



City of Asheville, NC

Police Department

PO Box 7148  
Asheville, NC 28802

Office: 828-259-5880  
[www.ashevillenc.gov](http://www.ashevillenc.gov)

July 13, 2018

**VIA HAND DELIVERY**

Mark Byrd  
c/o John Hunter, Attorney  
One North Pack Square  
Asheville, NC 28801

Dear Captain Byrd:

A pre-disciplinary conference was held on July 11, 2018 at 10:00 a.m., in accordance with City of Asheville Personnel Policy Section 69, to give you the opportunity to explain the policy violations outlined in the notice of pre-disciplinary conference you received on July 5, 2018.

As explained in the pre-disciplinary conference notice, and as you are aware, beginning in December 2017, the Human Resources Department ("HR") hired an independent third-party investigator to conduct investigations into complaints made against you by other members of the Asheville Police Department ("APD"), as well as complaints you had made regarding other employees. After a review of the information provided by this investigator, Peggy Rowe, HR Director at the time the investigation was initiated, and current Interim Assistant City Manager, wrote to me as your department director, recommending a pre-disciplinary conference based on her findings that you had violated several City and APD policies. In addition, Ms. Rowe recommended that APD and HR jointly conduct an additional investigation into whether you had provided untruthful information regarding certain matters.

The joint HR and Professional Standards investigation concluded that you had, in fact, provided untruthful information. In addition, the investigation found that you made additional untruthful statements during the course of the joint investigation. You were afforded the opportunity to review the investigative files, as well as Ms. Rowe's memo and the third-party investigator's report, prior to your pre-disciplinary conference.

During the pre-disciplinary conference, your attorney, John Hunter, indicated that you had reviewed the investigative files. At that conference, you were given the opportunity to respond to the issues and provide pertinent information that you wished to be considered as part of this process.

As an initial matter and as previously described in your pre-disciplinary conference notice, your actions and the appropriate course of discipline are evaluated with consideration given to the performance standards communicated to you by Deputy Chief Wade Wood in an August 2017

memo outlining the expectations for you as an APD Captain. The expectations for behavior of an APD captain is also codified in APD Rule of Conduct I-1, Compliance to Rules and Policies, which provides:

Employees shall comply with all City of Asheville Personnel Policies and Asheville Police Department Rules of Conduct, general orders, policies, and procedures. **Supervisors of the Asheville Police Department shall be held to a higher standard regarding the understanding and adherence to the Departmental Rules of Conduct.** Ignorance of these Rules of Conduct or any other Departmental or City regulations, directives, orders, procedures or policies shall not be considered as a justification for any such violation. (Emphasis Added)

Having now considered the information you provided at the Pre-Disciplinary Conference, I have found as set forth below:

**1. Your lack of truthfulness on more than one occasion has violated the City of Asheville's Ethics Policy D. Honesty and APD Rule of Conduct I-11 Truthfulness.**

In November of 2017, former APD Captain Stony Gonce wrote the City's HR department alleging that two sergeants failed to follow protocol during a call in the summer of 2017. During an ensuing Professional Standards investigation into the two sergeants' conduct, Captain Gonce informed Professional Standards that he learned about the alleged incident from you. On January 5, 2018, when interviewed as a witness in the case by Professional Standards, you stated that you received information about the incident through an anonymous note left in your office inbox. You subsequently repeated that statement about the anonymous note to the HR investigator.

In her memo to me regarding the outcome of HR's investigation, Ms. Rowe stated that she was concerned that your statements about receiving an anonymous note were not true, and recommended that Professional Standards and the HR department conduct additional investigation on that point. That investigation subsequently concluded that your statements about receiving the anonymous note were untruthful and recommended sustaining a violation of APD Rule of Conduct I-11, Truthfulness. Based on my review of the file, I concur with that finding. You offered no evidence or statements regarding this matter during your pre-disciplinary conference.

The investigation also found that you made additional untrue statements during the course of the investigation. Specifically, during your May 23, 2018 interview with Professional Standards and HR, you made a number of untrue statements related to the Christopher Hickman ("Hickman") case.

- (1) First, you stated that you requested a criminal investigation of Hickman on August 25, 2017 in the presence of the Professional Standards lieutenant, sergeant and me. Both the lieutenant and the sergeant deny that you made any statement regarding a criminal investigation on that date, and I concur with their recollection. That statement is also contrary to a December 6, 2017 recorded interview you had with HR. Records show that you did not recommend a criminal investigation in Hickman's case until you



reviewed the administrative case in mid-December of 2017, and that following further review by Deputy Chief Wood and me, the case was resubmitted to the DA for consideration of a criminal investigation at that time. As such, I find your May 23, 2018 statement to Professional Standards, that you requested a criminal investigation on August 25, 2017, to be untrue.

