

Hon. James Emerson (Ret.)
ADR Services, Inc.
96 North Third Street, Suite 350
San Jose, CA, 95112

REMOVAL HEARING
PURSUANT TO SECTION 412.5 OF THE SAN MATEO COUNTY CHARTER

SHERIFF CHRISTINA CORPUS,

Appellant,

vs.

COUNTY OF SAN MATEO,

Respondent.

ADRS Case No. 25-4038-JCE

ADVISORY OPINION

Pursuant to Section 412.5 of the San Mateo County Charter (“Charter”) and, in particular, the Sheriff Removal Procedures (“Procedures”) established thereby, appellant Sheriff Christina Corpus (“Sheriff Corpus”) has exercised her right to request an appeal hearing (“Removal Hearing”) of respondent County of San Mateo’s (“County”) Board of Supervisors’ (“Board”) Final Notice of Decision to remove her from the office of Sheriff. From August 18 – 22 and 25 – 29, 2025, the undersigned Hearing Officer conducted the Removal Hearing in accordance with the Procedures. Respondent County appeared at the Removal Hearing by and through its counsel, Keker, Van Nest & Peters LLP. Appellant Corpus personally appeared at the Removal Hearing as well as by and through her counsel, Murphy, Pearson, Bradley & Feeney.

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PREAMBLE

The Procedures at section III(3)(B) set forth the requirements for the advisory opinion to be issued by the undersigned Hearing Officer: “The Hearing Officer’s advisory opinion shall: (1) Employ the ‘preponderance of the evidence’ standard of proof over the evidence presented; (2) Analyze and issue an advisory opinion as to whether the County had cause, as defined in Section 412.5¹ of the County Charter, to remove the Sheriff; and (3) Include findings of fact and a proposed advisory opinion to the Board, limited to the statement of the issue of whether the County had cause, under Section 412.5, to remove the Sheriff.”²

In view of the stated procedure, the undersigned Hearing Officer will treat respondent County’s Notice of Intent to Remove (“NOI”) in the same way a court would treat a complaint in a civil action. In other words, the undersigned Hearing Officer reads the NOI as allegations, not evidence, despite the NOI’s repeated reference to “supporting evidence.” Although Sheriff Corpus is dubbed appellant, the burden of proof lies with respondent County to establish by a preponderance³ of relevant and admissible evidence⁴ that County has cause, as outlined in its NOI, to remove appellant Sheriff Corpus.

¹ For the purposes of this Section 412.5, “cause” shall mean any of the following:

- (1) Violation of any law related to the performance of a Sheriff’s duties; or
- (2) Flagrant or repeated neglect of a Sheriff’s duties as defined by law; or

...

- (5) Obstruction, as defined in federal, State, or local law applicable to a Sheriff, of any investigation into the conduct of a Sheriff and/or the San Mateo County Sheriff’s Office by any government agency (including the County of San Mateo), office, or commission with jurisdiction to conduct such investigation.

² It is the undersigned Hearing Officer’s opinion that subparts (2) and (3) can be combined to read: “Analyze and issue an advisory opinion, including findings of fact, to the Board as to whether the County had cause, as defined in Section 412.5 of the County Charter, to remove the Sheriff.”

³ “[O]ur Supreme Court explained that ‘preponderance of the evidence’ ‘means what it says, viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is addressed.’” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325; italics original. See also CACI, No. 200.)

⁴ Pursuant to the Procedures at section III(2)(C), “The Removal Hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which hearing officers are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might impact the admissibility of such evidence over objection in civil actions. Hearsay evidence may be admitted for any purpose, but shall not be sufficient, in itself, to support a material finding unless it would be admissible over objection in civil actions or if it is independently corroborated by reliable and credible evidence admitted during the Removal Hearing. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant or cumulative evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.”

On the issue of whether the County had cause to remove appellant Sheriff Corpus from the office of Sheriff, the undersigned Hearing Officer is guided by some general principles found in the employment context but with the recognition that appellant Sheriff Corpus is an elected official, not an employee. The undersigned Hearing Officer further recognizes that Section 412.5 of the County Charter, allowing the Board to “remove a Sheriff from office for cause” and defining cause, did not come into existence until passage of Measure A on or about March 4, 2025, while appellant Sheriff Corpus was in office.

Whether good cause exists is dependent upon the particular circumstances of each case. [Citation.] [¶] In deciding whether good cause exists, there must be a balance between the employer's interest in operating its business efficiently and profitably and the employee's interest in continued employment. [Citations.] Care must be exercised so as not to interfere with the employer's legitimate exercise of managerial discretion. [Citation.] While the scope of such discretion is substantial, it is not unrestricted.

(*Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal.4th 93, 100 (*Cotran*).)

"[A]n employer must have wide latitude in making independent, good faith judgments about high-ranking employees without the threat of a jury second-guessing its business judgment. Measuring the effective performance of such an employee involves the consideration of many intangible attributes such as personality, initiative, ability to function as part of the management team and to motivate subordinates, and the ability to conceptualize and effectuate management style and goals. . . . [Citations.] *Although the jury must assess the legitimacy of the employer's decision to discharge, it should not be thrust into a managerial role.*" (*Id.* at p. 769, italics added.)

(*Cotran, supra*, 17 Cal.4th at pp. 100-101.)

As an initial matter, the undersigned Hearing Officer grapples with what standard to apply in order to comply with the Procedure’s directive to issue an advisory opinion as to

whether the County had cause to remove the Sheriff. The *Cotran* Court similarly pondered this nuanced distinction:

When an employee hired under an implied agreement not to be dismissed except for "good cause" is fired for misconduct and challenges the termination in court, what is the role of the jury in deciding whether misconduct occurred? Does it decide whether the acts that led to the decision to terminate happened? Or is its role to decide whether the employer had reasonable grounds for believing they happened and otherwise acted fairly?

(*Id.* at p. 95.)

The *Cotran* Court held the latter to be more appropriate.

The better reasoned view, we conclude, prescribes the jury's role as deciding whether the employer acted with [good cause] ... We give operative meaning to the term "good cause" in the context of implied⁵ employment contracts by defining it ... as fair and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual. A reasoned conclusion, in short, supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond.

(*Id.* at pp. 95 – 96 and 107 – 108.)

Here, however, the undersigned Hearing Officer finds his role is, more appropriately, to decide simply whether the underlying acts occurred. The reason the undersigned Hearing Officer employs this standard is because the instant Removal Hearing is but a step in the process of the Sheriff's actual removal. Thus, the procedural posture of *Cotran* is distinguishable. The employee in *Cotran* had already been terminated and was challenging their termination in court.

⁵ As alluded to above, the "cause" requirement in this case is express (pursuant to Section 412.5 of the County's Charter) but arose while appellant Corpus was in office. This is another basis to distinguish *Cotran*. The *Cotran* Court itself noted, "Wrongful termination claims founded on an *explicit* promise that termination will not occur except for just or good cause may call for a different standard, depending on the precise terms of the contract provision." (*Cotran, supra*, 17 Cal.4th at p. 96, fn. 1; italics original.) Additionally here, the explicit language of Section 412.5 allows removal of the Sheriff for "cause," not *just or good* cause. Accordingly, the undersigned Hearing Officer is not required to determine whether the cause is "good," only that there is cause itself.

Here, the Procedures contemplate several steps (issuance of NOI, service of NOI, pre-removal conference, final notice of decision, appeal thereof (Removal Hearing), review of advisory opinion, final post-Removal Hearing decision) and the ultimate decision to remove appellant Corpus has not yet been made. The undersigned Hearing Officer looks to *Cotran* merely as guidance in this pre-litigation context.

This advisory opinion's limited function and the undersigned Hearing Officer's goal is to sit as a trier of fact and apply an evidentiary standard to identify whether the alleged misconduct occurred, i.e., whether "cause," (not good cause or just cause) as defined by Section 412.5 existed, (by making factual findings in support or against) and to give appellant Corpus a chance to respond. Adequate notice; investigation; and a fair, good faith, and honestly reasoned conclusion is for the County/ Board to provide. The sufficiency, adequacy, and/or propriety of notice, investigation, and the County/ Board's final decision is beyond the scope of the undersigned Hearing Officer's purview. This application is consistent with the undersigned Hearing Officer's pre-hearing ruling on appellant Sheriff Corpus's motion to dismiss. Appellant Sheriff Corpus devoted a significant amount of effort, at the Removal Hearing and in her closing brief, raising issues related to whether County/ Board has acted with fairness and/or good faith. Preliminarily speaking, the undersigned Hearing Officer found these issues tangential and irrelevant.

It is under the above-stated framework/ lens that the undersigned Hearing Officer proceeds with his analysis.

I. Grounds for removal relating to Victor Aenlle.

A. Violation of law.

1. Conflict of Interest.

a. Charging allegation(s).

At page 20 of the NOI, County asserts, "Sheriff Corpus has violated [conflict of interest laws] with respect to her treatment of Mr. Aenlle, with whom she enjoys a close personal relationship, including by hiring and employing him at public expense in positions for which he is not qualified, by seeking promotions and salary increases for him, and by retaining him in

those positions notwithstanding the fact that the County Executive and others advised Sheriff Corpus that doing so was improper. Moreover, Sheriff Corpus tolerated, enabled, and acquiesced to Mr. Aenlle’s conduct that was detrimental to the morale and proper functioning of the Sheriff’s office.”

b. Law.

San Mateo County Charter⁶, Article V, Section 510 states, “All laws pertaining to conflicts of interest shall be applicable to all officers, employees and members of boards and commissions.”

... one Court of Appeal discussed the common law prohibition on conflicts of interest, stating: "A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public [P] . . . [P] Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine is generally applicable to private agents and trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason" (*Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51 [264 P 529], citations omitted.) "[T]he common law doctrine against conflicts of interest . . . prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." (64 Ops.Cal.Atty.Gen. 795, 797 (1981); accord, 70 Ops.Cal.Atty.Gen. 45, 47 (1987).)

(*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170-1171.)

