How Not to Get Sued as a Police Chief or How Not To Get Fired
Pete Orput
MCPA Co-counsel April 2015

GET OUT OF WORK “FREE”
Play the card... get the boot

Basic Concepts
- Employment At Will
- Contracts/Agreements
- Protections
  - Due Process
  - Veterans Preference
  - Civil Rights
  - Constitutional Rights
Employment At Will

The city may fire a chief for any reason or no reason at all. Any hiring is presumed to be "at will"; that is, the employer is free to discharge individuals "for good cause, or bad cause, or no cause at all," and the employee is equally free to quit, strike, or otherwise cease work.

Employment Agreements

- Ask for a formal employment agreement from your city manager.
- The League of Minnesota Cities has been encouraging cities to have agreements in place for new police chiefs.
- Now is the time to negotiate for yourself for job security.

Employment Agreements

- A well-drafted Employment Agreement addresses the following key issues:
  - The job position
  - Whether the position can be changed by the employer
  - The length of the agreement
  - The salary, bonus, and benefits
  - When the employee can be terminated for just cause
  - What "just cause" means
  - When the employee can be terminated without just cause and what severance payment will be due
  - The employee's job responsibilities
  - The employee's confidentiality obligations
  - Where and how disputes will be handled
Bumping Rights

“Bumping,” means the displacement of a junior worker by a senior worker to avoid the layoff of the senior worker. Before accepting a promotion to a police executive position from within the department, meet with HR and union rep. to negotiate your right to rejoin the union upon lay off.

If you have been selected from the ranks, you may have bumping rights back to the collective bargaining unit.

City Employment Handbook

Many public employees have successfully argued that the rules in the handbook are, in effect, an employment contract. *Dontley v Howard University* 859 A.2d 651 (D.C. Ct. App. 2004)

City handbooks typically state that discharge from employment shall be for “just cause.”

The handbook language may give employee a right to notice and a hearing.

An employment agreement may specifically obviate the handbook.

City employment hand books
Civil Rights Protection

- A showing of purposeful discrimination based on sex, race, national origin, religion, disability, orientation...
- In violation of Title VII of the Civil Rights Act of 1964 or of the Minnesota Human Rights Act,
- May be a cause of action under 42 USC sec. 1983.

Constitutional Rights

- First Amendment Claims
  - Chief must prove that the protected speech was the motivating factor in termination.
  - Then burden shifts to the city which must show, by a preponderance of evidence, that it would have made the same decision absent the protected activity
  - I wouldn’t rely too heavily on this defense...

Discrimination Claims

Direct discrimination: A claimant must show either “an acknowledgment of discriminatory intent by the defendant or; circumstantial evidence that provides the basis for an inference of intentional discrimination.”
Discrimination Claims

- Indirect showing of discrimination:
  - first, that he is a member of a protected class;
  - second, that he was meeting his employer's legitimate performance expectations;
  - third, that he suffered an adverse employment action;
  - fourth, that he was treated less favorably than similarly situated individuals who are not members of his protected class.

Political Speech

- Practical Analysis
  
The reality is that if a chief says something that irritates a council person or mayor, they will likely wait and amass other evidence of wrongdoing to support a firing.

Sure Fire Ways To Get Fired

- Criminal Conviction
- Unprofessional Conduct
- Outside Remuneration
  - While on Duty
- Neglect of Office Duties
- Political Speech
Criminal Conviction

- Conduct that impairs the use of one’s license
  - POST Board may suspend peace officer license for conviction of all felonies, gross misdemeanors and some misdemeanors (domestic assault, drug crimes, theft)
  - DWI conviction could result in driver’s license suspension.
  - Domestic assault or OFPs prevent one from carrying a firearm.

Convictions, Continued

- It does not matter whether the conviction is stayed or continued for dismissal.

Unprofessional Conduct

- Adultery
- Drunkenness
- Gambling addiction
- Using city property for one’s own gain
  - Cellular phone for personal use
  - Squad car for personal use
**Outside Remuneration While On Duty**
- Serving on corporate boards (for remuneration – even small $)
- Serving on other department’s hiring or promotion panels
- Doing private investigative work
- Accepting gratuities

**Gratuities**
- M.S. 471.895 makes it a misdemeanor for a “local official” to accept a gratuity from an “interested party”, i.e. a constituent or someone who may rely on police services in the community.

