CAUSE NO. D-1-GN-11-003857

CHRISTINA GASTON	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
V.	§	250TH JUDICIAL DISTRICT
	§	
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT,	§	
	§	
DEFENDANT.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S RESPONSE TO DEFENDANT'S PLEA TO THE JURISDICTION, MOTION FOR SUMMARY JUDGMENT, AND MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT

Respectfully submitted,
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NOW COMES Plaintiff Christina Gaston and files Plaintiff's Response to Defendant's Plea to the Jurisdiction. The Department's Plea to the Jurisdiction and Motions for Summary Judgment and No-Evidence Summary Judgment should be denied. In support, Plaintiff respectfully shows the following:

I.
SUMMARY

Christina Gaston, Plaintiff, reported to the Honorable Steve Tittle that the Hunt County Corrections Department, Defendant, was taking probationers' payments and using them to purchase exercise equipment for the employee gym. When Jim McKenzie, Ms. Gaston's supervisor, learned of her report, he immediately threatened to fire the employee who told Judge Tittle. Two days later, he fired Ms. Gaston.

To establish a Texas Whistleblower Act claim, a plaintiff only has to show four elements: (1) that she made a good faith report (2) of a violation of law (3) to an appropriate law enforcement authority and (4) that report subjected her to adverse action. Here, the Department concedes the facts that establish Ms. Gaston reported a violation of law in good faith to an appropriate law enforcement authority. The Department's own evidence also shows that there is a genuine issue of material fact regarding whether Ms. Gaston was terminated because of that report.

The first element of a whistleblower claim is that the plaintiff must have made a report of conduct. Here, the Department concedes that Ms. Gaston reported to Judge Tittle on several occasions that the corrections department was using probationers' payments to purchase exercise equipment for the employee gym. Since a report under the whistleblower statute simply means any disclosure of information that tends to show a violation of law, Ms. Gaston's report to Judge Tittle qualifies as a report entitled to whistleblower protection.

The second element of a whistleblower claim is that the plaintiff made the report in good faith. Here, the Department concedes facts establishing that Ms. Gaston made her report in good faith. Under the Whistleblower Act, to make a report in good faith, an employee must reasonably believe that the conduct the employee reports violates a statute. Here, using probationers' payments to purchase exercise equipment for a private gym actually violates both the Texas Code of Criminal Procedure and the Texas Penal Code. Ms. Gaston looked up the specific statute that this conduct violated in the Code of Criminal Procedure.

Furthermore, Judge Tittle told Ms. Gaston that such conduct was illegal. Therefore, the Department's plea to the jurisdiction and motions for summary judgment should be denied on this element.

The third element of a whistleblower claim is that the report be made to an "appropriate law enforcement authority." Here, again, the Department concedes the facts that establish this element. Under the Whistleblower Act, an appropriate law enforcement authority must have the ability to regulate under and enforce civil statutes or investigate and prosecute criminal violations related to the law allegedly violated. In this case, Judge Steve Tittle, as a state district court judge, can do both. Judge Tittle regulates under and enforces the Texas Code of Criminal Procedure through his ability to set the terms and conditions of probation and then enforce those terms. Judge Tittle also has the authority to investigate and prosecute a violation of criminal law through the use of a Court of Inquiry under the Texas Code of Criminal Procedure. Therefore, the Department's plea to the jurisdiction and motions for summary judgment should be denied on this element.

The final element of a whistleblower claim is that the report caused the plaintiff to suffer an adverse action. Here, there is a genuine dispute of material fact as to whether Ms. Gaston was terminated because she spoke to Judge Tittle about the Department's misuse of probationers' payments to purchase exercise equipment for the employee gym. Here, Mr. McKenzie threatened to fire the employee that told Judge Tittle about the misuse of probationers' payments. Mr. McKenzie then made good on that threat two days later when he fired Ms. Gaston.

The Department has since given inconsistent reasons for Ms. Gaston's termination, which raise a genuine issue of fact on this element. Furthermore, Ms. Gaston was terminated less than ninety days after her report, which presumes causation. Thus, there is a genuine issue of material fact as to whether Ms. Gaston was terminated because of her report.

Because the evidence in this case conclusively establishes three of the elements of a whistleblower claim in Ms. Gaston's favor and shows a genuine issue of fact regarding the fourth element, the Department's plea to the jurisdiction and its motions for summary judgment should be denied.

II.
PLEA TO THE JURISDICTION AND SUMMARY JUDGMENT EVIDENCE

Plaintiff includes the following evidence in the appendix attached to and filed with this response. Citations to materials in the appendix generally state the name of the document and identify the relevant pages of the appendix. Citations to materials found in Defendant's appendix generally state "Def. Appx," followed by the name of the document, and the relevant pages.

1. Deposition of Christina Gaston (Gaston dep.).
2. Deposition of the Honorable Steve Tittle (Judge Tittle dep.).
3. Deposition of Jim McKenzie (McKenzie dep.).
4. Court Officer Job Description.
5. Hunt County Probation Officers' Code of Ethics
6. July 18, 2011 Chronological Entry by Christina Gaston.
7. October 3, 2011 email from Judge Tittle to Mr. McKenzie

8. October 4, 2011 letter from Mr. McKenzie to Judges.

9. Ms. Gaston's Termination Letter (Term. Letter).

10. Deposition of John Washburn (Washburn dep.)

11. October 6, 2011 email from Mr. McKenzie to Judges.

III.
FACTS

In early 2011, Ms. Gaston learned that the Hunt County Community Supervision and Corrections Department was taking probationers' money in lieu of performing community service hours and using those funds to purchase exercise equipment for the employee gym. This violates state law. Ms. Gaston reported this conduct multiple times to Judge Tittle. When her supervisor, Mr. McKenzie found out about the report, he sent a letter to all of the Hunt County judges stating that he would fire the employee who gave judge Tittle this information. Two days after he sent that letter, he fired Ms. Gaston. Based on these facts, the Department's plea to the jurisdiction and motions for summary judgment should be denied.

A. Ms. Gaston worked for the Department for thirteen years as a community supervision officer and court officer.

The Hunt County Community Supervision and Corrections Department oversees criminal offenders who are placed on probation by a judge. During her thirteen years with the Department, Ms. Gaston worked as both a probation officer and a court officer. (Gaston dep. at 3:18; 5:9-17). As a probation officer, also known as a community supervision officer, Ms. Gaston supervised offenders and monitored their conditions of probation. (Gaston dep. at 4:13-15). As a court officer, Ms.

Gaston's duties included conducting all intake and orientation for probationers, preparing and presenting Pre-sentence Investigation Reports, testifying during probation revocation hearings, walking through motions to revoke probation, and constructing legal documents. (Court Officer Job Description at 30-31). Both of these positions involved determining whether offenders were complying with the conditions of their probation. (Gaston dep. at 5:12-17).

B. Ms. Gaston knew the laws regarding community supervision as her employer expected her to.

As both a community supervision officer and a court officer, Ms. Gaston was expected to "seek every opportunity to become aware of any changes in the law and be apprised of the latest development in the field of supervision and corrections." (*See* Probation Officers' Code of Ethics at 35). This would include knowing that the standard conditions of probation are set down in Texas Code of Criminal Procedure § 42.12. (McKenzie dep. at 26). Ms. Gaston, as an officer of the Department, was expected to know that "[t]he judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time during the period of community supervision, alter or modify the conditions." Code Crim. Proc. § 42.12, sec. 11(a); (*See* Probation Officers' Code of Ethics at 35). In other words, Ms. Gaston knew that a judge "ordered the terms of probation for the defendants in his court." (Gaston dep. at 19: 19-20).

C. Shortly after Ms. Gaston learned that the Department had been using probationers' payments to purchase exercise equipment for a private gym, she reported it to Judge Tittle.

In early 2011, Ms. Gaston learned about a program within the Department in which "cash was being accepted for community service hours from offenders for the sheriff's office workout room." (Gaston dep. at 6:10-12; 7-8, 9). Ms. Gaston also discovered that exercise equipment was being accepted in lieu of community service hours. (Gaston dep. at 6:17). Ms. Gaston thought this program was illegal because "the sheriff's office wasn't a charitable organization, and the workout room was a private workout room [and] [i]t was for personal gain." (Gaston dep. at 12:8-11, 13).

In February 2011, Ms. Gaston told Judge Tittle "about the cash and exercise equipment being donated for the sheriff's office for their private workout room." (Gaston dep. at 10: 17-19). At that time, Ms. Gaston believed that this program was "unauthorized and illegal." (Judge Tittle dep. at 23:2-3).

D. Ms. Gaston reported this conduct at least two more times to Judge Tittle.

In spring 2011, Ms. Gaston again discussed with Judge Tittle, "the policy of the director of probation . . . accepting workout equipment donations and using funds that had been donated to purchase workout equipment." (Judge Tittle dep. at 24: 4-7). During that discussion "[Ms. Gaston] and Judge Tittle looked in the code and read that it was [illegal]." (Gaston dep. at 15: 7-8).

Ms. Gaston spoke to Judge Tittle at least one more time about this conduct in July 2011. The chronological entry for July 18, 2011 written by Ms. Gaston states "I told him the Judge ordered NO payment for CSR unless food pantry and such is

illegal." (July 18, 2011 Chronological Entry at 40). After court that day, Ms. Gaston and Judge Tittle again discussed the legality of the Department's program using probationers' payments to purchase exercise equipment. (Gaston dep. at 18:3). Therefore, Ms. Gaston reported the misuse of probationers' payments as late as July 18, 2011. In less than three months, Ms. Gaston would be terminated. (Term. Letter at 51).

E. Ms. Gaston reported this conduct to Judge Tittle because she knew he could do something about it.

The reason Ms. Gaston told Judge Tittle about this program was because he could "put a stop to it." (Gaston dep. at 13:8). Specifically, Ms. Gaston knew that Judge Tittle "set the terms of probation and could have stopped it, you know, or – did stop it because he ordered the terms of probation for the defendants in his court." (Gaston dep. at 19: 17-20). Judge Tittle could also "not accept the hours in his court [and] inform the probation department that it was illegal to do [so]." (Gaston dep. at 13: 11-12).

F. Mr. McKenzie threatened to fire whomever reported him to Judge Tittle and fired Ms. Gaston two days later.

On October 3, 2011, Judge Tittle emailed Jim McKenzie about Ms. Gaston's report of unlawful conduct. (October 3, 2011 email at 42). On October 4, 2011, Mr. McKenzie angrily replied to Judge Tittle in a letter to all four judges in Hunt County, stating "[i]f an employee of mine is responsible for making this false claim about me to Judge Tittle, that most certainly would warrant an immediate termination from the department." (October 4, 2011 letter at 44).

Mr. McKenzie knew who had made the report. In fact, he believed that Ms. Gaston had done the exact same thing in September 2011. (Def. Appx, Ex. A Affidavit of James McKenzie at ¶ 16 : "Gaston reported to Judge Tittle that I was not complying with his protocol.") Mr. McKenzie knew that Ms. Gaston was the only court officer assigned to Judge Tittle's court. (Term. Letter at 54: "his email directive that stated who would be allowed to serve in the 196th Court . . . ."; Gaston Dep. at 20:18-21). Mr. McKenzie knew that Judge Tittle got information about the probation department from Ms. Gaston. (Gaston dep. at 20: "Q. Well, did people know that Judge Tittle generally got information from you? A. Yes."). This was so well known that John Washburn, assistant director of the department, testified:

> Q. Well, how would the 196th get inaccurate information like that [about the exercise equipment program]?
> A. I don't know.
> Q. You don't know who could have told him?
> A. Christina Gaston's the only one I would know of, but I don't know.

(Washburn dep. at 61: 12-17).

On October 6, 2011, Ms. Gaston was terminated by Mr. McKenzie, eighty days after her July 18 report to Judge Tittle. (Term. Letter at 51).

