

Resolution of Censure

MOTION

WHEREAS, Commissioner Randall Pinocci did, on two known occasions, fully access and inspect Commissioner Koopman's email account without his knowledge or permission, circumventing required PSC legal division handling and review in direct violation of Bluebook Email Policy (see excerpts from Kraske 2/18/20 memo to commissioners in Exhibit #1, and Bluebook pages 22-24 in Exhibit #5), and,

WHEREAS, Commissioner Pinocci gained access to these emails by the fraudulent use of Chairman Johnson's signature stamp on DOA records request forms, without the chairman's knowledge, as confirmed before the commission by the chairman, and,

WHEREAS, during this time, Commissioner Pinocci was aware that another PSC employee was planning to, and did in fact publicly disseminate various Koopman e-mails, some of a highly personal nature, on the January 16, 2020 Northwest Liberty News website and podcast entitled "Roger Koopman's Work Email Laid Bare." This was in retaliation for Koopman speaking publicly to the news media about his PSC concerns. Commissioner Pinocci kept the individual's identity and intended actions hidden from the Commission, a violation of state law and the PSC Bluebook Ethical Standards (Exhibit #5), and,

WHEREAS, Commissioner Pinocci has subsequently expressed knowledge of and support for the individual's intention to continue disseminating additional Koopman emails for malicious, intimidating and retaliatory purposes, including in the February 28 Billings Gazette story entitled "Montana Public Service Commissioner levels personal attacks at colleagues." The article stated, in part, *"Speaking to The Gazette on Monday, Pinocci denied having any part in the release of the emails, but then said a new batch of emails was about to drop. 'Now keep in mind that the next emails that are going to be released and going to shed some tremendous light on what's going on,' Pinocci said. Pinocci then went on to make several unfounded claims about Koopman, which The Gazette won't publish due to concerns about libel and malice."* These words and actions violated PSC Bluebook Ethical Standards (Exhibit #5), and,

WHEREAS, Commissioner Pinocci, in concert with the individual, did in fact personally meet with uniformed officers of the Helena Police Department and Montana Highway Patrol for the purpose of making false accusations of an extremely serious and defamatory nature about Commissioner Koopman, accusations he knew to be false, alleging that Commissioner Koopman was mentally unwell, homicidal, suicidal and posed a grave and imminent threat to PSC commissioners and staff – all PSC Ethical Standards violations, and,

WHEREAS, Commissioner Pinocci joined with the individual in the spreading of these false, malicious and inflammatory accusations to various other state agencies, including GSD and the Commissioner of Political Practices, as well as the Bozeman Police Department and the Gallatin County Sheriff, partly to discover if Commissioner Koopman had an arrest record, and partly to see if a county attorney would compel Koopman to have a psychological evaluation – all PSC Ethical Standards violations and probable violations of state law, and,

WHEREAS, on February 28, 2020, Commissioner Pinocci appeared with the Commission Communications Director Drew Zinecker on the website podcast of Northwest Liberty News/Excellence in Voting, under the show title "Terror in Helena! I'm Afraid that Roger Koopman Will Bring a Gun to Work and Shoot Me," as a direct retaliatory response to Koopman's guest column in the February 26, 2020 Missoulian.

Together, they spent one hour making baseless, inflammatory and defaming statements about Commissioner Koopman, to include repeating the charges that Koopman was mentally unstable, psychotic, suicidal, and was likely to come into the office with one or more guns and begin shooting people, all of which Commissioner Pinocci knew to be total and absurd fabrications, in probable violation of state law and in violation of the PSC's Ethical Standards (excerpts of Pinocci comments included as Exhibit #2, taken from transcript), and,

WHEREAS, during this same interview, Commissioner Pinocci maintained that the PSC staff, and one commissioner, were equally fearful and concerned about Koopman, and many had complained to Pinocci about him, assertions they knew to be untrue, in violation of PSC Ethical Standards, and,

WHEREAS, in a March 4 story in the online Montana Daily Gazette, entitled "Montana 'Sprygate': Pinocci Tries to Protect PSC From Koopman's Alleged Irrational Behavior", Commissioner Pinocci made intentionally inflammatory, baseless and defamatory statements about Commissioner Koopman, in probable violation of state law and in violation of the PSC Bluebook's Ethical Standards (excerpts of Pinocci comments attached as "Exhibit #3), and,

WHEREAS, in a memorandum to all commissioners on March 2, Commissioner Pinocci did in fact continue to make intentionally inflammatory, baseless and defamatory statements about Commissioner Koopman (excerpts attached as "Exhibit 4), and during a subsequent closed Commission meeting on that date, Pinocci repeatedly asserted that because of his public criticisms of Commission actions, Koopman was entirely to blame for the email disseminations and had it coming – statements clearly justifying the various retaliations directed against Koopman, in probable violation of state statute and in violation of the PSC's Ethical Standards, and,