**Neglect of Duty**
- Disregarding orders of a police commission or city council
- Being habitually unavailable to the public
- Inefficiency
- Time abuse
- Dereliction of duty
Whistleblowers

- Claiming a violation of M.S. 181.932, the State Whistleblower Statute, is a defense to a firing that is raised after termination.

A successful whistleblower claim

- Mayor of City of Moline Acres fired chief.
- Chief sued alleging: Mayor ordered cops to tow legally parked car from residence of former mayor;
- Ordered a truck towed then when cop told truck driver that mayor ordered it, he was fired.
- Mayor ordered DWI checkpoints in front of saloon that wouldn’t let him use the lot for the city circus
- Mayor had his son-in-law released from arrest and tickets destroyed.
- Chief dimed the mayor to the county attorney, then the mayor fired him.

Things to Avoid
Some broad categories

- Sex
- Drugs/alcohol
- Internet usage
- Criminal misconduct
- Battles with Unions
- Burn out
- New appointing authority

Disbanding the Department and contracting with the Sheriff

Mora City Council members ended months of discussion and debate by voting 3-2 Tuesday afternoon to disband the city's police department and contract with the Kanabec County Sheriff's Office for the administration of law enforcement services.

- Mayor was member of Kanabec County Sheriff's Office....

Political Speech

- Legal Analysis
  - Whether chief engaged in speech involving a matter of public concern;
  - Whether the employee's interest in the expression outweighs the gov't interest in providing services efficiently;
  - Whether the employee has shown that the protected speech was a substantial or motivating factor in the challenged employment decision;
  - Whether the employer has shown it would have reached the same decision in absence of the protected speech.
Texas Chief fired for management issues

- Chief and sergeant fired after starting and loudly participating in local Tea Party movement which attacked incumbent council members...

Columbia, SC. Chief fired

- New mayor got in car wreck- other party seriously injured.
- Chief refused to turn over investigation to outside agency.
- City manager fired him citing that he had turned over a previous investigation to an outside agency when a city councilman was involved in a fender-bender in the city hall parking lot.
- When asked why he turned over that one and not the current case, he said the City Hall parking lot is private property and the police department investigates accidents only on public property, as is the case with the mayor’s accident.

Internet/texting/posting, etc.

- UW Campus police chief fired for texting things such as:
  - “I’m a bit of a voyeur and a fan of the female form.”
  - Chief requested a photo of woman. When she sent one with clothes he said “Less clothes, more smile and sensuality”
Internet issues, cont.
- Pa. Police Chief fired for posting videos on internet.
- Videos showed chief firing auto weapons while ranting about gun control. He also ripped Secretary of State Kerry for arms control treaties.
- Stated reasons for firing: Misuse of govt. property, neglect of duties.

More internet posting....
- Chief sent racist emails to friends.
- Chief had received emails from friends then forwarded them on to other cops.

Fla. Chief Fired over e-mails?
- Chief sent e-mails to friends lamenting that President Obama’s security detail should shoot him. Also sent disparaging e-mails about Arabs and Muslims...
- He wasn’t fired for that!
- He was fired for having been paid for time off that he had not reported...
More internet nonsense
- Police Chief fired for posting the N word on Facebook.
- Sending out a video “How a real N___a orders Starbucks.
- Forwarding salacious emails, though funny- will get you fired quickly.
- This applies to tweets, text messages, etc.

Enforcing the Laws
- Chief fired for writing too many speeding tickets.
- “The chief is just too aggressive for our community”
- One person told the city council that the chief pulled her over and made her put her hand over her heart and promise to never speed. He also made me call him “Chief”.

Law Enforcement
- 5 officers told city council that chief made them write 12 tickets per shift.
- Chief fired for too aggressively enforcing town code related to clean up of debris after a tornado.
- Chief was fired for not writing enough tickets. Town’s department wrote more tickets than any other municipality in the state.
Theft

- Big or little - doesn’t matter!
- Police chief fired for “missing ammunition”. He took a case of ammo from the office storage room.
- Chief fired because police dept. vehicles had their electronic equipment “repaired” at the chief’s son’s shop.

