

ROBERT MAKEMSON



November 7, 2022

Ms. Gillian Barth
People & Culture Director
Town of Palm Beach
360 South County Rd.
Palm Beach, FL 33480

Dear Ms. Barth:

Enclosed is my Report and Recommendation on the Appeal of Kevin Morine of his termination as a police officer with the Palm Beach Police Department. Also enclosed is my invoice for serving as a special magistrate for the hearing and my W-9 form.

Thank you for letting me serve as a special magistrate for this hearing. If I can be of service to the Town of Palm Beach in the future, please let me know.

Sincerely,



Robert Makemson

**SPECIAL MAGISTRATE HEARING FOR RESOLUTION OF EMPLOYEE
GRIEVANCES, TOWN OF PALM BEACH, FLORIDA.**

In Re: Appeal of Termination by Kevin Morine

This matter came before Special Magistrate Robert Makemson on March 22, 2022, April 11, 2022, and May 18, 2022, pursuant to Article III – Resolution of Employee Grievances of the Town Code (Sections 82-206 through 82-210). The employee, Kevin Morine, was represented by his attorney, Stuart Kaplan. The Town was represented by special counsel, Brett Schneider. Chief of Police Nicolas Caristo acted as the Town representative during the hearing.

Each party had a full opportunity to present, examine and cross examine witnesses and to introduce pertinent documentary evidence. All witnesses were sworn, and the proceedings were recorded. The Special Magistrate has considered evidence presented by both sides, questioned witnesses and considered opening and closing arguments by both sides. Based upon the evidence and arguments submitted, the Special Magistrate hereby finds as follows:

Findings of Facts

On September 15, 2021, the Town issued a Notice of Termination to police officer employee Kevin Morine. Prior to the Notice of Termination being served on him, Kevin Morine had served almost twenty-six years as a police officer with the Town of Palm Beach Police Department without any prior internal investigations or discipline actions against him. The Notice of Termination specified five grounds for termination:

I: Failure to follow a clear, lawful and unambiguous direction by a supervisor to report suspected sexual abuse of his daughter to the Florida Department of Children and Families (DCF);

II: Failure to follow a clear, lawful and unambiguous direction by a supervisor to secure potential evidence on his daughter's iPad;

III: Failure to observe FS 39.201 (1)(c) when he failed to report, as mandatory reporter, suspected childhood sexual abuse of his daughter;

IV: Making contradictory and untruthful statements during his formal interview;

V: Failure to comply with the Town of Palm Beach Employee Manual IV-4 (98) Sick Leave (misuse).

I: Failure to follow order to report to DCF

While on vacation in the state of Georgia with his then five-year-old daughter, [REDACTED] and an adult friend, Diana, Diana showed Kevin Morine a Tik Tok video that Diana found on [REDACTED] iPad. As reported by Kevin Morine to Captain Guelli, the Tik Tok video was [REDACTED] and an 8-year-old female friend "spreading their butt cheeks, twerking and pulling up their skirts, exposing their vaginas."

Also, while on vacation in Georgia, on July 8, 2021, Kevin Morine received a text message from a neighbor in Florida who advised him that on July 4, 2021, [REDACTED] had told the neighbor's daughter that [REDACTED] said she had seen Kevin Morine's former wife's boyfriend's "balls and penis and wanted to kiss and lick them." After discussing the text message with [REDACTED], Kevin Morine called his former wife, [REDACTED]. During this conversation [REDACTED] became very angry and told Kevin Morine that she was going to go to the Palm Beach Police Department station and meet with the captain at the desk and cause trouble for him.

On July 9, 2021, Kevin Morine called Captain Guelli, the on-duty captain at that time. Kevin Morine called Captain Guelli because he was aware of Kevin Morine's difficult relationship with [REDACTED] and he wanted to let him know that [REDACTED] may be coming down to cause trouble for him. When Captain Guelli asked what is going on, and why is she coming down, Kevin Morine told him about the video and text message. The reason for the call to Captain Guelli was not to report the video and text message, but to alert Captain Guelli that [REDACTED] was coming to the station.