THEREFORE, BE IT RESOLVED, that the Montana Public Service Commission is gravely concerned over the accessing and inspection by Commissioner Pinocci of Commissioner Koopman's emails, conduct that is corrosive of intra-commission trust and compromises the Commission's ability to work together in the public interest, and,

FURTHERMORE, the Commission censures Commissioner Pinocci for violation of PSC email records request policy and the laws governing state agencies, by circumventing the PSC system and going instead to the DOA, so as to keep Koopman's email inspections a secret, and,

FURTHERMORE, the Commission censures Commissioner Pinocci for fraudulently using Chairman Johnson's signature stamp, and the fraudulent placement of the chairman's signature on official government documents, either by Pinocci directly or by staff at Pinocci's direction, and,

FURTHERMORE, the Commission admonishes Commissioner Pinocci for having direct knowledge of the individual's extensive breaches of Commissioner Koopman's email security, and the individual's subsequent dissemination of Commissioner Koopman's highly personal emails in violation of his privacy rights, and yet failing to report these violations and legal liabilities to the Commission, as required by PSC Bluebook policy – while later justifying these acts of defamation and retaliation as "caused" by Commissioner Koopman, and,

FURTHERMORE, the Commission censures Commissioner Pinocci's public impugning of Commissioner Koopman's character, mental faculties and reputation through repeated fabrications and falsehoods of an extremely inflammatory, malicious and defamatory nature, violating the PSC's Ethical Standards, while placing the Commission under serious legal liability, and,

FURTHERMORE, the Commission censures Commissioner Pinocci's filing of false reports with various law enforcement and state agencies about Commissioner Koopman for retaliatory purposes, based on malicious and outrageous fabrications, violations of the PSC Bluebook Ethical Standards and probable violations of state law, and,

FURTHERMORE, the Commission therefore calls upon Commissioner Pinocci to cease and desist in these inexcusable actions, all of which constitute conduct unworthy and unbecoming of a Montana Public Service Commissioner. The Commission instructs Commissioner Pinocci to make every good faith effort with law enforcement, state agencies, the news media and the PSC staff, to correct the fabrications and baseless, inflammatory attacks he has unjustly and harmfully directed against Commissioner Koopman.

SIGNED:

Exhibits

Exhibit #1:

"As you are all aware, if a records request was received requesting staff of Commissioners' email, pursuant to the Bluebook, the records request must be forwarded to the legal staff for review and compliance with the state law and the Commission's email records request policy. Bluebook p. 21. There are many reasons why records requests are subject to legal review, including to ensure any non-work related emails are closely reviewed, and any determined to be private or subject to redaction under Montana law are handled in an appropriate way, balancing the right to privacy versus the right to know of the requestor. Otherwise, there could be significant legal liability to the Commission and any employee that does not comply with Montana law." 2/18 Kraske memo, pp. 1-2.

"The Commission must immediately start taking concrete steps to mitigate the damage of this email breach and disbursement, as the legal liability to the Commission is escalating and the reputation of the Commission to maintain confidential information is declining." 2/18 Kraske memo. P. 7.

Exhibit #2:

"I felt we needed some intervention with Roger. He needed some help."

"Since Roger wants to come out and be dishonest, and doesn't want to tell the truth..."

"Roger has misused his computer in the past. He's a repeat offender. He's been warned about this before."

"It takes a lot of courage for staff to come forward. I really commend Drew for what he tried to do today." (i.e., assert publicly that Commissioner Koopman is going to start killing people at the PSC.)

"I'm most concerned about Roger Koopman being in a mentally healthy place, and I want to make it clear that I had the opportunity to sit down with Roger and tell him my concerns."

"I think listeners might want me to say what caused Roger to go off the rails, that clearly shows that he's unstable... He was screaming every four-letter word he could think of."

"Clearly, Roger was a bully. Clearly, he was unstable. And he did look very threatening. And he was very aggressive in his stand... This is a time to apologize and a time to seek counseling. He is fighting with everyone in the office, not just one."

"Let's get some counseling. Let's sit down and get the problem fixed,"

(taken from 2/28/20 radio interview full transcript)

Exhibit #3:

"Employees have brought concerns to me about Roger Koopman. I have been listening to them, taking notes, and staffers said there were a number of emails that are very concerning that Koopman has written... I went to Mandy Henmen (sic) and said I have heard complaints about Koopman's emails from staffers..."

"I thought we should have an intervention with Roger. Chairman Johnson thought the situation was very serious but that we should wait because it might make matters worse if we confronted him right away."

"The emails that got released somehow to the press – which I absolutely did not do – make it very clear he has said things that are outlandish." (Gazette editor: There were additional concerns Pinocci was not at liberty to discuss because the emails were not yet available.)