IV.
STANDARD OF REVIEW

The standards for a plea to the jurisdiction, traditional motion for summary judgment, and a no-evidence summary judgment are similar. *See Texas Dep't of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004); *See Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997). In all three types of motions, the Court must take as true all evidence favorable to the

nonmovant. *Miranda*, 133 S.W.3d at 228; *Havner,* 953 S.W.2d at 711. The Court must also indulge in every reasonable inference favorable to the nonmovant and resolves all doubts in favor of the nonmovant. *Miranda*, 133 S.W.3d at 228; *Havner,* 953 S.W.2d at 711. Each motion must be denied if there exists a genuine issue of material fact. *Miranda*, 133 S.W.3d at 228; *Havner,* 953 S.W.2d at 711

In a no-evidence summary judgment, a Plaintiff need only present more than a scintilla of evidence to raise a genuine issue of material fact. *See Reynosa v. Huff*, 21 S.W.3d 510, 512 (Tex. App.—San Antonio 2000, no pet.). In a plea to the jurisdiction, the Court does not consider the merits of the plaintiff's case, but focuses instead on the pleadings and the evidence pertinent to the jurisdictional inquiry. *See County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex.2002). The Court should construe the pleadings liberally in favor of conferring jurisdiction. *See Tex. Dep't of Transp. v. Ramirez*, 74 S.W.3d 864, 867 (Tex.2002) (per curiam).

V.
ARGUMENTS AND AUTHORITIES

To establish a claim under the Texas Whistleblower Act, Ms. Gaston must show that she (1) made a report of conduct (2) which she reasonably believed to be a violation of law (3) to an appropriate law enforcement authority, (4) which caused her to suffer an adverse action. Tex. Gov. Code Ann. § 554.002; *Wichita County v. Hart*, 917 S.W.2d 779, 784 (Tex. 1996) (defining the meaning of good faith within the whistleblower statute).

The evidence produced in this case establishes the first three elements of her whistleblower claim. There is no genuine dispute that Ms. Gaston reported to

Judge Tittle that the corrections department used payments from probationers to purchase exercise equipment for the employee gym and that she reasonably believed this conduct to be a violation of law. The evidence produced in this case also shows that there is genuine issue of material fact as to whether Ms. Gaston was terminated because she made that report.

I. The Department does not dispute that Ms. Gaston told Judge Tittle that Mr. McKenzie was allowing the corrections department to use payments from probationers to purchase exercise equipment for the employee gym.

The first element that a whistleblower Plaintiff must show is that she made a report of conduct. *See* Tex. Gov. Code Ann. § 554.002. The Department does not dispute that Ms. Gaston told Judge Tittle that Mr. McKenzie and the Department were using probationers' payments to purchase exercise equipment for the employee gym. (Def. Plea to the Juris. at 14). Therefore, the issue is whether Ms. Gaston's discussion with Judge Tittle qualifies as a report. Under applicable case law, it is clear that her discussion does qualify as a report.

A. Under the Whistleblower Act, a report is any disclosure of information that might show a violation of law.

The Third Court of Appeals defines "report" as "any disclosure of information regarding a public servant's employer tending to directly or circumstantially prove the substances of a violation of criminal or civil law, . . . statutes, administrative rules or regulations." *Tex. Dep't of Assistive & Rehab. Servs. v. Howard*, 182 S.W.3d 393, 401 (Tex. App.—Austin, 2005, pet. denied). The Third Court holds that a report of conduct can be an inquiry into a practice's legality, that an employee does

not need to specify the law violated, and that a report does not have to be an affirmative statement of a violation. *Id.* at 400; *Tex. Dep't of Criminal Justice v. McElyea*, 239 S.W.3d 842, 850, 854 (Tex. App.—Austin 2007, pet. denied).

In *Howard*, the Third Court of Appeals held that an employee's phone call "seeking opinions regarding the legality/validity of the Department's practices" qualified as a report because:

> Neither the Act itself nor the definition of report . . . require the use of specific phrasing in a whistleblower report, nor do they require that a whistleblowing employee state his complaint in the affirmative, as opposed to reporting matters in the form of a query.

Howard, 182 S.W.2d at 400 (internal quotations and citations removed). The Third Court of Appeals later explained, "[t]here is no requirement that an employee identify a specific law when making a report" or provide "hard evidence to conclusively prove each and every element of a violation of the statute." *McElyea*, 239 S.W.3d at 850, 854. The Third Court reaffirmed this definition of a report in 2012, adding "[n]or does the employee have to affirmatively state that the conduct is in fact a violation of the law." *Resendez v. Tex. Comm. on Environ. Quality*, 2012 WL 6761529 at *9 (Tex. App.—Austin Dec. 28, 2012, no pet h.).

B. It is undisputed that Ms. Gaston reported the Department's misuse of probationers' monetary and equipment donations to Judge Tittle.

In this case, Ms. Gaston's report is similar to the one in *Howard*. According to Ms. Gaston's uncontroverted deposition testimony Ms. Gaston told Judge Tittle "about the cash and exercise equipment being donated for the sheriff's office for their private workout room" in February 2011. (Gaston dep. at 10: 17-19). She told

Judge Tittle about this conduct "[b]ecause it wasn't right." (Gaston dep. at 11:24). Ms. Gaston next spoke to Judge Tittle about the legality of this conduct in Spring 2011, "when myself and Judge Tittle looked in the code and read that it was [illegal]." (Gaston dep. at 15: 7-8). The third time Ms. Gaston reported this conduct to Judge Tittle was on July 18, 2011. (*See* Facts, subsection D, *supra*; Gaston dep. at 16-17; July 18, 2011 Chronological entry at 40).

In his deposition, the Honorable Steve Tittle confirms that in 2011 Ms. Gaston discussed with him several times:

> the policy of the director of probation [Mr. McKenzie] which included accepting workout equipment donations and using funds that had been donated to purchase workout equipment. And that he had actually donated the workout equipment, first to the sheriff's office and then subsequently removing it from there and donating it to the YMCA.

(Judge Tittle Dep at 24: 4-10).

Defendant does not dispute that Ms. Gaston had these discussions and reported this conduct to Judge Tittle. Under *Howard, McElyea*, and *Resendez*, Ms. Gaston's three discussions with Judge Tittle, which sought opinions on the legality and validity of Defendant's practices, qualify as reports entitled to whistleblower protection. *See Howard*, 182 S.W.2d at 400-401; *McElyea*, 239 S.W.3d at 854; *Resendez*, 2012 WL 6761529 at *9.

C. The Department's argument that McKenzie never engaged in these acts is not only contrary to its own evidence, but also irrelevant to a whistleblower claim.

First, the Department's argument that "McKenzie never engaged in these acts" is contradicted by its own evidence. Exhibit E attached to the Department's

Plea contains an email Mr. McKenzie sent to some employees in the probation department in February 2011. (See Def. Appx at Ex. E). The second sentence of that email clearly shows that Mr. McKenzie knew of and approved of the program, stating, "Derrick did get with me initially about this project and I said ok." (Def. Appx at Ex. E). Exhibit F provided by the Department takes up the story from there, stating that Mr. McKenzie knew the program actually went into effect: "There was an instance where funds and workout equipment had been collected by officers and those funds were going to be used to purchase workout equipment for the jail." (Def. Appx Exhibit F at HCCSCD 2931). Therefore, by the Department's own evidence, these acts were engaged in by the Department and Mr. McKenzie.

Second, the case law is clear that a "an employee need not establish an actual violation of law." *McElyea*, 239 S.W.3d 850. Thus, even if Mr. McKenzie's program had not violated the law, Ms. Gaston would be entitled to whistleblower protection. In *McElyea*, the Third Court of Appeals stated this explicitly: "when an employee believes and reports in good faith that a violation has occurred, but is wrong about the legal effect of the facts, he is nevertheless protected by the whistleblower statute." *Id.* Under applicable case law, Ms. Gaston's discussion with Judge Tittle about the Department's program using probationers' payments to purchase exercise equipment is a report under the whistleblower act, even if no violation occurred. *See Id.*

Thus, Plaintiff has established the first element of her whistleblower claim and the Department's Plea to the Jurisdiction and motion for summary judgment cannot be granted on this element.

II. The Department concedes that the conduct Ms. Gaston reported violated the law and does not dispute that Ms. Gaston looked up the relevant law, was familiar with it, and Judge Tittle told her the conduct was illegal.

The next element of a whistleblower claim is that the report must be made in good faith. Tex. Gov. Code Ann. § 554.002. For the report to be in good faith, "there must be some law prohibiting the complained-of conduct." *McElyea*, 239 S.W.3d at 850. Furthermore, "good faith" requires that "(1) the employee believed that the conduct reported was a violation of law and (2) the employee's belief was reasonable in light of the employee's training and experience." *Hart*, 917 S.W.2d at 786. Here, there is no dispute that the use of probationers' payments to purchase exercise equipment for the employee gym violates Code of Criminal Procedure § 42.12 and Texas Penal Code § 39.02. At the same time, the Department does not contest the facts that establish Ms. Gaston's reports meet both elements of good faith.

A. Accepting cash for community service hours to purchase exercise equipment for the employee gym is a violation of the Texas Code of Criminal Procedure and the Texas Penal Code.

The conduct Ms. Gaston reported to Judge Tittle is a violation of the Texas Code of Criminal Procedure and the Texas Penal Code, which are laws under the Texas Whistleblower Act. *See* Tex. Gov. Code Ann. § 554.001(1) ("Law means . . . a state or federal statute.").

Ms. Gaston reported to Judge Tittle that "cash was being accepted for community service hours from offenders for the sheriff's office workout room. . . . [a]nd exercise equipment." (Gaston dep. at 6:10-12, 17). She also specifically reported that it was the policy of the director of the probation department to accept such donations. (Judge Tittle dep. at 24).

This conduct gives rise to a violation of the Texas Code of Criminal Procedure § 42.12, sec. 16(f). Section 16(f) of § 42.12 states:

> [I]n lieu of requiring a defendant to work a specified number of hours at a community service project or projects under Subsection (a), the judge may order the defendant to make a specified donation to a nonprofit **food bank or food pantry** in the community in which the defendant resides.

Code Crim. Proc. § 42.12, sec 16(f) (emphasis added). Obviously, if the Department were accepting cash donations in lieu of community service hours for the employee workout room, section 42.12 would be violated because that money would not be going to a food bank or food pantry, as the statute requires.

The Department does not dispute that conduct would violate Code of Criminal Procedure § 42.12, sec. 16(f). The Department's own plea refers to section 42.12 as "the 'law' in question." (Def. Plea at 15).

Moreover, the reported conduct would also violate Judge Tittle's orders setting the terms of community supervision for probationers appearing in his court. *See* Code Crim. Proc. § 42.12, sec. 16(f) (only allowing the judgeto order donations in lieu of performing community service hours). Judicial orders are considered laws for the purposes of whistleblower protection. *Scott v. Godwin*, 147 S.W.3d 609, 621

(Tex. App.—Corpus Christi-Edinburg 2004, no pet.) ("[W]e conclude that the *Ruiz* Final Judgment is a law within the meaning of the Whistleblower Act.").

The conduct reported by Ms. Gaston also gives rise to a violation of Texas Penal Code § 39.02, which states:

> A public servant commits an offense if, with intent to obtain a benefit . . . he intentionally or knowingly . . . misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

Tex. Penal Code § 39.02(a),(a)(2). If the director of the corrections department was accepting cash donations in lieu of community service hours and using those funds to purchase exercise equipment for the employee gym, then the director would be misusing government services and other things of value for a benefit under Penal Code § 39.02.

Because Defendant does not dispute that the conduct reported by Ms. Gaston and that conduct states violations of the Texas Code of Criminal Procedure, Judge Tittle's probation orders, and the Texas Penal Code, the Department's Plea to the Jurisdiction cannot be granted on this element.

B. Ms. Gaston reported the Department's misuse of probationers' monetary donation in good faith.

"Good faith" requires that "(1) the employee believed that the conduct reported was a violation of law and (2) the employee's belief was reasonable in light of the employee's training and experience." *Hart*, 917 S.W.2d at 786.

1. Ms. Gaston believed that using probationers' money to purchase exercise equipment for the employee gym was a violation of law.

The Third Court of Appeals has held that the first element of "good faith," the "honesty in fact" element, merely requires that at the time the report was made, the employee "believed that [s]he was reporting an actual violation of law." *McElyea*, 239 S.W.3d at 850.

The Third Court has repeatedly held that this element is satisfied by the plaintiff's own testimony. *See McElyea*, 239 S.W.3d at 850-52; *Howard* 182 S.W.3d at 401. In fact, in *Howard*, the Third Court of Appeals suggested that it may be determinative of this element when an employee points to an actual law the employee believes was violated. *See Howard*, 182 S.W.3d at 401 ("Our sister court in San Antonio has found this persuasive, if not necessary, stating 'the fact that the whistleblower has pointed out an actual law that he believes his co-worker violated is relevant to our inquiry here.'") (citing *Bexar County v. Lopez*, 94 S.W.3d 711, 713 (Tex. App.—San Antonio 2002, no pet.)).

