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MEMORANDUM

TO: Paula Flowers, Esq. - City Attorney
FROM: Kristin E. Berexa, Esq. - Investigator
RE: Findings and Recommendations for Reitz Sexual Harassment Complaint

I. INTRODUCTION

On April 5, 2007, Kathryn Reitz, a clerk in the Storm Water Department, filed a written complaint pursuant to Section 14 of the City of Mt. Juliet's Personnel Manual. Section 14 of the City's personnel manual is titled "Sexual Harassment Policy." Section 14(D) states that a "disinterested third party will be appointed as an investigator when a complaint of sexual harassment is made." On April 11, 2007, I was appointed as the investigator of the Reitz complaint. As the investigator, my role was to interview the complainant and witnesses and objectively gather, analyze, and evaluate facts and information regarding Ms. Reitz's complaint. As the investigator, my role was not to provide support, guidance, or counseling to the complainant or to any particular witness. Additionally, as my role requires me to submit a report of my findings and recommendations, I had to assume the task of resolving as best as possible factual disputes and weighing the credibility of the complainant and witnesses.

Prior to my appointment as the investigator for the Reitz complaint, I had represented the City of Mt. Juliet in the litigation styled Sandra Dempsey v. City of Mt. Juliet, U. S. District Court for the Middle District of Tennessee, Docket No. 3:06-cv-0741. The plaintiff in the Dempsey matter was a former employee in the Public Works Department, and her complaint included claims of sexual harassment, sexual discrimination, and retaliation. The Dempsey litigation was resolved in an out-of-court settlement. My representation of the City in the Dempsey matter was disclosed to Ms. Reitz at my initial meeting with her. Further, all City commissioners, the mayor, the city manager, as well as the City attorney, were well aware of my representation of the City in the Dempsey matter. I interviewed many employees of the Public Works Department during the Dempsey litigation. It was believed that the information I had gathered regarding the Public Works Department would be beneficial in my handling of the Reitz complaint.

Ms. Reitz began her employment with the City of Mt. Juliet on October 16, 2006 as the clerk in the Storm Water Department. Ms. Reitz had served as a member of the City of Mt. Juliet Planning Commission for approximately two years prior to her employment with the City. Once she became employed with the City, she had to relinquish her seat on the Planning Commission. The Storm Water Department is under the auspices of the Public Works Department. At the time of the submission of this complaint, according to the organizational flow chart for the Public Works Department, Ms. Reitz's immediate supervisor was the Storm Water Department coordinator, Gary Gaskin. In turn, Mr. Gaskin reported directly to the Assistant Director of Public Works, Shannon Joiner, and Mr. Joiner reported to the Director of Public Works, Hatton Wright.¹

Prior to filing her written complaint on April 5, 2007, Ms. Reitz spoke with a member of the Planning Commission regarding her complaints with her work environment in the Public Works Department. This particular member of the Planning Commission suggested that Ms. Reitz contact the mayor about these complaints. According to Ms. Reitz, she did not feel comfortable going to administrative staff at city hall or to anyone within the Public Works Department. Thus, Ms. Reitz contacted Mayor Elam via telephone regarding her complaint on April 2, 2007. According to Ms. Reitz and Mayor Elam, Mayor Elam instructed Ms. Reitz to submit the complaint to Rob Shearer, the City Manager, as required by the City's sexual harassment policy.²

On April 5, the day Ms. Reitz submitted her written complaint, Ms. Reitz telephoned Mayor Elam to inform her she had filed her complaint with Mr. Shearer. On April 9, 2007, the Board of Commissioners conducted a regularly scheduled meeting. At this meeting, Mayor Elam publicly announced that an investigation was forthcoming and moved that the City Attorney, not the City Manager, oversee the investigation. The motion received a second and passed.

II. CITY'S SEXUAL HARASSMENT POLICY AND PROCESS OF INVESTIGATION

Section 14 of the City of Mt. Juliet's Personnel Manual sets forth the City's sexual harassment policy. In accordance with Section 14(A), a copy of the sexual harassment policy must be given to every City employee and to all new City employees as part of their orientation. Ms. Reitz did receive a copy of the sexual harassment policy when she began her employment with the City.

¹ Mr. Wright was the Director of the Public Works Department from August 7, 2002 until he resigned his position on April 27, 2007. Currently, Mr. Joiner is serving as the Interim Director of the Public Works Department due to Mr. Wright's resignation.

² Mr. Shearer was relieved of responsibility as City Manager effective April 23, 2007 when the Board of Commissioners appointed Sheila Luckett as the Interim City Manager.

Section 14(B) defines sexual harassment as follows:

Sexual harassment is unwelcome conduct of a **sexual nature** which (a) substantially changes the terms and conditions of employment; (b) interferes with an employee's work performance; or (c) creates an intimidating, hostile, or offensive work environment. (emphasis added)

This definition of sexual harassment complies with the United States Supreme Court's definition of sexual harassment as set forth in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). The creation of an "intimidating, hostile, or offensive work environment" does not constitute "sexual harassment" unless the intimidation, hostility, or offensive conduct is of a sexual nature or because of one's sex. The sexual harassment policy does not address and is not a proper vehicle for filing or resolving complaints of employee and/or supervisor misconduct, nor is it the proper vehicle for resolving management and employee conflicts that are sexually benign or gender neutral.

