

CITY OF DUNWOODY, GEORGIA

ETHICS HEARING

STEPHEN CHIPKA,)	
)	
COMPLAINANT,)	Count III of the
)	April 15, 2013
v.)	Ethics Complaint
)	
COUNCILMEMBER ADRIAN BONSER,)	
)	
RESPONDENT)	

HEARING OFFICER’S REPORT TO ETHICS BOARD

Pursuant to Sec. 2-258 of the 2013 Ethics Ordinance, Count II of the April 15, 2013 Ethics Complaint was set for a hearing before the Hearing Officer, who served as the Magistrate of the Proceedings, and three members of the Ethics Board, to serve as the jury. This Hearing Officer’s Report (“Report”) is tendered to the Ethics Board as it relates to Count III of the April 15, 2013 Ethics Complaint (“Complaint”) brought by Dunwoody Resident Stephen Chipka (“Complainant”) against Councilmember Adrian Bonser (“Accused”) following the May 30, 2013 hearing held on that count.

I. Introduction

Count Three of the Complaint accuses “Adrian Bonser with threatening and abusive behavior toward a member of the public while in the course of her duties in violation of Sec. 2-222(a)(k) – Prohibited conduct and other abuses or misuses of position.” (Narrative of Complaint, Exhibit 1).

In support of this accusation, Complainant provided a narrative explanation of his concerns in his Complaint and attached approximately 80 pages of documents as exhibits to it, a portion of which factually related to Count III. Within the narrative portion of the Complaint, it is alleged that “On July 3, 2012, Ms. Bonser sends a threatening, abusive email to Steve Chipka. It is self explanatory.” The referenced July 3, 2012 email was included in the Complaint’s exhibits and is attached to this Report as Exhibit 2.

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Referenced in the narrative of the Complaint and attached as an exhibit to it is a February 3, 2013 email between the Accused to the Complainant. During the hearing, Complainant indicated that this February 3, 2013 email also factually supported Count III. This February 3, 2013 email is attached to this Report as Exhibit 3.

The Accused responded (“Response”) in writing to Count Three of the Complaint on May 6, 2013, which was accepted by the investigating Hearing Officer. The narrative of this Response is attached to this Report as Exhibit 4. At the hearing, the Accused provided a written Supplemental Response with additional exhibits which are attached to this Report as Exhibit 5.

The Hearing for this Complaint began at 5:30 p.m. on May 30, 2013 in the City Council’s Chambers. In attendance at this hearing were members of the public, as well as the Accused, the Complainant, the Hearing Officer Jennifer Keaton,¹ three Ethics Board Members² who served as a jury, two alternates from the Ethics Board, the City Clerk, Witness Heather Chipka and Witness Chief of Police William Grogan.

At this Hearing on Count III of the Complaint, statements from the Complainant and the Accused were heard. The Complainant called his wife, Heather Chipka, as a witness and provided no further documents. The Accused called the City of Dunwoody’s Chief of Police William Grogan as a witness and provided additional documents attached here, as previously noted, at Exhibit 4. Following the close of the hearing, the jury deliberated and made factual findings that were communicated to the Hearing Officer.

In accordance with Sec. 2-258(d), the Hearing Officer prepared the instant Report that reflects the jury’s Findings of Fact and the Hearing Officer’s Conclusions of Law and Recommendations to the Ethics Board.

¹ Jennifer Keaton is an attorney licensed to practice law in the State of Georgia since 2001 and whose residence and law firm are located in Cobb County, Georgia.

² Wade Wright, Janet Webb and Steven Blaske are Ethics Board members who served as the jury in this hearing.

II. Findings of Fact

The jury made the following Findings of Fact with respect to Count III of the Complaint:

1. Both the Accused and the Respondent had sufficient and adequate notice of the hearing based upon their presence and ability to present their respective sides.
2. Count III alleges that the Accused violated Sections 222-2(a) and 222-2(k) of the Ethics Ordinance.
3. The conduct Complainant alleges in his Complaint violated Sections 222-2(a) and 222-2(k) of the Ethics Ordinance include a July 3, 2012 email exchange between the Complainant and the Accused and a February 3, 2013 email exchange between the Complainant and the Accused.
4. The Complainant knew about the Accused's July 3, 2012 email to him on or about that same day or the day after (July 4, 2012).
5. January 3, 2013 was six months after July 3, 2012.
6. On January 14, 2013, the City of Dunwoody City Council passed a Resolution that implemented a Moratorium on the City's acceptance and processing of any Complaints based upon the Ethics Ordinance for a period of 90-days. See Resolution 2013-01-01 ¶ 3 (attached as Exhibit 6 herein).
7. The January 14, 2013 Resolution also provided a provision that the "Moratorium shall stay any effective statute of limitations that currently exists in the City Ethics Code or that will exist in any revised Ethics Code and the period of time this Moratorium is in place shall not be counted against any Complaints to be filed after the expiration of termination of this Moratorium by virtue of the statute of limitations." See Resolution 2013-01-01 ¶ 6.

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8. No explanation provided by the Complainant for failing to file an ethics complaint on or before January 3, 2013 regarding the July 3, 2012 email provided a basis for changing the calculation of the tolling period for filing to a date after January 3, 2013 or to a date that would implicate the Moratorium.
9. On February 3, 2013, the Accused send an email to the Complainant that is attached here as Exhibit 2 and its contents are accepted as a communicative exchange between them whereby the City-issued email account assigned to the Accused was utilized.
10. The February 3, 2013 email was part of an ongoing dialogue between the Complainant, as a resident of the City of Dunwoody, and the Accused, as a councilmember for the City of Dunwoody.
11. The ongoing dialogue, of which the February 3, 2013 email was a part, related to the Complainant's concerns about the performance of personnel in the City of Dunwoody's Police Department that he raised to the Accused because she was a councilmember for the City of Dunwoody and his related dissatisfaction with the Accused's responses to him about it.
12. The Complainant knew about the Accused's February 3, 2013 email to him on or about that same day.
13. On April 15, 2013, Complainant filed the Ethics Complaint at issue here.
14. April 15, 2013 is less than six months after February 3, 2013.
15. The Accused's comment in the February 3, 2013 email to the Complainant that he was a "funny man," when placed in the instant context, did not evidence courtesy by the Accused.

16. The Accused's comment in the February 3, 2013 email to the Complainant that he was a "funny man," when placed in the instant context, was not "threatening" towards the Complainant.
17. The Accused's comment in the February 3, 2013 email to the Complainant that he was a "funny man," when placed in the instant context, was not "abusive in nature" towards the Complainant.
18. All other allegations presented by Complainant at the Hearing that were not included in the Complaint were not found to be relevant for purposes of Count Three and/or specifically set forth in the Complaint.

III. Conclusions of Law

Based upon the findings of fact of the jury, the Hearing Officer makes the following Conclusions of Law:

1. The Conduct Alleged in Exhibit 2's July 3, 2012 Email Exchange is Time Barred

The communication exchange between the Accused and Complainant via email (Exhibit 2) dated July 3, 2012 is time barred by the Statute of Limitations of the Ethics Ordinance. The deadline for Complainant to raise this conduct in an Ethics Complaint to the City expired six months following it or on January 3, 2013 or January 4, 2013 under Ordinance 2008-10-06 version of the Ethics Ordinance-. Complainant did not file an Ethics Complaint on or before January 3, 2013 or January 4, 2013 regarding this email exchange.

Further, the City's Moratorium (Resolution 01-01-2013) on Ethics Complaints does not resuscitate the claim. As an initial matter, the City's Resolution does not stand for the proposition of reviving previously time-barred matters under the Ethics Ordinance. Rather, and consistent with the tenets of Due Process, it held the tolling of the statute of limitations in abeyance during the Moratorium period. See e.g., Telecom*USA, Inc. v. Collins, 260 Ga. 362, 363 (1990).

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The July 3, 2012 email exchange involved conduct that, pursuant to the statute of limitations in the 2008 Ethics Ordinance (Article II, Section 11 (“No action may be taken on any complaint . . . [unless] a complaint alleging a violation . . . within six (6) months from the date the complainant knew or should have known of the action alleged to be a violation.”)). Accordingly, the conduct contained in Exhibit 2 from July 3, 2012 is time barred it is dismissed for its procedural impropriety as the Board has no jurisdiction over this alleged violation of the Ethics Ordinance.