In this case, not only did Ms. Gaston testify that she believed the conduct violated the law, and point to that law specifically, but Judge Tittle has corroborated her testimony.

In Ms. Gaston's deposition, she repeatedly stated that she believed she was reporting a violation of law. (See Gaston dep. at 11-12; 14:5-6 "Q: Okay. And what was the problem with that? A: It wasn't legal.").

Ms. Gaston also pointed to a particular law that she believed had been violated. During one of her discussions with Judge Tittle about this conduct, "[Ms. Gaston] and Judge Tittle looked in the code [of criminal procedure] and read that it was [illegal]." (Gaston dep. at 15:7-8). Because Ms. Gaston looked it up in the code and found that the code did not permit it, she believed that the conduct violated the law. *See Howard*, 182 S.W.3d at 401.

While this evidence alone is sufficient under *Howard* to establish the first element of the good faith requirement, in this case, Ms. Gaston's testimony has been corroborated by Judge Tittle. Judge Tittle stated in his deposition that when Ms. Gaston first discussed the misuse of probationers' payments, she believed that "it was unauthorized and illegal." (Judge Tittle dep. at 23:2-3).

The Defendant does not challenge or contradict any of these facts in its plea or motion. Therefore, the Department's Plea to the Jurisdiction cannot be granted on the first element of good faith.

2. It is reasonable for a probation officer to believe that using probationers' payments to purchase exercise equipment for the employee gym would be a violation of law.

The second element of "good faith" merely asks "if a reasonably prudent employee in similar circumstances would have believed that the facts as reported constituted a violation of law." *McElyea*, 239 S.W.3d at 850. In *McElyea*, this element was met by showing the plaintiff had pointed to a specific law that he believed was violated and that the plaintiff had experience applying the law at issue. *Id.* at 853, 855.

Here, Ms. Gaston's belief was even more reasonable than in *McElyea*. In this case, it is undisputed that (1) Ms. Gaston looked up the particular code provision that she believed was violated, (2) that she had experience applying it, and (3) Judge Tittle told her that such conduct was illegal.

It is undisputed that Ms. Gaston looked up the particular statute that she believed was violated in the Code of Criminal Procedure. (*See* Facts, section D; Argument, section II.B(a)). Therefore, it is objectively reasonable for Ms. Gaston to believe that a violation of law had occurred. *See McElyea*, 239 S.W.3d at 853 ("It is also relevant that [plaintiff] pointed to a specific law that he believed [defendant] violated.").

Ms. Gaston also had experience with the law she believed was violated. As an employee of the Hunt County Community Supervision and Corrections Department since 1998, Ms. Gaston had extensive experience supervising offenders on probation and monitoring compliance with their conditions of probation. (Gaston dep. at 3:18, 4:13-15). As a case officer, Ms. Gaston "performed duties, tasks and responsibilities that are directly related to probation" and was expected to know the applicable laws (See Court Officer Job Descrip. at 29, 30-31; Probation Officer Code of Ethics at 35; Facts, section C). As such, Ms. Gaston was well aware of Texas Code of Criminal Procedure § 42.12, which governs community supervision matters. Under *McElyea*, it is objectively reasonable for her to be aware of violations of those laws. *See McElyea*, 239 S.W.3d at 855 ("[Plaintiff's] belief that a law had been

violated is objectively reasonable because he had experience applying the statute at issue . . . .").

Finally, Ms. Gaston's belief was reasonable because Judge Tittle told her that the conduct was illegal. In the chronological entry written by Ms. Gaston for Judge Tittle's court on July 18, 2011, it states, "the Judge told him he will not get CSR credit for buying hours as not legal . . . I told him the Judge ordered NO payment for CSR unless food pantry and such is illegal." (July 18, 2011 Chronological entry at 40). Thus, it is objectively reasonable for Ms. Gaston to believe that using probationers' payments to purchase gym equipment is a violation of the law.

Because Ms. Gaston has established both prongs of "good faith," the Department's plea and motion for summary judgment cannot be granted on the element of good faith.

C. The Department ignores facts and applies the wrong standard of good faith.

Instead of disputing the facts above, the Department argues that "any report Gaston made could not have been in good faith because . . . such acts were simply not occurring in the first place." This argument is factually incorrect.

As discussed above in Argument, section I.C, the Department's own exhibits show these activities were engaged in by the Department. (*See* Section I.C, *supra*; Def. Appx, Exhibits E-F).[1] Since the Department does not dispute the facts that

[1] The Department's argument is also legally incorrect. The Department argues, "Gaston had no legitimate basis to believe" a violation of law was occurring because a violation of law was not occurring. *See* Def. Plea at 14-15. As discussed at length above, that is not the correct standard. *See Hart*, 917 S.W.2d at 786. Even if what

establish these elements, the Department's plea and motions for summary judgment cannot be granted on the whistleblower element of good faith.

III. The Department concedes that Judge Tittle is an appropriate law enforcement authority because he can regulate and enforce the terms of probation. Judge Tittle is also appropriate because he can initiate Courts of Inquiry to investigate and prosecute violations of criminal law.

The next element a whistleblower plaintiff must prove is that she made the report to "an appropriate law enforcement authority." Tex. Gov. Code Ann. § 554.002. "An appropriate law enforcement authority" is "a state or local governmental entity . . . that the employee in good faith believes is authorized to: (1) regulate under or enforce the law alleged to be violated in the report; or (2) investigate or prosecute a violation of criminal law." *Id.* at 554.002(b).

In *Needham*, the Texas Supreme Court held that the "particular law the public employee alleged violated is critical to the determination" of whether the law enforcement authority was appropriate. *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 320 (Tex. 2002). Here, the alleged violation involved the community supervision laws in the Code of Criminal Procedure and the abuse of office laws in the Texas Penal Code. Thus, the inquiry is whether or not the state judiciary can regulate or enforce community supervision laws or investigate violations of criminal law.

Ms. Gaston told Judge Tittle were not a violation of law, she would still be protected because "an employee need not establish an actual violation of law." *McElyea*, 239 S.W.3d 850.

Here, the Department concedes that the state judiciary can regulate and enforce the terms of community supervision under the Code of Criminal Procedure. Furthermore, the state judiciary can investigate and prosecute violations of criminal law under the Texas Code of Criminal Procedure.

A. The Department concedes that under the Texas Code of Criminal Procedure, district judges can regulate and enforce the terms of probation.

The Department agrees that community supervision is regulated by § 42.12 of the Code of Criminal Procedure. (See Def. Plea at 15). Under subsection 10 of § 42.12, the Legislature gives exclusive authority to regulate and enforce community supervision to "the court in which the defendant was tried." Code Crim Proc. § 42.12, sec. 10(a). The statute explicitly states:

> Only the court in which the defendant was tried may grant community supervision, impose conditions, revoke the community supervision, or discharge the defendant . . . only the judge may alter conditions of community supervision.

Code Crim Proc. § 42.12, sec. 10(a). The code goes on to state that "any judge . . . where the defendant is residing or where a violation of the conditions of community supervision occurs may issue a warrant for his arrest." Code Crim. Proc. § 42.12, sec. 10(c); see also § 42.12, sec. 11(a).

Judge Tittle clearly has the authority to regulate under and enforce the law that Ms. Gaston reported to him because, as a member of the state judiciary, he can set the terms of community supervision and then enforce compliance with them. *See* Code Crim Proc. § 42.12. Indeed, that is the precise reason Ms. Gaston reported the violations to Judge Tittle. (*See* Gaston dep. at 13: 10-12 "Q: Okay. How could

he put a stop to it? A: Not accept the hours in his court, inform the probation department that it was illegal to do."; *Id.* at 19: 16-20 "Q: And what could he have done? A: He set the terms of probation and could have stopped it, you know or – and did stop it because he ordered the terms of probation for the defendants in his court.").

The Department does not dispute that Judge Tittle is a district court judge and that the Code of Criminal Procedure gives such judges the authority to regulate under and enforce the laws that were allegedly violated. Therefore, the Department's plea and motion for summary judgment cannot be granted on this element.

B. Under the Texas Code of Criminal Procedure, district court judges can investigate and prosecute violations of criminal law.

The conduct that Ms. Gaston reported to Judge Tittle also implicated the abuse of office offenses found in Title 8 of the Texas Penal Code. (*See* Argument, section II.A, supra). Again, Judge Tittle, as a state district court judge, is an appropriate law enforcement authority under the Code of Criminal Procedure. Chapter 52 of the Code of Criminal Procedure states:

> When a judge of any district court of this state, acting as a magistrate, has probable cause to believe that an offense has been committed against the laws of this state, he may request that the presiding judge of the administrative judicial district appoint a district judge to commence a Court of Inquiry.

Code Crim. Proc. § 52.01(a). The code goes on to explain that a Court of Inquiry "may summon and examine any witness in relation to the offense." *Id.*

Not only does chapter 52 give a district judge the power to investigate criminal offenses, but also the power to prosecute them. Section 52.08 explains, "[i]f it appear from a Court of Inquiry or any testimony adduced therein, that an offense has been committed, the Judge shall issue a warrant for the arrest of the offender as if complaint had been made and filed." Code Crim. Proc. § 52.08 "Criminal Prosecutions."

District court judges, therefore, have the authority to investigate and prosecute violations of criminal law. Since there is no dispute that Judge Tittle is a district court judge, the Department's Plea and summary judgment cannot be granted on this element.

C. The Department's reliance on City of Elsa is misplaced because the Code of Criminal Procedure explicitly delegates the power to determine, impose and enforce the conditions of probation to district court judges.

The Department argues that Judge Tittle is not an appropriate law enforcement authority because his power does not extend beyond the ability to comply with the law by acting or refusing to act. The Department cites *City of Elsa v. Gonzalez*, 325 S.W.3d 622 (Tex. 2010), for this proposition. *See* Def. Plea at 15. However, *City of Elsa* is inapplicable to the facts of this case.

In *City of the Elsa*, the Supreme Court of Texas held that the ability of a city council to "postpone or recommend postponement of [a] meeting until such date that would comply with the seventy-two hour notice requirement" did not equate to regulation, enforcement, investigation or prosecution of law. *City of Elsa*, 325 S.W.3d at 628. The Supreme Court held that merely complying with the law is

insufficient. *Id.* This situation does not apply to the present case because the Code of Criminal Procedure clearly allows district judges to regulate and enforce the terms of probation.

In fact, the Code of Criminal Procedure explicitly grants to district court judges the power to determine, impose, and enforce the conditions of probation. As shown above, the Code of Criminal Procedure § 42.12 places "wholly within the state courts the responsibility for determining . . . the conditions of community supervision, and the supervision of defendants placed on community supervision." Code Crim. Proc. § 42.12, sec. 1, Purpose. Furthermore, a district court judge may "at any time during the period of community supervision, alter or modify the conditions [and] impose any reasonable condition." Code Crim. Proc. § 42.12, sec. 11(a). Because a judge can set and enforce the terms under the Code of Criminal Procedure a district judge's authority extends beyond merely complying with the law. Therefore, the Department's argument that the "mandate of *City of Elsa*" means that Judge Tittle is not an appropriate law enforcement authority is without merit and cannot support their plea to the jurisdiction or motions for summary judgment.

IV. There is a genuine issue of material fact concerning whether Ms. Gaston was terminated because she reported a violation of law to Judge Tittle.

The final element of a whistleblower claim is that the Department terminated Ms. Gaston because of her report. *See McElyea*, 239 S.W.3d at 849.

This element means that an adverse action "would not have occurred when it did if the employee had not reported the illegal conduct." *Id.*

This element can be satisfied by, among other things, evidence showing "knowledge of the report of illegal conduct . . . expression of a negative attitude toward the employee's report of illegal conduct . . . [and] evidence that the stated reason for the adverse employment action was false." *Id.* at 856. There is evidence of each of these three factors. Furthermore, Ms. Gaston is entitled to a presumption of causation because she was terminated eighty days after her last report. Tex. Gov. Code Ann. § 554.004(a).

