

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF KANSAS

3

4 COLLEEN STUART, et al.,)
)
 5 Plaintiffs,)
)
 6 vs.) CIVIL ACTION NO. 23-CV-2021-JWB-RES
)
 7 CITY OF TOPEKA, KANSAS, et al.,)
)
 8 Defendants.)

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 10
 11
 12 VIDEOCONFERENCE DEPOSITION OF DAVID P. MUDRICK

13
 14 TAKEN ON BEHALF OF THE PLAINTIFFS

15
 16 NOVEMBER 8TH, 2023

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Page 3

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 6 vs.) CIVIL ACTION NO. 23-CV-2021-JWB-RES
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 7 CITY OF TOPEKA, KANSAS, et al.,)
)
 8 Defendants.)

9

10 VIDEOCONFERENCE DEPOSITION OF DAVID P. MUDRICK,
 11 produced, sworn and examined on NOVEMBER 8TH, 2023,
 12 between the hours of 10:00 o'clock in the forenoon
 13 and 3:00 o'clock in the afternoon of that day, at the
 14 offices of Lexitas Legal, 1608 Locust Street, Kansas
 15 City, Missouri, 64108, before Mary Lynn Cushing, a
 16 Certified Court Reporter (MO), Certified Shorthand
 17 Reporter (KS), in a certain cause now pending in the
 18 United States District Court for the District of
 19 Kansas, between COLLEEN STUART, et al., Plaintiffs,
 20 vs. CITY OF TOPEKA, KANSAS, et al., Defendants; on
 21 behalf of the Plaintiffs.

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1 I N D E X

2

3 EXAMINATION BY: PAGE:

4 Mr. Jess 5

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6 EXHIBITS

7 Exhibit 1 - Mudrick Investigation 15
 8 File - Bates No. 1 to 221

9 Exhibit 2 - Hanika Investigative File 118

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11 NOTE: Exhibits were attached to the original
 12 transcript.

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1 A P P E A R A N C E S

2

3 Appearing by Zoom For the Plaintiffs:

4 Mark A. Jess
 5 Christie Jess
 6 Employee Rights Law Firm, LLC
 7 4 East Franklin Street
 8 Liberty, Missouri 64068
 9 (816)474-4600
 10 mark.jess@employeerightslawfirm.com
 11 christie.jess@employeerightslawfirm.com

12

13 Appearing by Zoom For the Defendants:

14 J. Phillip Gragson
 15 Kara L. Eisenhut
 16 Henson, Hutton, Mudrick & Gragson, LLP
 17 3649 Southwest Burlingame Road
 18 Suite 200
 19 Topeka, Kansas 66611
 20 (785)232-2200
 21 jpgragson@hhmglaw.com
 22 keisenhut@hhmglaw.com

23

24 Also present by Zoom: Colleen Stuart,
 25 Jana Harden Kizzar and Jennifer Cross

26

27 Mary Lynn Cushing
 28 Missouri CCR #1077
 29 Lexitas Legal
 30 1608 Locust Street
 31 Kansas City, Missouri 64108
 32 (816) 221-1160
 33 1-800-280-3376

34
 35

Att. 3

Page 5

1 IT IS HEREBY STIPULATED AND AGREED
 2 that this deposition may be taken in shorthand by
 3 Mary Lynn Cushing, CCR/CSR, a Certified Court
 4 Reporter, Certified Shorthand Reporter, and
 5 afterwards transcribed into typewriting; and the
 6 signature of the witness is expressly reserved.
 7 * * * * *
 8 DAVID P. MUDRICK,
 9 of lawful age, produced, sworn and examined on behalf
 10 of the PLAINTIFFS, deposes and says:
 11 (Starting time of the deposition: 10:00 a.m.)
 12 EXAMINATION
 13 BY MR. JESS:
 14 Q. Mr. Mudrick, have you ever had your
 15 deposition taken before?
 16 A. I have not.
 17 Q. I've never been deposed, and I suspect
 18 anyone that would try to depose me is glad that that
 19 has not occurred, but you seem like a very upstanding
 20 and kind gentleman so. You know the drill. How long
 21 have you been practicing, sir?
 22 A. I practiced from 1976 to 2019.
 23 Q. I would argue that's a pretty good
 24 run.
 25 A. Yes, it's a long time.

