matter, to obtain a preliminary injunction, a plaintiff must demonstrate that without immediate injunctive relief he would suffer irreparable harm “not capable of remediation by a final judgment in law or equity.” John T. Callahan & Sons, Inc. v. City of Malden, 430 Mass. 124, 131 (1999); see also LeClair v. Town of Norwell, 430 Mass. 328, 331 (1999).

Commissioner White cannot meet this showing.

First, Commissioner White’s claim is based largely on the procedural rights purportedly contained in the removal provision of Chapter 322 of the Acts of 1962, Section 7 (“Removal Provision”). In relevant part, the Removal Provision states that the Police Commissioner “may after notice and hearing, be removed by the mayor of [Boston] for cause.”

As highlighted in the attached exhibits and conceded in the Complaint, the City gave Commissioner White detailed written notice of the charges against him, a full unredacted copy of the Kaplan Report and offered him a hearing to provide his side of the story regarding whether he would be removed from the Police Commissioner position. See, e.g., Attachment 5.

Commissioner White however voluntarily chose not to participate and, therefore, cannot claim irreparable injury.

Moreover, the City is fully prepared to reschedule that hearing to a date certain within 48 hours of this Court’s decision on the Motion. Thus, Commissioner White will be offered a second opportunity, should he choose to participate, to receive the hearing he claims he was unlawfully denied. Therefore, Commissioner White cannot show irreparable harm.

Finally, Commissioner White’s claim here is essentially one for continued employment, any unlawful deprivation of which can be remediated through money damages for his lost salary at the end of this lawsuit. It is well-settled that “[m]onetary loss alone cannot constitute irreparable harm.” Long v. Lamontagne, 79 Mass.App.Ct. 1115, 1115 (2011) (citing Caffyn v. Caffyn, 70 Mass.App.Ct. 37, 42 (2007); see also Tri-Nel Mgmt., Inc. v. Bd. Of Health of Barnstable, 433 Mass. 217, 227 (2001) (“Economic harm alone, however, will not suffice as irreparable harm....”).

A preliminary injunction “is a potent weapon that should be used only when *necessary* to safeguard a litigant’s legitimate interests” and the purely monetary damages like those at issue here are insufficient grounds for preliminary injunction. See Tri-Nel Mgmt., 433 Mass. at 227 (emphasis supplied). Commissioner White has therefore failed to show irreparable harm and the injunction should be denied.

B. Commissioner White Cannot Show A Likelihood Of Success On The Merits Of His Claim.

If a plaintiff has “no likelihood of success on the merits,” the court may deny a motion without “address[ing] the other factors necessary for a preliminary injunction to issue.” Boston Police Patrolmen’s Ass’n, Inc. v. Police Dept. of Boston, 446 Mass. 46, 50 and 53 n. 5 (2006). “The burden of showing a likelihood of success on the merits is on the party seeking the preliminary injunction.” Robinson v. Secretary of Admin., 12 Mass. App. Ct. 441, 451 (1981). Commissioner White cannot meet this burden.

1. Commissioner White has not shown that he was denied notice and hearing under the Removal Provision.

As noted, the Removal Provision states only that the Police Commissioner “may after notice and hearing, be removed by the mayor...for cause.” The concept of pre-termination notice

and hearing is a well-established matter of constitutional due process. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-41 (1985). Under Loudermill, “a very limited hearing prior to termination [is] sufficient” to satisfy the requirements of the Due Process Clause. O’Neill v. Baker, 210 F.3d 41, 48 (1st Cir. 2000) (citing Loudermill, 470 U.S. at 545-46). The hearing “need only include oral or written notice of the charges, an explanation of the employer’s evidence, and an opportunity for the employee to tell his side of the story.” Gilbert v. Homar, 520 U.S. 924, 929 (1997).

Loudermill, moreover, does not require a formal adversary hearing prior to termination. See 470 U.S. at 545. The appropriate amount of process is only that which serves as “an initial check against mistaken decisions – essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.” Id. at 545-46.

Here, Commissioner White received all the notice and hearing rights the Removal Provision requires. First, as the Complaint points out, on May 14, 2021, at approximately 10:00 a.m., the Mayor spoke with Commissioner White about his possible termination and would hold a hearing that afternoon at 3:00 p.m. Complaint at ¶ 5. Under the relevant caselaw, this is more than sufficient notice.

In an extremely similar case involving then-Governor Romney’s termination of the Chairman of the Massachusetts Civil Service Commission, the U.S. District Court concluded the plaintiff, placed on notice of the charges against him during his initial 6:52 p.m. telephone conversation with Governor’s staff-members – during which he received his first “hearing” – and a second “hearing” in a phone call with the Governor at 8:15 p.m., provided all the notice that was required. Monahan v. Romney, Civil Action No. 06cv10921-NG, 2009 WL 10694327, at

*10 (D. Mass. Sept. 3, 2009), aff'd on other grounds, 625 F.3d 42 (1st Cir. 2010). Other courts concur. See, e.g., Heinen v. Brewer, 171 F.3d 612, 614 (8th Cir. 1999) (concluding hearing conducted same day as police lieutenant's termination satisfied constitutional requirement for pre-termination hearing); Powell v. Mikulecky, 891 F.2d 1454, 1458-59 (10th Cir. 1989) (reviewing cases and holding that abbreviated, face-to-face meeting constituted adequate pre-termination notice and hearing).

For similar reasons, Commissioner White cannot show likely success on his claim that the hearing the City offered him was inadequate. All that is required is "a very limited hearing prior to termination," O'Neill, 210 F.3d at (1st Cir. 2000) (citing Loudermill, 470 U.S. at 545-46), that provides "an opportunity for the employee to tell his side of the story." Gilbert, 520 U.S. at 929.

Thus, in Monahan, the District Court concluded that two "brief and informal" telephone conversations in a single night were constitutionally adequate because they gave the plaintiff all that was required: "an opportunity 'to tell his side of the story' before being removed from office." Monahan, 2009 WL 10694327, at *10 (quoting Gilbert, 520 U.S. at 929); see also Brasslett v. Cota, 761 F.2d 827, 836 (1st Cir. 1985) (holding fire chief who met with town manager for one hour before being terminated was afforded ample pre-deprivation process); Hanton v. Gilbert, 842 F. Supp. 845, 853 (M.D.N.C. 1994) ("Even a simple telephone call offering an employee the opportunity to discuss a discharge may satisfy pre-termination hearing requirements.").

Here, the City provided Commissioner White with ample opportunity to be heard before being removed from office. Indeed, due to his own refusal to participate, the City is prepared to reschedule the hearing to a date certain after the Court rules on the Motion.

Given all the longstanding law, Commissioner White's bald claim that the Removal Provision entitles him to a *judicial* hearing is completely unfounded. Most clearly, the Removal Provision itself makes no mention whatsoever of a judicial hearing, which cannot be read into the law. See, e.g., O'Brien v. Massachusetts Bay Transp. Auth., 405 Mass. 439, 443-44 (1989) (“We will not read into the plain words of a statute a legislative intent that is not expressed by those words.”) (quoting Commonwealth v. Vickey, 381 Mass. 762, 767 (1980)).

Indeed, in 1962 as today, the Legislature clearly knew how to subject governmental decisions to judicial review, having explicitly done so in innumerable statutes but, pointedly, not the Removal Provision. See, e.g., Commissioner of Corr. v. Superior Court Dept. of the Trial Court, 446 Mass. 123, 126 (2006) (the court may not “add words” to a statute “that the Legislature had an option to, but chose not to include”); Fascione v. CNA Ins. Cos., 435 Mass. 88, 94 (2001) (declining to expand remedies available under statute where there was no “evidence that the Legislature desired such a result”).

Moreover, any conclusion that the Removal Provision requires a judicial hearing prior to termination would simply make no sense, given the constitutionally-limited parameters of the notice and hearing requirement described above, not to mention that in Massachusetts public employees have extensive statutory rights to judicial review *after* being removed from employment. See, e.g., Monahan, 2009 WL 10694327, at *10-12 (outlining that the plaintiff “had at least three ways of obtaining meaningful judicial review of his removal under Massachusetts law,” including petitioning for a writ of certiorari under M.G.L. c. 249, § 4, seeking a declaratory judgment under M.G.L. c. 231A, or seeking writ of mandamus under M.G.L. c. 249, § 5). Significantly, the District Court in Monahan concluded that the availability

of judicial review under Massachusetts statute adequately provided the plaintiff there all post-termination rights due him under the Due Process Clause. Id.

In short, Commissioner White was not denied notice or a hearing as afforded under the Removal Provision and has therefore shown no likelihood of success on these issues. No injunction should issue.

2. Commissioner White has not shown that the City lacks “cause” for his removal under the Removal Provision.

Nor can Commissioner White show likely success on the merits of his claim that there is no “cause” for his removal under the Removal Provision. With regard to the same “for cause” language of M.G.L. c. 30, § 9, enabling the Governor to remove appointed officials from office for cause,^{7/} the Supreme Judicial Court has stated:

We conclude that the standard by which “cause” is measured in this case is the one traditionally offered as a legitimate reason for an employee’s discharge: to name a few examples, any grounds for discharge reasonably related, in the employer’s honest judgment, to the needs of his business,...[the] conclusion that the interests of the public require the removal of the public officer,...or less than complete confidence in a public official’s competency and efficiency.”

Flomenbaum v. Commonwealth, 451 Mass. 740, 746-47 (2008) (internal punctuation and citations omitted); see also McSweeney v. Town Manager of Lexington, 379 Mass. 794, 796 (1980) (“official action....under a power of removal ‘for cause’ can be revised by this court only when there has been an arbitrary exercise of power, and the cause alleged for the removal is unreasonable and in law insufficient”) (quoting Dunn v. Mayor of City of Taunton, 200 Mass. 252, 258 (1908)).

Importantly, the “for cause” standard is different from, and imposes a much lower burden on employers than, the commonly-used “just cause” standard. “Just cause” is the existence of

^{7/}Chapter 30, § 9, provides in relevant part: “Unless some other mode of removal is provided by law, a public officer, if appointed by the governor, may at any time be removed by him for cause....”

“(1) a reasonable basis for employer dissatisfaction with a[n]...employee, entertained in good faith, for reasons such as lack of capacity or diligence, failure to conform to usual standards of conduct, or other culpable or inappropriate behavior, or (2) grounds for discharge reasonably related, in the employer’s honest judgment, to the needs of his business.” Goldhor v. Hampshire Coll., 25 Mass. App. Ct. 716, 723 (1988) (quoting Klein v. President & Fellows of Harvard College, 25 Mass. App. Ct. 204, 208 (1987). “Discharge for a ‘just cause’ is to be contrasted with discharge on unreasonable grounds or arbitrarily, capriciously, or in bad faith....” Id. at 723.

The “for cause” standard is thus similar to “good cause,” defined as “any ground which is put forward...in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant....” School Comm. of Foxborough v. Koski, 8 Mass. App. Ct. 870, 870 (1979 (quoting Rinaldo v. School Comm. of Revere, 294 Mass. 167, 169 (1936)). It is nevertheless significant that the Removal Provision does not require “good cause” but only “cause” for removal, imposing an even lighter burden on the Mayor here.

