

To: Tempe City Council
From: Burr Shields, Attorney
Subject: Information Relevant to June 14, 2017 Work Study Session
Date: May 19, 2017

The purpose of this Memorandum is to provide the Tempe City Council with information relevant to Agenda Item 2C of the Tempe Council Work Study Session which is scheduled to occur on June 14, 2017.

On April 10, 2017, a City of Tempe resident (M. Martinez) submitted a written complaint to the Tempe City Manager called “Formal Complaint, Kolby Granville’s Criminal Unproven Stalker Allegations.” The City requested that I investigate this complaint. Set forth below is the following: [A] description of the complaint; [B] a summary of my investigation; [C] the relevant portions of Personnel Rule 406.b and excerpts from the Ethics in Our Workplace Handbook; [D] my analysis and conclusion; and [E] the options available to City Council.

A. THE COMPLAINT

M. Martinez alleged in his written complaint to the Tempe City Manager that on April 7, 2017 Councilmember Granville posted, through social media, a photograph of himself (Councilman Granville) and, below the photograph, stated the following:

“Things I never thought about when I decided to run for council.
#1 That I would have my own personal, psycho, paparazzi stalker.
#2 That he would take such good photos!”

B. INVESTIGATION

On April 7, 2017, after learning of the posting and before submitting his complaint to the Tempe City Manager, M. Martinez communicated with the Tempe Chief of Police regarding the posting. The Chief of Police assigned the matter to Assistant Police Chief, Angel Carbajal, to investigate. During my investigation, I interviewed Assistant Police Chief Carbajal, M. Martinez and Councilman Granville. A summary of the relevant facts is set forth below:

- M. Martinez saw the above-described social media posting while at work on April 7th. The first posting was via Instagram and the second was via Facebook. Very shortly after the postings occurred, M. Martinez received communications from friends and acquaintances informing him that he was being referred to in the social media posting as a “psycho” and a “stalker.”
- Prior to looking into this matter, Assistant Police Chief Carbajal reviewed other communications originated by M. Martinez concerning Mr. Granville. Assistant Police Chief Carbajal then spoke with Councilman Granville on April 9th and M. Martinez on April 10th. Both discussions were telephonic.

- When Assistant Police Chief Carbajal spoke with Councilman Granville, he asked him whether he was concerned for his own safety. Mr. Granville responded that he was not afraid but “concerned.” As a result, the City of Tempe provided security on a couple of subsequent City-related events held at Mr. Granville’s home.
- M. Martinez told Assistant Police Chief Carbajal during their discussion on April 10th that his main concern was that he did not want to be blamed if Councilman Granville was the victim of some sort of crime because Councilman Granville had referred to him as a “psycho stalker.” Assistant Police Chief Carbajal asked M. Martinez if he knew that stalking was a crime and M. Martinez responded that he did not. At the end of the discussion, M. Martinez told Assistant Police Chief Carbajal that he was going to submit a complaint asserting that Mr. Granville had accused him of committing a crime.
- Assistant Police Chief Carbajal sent M. Martinez an email on April 10, 2017 which provided as follows:

“Thank you for taking the time to speak with me this morning. To recap our conversation, I understand that you are concerned over the use of the words “psycho” and “stalker” and that you were concerned for Councilmember Granville’s safety. As I mentioned during our phone call, I have spoken with Councilmember Granville and he does not believe he is being stalked and is not accusing you of any such thing. Also, in revealing all of the information provided to me thus far, I do not believe there to be a crime established at this time. Finally, we agreed that a face to face meeting will not be necessary. I hope that this information will bring you some peace of mind... If I can be of any further assistance to you, please do not hesitate to contact me.”
- When M. Martinez contacted the Chief of Police on April 7th, it appears as though he copied all Councilmembers. A couple of hours after M. Martinez’s complaint to the Police Chief, Councilmember Kuby sent to M. Martinez an email stating: “No citizen should ever be subjected to name calling by an elected official. And, I am sad to see a Tempe councilmember using a derogatory name for mental illness... I hope he apologizes to you.”
- On May 1, 2017, I interviewed Kolby Granville. The focus of my interview was to ascertain why Mr. Granville posted the social media at issue. When I initially asked him this question, he stated that he “just liked the photo,” and that he did not intend to say anything derogatory in regards to the individual who took the photo. A couple of hours after the posting, Mr. Granville received a call from one of his friends who told him that the comments in the posting could be deemed offensive. Mr. Granville then reposted the photo deleting the words “psycho” and “stalker.” I again asked Mr. Granville why he utilized those particular terms (psycho and stalker) in the posting. Mr. Granville responded that he regarded the terminology as “descriptive of the person who took the photo.” He analogized to referring to an individual physically, such as a “tall blonde.” Mr. Granville also explained his history with M. Martinez. M. Martinez has been a persistent, vocal critic of Mr. Granville for at least the last year.

