

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

COMPLAINT

Filed against a commissioned officer of the Madison Police or Fire Department by an aggrieved person, pursuant to 62.13(5), Wisconsin Statutes, and Rule 7 of the Board

SHARON IRWIN,

Complainant,

v.

MADISON POLICE DEPARTMENT CHIEF MICHAEL KOVAL,

Respondent.

STATEMENT OF CHARGES

Made under oath or affirmation and subject to penalties for the false swearing (Refer to Wisconsin Statute 32.13 and Board Rule 7.)

I, Sharon Irwin, do hereby state the following charges as a Complaint against Madison Police Chief Michael Koval, a commissioned officer of the City of Madison Police Department.

I. DEPARTMENTAL RULES ALLEGED TO HAVE BEEN VIOLATED

The following rules, contained in the indicated sections of the Madison Police Department Code of Conduct and Standard Operating Procedures (MPD Rules) as well as City of Madison Administrative Procedural Memoranda (APM), were applicable to and governed the conduct of Chief Koval at all times stated herein and relevant hereto, and read in relevant part as follows:

Introduction

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

Our Code of Conduct and Core Values define us and directs our behavior; thus they require strict adherence. Our Standard Operating Procedures detail the means to perform our duties in a reasonable and lawful manner. Policing is complex, and we recognize the legitimate use of discretion to achieve goals that are in line with our Core Values.

Members are responsible for adhering to the contents of the Mission, Core Values, Code of Conduct and Standard Operating Procedures. In addition, all City of Madison employees are expected to comply with the provisions of the Administrative Procedural Memoranda (APM) of the City.

The Madison Police Department strives to have a workforce that is representative of our community. Consequently, we are an equal employment opportunity/affirmative action employer and have an Equitable Workforce (Affirmative Action) Plan.

Mission

We, the members of the Madison Police Department, are committed to providing high quality police services that are accessible to all members of the community. We believe in the dignity of all people and respect individual and constitutional rights in fulfilling this mission.

MADISON POLICE DEPARTMENT CODE OF CONDUCT

Core Values

INTEGRITY

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

HUMAN DIGNITY

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

SERVICE

We strive to deliver exceptional service in an unbiased manner.

COMMUNITY PARTNERSHIP

We believe that the police can only be successful in improving safety and the quality of life the community enjoys when police and community members work collaboratively to address issues of mutual concern.

PROFICIENCY AND CONTINUOUS IMPROVEMENT

We are accountable to the public and ourselves for the quality of our service. We strive for proficiency in all facets of our work. We seek to continually improve ourselves and those systems in our midst and those in the community where the police can effect meaningful change for better outcomes.

DIVERSITY

We engage in continuous learning about different cultures, values and people. We promote mutual acceptance and inclusion of all.

Code of Conduct

7. Equal Protection

Members of the Department shall act to preserve the rights of all. Any intentional acts (by commission or omission) based solely upon an individual's membership, association, identification or protected class is a violation of equal protection and prohibited by federal, state and City of Madison law. Furthermore, such activity is contrary to the MPD Mission Statement and our Core Values and only serves to undermine trust with the community we have pledged to serve.

This policy is also intended to prohibit employees from being involved in enforcement decisions, follow-up investigations, assisting in prosecutions or any other law enforcement functions that involve a family member, relative, friend, or important relationship. The purpose of this regulation is to prevent even the appearance of bias on the part of the employee.

9. Harassment

Any employee who engages in harassment on the basis of race, sex, religion, color, age, handicap, national origin, or sexual orientation; or who permits employees under his/her supervision to engage in such harassment; or who retaliates or permits retaliation against an employee who reports such harassment is guilty of misconduct. (See related APM 3-5.)

Supervisors are required to report to the Chief of Police all instances of harassment whereupon he (or his designee) is responsible for immediately notifying the Department of Civil Rights of the reported instance of harassment.

Complaints of harassment will be examined impartially and resolved promptly within the structure of the Department's complaint policy and City Ordinance 3-23.

10. Courtesy, Respect and Professional Conduct

Members of the Department shall be courteous and respectful to the public and co-workers. Our encounters should be predicated upon civility and the appropriate use of an officer's discretion based upon the totality of the circumstances. Members of MPD should avoid abusive, profane language or gestures and actions that bring disrespect upon the Department or members of the community. This includes unreasonable orders, or warnings not within the lawful scope of the member's authority.