A. Mr. McKenzie knew of Ms. Gaston's report of illegal conduct and expressed a negative attitude toward the report.

Mr. McKenzie knew of Ms. Gaston's report because on October 4, 2011 he threatened to fire the person who had made it. (October 4, 2011 letter at 44). In the letter that Mr. McKenzie sent to all four judges in Hunt County, he did not mince words when he stated, "[i]f an employee of mine is responsible for making this false claim about me to Judge Tittle, that most certainly would warrant an immediate termination from the department." (October 4, 2011 letter at 44; Def. Appx at P). Two days later, Mr. McKenzie made good on that threat when he terminated Ms. Gaston. It is hard to imagine a more negative attitude being expressed about a report of a violation of law than threatening to fire the person who made it. *See McElyea*, 239 S.W.3d at 857 (holding sufficient evidence of a negative attitude and causation existed where evidence showed "as far as [Defendant] was concerned, trouble loomed ahead for [Plaintiff].").

The Department cannot dispute that Mr. McKenzie knew that Ms. Gaston was the only court officer assigned to Judge Tittle's court. (Term. Letter at 54: "his email directive that stated who would be allowed to serve in the 196th Court . . . ."; Gaston Dep. at 20:18-21). Mr. McKenzie knew that Judge Tittle got information about the probation department from Ms. Gaston. (Gaston dep. at 20) In fact, the Department's own witness, John Washburn, could think of no other person from whom Judge Tittle would receive such information. (Washburn dep. at 61: 12-17 "Christina Gaston's the only one I would know of, but I don't know.").

Finally, the Department cannot dispute that Mr. McKenzie believed that Ms. Gaston had done the exact same thing earlier that year. (Def. Appx, Ex. A Affidavit of James McKenzie at ¶ 16 : "Gaston reported to Judge Tittle that I was not complying with his protocol."). Taking this evidence in the light most favorable to Ms. Gaston, a reasonable jury could find that Mr. McKenzie knew of her report of unlawful conduct and terminated her for it. Therefore there is a genuine issue of material fact on this element, which precludes granting the Department's Plea or motion for summary judgment.

B. *The Department has given inconsistent reasons for Ms. Gaston's termination, which creates a fact issue.*

The Department has given inconsistent reasons for her termination. Inconsistent reasons for an adverse employment action are evidence of pretext. *Burrell v. Dr. Pepper/Seven Up Bottling Group*, 482 F.3d 408, 415 (5th Cir. 2007) ("This unexplained inconsistency was further evidence from which a jury could infer that [Defendant's] proffered rationale is pretextual."). In *Burrell*, a Title VII pretext

case, the Fifth Circuit found sufficient evidence that the proffered reason for an adverse action was prextual where the Defendant had given different reasons for not promoting an employee. *Id.* Specifically, the employer had stated at different times that the plaintiff was not promoted due to a lack of "purchasing experience," "purchasing experience in the bottling industry," and "bottling experience." *Id.* The court held that these reasons were sufficiently inconsistent to allow a jury to find pretext. *Id.*

Here, the Department has given at least two inconsistent reasons for her termination. During her termination meeting, Ms. Gaston was told that she was being terminated "[b]ecause [Ms. Gaston] had told Judge Tittle that there was a complaint." (Def. Appx Ex. B Gaston Dep. at 120:5-6). However, Mr. McKenzie gave a different reason for Ms. Gaston's termination to the Hunt County Judges. In an October 6, 2011 letter, Mr. McKenzie states, "due to the nature of the allegations as substantiated by the testimony provided for each allegation . . . I have terminated Christina Gaston's employment with the HCCSCD." (*See* October 6, 2011 letter to Judges at 63) Mr. McKenzie goes on to explain that the allegations concerned "allegedly making comments to [Mr. McKenzie] and other HCCSCD employees." (*Id.*). These reasons are diametrically opposed. The reason told to Ms. Gaston has to do with making comments to Judge Tittle, but the reason given to the judges was because she was making comments to Mr. McKenzie. Under Burrell,

these inconsistent reasons raise a genuine issue of material fact. *See Burrell*, 482 F.3d at 415.[2]

Because the Department has given inconsistent reasons for Ms. Gaston's termination, a fact issue exists as to whether or not that reason is false. Therefore, the Department's Plea cannot be granted on this issue.

C. Causation is presumed because Ms. Gaston was terminated within ninety days of her last report.

Under the Texas Whistleblower Act if the termination "occurs not later than the 90th day after the date on which the employee reports a violation of law, the . . . termination . . . is presumed, subject to rebuttal, to be because the employee made the report." Tex. Gov. Code Ann. § 554.004(a). Here, it is undisputed that Ms. Gaston made a report of unlawful conduct to Judge Tittle on July 18, 2011. (Gaston dep. at 18:3). It is also undisputed that she was terminated eighty days later on October 6, 2011. (Term letter at 51).

The Department does not rebut this presumption in its Plea or motions for summary judgment. The Department's only argument concerning causation is that because Ms. Gaston and Judge Tittle agree "they never told McKenzie of their communication, Gaston cannot . . . prove that her termination was motivated by her

[2] In fact, under the low standard in *Burrell*, the Department has given at least four different reasons for her termination. The third inconsistent reason is found in her termination letter, which states, "The main basis for your termination is due to you being deceitful when asked the question as to whether or not you have or have ever implied that you can influence Judge Tittle." (Term. letter at 54). The fourth inconsistent reason was from Mr. Washburn, who said Ms. Gaston was terminated for "her ego." (Washburn dep. at 60: 15-16 "If she said that I said it was her ego, then I won't deny it.").

alleged conversations with Judge Tittle." (Def. Plea at 16). This argument does not rebut the presumption because it does not address causation and whether or not Ms. Gaston was terminated because of her report. Regardless of how Mr. McKenzie find out that Ms. Gaston made the report to Judge Tittle, Mr. McKenzie could still have terminated her because of it. Indeed, the fact that Mr. McKenzie terminated Ms. Gaston three days after Judge Tittle addressed Ms. Gaston's reports with him supports her decision to not tell him.

Because the Department has not rebutted the presumption of causation Ms. Gaston is entitled to, the Department's Plea cannot be granted on this element.

VI.
CONCLUSION

Because the Plaintiff has established the first three elements of a whistleblower claim and shown a fact issue regarding the fourth element, Defendant's Plea to the Jurisdiction and motions for summary judgment should not be granted. Therefore, Plaintiff respectfully asks this Court to deny Defendant's Plea to the Jurisdiction and motions for summary judgment, and for such other and further relief to which Plaintiff is entitled.

Respectfully submitted,
ROB WILEY, P.C.

By: _/s/ Colin Walsh____
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CERTIFICATE OF SERVICE

I certify that on January 30, 2013 I sent a true and correct copy of the foregoing to counsel for Defendant, Eric Vinson, PO Box 12548, Austin, TX 78711 via email.

___/s/ Colin Walsh_____
Colin Walsh

Appendix

APPENDIX
Christina Gaston v. Hunt County Community Supervision & Corrections Department
D-1-GN-11-003857

TABLE OF CONTENTS

Exhibit
1

CAUSE NO. D-1-GN-11-003857

CHRISTINA GASTON Plaintiff	)	IN THE DISTRICT COURT
VS.	)	250TH JUDICIAL DISTRICT
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT Defendant	)	TRAVIS COUNTY, TEXAS

ORAL AND VIDEOTAPED DEPOSITION OF

CHRISTINA GASTON

JUNE 28, 2012

VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF CHRISTINA GASTON, produced as a witness at the instance of the DEFENDANT, and duly sworn, was taken in the above-styled and numbered cause on June 28, 2012, from 8:58 a.m. to 1:44 p.m., reported by machine shorthand, before Tobi Moreland, CSR in and for the State of Texas, at the offices of Pemberton Green Newcomb & Weis, 2507 Washington Street, Greenville, Texas, pursuant to the Texas Rules of Civil Procedure and any provisions stated on the record.

courses?

A. Maybe a year.

Q. Okay. After that year, what did you do?

A. Well, I took about a year off because I got sick, and then shortly after I finished treatments for cancer, I started at Hunt County.

Q. So you took about a year off, you said?

A. Approximately, yeah.

Q. And during that year, you were receiving treatment for cancer?

A. Yes.

Q. Hopefully that cured you?

A. I hope so.

Q. Excellent. Now, after that you said that you had started at Hunt County?

A. Yes.

Q. Okay. What year was that?

A. 1998.

Q. So was -- was starting at Hunt County, that was essentially your first job?

A. My first real job. I mean, I had a few in between, a few like Wal-Mart, but that's it.

Q. Okay. Where else other than Wal-Mart?

A. Kroger, a restaurant in Mount Pleasant, long time ago, but I don't remember the name of it. It was a

short time.

Q. And were any of those jobs full time?

A. No.

Q. So then the Hunt County would be your first real job working full time; is that correct?

A. Yes, yes.

Q. Okay. When you started at Hunt County, this is the CSCD that we're talking about, correct?

A. Yes.

Q. Okay. What position did you start at?

A. Community supervision officer.

Q. Now, tell me about that. What is that position?

A. Basically probation officer, supervise offenders placed on probation through the courts, monitor their conditions of probation.

Q. Did you have to have a license?

A. I had to get certified.

Q. And is that something that you were able to do on the job?

A. Yes. Well, I had to go to training. I take that back. I had to go to a course.

Q. Okay. Now, where are you currently employed?

A. Smith County CSCD.

Q. And are you -- well, let me back up. What position do you hold at Smith County CSCD?

Q. Okay.

A. Sort of.

Q. What do you mean by sort of?

A. As a friend, you know, yes. But I wasn't a voter here, so, you know, I didn't do any work or anything for him.

Q. Okay. Did you contribute at all financially?

A. No, no.

Q. All right. As a -- well, tell me this: What's the difference between being a court officer and a probation officer?

A. As a probation officer, I supervised a caseload of people put on probation; and as the court officer, I handled all the court work, whether they were orders or testifying or whatever came up with people on probation. I also did pre-sentence investigations, but I did that as a probation officer as well.

Q. Okay. So when you testified as a court officer, you were testifying on cases that were being supervised or handled -- not supervised, but handled by probation -- by probation officers?

A. Yes.

Q. Okay. So they weren't, in essence, your case?

A. Correct.

Q. Okay. And were you responsible for making

whistle on illegal conduct?

A. Yes.

Q. Is that what you understand?

A. Yes.

Q. Okay. Do you believe it to be in any way different than that?

A. No.

Q. Okay. What is the illegal conduct that you believe was occurring at Hunt County CSCD?

A. That cash was being accepted for community service hours from offenders for the sheriff's office workout room.

Q. Okay. Let me just make sure that I understand that. The illegal conduct that you're claiming was that cash was being accepted in lieu of community service hours?

A. And exercise equipment.

Q. Okay. So not that -- not simply that cash was being accepted -- there's two different things: Cash was being accepted in lieu of community service hours, and that equipment was being accepted in lieu of community service hours, correct?

A. Yes.

Q. Okay. All right. When did you first learn that cash was being accepted in lieu of community service

that cash was being allowed to be paid in lieu of actually working for CS -- community service hours, correct?

A. In this case, and this is different than what I've alleged in the lawsuit.

Q. Okay. That was going to be my next question. How is it different?

A. According to the code, you can -- the judge can in particular cases convert community service to fees.

Q. Okay. And how is that different from your allegation in this case?

A. Because it's a case-by-case basis.

Q. Well, what did you believe was occurring at the Hunt County CSCD?

A. Offenders would just -- offenders without approval from the Court would bring sports equipment and cash for a workout room. My understanding of the sheriff's office, it's not necessarily a charitable organization.

Q. Okay. Who did you confirm this with at Hunt County CSCD?

A. Confirm what?

Q. That this was happening.

A. It was -- everybody -- you know, there were signs on the door. It was, you know, publicized that offenders could do this. Officers told offenders that

this was an alternative.

Q. Okay. Well, how did you learn about that?

A. Because I went to the office every day and officers told me and I saw a sign posted on somebody's door.

Q. And so probation officers told you about it?

A. Correct.

Q. Okay. Who were those probation officers?

A. David Wooldridge was one, and I don't -- I don't recall who else.

Q. Okay. Did David Wooldridge ever tell you that he was supporting this or that he had helped get this started?

A. I believe he told me that he and another officer discussed it.

Q. Who was that other officer?

A. Derrick Bercher.

Q. Okay. Now, did you ask David how long this had been going on?

A. No.

Q. So once you learned about it, what did you do?

A. At the time I learned about it, I didn't do anything at that time when I first learned about it.

Q. Why not?

A. It didn't catch my attention at first.

A. Again, because I feel I would have been in trouble.

Q. Okay. What had happened prior to that that would lead you to believe that you would have been in trouble?

A. Nothing specifically.

Q. Did you go and have a conversation with Derrick Bercher at the time?

A. No, I did not.

Q. Did you have a conversation -- well, you stated that you had a conversation with David Wooldridge, right?

A. Yes.

Q. Okay. What did Mr. Wooldridge say about why Mr. McKenzie was angry?

A. He didn't know specifically why. He just said that he was angry and ripped the sign off the door and, as far as I remember, cursed. But that I'm not 100 percent for sure.