Immediately after speaking with Kevin Morine, Captain Guelli goes to speak with Chief Caristo and report to the Chief what Kevin Morine had told him. During that conversation with the Chief, the Chief told Captain Guelli to have Kevin Morine report the incident to DCF and to notify the local Georgia authorities. Right after speaking with the Chief, Captain Guelli directed Kevin Morine to call DCF and to notify the local Georgia authorities. Kevin Morine did not call DCF and did not notify local authorities.

It is Kevin Morine's position that no evidence was presented that required Kevin Morine, or anyone else, to make a report to DCF. But that is not the issue on this specification for termination. The issue is, did Kevin Morine fail to obey a direct order to report.

When the Chief told Captain Guelli to have Kevin Morine report to DCF and the local authorities, that was a direct order to Captain Guelli. When Captain Guelli told Kevin Morine to report to DCF and notify local authorities in Georgia, that was a direct order from Captain Guelli to Kevin Morine.

The Town has presented substantial, competent evidence that Kevin Morine failed to follow a clear, lawful and unambiguous order to report to DCF and to notify local Georgia authorities.

II: Failure to follow order to preserve video and text message

Chief Caristo told Captain Guelli to have Kevin Morine secure the iPad and the images that are on it. When Captain Guelli directed Kevin Morine to preserve the Tik Tok video on the iPad, Kevin Morine told Captain Guelli that he had already transferred the video to his " iPhone, e-mail account, or something to that effect." The reason Kevin Morine had transferred the Tik Tok video was so that he could give the iPad back to [REDACTED]. The Tik Tok video was preserved, just not on the iPad.

Detective Jennifer Brashear, of the Palm Beach Gardens Police Department, was able to view the video. After she viewed the video, she told Kevin Morine that he did not have to preserve it anymore, and Kevin Morine deleted it. Captain Guelli testified that he got the text message, so that was preserved.

Because Kevin Morine had already transferred the video from the iPad before Captain Guelli told him to preserve it, and because the text message was preserved, the Town has failed to present competent, substantial evidence that Kevin Morine failed to follow an order to preserve the Tik Tok video and text message.

III: Failure to observe FS 39.201(1)(c) as a mandatory reporter to DCF

This termination specification is different from the failure to follow a direct lawful order from Captain Guelli. The issue here is whether there is substantial, competent evidence that Kevin Morine, as a mandatory reporter, was legally required to make a report to DCF.

FS 39.201(1)(c): "Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse, or the victim of a known or suspected juvenile sexual offender, as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2)".

The Tik Tok video is nothing more than two young girls dancing and having fun making a video. There is nothing on the video that would create reasonable cause to suspect that a child is the victim of childhood sexual abuse. The Town has failed to present substantial, competent evidence that Kevin Morine was required to report the video to DCF under FS 39.201(1)(c).

Regarding the text message that [REDACTED] said she saw the balls and penis and wanted to kiss and lick them, when Kevin Morine asked [REDACTED] about that she said she was "joking." Other than [REDACTED] mother, no one knows his daughter better than Kevin Morine. Kevin Morine was satisfied with his daughter's explanation and that there was no reason to suspect any sexual abuse. When [REDACTED] mother was told by Kevin Morine about the text message, she became very angry and accused Kevin Morine of trying to get back at her. [REDACTED] did not express any concern about the contents of the text message. Kevin Morine's concern was not that there may have been some sexual abuse of his daughter, but that [REDACTED] was going to cause trouble for him with the Town police department. The Town has failed to present substantial, competent evidence that Kevin Morine was required to report the text message to DCF under FS 39.201(1)(c).

IV: Making contradictory and untruthful statements during his formal interview

When Lieutenant Alber first spoke to Kevin Morine regarding the text message, Kevin Morine said he was "appalled." During his formal interview with Lieutenant Alber, when the Lieutenant asked what was his reaction to the text message, the following discussion took place:

LIEUTENANT ALBER: Okay. What was your reaction to that?

OFFICER MORINE: Well, I took a breath and was like, all right. So Immediately I spoke to [REDACTED].

LIEUTENANT ALBER: Uh-huh.

OFFICER MORINE: And asked her – well the text messages said it was a joke.