However, an employee who has a complaint or conflict with a fellow employee and/or supervisor is not without an avenue of recourse. Section 9 of the City of Mt. Juliet's Personnel Manual sets forth a grievance procedure for management and employee conflict resolution. Section 9 provides a detailed grievance procedure. The grievance procedure does not allow for the appointment of an outside investigator, whereas the sexual harassment policy does. Ms. Reitz's complaint expressly states it is being filed "as allowed in our Personnel Manual citing Section 14," the sexual harassment policy, not Section 9, the grievance policy.³

During this investigation, I conducted over 25 witness interviews, and my associate, Derrick Free who assisted in this investigation, conducted ten witness interviews. We have spent in excess of 160 hours in conducting this investigation. All witness and complainant interviews were recorded, with the exception of a few brief follow-up interviews and a few witnesses who objected to their interviews being recorded.⁴ The complainant was interviewed in person four times. As part of the investigation, we spoke with each witness identified by Ms. Reitz. In addition, we interviewed many other current and former employees of the Public Works Department whom we believed may have information relevant to this investigation. Although Section 14 (D) provides that all attempts should be made to complete the investigation within seven days, due to the number of witnesses interviewed and the number of hours

³ During my investigation, certain issues arose which were not within the scope of an investigation under the sexual harassment policy but would be more appropriately filed under the grievance policy. A confidential attorney-client privileged memorandum, outlining those issues which I believed were outside the scope of this sexual harassment investigation, was provided to the city attorney.

⁴ John Reitz, Ms. Reitz's husband, telephoned Mayor Elam during this investigation and told her Ms. Reitz had recorded some of her interviews with the investigator. If so, such recordings were made surreptitiously. Nevertheless, additional or duplicate recordings of interviews may exist.

spent in this investigation, completing this investigation within seven days was simply impossible. Pursuant to the City's policy if, after due diligence, the investigator is unable to complete the investigation and prepare a report, additional time may be allowed to complete the investigation. In this case, such additional time was absolutely imperative in order to conduct a thorough and complete investigation.

Section 14(D)(3) provides that the complainant and all witnesses be interviewed. This was completed. Section 14(D)(3) also provides that the accused should be notified in writing that a complaint has been filed and that a written response should be requested from the accused. In Ms. Reitz's written complaint, the only specific individual identified as having exhibited behavior in violation of the sexual harassment policy was Public Works Director, Hatton Wright. Mr. Wright was notified in writing and placed on leave pending the outcome of this investigation. Mr. Wright was not required nor requested to provide a written response to the written complaint because the written complaint itself provided no specific episodes to which he needed to respond. The specific nature of Ms. Reitz's complaint was gathered through the documents she provided to me and my conversations with her. Mr. Wright was interviewed during this investigation and questioned as to the specific complaints and allegations made by Ms. Reitz.

Further, Section 14(E)(1) of the sexual harassment policy provides that, "[t]o the fullest extent possible, the investigation will be conducted discreetly, confidentially, and with all due regard for the persons involved." Due to the nature of this investigation and the public disclosure of this investigation, it was impossible to maintain strict confidentiality. In my opinion, four specific factors eroded the confidentiality of this investigation. First, the City Manager made the determination that the written complaint itself was a public document subject to disclosure. Second, at the City Commission meeting on April 9, 2007, Mayor Elam publicly disclosed, without specifically identifying the name of the complainant, that an investigation would be forthcoming into conduct occurring within the Public Works Department. The existence of this investigation became public almost immediately upon its filing.

Third, the Reitz complaint is based upon many episodes that Ms. Reitz, herself, did not witness nor of which did she have firsthand knowledge. Many of her complaints and allegations were relayed to her by other City employees. As a result, during this investigation the disclosure and/or identification of various other employees was simply unavoidable. Fourth, the interviewed witnesses were asked not to discuss their interviews with other employees in the workplace and not to discuss this investigation in the workplace. Moreover, the City attorney, City Manager, and I held meetings with the Public Works Department discussing the handling of this investigation and again requesting that employees not discuss this investigation while it was ongoing. However, through my witness interviews, it became apparent that some witnesses were not adhering to our admonition and were discussing their interviews with fellow employees.

For these reasons, confidentiality of the complainant and all the witnesses involved was simply impossible to maintain in this type of atmosphere. Confidentiality

could possibly be maintained if there is one complainant and one harasser. However, when the investigation requires interviewing over 50% of the Public Works Department plus people from outside departments, strict confidentiality simply cannot be maintained.

III. GENERAL OBSERVATIONS

Before addressing the actual specifics of Ms. Reitz's written complaint, I believe it important to provide some general observations which I formed during the many hours spent on this investigation. In my opinion, such observations may provide somewhat of a helpful backdrop for a more thorough understanding and analysis of Ms. Reitz's complaint and the work environment within the Public Works Department.