⁶ “[T]o the extent it is authorized by the Constitution, a county ‘charter ... shall become the organic law thereof relative to matters therein provided ... and shall supersede all laws inconsistent with such charter relative to the matters provided in such charter.’” (220 Cal. at p. 226, quoting Cal. Const., art. XI, former § 71/2, par. 17.)” (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1215; see also *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2021) 60 Cal.App.5th 327, 339-340—“[w]hen a California County ... adopts a charter, its provisions ‘are the law of the State and have the force and effect of legislative enactments.’ [Citations.]”).

1 A public office is a public trust created in the interest and for the benefit of the
2 people. Public officers are obligated, *virtute officii*, to discharge their
3 responsibilities with integrity and fidelity. Since the officers of a governmental
4 body are trustees of the public weal, they may not exploit or prostitute their
5 official position for their private benefits. When public officials are influenced in
6 the performance of their public duties by base and improper considerations of
7 personal advantage, they violate their oath of office and vitiate the trust reposed in
8 them, and the public is injured by being deprived of their loyal and honest
9 services.

10 (*California Taxpayers Action Network v. Taber Construction, Inc.* (2017) 12 Cal.App.5th 115,
11 138 (*California Taxpayers*).)

12 c. [There being a close personal relationship between Sheriff
13 Corpus and Mr. Aenlle,] hiring and employing Mr. Aenlle at
14 public expense in positions for which he is not qualified,
15 seeking promotions and salary increases for Mr. Aenlle, and
16 retaining Mr. Aenlle in positions notwithstanding County
17 Executive and others advising Sheriff Corpus that doing so was
18 improper.

19 i. Close personal relationship.

20 Although vehemently denied by appellant and Victor Aenlle, the evidentiary record is
21 highly suggestive that appellant Sheriff Corpus and Mr. Aenlle were in a romantic extra-marital
22 relationship preceding appellant Sheriff Corpus's election to office and continuing thereafter.
23 The undersigned Hearing Officer need not determine whether appellant Sheriff Corpus and Mr.
24 Aenlle were in a romantic extra-marital relationship. However, the undersigned Hearing Officer
25 finds, supported by the greater weight of the evidence, that appellant Sheriff Corpus and Mr.
26 Aenlle were in a close personal relationship outside the boundaries of a professional working
27 relationship.
28

The undersigned Hearing Officer found particularly compelling the text messages between appellant Sheriff Corpus and Valerie Barnes. Although appellant Sheriff Corpus proffered testimony from Tom Williams, Millbrae City Manager, which would suggest Ms. Barnes now harbors ill will toward appellant Sheriff Corpus and thus lacks credibility, Mr. Williams's testimony is that Barnes's ill will arose subsequent to appellant Sheriff Corpus's election. The undersigned Hearing Officer found genuine and credible the text messages between appellant Sheriff Corpus and Ms. Barnes which largely pre-dated appellant Sheriff Corpus's election.

ii. Conflict.

San Mateo County Charter, Article IV, Section 413 states, in part, "***Department⁷ heads shall have and may delegate the power to appoint***, supervise, suspend and remove ***all persons employed in their departments subject to the provisions of Article V.***"

Not only does appellant Sheriff Corpus, as the head of the Sheriff's Department, have the power to appoint, but she also has a duty to do so but subject to obligations imposed upon her by the Charter, particularly Article V.⁸ "***Duties of department heads shall include*** the effective management of assigned areas of responsibility as well as those duties provided by applicable state law, County Charter, County ordinance or resolution, order of the Board of Supervisors or appointing authority. Those duties shall include, when not otherwise prohibited, ***the appointment of heads of divisions and other principal administrative staff; however, nothing set forth in this section shall diminish, alter or relieve any County officer or employee, of whatever position, from the duties and responsibilities imposed by federal or state law, County Charter, ordinance or resolution.***" (San Mateo County Ordinance Code, §2.00.060.)

Although appellant Sheriff Corpus has the power to appoint all persons employed in her department, she does not have the unfettered discretion to do so despite her belief that "elected officials are entitled to choose their closest advisers" and have discretion to make "high-level

⁷ Sheriff is a County department. (San Mateo County Ordinance Code, §2.00.020, subd. (t).)

⁸ The undersigned Hearing Officer does not agree with appellant Sheriff Corpus's suggestion in her closing brief that her duties are limited to those statutory duties codified at Government Code sections 26600 *et seq.*

staffing decisions.”⁹ Such a position wholly ignores the express limitations stated above. San Mateo County Charter, Article V, Section 501 states, in part, “It shall be the policy of the County to recruit, select, retain and promote the best qualified officers and employees and to effect equal opportunity for all persons at all levels of County employment to serve the County’s diverse population. *Appointments and promotions shall be made on the basis of merit and in conformity with the principles of equal opportunity.*”

The evidentiary record before the undersigned Hearing Officer supports a finding that appellant Sheriff Corpus elevated her own interest in the close personal relationship she held with Mr. Aenlle above her obligation to appoint, recruit, select, and/or retain based upon merit and in conformity with the principles of equal opportunity. Particularly compelling to the undersigned Hearing Officer was the testimony of Heather Enders, Human Resources Manager for the Sheriff’s Office [Department]. Ms. Enders testified that in or around March 2023, appellant Sheriff Corpus asked Ms. Enders to create a position for Mr. Aenlle “that had a high salary range associated with it.”¹⁰ Ms. Enders communicated with Lisa Yapching, a Classification/ Compensation Manager with County Human Resources who approved the use of the “Special Projects Coordinator” classification at a rate of \$73 per hour.¹¹ Ms. Enders relayed this position and pay rate to appellant Sheriff Corpus and Mr. Aenlle and both indicated to Ms. Enders that the rate of pay “wasn’t good enough” and instructed Ms. Enders to “find a way” to obtain a higher rate of pay for Mr. Aenlle.¹² Ms. Enders testified that Mr. Aenlle was the only applicant for the unposted Special Projects Coordinator and subsequent Executive Director of Administration positions Mr. Aenlle held.¹³

Ms. Enders’s testimony supports a finding that appellant Sheriff Corpus placed her own self-interest in maintaining/ advancing the close personal relationship she had with Mr. Aenlle above her obligation to appoint someone in conformity with principles of equal opportunity.¹⁴

⁹ See page 15, lines 23 – 24, of Sheriff Corpus’[s] Closing Brief.

¹⁰ See Hearing Transcript, pp. 220:17 – 221:8.

¹¹ See Hearing Transcript, pp. 225:7 – 229:19 and Exh. 48.

¹² See Hearing Transcript, pp. 229:20 – 230:15.

¹³ See Hearing Transcript, pp. 227:20 – 228:2 and 231:17-24

¹⁴ See also Hearing Transcript, pp. 2593:7 – 18 [In deciding whether to arrest Carlos Tapia, appellant Sheriff Corpus openly testified that her political self-interest was a factor in her overall consideration—“And I had to think about

Mr. Aenlle's qualifications aside, this conclusion naturally follows from appellant Sheriff Corpus's selection of Mr. Aenlle as one of one candidates for a position specifically created for Mr. Aenlle at appellant Sheriff Corpus's behest. This finding is bolstered by evidence of the significant value appellant Sheriff Corpus placed on her close personal relationship with Mr. Aenlle.¹⁵

In defense, appellant Sheriff Corpus presented testimony that the contracts and pay raises which Mr. Aenlle received were all approved by the County. However, approval of Mr. Aenlle's contracts and pay raises does not legitimize a conflict of interest or render a conflict of interest unassailable. Conflict of interest rules are designed precisely to avoid such a result, particularly here where it appears that appellant Sheriff Corpus used her authority to direct the result. (See *Klistoff v. Superior Court* (2007) 157 Cal.App.4th 469, 481—"[A] contract in which a public officer is interested is void, not merely voidable.")

d. Sheriff Corpus tolerated, enabled, and acquiesced to Mr. Aenlle's conduct that was detrimental to the morale and proper functioning of the Sheriff's office.

County contends, and the undersigned Hearing Officer agrees, that appellant Sheriff Corpus's conflict of interest in hiring and employing Mr. Aenlle led to a number of downstream effects in the operation of the SMCSO and permeated throughout Sheriff Corpus's administration. As it is the same conflict of interest identified above which persisted throughout Mr. Aenlle's various times of employment with SMCSO, the undersigned Hearing Officer deems it unnecessary to address each instance in which the conflict of interest "related to the performance of a Sheriff's duties."

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how this was going to affect the office, affect the trust within the community. But then also, you know, I am still a politician, and it would affect me politically." It is reasonable to infer that self-interest is a consideration in other decisions made by appellant Sheriff Corpus.]

¹⁵ See Hearing Transcript, p. 732:7 – 735:11 [appellant Sheriff Corpus placating Mr. Aenlle when he felt unappreciated for his contributions toward appellant Sheriff Corpus's election].

1 **2. POST regulations.**

2 **a. Charging allegation(s).**

3 As a second and separate violation of law, County asserts in the NOI, “Sheriff Corpus
4 violated [Peace Officer Standards and Training (POST) regulations and the County’s Charter
5 provisions] by directing that SMCSO personnel advance a candidate (Mr. Aenlle) who failed an
6 oral examination and thus failed to satisfy the minimum selection requirement specified by law.”

7 **b. No violation of law.**

8 The NOI alleges a violation, among others, of Cal. Code of Regulations, title 11, section
9 1952, subsection (a), which states, “Every peace officer candidate shall participate in an oral
10 interview to determine suitability to perform the duties of a peace officer. The interview shall
11 take place prior to making a conditional offer of employment.”

12 The NOI, at pages 15 – 16, County alleges on November 13, 2024, the Board voted to
13 eliminate Mr. Aenlle’s Executive Director of Administration position and, on the same day,
14 appellant Sheriff Corpus stated her intention to appoint Mr. Aenlle to the position of Assistant
15 Sheriff, but that because Mr. Aenlle did not have four years of full time law enforcement
16 experience as required by POST, Mr. Aenlle was not hired to an Assistant Sheriff position.