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1 Q. I've only been practicing since 1990,
 2 and many would argue that I have yet to perfect
 3 anything, including Phillip would maybe --
 4 MR. GRAGSON: You have perfected a
 5 number of things, Mark.
 6 Q. (By Mr. Jess) Mr. Mudrick, when you
 7 were engaged to perform this investigation on behalf
 8 of the City of Topeka regarding Officer Kim Hanika's
 9 complaint to HR, would I be correct in assuming this
 10 was not your first engagement with the City of
 11 Topeka?
 12 A. You would be correct.
 13 Q. So when you were approached, and I
 14 think the documents will reflect, and you correct me
 15 if I'm wrong, when you were approached in June of
 16 2019 to conduct this particular investigation, you
 17 have represented the City of Topeka personally, and
 18 your law firm, many times prior to that?
 19 A. Yes.
 20 Q. So Brent Trout, the City Manager at
 21 the time, Shelly Starr, all these folks were familiar
 22 with you and your firm when you were contacted to
 23 conduct this investigation, is that fair?
 24 A. Well, I don't know if Brent Trout was.
 25 I don't remember if I ever met him, but Shelly Starr

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1 was familiar with me. Catherine Walter was familiar
 2 with me, and Jacque Russell as well.
 3 Q. And Shelly Starr at the time, was she
 4 the City Attorney?
 5 A. No. I believe Shelly may have been
 6 the Chief of Litigation. The City Attorney, I think,
 7 was Lisa Walter, I believe.
 8 Q. Okay. So Shelly Starr was Chief of
 9 Litigation. Approximately --
 10 A. I believe so.
 11 Q. Approximately as of June 2019, how
 12 many years had you been doing legal work for the City
 13 of Topeka at that point?
 14 A. I am somewhat guessing, Mr. Jess, but
 15 I think maybe 15 years would be my guess.
 16 Q. Had you ever been, in those 15 years,
 17 adverse to the City of Topeka on behalf of another
 18 client?
 19 A. Not that I recall.
 20 Q. As of June of 2019, did you know Bill
 21 Cochran?
 22 A. I don't recall if I met him before or
 23 not. I did meet him in the course of this
 24 investigation. I don't think I'd known him before.
 25 Q. And how about now Chief of Police

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1 Bryan Wheelles, did you know him prior to this
 2 engagement?
 3 A. Not that I recall.
 4 Q. And the same would be true with regard
 5 to his wife, Jeralyn Wheelles?
 6 A. I'm very certain I had never met her
 7 before this case.
 8 Q. By case, you mean the investigation
 9 that you were engaged to perform?
 10 A. Yes.
 11 Q. How did that arise, as you recall it?
 12 A. I believe somebody called me, I don't
 13 remember if it was Shelly Starr or Catherine Walter,
 14 and asked if I would be willing to be involved in
 15 this investigation, and that was followed up with, I
 16 think, an e-mail or two, which then led to a meeting
 17 or two or three.
 18 Q. And forgive me, I think you just
 19 referred to Catherine Walter. Is that the same as I
 20 think you referred to her earlier as Lisa Walter?
 21 A. Okay. I think I may have misspoke.
 22 Lisa was the City Attorney. I may have been mistaken
 23 on her last name. I don't recall her last name.
 24 Catherine Walter was one of the Assistant City
 25 Attorneys.

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1 talk of moving either Ms. Hanika or Ms. Wheelles to
 2 accreditation. I think what it's talking about is I
 3 believe accreditation would somehow have taken
 4 Jeralyn somewhat out of the chain of command to
 5 Deputy Chief Wheelles, and I think that's what they
 6 were talking about, but I'm not certain of that.
 7 That's my best recollection.

8 Q. So your best recollection is the "move
 9 her," the her pronoun would be a reference to Jeralyn
 10 Wheelles is your best recollection?