LIEUTENANT ALBER: Okay. When I first spoke to you when I gave you your notification, you used the term appalled.

OFFICER MORINE: Well, yes.

LIEUTENANT ALBER: So that –

OFFICER MORINE: Yeah, it's still — concerning.

LIEUTENANT ALBER: Okay.

OFFICER MORINE: Yeah.

LIEUTENANT ALBER: Okay. Did you believe what was said in the text messages?

OFFICER MORINE: At that moment, I — I couldn't make a decision.

LIEUTENANT ALBER: Do you believe the content — of the text messages, what was being said to you?

OFFICER MORINE: Did I believe it was true?

LIEUTENANT ALBER: Yes.

OFFICER MORINE: No

LIEUTENANT ALBER: So let me get back on track. Okay. So I understand, I understand the theory. And based on the luxury of hindsight, 20/20 hindsight, you can see that there probably wasn't anything that actually happened. But when you look at the statements that were sent to you.

OFFICER MORINE: Correct.

LIEUTENANT ALBER: Your initial statements to me when I gave you your disciplinary paperwork that you were appalled and — let me go back. Let me see here.

OFFICER MORINE: Yeah, that might have been my initial reaction.

The Special Magistrate does not find that there was any intent on the part of Kevin Morine to be untruthful regarding "appalled" changed to "it's still concerning". The first statement was his initial reaction. The second statement was made after speaking with [REDACTED] and after more time to reflect.

When asked by Lieutenant Alber what he did with the video, Kevin Morine said "I left it". Lieutenant Alber asked, "So you left it on the iPad". Kevin Moraine, "Right".

Previous to his formal interview with Lieutenant Alber, Kevin Moraine told Captain Guelli that he had transferred the video to his phone or e-mail.

Lieutenant Alber was the only officer conducting internal investigations for the Town police department. Kevin Morine was aware of that. On Sunday, July 11, 2021, Sergeant Dawson became aware that Lieutenant Alber's car was in the parking lot at the Palm Beach Police Department. That was unusual because Lieutenant Alber was not on duty that day. On that same day, Sergeant Dawson told Kevin Morine that Lieutenant Alber was in the building or that his car was there. Sergeant Dawson testified that he did not speak with Lieutenant Alber that day. During the formal interview with Lieutenant Alber, Kevin Morine said that he called Sergeant Dawson, and that Dawson said that Lieutenant Alber was in the office and that Dawson would call him back.

On that Sunday morning Kevin Morine started texting Lieutenant Alber. During the formal interview, the following discussion took place:

LIEUTENANT ALBER: Okay. And then — a few final questions. On Sunday morning it would have been the 11th at 6, 6:30 in the morning you started texting me.

OFFICER MORINE: Right.

LIEUTENANT ALBER: Are you aware of my normal schedule?

OFFICER MORINE: No.

LIEUTENANT ALBER: Okay. That's — I need to know what — so how did you know that I'm at the station at 6:00 on Sunday morning?

OFFICER MORINE: I talk to Mike just about every day.

LIEUTENANT ALBER: Okay.

OFFICER MORINE: And I called him. And he said, Paul's — in the office, I'll call you back, or something like that. So I knew you were there.

LIEUTENANT ALBER: So you called him at 5:30, 6:00 in the morning on Sunday morning, and he alerted you to my presence being there?

OFFICER MORINE: He said you were in the office. He'll call me back.

LIEUTENANT ALBER: Okay

OFFICER MORINE: You were having a conversation. Like he's not going to interrupt talk to me when you're talking to him.

Kevin Morine did make confusing and contradictory statements regarding the Tik Tok video on the iPad. He also made a statement that was contradictory to what Sergeant Dawson testified regarding Sergeant Dawson speaking to Lieutenant Alber on Sunday, July 11, 2021. The Special Magistrate does not find that these statements were made with the intent to be untruthful or to mislead the investigation. Specifically, regarding the contradiction with Sergeant Dawson's testimony, the Special Magistrate finds that Kevin Morine made an assumption that Sergeant Dawson had spoken to Lieutenant Alber on Sunday, July 11, 2021. There does not appear to be any advantage to Kevin Morine to be untruthful about whether or not Sergeant Dawson actually spoke with Lieutenant Alber. The significance of the discussion with Sergeant Dawson is that is how Kevin Morine learned that Lieutenant Alber was in the station on Sunday, July 11th, 2021.

