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April 15, 2009

Steve Maynard
PO BOX 11000
Tacoma, WA 98411

Re: Public Disclosure Act Request # 09-71

Dear Mr. Roegner:

The purpose of my letter is to respond to your March 31, 2009, public records request for "Judge David Larson's investigation of allegations/statements made by Cindy Roque regarding Judge Michael Morgan." The City has located and enclosed 4 pages responsive to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Dunnachie".

Heather Dunnachie
Legal Assistant

cc: City Clerk

Mary McDougal

From: David A. Larson
Sent: Thursday, December 18, 2008 1:37 PM
To: Neal Beets; Brian Wilson; Andy Hwang; Mary McDougal
Cc: Patricia Richardson
Subject: Cindy Roque Investigation

In close cooperation with City Attorney Pat Richardson, I conducted an investigation into the November 19, 2008 report by Cindy Roque to HR. I have also kept the City Manager apprised of the progress of this investigation as it unfolded.

I have reviewed all of the materials provided to me, and I have talked to Christine Faucher, Rae Iwamoto, Judge Michael Morgan, Ruth Rogers, and Cindy Roque. I make the following conclusions:

ALLEGED SUICIDAL IDEATIONS

1. On November 13, 2008, Judge Morgan made a remark to clerk Christine Faucher that was interpreted by Ms. Faucher as a serious suicidal ideation on the part of Judge Morgan. Judge Morgan states that it was never a serious threat of suicide but was instead a passing comment to describe how he felt in the past tense about how the CJC was addressing its investigation of him.
2. Ms. Faucher reported this remark to Court Administrator Rae Iwamoto that same day (per Cindy Roque and Ms. Iwamoto) or the following day (per Ms. Faucher).
3. Judge Morgan had made a similar comment to Ms. Iwamoto that same day which she said she did not interpret as a serious threat by Judge Morgan to do harm to himself and told Ms. Faucher that there was nothing to worry about. Ms. Iwamoto did not disclose this conversation to Ms. Faucher believing it to have been in confidence.
4. Ms. Iwamoto believed that Ms. Faucher was satisfied and stated that she would have taken further action if she believed that she was not satisfied.
5. Ms. Faucher was not satisfied with Ms. Iwamoto's response.
6. Ms. Faucher waited until November 18, 2008 to report her ongoing concerns for Judge Morgan to her direct supervisor, Cindy Roque.
7. Ms. Roque then reported Judge Morgan's comments to Judge Larson.
8. Judge Larson accepted Ms. Faucher's interpretation at face value and took the comments seriously.
9. Ms. Roque agreed that Judge Larson would address the issue with Judge Morgan and that Judge Larson would take further action if appropriate.
10. Judge Larson asked Judge Morgan about his comments and confirmed Judge Morgan made the remark, but the conversation was cut short due to Judge Morgan being called on the bench to address cases.
11. Judge Larson was on the bench after Judge Morgan got off the bench. During that time, Judge Morgan spoke to Ms. Roque and confirmed to her that he made the statements to Ms. Faucher.
12. Ms. Roque returned to Judge Larson after he got off the bench and reported her conversation with Judge Morgan. Judge Larson confirmed again that he would handle the situation. Ms. Roque agreed, but was still concerned as was Judge Larson.
13. On the morning of November 19, 2008 Ms. Roque told Ms. Iwamoto that she was reporting Judge Morgan's comments to HR. Ms. Iwamoto apparently did not reasonably believe that Judge Morgan was a threat to himself and Ms. Roque apparently did

reasonably believe that he was a threat to himself. Ms. Iwamoto also tried to persuade Ms. Roque that going to HR would not help Judge Morgan and would actually make matters worse due to the adversarial relationship he has with city government. Ms. Roque claims that she was "ordered" not to go to HR. Ms. Iwamoto said she did not issue such a directive.

14. Judge Larson had completed his conversation with Judge Morgan. Judge Morgan indicated that in the process of the conversations with Ms. Iwamoto and Ms. Faucher that he mentioned in the context of the CJC asking him to admit to facts/situations that were not true and that were potentially highly embarrassing that he stated that the thought had "crossed his mind" of suicide to protect his daughter from embarrassment. However, the CJC's request to include such statements in the stipulation had changed and he was actually upbeat and hopeful about that. His statement regarding an upbeat attitude is consistent with contemporaneous statements made by Judge Morgan to Judge Larson. Judge Morgan told Judge Larson that he never intended his comment to be a serious threat of suicide.
15. Judge Larson asked Judge Morgan if he would seek assistance through the judicial assistance program, Ruth Rogers, or through some other form of help to address any stress he might be experiencing. Judge Morgan stated that he was going to talk to Ruth Rogers.
16. Judge Larson believed that the situation was under control and that the initial concern was overstated. He based this belief on the following:
 - i. His interview of Judge Morgan;
 - ii. Judge Larson's own independent observations and conversations during this same time period;
 - iii. Judge Morgan was lucid, not depressed, and he had a realistic and constructive view of the pending outcome of the CJC complaint;
 - iv. Judge Morgan's decision to seek assistance from Ruth Rogers;
 - v. Judge Morgan's decision to take vacation to relax.

In conclusion, those exposed to Judge Morgan's statements showed varying levels of concern, but there was no imminent threat of Judge Morgan harming himself. The CJC was aware of his statements before his December 5th hearing and it is believed by Judge Morgan that counseling was ordered as a result and that no further action was necessary.