17 The NOI further alleges that on April 17, 2025, appellant Sheriff Corpus directed that Mr.
18 Aenlle be moved to the “active list” and assigned him to assist in the unit that processes
19 concealed weapons permits.

20 In its closing brief, County asserts instead that Mr. Aenlle “interfered with the Sheriff’s
21 Office hiring practices, including by ordering a civilian employee to advance the candidacy of
22 an applicant who had failed a screening interview that is required by law, Cal. Code Regs. tit. 11,
23 § 1952(a). The Sheriff heard Aenlle give this order.”

24 This factual scenario identified in the County’s closing brief does not support a violation
25 of Cal. Code of Regulations, title 11, section 1952, subsection (a), by appellant Sheriff Corpus
26 directly. As the undersigned Hearing Officer understands it, County appears to be arguing
27 appellant Sheriff Corpus ratified (by failing to object) a violation of the regulation by Mr. Aenlle.
28 However, County, in closing, does not advance any argument that appellant Sheriff Corpus

herself violated the regulation. Instead, County cites this testimony to support its assertion that appellant Sheriff Corpus violated conflict of interest laws by acquiescing in Mr. Aenlle's decisions/ violations of law. The undersigned Hearing Officer has already addressed appellant Sheriff Corpus's conflict of interest above.

The undersigned Hearing Officer finds County has not met its burden of establishing the allegation in the NOI that "Sheriff Corpus violated [Peace Officer Standards and Training (POST) regulations and the County's Charter provisions] by directing that SMCSO personnel advance a candidate (Mr. Aenlle) who failed an oral examination and thus failed to satisfy the minimum selection requirement specified by law."

B. Flagrant or repeated neglect of duties.

1. Charging allegation(s).

According to the NOI, "Sheriff Corpus flagrantly neglected ... duties [under the Government Code and/or SMCSO Policy Manual] by hiring, promoting, and retaining Mr. Aenlle notwithstanding his lack of qualifications, his poor leadership skills, and the repeated warnings she received regarding the same. Indeed, as a result of Sheriff Corpus's actions, the SMCSO is currently without any of the three assistant sheriffs required by Sheriff Corpus's Policy Manual."

2. Law.

In the NOI, County cites the following Government Code sections as the legal basis for duties imposed upon appellant Sheriff Corpus:

- Government Code section 26600: "The sheriff shall preserve peace, and to accomplish this object may sponsor, supervise, or participate in any project of crime prevention, rehabilitation of persons previously convicted of crime, or the suppression of delinquency."
- Government Code section 26604: "The sheriff shall command the aid of as many inhabitants of the sheriff's county as he or she thinks necessary in the execution of his or her duties."
- Government Code section 26605: "Notwithstanding any other provision of law, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it, the sheriff shall take charge of and be

1 the sole and exclusive authority to keep the county jail and the prisoners in it including
2 persons confined to the county jail pursuant to subdivision (b) of Section 3454 of the Penal
3 Code for a violation of the terms and conditions of their postrelease community supervision,
4 except for work furlough facilities where by county ordinance the work furlough
5 administrator is someone other than the sheriff.”

6 County also cites to SMCSO Policy Manual provisions as the basis for imposing legal
7 duties upon appellant Sheriff Corpus. As a preliminary issue, the undersigned Hearing Officer
8 considers whether SMCSO Policy Manual provisions have the force of law. Appellant Sheriff
9 Corpus, in her closing brief, argues they do not by citing to language in the SMCSO Policy
10 Manual disclaiming the policies stated therein “shall not be construed to create a higher standard
11 or duty of care.”

12 The undersigned Hearing Officer finds similar authority in Evidence Code section 669.1
13 which provides:

14 [a] ... policy, manual, or guideline of [a] local government setting forth standards
15 of conduct or guidelines for its employees in the conduct of their public
16 employment shall not be considered a statute, ordinance, or regulation of that
17 public entity ... unless, the ... manual, policy, or guideline has been formally
18 adopted ... as an ordinance of a local governmental entity in this state empowered
19 to adopt ordinances.

20 Although this section is intended to “affect[] only the presumption set forth in Section
21 669 [negligence per se],” the undersigned Hearing Officer finds it applicable to these
22 proceedings and in determining whether SMCSO Policy Manual provisions have the force of
23 law. The undersigned Hearing Officer finds the SMCSO Policy Manual does not have the force
24 of law and, therefore, will not consider SMCSO Policy Manual provisions cited by County in
25 determining whether appellant Sheriff Corpus engaged in “flagrant or repeated neglect of a
26 Sheriff’s duties as defined by law.”

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1 **3. No neglect.**

2 In its closing brief, County reiterates the charging allegations and conclusion from the
3 NOI that appellant Sheriff Corpus flagrantly and repeatedly neglected her duties by hiring,
4 retaining and promoting Mr. Aenlle notwithstanding his lack of qualifications, his poor
5 leadership, and repeated warnings regarding the same. The undersigned Hearing Officer finds
6 these allegations insufficiently tethered to the aforementioned Government Code sections to
7 justify a finding that appellant Sheriff Corpus neglected the duties stated therein. For instance,
8 the evidentiary record does not establish that hiring, retaining and promoting Mr. Aenlle caused
9 appellant Sheriff Corpus to breach her duty to preserve peace (Government Code, §26600) or to
10 breach her duty to take charge of and be the sole and exclusive authority to keep the county jail
11 and the prisoners in it (Government Code, §26605).

12 **II. Grounds for removal relating to Carlos Tapia.**

13 **A. Violation of law.**

14 **1. Retaliation.**

15 **a. Charging allegation(s).**

16 As it relates to Deputy Carlos Tapia, the NOI alleges appellant Sheriff Corpus violated
17 the law in two respects: (1) appellant Sheriff Corpus ordered Deputy Tapia arrested without
18 probable cause and (2) appellant “Sheriff Corpus subjected Dep. Tapia to an investigation and
19 arrest as the result of his engaging in protected union activity. This constitutes unlawful
20 retaliation” In the undersigned Hearing Officer views, these two charges go hand-in-hand.
21 However, since it is the undersigned Hearing Officer’s opinion that the retaliation occurred first
22 chronologically, the undersigned Hearing Officer will address the alleged retaliation first.

23 **b. Law.**

24 “No public employee shall be subject to punitive action ... for the exercise of lawful
25 action as an elected, appointed, or recognized representative of any employee bargaining unit.”
26 (Govt. Code, §3502.1.)

27 “A public agency shall not ... impose reprisals on employees ... because of their exercise
28 of rights guaranteed by this chapter.” (Govt. Code, §3506.5.)

Given the similarity in statutory language at issue here, the undersigned Hearing Officer looks to *Visalia Unified School Dist. v. Public Employment Relations Bd.* (2024) 98 Cal.App.5th 844, 870 (*Visalia*), where the court explained:

Establishing retaliation ... requires either direct proof or evidence “that: (1) the employee exercised [guaranteed] rights ...; (2) the employer had knowledge of the employee's exercise of those rights; (3) the employer took action against or adverse to the interest of the employee; and (4) the employer acted because of the employee's exercise of the guaranteed rights.” [Citation.]

c. Violation.

i. Deputy Tapia exercised rights.

“Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.” (Govt. Code, §3502.)

There is no dispute that Deputy Tapia was, at all relevant times, President of the Deputy Sheriffs Association (DSA), an employee organization as that term is defined by Government Code section 3501. “Serving as a [employee organization] officer, however, warrants particular protection because officers act as the [employee organization’s] face and risk disproportionate backlash and criticism.” (*Visalia, supra*, 98 Cal.App.5th at p. 869.) The *Visalia* court concluded that merely holding a union office constituted protected activity. “Holding office undoubtedly exercises the right to join and participate in a union.” (*Id.* at p. 864.) The undersigned Hearing Officer finds similarly here that Deputy Tapia exercised a guaranteed and protected right under Government Code section 3502 by virtue of holding the position of DSA President.

ii. Appellant Sheriff Corpus had knowledge of Deputy Tapia’s exercise of those rights.

There is also no dispute that appellant Sheriff Corpus knew Deputy Tapia served as the DSA President. The undersigned Hearing Officer thus finds appellant Sheriff Corpus had knowledge of Deputy Tapia’s exercise of rights under Government Code section 3502.

1 **iii. Appellant Sherrif Corpus took action against or adverse**
2 **to Deputy Tapia’s interest.**

3 No dispute lies with the fact that appellant Sheriff Corpus ordered Deputy Tapia’s arrest.

4 **iv. Appellant Sheriff Corpus acted because of Deputy**
5 **Tapia’s exercise of guaranteed rights.**

6 In analyzing an employer's intent, the Board “considers all relevant facts and
7 circumstances” (*City & County of San Francisco* (2020) PERB Dec. No.
8 2712-M, p. 21 [44 PERC ¶ 173] (*San Francisco*)). More specifically, it has
9 “identified the following factors as being the most common means of establishing
10 a discriminatory motive, intent, or purpose: (1) timing of the employer's adverse
11 action in relation to the employee's protected conduct; (2) disparate treatment; (3)
12 departure from established procedures or standards; (4) an inadequate
13 investigation; (5) a punishment that is disproportionate based on the relevant
14 circumstances; (6) failure to offer a contemporaneous justification, or offering
15 exaggerated, questionable, inconsistent, contradictory, vague, or ambiguous
16 reasons; (7) employer animosity towards union activists; and (8) any other facts
17 that might demonstrate the employer's unlawful motive.” (*Ibid.*)

18 (*Visalia, supra*, 98 Cal.App.5th 844, 870; footnote omitted.)

19 Here, the evidentiary record supports a finding by the undersigned Hearing Officer that
20 appellant Sheriff Corpus ordered the investigation and ultimate arrest of Deputy Tapia because
21 of Deputy Tapia’s position as DSA President and/or because of Deputy Tapia’s participation in
22 activities as DSA President. By her own admission, negotiations between the DSA and SMCSO
23 during 2024 were contentious or marked by “disagreements about what the [DSA and OSS]
24 wanted and what was feasible ... what was happening is that the [DSA and OSS] were starting to
25 want to run the organization and tell me how to run the organization.”¹⁶ It is reasonable for the
26 undersigned Hearing Officer to infer from this testimony that Sheriff Corpus felt threatened by
27 and held some animosity against the DSA and OSS.