Applying the proper legal standard, the Acting Mayor plainly had and has “cause” to remove Commissioner White as Police Commissioner. Following her receipt of an independent investigative report, Acting Mayor Janey outlined in writing to Commissioner White the reasons for her concerns about his appointment as Police Commissioner, to wit:

- The information contained in the independent investigation regarding complaints of domestic violence and abuse filed in 1993 involving your then-niece-by-marriage and in 1999 involving your then-wife, and your responses thereto. It is particularly concerning that you failed to demonstrate an appreciation for the reasons for the public’s concerns about these incidents when you were assuming the leadership of the BPD.
- As the Police Commissioner you were being investigated on a matter of public interest and concern. Your lack of cooperation and judgment during that investigation including your initial refusal to complete forms for a background check, refusal to answer all questions posed by the investigator, and your refusal to meet for a follow-up/second interview are

particularly troubling. As Commissioner, you serve as a role model and represent the entire Department and must conduct yourself in a manner befitting that position.

- You appeared for your interview with the independent investigator in the BPD Commissioner's office, as well as at other times at BPD headquarters, while on administrative leave. Such conduct, at the very least, gave the appearance that you were still in charge and raised the potential for confusion. At worst, your presence was a reminder of the power of the Police Commissioner and may have intimidated some of the witnesses who were asked to participate in the independent investigation. This reflects poor judgment.
- At no time during the investigation into the earlier domestic violence allegations did you express any appreciation of the importance of domestic violence concerns to the public or how it might affect the public's perception of the ability of the BPD to respond to incidents of domestic violence. Your approach to the concerns raised about the domestic violence allegations against you was consistently dismissive and uncooperative, which reflects poor judgment given your role as the leader of the BPD that is regularly called upon to address domestic violence in our community.

Attachment 5 at 1-2.

Quite simply, these are separately and together more than "legitimate" reasons for Commissioner White's removal. They are facially reasonable, accurate and plainly exhibit no arbitrary exercise of power. Commissioner White has not and cannot show a likelihood of success on the merits of his claim and the Court should therefore deny an injunction.

C. Neither The Balancing Of The Harms Nor The Public Interest Weigh In Favor Of An Injunction.

The Court should also deny the Motion because Commissioner White has not shown that the balancing of the harms weighs in his favor or that an injunction is in the public interest. Commissioner White's proposed injunction would put the City, even if temporarily, in an untenable situation – maintaining in office a Police Commissioner whom Acting Mayor Janey believes has repeatedly shown poor judgment, a lack of appreciation for matters of intense public

concern, and a defiant, dismissive uncooperativeness with regard to the charges of domestic violence against him, the City's investigation into his past behavior, and his dealings with the Acting Mayor. See Att. 5. Indeed, these and other factors have led Acting Mayor Janey to openly and legitimately question whether Commissioner White has the qualities necessary to lead the BPD going forward. Id.

It would prevent the Acting Mayor from moving forward with her vision for the BPD as a public safety institution of integrity and accountability. It would erode the public's confidence in BPD leadership and its ability to lead by example and to appreciate and act on matters of utmost importance to Boston's citizenry, particularly the harms of domestic violence and sexual assault. It would undermine the confidence of the sworn police force and reinforce a culture of fear and the "blue wall of silence." It would continue the intense scrutiny on Commissioner White's past behavior at a time when Acting Mayor Janey must lead the City forward in its recovery, reopening and renewal.

All this has particular, critical importance in these turbulent times for police departments across the country. Quite simply, especially now, Acting Mayor Janey and Boston's citizens should be able to move on from Commissioner White and move forward with a Police Commissioner in whom they all have confidence and trust, and with whom they can effectively work to address the many issues confronting policing in Boston.

In contrast to these overarching, vitally important concerns, Commissioner White would be denied his paycheck, an easily remediable injury should the Court ultimately determine he was intemperately removed from office. In short, an injunction would harm the City far more than Commissioner White and is not in the public interest.

CONCLUSION

For all of the foregoing reasons, the City respectfully requests that the Court deny the Plaintiff's motion for a temporary restraining order and preliminary injunction.

Respectfully submitted,

CITY OF BOSTON and ACTING MAYOR
KIM JANEY

By their attorneys,

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Dated: May 19, 2021

Certificate of Service

I hereby certify that on May 19, 2021, I served a true and accurate copy of the foregoing document on each of the following parties by electronic mail as follows:

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/s/Kay H. Hodge
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ATTACHMENT 1

Chap. 320. AN ACT RELATIVE TO THE TERM OF OFFICE OF THE MODERATOR OF THE TOWN OF FALMOUTH.

Be it enacted, etc., as follows:

Section 6 of chapter 349 of the acts of 1935 is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — A moderator shall be elected by ballot at each annual town meeting for a term of one year, and shall serve as moderator of all town meetings, except as otherwise provided by law, until a successor is elected and qualified; provided, however, that if at any town meeting the town votes that the term of the moderator shall be three years, a moderator shall be elected at the next annual town meeting, and at each third annual town meeting thereafter, for a term of three years, such three year term to commence with the annual town meeting next following such election.

Approved April 4, 1962.

Chap. 321. AN ACT PROVIDING FOR THE PAYMENT OF OVERTIME COMPENSATION OWED TO A POLICE OFFICER AT THE TIME OF HIS DEATH OR RETIREMENT.

Be it enacted, etc., as follows:

SECTION 1. Chapter 147 of the General Laws is hereby amended by inserting after section 17D, inserted by section 2 of chapter 246 of the acts of 1961, the following section: —

Section 17E. Whenever the employment of any police officer subject to section one hundred and eleven H of chapter forty-one or sections seventeen A, seventeen B, and seventeen C of this chapter is terminated during a year by dismissal through no fault or delinquency on his part or by resignation, retirement or death, without his having received the compensation to which he is entitled under such sections, he, or in case of his death, his estate, shall be paid the full amount of such compensation, provided that no monetary or other allowance has already been made therefor. The official head of the department in which the police officer was last employed shall enter on the departmental payroll all amounts payable under this section.

SECTION 2. Section 111 I of chapter 41 of the General Laws, as amended by section 3 of chapter 562 of the acts of 1954, is hereby further amended by inserting after the letter "F", in line 6, the words: — or section seventeen E of chapter one hundred and forty-seven.

Approved April 4, 1962.

Chap. 322. AN ACT PROVIDING FOR THE APPOINTMENT BY THE MAYOR OF THE CITY OF BOSTON OF THE POLICE COMMISSIONER FOR SAID CITY.

Be it enacted, etc., as follows:

SECTION 1. Chapter 291 of the acts of 1906 is hereby amended by striking out sections 7, 8, 9, 10, 11, 12, 13 and 14, as amended, and inserting in place thereof the following sections: —

Section 7. There shall be in the city of Boston a department, known as the police department, which shall be under the charge of an officer,

known as the police commissioner, appointed by the mayor for a term of five years commencing on May first of the year in which he is appointed, except that any vacancy in said office shall be filled for the balance of the unexpired term. Such officer shall at the time of his appointment have had at least ten years' experience as a member of a federal, state or local police force or law enforcement agency. Notwithstanding the provisions of section fourteen of chapter four hundred and eighty-six of the acts of nineteen hundred and nine such officer may, after notice and hearing, be removed by the mayor of said city for cause. Such officer shall not engage in any other business, and shall receive an annual salary of fifteen thousand dollars or such other sum as may from time to time be fixed by the city council with the approval of the mayor.

Section 8. In case of the absence or disability of the police commissioner or of vacancy in his office without a temporary police commissioner having been appointed under section sixty-one A of chapter forty-one of the General Laws, the superintendent of police hereinafter provided for or, in case of his absence or disability or vacancy in his office, the next ranking officer of the police force or, where there are two such officers of equal rank, the senior officer in date of appointment, shall be acting police commissioner. An acting police commissioner shall receive no extra compensation for his services as such.

Section 9. The police commissioner shall appoint a secretary, who shall be exempt from the civil service laws and rules, shall be sworn to the faithful performance of his duties, shall serve at the pleasure of the police commissioner, and shall keep such records, issue such notices and attest such papers and orders as the police commissioner shall direct. Such secretary shall receive such annual salary as shall be fixed by the police commissioner with the approval of the mayor.

Section 10. The police commissioner shall have authority to appoint, establish and organize the police of said city, and shall appoint from said police, and as a part thereof, a superintendent of police, who shall receive such annual salary as shall from time to time be fixed by the police commissioner with the approval of the mayor.

The police commissioner shall appoint from said police and as a part thereof such number of deputy superintendents, captains and other officers as he may from time to time deem proper. The police commissioner with the approval of the mayor shall establish, and may from time to time revise, a compensation plan for the deputy superintendents, captains and other officers and members of said police, who shall be compensated in accordance therewith; provided, however, that a deputy superintendent shall not receive as an annual salary less than ninety-eight hundred and forty dollars, nor a captain less than eight thousand dollars, nor a lieutenant less than sixty-nine hundred and sixty dollars, nor a sergeant less than sixty-two hundred and eighty dollars, nor a patrolman after the second year of service less than fifty-five hundred dollars or in the second year of service less than five thousand and thirty dollars or in the first year of service less than forty-eight hundred and eighty dollars; and provided, further, that lieutenant detectives shall receive an annual salary three hundred dollars in excess of the annual salary of lieutenants, and sergeant detectives shall receive an annual salary three hundred dollars in excess of the annual salary of sergeants, and first grade detectives, second grade detectives and third grade detectives shall receive an annual salary five hundred

dollars, four hundred dollars and three hundred dollars, respectively, in excess of the maximum annual salary of patrolmen.

No person shall be appointed to said police unless at the time of his appointment he is, and for at least two years immediately prior thereto has been, a resident of said city, except that this requirement shall not apply to any appointment of a police commissioner. Women shall be eligible for appointment to said police in the discretion of the police commissioner; and a separate list of women shall be established by the division of civil service.

The civil service laws and rules shall not apply to the appointment of the superintendent of police or any deputy superintendent; nor shall said laws and rules apply to the removal of a superintendent of police or of a deputy superintendent if, upon such removal, he is transferred back to the rank held by him immediately prior to his appointment as superintendent of police or deputy superintendent.

Section 11. The police commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department and shall make all needful rules and regulations for the efficiency of said police; provided, however, that no such rule or regulation shall forbid any officer or member of said police from organizing or belonging to any organization composed solely of officers or members, or both, of said police and not affiliated with any outside organization other than the Massachusetts Police Association, and having among its objects the improvement of their conditions of employment, including leaves of absence, hours of labor and compensation. Officers and members of said police shall, whether on or off duty, be subject to the rules and regulations made under this section.

Any officer or member of said police shall have the right to petition the general court or the city council of said city and to appear before any committee thereof; provided, that this paragraph shall not authorize any officer or member to absent himself from duty without permission.

Section 12. The police commissioner shall from time to time appoint a trial board, consisting of three captains, to hear the evidence in such complaints against officers or members of said police as said commissioner may deem it advisable to refer to said board. Said board shall report its findings to said commissioner, who may review the same and take such action thereon as he may deem advisable.