First, all witnesses interviewed were cooperative, polite, and most appeared respectful of the investigation process. However, some witnesses voiced resentment of the effect they believed this investigation was having on their work environment. Such effects included the creation of a much more stressful work environment, a decrease in employee morale, and creation of an element of distrust among employees. Other witnesses expressed feelings of retaliation and rejection in the form of "cold shoulder" treatment, "stare downs," etc.

Specifically, in regard to former Public Works Director Hatton Wright, Mr. Wright engendered very strong feelings among his employees of either staunch loyalty or animosity. The majority of the interviewed employees were very supportive of Mr. Wright. However, even some of those very supportive of Mr. Wright admitted that he had a somewhat volatile personality. However, the great majority of witnesses believed his volatility was not gender based. There were two witnesses, in addition to the complainant, who believed Mr. Wright treated women less favorably than men.

As to Ms. Reitz, I found her to be pleasant, articulate, and well-educated. However, at times during the interviews she exhibited a rather condescending attitude toward her fellow employees, as was evidenced by her statement to me that "it wears [her] out having to educate some people about what's appropriate and what's not appropriate." She stated she was over-qualified for the clerk position and was simply using it as a stepping stone to a better position. Ms. Reitz had been an employee of the City for six months before filing her complaint.

Based upon my investigation, I believe the work environment in the Public Works Department is somewhat dysfunctional. I found it to be a very divisive environment. It appears to be an environment riddled with distrust among employees and somewhat "cliquish" behavior. Employees described groups of certain employees as the "untouchables" and the "in crowd." Some employees also voiced a constant concern for their job security and a fear of reprisals from supervisors and even from elected officials. Many of these feelings described by the employees may simply be based upon employees' subjective beliefs, rumor spreading, and preconceived notions. Nonetheless, these feelings are "real" to the employees. Further, in my opinion the current somewhat

dysfunctional work environment is not a product of any sole person or cause, but is a conglomeration of polarizing personality types and a lack of effective communication, which potentially breeds distrust and discontent in the workplace. This type of environment would most definitely decrease employee morale and productivity.

IV. FACTUAL ANALYSIS OF REITZ COMPLAINT

A. Analysis of Paragraph 1 of Reitz Complaint

The Reitz complaint asserts in paragraph 1 as follows:

1. Building codes people were treated unfairly. There was an environment of intimidation created by the department head forbidding them from speaking to police and anyone outside their department. One employee was assaulted verbally for many weeks with supervisor's knowledge followed by a physical assault while in the field doing inspections. These people who did the assaulting were then passed on inspections.

In interviewing Ms. Reitz, she explained that the assertions set forth in paragraph 1 related to a former female Public Works Department employee and a current female Public Works Department employee. Ms. Reitz explained to me that her allegations that these employees were treated unfairly were based almost solely on conversations she had had with these employees. She had little to no firsthand knowledge of the allegations in paragraph 1. Further, she was unsure as to whether this unfair treatment was even because of the employee's gender. She simply assumed so.

As to the former employee, her tenure with the City and Ms. Reitz's tenure overlapped by six weeks. During this overlap, the only firsthand knowledge or information Ms. Reitz had of the former employee's work environment was that Ms. Reitz did witness the former employee being upset at work. However, the only information Ms. Reitz has as to why this former employee was upset came from other employees or the former employee herself. Ms. Reitz has no direct or firsthand knowledge of this former employee's situation. Moreover, the former employee was interviewed, and she described her environment as hostile and unfair, but not hostile and unfair because of her gender.

In order to establish a sexually-hostile work environment, the complainant must bring forth sufficient evidence that she herself was the victim of unwelcome conduct of a sexual nature or at least witnessed such conduct firsthand. A complainant cannot base her claim on hearsay statements and secondhand information. Peake v. Brounlee, 339 F.Supp.2d 1008 (M.D. Tenn. 2003).

As to the current employee, Ms. Reitz's knowledge of this situation is based upon hearsay statements and not firsthand knowledge or information. The current employee was interviewed and explained her belief that she was treated unfairly in regard to work assignments and supervisory support because of her gender. Moreover, she complained

of overly-flirtatious behavior between some employees. A determination of whether this current employee has been or is being subjected to a sexually hostile work environment is outside the scope of this investigation. The issue in this investigation is whether Ms. Reitz was the victim of sexual harassment.⁵ Therefore, in regard to the current employee's work environment and its effect on Ms. Reitz, since hearsay statements and second-hand information cannot create a sexually-hostile work environment, I find that the allegations made by the current employee cannot contribute to nor do they correlate to a hostile work environment for Ms. Reitz.

As to the former employee, I find that the work environment of this former employee also cannot contribute nor correlate to a sexually-hostile work environment for Ms. Reitz for two reasons: (1) Ms. Reitz's knowledge of this work environment is based upon hearsay and not firsthand knowledge; and (2) the former employee did not even view her own environment as hostile or unfair because of her gender.