Q. Okay. So then what did you do?

A. Shortly after that, I went and talked to Judge Tittle and told him what was going on.

Q. So this would have been February of 2011?

A. Yes.

Q. Okay. Why did you go to Judge Tittle?

A. Why? Because I knew I would not get in trouble

with him.

Q. Because he liked you, you were friends?

A. Yes.

Q. Okay. Now, you knew that this thing was being stopped, correct?

A. Yes.

Q. Okay. So what was there to report to Judge Tittle?

A. Because it had been going on.

Q. Okay. But you hadn't reported that to him before that, correct?

A. Correct.

Q. And I believe you testified you didn't know how long this had been going on, correct?

A. That's right.

Q. So what was it that you told Judge Tittle?

A. The same thing that David had told me about the cash and exercise equipment being donated for the sheriff's office for their private workout room.

Q. Did you investigate into whether that actually happened, whether exercise equipment was donated?

A. I was told that that had been.

Q. Okay. And who told you?

A. David.

Q. Did he tell you about how much money was

collected?

A. No, he didn't.

Q. Did he tell you where that money went?

A. Yes.

Q. Okay. What did he say?

A. I believe he said it went to the YMCA.

Q. That it had already gone to the YMCA or that it was going to go to the YMCA?

A. I think at the time that it was going to, but I can't be 100 percent for sure.

Q. Do you know if it ever did?

A. Not firsthand, no.

Q. So you didn't actually talk to Jim McKenzie or John Washburn and ask them about where it went?

A. That's correct.

Q. Did you tell that to Judge Tittle?

A. Yes.

Q. Okay. And what did Judge Tittle say?

A. At that time?

Q. Uh-huh.

A. I don't recall he said a whole lot. I don't recall exactly what he said at that time.

Q. Okay. Well, why were you telling Judge Tittle?

A. Because it wasn't right.

Q. Okay. And so before you went to Judge Tittle,

you looked into this, the issue?

A. No, no.

Q. Okay. So was it fair to say you just had a gut reaction that you didn't think it was right?

A. That's correct.

Q. And what would lead you to believe that it wasn't right?

A. That to me the sheriff's office wasn't a charitable organization, and the workout room was a private workout room only for employees of the sheriff's office or the probation department.

Q. Okay.

A. It was for personal gain.

Q. Well, did David tell you that workout equipment had actually gone to the sheriff's department workout room?

A. Yes.

Q. Okay. And what did he tell you had gone there?

A. He didn't tell me specifically.

Q. Okay. Did you ask him? Did you say --

A. No.

Q. -- what was donated?

A. No.

Q. And you didn't go to Mr. McKenzie or Mr. Washburn to confirm that that had actually occurred,

the issue?

A. Not at that time.

Q. Okay. Beyond talking with Mr. McKenzie and Mr. Washburn, what did you believe Judge Tittle could do about the issue?

A. At that time, or at any time?

Q. At any time.

A. Well, put a stop to it and, you know, investigate it and see if it was legal or not.

Q. Okay. How could he put a stop to it?

A. Not accept the hours in his court, inform the probation department that it was illegal to do.

Q. So that would be done on the cases that were being brought to him that are in front of the court?

A. I didn't understand that question.

Q. Okay. So by putting a stop to it, it would be in the confines of the cases that he would decide, the probation cases that would come before his court, correct?

A. In part.

Q. Okay. What's the other part?

A. To put a stop to it in general because of the legality of it.

Q. Okay. How could he do that?

A. Because he's a judge and he's the director's boss, all of them are.

A. In that particular -- with the sheriff's office.

Q. Okay. Okay. What had -- what did not stop?

A. Offenders could donate cash to nonprofits for community service hours such as Salvation Army or YMCA.

Q. Okay. And what was the problem with that?

A. It wasn't legal.

Q. Okay. Well, clearly Judge Beacom didn't have a problem with the issue and the money going directly to the Hunt County CSCD, correct?

A. According to the code, he can -- you can do that on a case-by-case basis.

Q. Okay. What part of the code allows that?

A. I don't know the exact. It's under the community service part in 4212.

Q. Okay. And doesn't that specify food bank or food pantry?

A. Yes.

Q. Well, where in Judge Beacom's order does it specify that that money has to go to a food bank or food pantry?

A. It doesn't.

Q. Okay. And you've testified, too, that it was your understanding that the money that this probationer paid would have been paid directly to Hunt County CSCD, correct?

Judge Beacom and say this isn't right?

A. At that time, I didn't know that it was illegal, and I just did what I was told. I didn't know at that point.

Q. Okay. Well, when did you decide that it was illegal?

A. When I looked at -- when myself and Judge Tittle looked in the code and read that it was.

Q. When did that happen?

A. Approximately in the spring of 2011.

Q. Can you be a little bit more specific?

A. On what? On the date?

Q. Uh-huh.

A. No, I can't.

Q. Time frame, month?

A. Spring. That's all I can remember. I don't remember the month or --

Q. March, April, May?

A. I don't remember.

Q. Okay. Now, so after this conversation you had with Judge Tittle in February of 2011, when was the next time that you talked with him about the issue?

A. In the spring.

Q. In the spring? Okay. And between February of 2011 and this conversation, the second conversation in

Q. Okay. And how did this issue arise in a court case?

A. A defendant came before Judge Tittle and had paid for community service hours through the YMCA, and Judge Tittle said he will not accept it, it's illegal, and ordered me to note it in the file and let the officer know.

Q. Okay. At this point between spring 2011 and this next -- this court case in early summer of 2011, had you made Mr. McKenzie or Mr. Washburn aware that you talked with Judge Tittle about this issue?

A. No.

Q. And are you aware of any conversations that Judge Tittle may have had with Mr. McKenzie or Mr. Washburn about this issue?

A. I'm not aware.

Q. Okay.

(EXHIBIT NO. 4 WAS MARKED)

Q. (By Mr. Bray) All right. I'm showing you Exhibit No. 4. And this is a, again, entries, chronological entries, correct?

A. Yes.

Q. Okay. And the top entry says it was entered by Chris Jones on 7 -- July 18 of 2011, correct?

A. Yes.

Q. Okay. That second entry by Joey D. Jackson on July 18, 2011, correct?

A. Yes.

Q. And that last entry on the bottom entered by Christina Gaston on July 18, 2011, correct?

A. Yes.

Q. Okay. Is this the court case that you're referring to?

A. I believe so.

Q. Okay.

A. I believe so.

Q. Okay. So this was July 18 of 2011. Does that help refresh your memory on when?

A. If this is the case.

Q. Okay. Would -- would there have been another one that you were ordered to note the issue?

A. I don't recall. I just remember that specific case, and I don't remember who it was, the defendant.

Q. Okay. In your entry here, let's see, that second paragraph starting with "the judge ordered," it says, "The judge ordered no CSR to be paid and he will not receive credit for any bought CSR hours, noted on court record. Defendant instructed to report today upon release from jail. Defendant asked me about CSR. I told him he may not pay for CSR but must work for CSR. He asked about

when was the next time you discussed this issue with Judge Tittle?

A. We discussed it that day after court, but I'm not -- I'm not sure when the next time was.

Q. Okay. Did you inform Judge Beacom that this is what Judge Tittle had essentially declared, that it was illegal?

A. No.

Q. Did you inform Judge Beacom that this was what Judge Tittle was ordering in his cases?

A. No.

Q. Why not?

A. I didn't feel that was my place to tell the judge what -- how to run his court.

Q. Well, you knew that Judge Beacom was the administrative judge at the time, correct?

A. Yes.

Q. And all of the judges collectively -- well, was it your view -- was it your understanding at the time that the judges collectively oversaw the Hunt County CSCD?

A. That was my understanding, but I'm not sure.

Q. Okay. So Judge Beacom would have been part of that collective, correct?

A. Correct.

Q. Okay. You don't think that would have been

EXAMINATION

BY MR. WALSH:

Q. Okay. I have just a few quick questions for you. I want to go back to when you were reporting this illegal conduct of cash donations to Judge Tittle. When did you first decide -- determine that it was illegal?

A. In the spring of 2011.

Q. And did you report this conduct to Judge Tittle after that point?

A. It came up again, yes. We discussed it again after that.

Q. And after you found out that -- or after you determined that this was illegal conduct, did you think Judge Tittle could do anything about it?

A. Yes.

Q. And what could he have done?

A. He set the terms of probation and could have stopped it, you know, or -- and did stop it because he ordered the terms of probation for the defendants in his court.

Q. Okay. And then I just had some quick questions about your -- the reasons you were given for your termination. Who told you that you were terminated?

A. Mr. McKenzie, and Mr. Washburn was in the room as well.

Q. What chronological entry are you talking about?

A. The one back in the summer, in July that's in one of the exhibits. No. 4. I believe this is the one he was referring to.

Q. Exhibit No. 4, the July 18, 2011, chrono entry?

A. Yes. That's what I believed he was referring to, yes.

Q. Okay. And did you believe that these were the real reasons you were terminated?

A. No.

Q. And why did you think you were terminated?

A. I believed it was because I reported that -- about the community service and the cash donations and exercise equipment to the sheriff's office.

Q. Well, how would Mr. McKenzie have known that you were the one that reported that information to Judge Tittle?

A. I had the -- I mean, I was court officer and I was in his court and no other officer was. And I was assigned to his court, and, I mean, there couldn't have been anybody else that told him, in my opinion.

Q. Well, did people know that Judge Tittle generally got information from you?

A. Yes.

Q. And how did they know that?

Exhibit
2

NO. D-1-GN-11-003857

CHRISTINA GASTON,	)	IN THE DISTRICT COURT
	)	
Plaintiff,	)	
	)	
VS.	)	250TH JUDICIAL DISTRICT
	)	
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT,	)	
	)	
Defendant.	)	TRAVIS COUNTY, TEXAS

ORAL AND VIDEOTAPED DEPOSITION OF

HONORABLE STEVE TITTLE

MAY 2, 2012

VOLUME 1 of 1

ORAL AND VIDEOTAPED DEPOSITION OF HONORABLE STEVE TITTLE, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on May 2, 2012, from 9:42 a.m. to 2:18 p.m., before Katherine Fratantoni, CSR in and for the State of Texas, reported by machine shorthand, at the 196th District Court jury room, Hunt County Courthouse, 2507 Lee Street, 3rd Floor, Greenville, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

community service hours?

A. She relayed to me that it was unauthorized and illegal.

Q. She believed it was illegal?

A. Yes.

Q. Okay. Did she say why she believed it was illegal?

A. I don't recall.

Q. Okay. Do you -- why was she reporting this to you, I guess? I mean, what was she hoping would happen?

A. I can't really speculate what she was thinking.

Q. Uh-huh.

A. However, in the context of that case, she had reported to it to me as well as in general she had reported it, the activities to me.

Q. And when she reported it to you, it was because she thought it was illegal?

A. I can't speculate what she was thinking, that was my assumption.

Q. Uh-huh. Well, you said her opinion was that it was illegal?

A. (Witness nods head.)

Q. Okay. And so, she reported it because it was improper in this case?

MR. HARRIS: Are you asking him if he

Q. Okay. Well, can you tell me about -- what the report that she made in late summer?

A. At sometime between early spring and late summer, Ms. Gaston had told me more about the policy of the director of probation which included accepting workout equipment donations and using funds that had been donated to purchase workout equipment. And that he had actually donated the workout equipment, first to the sheriff's office and then subsequently removing it from there and donating it to the YMCA.

Q. Okay. And that's what she reported to you in late summer?

A. Yes.

Q. Okay. And what -- what did you do after that?

A. At some point during the middle of 2011, I copied my e-mail correspondence and sent an e-mail -- and sent the e-mail correspondence to the Hunt County district attorney. Additionally, I contacted our outside auditor to inquire about these practices, and I contacted CJAD which is an administrative body, part of the TDCJ division which oversees programs and policies of the Adult Probations Department.