Section 13. The police commissioner shall also have the powers and perform the duties from time to time conferred or imposed on him by statute. All licenses issued by said commissioner shall be signed by him and recorded in his office; and he may, in his discretion, at any time without a hearing and for any cause deemed satisfactory to him, suspend for such period as he may deem proper any license issued by him.

Section 14. The superintendent of police and the other officers and members of said police shall have the powers and perform the duties from time to time conferred or imposed upon the chief and other police officers of cities by section ninety-eight of chapter forty-one of the General Laws, except that they shall when on duty carry such weapons as the police commissioner shall determine. The superintendent of police and the other officers and members of said police shall also have the powers and perform the duties from time to time conferred or imposed on police

or police officers in this commonwealth by general laws applicable to Boston.

SECTION 2. All the powers and duties conferred or imposed upon the police commissioner of the city of Boston by statutory provisions in force immediately prior to the taking effect of this act, except the provisions, so in force, of sections seven to fourteen, inclusive, of chapter two hundred and ninety-one of the acts of nineteen hundred and six, are hereby conferred and imposed upon the police commissioner provided for by this act. All officers and members of the police of said city in office on the effective date of this act and all persons holding, on said date, by appointment of said police commissioner employment subject to the civil service laws and rules shall continue to hold their several offices or employment until their resignation, retirement or removal in accordance with law; and the rules and regulations of the police commissioner of said city in force immediately prior to the taking effect of this act shall continue in force until otherwise ordered by the police commissioner provided for by this act.

SECTION 2A. The office of police commissioner of the city of Boston as an office filled by appointment of the governor with the advice and consent of the council, as provided by section seven of chapter two hundred and ninety-one of the acts of nineteen hundred and six, as amended by section one of chapter three hundred and seventy-seven of the acts of nineteen hundred and thirty-eight, and as in effect immediately prior to the effective date of this act, shall be abolished, and the term of office of any incumbent thereof shall terminate upon the qualification of the police commissioner initially appointed by the mayor under the provisions of section seven of chapter two hundred and ninety-one of the acts of nineteen hundred and six, as amended by section one of this act; and upon such qualification such incumbent, or, if there be no incumbent, the acting police commissioner, shall forthwith deliver all books, records and papers in his custody to the police commissioner so appointed.

SECTION 3. This act shall take effect upon its passage.

Approved April 5, 1962.

Chap. 323. AN ACT RELATIVE TO THE ISSUANCE OF BONDS OR NOTES BY THE CITY OF CHICOPEE FOR THE PURPOSE OF AIDING IN THE CONSTRUCTION AND WORK FOR THE IMPROVEMENT OF CERTAIN STREAMS.

Be it enacted, etc., as follows:

SECTION 1. The first sentence of section 1 of chapter 636 of the acts of 1960 is hereby amended by striking out, in line 9, the words "one year" and inserting in place thereof the words: — five years.

SECTION 2. The authorization of the issuance of bonds or notes by the city of Chicopee under chapter six hundred and thirty-six of the acts of nineteen hundred and sixty prior to the passage of this act shall be treated as having been made under said chapter six hundred and thirty-six, as amended by section one of this act. The note for two hundred fifty thousand dollars issued by the city of Chicopee on September fifth, nineteen hundred and sixty under said chapter six hundred and

ATTACHMENT 2



DAVIS MALM

MEMORANDUM

TO: Henry C. Luthin, Corporation Counsel
Susan Weise, First Assistant Corporation Counsel
City of Boston

FROM: Tamsin R. Kaplan

DATE: April 29, 2021

SUBJECT: **Independent Investigation in the Matter of Police Commissioner Dennis A. White**

I. INTRODUCTION

I was engaged as an independent outside investigator by Eugene O'Flaherty, Corporation Counsel for the City of Boston under the Walsh Administration, on February 12, 2021. In summary, my role as a neutral investigator was to obtain and review information relating to Boston Police Commissioner Dennis A. White,¹ including but not limited to past allegations of domestic abuse against him by his then-niece-by-marriage [REDACTED] in 1993 and by his [REDACTED], in 1999. I was instructed by Attorney O'Flaherty to conduct vetting of Commissioner White for the position of Police Commissioner to the fullest extent possible based on available information. My role as Independent Investigator does not include provision of any legal advice or representation and is not subject to any attorney-client or work product privilege.

I informed Attorney O'Flaherty at the outset that I anticipated the investigation would require at least 4-6 weeks, and would extend beyond that time as needed to obtain and review all appropriate information.

II. CONDUCT OF INVESTIGATION

I proceeded to obtain and review certain Boston Police Department ("BPD") records. I also contacted Commissioner White and secured his cooperation. I provided to Commissioner White and his newly hired counsel Nicholas Carter disclosure and consent forms to be completed by Commissioner White for the purpose of obtaining complete background checks. I obtained

¹The subject of this investigation is referred to as Commissioner White, the Commissioner, White or Dennis in the various sections of this report.

written authorization from the City (as Commissioner White's employer) to enable me to facilitate background checks through Creative Services, Inc., in the form of a February 19, 2021 amendment to the February 12, 2021 Engagement Letter.

I commenced the process of obtaining additional court documents related to the aforementioned allegations, as well as information to assist me in locating and contacting, as needed, certain potential witnesses whom I had identified on a preliminary basis. On approximately February 19, 2021, I informed First Assistant Corporation Counsel Susan Weise that I anticipated the investigation could be concluded by the end of March.

On February 22, 2021, I was notified by Attorney Weise that this independent investigation was to be terminated as of 5:00 p.m. on February 24, 2021, at the direction of Attorney O'Flaherty. I was asked to provide a final report of the investigation to the extent possible. As the investigation was in a preliminary phase, I was unable to make any findings at that time. I submitted a brief memorandum summarizing the status of the investigation.

I was contacted again by Attorney Weise on March 1, 2021 and informed that this investigation was to resume. However, following the termination of the investigation on February 24th and its resumption on March 1st, Attorney Carter sent a letter to Attorney O'Flaherty on March 2, 2021 communicating the Commissioner's refusal to cooperate on the grounds that the investigation was not being undertaken by the City in good faith.

On March 5, 2021, I informed Attorney Weise of my estimate that the earliest time at which I would be able to conclude the investigation would be mid-April. I requested that the City require the Commissioner's cooperation in the investigation as a condition of employment, as is typical in an employment related investigation in my experience, and I informed Attorney Weise that the investigation would be negatively impacted by the Commissioner's refusal to cooperate.

On March 8, 2021, Attorney Henry C. Luthin replaced Attorney O'Flaherty as Corporation Counsel for the City of Boston.

To continue moving forward to the extent possible without Commissioner White's cooperation, I obtained the City's authorization to enter into a contract with a private investigation firm, American Investigative Services, Inc. (AIS), to obtain and review publicly available information for purposes of this investigation, in the form of a March 8, 2021 amendment to the February 12, 2021 Engagement Letter. During the period from March 10 through April 15, 2021, I received a series of oral reports from Jay Groob, President of AIS.

On March 19, 2021, Attorney Carter submitted to Attorney Luthin an affidavit of retired BPD Sergeant Detective Mary-Ann Riva dated March 18, 2021, which Attorney Luthin forwarded to me.

On March 23, 2021, Kim M. Janey became Acting Mayor of the City of Boston.

I continued to receive records and information from the BPD throughout the investigation, to the extent possible. I was informed by Attorney David Fredette, Legal Advisor to the BPD, that the BPD had no ability to provide requested information that pre-dated the computerization of the Internal Affairs Division ("IAD") in 2007 or that was not maintained in the ordinary course. On

April 5, 2021, Superintendent Sharon Dottin and IA Pro Coordinator Bridie Brienzi provided me with information about the background, capabilities and use of the IA Pro electronic filing system.

In response to my request for assistance obtaining the cooperation of witnesses who are current and former BPD officers, on April 6, 2021 Attorney Luthin introduced me to BPD Superintendent-in-Chief and Acting Commissioner Gregory Long by email, requesting that Superintendent Long facilitate my interviews of current and retired member of the BPD. After conferring with the Acting Mayor's Chief of Staff, Superintendent Long declined to provide assistance.

On April 5, 2021, I sent an email to Attorney Carter requesting Commissioner White's complete cooperation in the investigation. On April 6, 2021, Attorney Carter informed Attorney Luthin that the Commissioner would cooperate in the investigation in a limited manner, agreeing to submit an authorization for a CORI search, but no other background checks, and agreeing to participate in the investigation only with respect to "[REDACTED] allegations of an alleged shooting threat in 1999." The following day, I again requested that the City communicate to Commissioner White that his full cooperation in the investigation was required. To my knowledge, the City did not communicate to Commissioner White or his counsel at any time a requirement that the Commissioner cooperate in the investigation.

On April 9, 2021, I was instructed by Attorney Luthin that the investigation's scope was to be reduced to information contained in and related to Commissioner White's personnel records and Internal Affairs files, court documents related to the Internal Affairs files and the CORI check, and to information from witness interviews, including an interview with Commissioner White relating to the revised scope of the investigation. I was informed that Attorney Fredette would be instructed to facilitate interviews with two of the three current BPD employees I sought to interview. I was asked to conclude the investigation as quickly as possible. I responded that I would likely need two additional weeks to conclude the investigation at that point.

Later on April 9, 2021, Attorney Fredette introduced me by email to two witnesses who are current Boston Police Officers, requesting that they reply directly to me if I were to contact them. He provided me with a BPD email address for a third current Boston Police Officer.

On April 12, 2021, the City of Boston Office of Human Resources ordered the CORI report based on Commissioner White's authorization. Due to City policy, the vendor I had identified to run background checks for purposes of the investigation, Creative Services, Inc, was not authorized to run the CORI report. The Office of Human Resources provided the CORI report by email to Attorney Luthin, who forwarded it to me by email. The CORI report contained no substantive information.

I requested that Commissioner White make himself available for his interview as early as possible during the week of April 12, 2021. I also requested that he make himself available for a second, shorter, follow up interview as needed. Attorney Carter informed me that he would attend Commissioner White's interview and that he and Commissioner White would be available on Thursday April 15 from 2:00 to 4:00. In response to a request for detailed information about the questions I intended to cover in Commissioner White's interview, I provided a summary to

Attorney Carter regarding the anticipated areas of inquiry for Commissioner White's interview. Specifically, I informed Attorney Carter in writing that the areas of questioning for Commissioner White's interview would include: "Personnel records and related issues; Internal Affairs record and related issues; Court documents related to Internal Affairs record and related issues; CORI check and related issues; Questions arising from witness interviews relating to the above areas; Questions arising from review of the above areas." I agreed that the interview would commence at 2:00 on April 15, 2021.

With respect to former Boston Police Officers, I was unable to obtain their contact information from the BPD or from the State-Boston Retirement Board. Accordingly, I instructed AIS to obtain current contact information for all witnesses to the extent possible, with the exception of the three current Boston Police Officers for whom I had been provided BPD email addresses by Attorney Fredette. AIS located and provided witness contact information based on available resources.