V: Failure to comply with the Town Employee Manual regarding sick leave

Section IV-4 (98) of the Town Employee Manual: (in part):

Police department employees shall remain at their place of residence as documented with the police department while on sick leave. Police department employees may only leave their residence for exigent circumstances and only after immediately notifying the on-duty Watch Commander or Designee the location at which they may be reached.

Travel outside of the State of Florida while on sick leave must be approved by the Chief of Police.

Kevin Morine and his daughter, while Kevin Morine was on vacation in Georgia, contracted COVID. Kevin Morine was scheduled to return to work at 5:30 AM on Sunday, July 11, 2021. On Saturday, July 10, 2021, Kevin Morine called Sergeant Hanning, the then on duty shift supervisor and informed Sergeant Hanning that his daughter was sick and that he needed the day off. Sergeant Hanning told Kevin Morine that he would put that in the Telestaff system. Sergeant Hanning sent an e-mail to Sergeant Dawson, the shift supervisor for the shift beginning Sunday, July 11, 2021, at 5:30 AM, to advise him that Kevin Morine would be out sick for his shift.

When Kevin Morine's sick leave began at 5:30 AM on Sunday, July 11, 2021, he was away from his residence, returning from vacation in Georgia. While on sick leave that began at the end of his vacation and at the beginning of his shift at 5:30 AM on Sunday, July 11, 2021, Kevin Morine did not travel outside the state of Florida.

Based upon the fact that Kevin Morine was already away from his residence when his sick leave began and based upon the fact that Kevin Morine did not travel outside the state of Florida while on sick leave, the Town has failed to present substantial, competent evidence that Kevin Morine violated IV-4 (98) of the Town Employment Manual.

Recommendation

Sec. 82-208 sets out the role of the special magistrate in an appeal by a Town employee:

The role of the special magistrate in regard to hearing employee grievances is to (1) determine whether the determination made by the employee's department head and/or town manager was supported by substantial competent evidence, whether the disciplinary action is in compliance with the town's personnel manual, and/or whether the discipline imposed was warranted considering all relevant facts; and (2) to recommend to the town council to either sustain the decision of the department head and/or town manager or to overturn such decision. The special magistrate may also recommend less severe discipline if requested to do so by the grievant, and if it is determined, on the basis of all relevant facts, that the discipline imposed is unreasonable and an abuse of discretion.

Although the Special Magistrate has found that the Town has presented substantial, competent evidence that Kevin Morine failed to follow a clear, lawful and unambiguous direction to report to DCF and local authorities; and that Kevin Morine did make a contradictory statement regarding the iPad video, based upon all relevant facts it is the Special Magistrate's determination that termination of Kevin Morine's employment with the Palm Beach Police Department is not warranted.

The relevant facts for this determination are:

- (1) Kevin Morine had served almost twenty-six years without any disciplinary action against him.
- (2) The incident that led to this investigation concerned his then 5-year-old daughter. That was a very emotional situation for Kevin Morine.
- (3) The hostile relationship Kevin Morine has with his former wife caused him to reach out to Captain Guelli in order to alert Captain Guelli that his former wife may come to the station to cause some trouble for him. That was the reason for the call to Captain Guelli, not to report the video or text message.
- (4) Although Kevin Morine did not make a report to DCF, Captain Guelli did make a report. That report to DCF did not cause further investigation by DCF.

Therefore, pursuant to Sec. 82-208, the Special Magistrate recommends to the Town Council that the decision of Chief Caristo to terminate Kevin Morine's employment with the Palm Beach Police Department be overturned.

Sec. 82-208 provides that if requested by the grievant, the special magistrate may also recommend a less severe discipline. In his written closing argument Kevin Morine requested that the special magistrate grant all further relief that might be just and proper under all the relevant facts. Based upon this request the Special Magistrate recommends that the Town Council impose a sanction on Kevin Morine other than termination of his employment.

Submitted this 7th day of November, 2022



Robert Makemson, Special Magistrate