- (2) Second, you stated that you requested that a criminal investigation take place once the use of force against Anthony Morrow by Hickman was discovered. A review of the memorandum that you completed in that matter, as well as the Blue Team routing notes, show that you recommended an administrative investigation. Specifically, Hickman completed the Blue Team report on August 19, 2017. On September 2, 2017, you forwarded the Blue Team report to the Deputy Chief with the comment, "I request and [sic] Administrative Investigation." The Professional Standards Investigation into the matter was initiated on September 5, 2017. You did not request a criminal investigation until you completed your review of the administrative case in December 2017. As such, this statement was also untrue.
- (3) Third, you said that on November 8, 2017, you made two individuals in HR aware of "the concerns" regarding the treatment of Hickman as related to Johnnie Rush and Anthony Morrow. According to each of those individuals, you never mentioned concerns regarding either Johnnie Rush or Anthony Morrow with them on that date. Additionally, in a recorded interview with the same individuals on December 6, 2017, you gave every indication that those same matters were being handled appropriately. As a result, this statement is also untrue.

You offered no evidence or information regarding this matter during your pre-disciplinary conference.

Further, since your May 23, 2018 interview, you have repeated the untrue statement, through your attorney, that upon seeing the Hickman recording you immediately recommended, in front of other officers, that the matter be referred for criminal investigation and that I refused to do so. As already noted above, the other persons present, including me, deny that you made any such statement about a criminal investigation when you first saw the recording, and your recent claims to the contrary are belied by your December 6, 2017 recorded interview. As a result, this statement is untrue.

You have also stated, through your attorney, that on March 5, 2018 I made an untruthful statement regarding the additional investigation into Hickman's body camera footage. Specifically you find fault with my statement that the investigation did not reveal any additional use of force incidents involving Hickman. As evidence, you point to the arrest of Anthony Morrow and a citizen complaint from Vanessa Bogany as proof of my misstatements. However, again, your allegations are demonstrably and knowingly false. Neither the complaint made by Ms. Bogany, nor the use of force incident involving Mr. Morrow, were revealed through the review of Hickman's footage

completed in October of 2017. The incident involving Mr. Morrow was already under review at the time that the administrative investigation into the remainder of Hickman's body-worn camera footage was ordered. The complaint filed by Ms. Bogany was received, assigned, and investigated well prior to the receipt of the complaint filed by Mr. Rush, and was not something revealed through the review of Hickman's footage. You were involved in the review of both of those incidents as well as the investigation pertaining to the body camera review where additional courtesy violations were found, and were, therefore, aware of these facts prior to your most recent untruthful allegations. As a result, these new allegations are also dishonest, and a clear violation of APD policy.

I depend on all APD employees, but particularly command staff, to be honest and truthful at all times, as this is critical for law enforcement officers. One incident of a lack of honesty would be concerning for any employee of APD, but I find your pattern of untruthful statements completely unacceptable for an APD Captain. Acts of dishonesty are a clear policy violation.

**2. Your emails to lieutenants are in violation of APD Rule of Conduct P-12, Supervisory Cooperation and APD Rule of Conduct P-2, Unsatisfactory Job Performance.**

As described in your pre-disciplinary conference notice, on more than one occasion you have sent emails to your subordinates that are in violation of APD policies. You did not offer any evidence in the pre-disciplinary conference to dispute sending any of these emails or that they were a violation of policy.

In a March 13, 2018 response to an email from a lieutenant, which you also sent to six other lieutenants, you described responses you received from your senior officers as "lacking and need[ing] more clear direction." In that same email, you told your lieutenants, "I do not have any additional information to share at this time. Little to no information is being shared with me about departmental operations and plans."

On March 16, 2018, you sent an email to your lieutenants in which you describe discussions you had with other command staff. Throughout that email, to personnel under your command, you expressed frustration and disdain for the APD's senior leaders and command staff, and even implied that senior commanders were not being truthful.

I do not expect that personnel under my command agree with every decision made by a commanding officer. It has been clearly communicated to you in writing, however, that I do expect that Captains will: generate a positive working environment of cooperation and trust; express positive expectations; show respect for others and their opinions; demonstrate a sense of direction and purpose in relation to organizational and division goals; promote team morale and productivity; make decisions when needed and without passing them off to someone else; understand and support the department's multi-year plan; promote awareness and understanding of organizational initiatives, events, projects and strategies; and support organizational decisions, even if they are unpopular or controversial. These emails demonstrate that you are not meeting



these expectations. In fact, these emails appear to be nothing less than a conscious attempt to sow confusion and distrust among subordinate officers.