28 ¹⁶ See Hearing Transcript, p. 390:8 – 20.

County and Sheriff Corpus offered differing accounts of what led to the investigation into Deputy Tapia's timecard reporting and ultimate arrest, so much so that the undersigned Hearing Officer can only conclude that one side is not telling the truth. In Sheriff Corpus's recounting, Lieutenant Brandon Hensel (who oversees the Sheriff's Transportation and Security Bureau¹⁷) approached Sheriff Corpus requesting to transfer Deputy Tapia from his position in Transportation to Corrections because Deputy Tapia only worked in Transportation on Fridays "but (Lt. Hensel informed Sheriff Corpus that) a lot of times, he (Tapia) was not there."¹⁸

This assertion is in direct conflict with Lt. Hensel's testimony who testified it was Sheriff Corpus who initiated a conversation about Deputy Tapia's attendance stating, "we may need to start documenting his (Tapia's) time and attendance."¹⁹ Moreover, Lt. Hensel testified he personally did not observe any issues with Deputy Tapia's attendance and did not hear of any issues with Deputy Tapia's attendance from any of the responsible sergeants in Transportation.²⁰

In denying that she held a close personal relationship with Mr. Aenlle, appellant Sheriff Corpus has already lost credibility with the undersigned Hearing Officer who now finds Lt. Hensel's testimony more credible. As a result, appellant Sheriff Corpus's purportedly non-retaliatory justification for ordering an investigation against Deputy Tapia is, at the very least, questionable and, more likely, pretextual.

Another factor for the undersigned Hearing Officer to consider is disparate treatment. In that regard, the testimony of Van Enriquez, payroll supervisor for SMCSO, and Exhibit 117 supports an inference that particular focus and emphasis was placed upon Deputy Tapia by SMCSO finance director, Stacey Stevenson, as to whether Deputy Tapia used the appropriate coding of DSA work (release time) on his timecard.

Disparate treatment is found also in the testimony of Michelle Kuka, Deputy Director of County Human Resources. In her seventeen plus years with the County, she was not aware of

¹⁷ See Hearing Transcript, p. 910:7 – 10.

¹⁸ See Hearing Transcript, p. 456:11 – 14.

¹⁹ See Hearing Transcript, pp. 916:9 – 917:8.

²⁰ See Hearing Transcript, pp. 914:19 – 915:24. Lt. Hensel's testimony concerning Deputy Tapia's performance/attendance is also supported by the testimony of Sgt. Daniel Chiu.

any employee other than Deputy Tapia being investigated or disciplined for miscoding release time despite other employees required to log release time doing so inconsistently.

The strongest evidence of pretext comes from the testimony of Matthew Fox who joined SMCSO in July 2023 as a Captain and subsequently promoted to acting Assistant Sheriff on September 22, 2024. Acting Assistant Sheriff Fox testified that on October 14, 2024, Sheriff Corpus assigned him the task of looking into Deputy Tapia's coding practices. In his initial review of Deputy Tapia's time records for August and September 2024, Acting Assistant Sheriff Fox noticed Deputy Tapia changed how he coded release time in August 2024 and presented that finding to Sheriff Corpus. Sheriff Corpus, with Mr. Aenlle present, explained to Acting Assistant Sheriff Fox the reason for Deputy Tapia's change in coding was due to DSA's active opposition to Sheriff Corpus. Having absolute trust in Sheriff Corpus and Mr. Aenlle, Acting Assistant Sheriff Fox found plausible this explanation given to him that Deputy Tapia began correctly coding his release time in August 2024 because of DSA's opposition to Sheriff Corpus and, implicitly, Deputy Tapia's concern that he would come under scrutiny.²¹

In the undersigned Hearing Officer's view, Sheriff Corpus's explanation had a significant influence on Acting Assistant Sheriff Fox's subsequent investigation. Acting Assistant Sheriff Fox testified that because Deputy Tapia's conduct fit the explanation provided to him by Sheriff Corpus, Acting Assistant Sheriff Fox didn't even begin to consider other possible explanations or to conduct further investigation.²² In effect, the explanation Sheriff Corpus provided to Acting Assistant Sheriff Fox became the linchpin of Acting Assistant Sheriff Fox's determination that Deputy Tapia committed timecard fraud.²³

Such evidence strikes the undersigned Hearing Officer as not merely inadequate investigation, but gives rise to a reasonable inference that Sheriff Corpus and Mr. Aenlle intentionally steered Acting Assistant Sheriff Fox's investigation altogether. Such an inference is

²¹ See Hearing Transcript, pp. 1145:23 – 1149:2. See also p. 1154:14 – 18; see also pp. 1221:24 – 1222:11.

²² See Hearing Transcript, pp. 1221:24 – 1223:8. Consistent therewith, Daniel Chiu, SMSCO Sergeant in Court Security and Transportation who directly oversaw Deputy Tapia, testified nobody interviewed him regarding Deputy Tapia. Philip Hallworth, division supervisor of Court Security and Transportation, testified he was not interviewed as part of the timecard fraud investigation into Deputy Tapia.

²³ See Hearing Transcript, p. 1154:19 – 24 and pp. 1164:16 – 1166:13.

bolstered by Acting Assistant Sheriff Fox’s testimony that despite wanting to meet with payroll supervisor Van Enriquez, Mr. Aenlle arranged for Acting Assistant Sheriff Fox to meet with Joann Lov, who at the time was already two years removed from the position of payroll supervisor. Mr. Enriquez testified that in August/ September 2024, he communicated directly with Deputy Tapia instructing Deputy Tapia to begin coding release time in accordance with Ms. Stevenson’s direction. Had Acting Assistant Sheriff Fox interviewed Mr. Enriquez, Mr. Enriquez could have provided Acting Assistant Sheriff Fox with this exculpatory explanation for Deputy Tapia’s conduct.

Sheriff Corpus directed Acting Assistant Sheriff Fox not to review Deputy Tapia’s key card access records or surveillance video showing Deputy Tapia’s movement in and out of assignments.²⁴

Sheriff Corpus’s selection of Acting Assistant Sheriff Fox to investigate Deputy Tapia itself raises some suspicion. Although Acting Assistant Sheriff Fox had a lengthy background in investigations, Acting Assistant Sheriff Fox received this assignment to investigate Deputy Tapia only weeks after his promotion and only 15 months after joining SMCSO. Acting Assistant Sheriff Fox testified about his general unfamiliarity with SMSCO,²⁵ the different types of codes used in SMSCO to log time,²⁶ and SMSCO policy relating to criminal investigations of SMSCO members.²⁷ Together, these circumstantial facts lend credence to an inference that Sheriff Corpus selected Acting Assistant Sheriff Fox to investigate Deputy Tapia specifically because he was susceptible to her influence.

For the reasons discussed above, the undersigned Hearing Officer finds appellant Sheriff Corpus violated Government Code sections 3502.1 and 3506.5 by subjecting Deputy Tapia to punitive action and imposing reprisals on Deputy Tapia for his exercise of lawful action as an elected representative of the DSA.

²⁴ See Hearing Transcript, pp. 1172:25 – 1173:19.

²⁵ See Hearing Transcript, pp. 1150:24 – 1151:4 – “..I would confirm with [Mr. Aenlle], because I didn’t know anything about the Sheriff’s Office, right, I’m pretty new to the agency...”

²⁶ See Hearing Transcript, pp. 1140:7 – 1141:2.

²⁷ See Hearing Transcript, pp. 1161:17 – 1162:15.

1 **2. Penal Code section 836.**

2 **a. Charging allegation(s).**

3 The NOI, at pages 34, alleges, "Sheriff Corpus ordered Dep. Tapia arrested without
4 probable cause to support that arrest in violation of Penal Code § 836."

5 **b. Law.**

6 A peace officer may arrest a person ... without a warrant ... whenever any of the
7 following circumstances occur: (1) The officer has probable cause to believe that
8 the person to be arrested has committed a public offense in the officer's presence.
9 (2) The person arrested has committed a felony, although not in the officer's
10 presence. (3) **The officer has probable cause to believe that the person to be**
11 **arrested has committed a felony, whether or not a felony, in fact, has been**
12 **committed.**

13 (Pen. Code, §836, subd. (a).)

14 " ' "Reasonable or probable cause" means such a state of facts as would lead a
15 man of ordinary caution or prudence to believe, and conscientiously entertain a
16 strong suspicion of the guilt of the accused. "Reasonable and probable cause" may
17 exist although there may be some room for doubt.' " (*Lorenson v. Superior Court*
18 (1950) 35 Cal. 2d 49, 56-57 [216 P.2d 859], quoting *People v. Nagle* (1944) 25
19 Cal. 2d 216, 222 [153 P.2d 344].)

20 (*People v. Mower* (2002) 28 Cal.4th 457, 473.)

21 In *Stacey v. Emery*, 97 U.S. 642, 645, 24 L.Ed. 1035, the Supreme Court thus
22 defined "probable cause": "If the facts and circumstances before the officer are
23 such as to warrant a man of prudence and caution in believing that the offence has
24 been committed, it is sufficient." ... And as pointed out in *Lawson et al. v. United*
25 *States, supra*: "This probable cause must be determined by the existence of facts
26 known to the officer before, not after, the search."

27 (*Poldo v. United States* (9th Cir. 1932) 55 F.2d 866, 869.)

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1 **c. Violation.**

2 Deputy Tapia’s arrest by Sheriff Corpus is not legitimized simply because Acting
3 Assistant Sheriff Fox executed and issued a probable cause declaration upon which Sheriff
4 Corpus placed her reliance in light of the undersigned Hearing Officer’s finding above that
5 Sheriff Corpus intentionally influenced and interfered with Acting Assistant Sheriff Fox’s
6 investigation. Under such circumstances, appellant Sheriff Corpus had no reasonable reason to
7 believe and consciously entertain any suspicion of Deputy Tapia’s guilt on the charge of
8 timecard fraud [grand theft/ theft by false pretenses].

