


CCMS No: 08-05-374

Confidential Conduct Complaint Investigation

Allegations of Employee Misconduct

**CITY OF TACOMA
CONFIDENTIAL MEMORANDUM**

TO: Eric Anderson, City Manager
Tansy Hayward, Asst. City Manager
Elizabeth A. Pauli, City Attorney

FROM: Tracy R. Storwick, Risk Analyst 

DATE: February 12, 2009

RE: Supplemental Investigation into Conduct Complaint #08-05-374

Background

In May 2008, the City received a complaint from Mr. Grant Blinn, Pierce County Deputy Prosecuting Attorney that alleged a City employee, Ms. China Fortson, Human Rights/Human Services ("HR/HS") Domestic Violence Project Specialist, had inappropriately used her City position and City funds to benefit a personal friend, Ms. Keisha Jackson. An investigation into Mr. Blinn's complaint was conducted; however, essential follow-up interviews with Ms. Fortson were placed on hold pending her return from an extended leave of absence.

In the original investigative report, this investigator indicated that evidence supported a finding that Ms. Fortson assisted Ms. Jackson in leaving the state of Washington with her children in direct violation of a court order; however, insufficient evidence existed to establish whether Ms. Fortson, at the time she aided Ms. Jackson in leaving the state of Washington, knew of the court's order directing Ms. Jackson to return to Washington with her children no later than September 3, 2007. Although evidence supported a finding that Ms. Fortson had substantial involvement with the parties' Washington State Court proceedings and should have known the legal status of Mr. Jackson and the parties' children, because the Ethics Code requires a knowing misuse of position, further evidence on this issue needed to be developed prior to forming a conclusion.

On January 13, 2009, Ray Arellano, Acting City Manager, remanded this investigation back to the City Attorney's Office for further investigation regarding this investigator's inconclusive finding concerning Ms. Fortson's misuse of her City position.

Issue

Did Ms. Fortson knowingly use her official City position and/or City funds to secure personal benefit, gain, profit, or special privileges for Ms. Keisha Jackson in

violation of City of Tacoma Code of Ethics Section 1.46.030 when she aided Ms. Jackson in leaving the state of Washington to go to Florida in September 2007?

Short Answer

Yes, Ms. Fortson knowingly misused her official City position and City funds to benefit Ms. Keisha Jackson in violation of the City of Tacoma Code of Ethics Section 1.46.030 when she aided Ms. Jackson in going to the state of Florida in September 2007.

Relevant Standard

City of Tacoma, Code of Ethics, Section 1.46.030, provides in pertinent part:

H. *Improper Use of Position Prohibited.* No City official shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use his or her position to secure special privileges or exceptions for himself, herself, or for the benefit, gain, or profits of any other persons.

J. *Improper Use of City Property Prohibited.* No City official shall use City-owned vehicles, equipment, materials, money, or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business, and for such purposes and under such conditions as are approved by administrative order of the City Manager or Director of Public Utilities . . .

Interviews Conducted and Documents Reviewed

A. Interview with Ms. China Fortson, HR/HS Victim Advocate, on February 4, 2009.

B. Review of the following documents:

1. Tacoma's Code of Ethics, specifically, Tacoma Municipal Code 1.46.030 (H) and (J). (*Please see attached as Exhibit "1"*)
2. *Received from Ms. Jacqueline Strong-Moss:* An interoffice memo from Ms. Fortson addressed to Ms. Jacqueline Strong-Moss dated May 5, 2008.
3. Order re Suspend Visitation, Memorandum of Journal Entry, re: *Jackson v. Jackson*, Pierce County Superior Court Cause No. 05-3-02569-6, dated August 13, 2007. (*Attached as Exhibit "24"*)
4. Order re Modification Parenting Plan, re: *Jackson v. Jackson*, Pierce County Superior Court Cause No. 05-3-02569-6, dated January 23, 2009. (*Attached as Exhibit "25"*)

