



IA 2019-01

**Complainant:** [REDACTED] (MACECOM 911-Dispatcher)  
**Subject Employee:** Hector Diaz (Officer-SPD)  
**Investigator:** Captain Mike Fiola *MF*

**Potential Policy Violations:** 340.3 Directives and Orders  
340.5.9 Conduct (Standards of Conduct)  
340.5.5 Attendance (Standards of Conduct)  
340.5.8 Performance (Standards of Conduct)  
402 Biased Based Policing  
340.5.4 Relationships  
340.5.2 Ethics

**Findings:** **Sustained**-Attendance, and Standards of Conduct  
**Not-Sustained**-Orders, Ethics and Conduct  
**Un-Founded**-Biased Based Policing, and Relationships  
**Exonerated**-

**Conclusion:** Sustained violations based on clear and convincing evidence. Not-Sustained and Un-Founded complaints did not meet the standard of: preponderance of evidence.

**Recommendation:** After reviewing all of the Douglas Factors (Douglas v. VA, 5 MSPR 280, 5 MSPB 313 (1981)), it would be recommended that the subject officer receive a documented **written counseling and 3-days suspension** for his conduct and performance pertaining to inappropriate, sexual in nature communication with MACECOM employees, and local barista while on duty. This behavior goes against our policy, and core value **respect**. Further, the subject officer should receive **remedial training** for sexual harassment in the workplace, and gender equality. This recommendation is consistent with our agencies Mission, Vision and Core Values. Diaz has no previous discipline.

## Summary Synopsis

### 340.3 Directives and Orders

#### **NOT SUSTAINED VIOLATION**

██████████ believed that Officer Hector Diaz had been directed by Sgt. Fry to not contact her after she'd filed a complaint against Diaz in March of 2019 pertaining to rumors and gossip. ██████████ believed that Diaz following her around town while Diaz was on-duty was in contrast to Sgt. Fry's order(s).

Sgt. Fry was interviewed. He told Diaz not to talk poorly about ██████████, but he never gave him a directive to not contact her.

Thus, there was no actual order given to Diaz to not contact ██████████. ██████████ believed that being followed by Diaz was a form of harassment, which was investigated under policies conduct and performance further on in this investigation.

### 345.5 Attendance

#### **SUSTAINED VIOLATION**

On 4/8/2019, Officer Diaz was scheduled to work 1700 hours to 0500 hours. Per this policy Officer Diaz was to be in the City limits at the beginning of his shift. Officer Diaz was working with Officer Chris Pickens; Sgt. Fry had an excused absence. Officer Diaz was driving a Ford Crown Victoria, black and white.

██████████ complained that Diaz had followed her into work on 4/8/2019 after 1700 hours, from McCleary, WA to Shelton, WA. ██████████ said that Diaz should not have been behind her at this time, because he should have been inside the City limits of Shelton working. Further, she felt he was following her in an attempt to harass her (tail-gating).

Deputy Carlos Rangel, an on-duty Sheriff's Office employee had been called during this incident by Hall, due to her fear of Diaz. Deputy Rangel provided a taped statement indicating that he'd indeed seen who he believed to be Officer Hector Diaz driving a Shelton Police Department vehicle on 4/8/19 onto N/B US Hwy 101 from SR 108 after 1700 hours. Rangel said that he didn't have the exact time, but that it was indeed after 1700, possibly around 1710 hours.

Diaz stated that he could not remember this incident, but feels that Rangel is making a false allegation against him because he's dating ██████████. There is no indication that the Deputy would risk his career for something as trivial as being late for work. Diaz said it is possible he was behind ██████████, but not intentionally, and that it is possible he'd forgotten something at home before this shift, but he couldn't remember for sure.

340.5.9      Conduct & Performance 340.5.8

**SUSTAINED VIOLATION**

██████████ alleged that in the past 12-months Officer Diaz had routinely gone into the dispatch center (MACECOM), while on-duty and engaged in sexual harassment by speech, conduct, and actions. ██████████ provided many witnesses to this claim, and requested they be interviewed. Interviews were conducted with the following 911 Dispatchers: ██████████ ██████████, and ██████████. Other witnesses included SPD Officer ██████████.

In speaking with all witnesses it was clear and consistent that Officer Hector Diaz routinely entered MACECOM while on-duty and engaged in communication with female employees that was obscene, indecent, profane, derogatory, disrespectful and sexual in nature. Review of the witness transcriptions will provide context for those evaluations.