Q. Okay. And you reiterate in those communications it was about these allegations that you had heard?

Exhibit
3

CAUSE NO. D-1-GN-11-003857

CHRISTINA GASTON, Plaintiff,	)	IN THE DISTRICT COURT
VS.	)	250th JUDICIAL DISTRICT
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT, Defendant.	)	TRAVIS COUNTY, TEXAS

****

ORAL DEPOSITION OF

JIM MCKENZIE

June 5, 2012

CERTIFIED COPY

****

ORAL DEPOSITION OF JIM MCKENZIE, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 5th day of June, 2012, from 9:32 a.m. to 5:36 p.m., before Tess Stephenson, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Pemberton, Green, Newcomb & Weis, 2507 Washington Street, Greenville, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

probation, like drug counseling or any other type of counseling service. And when they violate those conditions, we call them technical violations because if someone from the general public gives a positive UA at work, it's -- it's -- they may lose their job, but there's no incarceration involved with it. And then if it's not a technical, what we're saying is that they've gone out and committed a new criminal offense while on supervision. That's really just a separation is -- a technical violation is a violation of the conditions of probation and if -- a new offense is one where they go out and commit any kind of criminal offense while they're on supervision.

Q. And what -- how is the -- how are these terms set? I mean, how would these technical violations be set by -- or who -- who sets these terms?

A. The conditions of probation are -- are contained in 42.12, the standard ones: Reporting, paying, not moving without permission. There's a whole list of them. And special conditions are usually based on what the offense -- the persons being placed on community supervision for or standard special conditions such as somebody gets a DWI first offender. They're required to take the first offender DWI course. So that's how special conditions are based around

Exhibit
4

45. COURT OFFICER

The Court Officer is an Employee of the Hunt County CSCD and shall serve the needs of the District Courts as well at the needs of the Hunt County CSCD. As an employee and representative of the Hunt County CSCD, the Court Officer shall also adhere to the Code of Ethics as set forth by CJAD as all Hunt County CSCD employees are required to follow.

The Court Officer shall only perform duties, tasks and responsibilities that are directly related to probation. The Court Officer does not have the authority to speak on behalf of the Hunt County CSCD or on behalf of any employees that are currently employed by the Hunt County CSCD unless testifying from the records as a representative of the department or has been given proper authorization to do such. Authorization to speak on behalf of the department or from one of its employees will need to be given by a member of Administration (Director, Asst. Director, Supervisor II or Supervisor I).

The chain-of-command for the Court Officer differs from that of the felony community supervision officers. If the Court Officer has an issue that requires such to be addressed by an administrator, the Court Officer shall address the issue in the following sequential order:

1. Asst. Director
2. If Asst. Director is not available - Address with Supervisor II
3. If Asst. Director & Supervisor II is not available - Address with Supervisor I
4. If Asst. Director, Supervisor II & Supervisor I is not available - Address with the Director

The exception to this rule applies to document approvals. Documents at this time constructed by the felony supervision officers must be approved by the Supervisor II prior to being submitted before the Courts. This rule also applies to the Court Officer as well unless the documents are immediately needed by the Court. Example of this would be an order modifying an offender's conditions of probation as a result of either a revocation or violation hearing.

As a representative of the Hunt County CSCD, the Court Officer is expected to interact with all personnel involved in matters concerning the

department in a courteous and professional manner befitting the position.

The Court Officer shall include the following:

1. Be available to conduct the plea process in both the 196th & 354th District Courts. If *not available the Duty Officer & Back-Up Duty Officer shall be required to perform this responsibility.

2. If available, the Court Officer will also conduct the intake/orientation process for all Hunt County probation placements out of the District Courts. If *not available this responsibility goes to the Duty Officer & Back-Up Duty Officer

3. Prepare and if requested testify, on all Pre-Sentence Investigation Reports (PSIR).

4. If requested by a Community Supervision Officer, that filed a Revocation, the Court Officer shall serve as the department's representative at the Revocation Hearing. The Court Officer's primary responsibility while representing the department at said hearing shall be to communicate to the State's Attorney the recommendation made by the officer that either currently supervises the offender while on probation or signed the revocation document. In the event that either the State's Attorney or Defense Attorney rejects the officer's recommendation, one of the following options shall be considered:

    1. The State's Attorney and the Defense Attorney can enter into an agreement on their own accord to come to a mutual agreement without ascertaining any input from the probation department or its personnel
    OR
    2. The officer either assigned to supervise the offender while on probation or the officer that filed the revocation document can be contacted for either an alternate recommendation and/or for testimony at the revocation hearing

    If a Revocation Hearing reaches the point to where testimony is heard by the Court, the Court Officer can testify to the records contained within the file that address the violations alleged in the Revocation document. Since the Court Officer does not have first

hand supervision knowledge in regards to the defendant, the Court Officer should never make a punishment recommendation other than the one being recommended by the officer assigned the responsibility of supervising the offender while on probation.

The Court Officer shall document all Court actions as they occur during the revocation process until a final disposition is reached.

(Note: If the Court Officer is representing the department at a "Violation Hearing" the same protocol listed above regarding the Revocation process applies to Violation Hearings as well.)

5. Notify the District Court Coordinators of any offenders arrested on revocation warrants through the email system.

6. If required and available the Court Officer shall walk Motion to Revoke probation documents through if a situation warrants such to be done. If *not available, the supervising officer shall be required to perform this function.

7. If required and available the Court Officer shall walk Motion to Revoke dismissals through if the situation warrants such. If *not available, the supervising officer shall be required to perform this function.

8. As required or needed, perform the construction of legal documents.

* Not Available shall be defined as if the Court Officer is out on official leave and/or if the Court Officer is performing other tasks that take priority over these tasks.

(These requirements apply to both Court Officer positions [Felony & Misdemeanor] with modifications as they pertain to the two positions)

Exhibit
5

CODE OF ETHICS

Preamble

In order to ensure that all probation officers maintain the highest level of professional standards, that the integrity of the criminal justice system is fully preserved, that the mission and goals of every community supervision and corrections department in this State is faithfully accomplished and that the people of this state and in each local community are served with honor and dedication, the Community Justice Assistance Division of the Texas Department of Criminal Justice propounds the following code of ethics to be adopted and implemented by every community supervision and corrections department in this State and by its officers and employees.

Probation Employees are Servants of the Court

A. It is the primary duty and responsibility of every probation officer and all other employees of the department to faithfully serve the court.

B. Probation officers shall not make any public statement that disparages the dignity of the Court, degrades or belittles any Court officer, or shows contempt or disregard for the criminal justice system. Instead probation officers shall work diligently to preserve the integrity of our judicial system, work to improve the function and efficiency of our legal system and strive towards assuring that equal justice will be provided to all persons.

C. A probation officer has the duty and obligation to vigorously carry out the instructions and orders of the Court and to comply with the administrative procedures established by the department. A probation officer shall provide the Court and the department with accurate and objective information. As such a probation officer shall exercise care to verify pertinent factual information presented to the Court, formulate an informed and unbiased judgment when making recommendations to the Court, and promptly inform the Court of any violation of or deviation from the Court's instructions and orders as directed by the Court.

D. A probation officer has the duty and obligation to endeavor to maintain the integrity and independence of the judiciary. As such a probation officer shall not use his or her official position for the furtherance of partisan political objective; nor shall an officer, in an official capacity, treat any individual differently on account of personal animosities or biases; nor shall the officer discriminate against any

person on the basis of religion, race, sex, creed, national origin, disability, health status, or age. Moreover, a probation officer shall not represent to any person that he or she can gain influence or access to anyone because of the officer's position as a probation officer or because of the officer's relationship with the Court.

E. A probation officer shall conscientiously obey the laws of the land and shall not counsel or encourage any individual to violate any law of this state, any other state, or any law of this nation.

A Probation Employee has an Obligation to the Department, Which He Serves

A. A probation officer or other employee shall not make any public statement that falsely or maliciously ridicules or disparages a fellow employee or the operations, policies, and practices, of the department. Instead all employees shall strive to strengthen the endeavors of the probation department while constantly upholding the interest of the public, shall offer constructive comments aimed at improving the efficiency and effectiveness of the department and shall work toward enhancing the quality of supervision and corrections in the community. Employees are, however, encouraged to report any misconduct by any department employee by using the department's chain of command or reporting the misconduct to the appropriate authorities.

B. A probation employee shall not engage in activity, which creates an actual or apparent conflict of interest or has the appearance of a conflict of interest, which affects his or her duties as a department employee.

C. A probation officer shall accurately and timely document all significant interactions concerning the supervision of probationers and record all significant contacts with other agencies pertaining to the offender.

A Probation Officer Has an Obligation to the Public and to Those Individuals Whom an Officer Supervises

A. A probation officer shall exercise the utmost precaution to ensure that a probationer whom the officer is supervising does not pose a substantial and unjustifiable risk to the community. Probation

Officers should notify any individual or law enforcement agency, within the proper bounds of the law, whenever a probation officer has a good faith belief that the life, safety, or property of any member of the public may be endangered.

B. A probation officer shall supervise probationers with fairness and competency. A probation officer shall treat all individuals that the officer is supervising with the dignity and respect to which all human beings are entitled. A probation officer shall treat all persons with whom the officer comes in contact in his or her official capacity impartially. The officer shall neither treat some individuals more favorable than others; nor shall the officer treat some individuals more adversely than others.

C. A probation officer shall maintain a professional relationship with the individuals the officer is supervising . A probation officer shall not use his or her authority as a supervising officer or his or her position to extract any personal gain from a probationer or exert any undue duress or harassment of any probationer.

D. A probationer employee shall not violate a probationer's civil and legal rights, including any right to the confidentiality of any communication or records. A probation officer shall disclose no personal information concerning a probationer other than in his official capacity and in accordance with any applicable law and administrative policy.

A Probation Officer has the Status of a Professional

A. A probation officer shall work toward improving and enhancing the Profession. An officer shall maintain a high degree of proficiency in his or her employment. As such a probation officer shall seek every opportunity to become aware of any changes in the law and be apprised of the latest development in the field of supervision and corrections. A probation officer should seek to improve his or her skills and competence through training programs, seminars and self-study. In order to improve the profession, develop contacts with probation officers in other jurisdictions and parts of the country, and provide a network of resources and ideas, probation officers are encouraged to join and actively participate in professional organizations affecting corrections and probationary matters.

Time off will not be approved during the "notice" period unless for necessary reasons and with the prior approval of the Director or his designee. The employee shall be entitled to be paid for all accrued vacation time as previously outlined in this manual.

If an employee resigns in "good standing", if a potential employer contacts this department for a reference they will be provided the following information:

1. The starting date and last date of employment with the department
2. The employee is eligible for re-hire

If the employee does not resign in "good standing", if a potential employer contacts this department for a reference, they will only be given the start date and ending date of employment with the department. If asked if the former employee is eligible for rehire, they will be told "no comment".

If resigning under good standing, the employee will undergo an exit procedure that will consist of:

1. An audit of that officer's files or if a Clerical Staff, verify that all work pending is current
2. An exit interview between the employee and the Director

B. Severance

Below is a list of reasons for which the Director or Acting Director can terminate an employee from the department. This list is not an all-inclusive list. An employee can be terminated for other reasons that are not contained on this list. This list should serve more as a "guideline" rather than as a rule as to what can constitute termination of an employee:

- Repeated and habitual tardiness or early departure without making up the missed time or using personal leave to make up the difference;

- Unsatisfactory performance of the quality or quantity of work considered standard for that position inclusive of CJAD and Department Standards;

- Failure to carry out a direct instruction by an Administrator;

- Aggravated or habitual inability to get along with fellow workers;

- Negligent or willful destruction of departmental property;
- Reporting for duty or working under the influence of alcohol or illegal drugs;
- Abuse of sick leave;
- Absence without approved leave;
- Discourtesy to the public;
- Association with a probationer, or a probationer's family, in a social or business manner;
- Acceptance of any gratuity of gift for the performance of official duties;
- Conviction of a felony or misdemeanor offense involving moral turpitude;
- Any actions that conflict with EEOC guidelines;
- Willful violations of department procedures and rules;
- Willful disregard or violation of the Code of Ethics of the Criminal Justice Assistance Division.
- Any act deemed as sexual harassment.
- Continued refusal to adhere to the chain of command.
- Misclassification of felony and misdemeanor cases (Ex. Continuing to carry a case as Direct even though there has been no face-to-face contact with the offender in over 90 days).
- Classifying any case as an Indirect due to no face-to-face contact with the offender in over 90 days but failed to take appropriate action(s) within 30 days of the reclassification date.