5. Parenting Plan re: Jackson v. Jackson, Pierce County Superior Court Cause No. 05-3-02569-6, dated June 22, 2007. (*Attached as Exhibit "26"*)
6. Declaration of Keisha Jackson in Support of Motion to Suspend Visitation, Motion for Order re: Suspend Visitation, Memorandum of Journal Entry, re: *Jackson v. Jackson*, dated August 7, 2007. (*Attached as Exhibit "27"*)
7. Eviction Summons and Three Day Pay Rent or Vacate for Keisha Jackson. (*Attached as Exhibit "28"*)
8. Travel Expense Statement No. 8001366 dated 11/06/07, and Itemized Expense Worksheet for Ms. Fortson – Mileage Reimbursement for Travel to Puyallup and Seatac Airport. (*Attached as Exhibit "16"*)
9. City of Tacoma Transaction Detail Report for Ms. Fortson's Purchase Card xxxx7385, printed 7/25/08 – Ramada Inn. (*Attached as Exhibit "29"*)
10. Travel Expense Statement No. 8001367 dated 11/06/07 for Ms. Fortson - Budget Rent A Car Contract, dated 9/6/07, Port of Seattle Parking Receipt dated 9/6/07. (*Attached as Exhibit "21"*)
11. Email from Tracy Storwick to Ms. Fortson, dated February 4, 2009. (*Attached as Exhibit "30"*)
12. *Received from Ms. Forston: HR&HS Checks Received Log*, dated February 5, 2009. (*Attached as Exhibit "31"*)
13. Email from Tracy Storwick to Ms. Fortson dated February 5, 2009. (*Attached as Exhibit "32"*)
14. *Received from Ms. Susan Brown, Admin. Asst. to Mr. John Briehl: City of Tacoma J.E. Cashier's Advice – Record of Checks Received*, dated October 1, 2007; *Remittance Advice from DSHS* dated August 27, 2007. (*Attached as Exhibit "33"*)

Analysis

This investigator met with Ms. Fortson on February 4, 2009. The purpose of the interview was to determine the extent of Ms. Fortson's knowledge of the August 13, 2007, Pierce County Superior Court Order in *Jackson v. Jackson*, Cause No. 05-3-02569-6 (*Attached as Exhibit "24"*) which allowed Keisha Jackson to leave the state of Washington with her children to visit her ailing father in the state of Florida for a limited period time as outlined in said order.

The trial in the *Jackson* matter occurred in May 2007, final papers were entered in open court on June 22, 2007. Ms. Fortson testified at the trial on May 25, 2007, in

her capacity as Domestic Violence Advocate for the City of Tacoma on behalf of Ms. Jackson. Ms. Fortson informed me that the reason for her testimony was based upon Keisha Jackson's attorney's, Mr. Charles Schmidt, request that Ms. Fortson advise the court of what she had witnessed during child exchanges with the parties minor daughter, Quiymani, and to testify about her duties at the Family Justice Center. Ms. Fortson also advised me that prior to Mr. Schmidt drafting Ms. Jackson's final parenting plan he requested she come to his office and provide input into the wording of the document due to her experience with the parties' child exchanges and Mr. Jackson's alleged violent¹ behavior.

I asked Ms. Fortson to explain her understanding of the purpose of a parenting plan in a dissolution or custody case. She replied, "Basically it stipulates when the non-custodial parent will have visitation." I then asked her approximately how many parenting plans had she read in her career as a DV advocate with the City. She stated, "In the last 10 years, I have had 300 – 400 clients, so over a thousand." I asked what her purpose is in reading those parenting plans and she responded, "As the DV advocate, I would need to know what the court order said in order to do things in a timely manner." When I asked her to be more specific, she said, "Such as when the Judge says the visitations shall take place and when the Judge asks to have the DV advocate assist with visitation exchanges."

I asked Ms. Fortson if she ever read the final parenting plan that was entered in the *Jackson* matter, dated June 22, 2007, (*Attached as Exhibit "26"*) which she had assisted Keisha Jackson's attorney (Mr. Schmidt) in drafting. She stated she did not remember. She said she had read all the other parenting plans that had been entered in the *Jackson* matter (she said there had been approximately 10), but did not remember reading the final version. When I asked her how she knew when child exchanges would take place, she told me, "Mr. Schmidt would tell me, call me, when they were to take place."