ADMINISTRATIVE PROCEDURE MEMORANDUM (APM)

APM NO. 2-33

SUBJECT: RULES OF CONDUCT

Purpose: To ensure orderly and efficient operations and to provide the best possible work environment, the City of Madison requires employees to follow rules of conduct that will protect the interests and safety of all clients, co-workers, and members of the general public.

Policy: Committing any of the acts on the list below may be sufficient grounds for disciplinary action ranging from reprimand to immediate discharge, depending upon the seriousness of the offense and/or the number of infractions.

Unacceptable Conduct:

- A. General
 - 1. Discourteous or abusive behavior toward a client, co-worker, or member of the general public.

- C. Personal Actions and Appearance
 - 1. Engaging in unruly, abusive, violent, bullying, or other threatening or intimidating behavior or language during work hours or while on the work premises, as prohibited by APM 2-25.
 - 3. Knowingly making any false or malicious statement concerning any client coworker, or member of the general public.

 - 7. Harassment or discrimination on the basis of a person's race, sex (gender), religion, creed, color, age, disability/handicap, marital status, HIV status, source of

income, familial status, ancestry or national origin, sexual orientation, arrest record, conviction record, current or past military service, less than honorable discharge, use or non-use of lawful products off the employer's premises during non-work hours (notwithstanding the exceptions noted in Sec. 111.35, Wis. Stats.), physical appearance, political beliefs, or the fact that a person is a student, as prohibited by APM 3-5.

APM NO. 3-5

SUBJECT: PROHIBITED HARASSMENT AND/OR DISCRIMINATION POLICY

The City of Madison is committed to providing equal employment opportunities for all persons and to providing a work environment free from harassment and discrimination. The goal is to achieve and maintain a respectful and welcoming workplace for all members of the community. To that end, this policy will be liberally construed and strictly enforced so as to achieve these goals. Harassment, discrimination and retaliation are prohibited conduct and violations of this policy will not be tolerated.

This policy applies to the delivery of City services/goods and to the official interactions of City employees with other members of our community. This policy also applies to conduct that occurs at the workplace and at any location that can be reasonably regarded as an extension of the workplace.

Managerial and supervisory employees are expected to serve as role models and to demonstrate their commitment to this policy in their everyday conduct. Any such employee who fails to take appropriate action upon observing an act prohibited by this policy, or who fails to take appropriate action upon receiving a complaint of a violation of this policy, is guilty of misconduct. Managerial employees are required to promptly notify their Department/Division Head, in writing, of all instances of known, observed and/or reported discrimination, harassment and/or retaliation.

All employees are required to cooperate fully with any investigation into alleged violations of this APM. Although a pattern of conduct is usually required for purposes of civil liability, the City does not condone any act of harassment, discrimination or retaliation. Engaging in any such prohibited conduct could result in disciplinary action being taken against the offender, up to and including discharge from City employment.

Definitions

"Harassment" includes verbal abuse, epithets, and vulgar or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures and telling of offensive jokes motivated by a person's membership in a protected class. The behavior can be any of the three following subcategories: "quid pro quo" the request for sexual favors in exchange for some other favorable employment action or in exchange for the promise to refrain from taking negative employment action; "hostile environment" coworker to coworker behavior composed of abusive and degrading conduct directed against a protected class member that is sufficient to interfere with their work or create an offensive and hostile work environment, and finally, "respondeat superior" which occurs whenever a Department/Division Head, manager or supervisor, engages in any act of harassment. Harassment becomes a violation of this policy whenever an employee engages in any of the activities described above or in any similar behavior based upon a person's membership in a protected class.

"Protected Class" means a person's race, sex (gender), religion, creed, color, age, disability/handicap, marital status, HIV status, source of income, familial status, ancestry or national origin, sexual orientation, arrest record, conviction record, current or past military service, less than honorable discharge, use or non-use of lawful products off the employer's

premises during non-work hours (notwithstanding the exceptions noted in Sec. 111.35, Wis. Stats.), physical appearance, political beliefs, or the fact that a person is a student.

“Retaliation” is any adverse employment action and/or any adverse action to include any act of revenge, reprisal, intimidation or coercion directed at an employee and motivated by the belief that the employee has either opposed a violation of this policy, has filed a complaint under this policy, has participated in an investigation of a complaint filed under this policy, or has exercised any other right under this policy.

CITY OF MADISON POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

General Duties and Expectations of Employees

Purpose

The purpose of this Standard Operating Procedure (SOP) is to provide general expectations as to the duties and responsibilities of all employees of the Madison Police Department (MPD). This document does not encompass all aspects of an employee’s specific job description.