Also in paragraph 1 of her complaint, Ms. Reitz makes a very specific and serious allegation that one particular employee was "assaulted verbally for many weeks with supervisors' knowledge followed by a physical assault while in the field doing inspection. These people who did the assaulting were then passed on inspections." Although Ms. Reitz again has no firsthand knowledge or information regarding this allegation, and accordingly such allegation cannot contribute to Ms. Reitz's claimed hostile work environment, due to the seriousness of the allegation, I will relate what information I gathered in regard to this episode.

Based upon the testimony of several witnesses, an employee in the Building Codes Department had complained from time to time regarding verbal harassment from building superintendents for two developers with ongoing projects in the Mt. Juliet area. According to the employee, the employee was not happy with the supervisor's response to the complaints of verbal harassment. The supervisors claim that the issue was addressed with the building superintendents as well as individuals with supervisory authority over the building superintendents. The effectiveness of the City's response is disputed. The employee maintains that the verbal assaults continued. On the other hand, supervisors within the Public Works Department deny that they were ever informed of a continuous ongoing problem with verbal assaults.

As to the physical assault, there are differing recollections as to when someone in a supervisory capacity for the City was notified of a physical assault. According to the employee, a building superintendent grabbed the employee in the neck area. Although there is a dispute as to the actual time line of events following this physical assault, at some point, former Director Hatton Wright was notified of this episode. A meeting occurred between Mr. Wright, Mr. Joiner, and the employee. Following the meeting, Mr. Joiner stated that Mr. Wright ordered an immediate stop on the issuance of all permits and the performance of all inspections on the projects with which this building

⁵ The information gathered on these issues has been turned over to the City attorney in the form of a confidential memorandum protected by the attorney-client privilege work product doctrine.

superintendent was involved. Additionally, the employee was told to call the police department immediately the next time something similar to this occurred. Mr. Joiner and Mr. Wright also told the employee to prepare a written report regarding the episode. Mr. Joiner and Mr. Wright also scheduled a meeting with representatives of the builders. Moreover, Mr. Wright and Mr. Joiner spoke with the employee's immediate supervisor to insure that these situations were handled properly in the future. Finally, the employee was given MACE and a police radio to keep in the work vehicle. The police radio would allow this employee to have immediate contact with dispatch, and on-duty police officers would receive the transmission. The employee indicated that there had been no further physical assaults.

B. Analysis of Paragraph 2 of Reitz Complaint

Paragraph 2 of the Reitz complaint asserts as follows:

2. I was harassed with intimidation of spiders after an infestation of recluse spiders caused a co-worker to be out on medical leave after being bitten several times.

During my interviews with Ms. Reitz, we did discuss the ongoing existence of spiders in the building in which the Storm Water Department and Codes Department are housed. Ms. Reitz related to me her fear of spiders and her discomfort in having to work in an environment where spiders were present. Clearly, the existence of spiders in the workplace created discomfort for Ms. Reitz. She did express her uneasiness over the existence of spider traps throughout the building. However, Ms. Reitz admitted she has no evidence, information, or knowledge indicating that she was in some way harassed with the spiders or the spider problem because of her gender.

In short, Ms. Reitz's complaint regarding the existence of spiders in the workplace pivots on her belief that the City did not handle the spider situation appropriately or effectively. The sexual harassment policy is simply an inappropriate vehicle for the reporting and/or resolution of Ms. Reitz's complaints regarding spiders in the workplace. The determination of whether there was truly an "infestation" of spiders in the workplace and the City's adequacy of a response to the existence of spiders is not within the purview of an investigation under the sexual harassment policy. This complaint would be more appropriately addressed under the grievance procedure.

I believe it is important to note that Ms. Reitz was not the only employee who expressed concern over the spiders in the workplace. The complaints from the concerned employees centered more on not the existence of the spiders, but the City's perceived failure to provide them with sufficient information as to what was being done to remedy the situation. Some employees expressed distrust as to the information that was being relayed to them. In my opinion, it seems it could be helpful if the City arranged a meeting with its employees at which a representative from the pest control company and/or a neutral third party met with the employees to discuss the actual severity of the spider situation and the measures being taken to remediate the problem.

In my opinion, this situation is an example of the lack of effective communication within the department.

C. Analysis of Paragraph 3 of Reitz Complaint

Paragraph 3 of the Reitz complaint asserts as follows:

3. There was an environment of intimidation and hostility exhibited by public works director.

In interviewing Ms. Reitz about paragraph 3 of her complaint, I specifically discussed with her the difference between an environment of intimidation and hostility which was of a sexual nature or based upon one's gender versus a sexually benign or gender benign environment of intimidation and hostility. Based upon my interview with Ms. Reitz, paragraph 3 clearly related to what she perceived to be Mr. Wright's management style. In her opinion, Mr. Wright supervised his employees with fear and intimidation. She described him as having a volatile and hot tempered personality. Based upon my interviews with her, this environment "of intimidation and hostility" is not sexual in nature nor based upon the fact that Ms. Reitz is female. In order for a complaint to properly fall within the purview of the City's sexual harassment policy, the complaints of a hostile work environment must be based upon one's sex. The sexual harassment policy is not the proper vehicle for complaining about a supervisor's management style. Such a complaint falls more appropriately under the City's grievance procedure, which is found in Section 9 of the City's personnel manual.