2. The February 3, 2013 Email Exchange between the Accused and Complainant Dated February 3, 2013 is Not Time Barred

Irrespective of the City-imposed Moratorium on Ethics Complaints during 2013, the alleged conduct within the February 3, 2013 Email (Exhibit 3) was included in the April 15, 2013 Ethics Complaint. The instant Ethics Complaint was filed less than six months after February 3, 2013. Therefore, these allegations fell within the six month Statute of Limitations period under either the 2008 version or the 2013 version (Sec. 2-261) of the Ethics Ordinance and are properly before the Ethics Board.

3. The February 3, 2013 Email Exchange Fails to Violate Sec. 222-2(k) of the Ethics Ordinance

Section 222-2(k) of the Ethics Ordinance prohibits the Accused, who is an elected public servant, from engaging in any kind of behavior towards the public that is “threatening or abusive in nature,” when acting in the course and scope of her duties.

Assuming *arguendo*, that the challenged content of this February 3, 2013 was within the course and scope of the Accused’s duties, this communication did not suggest, insinuate, or overtly state any intention to engage in injurious or criminal behavior directed at Complainant or otherwise. Further, the Accused’s statements fail to implicate any plan or intent to inflict distress or duress upon Complainant. Therefore, the conduct in this email failed to rise to the level of “threatening or abusive” in nature. Therefore, the Accused’s conduct in the February 3, 2013 email exchange fails to violate Sec. 222-2(k) of the Ethics Ordinance.

4. The February 3, 2013 Email Exchange Violates Sec. 222-2(a) of the Ethics Ordinance

Section 222-2(a) of the Ethics Ordinance states that “Public servants of the City shall treat all citizens with courtesy, impartiality, fairness and equality under the law, and shall avoid both actual and potential conflicts between their private self-interest and the public interest.” The section continues to give a non-exhaustive list of examples of prohibited conduct. At issue here is whether the Accused treated the Complainant, a citizen, with courtesy.

This mandate within the Ethics Ordinance for “courtesy,” in essence, is a civility code. Indeed, www.dictionary.com defines “courtesy” as “1. Excellence of manners or social conduct; polite behavior. 2. A courteous, respectful or considerate act or expression. 3. Indulgence, consent, or acquiescence. 4. Favor, help, or generosity.” Far from the balance of the Ethics Ordinance’s overwhelming focus on placing personal interests below those of the City’s interests, this mandate imposes a high standard of interpersonal conduct, communication, and self-control. In short, this civility code requires City officials, such as the Accused, to conduct themselves at a level that exceeds the standards of professionalism.

Against the high standard of “courtesy,” the Accused’s communication exchange with the Complainant between February 2, 2013 and February 4, 2013 must be evaluated. As an initial matter, the February 3, 2013 communication from the Accused in this period was rendered using the Accused’s City-issued email account, was between the Accused acting as a councilmember and a citizen, and was part of an ongoing exchange between these two individuals. Here, the context involves the Complainant’s protest, complaint and condemnation of the Accused’s response and treatment of him in relation to his raising of concerns and complaints about City-related matters. (Exhibit 3).

More specifically, Complainant’s February 2, 2013 email in which – perhaps most succinctly – dealt with his concern that the Accused would utilize her “status as a ‘medical professional’ to support the unethical behavior of your [the Accused’s] personal best friends police chief ‘Billy’ Grogan & Brian ‘City Attorney’ Anderson, in making remarks that challenge my [Complainant’s]

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personal character . . . Hope your ability to ever again use the term ‘medical professional is revoked in the very near future. As to Brian Anderson and ‘Billy’ Grogan, I hope they have new career plans for when their professional certifications are taken away due to unethical behavior.” (Exhibit 3).

In response to this February 2, 2013 email, the Accused responds on February 3, 2013 by stating:

Stephen,

I LOL when I read your e-mail. You are a funny man. I have a Doctor of Dental Surgery degree which, I received from The Ohio State University 23 years ago. No one can take that away from me. It's a done deal. What you are saying is preposterous.

I'm looking forward to the Statue of Limitations being up on any complaints you might have against the City. I know it ends this month.

Cheers,

Adrian

It is this response that is under scrutiny for whether or not it is conduct that reflects “courtesy.”

The Accused’s February 3, 2013 response, as set forth above, fails to demonstrate professionalism, much less “excellence of manners or generosity.” In short, the Accused expresses derision and disdain towards the Complainant’s allegations that she and other City officials acted unethically. Taking the time to inform the Complainant that she was laughing at his email (LOL is a contemporary acronym for “laugh out loud”) and that she judged him to be a “funny man” minimizes and is trivializing the concerns expressed by the citizen.