On April 15, 2021, I interviewed Commissioner White via Zoom. He and Attorney Carter were located in Commissioner White's office at BPD headquarters during the interview. I was located in my home. In addition, a legal assistant located in the offices of Davis Malm attended for the purpose of taking notes. Commissioner White stated at the outset of the interview that he objected to the investigation. However, he participated by directly answering most questions posed to him. Commissioner White refused to answer certain questions as directed by Attorney Carter. Attorney Carter stated his opinion that such questions, including those regarding medication taken by Commissioner White and his alleged infidelity, were beyond the scope of the investigation.

On April 19, 2021, Attorney Carter copied me on a letter to Attorney Luthin in which Attorney Carter asserted that false allegations had been made against Commissioner White. Attorney Carter stated in his letter, "[i]f the City and/or the Investigator includes such false allegations in the [investigation] report, my firm will vigorously defend the Commissioner by way of legal action, including claims for defamation and violation of his civil rights and due process rights." In a letter addressed directly to me the same day, Attorney Carter asserted that I had, at one point during Commissioner White's interview, mischaracterized a statement made by Commissioner White and acknowledged the error. Attorney Carter concluded his letter, "Before you issue your report, I'd like to discuss with you a process to ensure that your report does not contain errors of this kind that could cause devastating reputational harm to Commissioner White."

On April 21, 2021, Attorney Carter communicated to me by email that he "would like to see the draft report before it is issued to ensure that it does not contain inappropriate content and would like an opportunity to comment on the report and request revisions if inappropriate content is included." In reply, I informed Attorney Carter that I would not permit him or anyone else to preview or suggest revisions to this final investigation report.

In a number of written correspondence to Attorney Luthin and to me, Attorney Carter provided commentary relating to the subject matter of the investigation and offered what he asserted was factual information, including attempts to modify statements made by Commissioner White. In response and to address some additional questions I had for the Commissioner, on April 21, 2021, I requested a second interview with Commissioner White. Attorney Carter contested the

need for a second interview and instructed me, “[i]f you want Commissioner White to answer further questions, please send them in writing.” On the same date, I declined to submit any questions in written form, and welcomed Commissioner White to speak with me directly to provide any clarification or additional information as he wished, by scheduling an interview or conversation. Commissioner White declined my request for a second interview or conversation.

During the course of this investigation, in addition to Commissioner White, I attempted to contact 21 witnesses, including 12 current and retired Boston Police Officers and 9 civilians. I was able to speak with a total of 7 of the 21 witnesses from whom I sought information. I was also sent an unsolicited email from someone claiming to be a former Boston Police Officer, attesting to Commissioner White’s good character. One retired BPD officer told me that they had received at least five phone calls directing them not to talk with me. They explained, “many people say don’t do anything against a police officer.” To address witness discomfort and concerns about retaliation, I assured most of the witnesses with whom I spoke that they would not be identified by name in this report.

III. SUBSTANCE OF INVESTIGATION

A. 1993 Incident

With respect to the alleged incident of domestic abuse involving Commissioner White on September 10, 1993, I reviewed the BPD Internal Affairs Division (“IAD”) investigation file, which includes certain court records and medical records, and interviewed witnesses.

This incident involved an altercation between White and his niece by marriage, [REDACTED]. At the time, [REDACTED] was described as “small and thin” and White was described as “a very large person.” [REDACTED] was living in the White home at 35 Bullard Street in Dorchester. She was [REDACTED] years old. White asked [REDACTED] for \$10.00 that she owed him, which she said she didn’t have, and he demanded her key to the house. [REDACTED] refused to return the key and a physical confrontation ensued. It was alleged by White that [REDACTED] was using foul language, charged at him swinging, struck him in the upper body and kicked him in the knee.

White admitted that he pushed [REDACTED] and struck her with a full swing of his arm and an open hand, which he alleges was in self-defense, as he had recently undergone surgery on the knee she kicked. Owens alleged that White punched her with his fist during the exchange of blows on the porch. She also alleged that White threw her down the stairs inside the home, then pushed her out the front door onto the porch, pulled her sweatshirt over her head, then smacked her and called her a “whore,” in response to which she hit him in the face.

White denied pushing [REDACTED] down the stairs or letting her fall. He stated that he took her by the arm and walked her down 5 steps to the front porch and released her at the front door. White described the incident as a “heated fisticuffs,” but denied punching [REDACTED]. [REDACTED] reported that a neighborhood person came by and told her that she shouldn’t be behaving in this way, to which she replied that the person did not know White very well. [REDACTED] eventually threw down the house-key and left. White alleged that she told him that she would “be back with my friends, motherfucker” before she left. White also alleged that he used the “least amount of force necessary to protect myself and home from any further harm.”

A neighbor who lived at 31 Nottingham Street witnessed a portion of the altercation from the sidewalk nearby. He reported that he came outside and heard an argument coming from the direction of the White home. He reported that he heard White demanding his keys and telling a "light complexioned female" to leave his house. The witness stated that he stood on the sidewalk and witnessed the woman curse at White and kick him, and then witnessed White slap her. He also reported that he saw White holding the woman by the top area of her coat. He stated that he believed the woman kicked White's right leg. He then went back inside his home. He reported that he did not know what else happened. The neighbor attested to D. White's good character. White's two children and two cousins witnessed the incident. However, White would not agree to have his older daughter (who was 11) interviewed. The mother of the eldest cousin present (who was 12) also declined to allow her daughter to be interviewed. The other two children present were preschool aged.

█████ sought medical treatment at Carney Hospital within hours after the incident, reporting pain and tenderness in her abdomen and vaginal bleeding from an alleged punch with a fist. She also claimed to suffer a "busted lip" from the altercation. She was treated with Tylenol and instructed to return if the pain or bleeding worsened.

White stated that he understood that █████ was moving out when he came home to find two boxes and a black bag piled by the front door of the White home, at which point he asked her for the money she owed him and her key. █████ on the other hand, stated that White forcibly ejected her from the White home, asking her for the \$10 that she owed him, demanding that she give him her key and leave, and not allowing her to collect her things.

White reported the September 10, 1993 incident to the police immediately and filed a complaint against █████ for assault and battery with a deadly weapon (a shod foot). █████ filed a complaint against White for assault and battery on the same date. Both complaints were dismissed by the court on September 28, 1993. █████ obtained an abuse prevention order against White for a period of one year. White sought and was denied an abuse prevention order against █████

A Not Sustained finding was recommended on February 7, 1994 following the IAD investigation of an allegation of "Physical Abuse" (later changed to "Use of Force") against White. This recommended finding was based on a conclusion that the only physical force by White against █████ was the open handed strike in response to her kick to his injured knee, which was determined to be a reflexive self-defense response by White. In recommending the Not Sustained finding, Sergeant Detective Jeffrey C. Chaney determined that White did not physically abuse █████. Sergeant Detective Chaney concluded that there was no basis to believe that White violated any BPD rules or procedures regarding use of force. The recommended finding of Not Sustained was submitted to Boston Police Commissioner Paul F. Evans on February 28, 1994

It was alleged during the course of this investigation that White had, before the events of September 10, 1993, made a sexual advance toward █████ including sexually hugging and rubbing her and making sexually suggestive statements to her. It was further alleged that White angrily threw █████ out of the house because she had rejected White's advance and because White learned that █████ had told his wife about it.

In his April 15, 2021 interview as part of this investigation, White denied that he touched [REDACTED] in a sexual manner or made comments to her of a sexual nature. He stated that he didn't remember the reason that [REDACTED] was asked to leave or who asked her to leave. He recalled the September 10, 1993 incident and that he thought [REDACTED] was already moving out when the altercation occurred. He recalled that he had struck [REDACTED] with an open hand and demonstrated the full swing of his arm, and he denied any other physical contact initiated by him. White recalled that he had recently had surgery on his knee and that a neighbor had been a witness to the incident.

B. 1998-1999 Incidents

With respect to the alleged incidents of domestic abuse involving Commissioner White in 1998 and 1999, I reviewed the 1999 IAD investigation file, as well as Probate and Family Court and Dorchester District Court files, and I interviewed witnesses.

1. Background

Commissioner White and his first wife [REDACTED] (now [REDACTED] Mason) were both born in 1961, and they met in high school. They married in 1981 and had two daughters, Tiffany born in 1982 and Brittany born in 1988. A former Boston Firefighter, Dennis became a Boston Police Officer in 1989. [REDACTED] became a Boston Police Officer in 1994. During the relevant time period, Dennis and [REDACTED] and their two daughters and a grandson lived in a two family house at 35 Bullard Street in Dorchester, MA. The house was owned by the couple as tenants in the entirety. According to the Complaint for Divorce filed by Dennis in 1999, the couple had been physically separated and living in separate units in their home since 1995. [REDACTED] occupied the first floor unit, while Dennis occupied the unit on the second and third floors. Dennis' bedroom was on the third floor. Their children moved freely throughout the house, between their mothers' and fathers' units.

2. October 1998

In October 1998, it is undisputed that Dennis clandestinely followed [REDACTED] in a separate car to the home of [REDACTED]. In his IAD interview, Dennis stated that upon arriving at [REDACTED] home, he got out of his car to speak with [REDACTED], then [REDACTED] got back in her car, where [REDACTED] already was seated, and the two drove away and left him standing in the street. In her IAD interview, [REDACTED] alleged that after speaking with Dennis she got into her motor vehicle and left, but did not mention whether [REDACTED] was in the motor vehicle with her. Dennis reported that he believed that [REDACTED] and [REDACTED] were having an affair, which [REDACTED] and [REDACTED] denied.

On another occasion around the same time period, [REDACTED] reported in his IAD interview, he and [REDACTED] had been sitting in a marked cruiser in front of 35 Bullard Street when Dennis drove past them in his police cruiser, saw [REDACTED] and [REDACTED] and drove away. According to [REDACTED] as a result of being seen by Dennis, he and [REDACTED] were called into the station by Area B-3 duty supervisor Sergeant Watts. Sergeant Watts informed Home and [REDACTED] that Dennis was very upset about seeing them outside of 35 Bullard Street. Watts told [REDACTED] and [REDACTED] to "stay away from the house."

█████ also reported in his IAD interview that sometime later in October 1998, Dennis knocked on his front door and asked ██████ to come outside. ██████ stated that Dennis told Horne "I'll kick your ass" and I can "fuck you up," warning him to stay away from ██████. Dennis' IAD interview did not include any discussion of this incident.

3. December 1998

On or about December 26, 1998, based on the IAD record, it is undisputed that Dennis told a friend of ██████, ██████, that in October 1998 ██████ and ██████ had driven away and left Dennis in the street. ██████ reported in her IAD interview that Dennis said "he was so mad that he wanted to shoot both of you -you and ██████ referring to ██████ and ██████." ██████ went on to state that Dennis had said, "You don't know how I felt...I was so hurt." ██████ further recounted "He was like, I want to shoot both of them." ██████ confirmed that ██████ was in fear for ██████ life and that Dennis was "mad" when he was talking with her on that day.