I asked Ms. Fortson if she was in court when Judge Serko gave her oral decision regarding Mr. Jackson's residential time with Quiymani. She stated she was and remembered being there because it was the same day she testified in the trial. When I asked her if she remembered what Judge Serko had ruled regarding visitation, Ms. Fortson said, "The Judge said that Mr. Jackson would have visitation with his daughter

¹ As noted in Footnote 1 of the initial investigative report dated December 22, 2008, there exists no evidence which supports Ms. Fortson's allegations of violent behavior and/or domestic violence on the part of Mr. Jackson. In January 2009, The Honorable Susan K. Serko modified the parties parenting plan, removed custody of the parties' minor daughter, Quiymani, from Ms. Jackson, and granted custody to Mr. Jackson. The order states the modification was necessary because the child's environment with Ms. Jackson was detrimental to the child's physical, mental, and emotional health. Ms. Jackson had been found in contempt of court at least twice in three years because she failed to comply with the residential time provisions in the court-ordered parenting plan. The court found that Ms. Jackson intentionally violated the court order and that she had no intention on returning to Washington. Ms. Jackson had enrolled the children in school in Florida and they were placed at risk. (*See attached as Exhibit "25"*)

every other weekend and that Mr. Jackson would pick up Quiymani on Friday after school and that he would drop her off at school the following Monday morning. Mr. Jackson was also given a two-week period of time with his daughter at the end of the summer."

I asked Ms. Fortson what the child exchange/visitation arrangements were for Quiymani during the summer of 2007. She stated, "There weren't any, Ms. Jackson had to leave with her children to go to Florida to visit her sick father." I asked her if she was sure visitation had not occurred that summer. She stated, "Yes.. I remember thinking that I did not have to be involved with exchanges because Mr. Jackson had to pick Quiymani up from school and drop her off at school." I pointed out that Quiymani would not have been in school during the summer, and asked how the exchanges would have taken place. Ms. Fortson again stated, "There weren't any, not that I am aware of. If there were visitations, I didn't have anything to do with them." When specifically asked if she assisted with a child exchange on August 23, 2007, China stated, "I did not assist with any child exchanges that summer."²

Ms. Fortson told me that during the summer 2007, she received a call from Ms. Jackson. Ms. Jackson was crying and told Ms. Fortson that her father had been diagnosed with prostate cancer and that she needed to go visit him in Florida. Upon receiving this call, Ms. Fortson stated she contacted the Pierce County Court Facilitator, Cindy Leeder, and asked her to assist Ms. Jackson with the necessary court documents which would allow her to go to Florida with her children. Ms. Fortson advised me that the Court Facilitator did not have "any slots available to meet with Ms. Jackson" and was told she would need to assist Ms. Jackson herself. Ms. Fortson stated that the Court Facilitator instructed her as to which pleadings needed to be completed and filed with the court. Ms. Fortson then helped Ms. Jackson fill out a motion/order shortening time, a motion/order to suspend Mr. Jackson's visitation, and Ms. Jackson's declaration in support of said motion. (*Attached as Exhibit "27"*) I asked Ms. Fortson what her understanding was as to why Ms. Jackson had to request leave from the court to visit her father in Florida. Ms. Fortson said, "Because during the time Ms. Jackson would be gone, Mr. Jackson would miss one visitation with his daughter." Given this response, it was clear that Ms. Fortson knew that the court had given Mr. Jackson specific visitation rights and any alteration of those rights required a specific order from the court.

On August 7, 2007, Ms. Fortson accompanied Ms. Jackson to court to request permission to leave the state with her children to visit her ailing father. Since Mr. Jackson had not been given appropriate notice of the motion, the court reset the hearing to take place on August 13, 2007. Court pleadings reviewed by this investigator indicate that Mr. Jackson requested the court deny Ms. Jackson's motion for he was concerned Ms. Jackson would not return to the state of Washington due to Ms. Jackson's precarious living situation at that time. Ms. Jackson had recently been evicted from her residence (*Attached as Exhibit "28"*) and did not have a place to live.

² (*Please see Exhibit "16"*) Expense Reimbursement Sheet shows Ms. Fortson received reimbursement in the amount of \$13.58 for mileage to and from the McDonalds in Puyallup for a child exchange on 8/23/07. This McDonalds was the designated location where child exchanges would occur in the Jackson matter.)