Types of Statements/Actions provided to the Investigator include, but were not limited to:

- 'You were so easy, I didn't even have to buy you a dinner' directed at a dispatcher. Denied
- Bragging about all of the "sex" you were having while in Mexico at your bar. Denied
- Bragging about your "sexually transmitted diseases" after returning from Mexico and having a prescription on file with your doctor. Denied
- 'You fucked him, but you wouldn't fuck me' directed towards a dispatcher. Denied
- 'I hate women, I'm only stopping them tonight', after a recent break-up. Denied
- Bragging about a "Biotchinary" black book with all your sexual conquests, and rankings. Joke
- Telling dispatchers that this "Biotchinary" is in your patrol car and to make sure it gets taken out if anything happens to you. Joke
- Stating you had to have sex with a barista to get the dispatcher's coffee, but it was free now. Joke
- Comments to a dispatcher about her low cut shirt, and clothing in a sexual manner. Denied
- Comments to a dispatcher that you'd come in more often if she dressed sexier. Denied
- Bragging about getting free coffee for having sex with a barista at Big Foot Java. Joke
- Sexual in nature jokes, comments, and un-professional flirting. Joke

Diaz denied the majority of the above, but admitted that he'd engaged in jokes that were inappropriate while in dispatch and that in retrospect it was not appropriate. Specifically, that he'd joked about having a book of sexual pasts partners ("Biotchenary"). Diaz also admitted to making mention of having to do something, believed to be sex, to get the dispatchers free coffee, but he said this was a joke. Diaz admitted to being outside our policy regarding conduct for his behavior in the dispatch center the past year.

This behavior is contrary to our policy on conduct and performance. It reflects poorly upon the Shelton Police Department, and is against our core values.

**CONDUCT-Continued-Following [REDACTED] while on Duty to Harass/Intimidate**

**NOT-SUSTAINED VIOLATION**

On 4/8/2019 at around 0200 hours, while on duty, Officer Diaz had followed her in his police vehicle into Wal-Mart, blocked her car in, and turned his spot light onto her vehicle. When she left Wal-Mart he again followed her to Anytime Fitness and then parked across the street while she worked out. Hall said this put her in fear, that he felt Diaz was doing this to harass her for complaining about him to Sgt. Fry and for not accepting his sexual advances in the past.

This incident was refuted in part by [REDACTED] friend who had been with her at the Wal-Mart and Anytime Fitness, [REDACTED] (911 Dispatcher). Specifically, Diaz had not blocked in [REDACTED], nor spot lighted her vehicle, nor parked across from the Anytime Fitness while they worked out. Officer [REDACTED] had also been at Wal-Mart and he too stated that Diaz had not blocked in [REDACTED] vehicle.

Diaz denied ever following [REDACTED] intentionally on-duty in an attempt to harass or intimidate her.

**CONDUCT-Continued; New Allegations Presented:**

**NOT-SUSTAINED (Relationships 340, Ethics 340, and Conduct 340)**

During the interviews with MACECOM employees and Deputy Rangel, it was brought to my attention the allegations that Officer Diaz had been sexually harassing a Barista at Big Foot Java named [REDACTED], and that he'd bragged about getting free coffee from her for the dispatchers. Further, Deputy Rangel stated that [REDACTED] had complained to him about Diaz and inquired about how to get a restraining order, or how to file a complaint against a police officer. Rangel said that this occurred while Officer Diaz was on-duty as a Shelton Police Officer. Further, that Diaz had told him he was having a relationship with [REDACTED], and that Diaz became very upset when he learned that she had a boyfriend. Rangel stated that [REDACTED] told him Diaz had given her boyfriend a ticket after finding out she was in a relationship.

[REDACTED] called the Shelton Police Department and provided a statement. In short, she said Officer Diaz had come to get coffee at night earlier this year, 2019. That he was on-duty as a police officer and seemed polite initially. [REDACTED] went onto state that Diaz's conversations became sexual in nature, and he began talking to her about her appearance, her breast size, and overall looks. [REDACTED] also went onto state that Diaz had told her about the size of his penis and made mention that she could not handle it. [REDACTED] said Diaz met her one time off duty in

Olympia, and that there had been underage drinking going on at her apartment when he was there. [REDACTED] stated that when she told Diaz she only liked him as a friend he began gossiping about her around town, telling people they'd slept together. [REDACTED] stated Diaz got upset when he found out she had a boyfriend, and that one night her boyfriend was stopped by Diaz near Big Foot Java while she was working and that he'd given her boyfriend a ticket. [REDACTED] felt this was because he was mad at her.