D. Analysis of Paragraph 4 of Reitz Complaint

Paragraph 4 of the Reitz complaint asserts as follows:

4. There was lewd behavior and sexually oriented emails permeating the office. This affects both section 14 and section 15, part 7(2).

Although paragraph 4 of Ms. Reitz's written complaint lacks factual specificity, during my interviews with her, Ms. Reitz provided specific instances of what she termed "lewd behavior and sexually-oriented e-mails." The following factual allegations were provided by Ms. Reitz in support of her claim that she was subjected to sexual harassment in violation of the City's sexual harassment policy: (1) Ms. Reitz's receipt of an e-mail depicting cartoon drawings of women's bare breasts and a comedic spoof on mammograms; (2) the discussion among employees of a rumor regarding an alleged romantic relationship between Director Wright and another City employee; (3) male employees referring to another female employee, not Ms. Reitz, as menopausal or perimenopausal; and (4) inappropriate comments and behavior by Ms. Reitz's supervisor, Gary Gaskin. Each of these allegations will be discussed separately.

Mammogram E-mail

Ms. Reitz stated that she received what she considered to be an inappropriate e-mail from a co-worker in the Public Works Department within the first two weeks of her employment with the City. There is no dispute that this particular e-mail was, in fact, received by Ms. Reitz and other employees in the Public Works Department. Ms. Reitz found this e-mail to be offensive and inappropriate for the workplace. Based upon my interviews, the majority of the employees did not find it offensive, but some stated it was probably inappropriate for the workplace.

Following her receipt of this e-mail, Ms. Reitz notified her supervisor, Gary Gaskin, of the e-mail and her feeling that the e-mail was inappropriate. Ms. Reitz stated that she explained to Mr. Gaskin that she was going to contact Jill Johnson, Human Resource Director, regarding the e-mail. Ms. Reitz states that Mr. Gaskin told her she should not contact Ms. Johnson, but she should simply take a “wait and see” approach to see if she received any further inappropriate e-mails. Mr. Gaskin admits that he and Ms. Reitz did have a discussion to this effect. Additionally, Mr. Gaskin states that, in an effort to prevent the dissemination of similar e-mails to Ms. Reitz in the future, he spoke with several employees in order to make them aware that Ms. Reitz did not appreciate this type of e-mail. According to Ms. Reitz, she never received any further inappropriate e-mail.

Section 15 of the City’s personnel manual sets forth the City’s policy for the use and monitoring of e-mail. Section 15(C) provides, “E-mail messages are considered to be City property. Also, they remain City property and may be retrieved from storage even after they have been deleted by the sender and the recipient.” Section 15(E)(1) further provides, “It is City policy that any e-mail system of the City, like other city assets, is to be used only for the benefit of the City.” However, Section 15(E)(4) does allow for limited personal use of the city e-mail system. This Section provides, in its entirety:

4. Personal Use.

Employees are not prohibited from using e-mail for personal messages, but such use should be kept to a minimum. Should employees make incidental use of e-mail to transmit personal messages, those messages will be treated no differently than other messages and may be accessed, reviewed, copied, deleted, or disclosed. You should not expect that a message will never be disclosed to or read by others beyond its original intended recipient(s).

Section 15 (E)(7) then sets forth prohibited uses of the City’s e-mail system. Specifically, this Section prohibits an employee from “composing, sending, or receiving e-mail that contains racial, religious, discriminatory, or **sexual slurs or jokes**, or harassing, intimidating, **pornographic**, slanderous, abusive, or **offensive** material to or about others[.]” (emphasis added). Finally, in Section 15(E)(3)(a), the City reserves

the right to monitor or retrieve e-mail messages during the course of an investigation that has been triggered by indications of impropriety.

The mammogram e-mail does not fall squarely within the prohibitions set forth in Section 15(E)(7). Although clearly the mammogram e-mail would be directed toward female employees because of their gender, this e-mail is not a sexual slur or joke regarding women. Further, this e-mail is not pornographic in nature. Pornography is defined by the Merriam-Webster Dictionary as “the depiction of erotic behavior designed primarily to cause sexual excitement.” However, this e-mail is rather crude and could certainly be “offensive” to many people. As such, in my opinion, this e-mail is inappropriate in the workplace.

Therefore, the transmission of this e-mail could be seen as a violation of the City’s e-mail policy. However, it is a minor infraction at best and, as the investigator, I would not recommend any disciplinary action. I would strongly recommend additional training with all City employees regarding the City’s e-mail policy. As to Ms. Reitz, the receipt of this particular e-mail could be an episode that could potentially contribute to a hostile work environment for her. Clearly, the mammogram e-mail was sent to Ms. Reitz because of her sex, and the content of the e-mail is most definitely gender-specific. Also, Ms. Reitz’s supervisor, Gary Gaskin, should not have discouraged the use of the City’s sexual harassment policy and/or the grievance policy. Mr. Gaskin should be verbally reprimanded regarding his discouraging the use of the City’s policy. Further, I would recommend training on the utilization of the City’s sexual harassment policy.