Boston Police Officer Wayne Hester, a friend and colleague of Dennis, was present for this portion of the conversation between Dennis and ██████. In his IAD interview, Hester stated that Dennis was very calm while talking to ██████. Dennis and Hester both stated in their IAD interviews that ██████ did not seem disturbed or concerned about Dennis' statement at the time.

Further, in his IAD interview, Dennis stated that he was "joking around" and that shooting ██████ was "not something I was going to act on." Dennis also reported that he told ██████ "But you know what? If this is what they want, I'm finished ██████." Dennis reported in his IAD interview that, at the end of the conversation, ██████ invited him to dinner.

In her IAD report, ██████ reported that ██████ had previously told her that ██████ had been physically threatened by Dennis. ██████ stated, "Well, he was grabbing her by the throat you know? Just years, you know, of abuse..." ██████ also described in her IAD interview that she had witnessed ██████ with a "busted lip because they were fighting," as well as scars, cuts and scratches from fights with Dennis. ██████ also described what she had heard from ██████ about escalating mental abuse by Dennis and about his jealousy. ██████ commented, "the thing about ██████ -She's the type of woman that, you know, always kept things, you know, to herself - and didn't want nobody involved because she wanted her marriage to work." ██████ also reported that ██████ was fearful of retaliation by Dennis if she filed paperwork against him. ██████ concluded her IAD interview describing being with Dennis and ██████. She stated, "If you were standing there, you know? You could feel the tension just swinging back and forth - you could just feel it; it was in the air."

4. April 1999

In April 1999, it is undisputed that Dennis told his daughter ██████ that she should be quiet coming up the stairs because Dennis slept with a gun under his pillow. ██████ reported that she took this as a warning. She reported the comment to her mother, ██████, approximately two weeks later. It is further undisputed that when ██████ told ██████ about this, ██████

immediately recounted Dennis' statement in December 1998. that he "could have shot [REDACTED] and [REDACTED]

At the time of this conversation, [REDACTED] explained in her IAD interview, she had been meaning to tell [REDACTED] about this statement by Dennis, but that [REDACTED] was going through a rough time and [REDACTED] was hesitant to tell her and had trouble finding the right time. [REDACTED] reported that she had tried to tell [REDACTED] on a number of occasions.

In his IAD interview, Dennis reported that he kept his service weapon under his pillow because there was a drug house across the street. He stated that he had been keeping the gun under his pillow since around February of 1999. According to a witness during this investigation, however, Dennis had explained at the time that he kept his weapon under his pillow because [REDACTED] had "cop friends around." During his April 15, 2021 interview for this investigation, Commissioner White stated that he kept the weapon under his pillow for an estimated period of five or six months in 1998-1999, to protect himself from [REDACTED] because he noticed that [REDACTED] "snuck" into the house late in the evening to be with [REDACTED]

5. May 1999

On May 4, 1999, [REDACTED] filed an incident report with the BPD concerning threats made by Dennis against her. According to the incident report, [REDACTED] reported that Dennis made a statement to [REDACTED] that he would "shoot both [REDACTED] and [REDACTED]" approximately three weeks prior. [REDACTED] further reported that sometime in the last week, Dennis told their daughter [REDACTED] that he "sleeps with a gun under his pillow." The incident report indicates that [REDACTED] told BPD she is separated from Dennis and had been for four years, and that "[Dennis and [REDACTED] have had arguments in past, but no physical abuse." The reporting officer advised [REDACTED] to "seek restraining order in Dorchester District Court in morning" and to contact Domestic Violence Detectives. According to the Incident Report, it was completed at 6:43 p.m.

Later in the evening of May 4, 1999, Dennis filed an incident report with the BPD concerning a phone call that [REDACTED] had made earlier that day to the Area B-2 police station where Dennis was working earlier that evening. It was reported in this Incident Report that [REDACTED] called the station at about 5:30 p.m. and told a front desk officer "in a loud and abusive manner" to "[p]ut fucking Sergeant White back on the fucking phone," and, when asked who might be calling, responded. [REDACTED]." In his IAD interview, Dennis reported that [REDACTED] called the station a third time, and said to Dennis "I'll get you motherfucker," then hung up. [REDACTED] recounted in her IAD statement that during the third phone call Dennis told her he was tired of being nice to her and that it was over, then she called him a "motherfucker" and hung up.

On May 5, 1999, [REDACTED] applied for an abuse protection order against Dennis in Dorchester District Court. On that date, [REDACTED] reported in an affidavit on May 4, 1999 Dennis had called her cell phone and left a "nasty" message, which said that she should get a lawyer. "this shit is over with" and telling her to "get the fuck out of [his] life." In her May 5, 1999 affidavit, [REDACTED] recounted Dennis' comment [REDACTED] about sleeping with a gun under his pillow and Dennis' statements to [REDACTED] that "he was going to shoot me and another friend of mine." [REDACTED] further stated that she kept her door locked because she and Dennis argued a lot and "he is always trying

to put me down.” She stated that she was afraid “he may come inside and kill me because he is angry.”

Also on May 5, 1999, [REDACTED] filed an incident report with the BPD in which it was reported by Sergeant Detective Mary-Ann Riva that Dennis had told [REDACTED] that “he just wanted to shoot [REDACTED] and her friend [REDACTED]. In the same report, it was stated, “[d]uring this interview [REDACTED] White (daughter of Dennis) stated her father told her not to startle him when she came into his home as he slept w/ his gun under his pillow.”

The Dorchester District Court issued an abuse prevention order against Dennis on May 5, 1999, and assigned custody of both daughters to [REDACTED] on a temporary basis. On May 13, 1999, Dennis filed a motion for an evidentiary hearing to vacate the abuse prevention order. At a hearing on May 19, 1999, at which both Dennis and [REDACTED] were present, the Court extended the order against Dennis until May 5, 2000. The abuse prevention order restricted Dennis from being within fifty yards of [REDACTED] with contact by pager or telephone permitted. Dennis was ordered to immediately leave and stay away from the White home at 35 Bullard Street or wherever else he knew [REDACTED] may reside. The order further required Dennis to surrender any keys he had for 35 Bullard Street to [REDACTED] not to damage any belongings of [REDACTED] or any other occupant, not to shut off or cause to be shut off any utilities or mail delivery to [REDACTED] and not to interfere in any way with [REDACTED] right to possess 35 Bullard Street. Dennis was required to immediately surrender to BPD District C-11 all guns, ammunition, gun licenses and firearm identification cards. His license to carry a gun and any firearm identification cards were suspended. Initially, Dennis was not permitted to contact his children, Tiffany and Brittany White, though the Dorchester District Court amended that portion of the prevention order on May 19, 1999.

6. BPD Investigative Report

An investigative report was prepared by Sergeant Detective Riva who was assigned to the domestic violence unit in Area B-2, where Dennis and [REDACTED] worked at the time. Having spoken with [REDACTED] on May 5, 1999, the report briefly summarized most of the pertinent events of October and December 1998 and April 1999. Riva reported that [REDACTED] told her that Dennis said on December 26, 1998, “[y]ou don’t know how I felt, I wanted to shoot her and him.” Riva further reported that [REDACTED] said “Dennis sounded mad and hurt when he spoke of shooting [REDACTED]. Riva also reported that [REDACTED] stated that “approximately two weeks ago her father said to her, ‘don’t startle me when you come up cause I sleep with a gun under my pillow.’” According to Riva, [REDACTED] thought this statement by her father was a “warning.” Riva reported that [REDACTED] told her that she had instructed her [REDACTED] sister [REDACTED] not to startle their father, but didn’t tell her about the gun, and that [REDACTED] stated that “she did not tell her mother until a few days after the incident.”

Riva included in her report that [REDACTED] reported she had been “having [REDACTED] problems with Dennis for a long time.” that [REDACTED] stated that she “felt the department was not taking her seriously,” and that she “has been in touch with Sgt. Gaines of the Domestic Violence Unit about this matter,” referring to the BPD Domestic Violence Unit located in BPD headquarters (the “DVU”).

Riva also included in her report that she had informed [REDACTED] that a Superior officer would follow up and that she would let [REDACTED] know who would be handling the IAD investigation. Riva further advised [REDACTED] to start proceedings in the Probate Court.

During this investigation, on March 19, 2021, Attorney Carter sent to Attorney Luthin the March 18, 2021 Affidavit of (now retired) Mary-Ann Riva. In this affidavit, Riva stated her credentials as a detective specializing in domestic violence investigations who had handled in excess of 7,000 domestic violence cases. In the affidavit, Riva stated, “[i]t was my opinion that [REDACTED] White’s request for a restraining order was motivated out of her being upset and angry, not because there was a real threat that Dennis White would commit violence against her.” Riva concluded, “In my view, based on my experience and investigation, Dennis White did not make a threat to commit violence on [REDACTED] White, and did not present a threat of violence to her.”

I spoke with Riva on April 23, 2021. She told me that Attorney Carter’s office had contacted her to request that she speak with Carter. After a phone conversation, according to Riva, Attorney Carter followed up by providing her with copies of her May 5, 1999 investigative report and other selected documents from the Dorchester District Court and Probate and Family Court files. Riva then wrote down “what [she] remembered,” which she and Attorney Carter both revised to produce the final March 18, 2021 Affidavit.

Riva told me that she recalls “bits and pieces” related to the May 5, 1999 investigative report that she had written, and that the reason she has memories of this case is that it was her first involving two police officers. Riva told me that she recalls [REDACTED] telling her that she and Dennis had “marital problems,” but does not recall if she asked [REDACTED] about “past physical abuse.” However, Riva said that she “would have” asked [REDACTED] if Dennis had hit her and “would have looked to see if there was any violence.” Riva explained that if [REDACTED] had told her that Dennis hit her, she would have included that in the report.

Riva explained to me that in 1999, in her experience, it was not unusual for police officers to sleep with their service weapons under their pillows. She also commented that she would have been concerned about [REDACTED] safety at the time if Dennis’ statement about shooting [REDACTED] and Horne had been more recent.

Nonetheless, Riva told me, “[REDACTED] felt afraid.” She explained further, “my personal opinion might be I don’t know why you feel afraid,” still Riva stated that she would always advise an alleged domestic abuse victim to get a restraining order. In this situation, Riva explained, there was already a restraining order in place or in process. Riva went on to state, “I don’t second-guess people when they say they are afraid.”

When I asked Riva if she had ever learned that a woman she interviewed had failed to disclose physical abuse, Riva responded, “Oh God yes!” Riva went on to comment, that she “can’t say” that there weren’t facts that [REDACTED] didn’t share. She commented, “it can happen, they don’t want to bring it up.” She also commented that [REDACTED] minor child [REDACTED] was present during [REDACTED]’s interview, that Riva remembered thinking this was not a good idea and suggesting to [REDACTED] that they speak away from [REDACTED] but [REDACTED] insisted that [REDACTED] be present.

Regarding [REDACTED]'s reported statement that she "felt the department was not taking her seriously," Riva told me that she doesn't remember what she thought [REDACTED] meant at the time. With respect to [REDACTED] reported statement that she "ha[d] been in touch with Sgt. Gaines of the Domestic Violence Unit about this matter," Riva stated that Gladys Gaines was a Deputy and Riva was new, so they didn't talk. She also explained that the DVU where Gaines worked did not oversee or coordinate with the local district domestic violence units at the time. Riva commented that if [REDACTED] had complained to Sergeant Gaines in the DVU, Riva would expect that there would be documentation which would have been included in the IAD file, and that Internal Affairs would have coordinated with Gaines.

