

Jim Webber | Training - Consulting - Investigations

218 Main Street | PMB 304
Kirkland | Washington | 98033
206.601.9242 | jim.webber@comcast.net
www.jimwebber.net

January 3, 2012

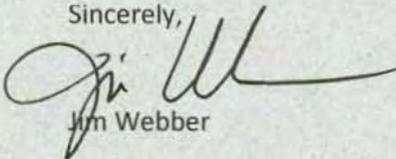
Mr. Mark Bucklin
Keating Bucklin & McCormick
800 5th Ave., Suite 4141
Seattle, WA 98104-3175

Re: Edmonds/Cole Investigation

Dear Mark:

My final report is enclosed. If I can be of any additional assistance, please do not hesitate to ask.

Sincerely,



Jim Webber

Enc.

JAN - 5 2012

Investigation Report

Complainant's Employer: City of Edmonds

Complainant: Kim Cole

Subject: Debi Humann and others

Investigator: Jim Webber

Client: Mark Bucklin (Keating Bucklin and McCormack) on behalf of the City of Edmonds

Date of Report: November 29, 2011

Scope of Investigation

Mark Bucklin of Keating Bucklin and McCormack engaged me to conduct an independent investigation of Kim Cole's allegations of a hostile work environment and harassment to assist Mr. Bucklin in his role of legal advisor to the City on these issues. Ms. Cole was the Mayor's Executive Assistant and is on paid administrative leave while this investigation is in progress.

Ms. Cole asserts that she was subjected to harassment and a hostile work environment based on the following:¹

1. Debi Humann, the City's Human Resources Director at the time, allegedly told Mayor Cooper (Ms. Cole's direct supervisor) and others that Ms. Cole was not working forty hours a week or was "never working", but was still getting paid for forty hours.
2. City employees other than her supervisor allegedly monitored her time.
3. Ms. Humann allegedly told others that Ms. Cole was forging time sheets.
4. Ms. Humann allegedly talked to other employees about a protective order that Ms. Cole had obtained against an ex-partner, including comments about its possible relation to a car accident, the ex-partner's appearance and the ex-partner's nationality.
5. Ms. Humann allegedly asked legal counsel if Ms. Cole could be terminated if Mayor Cooper did not win re-election.
6. Ms. Humann allegedly told other City employees that there may be an "inappropriate personal relationship" between Mayor Cooper and Ms. Cole.
7. Mayor Cooper allegedly denied time off when Ms. Cole needed it and discouraged her from making doctor appointments.

¹ Ms. Cole primarily attributes the hostile and harassing behavior to Debi Humann, the City's former Human Resources Manager (DIRECTOR?). However, she stated during her interview that she suspects other City employees of also participating in inappropriate conduct that created a hostile and harassing work environment.

8. Ms. Humann allegedly interrupted Ms. Cole's review of her personnel file with Mayor Cooper and then left the conference room door open even though Ms. Cole had her file open.
9. When Ms. Cole was completing her new hire paperwork, Ms. Humann allegedly revealed another employee's sexual orientation to Ms. Cole, talked about on-line dating and other personal matters, and said she had heard read stories about Ms. Cole's relationship with Mayor Cooper while they were working at the County.
10. When Mayor Cooper wanted to complete paperwork to allow Ms. Cole to take vacation time before she was entitled to it under City policy, Ms. Humann allegedly told him how to get the absence approved, but added "If I may opine, this could cause trouble with attendance problems."
11. Someone (or multiple people) allegedly went through things on Ms. Cole's desk when she was not there and may have "bugged" her office.
12. Ms. Cole received hang up calls
13. Mayor Cooper allegedly failed to take action about Ms. Cole's harassment concerns
14. Ms. Cole asserts that she was subjected to hostility or harassment due to her disability/medical condition or her gender.

During the course of my investigation, I interviewed the following individuals:

- Kim Cole
- Debi Humann
- Sharon Cates
- Francis Chapin
- Sandy Chase
- Stephen Clifton
- Al Compaan
- Michael Cooper
- Cindy Cruz
- Gail Donnelly
- Adrienne Fraley-Monillas
- Gerry Gannon
- Mary Ann Hardie
- Jim Lawless
- Carl Nelson
- Huda Olsen
- Jana Spellman
- Jim Tarte
- Phil Williams
- D.J. Wilson

I also received and reviewed the following documents:

- City of Edmonds job description for Executive Assistant to the Mayor
- Job Announcement (closing 7/30/10) for Executive Assistant to the Mayor
- Title 2 of the Edmonds City Code (City Officials and Personnel)
- City of Edmonds Personnel Policies (2002)
- Email from Stephen Clifton to K. Cole dated June 20, 2011 (regarding Government Channel Announcement)
- Email from Jana Spellman to M. Cooper and K. Cole dated June 15, 2011 (regarding EDC Applications)
- Email from Mary Ann Hardie to M. Cooper and K. Cole dated May 27, 2011 (regarding Robert Dionne – Meeting Request)
- Email from Stephen Clifton to M. Cooper dated May 13, 2011 (regarding Someone to see Mayor)
- Email from Stephen Clifton to M. Cooper dated March 21, 2011 (regarding Floretum Garden Club and Carl Zapora)
- City of Edmonds job description for Director-Community Services

I also received and read many local news articles about Ms. Cole and Ms. Humann's recent experiences with the City of Edmonds. Some were suggested to me by various witnesses; some were provided to me by Ms. Cole's counsel. I considered these articles for background purposes, but did not make any factual conclusions based on them.