- I interviewed M. Martinez, also, on May 1st. I asked M. Martinez when he first viewed the posting at issue whether he regarded Mr. Granville's comments as simply "sarcastic." M. Martinez responded that he was not sure. At the end of my interview with M. Martinez, I asked him to describe, fully, his motivations in pursuing his complaint. He told me:
 1. Councilman Granville has approximately 8000 followers via social media. He believes these followers knew that Councilman Granville was referring to him (M. Martinez) as a "stalker" and a "psycho."
 2. M. Martinez feels as though he was being punished by Councilman Granville for being involved in the political process.
 3. He feels that Councilman Granville minimized the actual crime of stalking.
 4. Councilman's Granville use of the term "psycho" was discriminatory in regards to people who actually possess mental issues.
 5. He regarded the comment as an assault on his character and accusing him of committing a crime - in regards to the "stalker" comment.
- In M. Martinez's written complaint to the City Manager, he described a "beautiful woman" as being offended by Mr. Granville's post. M. Martinez sent me a social media response from this individual. In it, she stated: "I saw your original post describing the photog as psycho, and as someone who has struggled with mental illness, it is not cool or funny to trivialize it. Words matter. Also, as a journalist, it is our job to take photos. Please don't flatter yourself."

**C. RELEVANT PORTIONS OF PERSONNEL RULE 406.B AND
LANGUAGE IN ETHICS IN OUR WORKPLACE HANDBOOK AS
INCORPORATED INTO THE COUNCIL CODE OF CONDUCT**

The relevant subdivisions of Personnel Rule 406.B are:

3. The employee has been abusive in attitude, language, behavior, or conduct toward a fellow employee, a supervisor or the public; or their action has resulted in physical harm, injury, or fear of it to such persons.
9. The employee has engaged in conduct, on or off duty that is of such a nature that it causes discredit to the City.

The excerpts from the City of Tempe's Ethics in Our Workplace Handbook which bear upon this investigation are:

1. Essential decency in our dealings with peers, bosses, and subordinates and all those outside the City with whom we come in contact. Earning the respect and regard of others for what we do and how we do it. Thinking through the implications of our actions, and our lack of action.

2. It is a matter of respect.
3. The City isn't a building, a piece of equipment, or a form to fill out, or a budget. It's people. A community of people. A team. A family.
4. We see each other every day, work together closely, share common goals and depend upon each other. We have bad days and good days. With squabble and squirm, fuss and fight, and agree to disagree. We also help each other out, trade confidences, pour on the second effort, and laugh together over coffee. We rise to the occasion, in small and big ways.
5. The only way the relationship works is to treat another with fairness, dignity and respect. We insist!
6. Our City is not only obligated, but committed, to provide you with a work environment that is safe, fulfilling, and dignified. Intimidation, coercion, and harassment of any kind have no place here.

D. ANALYSIS AND CONCLUSIONS

Mr. Granville disparaged M. Martinez in the April 7, 2017 Instagram and Facebook postings he created by referring to M. Martinez as a "psycho" and a "stalker." This violated Personnel Rule 406.B, subsections 3 and 9. It also violated the first, second, fifth and sixth above cited provisions of the Ethics in Our Workplace Handbook.

E. THE OPTIONS AVAILABLE TO CITY COUNCIL

As Council may recall, Resolution 2009.126 provides that the City Council can impose a maximum sanction of "formal censure." As far as lesser forms of discipline are concerned, Council may consider an advisory letter or a letter of reprimand.

- The Arizona Medical Board describes an "advisory letter" as a non-disciplinary measure to notify a responsible party that either: a) "While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action"; b) the violation is a minor or technical violation that is not sufficient to warrant disciplinary action; or c)...The Board believes that repetition of the activities that led to the investigation may result in further Board action.
- According to the above-described policy, a "letter of reprimand" is a more serious form of discipline than an advisory letter. A letter of reprimand, according to the Board, is

appropriate in situations where the activity at issue does “not involve issues of serious moral or ethical lapses in conduct or repetitive issues.”

Because there does not exist any City ordinance or regulation which provides guidance to Council as to forms of sanction less severe than a “formal censure,” Arizona Medical Board definitions are referred to. The Arizona Medical Board uses the term “decree of censure,” as opposed to “formal censure.” The Arizona Medical Board considers this form of discipline to be appropriate where “serious or repetitive” acts of misconduct have occurred and in cases of “serious morale and ethical lapses in conduct.” Discipline in the form of an advisory letter or letter of reprimand can be rendered in the form of a letter. Conversely, a formal censure should take the form of an actual resolution.

If Council wishes to issue a letter of concern or a letter of reprimand, it may direct staff to prepare a draft document for Council’s consideration at a future meeting. If Council wishes to pursue formal censure, Council may direct staff to draft such a resolution or Council consideration at a regular Council Meeting.

Council may also decide to take no further action on this matter.