7. IAD Investigation²

In May of 1999, an IAD investigation commenced, with two allegations against White: (1) violation of BPD Rule 102, Section 35 for nonconformance with the law;³ and (2) violation of BPD Rule 102, Section 4 for neglect of duty and unreasonable judgment.⁴ Five witnesses were interviewed, including [REDACTED] White on May 12, 1999, [REDACTED] on June 5, 1999, Dennis White on July 8, 1999, [REDACTED] on July 26, 1999 and Wayne Hester on July 26, 1999.

In her May 12 IAD interview, [REDACTED] said that she applied for a restraining order on May 5, 1999 because of Dennis' statement in December that he "wanted to shoot both [REDACTED] and [REDACTED] which she described as a threat. [REDACTED] further reported that she interpreted Dennis' statement to their daughter [REDACTED] in April of 1999 about the gun under his pillow as a threat "meant for me" and that she had started "looking up to the third floor praying he wouldn't shoot me". [REDACTED] stated that she and Dennis used to "physically fight and of course he won every time."

[REDACTED] stated in her IAD interview that during their separation over the past four years Dennis had engaged in "verbal abuse," calling her "bitch", "you no good mother," and "motherfucker." When asked if she had "taken out any restraining orders against [Dennis] in the past," [REDACTED] answered "yes" but that she "didn't follow it - follow it up." [REDACTED] stated that she did not proceed "because [Dennis] promised he wouldn't beat me no more, and he promised." When asked how many times Dennis beat her, [REDACTED] said "[c]an't count it."

² Commissioner White was also one of a number of subjects of an IAD investigation in 2013 which arose from a situation in which a parent was charged with larceny when their minor child passed a counterfeit check. Commissioner White and a number of other BPD officers were accused of defamation and other claims by the parent. A lawsuit and IAD Investigation followed. The case was dismissed in court and a Not Sustained finding resulted from the IAD investigation.

³ Rule 102, Section 35 reads: "Employees shall obey all laws of the United States, of the Commonwealth of Massachusetts, all City of Boston ordinances and by-laws and any rule or regulation having the force of law of any board, officer, or commission having the power to make rules and regulations. An employee of the Department who commits any criminal act shall be subject to disciplinary action up to and including discharge from the Department. Each case shall be considered on its own merits, and the circumstances of each shall be fully reviewed before the final action is taken."

⁴ Rule 102, Section 4 is titled "Neglect of Duty" and reads: "This includes any conduct which is not in accordance with established and ordinary duties or procedures as to such employees or which constitutes use of unreasonable judgment in the exercising of any discretion granted to any employee."

In his July 8, 1999 IAD interview, Dennis admitted that there was "physical abuse" in his relationship with [REDACTED] but that they both shared in the blame. He said the last physical confrontation between them had occurred ten years prior. In his April 15, 2021 interview for this investigation, Commissioner White stated, regarding his 1999 admission of physical abuse, "I believe the way the investigator asked me the question...did we have some pushing, yes, we pushed each other."

The IAD file contains no reports or notes from Sergeant Gaines or the DVU. The only reference to Sergeant Gaines in the IAD file is in a "Case Activity Log" dated May 12, 1999, which states that Gaines advised Sergeant Hill, the primary IAD investigator, on May 6, 1999 that a restraining order was in effect. Sergeant Hill reportedly notified Lieutenant Gavin and "was asked to notify Captain Goslin and inquire about the restraining order." During this investigation, I requested all pertinent DVU records. I was informed that a search of the BPD archives turned up nothing.

During this investigation, a witness confirmed that [REDACTED] had contacted the DVU on multiple occasions to complain about Dennis, including complaints of physical abuse, and that "reports were made." The witness told me, "[the] history of Dennis is known by everyone in the department." The witness stated this case was "of grave concern at the time," and that "[f]or anyone within the department to allude that this is not the case is dishonest." The witness reported that the DVU assisted in the IAD investigation at the outset, and that "questionable behavior was supposed to be investigated and dealt with, but wasn't." The witness stated to me, "[i]f people say these things did not happen, they are lying."

This witness said that, "[the DVU] did exactly what [it was] supposed to do," and that because "[Dennis White] was a Boston Police Officer with domestic abuse allegations," DVU officers were retaliated against. The witness told me that Gaines was "transferred after [the DVU] followed through with the process that should have taken place." This witness added that DVU staff "had hoped that credibility and professionalism would surpass other interests in the BPD," but they had "been through hell and back" due to retaliation against them as a result of the White case. A review of personnel records confirms that Gaines was transferred out of the DVU on February 2, 2000.

On October 21, 1999, the IAD investigation concluded with a recommendation of Not Sustained for alleged violation of Rule 102, Section 35, nonconformance with the law, and a recommendation of Sustained for alleged violation of Rule 102, Section 4, neglect of duty and unreasonable judgment.

An undated Confidential IAD Assessment in this case states:

Sergeant Dennis White acknowledges uttering the statement that "I could have shot the both of them if I wanted and that he uttered a statement to his daughter that he sleeps with a gun under his pillow. Sergeant Dennis White exercised unreasonable judgment when he uttered the statement. I recommend a finding of **Sustained**. In reference to the statement that he slept with a gun

under his pillow, I find his utterance a precaution to his daughter upon entering his room.

According to this document, the Commander of Internal Affairs, Chief of the Office of Internal Investigations and Legal Advisor to the BPD all "concurred" with this finding. However, it appears that the Legal Advisor added a handwritten caveat stating, "PO shouldn't keep firearm under pillow - weapon should be secured."

8. Divorce Proceeding

Dennis filed a Complaint for Divorce in the Suffolk Probate and Family Court on May 18, 1999. In the Complaint, Dennis stated that he and [REDACTED] had been separated since May 1, 1995. On May 27, 1999, Dennis filed a motion for temporary order, requesting that the Court, among other things, grant him primary physical custody of the children and child support payments to be provided by [REDACTED]. Also on May 27, 1999, Dennis filed a motion requesting that the Court order [REDACTED] to vacate the marital home. In his May 27, 1999 Probate and Family Court papers, Dennis admitted to arguments with [REDACTED] and denied a history of physical abuse.

The abuse prevention order against Dennis was vacated on June 23, 1999 by the Probate and Family Court, based on a stipulation of the parties that Dennis would continue to store his service weapon with the BPD during his off duty hours for at least a period of sixty (60) days from the date of the stipulation. Dennis came back to live in the upstairs unit in the house after the restraining order was vacated on June 23, 1999, with [REDACTED] continuing to live in the first floor unit. Dennis and [REDACTED] stipulated that this living arrangement was for convenience and not for purposes of marriage reconciliation. In his IAD statement, Dennis reported he told [REDACTED] he would keep his gun at work for two months. On September 1, 1999, the weapon continued to be kept out of the house, and Dennis and [REDACTED] filed a joint motion indicating they would revisit the issue at a later date.

Based on a joint motion of the parties, the Probate and Family Court appointed Michael Bachap, Ph.D., as Guardian ad Litem ("GAL") to evaluate the family and make a recommendation regarding custody. The GAL recommended that [REDACTED] have sole legal and physical custody of Brittany,⁵ with visitation by Dennis. The GAL also recommended that Dennis obtain outpatient mental health treatment.

As indicated by a Separation Agreement signed by both Dennis and [REDACTED] and submitted to the Probate and Family Court, the two agreed to continue living in separate units in the marital home until 30 days after [REDACTED] was able to refinance the house and buy out Dennis' share, following the Divorce Judgment which entered on January 18, 2001. Legal custody of Brittany was to be joint, while [REDACTED] received physical custody with visitation for Dennis.

9. IAD Finding Changed

On April 19, 2001, the IAD finding with respect to the 1999 allegation of violating Rule 102, Section 4, neglect of duty and unreasonable judgment, was changed from "Sustained" to "Filed" on the recommendation of Superintendent Thomas A. Dowd and with the approval of Police

⁵ [REDACTED] was emancipated by this time.

Commissioner Paul F. Evans. Dowd opined that "the subjective interpretation of the statements made [by Dennis] were not conclusive enough to sustain a rules violation," but that the allegations were serious enough that the matter should remain on file pending further developments. In a letter to Commissioner Evans on or around April 12, 2001, following discussion with BPD Legal Advisor Mary Jo Harris, Dowd explained that the statement at issue (that Dennis could have shot [REDACTED]) was made to a third party and may have been taken out of context. Dowd noted that Hester's IAD interview supported this reclassification.

In his April 15, 2021 interview for this investigation, Commissioner White stated that he had initiated the process to change the Sustained finding by expressing to his commanding officer Captain Albert Goslin that White "wasn't agreeing on the Sustained charge", and his desire for an appeal and a hearing. White told me that Goslin said "let me speak with the higher ups," and that, afterward, White was notified that the finding was changed to "Filed." White denied any involvement or knowledge of the process that led to the changed finding.

C. Domestic Abuse

Four witnesses reported during this investigation that [REDACTED] was subjected to physical and mental abuse by Dennis [REDACTED], corroborating statements in the record by [REDACTED] and [REDACTED]. It was confirmed that [REDACTED] repeatedly reported both physical and mental abuse to the DVU during that time period, but that no IAD investigations resulted until she obtained a restraining order in May 1999.

Witnesses stated that [REDACTED] generally kept secret the details of her relationship with Dennis, that she was very private about it, and that she did not want people to know what was happening behind closed doors. However, one witness described how [REDACTED] was on edge and that "if Dennis just pointed or looked in [REDACTED]'s] direction, her whole demeanor changed."

A witness who was [REDACTED] friend during her marriage to Dennis stated that [REDACTED] told her at that time about specific instances of physical abuse by Dennis. The witness reported that [REDACTED] told her that Dennis had burned her hair, put her face to the stove and stepped on her face. According to this witness, [REDACTED] described to her at that time an occasion when [REDACTED] was on the floor and Dennis was kicking her and [REDACTED] crawled under the bed.

This witness stated that, after she had knowledge of the physical abuse, she didn't want to leave [REDACTED] alone with Dennis. She told me that she was "always trying to stay around," and described an occasion when she was with Dennis and [REDACTED] at their home and they began to argue. Dennis asked the witness to leave and [REDACTED] asked her to stay. The witness recounted that she refused to leave and that Dennis grabbed her arm and pulled her and told her to get out. She described that Dennis was trying to throw her out, grabbing her repeatedly. According to the witness, "He was very angry, very angry. His voice, his posture was totally different. You could tell the aggressiveness in his voice....Dennis was swearing."