Mr. Jackson stated in a declaration that friends "close to the situation" told him Ms. Jackson had stated she was moving to Florida. Ms. Fortson told me that Ms. Jackson had always planned on returning from Florida. Ms. Fortson also told me that she was in court the day Judge Serko granted Ms. Jackson's motion to suspend Mr. Jackson's visitation and allow her to go to Florida. The August 13, 2007, order allowed Ms. Jackson to go to Florida with the stipulation that she must return to Washington with her children no later than September 3, 2007.

I asked Ms. Fortson if she knew when Ms. Jackson was to leave for, and return from, Florida. She said she did not because she never saw the Court Order. Although she did not see the court order authorizing Ms. Jackson to take the children to Florida, Ms. Fortson indicated that she was aware that the court order allowed Ms. Jackson to leave Washington for a set period of time and that the court order required Ms. Jackson to return to Washington by a specific date. She further indicated that she knew Ms. Jackson left later than she had planned, because shortly after the August 13, 2007, hearing, Ms. Jackson's vehicle broke down.

After the order was entered and prior to going to Florida, Ms. Jackson and her children were staying with her friend, Joy Mack. Ms. Fortson told me that while Ms. Jackson was living with Joy Mack, Mr. Jackson's violent behavior escalated. According to Ms. Fortson, Mr. Jackson came over to Joy Mack's house, was banging on the door, and parking in her driveway. Ms. Fortson said Ms. Jackson was so concerned for her safety and afraid of what he might do to his children that Ms. Jackson would not even allow them to play outside.

Ms. Fortson told me that Ms. Jackson called her asking for advice. Ms. Fortson told Ms. Jackson to have Joy Mack call the police because it was her house. I asked Ms. Fortson why Ms. Jackson had not called the police if she was so afraid of Mr. Jackson. Ms. Fortson stated, "Ms. Jackson did not want to call the police because she did not want the police coming to Joy's house and disrupting the lives of Joy's children. I then asked Ms. Fortson, why she had not notified the police on behalf of Ms. Jackson. Ms. Fortson then told me that she had, but that the police told her "they could not do anything unless he does something." Ms. Fortson told me, "I knew we had to get Ms. Jackson and her children out of Washington because of Mr. Jackson's threats. Even Ms. Jackson's neighbor told her she would help her leave the state, and Associated Ministries helped her with the *move*."

This statement was inconsistent with Ms. Fortson's prior statements about Ms. Jackson's reason for leaving Washington and her intent to return. Upon being questioned about this inconsistency, Ms. Fortson revised her response. This sequence of inconsistent statements regarding the purpose of this trip and the intent to return was repeated several times during the interview, furthering this investigator's concerns regarding Ms. Fortson's veracity and credibility.

Ms. Fortson said that the day before Ms. Jackson left for Florida, Joy Mack's boyfriend, Richard Collins, and her neighbor assisted Ms. Jackson and her children flee to a hotel in SeaTac. Ms. Fortson told me that the neighbor took Ms. Jackson's children in her vehicle and even placed blankets over their heads so they could not be seen. Richard Collins took Ms. Jackson and the luggage in his vehicle. I asked Ms. Fortson if she knew where the rest of Ms. Jackson's belongings were located. She stated, "Quite a bit of her furniture was placed in storage, but some she left at Joy's."

I asked Ms. Fortson if she knew who paid for the hotel the night Ms. Jackson fled. Ms. Fortson answered, "I don't know who paid." I asked her if she paid for the hotel and she told me, "No, maybe Associated Ministries paid." I then showed Ms. Fortson a copy of the Transaction Detail for her City issued Purchase Card which documented a charge to the Ramada Inn at Seatac, Washington, on September 7, 2007, in the amount of \$204.92. (*Exhibit "29"*) Ms. Fortson then stated that, yes; she had paid for the hotel, but that Associated Ministries had reimbursed the City for that charge. I requested Ms. Fortson provide me with a copy of the reimbursement check from Associated Ministries and she stated she would do so.