Rumor of Romantic Relationship

Ms. Reitz states that while employed at the City, she has continuously heard employees discuss the rumor that Mr. Wright has had an ongoing romantic relationship with another City employee. Ms. Reitz was unable to provide any solid evidence that the relationship between Mr. Wright and this particular employee was anything more than a close friendship. Many witnesses were asked about this rumor, and none of the witnesses were able to provide specific evidence that Mr. Wright was engaged in a romantic relationship with another City employee. This appears to be a rumor that has plagued the Public Works Department for quite some time. Employees apparently continue to discuss it and gossip about it. Mr. Wright adamantly denies such a relationship, and the other City employee allegedly involved in this romantic relationship also adamantly denies the existence of such.

Further, Ms. Reitz admitted that this rumor did not affect her work environment. Therefore, a rumor of this sort, especially one that does not involve Ms. Reitz, and admittedly does not affect her work environment simply cannot contribute to or cause a hostile work environment for Ms. Reitz.

Male Employees Referring to Another Female Employee as Menopausal or Perimenopausal

Ms. Reitz states she heard male employees refer to a former female City employee as menopausal or peri-menopausal as an explanation for what the male employees believed to be her erratic behavior. Ms. Reitz specifically identified three male employees that she heard firsthand make such comments. Mr. Wright was not one of the three identified male employees. All three of these City employees were interviewed. Two of the employees adamantly denied that they had ever used such terms in reference to the former City employee. The third employee admitted that he may have used that term at some point in referring to this former City employee, but said the term was not used in a derogatory manner. This particular male employee went on to explain that the former City employee actually had used that term in reference to herself. As the employee who admitted to using this term was so candid and forthright in his response, I find that his description that the statement was not used in a derogatory manner to be credible. The term “menopause” or “menopausal” in and of itself is simply a description of a health condition and is not, if used in an appropriate fashion, derogatory toward women. As to the other two male employees alleged to have used this term, I simply am unable to resolve the swearing match between Ms. Reitz and these two employees.

Inappropriate Comments and Behavior by Gary Gaskin

Ms. Reitz states that her supervisor, Gary Gaskin, behaved inappropriately and/or made inappropriate comments on five specific occasions. Each one will be addressed separately below. However, I think it is important to first discuss the manner in which these allegations against Mr. Gaskin arose. During my first two meetings with Ms. Reitz, she did not relate to me any episodes of inappropriate conduct by Gary Gaskin. Further, at the first meeting, Ms. Reitz provided to me 11 typewritten pages detailing her complaints about her work environment. Nowhere in these 11 pages is there any reference to Mr. Gaskin behaving in a manner violative of the sexual harassment policy. It was not until after I had met with Ms. Reitz twice that she contacted me and asked for a follow-up interview. During this interview, Ms. Reitz first brought forth her allegations that Mr. Gaskin had behaved inappropriately in the workplace. As background, it is important to note that Mr. Gaskin, Ms. Reitz, and John Reitz, Ms. Reitz’s husband, had somewhat of a friendship outside of work. According to Ms. Reitz and Mr. Gaskin, both men attended monthly prayer breakfasts together. Further, both were interested in the music business and shared some common experiences.

In response to the allegations made against Mr. Gaskin, Mr. Gaskin states that Ms. Reitz on numerous occasions, both in and out of the workplace, has instigated many conversations regarding Mr. Gaskin’s personal life. Mr. Gaskin states Ms. Reitz has made suggestive remarks about any number of Mr. Gaskin’s friends and clients who visit the office for luncheons. Mr. Gaskin states that Ms. Reitz has tried on numerous occasions to “hook him up” with personal friends of hers. Further, Mr. Gaskin states that Ms. Reitz and her husband, with some regularity, would begin discussions with him about his single status and his dating life.

As the investigator, I find it curious that neither in her written complaint nor in my first two meetings with Ms. Reitz did she ever mention inappropriate behavior on behalf of Gary Gaskin. What appeared to begin as a complaint regarding the behavior of former Public Works Director Hatton Wright turned into a complaint against Ms. Reitz's supervisor, Gary Gaskin. Due to the unusual sequence of events as well as the previous personal relationship between Mr. Gaskin and Ms. Reitz and her husband, I have some questions about Ms. Reitz's motivation in bringing forth these specific allegations against Mr. Gaskin. Nonetheless, I investigated her complaints and my findings are discussed below.

As to the first episode, Ms. Reitz claims that one morning following a breakfast between Mr. Gaskin and her husband, both men returned to the workplace and Mr. Gaskin made the comment to Ms. Reitz that, "You need to go home and sleep with your husband." Gary Gaskin denies that he ever made such a statement. Mr. Gaskin does recall that following breakfast one morning Mr. Reitz did, in fact, follow Mr. Gaskin back to the workplace. Mr. Gaskin states that, while standing by Ms. Reitz's desk, Mr. Reitz stated to her, "Gary said you should take me home and be nice to me." Mr. Gaskin denies ever making such a statement to Mr. Reitz, but Mr. Gaskin does recall that Mr. Reitz attributed such a statement to him. Mr. Gaskin goes on to state that Ms. Reitz quipped in response, "John, you are just nuts sometimes."