Procedure

EXPECTATIONS FOR ALL PERSONNEL

- Actively support the Mission and Core Values of the MPD.
- Know, understand and comply with provisions of the Code of Conduct, SOPs, Field Manual, and departmental memorandums.
- Work to build functional cultural norms that are consistent with departmental values to help build a strong work environment. Respectfully challenge those behaviors, systems, or processes whose influence is contrary to this goal.
- Be accountable to your chain of command or supervision.

II. CHARGES

FACTS:

On, March 7th, 2015 at around 2am, outside of my daughters home located at -----. I told Chief Koval in person that I’m a vet with PTSD and this and the police had my PTSD jumping, that I did not trust him and no he was not going into my daughter’s house. Michael Johnson and my partner, Beris Taki were there and heard this conversation.

On June 7th, 2016, at a Madison City Council Meeting outside of Council chambers in the Madison City County Building - Chief Koval twice called me a ***raging lunatic*** as I attempted to ask him questions.

I had been standing in the hallway outside of Council Chambers. I was with my friend Shadayra (Shady) Kilfoy-Flores. Chief Koval was standing in the hallway with his supporters. A woman was upset about not having more time to speak. I calmly initiated a conversation with Chief Koval. The following is the exchange between me and Chief Koval that occurred in a hallway between the first floor and the basement to the best of my recollection:

I said calmly to Chief Koval: *Where's the clarity? You admitted there was no investigation, you just took his word for it.*

Chief Koval responded: *I'm not talking to you!*

I responded: *Why? I just want the truth.*

A man (one of Koval's supporters) higher up on the stairs loudly asked, *"Why don't you make an appointment with him?"*

Chief Koval yelled *"I'm NOT meeting w her, she's a raging lunatic!"*

I said to Chief Koval (regarding MPD's transcription of a recorded statement from Matt Kenny): *Why didn't your people transcribe his statement right?*

Chief Koval responded in a quiet snarl: ***"You're a raging lunatic."***

And I said *"You know I'm not. You know I'm telling the truth."*

and then Chief Koval yelled *"Are you going to follow me in here?"* (into his gated office area - he was standing next to the locked door for that area)

He squared off toward me and his hand started moving towards his hip, where his gun was.

I said calmly: *I will if I can. I want the truth.*

Witnesses I have names for: Shadyra Kilfoy-Flores, Erika Bach.

Two other individuals (a civilian and an officer), whom I don't have names for, witnessed at least part of this interaction.

I was shaken, upset, wanted to cry. This triggered some hellish memories for me.

I then left the building and then came back in to speak to the Common Council.

During my testimony to the Common Council, as I spoke, I went over the allotted time limit.

Chief Koval then loudly pounded the table three times with his hand, in apparent frustration with my exceeding the time limit. Witnesses to this action include Common Council members and members of the public, and there is video of the proceedings.

June 7th Common Council meeting video is available from cityofmadison.com here:

<http://media.cityofmadison.com/Mediasite/Play/7e04e927eec2414ea5e3bc0899d571a51d?catalog=f6706bc9-c8ac-4d8d-83cc-5f6495e2c318>

My testimony starts at approximately 2:40:10. Chief Koval pounds the table at approximately 2:43:45.

Chief Koval striking the table was noted in several media reports. For example:

Article from Isthmus newspaper:

<http://isthmus.com/opinion/opinion/madison-police-chief-koval-broke-department-rules/>

Excerpt: *"Koval was combative, sarcastic and belligerent. He regarded the alders with open disdain, rolling his eyes and striking a table. He threatened to walk out. Several alders, who as a group showed far more character and restraint than Koval, actually cried."*

Article from the Wisconsin State Journal newspaper:

http://host.madison.com/ws/opinion/editorial/chief-koval-right-on-substance-not-style/article_86cb7bd2-c0cb-5987-87e3-e6da31f28a5b.html

Excerpt: *"Koval continued to spar with aldermen at Tuesday's City Council meeting, nearly walking out at one point, rolling his eyes at council members' comments and striking a table in frustration."*

SUMMARY OF VIOLATIONS

Incident A - Chief Koval repeatedly called me a “raging lunatic” in public with knowledge of my medically diagnosed PTSD mental health condition.

Incident B - While giving my testimony before the Common Council, in apparent frustration that I exceeded the time limit, Chief Koval loudly pounded the table with his hand.

A. MPD CODE OF CONDUCT: INTRODUCTION

“police conduct must be above reproach and held to high standards of professional behavior. When police conduct is found to be lacking, criticism is deservedly more warranted given the fiduciary relationship of trust established with the community. If community trust is lost, support and respect is diminished, as is the efficacy of police operations.