When I asked Ms. Fortson how Ms. Jackson got to Florida if her car was in the shop, Ms. Fortson told me Ms. Jackson rented a van. When I asked her how she knew that, Ms. Fortson answered, "She [Ms. Jackson] told me." I then asked if she knew who paid for that rental van. At first Ms. Fortson stated, "I have no idea," then changed her answer to "maybe it was Associated Ministries, the FJC, or DSHS, I am not sure." I then showed Ms. Fortson a copy of her Travel Expense Statement dated November 6, 2007, (*Attached as Exhibit "21"*) wherein she requested reimbursement from the City in the amount of \$267.48 for a vehicle rental on September 6, 2007. I asked her if she had paid for the rental van for Ms. Jackson. She said, "I went to the airport by myself and explained to them [Budget] that we had a victim that had to leave and I asked them how we should pay for it [rental]." Ms. Fortson told me, "I had to pay with my credit card, but I only paid for the car, not the liability insurance; Ms. Jackson had to pay for that. I didn't want the City to be liable for that."

I asked Ms. Fortson if that was a common practice for the City to rent vehicles for others. She told me, "It is very common for the City to pay for airplane tickets, bus tickets, or car rentals for *relocation purposes*." I then asked Ms. Fortson if Ms. Jackson went to Florida to relocate or if she went to Florida to visit her ailing father as stated in the August 13, 2007, court order. Ms. Fortson stated, "She went to visit her father, she wasn't relocating." I again showed Ms. Fortson her Travel Expense Statement dated November 6, 2007, and asked her to read the explanation she had given for the City's reimbursement of \$267.48 – "Victim Relocation". I asked Ms. Fortson again if Ms. Jackson was relocating to Florida or going to visit her father. Ms. Fortson stated, "Ms. Jackson was not relocating, she had planned on coming back to Washington, *but I had to write victim relocation because that is the only way the City can get reimbursement from other agencies and a discount on the car rental.*" Thus, according to Ms. Fortson, she deliberately misrepresented the purpose of the charge in order to obtain reimbursement that would not otherwise be authorized.

Ms. Fortson then assured me that DSHS had reimbursed the City for the cost of the rental van and the hotel. She told me she would get documentation to me substantiating her assertion. After our meeting ended I sent Ms. Fortson a confirming email requesting same. *(See attached as Exhibit "30")*

The day following my meeting with Ms. Fortson, February 5, 2007, she came to the Legal Department and presented me with a Checks Received Log from the HR&HS Department. *(See attached as Exhibit "31")* Ms. Fortson highlighted for me line item 3337, which read: State of Washington – 487.60 – 9/25 – China (For DV Client). Ms. Fortson told me this was proof that DSHS had reimbursed the City for Ms. Jackson's van rental and hotel.

Upon returning to my office I perused the document Ms. Fortson had just given me and realized that the amount on line item 3337 (\$487.60) of the Checks Received Log did not comport with the amount the City paid for Ms. Jackson's hotel room and van rental (\$472.40). I emailed Ms. Fortson back explaining such, and requested she provide the supporting documentation she had send to DSHS when she requested reimbursement. *(See attached as Exhibit "32")*

Since I did not receive a response to my request, I telephoned Ms. Fortson at work on Monday, February 12, 2009. Ms. Susan Brown, Admin Asst. to John Briebl, informed me that Ms. Fortson was out sick for the day. She asked if she could help me. I then requested the same information from her that I had requested from Ms. Fortson. A short time later, Ms. Brown called me back and advised she had the documents I needed. I went to the HR&HS Department and met with Ms. Brown. She gave me the documents that corresponded to line item 3337 and also showed me the case file for which this payment was initiated. *(See attached as Exhibit "33")* Documents received from Ms. Brown regarding the reimbursement check for line item 3337, from DSHS consists of two pages: 1) Record of Checks Received Without Detail Attached, and 2) Remittance Advice. Please note that this payment was not related to Ms. Jackson at all, this payment was for an entirely different individual, Ms. Jeannette White

Approximately one hour after Ms. Brown gave this investigator those documents, I received a telephone call from Ms. Fortson. She advised me that Ms. Brown had notified her that the documents given to me were not related to Ms. Jackson. Ms. Fortson told me again that DSHS, FJC, or Associated Ministries had reimbursed the City for Ms. Jackson's charges and that she would get those documents to me.

As of this writing, this investigator has received nothing from Ms. Fortson or anyone else in the HR&HS Department substantiating Ms. Fortson's contention that any of the above-named agencies reimbursed the City for the cost of Ms. Jackson's hotel stay at the Ramada Inn at SeaTac on September 5, 2007 and September 6, 2007, and the cost of the rental van Ms. Jackson drove to Florida on September 7, 2007.