Second, Ms. Reitz states that Mr. Gaskin made a statement referencing his male anatomy in which he compared the size of his male anatomy to the size of truck parts. Mr. Gaskin adamantly denies ever making any such statements to Ms. Reitz or in her presence.

Admittedly, these first two statements, standing alone, are unusual and could be considered episodes of sexual harassment if such statements were unwelcome by Ms. Reitz. However, when viewed in the context of the undisputed out-of-work friendship between Ms. Reitz and Mr. Gaskin, these statements may be appropriate within the confines of their personal friendship. However, the problem arises because of the blurring between the out-of-work friendship and the workplace relationship. Both parties claim inappropriate statements were made by the other. Due to the factual disputes and the unusual relationship between Ms. Reitz and Mr. Gaskin, I find insufficient evidence that these statements were sexual harassment or contributed to a hostile work environment.

Third, Ms. Reitz claims that one morning over coffee in the workplace she overheard Mr. Gaskin and another employee discussing a weekend boating episode wherein a friend of Mr. Gaskin's, who was a nurse for a plastic surgeon, openly examined another female's claimed breast augmentation. Apparently, the context of the conversation was that the co-worker's wife would not let him "hang out" with Mr. Gaskin because he was a "wild man." When questioned about this conversation in the workplace, Mr. Gaskin stated that another employee had somehow heard of the off-duty episode and began making comments about the episode to Mr. Gaskin. Mr. Gaskin denies that the comment was made directly to Ms. Reitz or intentionally in her presence. As to this episode, I find that it could contribute to Ms. Reitz's hostile work environment.

because the content of the conversation is gender specific in that it relates to specifically female anatomy. Further, such a conversation could be demeaning and offensive to female employees. In addition, this conversation occurred in an area of the workplace that was open to all employees and the potential for conversations to be overheard.

Fourth, Ms. Reitz claims that she heard Mr. Gaskin make a comment, in reference to a pregnant City employee, that he hoped she could carry her weight in the field. After four meetings with Ms. Reitz, she had never mentioned this statement to me. However, following our fourth meeting, Ms. Reitz sent me a six page fax of follow-up information. I attempted to arrange a meeting or telephone conference with Ms. Reitz to discuss the specifics of these additional allegations. Ms. Reitz was to contact me so that we could discuss this latest document. Ms. Reitz never contacted me again, and I was never able to learn any specifics of this allegation. Nonetheless, I questioned Mr. Gaskin about this comment. He denied making the comment. Further, he could not envision a situation where he ever would have made such a comment. I find this alleged statement did not contribute to a hostile work environment for Ms. Reitz.

Fifth, Ms. Reitz states that Mr. Gaskin, while sitting in his office, made a statement to the effect, "Don't come in here. I won't show you this." Ms. Reitz assumed it was an inappropriate e-mail, but Ms. Reitz never saw the e-mail to which she believes he was referring. Mr. Gaskin states that he recalls making this statement to her because he was viewing a rather graphic video clip of a motorcycle accident. As Ms. Reitz never viewed the subject material, and Mr. Gaskin's statement that the material was not sexual in nature is undisputed, I find this statement cannot contribute to a hostile work environment for Ms. Reitz.

Summary of Sexual Harassment Allegations

In sum, there appears to be only two episodes that could contribute to a hostile work environment for Ms. Reitz: (1) the mammogram e-mail; and (2) the overheard conversation about Mr. Gaskin's weekend boating episode.

These two episodes are simply insufficient to create a sexually-hostile work environment. Pursuant to the City's sexual harassment policy and relevant case law, a hostile work environment requires that the unwelcome sexual conduct must substantially change the terms and conditions of employment, interfere with an employee's work performance, or create an intimidating, hostile, or offensive work environment. I find that these two isolated episodes are simply insufficient evidence to support Ms. Reitz's claim of a sexually hostile work environment.

However, I would recommend that Mr. Gaskin, along with all other supervisors and employees in the Public Works Department, undergo some remedial sexual harassment training as well as training on the implementation of the City's sexual harassment policy, e-mail policy, and grievance policy.

E. Disparate Treatment Claim

Although Ms. Reitz did not specifically contend in her written complaint that she was treated differently than males, during my interview with her this allegation surfaced and thus was addressed. This allegation of differential treatment is commonly referred to as a disparate treatment claim. The essence of a disparate treatment claim is that an employer treats females less favorably than males because of their gender. Shah v. General Electric Co., 816 F.2d 264, 268 (6th Cir. 1987). In a disparate treatment claim, the complainant must establish that she was treated differently from similarly-situated male employees. A disparate treatment claim is a form of sexual discrimination. Based upon my interview with Ms. Reitz, her complaints of disparate treatment include the following four episodes:

Starting Salary

Ms. Reitz claims that she was treated differently in regard to her starting salary. Ms. Reitz states that Mr. Wright told her during her interview that her salary was non-negotiable, and Ms. Reitz contends that Mr. Wright's unwillingness to negotiate her salary was because of her gender. Ms. Reitz claims that there was some negotiation as to the salary of a male inspector within her department. Ms. Reitz was hired as clerk in the Storm Water Department.