**3. Your Responses Regarding Questions Related to the Downtown Staffing Unit Violated APD Rule of Conduct, P-12, Supervisory Cooperation and APD Rule of Conduct, P-12, Unsatisfactory Job Performance.**

In the later part of 2017, a sergeant came to you with concerns about schedule changes for the Downtown Unit ("DTU") and a rumor that the change was made because a lieutenant made a comment to me that she had not seen anyone from DTU while working watch command. The sergeant reported to the HR investigator that you said you were not aware that the lieutenant had anything to do with the change, but that I had given you a "strong recommendation" to make the shift change and provided no further explanation as to why the change was necessary.

As you are aware, and were aware then, DTU staffing was changed because the unit, which is the primary unit responsible for the highest crime area in the city, had been depleted due to promotions and attrition, and no longer had enough officers to sustain the alternating weekend split-shifts. You were also aware that there was a longer-term strategy to create a downtown district staffed with 15 officers. However, instead of explaining the need for the staffing change to the sergeant, explaining the longer-term strategy or trying to work on a solution that would address the sergeant's concerns, you chose to assign blame to senior commanders. According to the HR investigator, and I agree, this incident "is indicative of a trend in which Captain Byrd responds to subordinate concerns about decisions and policy by blaming superior officers instead of seeking buy-in or communicating strategy." HR concluded, and I agree, that you knew why the DTU staffing changes were necessary, and should have known that there is a longer-term strategy in place that will hopefully alleviate the sergeant's concerns. That you did not communicate this information to your subordinate, but instead decided to direct her discontent toward a senior officer, is indicative of a communication deficiency with very real implications for the department's morale. This behavior is unacceptable for a Captain of the APD, and, again, you did not provide any evidence or information during your pre-disciplinary conference which would excuse or mitigate this policy violation.

In summary, I have concluded that you have violated the following policies:

- **City of Asheville's Ethics Policy D. Honesty**
- **APD Rule of Conduct I-11 Truthfulness.**
- **APD Rule of Conduct P-12, Supervisory Cooperation**
- **APD Rule of Conduct P-2, Unsatisfactory Job Performance.**

During your pre-disciplinary conference, you opted not to respond to the vast majority of the allegations set out in the pre-disciplinary notice delivered July 5, 2018, and instead summarily alleged that you are being disciplined in retaliation for raising concerns about me with HR. Your attorney also informed me during your conference that, if you are terminated or demoted, you will attempt to harm my reputation by publicly accusing me of engaging in an inappropriate

relationship with another officer, an allegation which you know has been investigated and found untrue, and by publicly questioning my handling of the Hickman case. These unsupported allegations of retaliation and threats to harm my reputation, however, do not address, and therefore do not mitigate or excuse, the multiple serious violations of policy outlined in this letter.

Consistent with City policies, it is my decision to dismiss you from employment as a Captain in the Asheville Police Department, effective immediately. I have considered your years of service with the APD, as well as the information you offered in your pre-disciplinary conference regarding your perception of your standing within the department and your job performance. While I do not relish the thought of having to withstand your threatened false personal attacks against me and other members of the department, I feel strongly that due to your repeated untruthful statements, as well as emails and other conduct demonstrating a willingness to malign and undermine other members of the command staff, your dismissal is in the best interests of the City's residents, the members of this department and the City.

Information pertaining to your benefits and final paycheck will be emailed to you by Tarika Wyche, using the email address in your employee record. If you have any questions about this information, need to update your email address, or wish to have the information sent via regular mail, please contact the Human Resources Department at 828-259-5690.

You will need to return any and all property of the City to include any issued uniforms, equipment, computer equipment, records, and other property belonging to the Asheville Police Department or the City of Asheville. Please contact Sgt. Cecil in Logistics to arrange to return this property. Sgt. Cecil can be reached at (828) 259-5964.

Any permanent full-time employee, who is dismissed in accordance with Article 7, Section 69 of the Personnel Policy Handbook, shall have the right to appeal directly to the City Manager under the grievance procedure. Such an appeal shall be requested in writing within twelve (12) calendar days of the departmental action being appealed.

Sincerely,



Tammy Hooper  
Chief of Police  
City of Asheville

cc: Personnel file

I acknowledge receipt of this letter by my signature below:

*Marie A. Bowers*  
*in behalf of John C. Hunter*  
Employee Signature *and*  
*Mark Byrd*

*02/13/18*

Date