Common Theft Firings

- Chief terminated for using on-duty officers for personal errands.
- Used city vehicles for personal use.
- Many cases where chief used city vehicle - squad car, public works tractor or dump truck, Segway, water patrol boats or gear for personal use.

Dekalb Co. GA. Chief Fired

- Chief had 2 seized vehicles at his home: A Range Rover and a Mercedes.
- He had five police vehicles (3 assigned to cover 3 shifts + 2 back up vehicles.)
- He blocked the city manager’s efforts to fire chief’s aide - he then was considered insubordinate.
Sex and sex harassment
- Chief fired due to 3 year extra-marital affair.
- Considered code of conduct violations.
- Investigation revealed that chief misused sick leave to be with his gooma. Also used tax payer funded money to fund trysts.

Consorting with prostitutes
- Cop left his and duty belt at a prostitute’s rendezvous and when he awoke it was gone.
- Prostitute’s pimp later shot himself with the gun while haggling over pawning it.

Clashes with Mayor, City Manager
- Chief did not follow mayor’s advice on budget, got the boot.
- Chief fired after 25 years because the “City wanted to go in a new direction”
- Chief fired by mayor because “the Chief needs to be in the city not in another city sitting, drinking coffee, doing whatever he did”
U.S. Park Police Chief Fired
- 2004, U.S. Park Police Chief Teresa Chambers was sacked after telling The Washington Post that budget cuts for the police force that patrols much of the monumental core in Washington could jeopardize public safety.
- She fought a legal battle since and was finally reinstated in 2011.

Chief fired by city manager over “new direction” for department.
- Officers complained to city manager about the chief not giving them take home cars and issues with uniform allowance. City mgr. cited chief’s “personnel problems”.
- One of the city councilmen had, coincidentally, been arrested for his 3rd domestic incident.
- Councilman, along with 2 other members, were concerned with chief’s management and advised city mgr. of their concerns...

Clashes with Management
- Mayor and city administrator were investigating police complaints and left chief out. Chief complained and was sacked.
- New city mgr. and mayor had lost confidence in chief.
- Chief fired for wanting to fill 3 vacancies over mayor’s objection.
Clashes with Management

- Chief fired after publicly disagreeing with cuts instituted by mayor.
- After the chief’s press conference he was terminated.
- As soon as union learned of tension between new mayor and chief they held a no-confidence vote, too!

More mgmt. clashes

- Chief blamed for heroin epidemic.
- Mayor: “I need someone to work the streets, not an administrator”
- Turns out the new mayor was a cop who had worked with the new chief he hired when they were both cops together years ago.

Clashes with Management

- Chief fired for:
  - Running background checks without authorization
  - Using office to seek revenge on others
  - Questioning authority of mayor to screen police applicants.
  - Contacting news media about negative city administration stories.
Clashes with Police Union

- Chief came in making deep slashes to personnel, etc.
- Chief fired 2 local police assn. presidents.
- Cop union votes “no confidence” then chief is out.

Texas Chief fired for Questioning wisdom of City Council vote

- City council voted to purchase semaphore cameras to catch those going through red lights.
- Chief questioned legality of photo cop’s evidence in court and use of $ from budget.
- Fired soon after with scathing performance review.
- Currently suing to get job back.

Truthfulness

- Coral Gables Police has an opening for a chief. The city administrator fired the last one for lying about crime statistics to the city council.
- Chief “accidentally” allowed his officers’ weapons certification expire. (the firearms expert was a buddy of the chief’s and he wasn’t properly certified)
Chief fired when newsies uncovered conviction
- Chief had sex with a minor but received a stayed sentence.
- Newsies uncovered the conviction and went public.

Chief shoots wife
- Accident or intentional?
- Does it even matter?

The Best reason to get fired?
- 18 year old kid was ordered by court to work off misdemeanor by doing community service with the police. Cops recalled that the kid had criticized the cops to the judge.
- Took kid to shed behind the cop shop and administered the “cinnamon challenge”.
Kid was held down while a large amount of ground cinnamon poured into his mouth. Without any water it is apparently an impossible task. Results are choking, coughing up a plume of spice dust and vomiting.

“What ever you are, be a good one!”

Questions?

Pete Orput, MCPA Counsel
Pete.orput@co.washington.mn.us