[REDACTED] denied ever giving Diaz any free drinks or coffee. [REDACTED] denied that Diaz ever attempted to get free coffee.

Diaz denied all of the above allegations pertaining to sexual dialogues while on duty with [REDACTED]. Instead, he stated that [REDACTED] was the one who'd talked to him like that, once showing him a picture of her wearing little to no clothing, but again Diaz stated he'd not engaged in the conversation while at work. Diaz stated that he had pulled over the barista's boyfriend, and gave him a ticket for defective exhaust, but that it was not because of [REDACTED].

There is not sufficient evidence to sustain any violations, but the allegations are similar to the initial complaint filed by [REDACTED].

#### **402                      Biased Based Policing**

#### **NOT-SUSTAINED VIOLATION**

[REDACTED] alleged that after a break-up with his then fiancé, Officer Diaz had made comment while in MACECOM that he hated women, and that he'd be only stopping them on patrol. [REDACTED] stated that during this shift he appeared to be only conducting traffic stops on females.

[REDACTED] could not provide us with a date or time to research these accusations via radio history or radio transcripts, thus we were unable to confirm or refute this accusation. Officer Diaz denied the statement, and denied targeting females for law enforcement due to a bias.

### Chronological Events Summary

6/16/2019 Contacted by [REDACTED] regarding an incident involving Officer Diaz. Request to speak with me 1 on 1 to file complaint. Advised to come to SPD during my work hours and I'd discuss it with her.

6/17/2019 Email from [REDACTED] advising that she can't come into the office today, but will call me later and discuss the matter over the phone.

At around 1500 hours, I speak with [REDACTED] on the phone (desk-line). In short, [REDACTED] states Diaz filed a complaint against her at work, because she'd told a girlfriend of hers to be careful if she is dating Diaz because he has an STD, and does not treat females nicely. [REDACTED] stated that a feud between them started a few months ago after she told Diaz's supervisor that he was spreading rumors about him sleeping with her. [REDACTED] said that since that time she has been followed through town by Diaz, harassed at work, and made to feel un-safe in the City when Diaz is working. [REDACTED] said she had witnesses and documentation, and that she will be requesting an anti-harassment order on Diaz in the near future. We have scheduled to meet in person during her work hours this week to obtain a formal complaint and review her documentation. I advised [REDACTED] that I'd issue an order to Diaz today to stay away from [REDACTED] to not contact [REDACTED] and to stay out of MACECOM, unless it is recorded job duties.

1527 hours, I called and spoke with Officer Diaz. I advised him of the basic complaints being made by [REDACTED], and at this time he is ordered to not contact her outside of work. This was not a formal notification of an internal investigation. I informed him that after I spoke with her this week I'd know which route we'd have to take, but for now to not contact her and stay out of MACECOM unless work-related.

6/18/2019 Interview with [REDACTED] at SPD with Michelle Sutherland (CITY HR) in Training Room at 1700 hours. Got a basis for her complaint, not an official statement. Based on her synopsis there is reason to investigate the allegations further. Notes of our conversation with [REDACTED] are recorded in the IA notification. A formal statement will be conducted once [REDACTED] gives consent to do so, she wanted to think on it for a night.

6/19/2019 Notified MACECOM director of IA being opened and requested he tell his staff not cooperate with the investigation, and not discuss the matter openly since it could jeopardize the case. He sent an email to his staff (copy provided).

Notification of IA to Diaz. Notification of Witness IA to [REDACTED] and [REDACTED].  
Witness IA Notifications to MACECOM employees: [REDACTED]  
and [REDACTED]. Witness IA notifications to MCSO.

PDR Request into MACECOM for all MDT Messages between [REDACTED] and  
Diaz/[REDACTED]/[REDACTED] from 1/1/19-6/17/2019.

Notified SPD via email of on-going professional standards investigation. Request  
for no rumors and if you have information pertinent to the case contact a  
supervisor.

6/20/2019 Received MDT Messages that had been requested from MACECOM. Nothing to  
note regarding any of the claims. Nothing un-professional, nor any information  
regarding this investigation.

Received confirmation from Chief Dracobly that his deputies will contact me and  
provide witness statements.

Interview with [REDACTED] at SPD Training room, 1500 hours, with Det.  
Gray and HR Michelle Sutherland.

6/21/2019 Interview with [REDACTED] / Audio Recorded at SPD Training room 1052 hours,  
with Deputy Gray.