9 **B. Flagrant or repeated neglect of a Sheriff’s duties.**

10 **1. Limited/ incomplete investigation.**

11 **a. Charging allegation.**

12 “Sheriff Corpus, herself and through Mr. Aenlle, unreasonably restricted Acting
13 Assistant Sheriff Fox from collecting relevant evidence and speaking to key
14 witnesses in the course of his investigation into Dep. Tapia. Sheriff Corpus also
15 insisted that the arrest proceed on November 12, 2024, against the advice of the
16 District Attorney and despite Acting Assistant Sheriff Fox recommending that
17 Dep. Tapia be placed on administrative leave to allow for additional time for the
18 investigation. After the District Attorney refused to provide a warrant for the
19 arrest, Sheriff Corpus ordered the arrest of Dep. Tapia, the DSA President, based
20 purportedly on probable cause. Within a month, the District Attorney determined
21 ‘there was no basis to believe any violation of law had occurred, and ... Dep.
22 Tapia should not have been arrested.’”

23 (NOI, pp. 35 – 36.)

24 **b. Law.**

25 Among other authorities, County cites to Government Code section 26602 which states,
26 in relevant part, “The sheriff shall ... investigate public offenses which have been committed.”

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1 **c. Not neglect.**

2 In the undersigned Hearing Officer’s opinion, the evidence identified above go beyond
3 neglect which is why the undersigned Hearing Officer has sustained County’s charge that
4 appellant Sheriff Corpus retaliated against Deputy Tapia. Recasting the same conduct as neglect
5 is superfluous.

6 **C. Obstruction of an investigation.**

7 **1. Cordell Report.**

8 **a. Charging allegation(s).**

9 Sheriff Corpus obstructed an investigation into the conduct of the Sheriff and/or
10 the SMCSO as authorized by the Board of Supervisors. ... Acting Assistant
11 Sheriff Fox recommended placing Dep. Tapia on administrative leave to allow
12 more time for an investigation. Likewise, the District Attorney recommended
13 allowing its office to conduct the investigation instead of proceeding with a
14 probable cause arrest on November 12, 2024. Despite those recommendations,
15 Sheriff Corpus ordered Dep. Tapia to be arrested on November 12, 2024,
16 following an incomplete investigation. Then, within a few hours of the arrest,
17 counsel representing Mr. Aenlle encouraged the Board of Supervisors not to
18 release the Cordell Report and cited Dep. Tapia’s recent arrest as evidence that he
19 could not be trusted as a reliable informant.

20 (NOI, p. 36.)

21 **b. Law.**

22 As noted in footnote 1 above, “cause” for removal means “[o]bstruction, as defined in
23 federal, State, or local law applicable to a Sheriff, of any investigation into the conduct of a
24 Sheriff and/or the San Mateo County Sheriff’s Office by any government agency (including the
25 County of San Mateo), office, or commission with jurisdiction to conduct such investigation.”

26 **c. No obstruction.**

27 County cites several decisions for support as to the definition of “obstruction.”
28 Regardless of the correct definition, in the undersigned Hearing Officer’s opinion, County’s

charge of obstruction is not sustained because neither Deputy Tapia's arrest nor Mr. Aenlle's counsel's letter to the County's Board of Supervisors obstructed the investigation which resulted in the Cordell Report. The undersigned Hearing Officer viewed Deputy Tapia's arrest and Mr. Aenlle's counsel's letter as attempts to blunt the impact of the Cordell Report (investigative findings), but the undersigned Hearing Officer does not find this conduct to have obstructed the actual investigation itself.

III. Grounds for removal relating to Sgt. Javier Acosta.

A. Violation of law.

1. Violation of POBRA.

a. Charging allegation(s).

Sheriff Corpus violated the Public Safety Officers Procedural Bill of Rights Act ("POBRA") ... by taking punitive action against Sgt. Javier Acosta without affording him the rights provided by Government Code Sections 3303 and 3304. For example, Sgt. Acosta was not informed prior to his interrogation "of the rank, name, and command of the officer in charge of the interrogation [or] the interrogating officers," Gov't Code 3303(b); was not "informed of the nature of the investigation prior to any interrogation," *id.* § 3303(c); was not afforded the right to be "represented by a representative of his or her choice who may be present at all times during the investigation," *id.* § 3303(i); and was not afforded the opportunity for an administrative appeal, *id.* § 3304(b).

(NOI, p. 41.)

b. No violation.

In its closing brief, County offered no argument in support of this charge and so the undersigned Hearing Officer will deem this charge abandoned and/or withdrawn.

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1 **2. Retaliation.**

2 **a. Charging allegation(s).**

3 “Sheriff Corpus violated California law by subjecting Sgt. [Javier] Acosta to an improper
4 investigation and imposing on him an extended administrative leave because of protected union
5 activity [by Sgt. Hector Acosta, OSS President].” (NOI, pp. 38 – 39 and 41.)

6 **b. No violation.**

7 In its closing brief, County offered no argument in support of this charge²⁸ and so the
8 undersigned Hearing Officer will deem this charge abandoned and/or withdrawn.

9 **IV. Grounds for removal relating to Assistant Sheriff Ryan Monaghan.**

10 **A. Violation of law.**

11 **1. Charging allegation(s).**

12 Sheriff Corpus violated these laws [against retaliation] by terminating and
13 otherwise removing from office Assistant Sheriff Monaghan for cooperating with,
14 and speaking to, Judge Cordell in the course of her investigation. Assistant Sheriff
15 Monaghan had reason to believe that the information he provided to Judge
16 Cordell included violations of state and local law, including POBRA.
17 (NOI, p. 44.)

18 **2. Law.**

19 An employer, or any person acting on behalf of the employer, shall not retaliate
20 against an employee ... for providing information to, or testifying before, any
21 public body conducting an investigation, hearing, or inquiry, if the employee has
22 reasonable cause to believe that the information discloses a violation of state or
23 federal statute, or a violation of or noncompliance with a local, state, or federal
24 rule or regulation, regardless of whether disclosing the information is part of the
25 employee’s job duties.
26 (Lab. Code, §1102.5, subd. (b).)

27 _____
28 ²⁸ County, at footnote 3 of its closing brief, cites evidence to argue that Sheriff Corpus targeted Sgt. Javier Acosta
because of his brother’s (Sgt. Hector Acosta, president of the sergeant’s union) union activity. County does so,
however, in the context of arguing that Sheriff Corpus retaliated against Captain Brian Philip.

Any retaliation or reprisal by any County officer or employee against any ... informant is strictly prohibited; ... This prohibition against retaliation is in addition to the protections contained in California Labor Code section 1102.5, and any amendment thereto.

(San Mateo County Ordinance Code, §2.14.090.)

It is the intent of sections 2.14.060 through 2.14.100 of this chapter to protect all complainants or informants from retaliation for filing a complaint with, or providing information about, improper government activity by County officers and employees.

(San Mateo County Ordinance Code, §2.14.060.)

“The elements of a section 1102.5(b) retaliation cause of action require that (1) the plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate, nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a pretext for the retaliation.” (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384.) To establish a prima facie case of retaliation, “a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two.” (*Ibid.*)

3. No retaliation.

Even assuming Assistant Sheriff Monaghan engaged in a protected activity [by speaking with Judge Cordell as part of her investigation of SMSCO] and Sheriff Corpus subjected Assistant Sheriff Monaghan to an adverse employment action [surrendering badge and gun to Undersheriff Perea], the undersigned Hearing Officer finds County has not met its burden of showing, by a preponderance of the evidence, that there is a causal link between the two.

County places great weight on the temporal proximity between the time Sheriff Corpus learned that Assistant Sheriff Monaghan engaged in protected activity [September 18, 2024] and the adverse employment action [September 20, 2024] to demonstrate causal nexus.

“Circumstantial evidence such as proximity in time between protected activity and alleged

retaliation may establish a causal link.” (*Hawkins v. City of Los Angeles* (2019) 40 Cal.App.5th 384, 394.)

Temporal proximity is important to demonstrating a rational connection between protected activity and adverse action. (*Mt. San Jacinto Community College Dist.* (2023) PERB Dec No. 2865-E, p. 27 [48 PERC ¶ 15].) ... Typically, timing alone does not establish a retaliatory motive, but the closer in time an adverse action is to protected activity, the stronger the retaliatory inference. (*Id.* at pp. 27–28.) (*Visalia Unified, supra*, 98 Cal.App.5th at p. 868.)

Here, however, there is evidence to rebut the retaliatory inference created by temporal proximity. Sheriff Corpus and Assistant Sheriff Monaghan both testify consistently that at their meeting on September 20, 2024, just before Assistant Sheriff Monaghan surrendered his badge and gun, Sheriff Corpus’s proffered reason was that she heard Assistant Sheriff Monaghan had been maligning her so she lost trust in Assistant Sheriff Monaghan.²⁹ While the undersigned Hearing Officer did not find Sheriff Corpus’s testimony credible in other instances, the undersigned Hearing Officer accepts Sheriff Corpus’s testimony about her stated reason for (effectively) terminating Assistant Sheriff Monaghan at face value and does not view it as a *post hoc* justification for imposing adverse action.

B. Obstruction of an investigation.

1. Charging allegation(s).

“Sheriff Corpus obstructed Judge Cordell’s investigation into the SMCSO by terminating Assistant Sheriff Monaghan for cooperating with, and speaking to, Judge Cordell in the course of her investigation.” (NOI, pp. 44 – 45.) “By firing Monaghan for speaking with Judge Cordell, the Sheriff hindered and impeded her investigation, not least by discouraging others from speaking with Judge Cordell.” (County’s Post-Hearing Brief, page 12, lines 24 – 26.)

2. No obstruction.

The undersigned Hearing Officer finds County has not carried its burden of showing, by a preponderance of the evidence, that Sheriff Corpus obstructed Judge Cordell’s investigation by

²⁹ See Hearing Transcript, pp. 425:8-17 and 1855:19 – 1856:12.

terminating Assistant Sheriff Monaghan. County did not cite to any portion of the evidentiary record to establish that Assistant Sheriff Monaghan was precluded from further cooperating with and speaking to Judge Cordell or that any other person was discouraged from speaking with Judge Cordell based upon Assistant Sheriff Monaghan's termination.

V. Unlawful Retaliatory Transfers and Terminations.

A. Violation of law.

1. Captain Brian Philip – Retaliation.

a. Charging allegation(s).

Sheriff Corpus unlawfully retaliated against Capt. Philip. ... Sheriff Corpus violated [retaliation] laws by transferring Capt. Philip to a less desirable and advantageous post in retaliation for [1] refusing to sign and serve the deficient Internal Affairs notice to Sgt. Acosta and [2] for reporting the improper Notice.

(NOI, pp. 49 – 50.)

b. Law.

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(Lab. Code §1102.5, subd. (c).)

Any retaliation or reprisal by any County officer or employee against any complainant or informant is strictly prohibited; provided, however, if it is determined that a complaint was filed by a County employee in bad faith, said employee may be subject to appropriate disciplinary action. This prohibition against retaliation is in addition to the protections contained in California Labor Code section 1102.5, and any amendment thereto.

(San Mateo County Ordinance Code, §2.14.090.)

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1 **c. Violation.**

2 **i. Refusing to participate in an activity that would result**
3 **in a violation of state or federal statute.**

4 [T]o prevail on a claim under [Labor Code, section 1102.5, subdivision (c)], the
5 plaintiff must identify both the specific activity and the specific statute, rule, or
6 regulation at issue; the court must then determine the legal question whether the
7 identified activity would result in a violation or noncompliance with the identified
8 statute, rule, or regulation, and, if so, the jury must determine the factual issue
9 whether the plaintiff was retaliated against for refusing to participate in the
10 identified activity.

11 *(Nejadian v. County of Los Angeles (2019) 40 Cal.App.5th 703, 706.)*

12 Here, at Exhibit 128, Capt. Philip identified in an email to Ms. Enders the reason for his
13 refusal to serve Sergeant Javier Acosta with the Internal Affairs notice (Exhibit 204) was due to
14 its deficiency. Specifically, Capt. Philip stated that the Internal Affairs notice “fails to meet
15 several POBAR [sic] requirements as referenced in Government Code section 3303. Please
16 return this notice to the author and provide the IA number, date and time of the interview, and
17 the identity of the interviewer.”

18 Indeed, Government Code section 3303, subdivision (b), states, “The public safety officer
19 under investigation shall be informed prior to the interrogation of the rank, name, and command
20 of the officer in charge of the interrogation, the interrogating officers, and all other persons to be
21 present during the interrogation.” The Internal Affairs notice (Exhibit 204) that Captain Philip
22 was being asked to sign and serve lacked information about the rank, name, and command of the
23 interrogating officers.”

24 The undersigned Hearing Officer makes the legal determination that Captain Philip
25 signing and serving upon Sergeant Javier Acosta the Internal Affairs notice (Exhibit 204)
26 emailed to him by Ms. Enders on September 3, 2024 (Exhibit 128) would result in a violation or
27 noncompliance with Government Code section 3303, subdivision (b) because the Internal Affairs
28

notice (Exhibit 128) lacked information about the rank, name, and command of the interrogating officers.

ii. Captain Philip’s refusal to sign and serve IA notice was a contributing factor to his transfer.

The California Supreme Court in *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 712 (*Lawson*)

...clarif[ied] that [Labor Code] section 1102.6³⁰, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims. By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be “demonstrated by a preponderance of the evidence” that the employee’s protected whistleblowing was a “contributing factor” to an adverse employment action. (§ 1102.6.) Then, once the employee has made that necessary threshold showing, the employer bears “the burden of proof to demonstrate by clear and convincing evidence” that the alleged adverse employment action would have occurred “for legitimate, independent reasons” even if the employee had not engaged in protected whistleblowing activities. (*Ibid.*)

(See also CACI, No. 4603.)

Section 1102.6 requires whistleblower plaintiffs to show that retaliation was a “contributing factor” in their termination, demotion, or other adverse action. This means *plaintiffs may satisfy their burden of proving unlawful retaliation even when other, legitimate factors also contributed to the adverse action.* (See, e.g., *State Comp. Ins. Fund v. Ind. Acc. Com.* (1959) 176 Cal.App.2d 10, 17 [1 Cal.Rptr. 73] (*State Comp. Ins. Fund*) [describing *a contributing factor* standard

³⁰ Labor Code section 1102.6 states, “In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.”

as one in which the conduct at issue *need not be the “exclusive cause” of the plaintiff’s injuries*]; *Rookaird v. BNSF Ry. Co.* (9th Cir. 2018) 908 F.3d 451, 461 (*Rookaird*) [“A “contributing factor” includes “any factor, which alone or in connection with other factors, tends to affect in any way the outcome of the decision””].) (Lawson, *supra*, 12 Cal.5th at pp. 713-714; emphasis added.)

The undersigned Hearing Officer finds County has demonstrated by a preponderance of the evidence that Captain Philip’s refusal to sign and serve upon Sergeant Javier Acosta the Internal Affairs notice (Exhibit 204) emailed to him by Ms. Enders on September 3, 2024 (Exhibit 128) was a contributing factor in Captain Philip’s subsequent transfer from PSB to Corrections. This finding is based on the temporal proximity between Captain Philip’s refusal (September 3, 2024) and receipt of notice of his transfer (September 9, 2024). Retaliatory motive is also drawn from Ms. Ender’s testimony about how Mr. Aenlle responded on the evening of Captain Philip’s refusal to sign and serve the IA notice.³¹ Sheriff Corpus’s involvement in the decision is inferred from her testimony that she directed Ms. Enders to prepare the IA notice and directed Undersheriff Perea to involve Captain Philip.³²

The undersigned Hearing Officer finds further that Sheriff Corpus has not demonstrated, by clear and convincing evidence³³, that Captain Philip’s transfer from PSB to Corrections would have occurred “for legitimate, independent reasons” even if the employee Captain Philip had not refused to sign and serve the IA notice upon Sergeant Javier Acosta. The explanation provided by Sheriff Corpus for Captain Philip’s transfer was that there was a vacancy in corrections.³⁴ However, Assistant Sheriff Monaghan testified he was in attendance at the September 9, 2024 meeting where Undersheriff Perea notified Captain Philip of the transfer. When asked whether Undersheriff provided any explanation for Captain Philip’s transfer, Assistant Sheriff Monaghan

³¹ See Hearing Transcript, pp. 255:20 – 259:7.

³² See Hearing Transcript, pp. 447:21 – 448:11.

³³ Under the clear and convincing standard, the evidence must be “so clear as to leave no substantial doubt” and “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1158; see also CACI, No. 201.)

³⁴ See Hearing Transcript, pp. 428:16 – 429:1.

1 stated, “Nothing, other than they wanted [Captain Philip] to learn about the jail.”³⁵ Sheriff
2 Corpus’s stated reason for Captain Philip’s transfer differs from the contemporaneous reason, or
3 lack thereof,³⁶ provided to Captain Philip when he was initially notified. Although these
4 proffered reasons are not necessarily inconsistent, the evidence is not clear and convincing to the
5 undersigned Hearing Officer that Captain Philip’s transfer would have occurred for the reasons
6 given by Sheriff Corpus and identified by Assistant Sheriff Monaghan even if Captain Philip had
7 not refused to sign and serve the IA notice.

8 **iii. Adverse employment action.**

9 Although not argued specifically in relation to Captain Philip, Sheriff Corpus cites
10 *Holmes v. Petrovich Development Co., LLC* (2011) 191 Cal.App.4th 1047, 1063, where the court
11 wrote:

12 An “ ‘adverse employment action,’ ” which is a critical component of a retaliation
13 claim (*Jones, supra*, 152 Cal.App.4th at p. 1380), requires a “substantial adverse
14 change in the terms and conditions of the plaintiff’s employment” (*Akers v.*
15 *County of San Diego* (2002) 95 Cal.App.4th 1441, 1454, 1455 [116 Cal. Rptr. 2d
16 602]). “[A] mere offensive utterance or ... a pattern of social slights by either the
17 employer or coemployees cannot properly be viewed as materially affecting the
18 terms, conditions, or privileges of employment for purposes of [the FEHA]”
19 (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054 [32 Cal. Rptr. 3d
20 436, 116 P.3d 1123] (hereafter *Yanowitz*).)

21 ...

22 More importantly, “[m]inor or relatively trivial adverse actions or conduct by
23 employers or fellow employees that, from an objective perspective, are reasonably
24 likely to do no more than anger or upset an employee cannot properly be viewed
25 as materially affecting the terms, conditions, or privileges of employment and are
26 not actionable” (*Yanowitz, supra*, 36 Cal.4th at p. 1054.)

27
28 ³⁵ See Hearing Transcript, pp. 1838:13 – 1839:10.

³⁶ See Hearing Transcript pp. 1259:10 – 1261:13.

(See also *Francis v. City of Los Angeles* (2022) 81 Cal.App.5th 532, 540–541—same.)

To the extent Sheriff Corpus is asserting Captain Philip’s transfer from PSB to Corrections is not an adverse employment action, Captain Philip testified his material responsibilities, apart from being a Captain in PSB, were taken away.³⁷ (See *Patten v. Grant Joint Union High School Dist.* (Cal. App. 3d Dist. 2005), 134 Cal. App. 4th 1378—Under a materiality test for “adverse employment action,” a principal’s transfer to a different school could be adverse, even though the wages, benefits, and duties were the same, because there was evidence that her material responsibilities were significantly diminished.)

2. Captain Brian Philip – POBRA.

a. Charging allegation(s).

Sheriff Corpus violated POBRA by taking punitive action against Capt. Philip ... without affording [him] the rights provided by Government Code Sections 3303 and 3304. ... Sheriff Corpus took punitive action against Capt. Philip ... by transferring [him] for participating in lawful conduct that the Sheriff disfavored. ... Sheriff Corpus did not provide [Capt. Philip] with the right to an administrative appeal in violation of POBRA.

(NOI, p. 50.)

b. Law.

“No punitive action ... shall be undertaken by any public agency against any public safety officer ... without providing the public safety officer with an opportunity for administrative appeal.” (Govt. Code, §3304, subd. (b).)

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” (Govt. Code, §3303.)

c. No violation.

County makes the conclusory assertion that Sheriff Corpus violated POBRA by punitively transferring Captain Philip without affording him appeal rights. County does not cite

³⁷ See Hearing Transcript, pp. 1247:13 – 1248:20 and 1262:3 – 13.

to the record any evidentiary support and the undersigned Hearing Officer could find none regarding whether Captain Philip's transfer was done without providing Captain Philip an opportunity for administrative appeal. As such, the undersigned Hearing Officer finds County has not carried its burden of establishing that Sheriff Corpus violated Government Code section 3304, subdivision (b), in transferring Captain Philip from PSB to Corrections.

3. Lieutenant Jonathan Sebring.

a. Charging allegation(s).

Sheriff Corpus violated POBRA by taking punitive action against ... Lt. Sebring ... without affording [him] the rights provided by Government Code Sections 3303 and 3304. ... Sheriff Corpus took punitive action against ... Lt. Sebring ... by transferring [him] for participating in lawful conduct that the Sheriff disfavored. ... Sheriff Corpus did not provide [Lt. Sebring] with the right to an administrative appeal in violation of POBRA.

(NOI, p. 50.)

b. Law.

"No punitive action ... shall be undertaken by any public agency against any public safety officer ... without providing the public safety officer with an opportunity for administrative appeal." (Govt. Code, §3304, subd. (b).)

"For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Govt. Code, §3303.)

c. No violation.

The undersigned Hearing Officer finds County has not carried its burden of demonstrating that Lt. Sebring's transfer from PSB to Corrections was for the purposes of punishment. Lt. Sebring testified it was his belief that the transfer was punitive based upon the temporal proximity between when he told Jenna McAlpin that she could file a complaint with HR against Mr. Aenlle (April 3, 2024) and receiving notification from Captain Philip that he was being transferred to Corrections (June 2024). Lt. Sebring also testified to having a negative

interaction with Mr. Aenlle two to three weeks after April 3, 2024 as well as experiencing significantly reduced interaction with Sheriff Corpus. In the undersigned Hearing Officer's opinion, the evidence proffered by County is insufficient to establish that Lt. Sebring's transfer was for the purposes of punishment or that the decision to transfer originated with Sheriff Corpus.

4. Captain Rebecca Albin.

a. Charging allegation(s).

Sheriff Corpus violated POBRA by taking punitive action against ... Capt. Albin without affording [her] the rights provided by Government Code Sections 3303 and 3304. ... Sheriff Corpus locked Capt. Albin out of her work site on the basis of her lawful conduct. Sheriff Corpus did not provide [Capt. Albin] with the right to an administrative appeal in violation of POBRA.

(NOI, p. 50.)

b. Law.

"No punitive action ... shall be undertaken by any public agency against any public safety officer ... without providing the public safety officer with an opportunity for administrative appeal." (Govt. Code, §3304, subd. (b).)

"For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Govt. Code, §3303.)

c. No violation.

In its post-hearing brief, County cited to evidence in the record that Sheriff Corpus ordered Undersheriff Hsiung to terminate Captain Albin's access to email, to the Sheriff's Office website, and to her Half Moon Bay office. The undersigned Hearing Officer finds County has not carried its burden of demonstrating that such actions are "punitive actions" as that term is used and defined by Government Code sections 3303 and 3304, subdivision (b).

County relies upon *Hohol v. Transtar Industries, Inc.* (June 29, 2005, C045804) ___Cal.App.4th___ [2005 Cal. App. Unpub. LEXIS 5692] as support for its assertion that

Captain Albin was subjected to a *de facto* termination. California Rules of Court, rule 8.1115 precludes citation or reliance upon an unpublished decision. While evidentiary rules have been relaxed for this Removal Hearing, application of the law has not.

5. Sergeant Jimmy Chan.

a. Charging allegation(s).

i. Retaliation.

Sheriff Corpus unlawfully retaliated against Sgt. Chan. It is unlawful to retaliate against an employee for engaging or participating in political activities. ... Sheriff Corpus violated these laws by transferring Sgt. Chan to a less desirable and advantageous post in retaliation for his participation in the political rally in support of Measure A.

(NOI, p. 50.)

ii. POBRA.

Sheriff Corpus violated POBRA by taking punitive action against ... Sgt. Chan ... without affording [him] the rights provided by Government Code Sections 3303 and 3304. ... Sheriff Corpus took punitive action against ... Sgt. Chan ... by transferring [him] for participating in lawful conduct that the Sheriff disfavored. ... Sheriff Corpus did not provide [Sgt. Chan] with the right to an administrative appeal in violation of POBRA.

(NOI, p. 50.)

b. Law.

i. Political Activity/ Retaliation.

“Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.” (Gov. Code, §3302, subd. (a).)

“No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under

1 this chapter, or the exercise of any rights under any existing administrative grievance procedure.”
2 (Gov. Code, §3304, subd. (a).)

3 “For the purpose of this chapter, punitive action means any action that may lead to
4 dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes
5 of punishment.” (Gov. Code, §3303.)

6 **ii. POBRA.**

7 “No punitive action ... shall be undertaken by any public agency against any public
8 safety officer ... without providing the public safety officer with an opportunity for
9 administrative appeal.” (Govt. Code, §3304, subd. (b).)

10 “For the purpose of this chapter, punitive action means any action that may lead to
11 dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes
12 of punishment.” (Govt. Code, §3303.)

13 **c. No violations.**

14 The undersigned Hearing Officer finds County has not carried its burden of
15 demonstrating that Sgt. Chan’s transfer from PSB to the airport investigations division amounted
16 to an adverse employment action or was for the purposes of punishment. Sgt. Chan testified it
17 was his belief that the transfer was punitive based upon the temporal proximity between when he
18 appeared at a press conference in support of Measure A during the lunch hour on February 5,
19 2025 and received notification that he was being transferred to the airport investigations division
20 at “a little before 5:00 p.m. that same day.”³⁸ County contends the transfer is punitive based upon
21 Sgt. Chan’s testimony that the transfer was to an assignment/ position he previously held and did
22 not apply for, bypassing existing applicants.³⁹

23 Unlike Capt. Philip, Sgt. Chan’s transfer did not result in any loss of responsibility; Sgt.
24 Chan testified the role was exactly the same, did not result in a change of pay or require Sgt.
25 Chan to work more hours.⁴⁰ On this evidentiary record, the undersigned Hearing Officer finds
26

27 ³⁸ See Hearing Transcript, pp. 1748:8 – 16 and 1751:21 – 1752:4.

28 ³⁹ See Hearing Transcript, p. 1753:5 – 13.

⁴⁰ See Hearing Transcript, pp. 1755:15 – 1757:5.

Sgt. Chan did not experience an adverse employment action as a result of the transfer and, as noted earlier, an adverse employment action is a critical component of a retaliation claim.

The undersigned Hearing Officer finds further that County did not carry its burden to establish, by a preponderance of the evidence, that Sgt. Chan's transfer was for the purposes of punishment. Consequently, County has not established the punitive action against Sgt. Chan necessary to support a violation of POBRA.

VI. Professional Standards Bureau.

A. Flagrant or repeated neglect of duties.

1. Charging allegation(s).

Sheriff Corpus has mismanaged PSB and inhibited the unit from effectively performing its core investigative functions, leading to a severe backlog of uncompleted investigations. ... Sheriff Corpus has failed to complete investigations into allegations of misconduct by members of her office ... Sheriff Corpus has failed to properly initiate, support, oversee, and conclude investigations into civilian, use-of-force incidents, and Internal Affairs investigations. Sheriff Corpus's mismanagement of PSB has led to a significant backlog of incomplete investigations and unresolved open matters. The Sheriff also fails to dispense deputy discipline in an even-handed manner by engaging in favoritism.

(NOI, pp. 51 and 57 – 58.)

County's allegations against Sheriff Corpus in the NOI with regard to the PSB are broad and far-reaching so the undersigned Hearing Officer will focus, individually and collectively, on the four specific instances alleged in the NOI and discussed in County's closing brief in assessing whether Sheriff Corpus has engaged in "flagrant or repeated neglect of a Sheriff's duties as defined by law." The relevant law cited by County as the basis for Sheriff Corpus's duties in this regard is as follows:

///

///

1 **2. Law.**

2 Government Code section 26602 states, in relevant part, “The sheriff shall ... investigate
3 public offenses which have been committed.”

4 County cites Penal Code section 13510.8, subdivision (c), which states, “Beginning no
5 later than January 1, 2023, each law enforcement agency shall be responsible for the completion
6 of investigations of allegations of serious misconduct by a peace officer, regardless of their
7 employment status.”

8 County also directs the undersigned Hearing Officer to Penal Code section 832.5,
9 subdivision (a)(1), which states, in part, “Each department or agency in this state that employs
10 peace officers shall establish a procedure to investigate complaints by members of the public
11 against the personnel of these departments or agencies....” (See also *Galzinski v. Somers* (2016)
12 2 Cal.App.5th 1164, 1174—City police department and personnel have a ministerial duty to
13 follow the mandatory terms of the department's published procedure for handling citizen
14 complaints of police misconduct.)

15 As a preliminary matter however, County has not sufficiently identified, cited, or
16 referenced for the undersigned Hearing Officer any relevant provisions of SMSO published
17 procedure for handling citizen complaints of misconduct. Consequently, the undersigned Hearing
18 Officer has no legal basis for determining whether Sheriff Corpus has engaged in neglect of a
19 duty pursuant to Penal Code section 832.5.

20 [County’s citation in the NOI to Part 4, Title 4 of the Penal Code is not sufficiently
21 specific enough for the undersigned Hearing Officer to warrant any consideration.]

22 Thus, the undersigned Hearing Officer confines its analysis to whether Sheriff Corpus
23 engaged in flagrant or repeated neglect of her duties under Government Code section 26602 and
24 Penal Code section 13510.8, subdivision (c).⁴¹

25 ///

26 ///

27 _____
28 ⁴¹ In light of this limitation, the undersigned Hearing Officer declines to offer any opinion on the propriety or
impropriety of the discipline, or lack thereof, imposed upon the four individuals identified in the discussion of this
section.

1 **3. No flagrant or repeated neglect.**

2 **a. Correctional Officer A.**

3 Correctional Officer A is the subject of two separate investigations.

4 **i. April 2023.**

5 By County’s own account, an investigation into Correctional Officer A’s misconduct
6 (from April 2023) was conducted and PSB recommended discipline. This is not an abject failure
7 to investigate as was the case in *People v. Mullin* (1961) 197 Cal.App.2d 479 (*Mullin*). In *Mullin*,
8 the court found substantial and clear evidence establishing the defendant sheriff’s willful failure
9 to investigate, as required by Government Code section 26602, “[c]onsidering that [the sheriff]
10 failed to question the father, the mother, the aunt who made the first complaint [of molestation],
11 or two employees at the logging camp to whom [the victim] had revealed her plight.” (*Mullin*,
12 *supra*, 197 Cal.App.2d at p. 487.)

13 Here, instead, County contends Sheriff Corpus “never finalized the investigation or
14 imposed any discipline.”⁴² This is not a complete failure to investigate like in *Mullin*. However,
15 County’s assertion does implicate Penal Code section 13510.8, subdivision (c). In asserting
16 Sheriff Corpus engaged in neglect by failing to finalize an investigation, the undersigned Hearing
17 Officer is concerned with the appropriate standard of care.⁴³ Although it is not clear to the
18 undersigned Hearing Officer what the specific source is other than POBRA (Govt. Code, §3304,
19 subd. (d)?), what is clear is that both County and Sheriff Corpus presented testimony that
20 investigations should be completed within one year from the time the SMSCO learns of the
21 incident.⁴⁴ County presented evidence, which the undersigned Hearing Officer found to be
22 credible, that Sergeant Joe Fava of PSB generated an Internal Affairs Investigation Report in
23 November 2023 concerning Correctional Officer A’s misconduct (from April 2023).⁴⁵ Sgt. Fava
24 testified further that, as of May 2025 (more than one year beyond the Investigation Report and
25

26 ⁴² See County of San Mateo’s Post-Hearing Brief, p. 21:7 – 8.

27 ⁴³ “Breach is the failure to meet the standard of care.” (*Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th
28 627, 643.)

⁴⁴ See Hearing Transcript, pp. 1430:11 – 1431:6 and 2125:14 -24.

⁴⁵ See Hearing Transcript, pp. 1442:16 – 1445:4 and Exh. 50.

more than two years after the date of the incident itself), Correctional Officer A never received the recommended discipline (12 hour suspension) for this incident because PSB never received the signed decision letter from Sheriff Corpus.⁴⁶ Thus, the failure to complete the investigation into Correctional Officer A's misconduct (from April 2023) is attributable to Sheriff Corpus. The undersigned Hearing Officer finds this incident constitutes neglect of Sheriff Corpus's duties under Penal Code section 13510.8, subdivision (c).

ii. August 2024.

Correctional Officer A is the subject of a second separate incident arising from an August 17, 2024 off-duty altercation with a member of the public. County acknowledges an investigation into this incident was initiated in December 2024 after a lawsuit had been filed. Again, this does not involve a failure to investigate in breach of Government Code section 26602. Rather, County contends the investigation into this second incident has not progressed for reason(s) attributable to Sheriff Corpus and Undersheriff Perea. The undersigned Hearing Officer finds County has not carried its burden of proof by a preponderance of the evidence to establish that a delay in advancing the investigation amounts to a breach of duty to complete investigations pursuant to Penal Code section 13510.8, subdivision (c).

b. Deputy D.

County asserts that in July 2024, Deputy D permitted a juvenile gang member to sit in the front of his patrol vehicle while smoking an electronic cigarette. According to County, Sheriff Corpus did not commence an investigation until November 2024 after the Cordell Report publicly disclosed the incident. County, in its closing brief, argues the investigation may be barred because it still has not been completed more than a year after the incident occurred.

Government Code section 26602 is not at issue since County acknowledges the commencement of an investigation into Deputy D in November 2024. The undersigned Hearing Officer finds County has not carried its burden of proof by a preponderance of the evidence to establish that Sheriff Corpus breached a duty to complete the investigation of Deputy D pursuant to Penal Code section 13510.8, subdivision (c). In the undersigned Hearing Officer's opinion,

⁴⁶ See Hearing Transcript, p. 1447:14 – 23.

County has not clearly demonstrated when the one-year deadline to complete an investigation accrued nor has County clearly demonstrated that the one-year deadline to complete an investigation has passed.

c. Deputy Sheriff Trainee S.

County asserts that in October 2024, Deputy Sheriff Trainee S left unattended her office-issued firearm at a restaurant. As with Correctional Officer A, County asserts any delay in completing the investigation is attributable to Sheriff Corpus and Undersheriff Perea.

The undersigned Hearing Officer finds County has not carried its burden of proof by a preponderance of the evidence to establish that Sheriff Corpus breached a duty to complete the investigation of Deputy D pursuant to Penal Code section 13510.8, subdivision (c). In the undersigned Hearing Officer's opinion, County has not clearly demonstrated that the one-year deadline to complete an investigation has passed.

d. Correctional Officer M.

In August 2024, probationary correctional officer M strangled an unclothed inmate. County asserts a January 2025 pre-investigation memo by Sgt. Fava recommended immediate termination and PSB Lieutenant Dan Reynolds concurred. County's evidence indicates an investigation commenced in May 2025. County asserts Sheriff Corpus has delayed and failed to take corrective action. Under these circumstances, the undersigned Hearing Officer is of the opinion that neither a failure to investigate nor a failure to complete investigation are (yet) at issue.

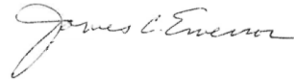
While the undersigned has found Sheriff Corpus engaged in neglect of her duties under Penal Code section 13510.8, subdivision (c), in connection with Correctional Officer A, the undersigned has only sustained this one instance of neglect. County has not carried its burden of demonstrating that Sheriff Corpus has engaged in flagrant or repeated neglect.

VII. Conclusion/ Summary.

Based upon the evidence and argument presented, it is the undersigned Hearing Officer's opinion that the County had cause, under Section 412.5, to remove appellant Sheriff Corpus as discussed in sections I(A)(1) [conflict of interest re Victor Aenlle]; II(A)(1)-(2) [retaliation/ lack

of probable cause re Deputy Carlos Tapia]; and V(A)(1) [retaliation re Captain Brian Philip],
above.

Dated: October 3, 2025



Hon. James C. Emerson (Ret.)

PROOF OF SERVICE

State of California
County of Santa Clara

I certify that I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is 96 North 3rd Street, Suite 350, San Jose, California, 95112.

On October 6, 2025, I served the foregoing document described as the **ADVISORY OPINION** on the interested parties in this action as follows:

SEE SERVICE LIST

- ☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be sent to the offices of the addresses via File & ServeXpress Electronic Service pursuant to the terms of the Case Management Order/Pre-Trial Order(s). The transmission was reported as complete and without error.
- ☒ **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from sejla@adrservices.com to the persons at the email addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ **BY U.S. MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in San Jose, California.
- ☐ **BY FACSIMILE:** I caused such to be faxed to the attorneys on October 6, 2025.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the attorneys on October 6, 2025.
- ☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
- ☐ **BY CERTIFIED MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in San Jose, California.

Executed on October 6, 2025 in San Jose, California by



Sejla Garbo

PROOF OF SERVICE

State of California

County of Los Angeles

I certify that I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 200, Los Angeles, California, 90067.

On October 6, 2025, I served the foregoing document described as the **ADVISORY OPINION** on the interested parties in this action as follows:

SEE SERVICE LIST

☐

BY ELECTRONIC SERVICE: I caused the document(s) to be sent to the offices of the addresses via File & ServeXpress Electronic Service pursuant to the terms of the Case Management Order/Pre-Trial Order(s). The transmission was reported as complete and without error.

☐

BY EMAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from krista@adrservices.com to the persons at the email addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

BY U.S. MAIL: I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

☐

BY FACSIMILE: I caused such to be faxed to the attorneys on October 6, 2025.

☐

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the attorneys on October 6, 2025.

☒

STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐

FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☒

BY CERTIFIED MAIL: I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

Executed on October 6, 2025 in Los Angeles, California by

Krista Butenschoen

Krista Butenschoen

REQUEST FOR CERTIFIED MAIL

Case Name:	In Re: Hearing on Removal of Sheriff Christina Corpus Case: # 25-4038-JCE
Addressee:	Franco Muzzio, Esq. Jan Little, Esq. Brook Dooley, Esq. Elizabeth Heckmann, Esq. Yegina Whang, Esq. Neha Sabharwal, Esq. 633 Battery Street, San Francisco, California, 94111
AFFIX LABEL HERE:	9589 0710 5270 3095 5969 67
Case Manager:	Sejla Garbo
Date:	October 6, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	In Re: Hearing on Removal of Sheriff Christina Corpus Case: # 25-4038-JCE
Addressee:	Christopher Ulrich, Esq. Thomas Mazzucco, Esq. James Lassart, Esq. Matthew Frauenfeld, Esq. 550 California Street, 14th Floor, San Francisco, California, 94104
AFFIX LABEL HERE:	9589 0710 5270 3095 5969 74
Case Manager:	Sejla Garbo
Date:	October 6, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	In Re: Hearing on Removal of Sheriff Christina Corpus Case: # 25-4038-JCE
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Case Manager:	Sejla Garbo
Date:	October 6, 2025



Date: Oct. 6, 2025

Service List

RE: IN RE: HEARING ON REMOVAL OF SHERIFF CHRISTINA CORPUS

ADRS Case No. 25-4038-JCE

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