Other reported incidents of physical abuse of [REDACTED] by Dennis include him putting his hands on her neck and choking her, throwing a television at her, pushing her and stomping on her legs when she crawled under the bed, pushing [REDACTED] face onto the stove and trying to turn it on, and trying to physically throw her or pull her out of the house. Witnesses described their awareness

during Dennis and [REDACTED] marriage of the physical abuse and that [REDACTED] had scars on her wrist and shoulder/upper arm as a result. Nonetheless, witnesses consistently reported that [REDACTED] "fought back." I was also told that [REDACTED] "got stomped on and got beaten by Dennis," but often apologized after fights because she loved Dennis and "wanted to smooth things over." It was estimated that during the period of their marriage, [REDACTED] weighed approximately 130 pounds or less, while Dennis weighed approximately 200 pounds.

Witnesses stated that fights between [REDACTED] and Dennis often started because [REDACTED] asked Dennis where he had been or what he had been doing or directly confronted him about infidelity. Witnesses reported that it was well known that Dennis was having affairs during the marriage, and that this was humiliating for [REDACTED]. Witnesses also described Dennis as being controlling of [REDACTED] including limiting her social interactions. One witness told me that Dennis disabled the car so that [REDACTED] couldn't use it; while another witness told me that they and others "suspected" this was happening because Dennis "could drive around without a problem, but [REDACTED] couldn't." Witnesses also stated that they were aware during the marriage that Dennis coerced [REDACTED] into sexual activities in which she did not wish to participate.

It was reported to me that [REDACTED] had become "very scared" of Dennis and "would have put nothing past him" when she sought the May 5, 1999 abuse prevention order against him, and that she was regularly locking her door and barricading at around that time.

It was reported during this investigation that [REDACTED] kept a diary during her marriage to Dennis, in which she documented her experiences. At some point, according to witnesses with whom I spoke, [REDACTED] gave to a relative the two stenography pads in which she had journaled, for safekeeping. This relative stated that [REDACTED] had given her the two pads containing information about her relationship with Dennis when they were still married. According to this witness, when [REDACTED] gave her the diary, [REDACTED] stated, "if anything happens to me, I want you to have this diary....If anything happens to me, it would be Dennis."

The witness stated that the diary contained descriptions of physical and mental abuse of [REDACTED] by Dennis. The witness reported that she remembers when she got the diary, she "sat in [her] kitchen and starting to read." She told me that the diary was written by [REDACTED] "over a long period of time" and that it was "very upsetting, shocking" and that she "felt so badly for [REDACTED]"⁶

D. Interview of Commissioner White⁷

During his interview as part of this investigation, Commissioner White told me that he and [REDACTED] had a good relationship "in the beginning." He explained that they were high school

⁶ This witness told me that she had cleaned out her attic during the summer of 2020 and had found the two stenography pads. At that time, the witness said she remembers telling her grandson that the pads belonged to [REDACTED] and instructing him to put them in a pile to keep, but that she has "tom up" her attic and looked in her garage and can't find them now. She told me that she thinks the diary must have been accidentally thrown away.

⁷As contained in Commissioner White's personnel records and corroborated by Commissioner White during his April 15, 2021 interview, he is not a resident of the City of Boston. Commissioner White currently resides in Randolph, Massachusetts.

sweethearts, both athletic, and that they did a lot together. Commissioner White told me that he has a good relationship with his daughters.

Commissioner White denied being accused of mental abuse or being controlling [REDACTED]. He denied that he at times limited [REDACTED] activities and friendships. He denied ever disabling their shared vehicle so that [REDACTED] couldn't use it. He denied coercing [REDACTED] to engage in sexual activities against her will. He told me that he would not characterize the relationship as physically abusive. He recalls saying in his 1999 IAD interview that there was "physical abuse in the relationship", but explained, "I believe the way the investigator asked me the question...did we have some pushing, yes, we pushed each other." He told me that he and [REDACTED] had both initiated physical pushing.

Commissioner White also denied beating [REDACTED] throwing a television at her, pushing her head down on a stove, pushing her onto the floor, pulling her down stairs, pulling her hair, and choking her with his hands around her neck. He denied being aware that [REDACTED] claims to have scars on her wrist and shoulder due to physical abuse by him. When asked if [REDACTED] ever accused him of infidelity, he replied, "Sure, she accused me of it." When asked whether [REDACTED] accusations ever led to arguments, he replied, "sure." When asked if her accusations ever led to physical contact between them, he replied, "other than a push to get away, no."

Commissioner White recalled the incident in October 1998 when he followed [REDACTED] to [REDACTED] home, and admitted that he clandestinely trailed her. He stated, "she arrived at a residence. I didn't know whose residence at that time. I saw [REDACTED] exit the residence. I walked over to [REDACTED] had a conversation with her and said 'what are we going to do?' She said 'Dennis, I'm fucking through with the relationship,' and she speeds off. I walked over to the door where [REDACTED] went in, I knocked on door and asked him to come outside. We had a conversation. I asked him, 'you and [REDACTED] having an affair?' he said 'what she say...?' I said 'back a truck up to take her stuff and get her out of my house. Otherwise, stay away from my house.'" Commissioner White denied going to [REDACTED] home on any other day. He also denied threatening [REDACTED] with physical harm on any occasion, and denied telling Horne that he would "kick his ass," and telling [REDACTED] that he would "fuck him up."

Commissioner White also recalled the incident in December 1998 involving [REDACTED] and Wayne Hester. He told me, "...I was working in Roxbury. [REDACTED] came by, I flagged her down, we got out of our cars, she greeted me with hugs and kisses, we were friends. She brought up the issue about [REDACTED] calling the house, and questioning [REDACTED] about answering the telephone. I relayed the incident about following [REDACTED] to [REDACTED] house, that I asked [REDACTED] about what she really wants to do with the relationship, she said she's 'fucking through.' I told [REDACTED] I felt so hurt, I could have shot them both, and that was it." Commissioner White also stated that Wayne Hester came over and gave Linda a hug, and that Hester there during that part of the conversation. Commissioner White added, "I said, [REDACTED] I'm finished with it." He also recounted that [REDACTED] last comment to him was "let's go to dinner."

Commissioner White admitted that he slept with a gun under his pillow for a period of time he estimated to be approximately five or six months long in 1998 and 1999. He also admitted that he told his daughter [REDACTED] in April 1999 about the gun, "I told her just don't come upstairs and startle me because I sleep with a gun under my pillow." He denied that he was trying to threaten

██████████ or threaten ██████████. He also stated that he had told ██████████ "that I didn't want kids startling me. ██████████ at the time was 7 or 6 or 9 years old, ██████████ had a baby 2 years old, ██████████ ██████████ and ██████████ used to sneak up to my room and play Geronimo, climb on bed post and jump on me to wake me up. I worked double shifts at the time, and I had a real close relationship with my kids and grandson, so I said "██████████ just make sure...I just don't want to get startled."

When asked why he slept with a gun under his pillow, Commissioner White explained, "Once I found out ██████████ was having an affair ██████████, I noticed he snuck into the main house late in evening, and I had concerns for my safety. The way the house was set up, it's a big colonial house and ██████████ was on the first floor, I had the unit on the second and third floors, but I had to leave the door unlocked at all times because the kids slept on the second floor, had their meals there, so it was easy access for anyone to walk up. My bedroom was on the third floor, so I gotta protect myself because I left the door unlocked at all times." Commissioner White did not recall if it was consistent with policy or protocol for an officer to sleep with a gun under their pillow, but he stated that "you were required to keep the gun in our possession."

Commissioner White told me that he and ██████████ had been "off and on" during some period of time. He stated that they were informally separated, still living in the same bedroom in the early 1990's, and that ██████████ moved down to "the apartment on the 1st floor maybe in '96 or '95." He explained that he and ██████████ had stayed in the same house until the divorce was final in 2001.

Attorney Carter instructed Commissioner White not to answer any questions about alleged extramarital relationships. Commissioner White told me that his current wife of 9 years is Jacqueline. When I asked if he had an affair with Jacqueline ██████████ Attorney Carter instructed Commissioner White not to answer. Later in the interview, he told me that he had started dating Jacqueline in "maybe 1997...Jacqueline came on the police department...1998, I want to say 1999, 2000?"

When I asked Commissioner White if there had been any pushing between Jacqueline and him, he responded, "me and my wife Jacqueline have a peaceful, beautiful relationship. I find this insulting." When I asked if he had ever been accused of physical abuse during his relationship with Jacqueline, he responded, "Again, I'm insulted, me and my wife Jacqueline have a peaceful, beautiful relationship." I followed up by asking, "Is the answer no?" and Commissioner White replied, "I'm insulted at the question." When I pointed out that Commissioner White wasn't answering my questions, Attorney Carter and Commissioner White took a break, after which Commissioner White answered "no" to both questions.

Commissioner White denied participating in any programs, therapy or treatment to address any mental health issue, domestic abuse, sex addiction, or anger management. I asked Commissioner White three separate times if he wanted to add anything, if these was anything else he would like me to know or anything additional to share with me, and he declined.

On April 22, 2021, I received an email from Attorney Carter in which he recounted that at the end of the April 15, 2021 interview, I had asked Commissioner White if there was anything else he would like to say. According to Attorney Carter, Commissioner White had thought about this and wanted to say the following, which was included in the body of Attorney Carter's email:

It is important that the community believes in the BPD. Transparency concerning the BPD is the right direction to go to strengthen community trust in the BPD. That is why I have agreed to release my IAD records regarding the allegations against me, which I addressed at the time and have addressed again in this process. Regarding my first marriage which ended 20 years ago and effectively ended nearly 30 years ago when we separated and began to live separately, it was a very difficult relationship. I was a young man and father and trying to do the best for my family by working hard at my job to support my family financially and by being present physically and emotionally for my family, including two young children and several nieces and nephews who at times needed to stay in our home due to their own difficult circumstances. Despite the challenges of my first marriage, I am proud to say that since our divorce I and my ex-wife have worked together without a single incident. I am blessed to say that I found a positive relationship after my first marriage ended and we have been happily in a partnership for the last nearly 20 years and married for the last 10 years.

For anyone who has experienced a difficult relationship, it is not easy. Because of my own experience in my first marriage, I am very aware of those challenges. As a result, I have been a strong supporter of the Peer Support Unit in the BPD and have provided support to officers who are experiencing difficult personal relationships. Where appropriate, I have made sure they get appropriate family support and professional counseling. I also created, with private funding and the support of Commissioner Gross, the first-in-the-nation public memorial commemorating officers who have died by suicide. That memorial is located in BPD Headquarters. I have attached a picture. I believe it is important to bring attention and support to mental health issues for officers, whether they are caused by stress from a difficult job or relationship or whatever the source. I have the maturity and experience to make a difference in this important area that affects so many, including the BPD.

A photograph of a memorial display for Boston Police Officers who have died by suicide was attached to Attorney Carter's email. The memorial display is located in the Boston Police Headquarters and includes information about how to obtain help through the Boston Police Peer Support Unit or the National Suicide Prevention Lifeline.