6/24/2019 Received hours worked for [REDACTED] and [REDACTED] from MACECOM regarding 4/7, 4/8,  
and 4/9, to establish dates of reported issues with Diaz.

PDR Request in for Radio History for the following in Spillman via MACECOM:  
Diaz, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Looking for date of attendance, Etc.

Interview with Officer Pickens at SPD 1530 hours, with HR Michelle Sutherland.

Received PDR of radio history for above subjects.

6/24/19 Interview with [REDACTED]. Different story about Wal-Mart and Anytime  
Fitness.

6/26/19 Interview with Sgt. Justine Fry / No Orders given to Diaz to not contact [REDACTED].

Interview with [REDACTED] / Only remembers comment about [REDACTED] shirt.

Spoke with Deputy [REDACTED] on the telephone. He stated that he did not see Diaz  
near Anytime fitness on the night in question, nor has he seen any type of stalking

behavior from Diaz, and has not witnessed anything regarding him and [REDACTED].  
Excused from being interviewed.

6/27/19 Interview with [REDACTED]; confirmed sexual in nature communication by Diaz in MACECOM.

7/9/19 Interview with Deputy [REDACTED]. New allegations, new Notice of added policies sent to lawyer and officer. Provided with phone number for new witness, [REDACTED], left voicemail.

7/22/19 Phone interview with [REDACTED] / [REDACTED], stated she was sexually harassed by Officer Diaz while he was on duty. Confirmed that she'd reported this to Deputy Rangel.

8/16/2019 Garrity Interview with Officer Hector Diaz and his FOP/Guild Appointed Lawyer.



### Investigation

Hector Diaz is a Shelton Police Officer. [REDACTED] is a MACECOM 911 employee. [REDACTED] has worked for MACECOM for approximately 2 years, and Officer Diaz 3 years. Initially friends, the relationship has deteriorated since early 2019.

In March, 2019, [REDACTED] had contacted Diaz about hearing rumors that he'd been telling co-workers he'd slept with her. Hall asked Diaz to stop, which she states did not happen. [REDACTED] took her complaint to Sgt. Fry, Diaz's immediate supervisor on 3/11/2019. Diaz denied the accusations, but either way Fry told Diaz not to spread rumors or talk about [REDACTED] in a negative manner. This was documented via email, but Diaz was given no direct orders to not contact or stay away from [REDACTED].

On or around June 12, 2019, [REDACTED], while off-duty, stopped at a coffee stand in McCleary, WA, where she lives. [REDACTED] had a conversation with a barista named [REDACTED] that revolved around Hector Diaz. Specifically, [REDACTED] had asked [REDACTED] about Diaz, because they were in some sort of dating relationship. [REDACTED] informed [REDACTED] that Diaz had another girlfriend, and that she should be careful due to his history of infidelity. [REDACTED] in turn told Diaz this, who in turn submitted a formal complaint against [REDACTED] to her employer MACECOM on 6/17/2019. The complaint surrounded [REDACTED] telling [REDACTED] personal information about his lifestyle and relationships. This appears to have nothing to do with MACECOM, thus it is unknown why he filed the complaint since [REDACTED] was off-duty and has 1<sup>st</sup> amendment rights as anyone else. Anything said that he felt was slanderous should have been handled in a civil lawsuit.

In return, [REDACTED] filed a formal complaint against Officer Hector Diaz on 6/17/2019, for allegations she said occurred while Officer Diaz was on duty as a Shelton Police Officer in 2019. The complaint alleged that Diaz had sexually harassed her and her female co-workers while on duty at the MACECOM center, followed her around town in an attempt to harass her, and in general made her feel un-safe while he was on-duty. [REDACTED] stated that their friendship began to deteriorate when she denied Diaz's sexual advances. [REDACTED] said this occurred after she'd filed her original complaint with Sgt. Fry in March, 2019. [REDACTED] did not come forward beforehand because she said she was in fear of Diaz.

The investigation included formal statements from dispatchers, police officers, deputies, a barista, and the subject officer (Diaz).

Interviewees / Recorded Statements: [REDACTED] (Complainant), [REDACTED] (911 Dispatcher), [REDACTED] (911 Dispatcher), [REDACTED] (911 Dispatcher), [REDACTED] (911 Dispatcher), [REDACTED] (SPD Officer), [REDACTED] (SPD Sgt.), [REDACTED] (MCSO Deputy), [REDACTED] (Barista), Hector Diaz (SPD Officer).

The audio statements and transcriptions are available for the reader, thus they will not be broken down piece by piece in this synopsis. Instead this will be an overall analysis of the investigation/statements.