"Roger Koopman is not the victim here, the rate-payers are the victim because they will be paying all the cost of working this mess out... The other victims are those Koopman wrote emails about, including staff and other commissioners. Had Roger not misused his email to begin with, we wouldn't have any problem. He's responsible. No one else."

(Gazette editor: ...his personal behavior has recently earned him the nickname "Kooky Koopman" according to a source within Northwest (sic) Energy.

Exhibit #4:

"I am absolutely concerned about Roger Koopman's mental wellbeing..."

"In addition to screaming and using profane language that the entire office could hear, he followed me into the hall as I was trying to leave our meeting..."

"One reason I am concerned about his fragile mental health is because he sounded like he sincerely believed his lies."

"Roger has two options – pick door number one: he admits he lied and did write more than one negative article against the commission. Or door number two: he does not even have the mental capacity to realize that he did anything wrong and believes his own lies – proving my theory that Roger needs an intervention with help..."

"He should send an email apology to all staff for his tantrum that the entire office heard – especially given his repeated shouting of profane words. According to Drew Zinecker, staff members actually came out of their offices to see what was going on when he was screaming,"

BLUEBOOK REFERENCES – Exhibit #5:

(underlining added)

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j. Commissioner Manual and Facsimile Signatures

A majority of Commissioner signatures on documents designated as orders, operating authorities, or minutes must be manual (i.e., personally handwritten by the Commissioner). If a Commission decision has been made by a quorum of three or four Commissioners, at least two Commissioner signatures must be manual. The remaining Commissioner signatures on the above-referenced documents and Commissioner signatures in all other instances may be facsimile (e.g., stamped) in accordance with Commissioner authority and the following policy:

A Commissioner may authorize the use of his or her facsimile signature for Commission purposes. The extent of authority granted by a Commissioner is at the discretion of the Commissioner and the authority may be granted to the Commission Secretary, other Commissioners, or staff. The authority granted, subject to conditions the Commissioner may identify, may be for general application (i.e., all instances meeting the conditions) or for a specific application (i.e., instance-by-instance). When a Commissioner's signature is required for Department purposes, a facsimile signature may be applied in accordance with the authorization

by a person designated by the Commissioner. For Department purposes, Commissioner facsimile signatures are as valid as Commissioner manual signatures.

Sample Commissioner Authority:

In accordance with Department policy, I authorize the Commission Secretary and all other persons who may be acting in that capacity to apply my facsimile signature when necessary, subject to the following conditions:

- my signature is for Commission purposes
- I am unavailable to enter my signature manually
- my facsimile signature is being applied to:
 - o an order upon which I have cast a vote, personally or by proxy; or
 - o other Commission documents I have, by clear indication, approved.

In all other instances I may be contacted concerning use of my facsimile signature.

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c. PSC Ethical Standards

Specific to the Department, the Commission adopts the following ethical standards for Commissioners and staff:

ETHICAL STANDARD I: Commissioners and staff shall uphold the integrity and independence of the Commission. The Commission has adjudicative, policy-making, representational, and administrative responsibilities. Commissioners and staff should observe high standards of conduct in order to preserve the integrity and independence of the Commission, and adhere to the Montana Constitution and statutes MCA § 2-15-104(k); MCA § 2-15-2601; and ARM 38.1.101.

ETHICAL STANDARD II: Commissioners and staff shall avoid impropriety and the appearance of impropriety. Commissioners and staff shall conduct themselves in accordance with the law in a manner that promotes public confidence in the integrity of the Commission.

Commissioners and staff may not allow personal relationships to influence their official conduct or judgment. Commissioners and staff may not convey, nor allow others to convey, that the Commission or staff can be improperly influenced. Commissioners and staff shall refrain from biased public comment about pending contested cases.

ETHICAL STANDARD III: Commissioners and staff shall perform their duties impartially and diligently. Commissioners and staff shall maintain order and decorum in Commission proceedings. Commissioners and staff shall be patient, dignified, and courteous to parties, witnesses, attorneys, and others with whom they deal, and shall expect similar conduct of participants in Commission proceedings. Commissioners and staff shall encourage public involvement in its activities and afford all legally interested parties full legal rights before the Commission. Commissioners and staff shall act expeditiously and diligently on Commission business.