Allegations and Conclusions

Allegation No. 1:

- Debi Humann, the City's Human Resources Director at the time, allegedly told Mayor Cooper (Ms. Cole's direct supervisor) and others that Ms. Cole was not working forty hours a week or was "never working", but was still getting paid for forty hours.

Conclusion:

I conclude that Ms. Humann expressed concerns to Mayor Cooper about Ms. Cole's attendance and time sheets. As the City's Human Resources Director, Ms. Humann had a legitimate basis for expressing these concerns to Mayor Cooper and her actions do not constitute harassment or hostility toward Ms. Cole. There is no evidence other than Ms. Cole's accusation (based on alleged conversations which Ms. Cole did not personally hear) that Ms. Humann told Mayor Cooper or anyone else that Ms. Cole was

"never working". Multiple witnesses told me that people said it seemed as if Ms. Cole was frequently absent and they wondered why she was getting full pay², but they never heard this from Ms. Humann. Other than Mayor Cooper and Ms. Cole, none of the witnesses indicated that Ms. Humann had initiated conversations about Ms. Cole's attendance or schedule.

Facts Found:

No one disputes that Ms. Cole did not regularly work 40-hours per week while at her desk or in the office. She contends that she worked forty hours, but often worked at home or away from the office handling special projects at the Mayor's request. Mayor Cooper stated that he approved Ms. Cole's "non-traditional" schedule. He explained that Ms. Cole needed an alternate schedule in part because she had a difficult time arriving at work in the morning due to parental obligations. He also gave Ms. Cole time off during some afternoons for medical appointments and says he did so to accommodate Ms. Cole's disability.³ Mayor Cooper admits that he did not tell the Human Resources Department or any other City officials about Ms. Cole's accommodation or alternate schedule. He explains that he implemented these arrangements as Ms. Cole's direct supervisor and under his mayoral powers. Based on the undisputed facts and Mayor Cooper's statements, it is clear that no one at the City other than Mayor Cooper and Ms. Cole were aware of the purported alternate schedule and leave accommodations. This includes Ms. Humann, who stated that she did not know about Ms. Cole's medical condition until after her own termination when she read about the condition in the newspaper.

Both Mayor Cooper and Ms. Cole told me that they addressed what her schedule would be at the City before she accepted her position as Mayor Cooper's Executive Assistant.⁴ Both individuals said that they intended for Ms. Cole to work 40 hours per week but not on a fixed schedule. Ms. Cole acknowledges that Mayor Cooper told her she would have to be at the office more in Edmonds than she had been while working at the County. According to Mayor Cooper and Ms. Cole, they decided she would work on weekends to make up time missed during the week. They also decided that she would usually arrive around or after 9:00 a.m. instead of the City administration's usual 8:00 a.m. starting time due to child care issues.

Almost every witness expressed personal knowledge of the fact that Ms. Cole was often not at her desk. The witnesses made these statements based on personal observations and experiences while trying to reach the Mayor's office during normal operating hours. Many of the witnesses stated that they expressed their concerns and frustrations to Ms. Humann, but no one said that they learned about Ms. Cole's attendance issues from Ms. Humann or that Ms. Humann made negative comments to them about Ms. Cole's work schedule. Every witness denied hearing Ms. Humann make any comments that would imply that Ms. Cole was getting paid for more time than she had worked. I conclude that Ms. Humann spoke with Mayor Cooper about Ms. Cole's working hours due to the concerns expressed to her by others and also based upon her own observations.

² Several individuals stated that they had expressed such concerns to Ms. Humann.

³ The nature of Ms. Cole's condition is not relevant to this discussion and therefore, in the interest of Ms. Cole's privacy, I will not provide details about her condition in this report.

⁴ Ms. Cole and Mayor Cooper worked together for the Snohomish County Council shortly before joining the City of Edmonds.

According to the current job description for Ms. Cole's position as the Mayor's Executive Assistant⁵, her basic duties were:

"Under the direction of the Mayor, perform a variety of professional, clerical and administrative support duties to assist the Mayor with various aspects of directing, coordinating and facilitating City projects, programs and policies; coordinate and perform liaison duties between the Mayor, City Council, elected agency officials, governmental agencies and the community."

The same job description provides the following as some of Ms. Cole's representative duties:

- Serve as primary administrative contact between the Mayor and Elected Officials, Agency officials and the general public
- Perform various clerical duties including: answering telephones and greeting visitors; provide information in person or on the telephone or refer to appropriate personnel; open screen and route mail
- Act as a key contact for rental of conference rooms including: scheduling and required completion of contracts and receipt of payment for room rentals

The information contained in the job description leads me to conclude that Ms. Humann and others were reasonably concerned about Ms. Cole's hours of work because her absences from the office during regular City hours had a detrimental impact on her ability to "serve as primary administrative contact", "perform liaison duties between the Mayor, City Council, elected agency officials, governmental agencies and the community", "answer[] telephones and greet[] visitors" and "[a]ct as a key contact".⁶ I reach this conclusion because it would be impossible for someone to perform these duties without being physically present in the office.