Such disclosure of her negative opinion of what he said and further judgment of him as a person fails to demonstrate professionalism, much less the principle regarding saying nothing in lieu of something that is not nice or extends the dialogue with further personal comments that were provoking, insulting, and

judgmental. In short, this communication was wholly unnecessary and counter-productive, at a minimum.

During the hearing, the Accused appeared to argue that her conduct should not be before the Ethics Board as per the provisions of the 2008 version of the Ethics Ordinance (Article II, Section 13 – *Wrongful use of this Chapter*), which would be the appropriate law to apply to matters occurring on February 3, 2012.³ In essence, the Accused attempted to defend or excuse her February 3, 2013 conduct by suggesting that:

- She was frustrated by Complainant’s numerous emails to her;
- She did not know how to respond to Complainant’s email;
- Complainant’s motives were to unseat her (as he had asked for her resignation many times and had volunteered to replace her if an appointee was needed) from her elected office;
- Complainant’s communications often were negative and harassing towards her and others within the City;
- Other City employees agreed with her that Complainant was annoying and antagonizing;
- Complainant was ruminating on something in his life with which she could not help him;
- Complainant targeted her by emailing her more than other City employees and officials; and
- Complainant’s voluminous emails made her feel harassed and unsafe, despite no physical threats being made by him.

These explanations from the Accused essentially function as an admission that she lost control of her emotions and responded poorly in her February 3, 2013 email to Complainant.

³ The 2013 version of the Ethics Ordinance did not go into effect until after February 3, 2013 and contains a revision of this section of the 2008 Ethics Ordinance at 2-262. Without deciding, the Hearing Officer posits without ruling that Sec. 2-262 would be inapplicable to the instant matter and is irrelevant to the analysis here.

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The Ethics Ordinance provides no exemption from acting with courtesy as a City Official towards the public. Indeed, courtesy describes a standard of conduct irrespective of the circumstances which, when unmet, is indeed a proper – not wrongful – use of the Ethics Ordinance and its procedures. As such, the Hearing Officer finds no basis for dismissing Count III under that provision of the Ethics Ordinance.

The jury concluded that the Accused's calling the Complainant a "funny man" did not demonstrate courtesy; and, as set forth in greater detail above, the preponderance of the evidence support the conclusion that Accused's February 3, 2013 email violates the civility code of the Ethics Ordinance.

IV. Recommendations to the Ethics Board

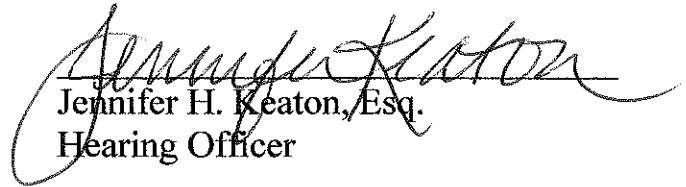
The Accused's misstep on February 3, 2013 is unfortunate because it does violate the Ethics Ordinance. The severity of the violation of the civility code in the Ethics Ordinance by her February 3, 2013 conduct is minor; however, the lack of remorse from the Accused makes the violation more troubling. Where, as appears to be the case, an individual does not recognize that they are acting discourteously or take responsibility for their role in further enflaming an ongoing situation, the potential that the same mistake may occur in the future may be more likely to recur.

As such, the Hearing Officer provides the following recommendations to the Ethics Board for consideration to address the violation of the Ethics Ordinance:

1. Public reprimand of the Accused for engaging in conduct that failed to be courteous towards a citizen on February 3, 2013;
2. Revocation of email privileges with the City of Dunwoody's email account and servers;
3. Issuance of a strong letter of encouragement to the Accused:
 - a. to make a private, written apology to the Complainant for failing to be courteous towards him on February 3, 2013 with a pledge to act with courtesy towards him, specifically, in the future; and
 - b. to attend the Dunwoody Police Department's Police Academy or other appropriate internal training opportunity(ies) with an eye to learning effective communication techniques in adversarial and

confrontational situations so that she may be better equipped to react productively to situations she perceives to be harassing or annoying from citizens.

Respectfully submitted this 4th day of June, 2013.


Jennifer H. Keaton, Esq.
Hearing Officer

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