11 A. That's my best recollection.

12 Q. And, in fact, that was what was
 13 recommended from the Human Resources investigation
 14 that had been conducted prior to the time that the
 15 city hired you, correct?

16 A. I don't recall that.

17 Q. So maybe yes, maybe no, you just don't
 18 recall either way?

19 A. I was thinking, Mr. Jess, that they
 20 suggested a couple of alternatives as to how to
 21 somewhat get her out of the chain of command, and I
 22 believe that was one of the alternatives that they
 23 recommended.

24 Q. Well, let's do this if we could,
 25 Mr. Mudrick. Bates No. 5 of your file is a

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1 Confidential Investigation Summary with the City of
 2 Topeka letterhead above. It says, "Investigation
 3 conducted by Jacque Russell, Human Resources
 4 Director, and Shawn Maisberger, Human Resources
 5 Manager, dated April 17, 2019." Could you please
 6 turn to that documents?

7 A. I have that in front of me.

8 Q. All right. So this is something that
 9 is in your file, which is Exhibit 1, correct?

10 A. Yes.

11 Q. And this would have been provided to
 12 you by your client, the City of Topeka, correct?

13 A. Yes.

14 Q. So you not only received this from the
 15 City of Topeka, but you would have read it carefully,
 16 correct?

17 A. Yes.

18 Q. Because this was the investigation
 19 that was done up to the time that you came in, right?

20 A. Correct.

21 Q. So if we go to page 3 or Bates No. 7
 22 of Exhibit 1, do you see a heading that says Findings
 23 and Considerations?

24 A. Yes.

25 Q. And, again, this is something that you

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1 would have read and carefully considered in
 2 conducting your investigation on behalf of the city,
 3 correct?

4 A. I would have considered it, yes.

5 Q. Under that heading, the document says,
 6 "This investigation reveals a conflict of interest
 7 that has emerged by having the Deputy Chief, being
 8 the spouse of a subordinate officer, within the
 9 Topeka Police Department. This conflict of interest
 10 is in violation of the city's Code of Conduct policy,
 11 page 131, Section 4C, Conflict of Interest." Did I
 12 read that typewritten portion correctly?

13 A. Yes, you did.

14 Q. Below that it says, "Dash, this
 15 conflict of interest has resulted in Wheelles being
 16 overly empowered compared to her peers, and this
 17 empowerment has resulted in an environment of
 18 intimidation over all levels within the department."
 19 Did I read that sentence correctly?

20 A. Yes.

21 Q. "This has resulted in retaliatory
 22 measures being imposed on individuals who have been
 23 in positions of managing Wheelles or assigned to peer
 24 working relationships with Wheelles." Did I read that
 25 correctly?

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1 A. You did.

2 Q. "This has also resulted in Wheelles
 3 being privy to and improperly disclosing information
 4 she otherwise would not have had knowledge of." Did
 5 I read that correctly?

6 A. Yes.

7 Q. In this Findings And Conclusions that
 8 you never put down in writing as a part of your
 9 investigation, did you find or conclude anything
 10 different from those sentences we just went through?

11 A. I believe that I did.

12 Q. And where do I go to find your
 13 findings?

14 MR. GRAGSON: Object to the form,
 15 asked and answered. He already explained he doesn't
 16 have anything in writing. Come on, Mark.

17 MR. JESS: Well, he identified some
 18 handwritten notes so I'm trying to find out whether
 19 or not those include what he told the city as a part
 20 of this investigation that he was hired to conduct as
 21 a lawyer on behalf of the City of Topeka.