Ms. Humann, Ms. Hardie (the City's current Human Resources manager) and Mayor Cooper agree that the mayor did not involve (or inform) Human Resources about Ms. Cole's purported accommodation or to formalize an alternate/flexible schedule. According to Ms. Humann, she was not aware that any part of Ms. Cole's absences might be attributed to a disability accommodation until she read about it in the local newspaper after her own termination. Ms. Hardie states she was not aware of an alleged accommodation until the information was published. Both witnesses also stated that it is the City's long-standing policy and practice that the Human Resources Department coordinates all employee accommodations and alternate schedules. Ms. Humann believes Mayor Cooper had to be aware of this

⁵ Edmonds City Code Section 2.10.070 provides that the terms and conditions of the Mayor's Executive Assistant position is at the concurrence of the city council. Mayor Cooper took no steps with the council to revise or modify the duties during Ms. Cole's tenure.

⁶ This should not be interpreted as any sort of criticism of Ms. Cole personally. Her direct supervisor, Mayor Cooper, stated that he had no concerns about her hours. She was performing work in a manner approved by her boss, even though her hours made it unlikely if not impossible that she would be able to fulfill all of the regular duties of the position.

policy because she and he discussed Labor and Industries matters, medical leaves and employee accommodation updates during their regular meetings.

Ms. Humann freely admits that she expressed concerns on multiple occasions to Mayor Cooper about Ms. Cole's attendance and time records. She explains that she did so because of numerous complaints and concerns communicated to her from City employees who had difficulty reaching Ms. Cole or the Mayor, or who passed on complaints they had received from members of the public about Ms. Cole's availability. She also expressed concerns when she was aware that Ms. Cole had been absent from the office for extended periods, but Ms. Cole's time sheets did not reflect the absence.

Based on Ms. Humann's role as Human Resources Director, I conclude that she had a legitimate interest in Ms. Cole's attendance, especially when many employees had expressed significant concerns about her attendance. I conclude not only that it was appropriate (and therefore neither harassing nor hostile) for Ms. Humann to express the concerns to Mayor Cooper, but also that Ms. Humann would have been remiss in her duties had she failed to do so.

Allegation No. 2:

- City employees other than Ms. Cole's supervisor allegedly monitored her time.

Conclusion:

I conclude that one City representative who was not Ms. Cole's regular supervisor monitored her time on some days. However, I also conclude that this does not constitute harassment or create a hostile work environment because the City representative had a legitimate business interest in Ms. Cole's attendance.

Facts Found:

Ms. Cole alleges that starting in early 2011, she began to suspect that other employees were monitoring her time at work. She says that this created a hostile environment for her because the people monitoring her were not her supervisor and it was not their business if she worked an alternate schedule on some days. Ms. Cole asserts that Ms. Humann was one of these people, but she also suspects Mary Ann Hardie and Stephen Clifton of monitoring her time. Ms. Cole asserts that Mr. Clifton started to say "Good morning" really loud as if her were signaling others on the floor that Ms. Cole had arrived. Ms. Cole also said that Ms. Hardie seemed to check Ms. Cole's office at the end of each day as if she wanted to see if Ms. Cole was present.

Ms. Humann and Ms. Hardie credibly deny monitoring Ms. Cole's hours although both individuals stated that they noticed that Ms. Cole often did not work a regular schedule. (This is consistent with the other witnesses, most of whom described personal observations that Ms. Cole was often not at her desk for some reason.) Ms. Cole merely suspects Ms. Humann and Ms. Hardie but lacks any specific evidence or other proof indicating that they were engaged in the alleged conduct. Therefore, with respect to these two individuals, I conclude that the allegation is unfounded.

Mr. Clifton (the City's Community Services/Development Services Director) stated during his interview with me that he sometimes recorded the times of Ms. Cole's arrivals and departures on his desk

calendar⁷. He explained that it was obvious to him that Ms. Cole was often not at work and he was concerned about the effects of her absence on the City's operations because other employees had to field calls to the Mayor's office or handle citizen and employee concerns that were directed to the Mayor's office. Under City policy, Mr. Clifton serves as Edmonds' "Administrative Mayor". This means that he is responsible for handling press calls and other mayoral functions when the Mayor is absent. Mr. Clifton explained that because he would be the person responsible for calls to the Mayor's office when he performed the Administrative Mayor function, he wanted to have a good understanding of Ms. Cole's attendance patterns. Also, he explained that he had heard a number of concerns directly from City employees and citizens about Ms. Cole's absence from her desk during the City administration's normal operating hours. He wanted to have specific facts about her usual arrival and departure times before addressing the concerns with Mayor Cooper in detail.

I conclude that Mr. Clifton had a legitimate interest in Ms. Cooper's schedule due to his position as Community Services/Development Services Director (pertaining to citizen concerns) and his role as Administrative Mayor (pertaining to his potential temporary role as Ms. Cole's supervisor). There is no evidence that Mr. Clifton misused the time documentation in any way or that he used it for any purpose other than to gather specific information that he could use if he determined that the matter needed to be addressed with Mayor Cooper. For these reasons, the allegations as they pertain to Mr. Clifton are also not sustained.

Allegation No. 3:

- Ms. Humann allegedly told others that Ms. Cole was forging time sheets.

Conclusion:

This allegation is unfounded.

Facts Found:

According to Ms. Cole, based solely on information provided to her by Mayor Cooper, Ms. Humann told the City's Interim Finance Director (Jim Tarte) that Ms. Cole had forged some of her timesheets. Mayor Cooper stated that he recalls telling Ms. Cole that Ms. Humann had expressed concerns to Mr. Tarte, but is not sure whether or not he said that Mr. Tarte used the term "forged". Mr. Tarte states that Ms. Humann did not allege forgery when talking to him and he flatly denies using the term "forged" when he in turn talked to the mayor. Mr. Tarte explained that based on his accounting and business background, he knows "forged" has a specific and serious definition and he would not have used the term in a casual manner.