Statement:

MF: While on duty, while he's on duty in Mascom?

█: Uh well, when I was -- when I started I was day shift, so he was coming in almost every morning and uh he -- he seemed to like to come in when certain people were working, which I -- I -- you know, I don't care about that, but to me he very quickly came across as a shit talker, one of those people that has to brag about things to, you know, build himself up or make him look good for other people. That was kind of, you know, frustrating. He would definitely be distracting while we were trying to work. Uh but a lot of comments about how he would get women, he would be doing public events and, you know, how, just for an example, the shopping that you guys do with the kids.

MF: Snap with a cop?

█: Yeah. And he did that and how he was getting mom's phone numbers and stuff like that and just, you know, some of the stuff that he says is, I don't --

Officer Chris Pickens Statement:

█: I don't remember specific words that were said, but I've heard sexual jokes before.

MF: Okay, by who?

█: By Officer Diaz. But I don't recall specific things that were said or if anyone was uncomfortable, but it's -- it's also come from the other side as well.

█ Statement:

MF: Okay, what other kinds of things, I mean you said it's kind of in a constant sense he came back there, what other kinds of things that he says when he comes back into the dispatch center?

█: About how much he sleeps with other people and like when he comes back from Mexico he has to go to the doctors all the time and --

█ Statement:

MF: Okay, at any time in the past, let's say six months, have you witnessed Officer Diaz make any sexual comment towards other dispatchers in the room?

█: Yeah, there was one night where it was █ and myself and we work three people shifts, so I don't know who the third person was --

Statement:

█: Diaz speaks inappropriately a lot of the time.

MF: Okay.

█: Back there.

MF: Can you give me some examples?

█: His multiple trips to Mexico, the women that he sleeps with while he's down there or how he manipulates them and how they're like oh, my gosh, Diaz.

MF: Mm-hmm.

█: Um he did show me one time a picture of a female on his phone and he was like oh, look at her nice shoes and it was definitely like her shoes were visible in the picture.

█: On more than one occasion. He made sure that we were very aware that he had to like hook himself out to get coffee -- free coffee for everybody.

MG: Hook himself out, just -- again, just --

█: Hooker himself out.

MG: Prostitute himself for free coffee?

█: Yeah, yeah, yeah.

MG: Okay.

MF: And did he say where he was getting this coffee for free?

█: Bigfoot Java.

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Statement (Barista):

█: And then he would like tell me like how big my boobs were and like how good I looked and he would sit there for like an hour and I'm like okay, well, I gotta like and then a car would come and have like customers, so I'd be like oh, I have to like clean this so I can't talk to you right now, but --

MF: Right.

█: And he would stop by and then there was one instance where my boyfriend would come to visit me because I told him I didn't think of him that way.

MF: Okay.

█: But he would still come by and I was like don't you have like a fiancé like I why do you keep hitting on me and my boyfriend came by and he like drove by and he like knew that was my boyfriend and he pulled him over and like told -- he was like -- he like smiled at me and then told him like he's not allowed back and because of his exhaust on his car, which exhaust is actually legal, so I don't know

### **Conclusion**

Officer Diaz violated the Shelton Police Department Policy regarding Conduct, and Attendance. The other accusations were not sustained.

### **Just Cause 7**

1. Officer Diaz received proper notice of the Internal Investigation, and IA addendum.
2. The Standards of Conduct, to include attendance, conduct, and performance have been acknowledged and trained on per our policy system LEXIPOL.
3. The Investigation was completed by trained internal affairs investigator.
4. The Investigation was fair, objective and thorough.
5. The burden of proof: Preponderance of the Evidence has been met based on sworn statements to the investigator.
6. All parties were equally treated in this investigation.
7. The recommended discipline is appropriate based on the *types* of violations, and decided after reviewing the Douglas Factors.



## MEMORANDUM



*"Building A Stronger Community  
TOGETHER"*

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TO: Officer Hector Diaz  
FROM: Darrin Moody, Chief of Police  
DATE: September 27, 2019  
RE: Termination

After considering the findings of the Shelton Police Department Internal Investigations 2019-01 and 2019-03, and the information you provided during the Loudermill hearing, I have made the decision to terminate your employment effective September 27, 2019.