A clerk in the storm water department is a Class I job based upon the City's pay scale. Ms. Reitz claims she was over-qualified for this position and should have been given a higher starting salary. When questioned about this, Mr. Wright stated that, as the clerk's position required no special qualifications, there was no need to negotiate on the starting salary. Mr. Wright stated there were many qualified applicants, and no need to increase a starting salary for a clerk in order to hire a qualified individual. According to Mr. Wright, there is some degree of negotiation for a starting salary if an increase is needed to hire a qualified individual as long as the salary conforms to the City's pay scale.

In this case, Ms. Reitz attempts to compare herself to a male inspector who undisputedly negotiated a higher starting salary, but still within the required pay scale. An inspector is a Class V position, and thus an inspector is not similarly-situated to Ms. Reitz. Further, according to Mr. Wright, it was necessary to pay a higher starting salary in order to obtain a qualified inspector. For these reasons, I find Ms. Reitz was not treated differently as to her starting salary because of her gender.

Birthday/Holiday

Ms. Reitz states that her birthday fell within the first two weeks of her employment with the City. It was Ms. Reitz's understanding that City policy allowed an employee to take the day off on his or her birthday. According to Ms. Reitz, since her birthday occurred within the first two weeks of her employment, she asked Mr. Wright if she could take the day off at Christmas time instead. When questioned about this episode, Mr. Wright had no real recollection of this conversation. However, Ordinance

No. 2006-15 which was passed April 24, 2006, some six months before Ms. Reitz was hired by the City, expressly states that an employee shall not be entitled to birthday leave during his or her six month probationary period. Ms. Reitz was not entitled to birthday leave at the time she requested it. For this reason, I do not find that Ms. Reitz was subjected to disparate treatment in this instance.

Verbal Counseling Regarding Time Clock Usage

Ms. Reitz claims that she was verbally counseled regarding her time clock usage more so than a male employee in her department. According to Mr. Gaskin, Ms. Reitz had a continuous problem utilizing the time clock properly. Mr. Gaskin states that the accounting department had problems reviewing her time card because of the placement of the clock-in and clock-out time entries. Additionally, according to Mr. Gaskin, Ms. Reitz had difficulty complying with her regular work hours. According to Mr. Gaskin, on three separate occasions he verbally counseled Ms. Reitz regarding time clock issues. According to Mr. Gaskin, the male employee in his department did not have difficulty in utilizing the time clock. I attempted to follow-up with Ms. Reitz on this issue, but, as previously stated, Ms. Reitz never called as requested. For these reasons, I do not believe there is sufficient evidence to indicate Ms. Reitz was treated differently in regard to time clock usage.

Bereavement Leave

Ms. Reitz claims that she was denied bereavement leave because of her gender. However, based upon information received from Jill Johnson, Ms. Reitz was given 24 hours, in effect three eight-day pay periods, of bereavement leave. Section 12(E) of the City's personnel manual governs bereavement leave. In fact, according to Ms. Johnson, the intent of the City policy is that the bereavement leave must be taken over a consecutive three day period. However, Ms. Reitz was allowed to take the 24 hours leave time over the course of an entire week. Again, I find that Ms. Reitz was not treated differently in regard to the use of her bereavement leave.

F. Analysis of Paragraph 5 of Reitz Complaint

Paragraph 5 of the Reitz complaint asserts as follows:

5. Finally, public works employees were forbidden from speaking to city manager, elected officials.

Ms. Reitz states that all employees, regardless of their gender, were forbidden from speaking to the City Manager or elected officials. Therefore, this allegation is not properly within the scope of a sexual harassment investigation. For this reason, no further analysis or evaluation is necessary with regard to paragraph 5 of Ms. Reitz's written complaint.

V. CONCLUSION

Based on the analysis above, I make the following findings with regard to the Reitz complaint.

- A. The allegations contained within paragraph 1 did not contribute to or cause a sexually hostile work environment in violation of Section 14 of the City of Mt. Juliet Personnel Manual.
- B. The allegations contained within paragraph 2 are not within the scope of an investigation conducted pursuant to Section 14 of the City of Mt. Juliet Personnel Manual.
- C. The allegations contained within paragraph 3 are not within the scope of an investigation conducted pursuant to Section 14 of the City of Mt. Juliet Personnel Manual.
- D. As to paragraph 4, I find that the mammogram e-mail and the conversation of the weekend boating episode could contribute to a sexually hostile work environment for Ms. Reitz. However, these two episodes are insufficient to create a sexually-hostile work environment as defined by Section 14 of the City of Mt. Juliet Personnel Manual.
- E. The allegations contained within paragraph 5 are not within the scope of an investigation conducted pursuant to Section 14 of the City of Mt. Juliet Personnel Manual.