- Failure to take appropriate action on an offender that was arrested for an alleged new offense (equal to or greater than a Class "B" Misdemeanor) within 10 working days of learning of the new arrest.

- Purposely back dating or falsifying documents to stay in compliance with both CJAD and Department Standards.

- If an employee is absent from work for 50 consecutive working days for reasons other than Military Duty, the Hunt County CSCD reserves the right to terminate the employee and seek a replacement. In the event that the employee becomes terminated due to this policy, he has the right to reapply for the position should he elect to do so.

- Leaving the workplace without ascertaining proper approval from an administrator. This excludes employees that go on break but do not leave the CSCD property.

In the event that an employee is severed from the department due to disciplinary reasons, he will only be paid for the days he worked during that pay period, all vacation time accrued up to the date of termination (not to exceed 120 hours total) and compensation time (up to a total of 24 hours). No other types of time off leave will be honored such as admin comp or medical/sick leave.

If terminated for disciplinary reasons, if a potential employer contacts this department for a reference the same information given on former employees that did not resign in good standing shall also be given on those who were terminated for disciplinary reasons.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ALL EMPLOYEES OF THE HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT ARE AT-WILL EMPLOYEES AND MAY BE DISCHARGED WITH OR WITHOUT CAUSE AT ANY TIME IN THE SOLE AND ABSOLUTE DISCRETION OF THE DIRECTOR, NO MATTER HOW ARBITRARY, SUBJECT ONLY TO EXCEPTIONS PROVIDED BY LAW.

Exhibit 6

CHRONOLOGICALS SID NUMBER : [redacted] NAME : [redacted]
July 18, 2011, 5:02 pm

07/18/11 OFFICE VISIT

[redacted] did report in person on shown date after his release from jail. This CSO issued the offender a new report date for Thursday July 28, 2011 @ 4 PM.

Entered by Kris Jones on 07/18/11

07/18/11 OFFICE VISIT

Made contact with [redacted] at the front window on this date. Tammy Walden stated Δ had question about CSR hours. Δ asked what this department's policy is about donating CSR hours. Told Δ this depends on the offender's compliance and CSO and there are different factors that go into this being approved. Δ stated he donated $240 for CSR hours before he went to jail. He stated in court this morning, the judge told Δ he will not accept the hours. Δ was upset about this. He stated he feels like he is being jerked around. Told Δ he can discuss this with the court however the judge has the final say and he is not going to get a different answer from anyone here. He asked if anyone else on probation can donate and I told him he just needs to worry about his case and what he needs to do to comply.

Entered by Joey D. Jackson on 07/18/11

07/18/11 COURT NO CONTACT

Δ appeared in Court on MTR and sanction ordered by the Judge. I completed an order but the Judge did change some things, sanction as follows:

1. MTR dismissed without prejudice
2. Extended 4 yrs with supervision fees
3. 50 additions CSR

The Judge ordered NO CSR to be paid and he will NOT receive credit for any bought CSR hours. Noted on Court record. Δ instructed to report today upon release from jail. Δ asked me about CSR I told him he may not pay for CSR but must work for CSR, he asked about hours already donated I told him the Judge told him he will not get CSR credit for buying hours as not legal. He asked what about money he already paid, I advised he needs to take that up with YMCA, Δ still seemed confused. I told him the Judge ordered NO payment for CSR unless food pantry and such is illegal.

Entered by Christina Gaston on 07/18/11

Exhibit
7

From: Steve Tittle [mailto:stittle@huntcounty.net]
Sent: Monday, October 03, 2011 3:01 PM
To: 'Jim McKenzie'
Subject: RE: Community Service Hours and Non-Profits

I am searching for facts. Again, I was informed that you had actually allowed probationers to make cash donations to your office to buy off their community service hours and that you then took that money, purchased exercise equipment, and then gave it to someone you know. Is that true? If I need to contact the auditor to list any cash donation, if they exist, I will do so. However, I expect your candor.

From: Steve Tittle [mailto:stittle@huntcounty.net]
Sent: Monday, October 03, 2011 1:08 PM
To: 'Jim McKenzie'
Subject: RE: Community Service Hours and Non-Profits

Thank you for getting those to me. I have not had a chance to follow up with you after the judges' meeting in which you agreed with me that it is unlawful for probationers to buy community service hours and that you would discontinue authorizing it. However, we still have not addressed the issue of which 196th probationers you allowed to buy off their community service hours. I still need that documented, as well as, under what authority you allowed it in the first place. In addition to that shocking information, I was also informed that you had actually allowed probationers to make cash donations to your office to buy off their community service hours and that you then took that money, purchased exercise equipment, and then gave it to someone you know. Is that true?

Steve

Exhibit
8

HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT

4515 Stonewall Street (75401) • PO Box 977 • Greenville TX 75403-0977
Voice (903) 455-9563 • Fax (903) 454-9597

Richard A. Beacom, Jr.
Judge, 354th Judicial District

Stephen R. Tittle, Jr.
Judge, 196th Judicial District

Andrew Bench
Judge, County Court at Law #1

F. Duncan Thomas
Judge, County Court at Law #2

Jim McKenzie
Director
Hunt County CSCD

October 4, 2011

Dear Judges,

The last page of this letter is a table that I have prepared for the Courts to be used as a time line. What I've included in this time table are emails and events that I feel are crucial when making a determination on what needs to be addressed versus what should have already been addressed and is no longer an issue.

You may or may not have had the opportunity to read both Judge Tittle's emails to me and my responses. If you have read them, you'll notice he states he has been told that I have committed a criminal act. Judge Tittle's informant told him that I was collecting money from probationers, giving them CSR credit for making the payment and then I took the money and bought exercise equipment and gave it to someone I knew. I would assume it would have had to have been a friend that I had allegedly given this equipment to.

Since this allegation carries criminal implications, I wanted to address it first and foremost.

I emphatically deny this allegation. Since I am being accused of a criminal offense that has no merit to support it and would appear to have been made to Judge Tittle out of spite, I would ask Judge Tittle to provide me with the name of the person making said allegation against me. I've consulted an attorney in regards to the false statements and I was told that an unsubstantiated allegation such as this can be considered "Slander" and whoever made the statement to Judge Tittle could be held "Liable" for making said accusation and that I could pursue a Civil suit in the matter. I haven't decided if I would like to pursue that avenue. If an employee of mine is responsible for making this false claim about me to Judge Tittle, that most certainly would warrant an immediate termination from the Department. If the accusation is coming from someone outside of my Department, I would consider pursuing the lawsuit. In my position, I have to maintain my integrity and my credibility and I can't allow someone to make claims such as these to one of the Courts that I serve.

I am also going to assume this allegation was brought to Judge Tittle's attention sometime between August 31, 2011 and October 3, 2011. I base this on the fact that I am sure this matter

would have been brought forth by Judge Tittle during the meeting held on August 30, 2011 in Judge Beacom's Court.

I consider the most important date of all to be **August 30, 2011.** It was on this date that all the Courts along with me and Assistant Director John Washburn met to resolve the issues surrounding community service and how we were going to address the matter of those agencies that had been taking payments in lieu of performing CSR. I may be wrong but from what I took from the meeting was that the Courts, in a proactive manner, established that the taking of payments in lieu of performing CSR by contract agencies would no longer be acceptable even though there was no policy in place that had given them authorization to conduct this practice to begin with. The exception to this rule was that food banks and pantries could accept donations in lieu of performing CSR. The following guidelines were put in place as approved by the Courts regarding the donation process to these food banks & pantries:

1. Only approved food banks or pantries could be used by probationers in the event they elected to make donations in lieu of performing CSR.
2. Probationers were only allowed to donate up to on-half of the total amount of CSR they were ordered to perform by the Court.
3. The rate in which they could receive the credit would be $10.00 = 1 hour of CSR credit
4. I was responsible to inform the agencies of this new policy.
5. The Courts would prepare a blanket order that would be retroactive that would allow probationers to make said donations.
6. The Department could still conduct food drives as long as the food was donated to an approved food band or pantry.

This is what I came away with as a result of that meeting. I came back to the office and I immediately sent letters to all the contract agencies apprising them of the CSR policy change and I also informed the officers of the change. I also developed a form to account for donations made in lieu of performing CSR.

I also remember that during this meeting there was no "finger pointing" as to who is to blame for what had transpired up to that date. I informed Mr. Washburn that I had all my documents ready just in case I was bombarded with questions about how this agency decided it could take money in lieu of performing CSR and how they came up with the monetary amounts. I commented to Mr. Washburn that the meeting went smooth and stated I didn't even need the data I had brought with me.

My interpretation may be wrong but I thought the issue was settled. What had transpired in the past was in the past and the Courts wanted to move forward with the modifications that had been agreed upon as a result of the meeting.

My assumption that the CSR issue had been resolved must have been incorrect based on the emails I received from Judge Tittle on October 3, 2011.

I have already addressed the major issue regarding Judge Tittle's emails. The issue I'm referencing is the one in which according to Judge Tittle someone had told him that I was taking money from probationers and giving them CSR credit and then I took the money and bought exercise equipment and gave it to someone I knew. This accusation is so false it's actually humorous. I've been doing this type of work for over 20 years and to fathom the thought that I would actually commit such a blatant act is preposterous. I am certainly not a saint but I'm definitely not a thief.

There are some other statements Judge Tittle claims I admitted fault or wrongdoing and he wants me to provide him with statements to support his claims. I supposedly made these statements during the meeting on the 30th. I don't recall making any such statements nor do I recall the meeting being conducted in a manner that was seeking someone to blame for what had happened with the CSR program more specifically the payments in lieu of performing CSR. I'm asking for feedback from the 354th Judicial District Judge as well as from the County Courts at Law Judges since they too were present at the meeting.

I'm numerically listing the statements in which judge Tittle is stating I admitted committing or am at fault. Under each is my underline response to his statement.

1. I have not had a chance to follow up with you after the judges' meeting in which you agreed with me that it is unlawful for probationers to buy community service hours and that you would discontinue authorizing it.

   The only statement ever made that comes close to what Judge Tittle is making reference to would be that I've said CSCD's cannot collect and deposit funds into their account where said funds were taken in lieu of performing CSR.

   I even went so far as to get legal opinions from two attorneys. Both attorneys stated that there is not a law that states that taking a monetary donation in lieu of performing CSR violates any statute. The only exception would be a CSCD taking payments in lieu of performing CSR and placing those funds into the CSCD account for CSCD purposes.

   Judge Tittle made a statement that I would "discontinue authorizing" the practice of making monetary donations in lieu of performing CSR. I never authorized the practice to begin with. I signed no documents nor did I verbally tell any CSR contract agency they had my permission to accept cash donations in lieu of performing CSR. If someone says I did do such, I'll need to conduct an internal investigation into the matter to see who within the department gave permission to an agency to take payments in lieu of performing CSR.

2. However, we still have not addressed the issue of which 196th probationers you allowed to buy off their community service hours.

   Again, Judge Tittle is making a statement that indicates I "allowed" probationers out of his Court to buy off their community service hours. If I didn't authorize the practice of making a monetary donation in lieu of performing CSR why would I allow such? Judge Tittle goes on in his statement to indicate that I picked who could pay in lieu of performing CSR.

   Here's the issue as I see it. All the Courts with the exception of the 196th Court are satisfied with the course of action discussed and approved during the meeting held on August 30, 2011 I'm assuming. In the event I'm still questioned about a CSR related matter, as opposed to sending out letters or emails to all the Courts, I'll address it with the Court that has Jurisdiction of the case. This eliminates tying up the other Courts' time since they are not involved with the matter.

   In order to satisfy the 196th Court's issues as it pertains to #2, the questions are:

   a. Will probationers that made a monetary donation in lieu of performing CSR prior to Judge Tittle taking the Bench be allowed to maintain said credit?

b. Does Judge Tittle want a list of all probationers out of his Court that made a payment in lieu of performing CSR? Once again, it will need to be known if he wants his list to only include monetary donations being made after he became Judge or does he want the list to be retroactive.

c. Does Judge Tittle want me to have these probationers contacted and to inform them that their monetary donation will not be accepted in lieu of performing CSR and they are now responsible to work the hours?

Being that I never authorized any agency to accept payments in lieu of performing CSR, in the event a probationer wants a refund, I've been told by an attorney that the probationer will have to address that issue with the agency in which the payment was made. The Department never accepted funds on behalf of the contract agencies therefore it is not responsible for giving them a refund. In addition to this, I never authorized any agency to take payments in lieu of performing CSR

I will await the 196th Court's response as to how Judge Tittle would like to address this issue. I can collect the data once I am given the word as to what course of action Judge Tittle wishes me to pursue as the CSR issue applies to his Court.