The internal investigations revealed a pattern of behavior in which you displayed a lack of integrity and truthfulness, related to your inappropriate sexual comments to MACECOM employees, members of the public and your team members. At the Loudermill hearing on September 20, you admitted to "lying" several times in order to get the desired results in your personal relationships, and you did this while using your position as a police officer to further the deception. You further used your position of authority as a police officer to coerce a member of the community by telling her that you had obtained a restraining order, when in fact you had not. This lie caused that community member to be fearful and restrict her own movements for fear of violating the nonexistent order. You risked damaging the reputation of two fellow Shelton Police Officers by telling the community member that they were also involved in obtaining and serving the nonexistent restraining order. These officers were appalled that you lied about their activities, and besmirched their integrity, without their knowledge or consent. Your actions brought disrepute upon your fellow officers and the Shelton Police Department.

You were untruthful numerous times with the investigator during the internal investigations. Under specific questioning, you denied that you made sexually-explicit and inappropriate comments in the workplace, despite multiple witnesses corroborating that you made these statements. As your denials are not credible, I have no choice but to conclude that you were deliberately dishonest. Lying during an investigation damages the integrity of the process and cannot be tolerated. The investigator specifically directed you to be truthful, and you violated that directive.

During recent court appearances, you continued your pattern of dishonesty. In response to specific questioning by the judge, you denied making sexually explicit and inappropriate comments while on duty. Your lack of truthfulness compelled a fellow officer to directly contradict your testimony in the same hearing. It is unacceptable to put your fellow officer in such a position. During your Loudermill hearing, you claimed you were "confused" during the

court hearing and thought the questioning was specifically asking about you commenting about "herpes", not other "STDs." Your explanation, considered in the context of the hearing and your pattern of dishonesty, is not credible. Again, I believe you were deliberately dishonest.

I am deeply troubled that you were untruthful in a court of law. One of the duties of an officer is to testify in court hearings. You must know that dishonesty in any form compromises that ability.

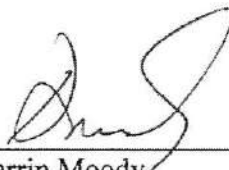
At the Loudermill hearing, you presented additional rationales and explanations that I believe are falsehoods. When we initially discussed your contact with McCleary Police Department, you told me you did not remember your conversation with the officer. When we discussed it a second time, you suddenly remembered the conversation regarding you being served with a restraining order notification. I do not find your initial lack of memory to be believable. In addition, your recollection of this contact is different than the two McCleary Officers who spoke with you. The McCleary Officers informed us that even though you knew they were coming to serve you, you left the residence and they flagged you down as you were driving away. They directed you to the park to be served and you initially acted as if you had no knowledge of the order. You then told them your attorney told you that if you were not served you did not have to appear. I also told you of the order previously and told you to expect to be served. You further lied to a Tumwater Police Officer regarding your duty status while on administrative leave. You took your Department K9 to protection training while you were on administrative leave, knowing you should not be there, damaging the City's credibility with the vendor/trainer. These two incidents are indicative of your pattern of untruthfulness throughout the investigations and your service as an officer.

You have baselessly challenged the integrity, and risked the reputations, of Deputy Rangel, Officer Pickens, Officer Campbell, and the McCleary officers involved in the restraining order. Officer Diaz, your consistent failure to tell the truth has undermined the trust that fellow officers and command staff need to have in you in order for you to do your job effectively.

For a police officer to be able to properly and effectively perform his or her duties, there must be trust from not only the public we protect, but also from our partners within the law enforcement community. Your actions have severed that trust and your deceit has repercussions that further hamper your abilities to perform your duties as a police officer.

Your conduct was a violation of department policies and contrary to your training. You have been provided clear training and directives that reinforce the culture of integrity respect both within the department and through public service. These directives are throughout the department and modeled daily by other employees within this department, with the expectation of accountability for our actions.

I am terminating your employment effective September 27, 2019.

  
Darrin Moody  
9/27/19  
Date



## **AGREEMENT TO REINSTATE AND CONTINUE EMPLOYMENT IN LIEU OF DISCHARGE**

This AGREEMENT TO REINSTATE AND CONTINUE EMPLOYMENT IN LIEU OF DISCHARGE ("Agreement") is between the City of Shelton ("City"), and Hector Diaz ("Employee").

The purpose of this Agreement is to provide Employee with a final opportunity to continue his employment notwithstanding actions by Employee that constitute just cause to terminate his employment. The City agrees to place in abeyance a plan to terminate Employee as long as Employee continues to abide by the terms of this Agreement.

This Agreement shall be effective on the last date shown on the signature page of this document and will remain in effect for the duration of employment.