Findings

1. Evidence supports a finding that Ms. Fortson had substantial involvement in the *Jackson v. Jackson* Washington State Court proceedings, knew the legal status of Mr. Jackson and the parties' children in the summer 2007, and was aware of Mr. Jackson's visitation rights with his minor daughter, Quiymani, as set forth in the parties' parenting plan entered in Pierce County Superior Court on June 22, 2007.

2. Evidence supports a finding that Ms. Fortson assisted Ms. Jackson in leaving the state of Washington to visit her ailing father in Florida by way of drafting, typing, filing, and serving Ms. Jackson's Motion/Order Shortening Time, Motion/Order to Suspend Visitation, and Declaration in Support of Motion.

3. Evidence supports a finding that Ms. Fortson accompanied Ms. Jackson to court when her Motion to Suspend Visitation was heard in August 2007.

4. Evidence supports a finding that Ms. Fortson's assistance with preparation of court pleadings, telephone calls to court personnel, and court appearances regarding Ms. Jackson's motion to go to Florida to visit her ailing father took place during regular City hours.

5. Evidence supports a finding that Ms. Fortson was aware of the necessity of a court order, and the substance of the Court's order in effect at the time that she aided Ms. Jackson in leaving the state of Washington. Ms. Fortson had substantial involvement with the parties' Washington State Court proceedings and knew the legal status of Mr. Jackson and the children. Further, Ms. Fortson knew that the Court had authorized a trip to Florida for a specified period of time and required Ms. Jackson to return the children to Washington State by a date certain.

6. Evidence supports a finding that Ms. Fortson used City funds, on September 6, 2007, (three days after the court-ordered deadline for Ms. Jackson to return to Washington with her children) to rent a van for Ms. Jackson to drive to Florida.

7. Evidence supports a finding that Ms. Fortson used City funds to pay for Ms. Jackson and her children to spend two nights in a hotel in Seatac (September 5th and September 6th 2007) before leaving for Florida on September 7, 2007.

8. Although Ms. Fortson repeatedly offered conflicting rationales for helping Ms. Jackson go to Florida (by renting the car and paying for the hotel room), substantial evidence supports a finding that Ms. Fortson either:

- a. assisted Ms. Jackson in relocating to the state of Florida, knowing that the court had authorized only a visit to Florida of a specified duration and further knowing that the Court had ordered that the children be returned to Washington by a specific date, or

- b. knowingly misrepresented the purpose for the expenditure for the rental car in order to obtain funds and/or reimbursement that Ms. Fortson knew would not be authorized under the circumstances of this situation.

9. Aside from statements made by Ms. Fortson, there exists no evidence to substantiate the allegations of domestic violence issues between Ms. Keisha Jackson and Mr. Kelvin Jackson. Accordingly, a clear nexus between domestic violence issues and Ms. Fortson's substantial level of involvement in Ms. Jackson's custodial issues was not found to exist.

10. In September 2007, Ms. Jackson failed to return her children to the state of Washington in violation of a Pierce County Superior Court order. Ms. Jackson was charged with two counts of Custodial Interference in the First Degree which is a Class C felony, arrested in Florida, and was extradited back to Washington in spring 2008.

Conclusion

A violation of the City of Tacoma Ethics Code based on an improper use of position requires a finding of a knowing use of the position for the benefit or gain of another. Substantial evidence supports the conclusion that Ms. Fortson knowingly used her position to secure special privileges for Keisha Jackson either by 1) knowingly using her position and City funds to allow Ms. Jackson to flee the jurisdiction and violate a valid court order, or 2) by knowingly misrepresenting the purpose of an expenditure to obtain funds and/or reimbursement that would not otherwise be authorized. In either case, Ms. Fortson knowingly used her position and City funds available by virtue of her position for Ms. Jackson's benefit without a sufficient nexus between Ms. Fortson's activities and the purpose and limitations of the Domestic Violence Program.

Therefore, a Reasonable Cause finding that Ms. Fortson knowingly violated the City's Code of Ethics by misusing her City position and City funds to secure special privileges for Ms. Keisha Jackson is warranted.