Our Code of Conduct and Core Values define us and directs our behavior; thus they require strict adherence.”

Count 1

Incident A - unprofessional behavior, poor example for employees, loss of community trust

Count 2

Incident B - unprofessional behavior, poor example for employees, loss of community trust

“Members are responsible for adhering to the contents of the Mission, Core Values, Code of Conduct and Standard Operating Procedures. In addition, all City of Madison employees are expected to comply with the provisions of the Administrative Procedural Memorandums (APM) of the City.”

Count 3

Incident A - display of disregard for the rules

Count 4

Incident B - display of disregard for the rules

B. MPD CODE OF CONDUCT: MISSION

“We, the members of the Madison Police Department, are committed to providing high quality police services that are accessible to all members of the community. We believe in the dignity of all people and respect individual and constitutional rights in fulfilling this mission.”

Count 5

Incident A - show of lack of dignity and respect for member of the public.

Count 6

Incident B - lack of dignity and respect

C. MPD CODE OF CONDUCT: CORE VALUES

INTEGRITY *"We are committed to performing our work with the highest degree of honesty, integrity and professionalism."*

Count 7

Incident A - unprofessional conduct, lack of integrity

Count 8

Incident B - unprofessional conduct

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

Count 9

Incident A - lack of dignity, disrespectful and unfair.

Count 10

Incident B - lack of dignity, disrespectful and unfair.

SERVICE *"We strive to deliver exceptional service in an unbiased manner."*

Count 11

Incident A - an act of biased and poor service

Count 12

Incident B - an act of biased and poor service

COMMUNITY PARTNERSHIP *"We believe that the police can only be successful in improving safety and the quality of life the community enjoys when police and community members work collaboratively to address issues of mutual concern."*

Count 13

Incident A - damage to trust and limits possibility for collaboration

Count 14

Incident B - damage to trust and limits possibility for collaboration

PROFICIENCY AND CONTINUOUS IMPROVEMENT *"We are accountable to the public and ourselves for the quality of our service. We strive for proficiency in all facets of our work. We seek to continually improve ourselves and those systems in our midst and those in the community where the police can effect meaningful change for better outcomes."*

Count 15

Incident A - no accountability for violation, disregard for a meaningful outcomes

Count 16

Incident B - no accountability for violation, disregard for a meaningful outcomes

DIVERSITY “We engage in continuous learning about different cultures, *values and people*. We promote mutual acceptance and inclusion of all.”

Count 17

Incident A - disregard for my values and me, unaccepting and exclusionary

Count 18

Incident B - disregard for my values and me, unaccepting and exclusionary

D. MPD CODE OF CONDUCT

#7 Equal Protection

“Members of the Department shall act to preserve the rights of all. Any intentional acts (by commission or omission) based solely upon an individual’s membership, association, identification or protected class is a violation of equal protection and prohibited by federal, state and City of Madison law. Furthermore, such activity is contrary to the MPD Mission Statement and our Core Values and only serves to undermine trust with the community we have pledged to serve.”

Count 19

Incident A - Chief Koval targeted me because of my disability and association with my grandson

#9 Harassment

“Any employee who engages in harassment on the basis of race, sex, religion, color, age, handicap, national origin, or sexual orientation; or who permits employees under his/her supervision to engage in such harassment; or who retaliates or permits retaliation against an employee who reports such harassment is guilty of misconduct.

Complaints of harassment will be examined impartially and resolved promptly within the structure of the Department’s complaint policy and City Ordinance 3-23.”

Count 20

Incident A - called me a name associated with my handicap in a retaliative manner

#10 Courtesy, Respect and Professional Conduct

“Members of the Department shall be courteous and respectful to the public and co-workers. Our encounters should be predicated upon civility and the appropriate use of an officer’s discretion based upon the totality of the circumstances. Members of MPD should avoid abusive, profane language or gestures and actions that bring disrespect upon the Department or members of the community. This includes unreasonable orders, or warnings not within the lawful scope of the member’s authority.”

Count 21

Incident A - lack of courtesy, disrespectful, uncivil

Count 22

Incident B - lack of courtesy, disrespectful, uncivil

E. ADMINISTRATIVE PROCEDURAL MEMOS

APM 2-33 / Subject: Rules of Conduct

Purpose: To ensure orderly and efficient operations and to provide the best possible work environment, the City of Madison requires employees to follow rules of conduct that will protect the interests and safety of all clients, co-workers, and members of the general public.