ALLEGED THREAT OF HARM TO THIRD PARTIES

1. Ms. Roque claims that Judge Morgan made a comment about taking "others down with him".
2. Judge Morgan recalls making this statement, but it was regarding how a contested CJC hearing would needlessly embarrass other people and damage their reputations, including past and present court staff. The statement was not made in the context of his conversation with Ms. Faucher where suicide was mentioned.
3. After speaking directly to Judge Morgan on November 18, 2008 Ms. Roque spoke to Judge Larson and did not mention any threat to third parties to Judge Larson.
4. Judge Morgan reported that the last statement Ms. Roque made to him on November 18th was that she would "work with him anywhere". This is consistent with previous statements Ms. Roque has made to Judge Larson about Judge Morgan.
5. On the morning of November 19, 2008 in the process of discussing the efficacy of going to HR, Ms. Iwamoto asked Ms. Roque if there was any threat to anyone else. Ms. Iwamoto told me that Ms. Roque replied once with silence and the second time she was asked she stated that there was no such danger.

6. Ms. Faucher told me that Judge Morgan never made a mention of harm to third parties and, in fact, she was surprised that anyone could think that.
7. At 8:08 a.m. November 20, 2008 Ms. Roque emailed the City Manager and stated, "I reported it to Judge Larson as I'm not only afraid for his safety, I'm afraid for the safety of staff I supervise..." She also noted, "I've witnessed outbursts of Judge Morgan for the entire time that I've been employed and I'm afraid of his reactions toward me." Judge Larson was not included on this email and was unaware of any threat to others or to him, was not a witness to any outbursts involving Ms. Roque, and Ms. Roque had never previously informed him of any such issues.
8. At 1:11 p.m. November 20, 2008 Ms. Roque emailed Ms. Iwamoto and the City Manager and mentioned "others safety". This is the first time a court employee knew of Ms. Roque's allegation of potential harm to third parties.
9. At 8:37 a.m. on November 21, 2008 Ms. Roque emailed Ms. Iwamoto and cc'd Judge Larson and stated that "my only fear right now is retaliation from personnel at the court for going to HR about the incident that I reported to HR" with no mention of physical harm to Judge Larson, her, or to others. However, she did make a statement about "everyone's protection".
10. Ms. Roque returned to work on November 21, 2008.
11. Judge Morgan was out of the office on vacation from November 20, 2008 until December 1, 2008.
12. At 10:00 a.m. on November 21, 2008 Ms. Roque spoke to City Attorney Pat Richardson and stated that her status at work was okay.
13. At 12:40 p.m. on November 21, 2008, Ms. Roque, without checking with Judge Larson on the status of the situation, went to the police department to report her concern for her safety and the safety of other court personnel believing that Judge Morgan would physically harm them and harm her in particular.
14. Ms. Roque did not attempt to advise Judge Larson of her concern for his safety and never told Judge Larson that he was in any danger. In fact, Ms. Roque told the police that she did not want her superiors to know that she went to the police.
15. At 3:30 p.m., Ms. Roque met with Ruth Rogers. Ms. Rogers asked Ms. Roque what could be done to satisfy her concerns about the workplace. Ms. Roque replied that she only wanted to answer to Judge Morgan and not to Ms. Iwamoto.
16. Ms. Rogers pointed out the incongruity of the request to only answer to Judge Morgan in light of her allegation earlier that same day to the police that she was in physical danger from Judge Morgan. Ms. Roque then changed her request to answer only to Judge Larson.

In conclusion, Ms. Roque's allegations are not credible. She alleges she felt that others and I were in danger and could be the object of Judge Morgan's possible future violent acts. Yet, she never told me directly or emailed me that I was in any danger or that any other court employees were in danger. Instead, she emailed the City Manager, and later reported these alleged threats to the police with the stated intent to hide that fact from me as her superior. Why she did not communicate with me first that others in the Court and I were in danger is puzzling and does not make sense.

However, the biggest telltale sign of this being a baseless allegation is her conversation with Ruth Rogers. Keep in mind at the time Ms. Roque met with Ms. Rogers she was not aware that Ruth or I knew that she had gone to the police. The credibility of her allegations is destroyed by making her very first request to make the workplace better to be directly supervised by Judge Morgan instead of Ms. Iwamoto even though just three hours earlier she was concerned enough of physical harm from him that she reported him to the police.

It should be noted that she acted with the advice of Alaska counsel throughout this and it is certainly possible that her lawyer instructed her to go the police or allege harm to third parties to HR for some tactical advantage rather than for any real concern about my safety or the safety of others.

On December 5, 2008, at her request I gave Ms. Roque copies of her job description, a summary of her responsibilities and a memorandum of understanding detailing work expectations. I gave her until Wednesday, December 10, 2008, to decide if she wanted to return to work. To date, she has not. Instead, she has tried to retain a lawyer to represent her and has now gone to at least four different law offices seeking representation to no avail.

After review of this situation, I am of the opinion that Ms. Roque is using these events and making allegations of retaliation either to assure her of a job at the city or to negotiate a favorable departure from the city. My opinion is that her actions and allegations have been calculated to "set up" the city for a claim of retaliation if she is terminated or to prevent her termination.

I hope this clarifies this set of events.

Thank you.

Judge David A. Larson
Federal Way Municipal Court