22 MR. GRAGSON: David, if there's
 23 something there that you can point to, have at it.

24 A. My conclusions, as best I can recall,
 25 Mr. Jess, are incorporated in my notes dated June

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1 **27th. I did not reach all the conclusions that the**
 2 **Human Resources department did.**
 3 Q. So I believe we identified your
 4 conclusions or those handwritten notes to what you're
 5 asserting were your conclusions. That was Bates No.
 6 27, is that correct?
 7 **A. Yes. That's the one page of notes.**
 8 **No. 1 through 8 of June 27th.**
 9 Q. And you have No. 1, "Legit reasons
 10 cancelled DEAK." I believe that means DEA contract,
 11 correct?
 12 **A. Yes.**
 13 Q. And legit period you meant legitimate?
 14 **A. That's right.**
 15 Q. And then No. 2, you write, "Legit
 16 reasons, put Lieutenant over narcotics, but can't
 17 understand the," and then you have Q, apostrophe Y of
 18 it. Does that mean the questioning of it?
 19 **A. Exactly.**
 20 Q. Because Lieutenant Simmons, or was it
 21 Sergeant Simmons, but Simmons was moved out and
 22 Monasmith was moved in over narcotics, correct?
 23 **A. I don't remember who was moved out. I**
 24 **believe they moved out a Lieutenant, and I believe**
 25 **maybe a Sergeant left as well, and then they put**

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1 **Lieutenant Monasmith over narcotics.**
 2 Q. Number three you wrote, "Legit reason
 3 for 5-18 policy advisory," and then you say, "And I
 4 also went to J. Wheelles," or maybe that's "and one
 5 also went to J. Wheelles," is that correct?
 6 **A. Yes. One is the correct**
 7 **interpretation.**
 8 Q. And that's all your handwritten notes
 9 under, I guess, your finding No. 3, right?
 10 **A. Yes.**
 11 Q. How much did you or your law firm
 12 charge the City of Topeka for your services in
 13 conducting this quote "investigation"?
 14 **A. I do not recall.**
 15 Q. What was your hourly rate in June of
 16 2019?
 17 **A. As best I can recall, I believe it was**
 18 **175.**
 19 Q. Do you know if you gave the city a
 20 discount on your hourly rate for this investigation?
 21 **A. I don't remember.**
 22 Q. Do you find it to be odd that you're
 23 trying to determine whether the Deputy Chief and his
 24 wife colluded to retaliate against other police
 25 department employees and that you didn't ever provide

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1 any typed up report of your findings and conclusions?
 2 **A. No.**
 3 MR. GRAGSON: Object to the form.
 4 It's vague and ambiguous. Go ahead.
 5 **A. No.**
 6 Q. (By Mr. Jess) Did either Jacque
 7 Russell, Shawn Maisberger, Shelly Starr, Catherine
 8 Walter or Lisa R, did any of them say, hey, don't
 9 send us anything in writing, we just want you to tell
 10 us verbally what you found?
 11 **A. As best I can recall, I sat down with**
 12 **them. I used this page of notes basically as memory**
 13 **joggers. These are the points. Had they asked me to**
 14 **put that in writing in a report, I would have done**
 15 **so.**
 16 Q. So it's your belief no one ever asked
 17 you to put anything in writing?
 18 **A. That's my assumption, but that's all**
 19 **that is, Mr. Jess, is my assumption, and the reason I**
 20 **say that had they asked me to put in writing a**
 21 **report, I would have done it.**
 22 Q. Well, and as we looked at before, the
 23 Human Resources Department in the form of this April
 24 17, 2019 Confidential Investigation Summary, and that
 25 goes from Bates No. 8 to Bates No. 9, that's

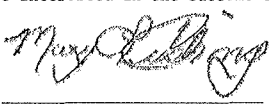
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1 certainly typewritten and in writing, their findings,
 2 correct?
 3 **A. True.**
 4 Q. But no one ever asked you to provide
 5 your findings in writing?
 6 **A. Not that I recall because, again, had**
 7 **they done it, I would have done that.**
 8 Q. On Bates No. 7, this is page 3 of that
 9 April 2019 memo to which I was just referring.
 10 MR. JESS: Are you okay, Phillip?
 11 MR. GRAGSON: Yeah. Just tired.
 12 MR. JESS: Well, if you're done
 13 yawning, we're going to continue with the deposition
 14 if that is okay.
 15 MR. GRAGSON: Sure.
 16 Q. (By Mr. Jess) All right. Are you on
 17 the page 3 of 5 of this report, Mr. Mudrick?
 18 **A. Yes.**
 19 Q. Under Findings and Considerations,
 20 underneath the paragraphs we already read, the next
 21 sentence says, "Consider rescinding the exception to
 22 the City's Code of Conduct policy which allowed the
 23 immediate family members to be in the same
 24 supervisory chain." Did I read that sentence
 25 correctly?