Policy: Committing any of the acts on the list below may be sufficient grounds for disciplinary action ranging from reprimand to immediate discharge, depending upon the seriousness of the offense and/or the number of infractions.

Unacceptable Conduct:

A. General

1. *Discourteous or abusive behavior toward a client, co-worker, or member of the general public."*

Count 23

Incident A - discourteous and verbally abusive

Count 24

Incident B - discourteous and verbally abusive

C. Personal Actions and Appearance

1. *Engaging in unruly, abusive, violent, bullying, or other threatening or intimidating behavior or language during work hours or while on the work premises, as prohibited by APM 2-25*

Count 25

Incident A - Engaged in unruly, abusive, violent, bullying, threatening and intimidating behavior and language during work hours and while on the work premises

Count 26

Incident B - Engaged in unruly, abusive, violent, bullying, threatening and intimidating behavior and language during work hours and while on the work premises

3. *Knowingly making any false or malicious statement concerning any client coworker, or member of the general public.*

Count 27

Incident A - made a false and malicious statement towards a member of the general public.

7. *Harassment or discrimination on the basis of a person's race, sex (gender), religion, creed, color, age, disability/handicap, marital status, HIV status, source of income, familial status, ancestry or national origin, sexual orientation, arrest record, conviction*

record, current or past military service, less than honorable discharge, use or non-use of lawful products off the employer's premises during non-work hours (notwithstanding the exceptions noted in Sec. 111.35, Wis. Stats.), physical appearance, political beliefs, or the fact that a person is a student, as prohibited by APM 3-5.

Count 28

Incident A - Verbal harassment based upon my mental health disability

APM 3-5 / Subject: Prohibited Harassment And/Or Discrimination Policy

"The City of Madison is committed to providing equal employment opportunities for all persons and to providing a work environment free from harassment and discrimination. *The goal is to achieve and maintain a respectful and welcoming workplace for all members of the community. To that end, this policy will be liberally construed and strictly enforced so as to achieve these goals. Harassment, discrimination and retaliation are prohibited conduct and violations of this policy will not be tolerated.*

This policy applies to the delivery of City services/goods and to the official interactions of City employees with other members of our community. This policy also applies to conduct that occurs at the workplace and at any location that can be reasonably regarded as an extension of the workplace."

Definitions

"Harassment" includes verbal abuse, epithets, and vulgar or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures and telling of offensive jokes motivated by a person's membership in a protected class. The behavior can be any of the three following subcategories: "quid pro quo" the request for sexual favors in exchange for some other favorable employment action or in exchange for the promise to refrain from taking negative employment action; "hostile environment" coworker to coworker behavior composed of abusive and degrading conduct directed against a protected class member that is sufficient to interfere with their work or create an offensive and hostile work environment, and finally, "respondeat superior" which occurs whenever a Department/Division Head, manager or supervisor, engages in any act of harassment. Harassment becomes a violation of this policy whenever an employee engages in any of the activities described above or in any similar behavior based upon a person's membership in a protected class.

Count 29

Incident A - harassment based on handicap and familial status and association

F. MPD STANDARD OPERATING PROCEDURES

General Duties and Expectations of Employees

Procedure: EXPECTATIONS FOR ALL PERSONNEL

"Actively support the Mission and Core Values of the MPD."

Count 30

Incident A - violation of mission and core values

Count 31

Incident B - violation of mission and core values

“Know, understand and comply with provisions of the Code of Conduct, SOPs, Field Manual, and departmental memorandums.”

Count 32

Incident A - willfully violated with impunity, Code of Conduct, SOPs, and APMs

Count 33

Incident B - willfully violated with impunity, Code of Conduct, SOPs, and APMs

“Work to build functional cultural norms that are consistent with departmental values to help build a strong work environment. Respectfully challenge those behaviors, systems, or processes whose influence is contrary to this goal.”

Count 34

Incident A - behavior promotes unhealthy and dysfunctional cultural norms that are inconsistent with departmental values and contribute to a dysfunctional working environment. He did not hold himself accountable which is contrary to the goal of this policy

Count 35

Incident B - behavior promotes unhealthy and dysfunctional cultural norms that are inconsistent with departmental values and contribute to a dysfunctional working environment. He did not hold himself accountable which is contrary to the goal of this policy

“Be accountable to your chain of command or supervision.”

Count 36

Incident A - unaccountable to the APMs of the City of Madison

Count 37

Incident B - unaccountable to the APMs of the City of Madison