ATTACHMENT 3



Henry Luthin <henry.luthin@boston.gov>

RE: Commissioner White

1 message

Carter, Nick <ncarter@toddweld.com>
To: Henry Luthin <henry.luthin@boston.gov>

Tue, Apr 6, 2021 at 4:09 PM

Henry: Following up on your email today and our subsequent call, please see the attached letter. Nick

From: Henry Luthin <henry.luthin@boston.gov>
Sent: Tuesday, April 6, 2021 2:34 PM
To: Carter, Nick <ncarter@toddweld.com>
Subject: Commissioner White

Hello Nick,

The investigation that Tamsin Kaplan is conducting is nearing completion. The Administration expects the Commissioner to cooperate with Msl Kaplan. If Commissioner White does not cooperate, then the investigation will be incomplete, and Mayor Janey will make a decision accordingly. The Mayor will not make a decision on Commissioner White's future until she sees Ms. Kaplan's report.

The Administration will review Commissioner White's internal affairs, human resources, and labor relations files, and his CORI. This is standard for anyone being appointed to a sensitive position.

We look forward to the Commissioner's cooperation.

Henry

Henry C. Luthin
Corporation Counsel
City of Boston Law Department
City Hall, Room 615
Boston, MA 02201

617.635.4099 (o)

617.594.1645 (c)

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2021 04 06 Luthin from Carter.pdf

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ATTACHMENT 4



Todd & Weld LLP

Nicholas B. Carter
E-mail: ncarter@toddweld.com

April 19, 2021

VIA FIRST CLASS MAIL AND EMAIL

Henry Luthin
Corporation Counsel
City of Boston
1 City Hall Square, Room 615
Boston, MA 02201
henry.luthin@boston.gov

Dear Mr. Luthin:

I write concerning the City's investigation and my concerns about whatever report might be issued. While reserving his rights, Commissioner White agreed to be interviewed on Thursday, April 15, concerning allegations (albeit false) of domestic violence which frames the scope of the investigation. Commissioner White cooperated fully and answered all questions within that scope. The interview lasted more than an hour and ended only when the investigator exhausted her questions.

There were two topic areas where I instructed Commissioner White not to answer questions because they were improper and outside the authorized scope of the investigation. I instructed Commissioner White not to answer a question about medications he is currently taking, because that is private health information that is irrelevant to the allegations at issue. I did permit him to answer a question whether he was taking any medications that would interfere with his ability to answer questions during the interview. He answered there were none.

I also instructed Commissioner White not to answer questions concerning his private sex life with any consenting adult partner, because that is clearly outside the scope of the investigation. Nonetheless, he was asked repeatedly whether he had any affairs when he was married to Sybil White, whether he had any girlfriends while married to her, whether he used any social media dating websites at any time. These questions were totally inappropriate. What is at issue are allegations of physical violence, not consensual sexual activities, if any. These repeated, inappropriate questions cause concern that the proper bounds of this investigation are not being respected and will not be respected in the final report.

Regarding the report to be issued, the City must ensure that unsubstantiated allegations about which Commissioner White has no meaningful opportunity to respond, challenge and disprove not be included. Specifically, there were questions during the interview about matters Commissioner White (and I) had never previously heard about from anyone and which are not mentioned in any record including Internal Affairs Division files. During the interview, Commissioner White was provided no further information about these allegations, such as who made the allegation, when and where the alleged event(s) occurred, what witnesses, if any, there were to the alleged event, and whether the person making such allegation is credible which



would include evidence that the person has not previously contradicted themselves on the subject and reported the alleged event contemporaneously (and if not contemporaneously, why not). He answered truthfully each of these vague allegations in the negative.

It is incumbent on the City to ensure that the investigative process, especially the final report, satisfy basic and fundamental principles of fairness and due process. Commissioner White is entitled to at least that much. Therefore, the City must ensure that the investigator's report, which may become public, not include any of these never-before-advanced allegations, because they are false and Commissioner White has not been given a meaningful opportunity to defend himself against them.

If these new, false allegations are included in the investigator's report, the investigative process will be proven a complete sham. Commissioner White's reputation will undoubtedly be destroyed, given the current climate where a mere accusation is often sufficient to cause deep and permanent reputational harm. If the City and/or the investigator includes such false allegations in the report, my firm will vigorously defend the Commissioner by way of legal action, including claims for defamation and violation of his civil rights and due process rights.

Very truly yours,

Nicholas B. Carter

cc: Mayor Kim Janey (via email)
Tamsin Kaplan (via email)

ATTACHMENT 5



City of Boston, Massachusetts
Office of the Mayor
KIM JANEY

May 14, 2021

By Electronic Mail

Commissioner Dennis A. White
9 Rae Circle
Randolph, MA 02368

RE: Notice of Intent to Dismiss

Dear Commissioner White:

Current events have focused attention on the administration of police departments and the conduct of police. As Boston's Acting Mayor, I am committed to making the changes required to build the trust and confidence in the Boston Police Department ("BPD") and to make the changes required to ensure public trust in the BPD and how it does its work. It is imperative, therefore, that I have complete confidence in the Police Commissioner, who will be the person in charge of implementing those changes, and who is willing and able to work with me and lead the required changes.

When I became Acting Mayor, you were on administrative leave and an independent investigation was already taking place. Now, having received the independent report (enclosed) commissioned by my predecessor and the letters and emails from your attorney, I am notifying you of my intent to dismiss you from the position as Commissioner of the Boston Police Department ("BPD") due to the following:

- The information contained in the independent investigation regarding complaints of domestic violence and abuse filed in 1993 involving your then-niece-by-marriage and in 1999 involving your then-wife, and your responses thereto. It is particularly concerning that you failed to demonstrate an appreciation for the reasons for the public's concerns about these incidents when you were assuming the leadership of the BPD.
- As the Police Commissioner you were being investigated on a matter of public interest and concern. Your lack of cooperation and judgment during that investigation including your initial refusal to complete forms for a background check, refusal to answer all questions posed by the investigator, and your refusal

to meet for a follow-up/second interview are particularly troubling. As Commissioner, you serve as a role model and represent the entire Department and must conduct yourself in a manner befitting that position.

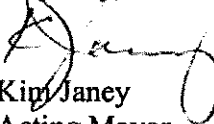
- You appeared for your interview with the independent investigator in the BPD Commissioner's office, as well as at other times at BPD headquarters, while on administrative leave. Such conduct, at the very least, gave the appearance that you were still in charge and raised the potential for confusion. At worst, your presence was a reminder of the power of the Police Commissioner and may have intimidated some of the witnesses who were asked to participate in the independent investigation. This reflects poor judgment.
- At no time during the investigation into the earlier domestic violence allegations did you express any appreciation of the importance of domestic violence concerns to the public or how it might affect the public's perception of the ability of the BPD to respond to incidents of domestic violence. Your approach to the concerns raised about the domestic violence allegations against you was consistently dismissive and uncooperative, which reflects poor judgment given your role as the leader of the BPD that is regularly called upon to address domestic violence in our community.

The conduct described above individually and/or collectively causes me to conclude that you do not possess the qualities that are essential to lead the BPD going forward and provide "cause" for me to remove you as Police Commissioner at this time in advance of 2022 when the term of your appointment concludes.

A hearing via Zoom will be held this afternoon at 3:00 p.m. You will be sent log-in information. This will give you an opportunity to provide me with any information you want me to consider before I make my final decision. You may be represented by an attorney at this hearing.

Should you have any questions please direct them to Henry C. Luthin, Corporation Counsel.

Sincerely,


Kim Janey
Acting Mayor

Enclosure

cc: Nicholas B. Carter, Esquire
Henry C. Luthin, Corporation Counsel
Personnel File

ATTACHMENT 6

Kay Hodge

From: Henry Luthin <henry.luthin@boston.gov>
Sent: Friday, May 14, 2021 5:42 PM
To: Kay Hodge
Subject: Fwd: emergency motion and request for hearing

See thread

Sent from my iPhone

Begin forwarded message:

From: Susan Weise <susan.weise@boston.gov>
Date: May 14, 2021 at 3:43:30 PM EDT
To: "Carter, Nick" <ncarter@toddweld.com>
Cc: Henry Luthin <henry.luthin@boston.gov>, Erika Reis <erika.reis@boston.gov>, "Dunn, Tara D." <tdunn@toddweld.com>, "Costa, Ashley" <acosta@toddweld.com>, Adam Cederbaum <adam.cederbaum@boston.gov>
Subject: Re: emergency motion and request for hearing

thank you

On Fri, May 14, 2021 at 3:36 PM Carter, Nick <ncarter@toddweld.com> wrote:
The clerk has notified me the hearing will be on Thursday, May 20 at 10:00 am by Zoom.

-----Original Message-----

From: Carter, Nick
Sent: Friday, May 14, 2021 3:01 PM
To: Henry Luthin <henry.luthin@boston.gov>
Cc: Susan Weise <susan.weise@boston.gov>; Erika Reis <erika.reis@boston.gov>; Dunn, Tara D. <tdunn@toddweld.com>; Costa, Ashley <acosta@toddweld.com>; Adam Cederbaum <adam.cederbaum@boston.gov>
Subject: RE: emergency motion and request for hearing

The clerk has notified me that Judge Brieger has the papers. She will conduct a hearing next week at a date and time convenient for all parties and the Court. The clerk will be getting me one or more possible dates later today I believe and I will circulate them. Needless to say, we won't participate in what we believe to be a sham and invalid "hearing" until the Court rules.

-----Original Message-----

From: Henry Luthin <henry.luthin@boston.gov>
Sent: Friday, May 14, 2021 2:56 PM
To: Carter, Nick <ncarter@toddweld.com>
Cc: Susan Weise <susan.weise@boston.gov>; Erika Reis <erika.reis@boston.gov>; Dunn, Tara D. <tdunn@toddweld.com>; Costa, Ashley <acosta@toddweld.com>; Adam Cederbaum <adam.cederbaum@boston.gov>
Subject: Re: emergency motion and request for hearing

Yes

Sent from my iPhone

> On May 14, 2021, at 2:37 PM, Carter, Nick <ncarter@toddweld.com> wrote:

>

> And please copy me and Tara Dunn and my assistant, Ashley Costa, on notices.

>

> -----Original Message-----

> From: Henry Luthin <henry.luthin@boston.gov>

> Sent: Friday, May 14, 2021 2:35 PM

> To: Carter, Nick <ncarter@toddweld.com>

> Cc: Susan Weise <susan.weise@boston.gov>; Erika Reis

> <erika.reis@boston.gov>

> Subject: Re: emergency motion and request for hearing

>

> Hello Nick,

>

> Kindly copy Erika Reis and Susan Weise on all notices.

>

> Thank you.

>

> Henry

>

> Sent from my iPhone

>

>> On May 14, 2021, at 2:18 PM, Carter, Nick <ncarter@toddweld.com> wrote:

>>

>> Dear Clerk Buckley: Pls bring the attached complaint and motion to

>> the emergency judge's attention. We are seeking a hearing on or

>> before 3pm. The City and Acting Mayor Janey are intending to remove

>> Commissioner White at that time and we are seeking to prevent that

>> removal, as it violates law. I have copied Boston Corporate Counsel.

>> Thank you. Nick Carter

>>

>>

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>> <2021 05 14 Complaint and Jury Demand.pdf>

>> <2021 05 14 Motion for Appointment of Special Process Server.pdf>

>> <2021 05 14 Motion for TRO and PI.pdf>

>> <2021 05 14 Proposed Order.pdf>

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