This Agreement is made in reference to the following facts:

1. From June 15, 2016 through September 27, 2019, Employee served as a patrol officer for the Shelton Police Department.
2. On September 25, 2019, the City gave Employee written notice that his employment was being terminated effective September 27, 2019. The decision to terminate employment was based on Chief Darrin Moody's conclusions that Employee had made sexually-oriented comments in the workplace; demonstrated a lack of honesty and integrity during the investigation of these comments and in other respects; and engaged in conduct unbecoming, which risked damaging the reputation of fellow officers and the Department.
3. Employee filed a grievance under the Collective Bargaining Agreement. The Parties subsequently negotiated this Agreement to reinstate and continue Employee's employment in lieu of termination, in exchange for Employee following the terms of this Agreement.

NOW, THEREFORE, THE CITY AND THE EMPLOYEE AGREE AS FOLLOWS:

1. Employee shall be reinstated as a police officer effective November 4, 2019. Employee shall report to work at 8 a.m. on November 4. His position shall be police officer with duties assigned by the Chief or designee. His position will not include K-9 duties.
2. Employee shall receive no back pay or compensation of any kind for the period of time between September 27 and November 4. This time shall be treated as an unpaid suspension for purposes of pay, benefits, seniority, and progressive discipline.
3. Employee shall have no further disciplinary incidents of the same or similar nature. For purposes of this Agreement, "same or similar nature" includes violations of Departmental


policies 340.5.8 (performance) and 340.5.9 (conduct), particularly 340.5.8(a), (c) and (d) (making false or misleading statements); 340.5.9(f) (discourteous, disrespectful, or discriminatory treatment); 340.5.9(g) (derogatory language); and 340.5.9(m) (conduct unbecoming).


4. Should the City determine, after such investigation of the facts as is needed under the circumstances, that Employee has violated this Agreement, Employee shall be subject to termination of Employment.
5. If the City decides to terminate Employee's employment as a result of his violation of this Agreement, Employee shall be entitled to notice and an opportunity to be heard through a Loudermill hearing prior to the City reaching a final decision.
6. Employee expressly waives and relinquishes his right to challenge any termination based upon his violations of this Agreement through the grievance process of the City's Collective Bargaining Agreement (CBA), the City's personnel rules, ordinances, and resolutions. Employee further waives and relinquishes his right to challenge any termination based upon the Civil Service Rules or Chap. 41.12 RCW. The City may withdraw from this Agreement if it is unable to reach a parallel agreement with the Shelton Police Guild that assures the City that all rights to appeal or grieve a termination based on violation of this Agreement have been adequately waived.
7. Nothing herein shall affect the City's right to terminate or otherwise discipline Employee for reasons other than a violation of this Agreement, in which case all relevant provisions pertaining to termination or other discipline as found in the Collective Bargaining Agreement, City policies, ordinances and resolutions shall apply.
8. A copy of this Agreement will be kept in Employee's personnel file.
9. By Employee's signature on this Agreement, the above-referenced grievance of the termination decision is withdrawn.
10. In exchange for the consideration set forth above, and for other valuable consideration, the receipt of which is hereby acknowledged, Employee, on behalf of himself and any descendants, representatives, or assigns, hereby releases the City and its directors, officers, attorneys, employees, agents, insurers, successors, assigns, and all other representatives, individually and in their corporate capacities, from any liability or damages, including without limitation, continuing contract rights and damages for emotional distress and/or discrimination, arising by reason of the Employee's employment with the City and the Employee's employment relationship with the City, including, without limitation, any claims arising under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; Civil Rights Act, 42 U.S.C. § 1981 *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; the Washington State Law Against Discrimination, Chapter 49.60 RCW; the


Washington Age Discrimination Statute, RCW 49.44.090; any collective bargaining agreements between the City and the Employee's bargaining representative; individual employee contracts between the City and Employee; and any other federal, state, and local laws or ordinances and any common law claims now or hereafter recognized. For the purpose of implementing a full and complete release of the City and its directors, officers, employees, attorneys, agents, successors, insurers, assigns and all other representatives, individually and in their corporate capacities, Employee expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims, whether known or should have been known, concerning acts occurring up to the date of this Agreement, and this Agreement extinguishes any such claim or claims, provided that neither party is releasing the other from the terms of this Agreement, and that either party may bring an action to enforce this Agreement.

11. This Agreement is not a precedent that will apply to all employees. It is extended to Employee solely in light of his willingness to comply with this Agreement.
12. This Agreement represents the entire Agreement of the parties and supersedes any prior written or oral agreements or representations. All amendments shall be in writing.
13. This Agreement will be interpreted and construed under the laws of the State of Washington.
14. Employee acknowledges that this Agreement places specific responsibility on him, which, if violated, could result in termination of employment. He acknowledges, and represents that he enters into this Agreement voluntarily, without coercion or inducement, and after having had the opportunity to consult with legal counsel of his choice.

Signed this 23<sup>rd</sup> day of October, 2019.

  
\_\_\_\_\_  
Hector Diaz, Employee

  
\_\_\_\_\_  
Union/employee representative

  
\_\_\_\_\_  
Jeff Niten, City Manager

Affidavit A

Training and Experience

Michael J. Fiola

I'm currently the 2<sup>nd</sup> in command at the Shelton Police Department. I've been a full-time commissioned police officer since 2002, and a reserve officer from 2000 to 2002. In that time I've attended thousands of hours of training, some which specifically relate to internal affairs investigations. Prior to becoming a Captain I served my agency as Lieutenant and Patrol Sergeant. While in patrol I was the use of force and defensive tactics instructor. Since being a Sergeant I've either completed, or assisted in numerous internal affair investigations. I hold first level, middle management, and executive certifications through the WA State Criminal Justice Training Commission. In 2018, I graduated from the Senior Management Institute for Police by PERF at Boston University (Session #72). I'm an active member in the National Internal Affairs Investigators Association, along with FBI-LEEDA, and Police Executive Research Forum.

**Training**

- 2018 Internal Affairs Investigations and Management, FBI-LEEDA, Lakewood, WA
- 2018 Arrest, Search & Seizure Case Law Refresher, PoliceOne Academy, Shelton, WA
- 2018 Leadership 1, PoliceOne Academy, Shelton, WA
- 2018 Implicit Bias and Cultural Diversity, PoliceOne Academy, Shelton, WA
- 2018 Senior Management Institute for Police, Boston University, MA
- 2018 Public Disclosure Beginner/Advanced, LEIRA, Sequim, WA
- 2018 SPD Use of Force Policy Training, Lexipol, Shelton, WA
- 2018 De-Escalation; When and How it Works, Lexipol, Online
- 2018 De-Escalation and Crisis Intervention, Dr. St. Jacques, Shelton, WA
- 2018 Building Supervisory Skills 301, WCIA, Lacey, WA
- 2018 10-Ways to Lose Police Lawsuits, Lexipol, Online
- 2017 Biased Based Policing, Online

2017 Building Employee Trust and Commitment, IACP, PA

2017 Responding to Officer Involved Shootings, IACP, PA

2017 Civil Service Commission Conference, Yakima, WA

2017 PERF ICAT-De-Escalation, PERF, Los Angeles, CA

2017 FBI-LEEDA Command Institute for LE Executives, Spokane, WA

2017 Conducting Effective Performance Evaluations, WCIA, Shelton, WA

2016 Best Practices for Command Staff, WCIA, Lacey, WA

2016 Middle Management, CJTC, Burien, WA

2015 Performance and Accountability, MARIN, Lacey, WA

2015 Work Place Harassment Training, Shelton, WA

2015 Work Place Violence Awareness, Online

2014 Leadership Training, Renton, WA

2014 Justice Based Policing, CJTC, Burien, WA

2013 Conducting Difficult Conversations, WCIA, Tukwila, WA

2013 Police Liability, Gordon Graham, CJTC, WA

2012 Firearms Retention and Disarming Instructor, CJTC, Burien, WA

2012 Motivating Personnel in Difficult Times, Puyallup, WA

2011 Impact Weapons Instructor, CJTC, Burien, WA

2011 Use of Deadly Force Legal review, WCIA, Lacey, WA

2011 Use of Force Liability Update, CJTC, Burien, WA

2011 Leadership Training, Lacey, WA

2010 Pre-Supervisor School, CJTC, Montesano, WA

2010 Recognition Mentally Ill Persons, Kent, WA

2009 Ground Survival Tactics Instructor, CJTC, Burien, WA

- 2008 SWAT Basic Operator Course, CJTC, Shelton, WA
- 2007 More effective Supervisor, Olympia, WA
- 2007 First Level Supervision, CJTC, Burien, WA
- 2007 Crime Scene Management, CJTC, Shelton, WA
- 2006 DV in the Workplace, LCC, Shelton, WA
- 2006 Level II DT Instructor, CJTC, Burien, WA
- 2005 Unarmed Defensive Tactics Instructor, CJTC, Shelton, WA
- 2005 TASER Instructor, AXON

Complete Training Transcript Available by Request