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1 I'd like to come back in ten minutes. Is that okay
 2 with you, Mr. Mudrick?
 3 **A. Certainly.**
 4 MR. JESS: Thank you. Phillip, is
 5 that okay?
 6 MR. GRAGSON: Sure.
 7 (Recess.)
 8 Q. (By Mr. Jess) Mr. Mudrick, we're back
 9 on the record. I appreciate your time today. Did
 10 anyone ever inform you that in addition to Jana
 11 Harden receiving discipline from Chief Wheelles
 12 involving this whole Kim Hanika situation, that then
 13 Lieutenant Jennifer Cross also received discipline?
 14 **A. No.**
 15 MR. JESS: All right. No further
 16 questions at this time. And, again, I appreciate
 17 your time, Mr. Mudrick.
 18 **A. You're welcome.**
 19 MR. GRAGSON: No questions, and Dave
 20 will read and sign and will provide Mary Lynn with
 21 the information.
 22 (Exhibits 1 & 2 were marked for
 23 identification.)
 24 (WHEREIN, the deposition was concluded
 25 at 2:05 p.m.)

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1 CERTIFICATE OF REPORTER
 2 STATE OF MISSOURI)
) ss.
 3 CITY OF KANSAS CITY)
 4 I, Mary Lynn Cushing, a Certified
 5 Court Reporter (MO), do hereby certify that the
 6 witness whose testimony appears in the foregoing
 7 deposition was duly sworn by me; that the testimony
 8 of said witness was taken by me to the best of my
 9 ability and thereafter reduced to typewriting under
 10 my direction; that I am neither counsel for, related
 11 to, nor employed by any of the parties to the action
 12 in which this deposition was taken, and further that
 13 I am not a relative or employee of any attorney or
 14 counsel employed by the parties thereto, nor
 15 financially or otherwise interested in the outcome of
 16 the action.

 17
 18
 19 Mary Lynn Cushing, CCR #1077
 20
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1 LEXITAS LEGAL
 2
 3 November 17th, 2023
 4
 5 David P. Mudrick
 6 8404 Borboni Court
 7 Naples, Florida 34114-2708
 8
 9 In Re: COLLEEN STUART, et al. VS. CITY OF TOPEKA,
 10 KANSAS, et al.
 11
 12 Dear Mr. Mudrick:
 13
 14 Please find enclosed a copy of your deposition taken
 15 on NOVEMBER 8TH, 2023, in the above-referenced case.
 16 Also enclosed is the original signature page and
 17 errata sheets.
 18 Please read your copy of the transcript, indicate any
 19 changes and/or corrections desired on the errata
 20 sheets, and sign the signature page before a notary
 21 public.
 22
 23 Please return the errata sheets and notarized
 24 signature page to Lexitas Legal, Production
 25 Department, 1608 Locust, Kansas City, Missouri,
 64108, for filing prior to trial date.
 Thank you for your attention to this matter.
 Sincerely,
 Mary Lynn Cushing, CCR(MO)
 Enclosures
 cc: Christie Jess

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1 WITNESS ERRATA SHEET
 2 Witness Name: DAVID P. MUDRICK
 3 Case Name: COLLEEN STUART, et al. VS. CITY OF TOPEKA,
 4 KANSAS, et al.
 5 Date Taken: NOVEMBER 8TH, 2023
 6
 7 Page # _____ Line # _____
 8
 9 Should Read:
 10 _____
 11 Reason for Change:
 12 _____
 13
 14 Page # _____ Line # _____
 15
 16 Should Read:
 17 _____
 18 Reason for Change:
 19 _____
 20
 21 Page # _____ Line # _____
 22
 23 Should Read:
 24 _____
 25 Reason for Change:

 Witness Signature:
