

CONFIDENTIAL
EXECUTIVE SUMMARY
for
LINCOLN COUNTY
Danforth and Howard Investigation

June 14, 2022

Heather R. Martin, J.D., AWI-CH

Ashley O. Driscoll, J.D., AWI-CH

Beery, Elsner & Hammond, LLP

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I. Introduction

Lincoln County (County) retained Beery, Elsner & Hammond, LLP to conduct an independent investigation into allegations that Chief Deputy District Attorney (CDDA) Robin Lynn Howard and District Attorney (DA) Lanee Danforth retaliated against Deputy District Attorney (DDA) Kenneth Park and subjected him to a hostile work environment.

This is the Confidential Executive Summary (Summary) of the investigators' findings as it pertains to the complaints against Howard. The investigators anticipate that the County will keep this Summary confidential, and it will not be disseminated except as required by law or as County determines necessary.

II. Investigation Background

A. Complaint

DA Kenneth Park alleges retaliation and a hostile work environment by Danforth and Howard. These issues were initially alleged in a letter from his attorney Jonathan Cable. Ex. 1 – Cable February 1, 2022¹ Letter. During this investigation, Park provided more information and specifically believes that Danforth and Howard have taken the following retaliatory actions:

1. Investigating him for filing a [REDACTED] affidavit;
2. Putting him on leave (again) after Human Resources (HR) completed an investigation and found no violations of County policy related to an exculpatory evidence issue in the [REDACTED] criminal case ([REDACTED] case);
3. Filing a complaint with the Oregon State Bar (Bar) concerning the [REDACTED] case; and
4. Removing him from Major Crimes Team cases.

Park believes these actions are retaliation for the his taking the following actions:

1. Opposing Danforth in the May 2020 primary election for DA and then ultimately supporting her opponent, Cable; and
2. Union activity including:
 - a. Objecting to Danforth sending out an Appointment Agreement that Deputy DAs had to sign if they wanted to continue in the office (referred to as “sign or resign”);
 - b. Objecting to Danforth’s attempt to require DAs to work one Saturday or Sunday to help with a backlog of cases; and
 - c. Assisting with a unit clarification petition and a PERS issue for another employee.

He also alleged that he is being treated differently because he is an older white male.

¹ Cable’s letter was dated February 1, 2021, but it was sent on February 1, 2022, so it is assumed the year was a typo on the letter and the date is 2022.

B. Documentation

The investigators requested, received, and reviewed documentation from individual witnesses and the County.

C. Relevant Policies

The policies under consideration are County Personnel Rules:

1. Lincoln County Personnel Rules, Article 3 (F) Retaliation;
2. Lincoln County Personnel Rules, Article 3 (H) Anti-Harassment Policy;
3. Lincoln County Personnel Rules, Article 3 (I) No-Bullying Policy; and
4. Lincoln County Personnel Rules Article 12 Code of Ethics and Conduct.

D. Standard for Evidentiary and Policy Findings

The investigators will make findings of fact and policy using a preponderance of the evidence standard.

III. Findings of Fact

Park alleged the following retaliatory acts by Danforth and Howard:

1. Investigating him for filing a [REDACTED] affidavit;
2. Putting him on leave (again) after HR completed an investigation and found no violations of County policy related to an exculpatory evidence issue in the [REDACTED] case;
3. Filing a complaint with the Bar concerning the [REDACTED] case; and
4. Removing him from Major Crimes Team cases.

A. Danforth Findings

1. Danforth's Concerns Regarding the [REDACTED] Affidavit Were Legitimate

Danforth had legitimate concerns regarding Park's conduct in filing the affidavit. Those concerns—rather than any retaliatory objective—motivated Danforth to investigate the issue. Howard acted at Danforth's direction.

It is more likely than not that Danforth's (through Howard) investigation of the [REDACTED] affidavit issue was for reasons other than to retaliate against Park for his support of Cable. First, the allegation of filing a [REDACTED] affidavit was serious and is the type of allegation that should be investigated to maintain the integrity of the DA's Office. [REDACTED]

[REDACTED] Park's rebuttal to the investigation findings did not appear to fully address these

issues. The investigation resulted in sustained findings; in effect, they were not baseless allegations.

Second, Danforth became aware of the situation after one of the police officers involved contacted her because he had not heard from Park. In other words, while she did initiate the investigation into Park's conduct here, she was alerted to a potential issue by an outside party.

Third, Danforth did not take any disciplinary action against Park as a result of his filing [REDACTED] affidavit² and likely would have if she truly wanted to retaliate against him.

Fourth, there is no evidence that this investigation was motivated by the primary election issues which had occurred a full year before in May 2020. It would stand to reason that if she was going to retaliate against Park, she would have taken some action against him after she took office, but instead she specifically told him that she did not want him to leave.

Fifth, this investigation also does not appear to be part of a pattern of Danforth retaliating against others (namely [REDACTED]) who did not support her as indicated by Park. [REDACTED] stated that he was the one who went to Danforth [REDACTED] [REDACTED] [REDACTED]

[REDACTED]. [REDACTED] does not feel that he has experienced retaliation by Danforth. Another employee, who also supported Cable, likewise does not believe she has been retaliated against for not supporting Danforth. It is unlikely that Danforth would single out Park for his support of Cable and not others who also did not support her.

Finally, it is more likely than not Danforth did not retaliate against Park for his union activity by investigating the [REDACTED] affidavit issue because all of the union activity appears to have taken place in late 2021, after the [REDACTED] affidavit investigation which occurred in May-June 2021, and as such, this could not be a reason for alleged retaliation against Park.

2. Some of Danforth's Concerns about the [REDACTED] Investigation Were Legitimate

Park alleges Danforth retaliated against him by putting him back on leave after the HR investigation concluded. Danforth responds that her concerns about Park were not alleviated by the HR investigation and because of the on-going criminal investigation.

² A witness indicated that Danforth initially wanted to terminate Park and provided an email dated July 20, 2021, from Danforth to County Counsel [REDACTED] that stated, "I staffed this anonymously as a hypothetical with all of the other elected DAs and all who responded said they would terminate him immediately." See Ex. 2 – Danforth July 20, 2021 Email. Danforth was counseled to implement a written reprimand which Danforth did not do.

Danforth did have a legitimate concern about the HR investigation, namely that she was not involved with the investigation, the findings, or the ultimate decision to bring Park back to work.³ Her remaining concerns are less supported by the evidence.

While Danforth appears to be concerned about the exculpatory evidence issue, she seems more concerned over Park's charging decisions, which in her mind have resulted in innocent people being incarcerated (which is not directly relevant to the exculpatory evidence issue). However, in 2018, Park's charging decision, at least related to [REDACTED], appears to have been supported by the then DA, was legal, and was also supported by the Grand Jury indictment.

There is also no evidence that Danforth had retaliated against anyone else for their support of Cable or that she said anything directly targeting Park for his support of Cable. Further, if Danforth wanted to take action against Park for his support, it is unlikely she would wait almost a year after taking office to take action.

As a result, it is more likely than not that Danforth's act of putting Park on leave again is because of what she believes is an ongoing criminal investigation, that she had concerns about the HR investigation, and primarily because she is concerned with how Park is making charging decisions which (in her opinion) are resulting in the incarceration of innocent people, and not because of Park's support for Cable in the elections which is not supported by the evidence. Danforth's act of initiating what she believes is a criminal investigation here is also not supported by the evidence, specifically given the fact that she did not initiate criminal investigations into other as serious potential misconduct (the [REDACTED] affidavit investigation of Park and [REDACTED]).

The investigators also note that Danforth's actions also appear to be part of a larger pattern of her opposing actions taken by the County Board of Commissioners (County Board), HR, and/or the County Counsel's office.

With respect to Park's other allegations—that Danforth was motivated by Park's union activity—the evidence does not show it played a role in Danforth's decision-making. While Park's union activity has been more recent in time (as opposed to his support for Cable in the elections) and he did just take over as the union president, he has not been the individual driving discussions with the union or pushing back against Danforth's actions. Rather, most of the communication on the primary issues here (requests to retract the appointment agreement and the

³ The investigators also acknowledge that the [REDACTED] affidavit and [REDACTED]s had sustained findings and the Park HR investigation did not, which could explain why the Park HR investigation was treated differently by HR. Nevertheless, the investigators note that the [REDACTED] affidavit investigation was done by Howard (not HR, although the investigators also acknowledge that HR appeared to assist Howard with this investigation) and that even though there was no discipline in that case, [REDACTED]

[REDACTED] Further, when it was clear Danforth did not agree with the Park HR investigation findings, HR did not take any steps to consult with her about it or address her concerns.

work on weekends) have come from the County Counsel's office. It is more likely than not that the concerns detailed above motivated Danforth rather than any of Park's union activities.

3. While Problematic, Danforth's Bar Complaint was Not Retaliatory

Danforth's communications with the Bar are problematic for several reasons: (1) she communicated with the Bar alleging Park's failure to disclose exculpatory evidence before any investigation had been done—she had not talked to Park nor had she uncovered his emails to the judge in this case; and (2) when the investigation was complete, she failed to provide the investigation findings or the December 18, 2018 emails to the Bar although she had them both when she emailed the Bar claiming she had additional information on January 28, 2022. From a due process standpoint, it appears the Danforth had made a decision regarding Park before she had the full picture.

Despite these issues, it is more likely than not Danforth filed a complaint with the Bar because she was concerned about how Park is making charging decisions which (in her opinion) are resulting in the incarceration of innocent people and not because of his support for Cable in the election or his union activity. This is supported by the fact that most of the information that Danforth sent to the Bar concerned [REDACTED] probation violations which occurred as a result of the September 2018 judgment against him. In other words, her main concern seemed to be [REDACTED] continued involvement with law enforcement as a result of a judgment that Danforth believed should have been vacated by Park in 2018.

4. Danforth Did Not Remove Park From Major Crime Team Cases

Park alleged that he was "asked to stay home" from Major Crime Team cases, citing two cases—[REDACTED] and [REDACTED]. For the [REDACTED] case, Park claimed that he was not allowed to travel to Michigan with Oregon State Police as part of the case. Danforth provided an email to show that the decision not to send him was because of staffing and budget issues, and as a result, no one from the DA's office traveled to Michigan. Moreover, Danforth provided an additional email from October 18, 2021, indicating that even if Park left to take a new position (he had indicated to her that he was planning to take a job with DOJ), Danforth wanted him to stay as a special prosecutor for the case.

Danforth does not recall that Park responded concerning the [REDACTED] case, only that she spoke to him about the case because he had information as a witness.

It is more likely than not Park was not removed from the [REDACTED] or [REDACTED] cases because of his support for Cable as the evidence does not support this. Rather, it appears Danforth wanted Park to remain on the [REDACTED] case even after he potentially left the DA's office, which is supported by the email Danforth submitted.

5. Different Treatment Based on Age and Gender

Park alleged that he and [REDACTED] have been treated differently by Danforth because they are older males. He specifically cited the [REDACTED] affidavit (Park) and [REDACTED] ([REDACTED]) investigations as examples of her different treatment of them. As noted above, it appears that Danforth had legitimate reasons for both investigations and she did not appear to be motivated by their age or gender.

B. Howard Findings

All of the alleged conduct at issue in this investigation was directed by or conducted by Danforth and not Howard. In those instances where Howard was directly involved—specifically related to the [REDACTED] affidavit issue and putting Park on leave with respect to the [REDACTED] case—Howard was directed in her actions by Danforth. This was confirmed by both Howard and Danforth.

As such there are no sustained findings with respect to Howard.

IV. Policy Findings

The investigation did not find that Danforth or Howard violated any County policies.



Jonathan H. Cable
Attorney At Law
P.O. Box 2061
Newport, OR 97365

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February 1, 2021

Lanee Danforth, District Attorney, Lincoln County
Lynn Howard, Chief Deputy District Attorney, Lincoln County

RE: Kenneth Park, Deputy District Attorney

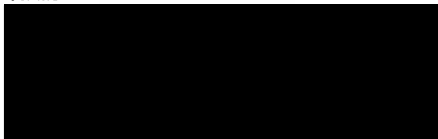
It is quite surprising that you have placed Mr. Park on leave yesterday morning for allegations that have been fully investigated. Two of your allegations #3 and #4 have already been investigated and found to be meritless. You give no good faith basis for believing there is a violation of Oregon law or the Oregon Rules of Professional Conduct. You will need to be more specific in terms of what Statutes and Ethical rules you believe have been violated. You are creating a hostile work environment by repeatedly making the same unfounded allegations. It is not hard to determine the reasons for this retaliation. The timing of your actions is simply offensive. You waited until he returned to work yesterday to repeat the same allegations. The County completed the investigation on January 27, 2022. You waited until my client returned to work to embarrass him again.

It was clear from the investigation conducted that Mr. Park did nothing wrong four years ago that was either illegal or unethical. Please state the factual statements in the report by the County you disagree with. I have attached the Documentation I have received so far. Please let me know what I am missing. I am representing Mr. Park as a private attorney in this matter as we explore his legal options. He also has separate LCEA representation, and I do not speak for them.

Sincerely,

Jonathan H. Cable
OSB #066401

Cc: file



MAILING ADDRESS: P.O. BOX 2061, NEWPORT OR 97365
PHYSICAL ADDRESS: 23 N. COAST HWY, NEWPORT OR 97365
jcableattorney@gmail.com | Phone: (541) 265-4655

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From: **Lanee Danforth** <ldanforth@co.lincoln.or.us>
Date: Tue, Jul 20, 2021, 8:55 PM
Subject: Re: Rusty
To: [REDACTED]

Sure. I have reviewed everything several times and I actually transcribed the recorded interviews. I'm struggling because I don't believe this was a mistake or something that happened because Rusty was negligent. Based on my review of everything, I think he knowingly included information in the affidavit, not knowing whether it was true, but swearing that it was. I think he did that hoping he could get the result he wanted. That has been a pattern. What troubles me more than that is the fact that he failed to correct the [REDACTED] statement and still hasn't corrected it even now. It's a violation of ORPC 3.3 and I am going to end up having to dismiss that case.

I staffed this anonymously as a hypothetical with all of the other elected DAs and all who responded said they would terminate him immediately. That's what I want to talk to you about. This is what I have drafted thus far...

Lanee Danforth

District Attorney

Lincoln County District Attorney's Office

Phone: (541) 265-0251

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