ETHICAL STANDARD IV: Commissioners and staff shall minimize the risk of conflict of interest. Commissioners and staff may participate in activities which do not create a conflict of interest for the Commission, even if the action is not in violation of a statute or rule pertaining to conduct or ethics. Commissioners and staff shall refrain from financial, business, or professional dealings which reflect adversely on their impartiality, interfere with proper performance of their duties, or exploit their positions. Commissioners and staff members may not acquire or maintain an interest in any business or undertaking which may be affected by

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economic benefit by official action of the Commission (if a Commissioner does so acquire or maintain an interest, all disclosure requirements must be met). Commissioners and staff may not accept gifts or loans from regulated enterprises, employees of regulated enterprises, or parties in proceedings before the Commission. For purposes of this guideline the term "gift" does not include:

- refreshment consumed while attending a meeting or other gathering scheduled in the normal course of Commission business (the refreshment consumed cannot

exceed \$50 in value unless the meeting or gathering is a charitable, civic, or community event bearing a relation to Commission business or attendance is in official capacity);

- the limited use of shared transportation where separate transportation would be impractical, such as a site visit to an industrial location (so long as the costs of transportation are shared among participants or the transportation does not exceed \$50 in value);
- reimbursement by regulated entities for Commission travel expenses for Commission business (e.g., audits, inspections, and attendance at regulatory meetings) made directly to the Commission's Centralized Services Division; and
- campaign contributions reported as required by state law

Commissioners and persons aspiring to that office should carefully consider Ethical Standard II when deciding whether to accept a campaign contribution. Commissioners' campaigns may receive reasonable, in kind gifts or compensation and reimbursement of expenses from entities not subject to Commission jurisdiction, or not expected to become parties before the Commission, if doing so does not give the appearance of impropriety or create a conflict of interest and all disclosure and reporting requirements are met.

ETHICAL STANDARD V: Commissioners may not engage in ex parte communication after a matter has been noticed for hearing. See MCA § 2-4-613.

ETHICAL STANDARD VI: Duty to Disclose Ethics Violations or Crimes.

Commissioners and staff are required to disclose to his or her supervisor (or in the case of Commissioner to the Commission Chairman) any job-related illegal or unethical behavior on the part of any individual, including the employee or Commissioner him/herself. (And/or report to the Commissioner of Political Practices.).

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ii. PSC Email Policy Compliance Requirements

Any PSC employee or Commissioner who becomes aware of a request to the agency to

provide email records must immediately notify the Chief Legal Counsel. The Chief Legal Counsel, or an attorney assigned by the Chief Legal Counsel, will initiate a legal hold and identify the personnel and/or Commissioners subject to the hold based on the request. A legal hold refers to a process which the agency uses to preserve all forms of relevant information when it receives a public records request or reasonably anticipates some type of litigation against it. The legal hold is initiated by a notice or communication from legal counsel to personnel within the agency that suspends the normal disposition or processing of records, such as backup tape recycling, archival of media, and other routine storage and management of documents and information.

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The legal hold request will be emailed to the employees and/or Commissioners subject to the hold, the agency's Paralegal, and the Information Technology staff (IT staff). Those individuals receiving the email will immediately begin compliance with the legal hold. The assigned attorney will send a letter to the requestor which will acknowledge receipt of the request. The letter will contain an attachment explaining the limits and restrictions of the legal hold process initiated at the PSC. In addition, it will explain that the State Information Technology Services Division (SITSD) legal hold and restoration options are the most complete direct source of emails.

If necessary, the letter will request clarification of the scope and terms of the email search request. The letter will contain an explanation that the PSC will facilitate the process but the cost is fully on the requestor.

Once the email search parameters are confirmed, the assigned attorney, will work to estimate the cost of response to the request. The requestor will be provided with an estimated cost to complete the search. The estimated costs to the requestor will be calculated consistent with MCA §2-6-1006. Email records will not be provided for free or at a discounted cost. The requestor will be billed for staff time and copies. The email records will not be provided until the full estimated payment has been received.

Once the full estimated payment has been received, the assigned attorney, IT staff, and

the paralegal will assemble the requested materials that the PSC has access to from PSC-owned computers, consistent with the search request.

A privacy review of the assembled emails will be conducted by the Legal Division, which will make the final decision on which emails will not be disclosed because of a right to privacy or other basis for non-disclosure (e.g., personnel matter or medical condition). The employees and/or Commissioners subject to the legal hold may review the emails anticipated to be disclosed.

Those emails that meet the search parameters, and are not subject to the right to privacy, will be supplied to the requestor after full payment is received. If the cost of the email search is different than the amount already received for the services, a refund or a bill will be issued. The email records will not be provided until the full payment has been received. All emails that were assembled pursuant to the search request will remain on file with the paralegal and retained like a legal file in accordance with agency record retention policies.

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An employee who refuses to cooperate in this process is subject to discipline as a result of non-compliance.

No Commissioner may refuse to supply emails once the legal hold is initiated. Should the requestor proceed to District Court, the PSC will not provide an attorney. The Commissioner will be responsible for acquiring its own legal counsel, and is responsible for any expenses incurred through litigation.

The following are hyperlinks to other relevant and related provisions and policy adopted by the Department:

User Responsibility:

<https://montanadoa.policytech.com/docview/?docid=341&public=true>

Email Policy:

<https://montana.policytech.com/docview/?docid=349&public=true>

For more information, please contact the Centralized Services Division Administrator.