According to Mr. Tarte, Ms. Humann expressed concerns to him about timesheet accuracy but did not accuse anyone of falsifying the paperwork. Ms. Humann acknowledges that she had concerns on a few occasions when she knew Ms. Cole had been absent for vacation or some other type of leave. Ms. Humann stated that timesheet inaccuracies are a common problem and she informed Mr. Tarte about

⁷ Ms. Cole's counsel (James Spencer) provided me with a copy Mr. Clifton's time notations, which he and Ms. Cole obtained in response to a Public Disclosure Request. Neither Mr. Spencer nor Ms. Cole knew who had prepared the notations

Ms. Cole's time records in the same way as she would any other time she thought a timesheet might not be correct.

Based on the statements made to me by Mayor Cooper, Mr. Tarte and Ms. Humann, I conclude that Ms. Humann did not accuse Ms. Cole of forgery.

Allegation No. 4:

- Ms. Humann allegedly talked to other employees about a protective order that Ms. Cole had obtained against an ex-partner, including comments about its possible relation to a car accident, the ex-partner's appearance and the ex-partner's nationality.

Conclusion:

This allegation is unfounded.

Facts Found:

Ms. Cole alleges that Ms. Humann made inappropriate comments to other City employees about a restraining order Ms. Cole had obtained.⁸ According to Ms. Cole, Ms. Humann made the alleged statements to "one of the ladies at the front desk". The employees who work at the front desk deny hearing Ms. Humann make any such statement. Ms. Humann denies making the statements. Other City employees who were interviewed as part of this investigation stated that they never heard Ms. Humann talk about a restraining order in any way. For these reasons, I conclude that this allegation is unfounded.

Allegation No. 5:

- Ms. Humann allegedly asked legal counsel how Ms. Cole could be terminated if Mayor Cooper did not win re-election.

Conclusion:

This allegation can neither be sustained nor dismissed. However, I conclude that such questions to legal counsel would not suggest harassment or hostility on Ms. Humann's part.

Facts Found:

As Human Resources Director, Ms. Humann had a legitimate reason for seeking legal counsel about a variety of employment issues. If she did so, the attorney-client privilege would prevent counsel or Ms. Humann from sharing details with me absent a privilege waiver.⁹

Solely for purposes of this Report, I will assume that Ms. Humann did ask about the legalities of terminating Ms. Cole's employment if the Mayor were not re-elected. Such a question would be reasonable for a human resources director to ask. The mayor's executive assistant position is "at will"

⁸ Ms. Humann was aware of the restraining order due to her role as Human Resources Director and related safety precautions implemented by the City.

⁹ The City's advisor declined to waive the privilege when I asked to interview attorney Scott Snyder. I was able to interview another attorney (Ms. Cates), who did not request a waiver. I did not discuss legal advice between the City and its advisors when I interviewed Ms. Cates.

and serves at the pleasure of the Mayor. Edmonds City Code Section 2.10.070. It is understandable that the City's Human Resources Director would want to know the City's options prior to the mayoral election because a new mayor more likely than not would want to hire his or her own executive assistant. Merely asking the question does not necessarily mean that the Director was planning to take affirmative steps to remove Ms. Cole or that she was harassing her.

For these reasons, assuming Ms. Humann did seek legal advice about Ms. Cole's future employment status, I conclude that such actions would have been a legitimate exercise of the Human Resources Director's job duties.

Allegation No. 6:

- Ms. Humann allegedly told other City employees that there may be an "inappropriate personal relationship" between Mayor Cooper and Ms. Cole.

Conclusion:

This allegation is not sustained.

Facts Found:

Several employees told me that they wondered about the relationship between Ms. Cole and Mayor Cooper "on their own" due to the amount of her salary, her past working relationship with Mayor Cooper and her apparent ability to set her own schedule despite the inconvenience to other City departments and City residents. Without exception, all of the employees who I interviewed denied hearing Ms. Humann talk about the relationship between Ms. Cole and the mayor.

One non-employee told me that Ms. Humann commented on the possibility of an inappropriate relationship. This person was one of the City's legal advisors, Sharon Cates. Ms. Cates stated that Ms. Humann told her and other legal advisors that there may be concerns that Ms. Cole and the mayor were "too close." Ms. Cates stated that she initially believed this meant a physical affair, but upon reflection during her interview with me said she is "pretty sure" that Ms. Humann only said "inappropriate relationship" and "too close". She does not believe Ms. Humann specifically referred to an affair or physical relationship.

Ms. Humann told me that several employees told her that they thought Ms. Cole and Mayor Cooper were too close and that some seemed to wonder if they might be having an affair. Ms. Humann says although she let the mayor know that these comments were circulating, she never initiated any other conversations about it with City employees. While Ms. Humann does not specifically recall talking to the legal advisors about the relationship between the mayor and Ms. Cole, she told me that she may have relayed what she was hearing from other people to them.

I conclude that Ms. Humann may have informed legal advisors of the rumors and gossip that was reported to her, but she did not engage in gossiping or spreading such rumors. Her comments were limited to appropriate discussions with the City's legal advisors and with Mayor Cooper.

Allegation No. 7:

- Mayor Cooper allegedly denied time off when Ms. Cole needed it and discouraged her from making doctor appointments.

Conclusion:

This allegation is sustained in part and denied in part.

Facts Found:

Ms. Cole contends that when she first started working for the City, Mayor Cooper would not let her take time off for necessary medical appointments related to her alleged disability.¹⁰ According to her, the mayor told her they needed to wait before she started to take the time off because they were new to the City and needed to counter any negative rumors that might be circulating about Ms. Cole's attendance record while working for the Snohomish County Council.¹¹

Mayor Cooper admits telling Ms. Cole that she should try to schedule medical appointments during her lunch hour. He asserts that he never refused permission to attend a doctor appointment and Ms. Cole did not identify any time when she asked to take time off to see a doctor and the request was denied. He admits asking her to avoid taking time off when she first started at the City in part due to perceptions about her tenure at the County.

Based on information from all of the witnesses (including Ms. Cole and Mayor Cooper), I conclude that Ms. Cole reasonably believed that her direct supervisor did not want her to take time off during her first few months working at the City. It is more likely than not that he discouraged doctor appointments during these first few months¹². However, there is no evidence that Mayor Cooper denied a specific request for time off or that he implemented a blanket rule that Ms. Cole could not go to medical appointments.

At the same time, it is not disputed that within a few months of starting at the City, Mayor Cooper allowed Ms. Cole to work a very flexible schedule which included time off for medical appointments or other personal business.

Allegation No. 8:

- Ms. Humann allegedly interrupted Ms. Cole's review of her personnel file with Mayor Cooper and then left the conference room door open even though Ms. Cole had her file open.

¹⁰ I reach no findings as to the existence of a disability or medical condition that would be covered by applicable laws and regulations.

¹¹ While I do not reach any findings with respect to Ms. Cole's employment with the County, the fact that there were rumors and controversy about her attendance and salary were reported in the news and also described to me by Ms. Cole.

¹² I did not attempt to reach and do not mean to imply any conclusions as to whether or not Ms. Cole would have been entitled to time off for certain doctor appointments under applicable laws and regulations.

Conclusion:

This allegation is sustained, but I also conclude that under the circumstances that Ms. Humann's conduct was neither hostile nor harassing.

Facts Found:

Ms. Humann, Ms. Cole and Mayor Cooper agree that when Ms. Cole and Mayor Cooper were reviewing Ms. Cole's personnel file, Ms. Humann asked the mayor if he could step out of the conference room to talk while Ms. Cole continued her review. Ms. Humann and Mayor Cooper both told me that the interruption was reasonable; Ms. Cole says that she considered the action to be hostile or harassing. Based on the three individuals' consistent description of the file review and interruption, I conclude that Ms. Humann did not do anything rude or disrespectful toward Ms. Cole by asking to speak with the mayor. She merely leaned into the room and asked for a moment with him. Workplace meetings and conferences are interrupted all the time and there is no indication that Ms. Humann's interruption would have caused distress to a reasonable person.

Ms. Cole states she was concerned about Ms. Humann leaving the door open because she wanted privacy when looking at her file. If that were the case, all she needed to do was to get up and close the door herself. Mayor Cooper and Ms. Humann both recall that there was no one else in the area outside the conference room. They also are certain that even if someone happened to walk by, they would not have been able to read what Ms. Cole was reviewing without walking into the room and reading over her shoulder (which did not happen). I conclude that a reasonable person would not consider leaving the door open to be hostile or harassing under the circumstances.

Allegation No. 9:

- When Ms. Cole was completing her new hire paperwork, Ms. Humann allegedly revealed another employee's sexual orientation to Ms. Cole, talked about on-line dating and other personal matters, and said she had read stories about Ms. Cole's relationship with Mayor Cooper while they were working at the County.

Conclusion:

This allegation is sustained to the extent I conclude that during this meeting with Ms. Cole, Ms. Humann mentioned Ms. Cole's employment with the County, discussed personal matters about herself and inadvertently revealed a co-worker's sexual orientation. The allegation that Ms. Humann's comments were harassing or hostile under the circumstances is not sustained.

Facts Found:

According to Ms. Cole, when she met with Ms. Humann to complete her new hire paperwork, Ms. Humann told her that her "reputation at the County had preceded her". Ms. Cole said that this pertained to rumors about a close relationship between Ms. Cole and Mayor Cooper and also about her alleged attendance issues at the County. Ms. Cole describes the comment as "light-hearted" and says she did not get the impression that Ms. Humann cared about the "reputation".

Ms. Humann confirms that she did tell Ms. Cole that her reputation had preceded her, but says that this had nothing to do with a personal relationship. Ms. Humann had read local newspaper articles that

came out after Ms. Cole was hired to be Mayor Cooper's executive assistant. The articles addressed Ms. Cole's tenure at the County and Ms. Humann thought Ms. Cole should know about them in case she wanted to contact the press to respond. Ms. Humann stated that she did not make any judgments about Ms. Cole based on the articles because she had no idea what did or did not happen at the County. She agrees with Ms. Cole that the conversation was light. She also describes it as "friendly and welcoming". Ms. Humann contends that she was trying to make Ms. Cole feel welcome despite the negative publicity. Based on the parties' consistent statements, I conclude that mentioning the news article(s) was not an act of hostility.

Ms. Cole contends that Ms. Humann also discussed private personal information about herself during this orientation session. According to Ms. Cole, Ms. Humann talked about her divorce, on-line dating, the unofficial "dating committee" that helped her set up an on-line profile and her boyfriend's tattoos. She also told Ms. Cole that Edmonds police officers are attractive. Ms. Cole speculates that Ms. Humann brought up these topics because both women are single. Ms. Humann recalls that as she and Ms. Cole were completing the new hire paperwork, they joked about being single. In addition to what Ms. Cole recalled, Ms. Humann believes she told Ms. Cole that she had dated someone from her church and that it was difficult to find "good guys". She told me that she does not recall telling Ms. Cole that the Edmonds police officers are attractive but that she also thinks it is something she might have said. She explained that if she did make such a statement, it would have been made in a joking way. She does not remember mentioning tattoos. While I conclude that Ms. Humann discussed personal information about herself when meeting with Ms. Cole, I also conclude that she did not say anything that would offend a reasonable person.

Ms. Cole does not say that she was offended by Ms. Humann's comments; she describes the exchange as awkward, uncomfortable and an example of being "too open." These reactions were reasonable under the circumstances even though some people would not have felt uncomfortable. While this indicates that Ms. Humann's comments were not professional, there is no indication that her comments were hostile toward Ms. Cole. To the contrary, based on both parties' descriptions of the conversation I conclude that Ms. Humann was trying to make Ms. Cole feel welcome at the City.

Ms. Cole's other objection to Ms. Humann's comments during the orientation pertain to a co-worker. According to Ms. Cole, Ms. Humann revealed another employee's sexual orientation during the meeting by mentioning that the other employee had a "nice partner". Ms. Cole took this to mean that the other employee is gay because Ms. Humann did not say "nice wife." Ms. Cole describes this comment as harassing because it revealed very personal information about another person. Ms. Humann at first denied telling Ms. Cole about anyone's sexual orientation. When I asked if she told Ms. Cole about anyone's "partner", she replied that she probably did if Ms. Cole remembers such a comment. She explained that another employee on the third floor has a "great partner" who she "likes a lot". Ms. Humann says it is likely that she made a similar statement to Ms. Cole when she was telling her who else worked on the third floor where she would be stationed. Ms. Humann also explained that the other employee is "very open" at work and that she might easily have mentioned his partner without realizing this comment would "reveal" sexual orientation. The employee in question confirmed that he is "totally out [of the closet]" at work and that if anyone mentioned his partner to Ms. Cole, he would have no

objection at all. Ms. Cole, however, objects because she does not think anyone should disclose another person's sexual orientation.

I conclude that Ms. Humann did tell Ms. Cole that another employee had a "partner" and that this resulted in Ms. Cole learning of the employee's sexual orientation from someone other than himself. It is clear that Ms. Humann did not make the statement in a gossipy or demeaning manner. It is also clear that the employee whose personal information was shared does not consider the information to be a secret. I conclude that Ms. Humann's comment cannot be characterized as hostile or harassing toward Ms. Cole.

Allegation No. 10:

- When Mayor Cooper wanted to complete paperwork to allow Ms. Cole to take vacation time before she was entitled to it under City policy, Ms. Humann allegedly told him how to get the absence approved, but added "If I may opine, this could cause trouble with attendance problems."

Conclusion:

Ms. Humann admits that she made such a statement. However, I conclude that she was offering good human resources advice to Mayor Cooper and not creating a hostile or harassing work environment for Ms. Cole. Therefore, this allegation has no merit.

Facts Found:

No one disputes that Mayor Cooper authorized an early vacation for Ms. Cole (before she would have been entitled to vacation as a new employee under City policy). Ms. Cole and Mayor Cooper told me that they discussed this pre-planned vacation when Ms. Cole was hired. Mayor Cooper admits that he had not researched City policy about vacation time and assumed he had authority to grant it for Ms. Cole. However, under City policy, vacation time may not be used until after six months of employment. Newly hired employees are allowed to take early vacation, but this exception to the regular rule is supposed to be approved in writing at the time of hire.

Mayor Cooper confirms that Ms. Humann told him that Ms. Cole was not entitled to vacation time when he requested it for her during her first six months of employment. He also confirmed that Ms. Humann helped him complete the necessary paperwork to allow Ms. Cole to take the vacation time, although she cautioned him that the approval could create a precedence problem if other new employees wanted to take early vacation without formal authorization made at the time of hire. Ms. Humann does not recall her exact words, but recalls telling Mayor Cooper that he needed to take precedence into account whenever he made an exception to the regular personnel policies.

I conclude that Ms. Humann was offering standard human resources advice to Mayor Cooper by making this statement and was not doing anything that could reasonably be said to create a hostile or harassing work environment for anyone. In fact, Ms. Humann would have been remiss in her duties had she failed to remind Mayor Cooper about the effect of past practice on personnel decisions.

Allegation No. 11:

- Someone (or multiple people) allegedly went through things on Ms. Cole's desk when she was not there and may have "bugged" her office.

Conclusion:

This allegation is not sustained.

Facts Found:

Ms. Cole alleges that often when she arrived for work she could tell someone had been moving things around on her desk and/or going through the trash. She also began to suspect that her office was wiretapped or "bugged". Ms. Cole describes the wiretapping concerns as a suspicion; she was not able to articulate any specific information to show that someone was electronically eavesdropping on her workplace conversations or who might be doing such a thing. She reported her concerns to Mayor Cooper but not to anyone else.¹³ Mayor Cooper told me that he did not report suspected wiretapping to anyone. As of the date of my interview with Mayor Cooper (October 20, 2011), he had taken no steps to determine whether listening devices had actually been hidden in the offices.

Mayor Cooper told me, and other witnesses stated that he had told them as well, that he thought people might be gaining access to his office over the weekends because sometimes the doors were left unlocked. Other witnesses who work on the same floor as the Mayor's office stated that the custodian sometimes fails to lock up after he or she finishes maintenance duties. These witnesses reported that they often suspect items on their desks have been moved and they attribute this to the custodian's cleaning duties. I also note based on my own experiences working in office environments that it is common to believe items on one's desk may have been moved or handled during the night by cleaning staff.

This allegation is not sustained because Ms. Cole offered nothing more than suspicion and speculation about wiretapping. If Mayor Cooper had a serious concern about wiretapping he would have notified the police department or taken some sort of independent steps to determine whether or not listening devices were present. In addition, Ms. Cole had no information other than conjecture about who might be responsible for listening devices or handling items in her office.

Allegation No. 12:

- Ms. Cole alleges that she received hang up calls while at work.

Conclusion:

This allegation is sustained, but it is not possible to determine what person or persons made the calls or whether the calls were directed at Ms. Cole personally.

¹³ As noted earlier, Mayor Cooper was Ms. Cole's direct supervisor. I do not intend to imply that Ms. Cole should have reported her concerns to anyone else.

Facts Found:

Ms. Cole alleges and Mayor Cooper corroborates that their offices received a high number of hang up calls (several per week) during the summer of 2011 and at other times less frequently. Ms. Cole told Mayor Cooper about the calls but did not take any other action about them. Mayor Cooper did not notify the police department, human resources or any other City representative about the calls. Neither Ms. Cole nor Mayor Cooper could do more than speculate about who was making the calls or how many people might be making calls. Other witnesses stated that they have also received hang up calls at their office and that the calls seem to go in cycles.

Due to the lack of specific information that would indicate City representatives were making the hang up calls to Ms. Cole or causing the calls to be made, it is not possible to conclude that the calls were harassing or hostile toward Ms. Cole. Under the circumstances as presented by Ms. Cole and Mayor Cooper, the calls could have been made by juvenile pranksters, personal connections, irate citizens or simply people who realized they had called a wrong number.

Allegation No. 13:

Mayor Cooper allegedly failed to take action about Ms. Cole's harassment concerns.

Conclusion:

This allegation is sustained.

Facts Found:

Ms. Cole contends and Mayor Cooper confirms that she told him on "many occasions" that Ms. Humann was "harassing" her by focusing on her attendance, hours and time sheets. She bases her contention on the fact that she was classified as a "confidential exempt" employee and could work any schedule that had been approved by her direct supervisor (the mayor). She explained that she complied with Mayor Cooper's directives about her hours and he should have taken action to stop Ms. Humann from raising concerns about her hours and paychecks. Ms. Cole contends and Mayor Cooper confirms that she told him that Ms. Humann was creating a "hostile work environment". Ms. Cole stated that she did not report her concerns to anyone other than Mayor Cooper.

According to Ms. Cole, she first raised her claim of a hostile work environment with Mayor Cooper after her orientation session with Ms. Humann. Ms. Cole thought Ms. Humann had shared too much personal information. She explained that she probably did not use the phrase "hostile work environment", but she intended her comments to be a complaint that the mayor would address. Mayor Cooper recalls that Ms. Cole made negative comments to him about how Ms. Humann handled the orientation, but told me she never said that she had been offended or felt harassed. I conclude Ms. Cole made critical comments to Mayor Cooper about what Ms. Humann had said, but based on Ms. Cole's description of her comments, I also conclude her comments at that time only conveyed a negative impression about Ms. Humann's professionalism. They did not rise to a level of concern that would alert a prudent supervisor that there was a harassment claim.

Although Mayor Cooper agrees that Ms. Cole eventually told him that she felt she was being subjected to a hostile work environment, he contends that she did not tell him these concerns until early 2011

after she had returned from the early vacation, discussed as part of Allegation No. 10. While Ms. Cole could not recall specific times or circumstances when she raised “hostile work environment” or “harassment” concerns with the mayor, she believes she told him “throughout her entire employment with the City.” It is not possible to pinpoint the timing, but based on Mayor Cooper’s admission it is clear that even if she did not tell Mayor Cooper her concerns early in her tenure, she at least told him months before the immediate circumstances that resulted in this investigation.

According to Mayor Cooper, in response to Ms. Cole’s concerns, he made a point of telling Ms. Humann and others that Ms. Cole worked full time but flexed her hours with his permission. He explained that he told Ms. Humann repeatedly that he was aware of Ms. Cole’s hours and that Ms. Humann did not need to be concerned. He admits that he did not, however, tell anyone that Ms. Cole had raised a “hostile work environment” claim. He explained that he interpreted Ms. Cole’s comments to be venting about Ms. Humann and others who were talking about her schedule. He did not believe that Ms. Cole was actually claiming to be harassed as that term is used in employment law matters.

Although I understand Mayor Cooper’s interpretation, it is not consistent with City policy. The City’s Personnel Policies specifically provide complaint procedures for discrimination/harassment complaints (Personnel Policies Chapter 2.6) and for general complaints of unfairness or policy violations (Personnel Policies Chapter 14.1). While these policies do not set out required steps for a supervisory response, they clearly require City management to review and do something employee complaints. While his admitted long-time friendship with Ms. Cole may have reasonably caused Mayor Cooper to treat her concerns as “venting” as opposed to an actual complaint, I conclude that Ms. Cole provided sufficient information to him to require an unbiased review of her claim. As is clear from the rest of this Report, I do not conclude that Ms. Cole’s harassment claims against Ms. Humann and other City employees are meritorious. Nonetheless, under City policy, Mayor Cooper should have taken steps to review her claims as of early 2011.

I conclude that Mayor Cooper’s actions of telling Ms. Humann about Ms. Cole’s “flex time” and saying that he had approved her schedule was not a sufficient response by him to Ms. Cole’s concerns. According to Ms. Humann, Mayor Cooper repeatedly told her that Ms. Cole’s time sheets were in order or otherwise accurate but he never disclosed that Ms. Cole had raised a “hostile work environment” concern or that he was accommodating an alleged disability. She stated that had Mayor Cooper informed her, she would have told him that the City needed to investigate Ms. Cole’s concerns and ensure that any accommodation was consistent with City practices and policies. She explained that investigations are standard procedure at the City if an employee asserts a hostile work environment. Ms. Humann stated that had she been informed of Ms. Cole’s concern, she would have recommended that the City coordinate an independent investigation since it involved a member of the Mayor’s staff and the Human Resources Department.

Allegation No. 14:

- Ms. Cole asserts that she was subjected to hostility or harassment due to her disability/medical condition or her gender.

Conclusion:

This allegation is unfounded.

Facts Found:

Although the City's harassment policy does not limit harassment claims to adverse or unwelcome conduct related to one of the protected categories under state and federal law, I asked Ms. Cole if she thought her claims were related to any such categories. She speculates that she may have been subjected to harassing or hostile behavior because of her medical condition/disability and because of her gender. With respect to medical condition and disability, Ms. Cole speculates that she may have been treated poorly because she needed time off for medical appointments. However, she was not aware of any derogatory comments, other statements or actions that would connect what she experienced to her disability or gender.

Based on my interviews with Ms. Cole and the City employees listed above, I conclude that neither Ms. Cole nor Mayor Cooper informed other employees that Ms. Cole had a medical condition or required medical treatment¹⁴. Therefore, their conduct could not be based on her medical condition since they did not know she had one.

Absent more than Ms. Cole's speculation that gender played a role in her treatment, it is not possible to conclude that gender was a factor. Based on my investigation, there was no evidence other than Ms. Cole's speculation.

I conclude that when Ms. Humann and others communicated concerns to Mayor Cooper about Ms. Cole's hours of work, they were not doing so based on Ms. Cole's protected statuses. Instead, they based their concerns on the fact that employees and residents were becoming increasingly frustrated when trying to work with the mayor's office because Ms. Cole was frequently away from her desk. While some of these absences were due to medical appointments, many of the absences were for other reasons. For example, Mayor Cooper informed me that part of Ms. Cole's flex schedule allowed her to come in later than usual due to her parenting obligations and status as a single parent. Mayor Cooper told me that if all of Ms. Cole's work was done, he did not mind if she left early or studied for the Washington Bar Exam¹⁵ so long as she worked 40 hours during the week. This practice often left Ms. Cole's desk unattended, which meant people calling the mayor's office (or visiting) would not reach a live person unless the mayor answered his phone.¹⁶ The effects were felt by many City employees:

- Employees covering the front desk reported that on a daily occurrence, one or more people expressed frustration about being unable to reach the Mayor's Office.

¹⁴ Most witnesses, including the Human Resources representatives, said they had no idea that Ms. Cole had a medical condition or that Mayor Cooper was accommodating a medical condition until they read about it in the newspaper after Ms. Cole was no longer working.

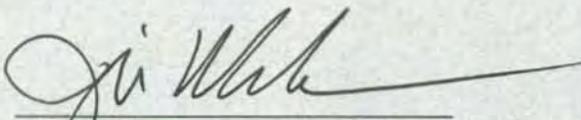
¹⁵ Several witnesses reported seeing Ms. Cole studying law book while wearing head phones during the City's normal business hours.

¹⁶ If neither Ms. Cole nor the mayor answered calls, they went to voice mail and not to the City's main reception desk.

- Employees who needed to work with the mayor uniformly reported that Ms. Cole was frequently unavailable during business hours and their voicemail messages were seldom returned until they had called several times.
- Many employees reported seeing Ms. Cole regularly arrive for work around 9:00 or 10:00 a.m. even though the offices opened at 8:00¹⁷.
- Employees on the third floor reported that they frequently had to assist visitors to the Mayor's Office because Ms. Cole was away from her desk and people often asked if Ms. Cole was "ever there".
- Some witnesses reported observing Ms. Cole wearing head phones and studying law books during regular working hours; others reported hearing from others that this was happening.
- Employees reported that when they told callers to contact Ms. Cole, callers began responding that they "wouldn't bother" because they knew from experience that Ms. Cole was gone more often than she was present.

These types of concerns and comments show that employees were acting based on perceived office inefficiencies and communication challenges rather than disability or gender.

Submitted on November 29, 2011¹⁸.



Jim Webber

Jim Webber | Training - Consulting - Investigations

218 Main Street | PMB 304
Kirkland | Washington | 98033
206.601.9242 | jim.webber@comcast.net

¹⁷ Mayor Cooper allowed Ms. Cole to come in late because of child care needs.

¹⁸ The "original" copy of this Report was not signed until January 3, 2012. The investigation was completed and no additional work was performed by me after November 29, 2011.