3. I still need that documented, as well as, under what authority you allowed it in the first place.

I gave no agency the authority to accept payments in lieu of performing CSR therefore I was not knowingly allowing for such to occur.

Again I'll go on record to say that if in fact someone from this Department gave any agency the authority to take payment in lieu of performing CSR, they gave said permission on their own authority. If I am told that authorization was given from this Department, I'll start an investigation to try and find out who gave the authorization.

4. In addition to that shocking information, I was also informed that you had actually allowed probationers to make cash donations to your office to buy off their community service hours and that you then took that money, purchased exercise equipment, and then gave it to someone you know. Is that true?

I've already responded to this accusation and that it has no merit whatsoever. I'm contemplating taking legal actions for such a slanderous remark being made about my character.

I've addressed the issues presented to me by Judge Tittle. I have a couple of questions of my own that I think probably need to be addressed. These questions are;

1. Who made the statement accusing me of committing a criminal offense?

2. Was the "Shocking" information made known to Judge Tittle after the August 30, 2011 meeting?

3. I'm sure it's purely coincidental but this new information that accuses me of committing a criminal act is being brought to my attention on the very same day I informed the Courts about the investigation involving Ms. Gaston. I'm not making an accusation I'm just stating a fact and the fact is that on the same day I informed the Courts about the

investigation involving Ms. Gaston that very same day the issues involving the CSR matter are brought back up again but now I've been alleged of committing a criminal act.

My goal has and always will be to satisfy the Courts and meet their needs. In order to achieve this goal I have to be able to perform my responsibilities without having to fear retaliation or repercussions. I'm sure I have and will in the future make decisions that the Courts, Department or other agencies in which we deal with may not find very pleasing. When making a decision I look at the situation, the facts and the possible outcome as a result of my decision. In the end the final decision rendered is based on what's I and my other administrators feel is best for the Courts and the Department.

As I have stated previously, in the event that any future CSR related issues are brought to my attention, I will address those issues on an individual basis with the Court directly involved with the matter. The exception to this rule would be the matters involving the 196th Court. In order to protect myself as well as any other of my Department employees, I will forward a copy of any correspondence I may receive or may send to the 196th Court to my Administrative Judge (Judge Beacom). This is strictly being done for "FYI" purposes just in case something transpires as a result of some type of action or inaction. Judge Beacom will at least be familiar with the situation in question.

I hope I have provided the Courts with some clarification as it pertains to the CSR issues addressed within the contents of this letter. Other than me being exonerated of the accusations made to Judge Tittle by an anonymous source, the only other issue that I can see that needs to be addressed is how the 196th Court wants to handle probationers out of that Court that have made a monetary donation in lieu of performing CSR.

I would like the Courts to be aware that after Judge Tittle informed me of the accusations being made against me, I acquired legal counsel on the issue and I disclosed any and all information that could give the slightest inclination to someone that I may have committed the alleged infraction contained in his email. The attorney did not see any criminal intent based on the information I disclosed to him.

I have nothing to hide from the Courts and this includes the financial records of the Department.

Respectfully Submitted,

Jim McKenzie
Hunt County CSCD Director

October 3, 2011 @ 3:01pm –Received email below from Judge Tittle
I am searching for facts. Again, I was informed that you had actually allowed probationers to make cash donations to your office to buy off their community service hours and that you then took that money, purchased exercise equipment, and then gave it to someone you know. Is that true? If I need to contact the auditor to list any cash donation, if they exist, I will do so. However, I expect your candor.
October 3, 2011 @ 1:08pm –Received email below from Judge Tittle. Judge Tittle was responding back to my email sent to him on July 14, 2011.
Thank you for getting those to me. I have not had a chance to follow up with you after the judges' meeting in which you agreed with me that it is unlawful for probationers to buy community service hours and that you would discontinue authorizing it. However, we still have not addressed the issue of which 196th probationers you allowed to buy off their community service hours. I still need that documented, as well as, under what authority you allowed it in the first place. In addition to that shocking information, I was also informed that you had actually allowed probationers to make cash donations to your office to buy off their community service hours and that you then took that money, purchased exercise equipment, and then gave it to someone you know. Is that true? Steve
October 3, 2011 @ 9am -Hand Delivered the Letter to All the Courts Regarding the Investigation of Christina Gaston
August 30, 2011 – Held Meeting in the 354th Court to discuss CSR & Non-Profits
July 14, 2011 – Last email sent to Judge Tittle regarding CSR prior to the 8/30/11 meeting with all the Judges

Exhibit 9

HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT

4515 Stonewall Street (75401) • PO Box 977 • Greenville TX 75403-0977
Voice (903) 455-9563 • Fax (903) 454-9597

Richard A. Beacom, Jr.
Judge, 354th Judicial District

Stephen R. Tittle, Jr.
Judge, 196th Judicial District

Andrew Bench
Judge, County Court at Law #1

F. Duncan Thomas
Judge, County Court at Law #2

Jim McKenzie
Director
Hunt County CSCD

October 6, 2011

Christina Gaston
2708 CR 3160
Emory, TX 75440

NOTICE OF TERMINATION

Ms. Gaston,

On September 26, 2011, you were requested by Hunt County Community Supervision & Corrections Department (HCCSCD) Assistant Director John Washburn to meet with him when you had the opportunity to discuss an issue that I had requested he address with you. The issue to be addressed was whether you were either influencing or implying you could influence the 196th Judicial District Judge (Judge Tittle) with regard to any decisions Judge Tittle has rendered or decisions he may be required to make in the future. This issue includes not only decisions involving probation related matters, but also any other types of matters which require Judge Tittle to render a decision while acting in his official capacity as the 196th Judicial District Judge.

On or about 11:00 a.m. on September 26, 2011, you met with Mr. Washburn and he proceeded to inquire about this issue. With your consent, Mr. Washburn recorded what transpired during the meeting. Since you were at the meeting and it was recorded, I don't feel the need to include the details of that conversation, except to say that you adamantly denied any attempts to influence a decision of Judge Tittle in his official capacity as a District Judge, whether it involved a probation related matter or a non-probation related matter. You also adamantly denied ever making any statements that would implicate to anyone that you could influence Judge Tittle's decisions in his judicial and administrative duties.

If an employee of the HCCSCD were to either:

1. Influence a decision rendered by a Judge either on a probation related matter or a non-probation related matter (non-probation related matters in this instance would be matters that requires a Judge to render a decision in his or her official capacity as a Judge)

   OR

2. Imply they could influence a Judge on either a probation related matter or a non-probation related matter (non-probation related matters in this instance would be matters that requires a Judge to render a decision in his or her official capacity as a Judge);

that employee would be in violation of the rule of ethics listed below which can be found in the "Code of Ethics" (a copy that you initialed and signed is attached) developed by the Community Justice Assistance Division (CJAD) that probation employees around the State of Texas are required to adhere to.

"***A community supervision officer has the duty and obligation to endeavor to maintain the integrity and independence of the judiciary. As such a community supervision officer shall not use his or her official position for the furtherance of partisan political objectives; nor shall an officer, in an official capacity, treat any individual differently on account of personal animosities or biases; nor shall the officer discriminate against any person on the basis of religion, race, sex, creed, national origin, disability, health status, or age. Moreover, a community supervision officer shall not represent to any person that he or she can gain influence or access to anyone because of the officer's position as a community supervision officer or because of the officer's relationship with the Court.***"

After your meeting with Mr. Washburn, you came to my office on September 27, 2011 around 7:15a.m. to discuss the matter further. You had several concerns regarding the meeting and the questions asked of you by Mr. Washburn. Those issues or concerns were:

1. You felt the meeting with Mr. Washburn came as a result of a complaint made by a defense attorney and that, based upon Judge Tittle's prior directive as relayed through you, I was obligated to report the complaint to you and you, in turn, would pass the information on to Judge Tittle. Neither I nor Mr. Washburn gave you any indication that a defense attorney had made a complaint against you and that was not the reason for the meeting with Mr. Washburn. I listened to the recording and I did not hear Mr. Washburn mention the word complaint. Even if you had inferred that a complaint had been made by a defense attorney in your conversation with Mr. Washburn, I clearly told you that that was not the case when you spoke with me the following day.

2. I did use the word complaint in our discussion. I informed you that, if a complaint was made and if it was in reference to what you were being questioned about, I would be receiving the complaint from someone above me. I didn't come right out and say it, but what I was trying to convey to you was a complaint alleging you had influence or implied you had influence with Judge Tittle in making judicial decisions or performing his other judicial duties would probably be brought to my attention by one of our Judges and that Judge would in all likelihood request that I look into the matter to see if there was any credibility to the accusation.

3. You feared that a paper trail was being made in order to terminate you from the department and you alluded to the fact that placing documentation in your personnel file was an indicator of such.

4. You emphatically denied ever influencing or claiming to be able to influence any decisions Judge Tittle has or will have to make in the future as the 196th Judicial District Judge.

5. As you had told Mr. Washburn when you met with him on the 26th, you also informed me that you have made educated "guesses" as to what Judge Tittle may decide in a matter and related that you have always done that with the Courts in which you have served.

6. In the end, you ultimately denied making the statements that you were questioned about and I made a statement to the effect that, "You deny ever making the statements. Therefore, I'm closing the book on the matter."

The meeting concluded and you went to your office at the Courthouse. At some point in time thereafter, you talked with Judge Tittle about what had been discussed between you, me and Mr. Washburn because I and Mr. Washburn received an email from Judge Tittle about the matter around 11:50 a.m. that day. It was also observed that Judge Tittle had forwarded a copy of his email to you.

In his email, Judge Tittle reminded me that, in the event a defense attorney lodges a complaint against you regarding a probation related matter in his Court, I am required to advise him of such. In his email, Judge Tittle wanted to know:

1. Who made the complaint?
2. When the complaint was made?
3. What was the complaint in reference to?

Your actions after you met with me and Mr. Washburn were inappropriate. You obviously told Judge Tittle that a complaint had been made against you by a defense attorney when, in fact, you had been told that no such complaint had been made. The result of your false claim led Judge Tittle to believe I was not following his protocol which he had issued (through you) as it pertained to the complaint process. I and Mr. Washburn had to stop what we were working on at the time and provide Judge Tittle with a response to his email. His email had been sent to us because you had erroneously concluded, in spite of what you were told that a complaint had been lodged against you by a defense attorney. Neither I nor Mr. Washburn had any issues with responding back to Judge Tittle's email. As servants of the Courts, we are expected to provide the Courts with whatever information they deem is necessary. The issue at hand is that we had to respond back to him due to a false statement made by you to him. Your actions in this incident were found to be unacceptable by both Mr. Washburn and me.

The act of you going directly to Judge Tittle, after talking with Mr. Washburn and me, and making or insinuating that a complaint had been filed against you by an attorney in itself provides evidence that you believe the relationship you have with Judge Tittle allows you to have influence over him. In fact, whatever statements you made to him certainly had enough influence on him so as to motivate him to send his emails and question our reasons for our discussions with you.

Within the body of the Code of Ethics is a paragraph that states the following;

"Employees are, however, encouraged to report any misconduct by any department employee by using the department's chain of command or reporting the misconduct to the appropriate authorities."

Based on this rule of ethics, several employees have come forward and provided me with reports that, in my and Mr. Washburn's opinions, give a clear indication that you have in the past influenced Judge Tittle's decisions on probation related matters. Furthermore, I've been provided information from an employee that would substantiate the claim that you have, at a minimum, implied that you can influence Judge Tittle decisions on probation related matters.

Obviously, the actions you took on September 27, 2011, demonstrate your efforts to influence Judge Tittle. When you went to Judge Tittle after talking to me and Mr. Washburn, your intent was to have him investigate what you felt was the "real" reason behind being called in to speak with Mr. Washburn and to answer the questions he posed to you.

You were given the opportunity to inform Mr. Washburn of any incidents that could be construed as an attempt to influence a decision Judge Tittle may have made in the past on either probation or non-probation related matters. You were also afforded the opportunity to inform Mr. Washburn about any incidents that may imply that you have the ability to influence Judge Tittle when it comes to decision making, whether it be on probation or non-probation related matters. You denied ever doing either of the two.

The actions you initiated on the 27th gives more credibility to the misconduct claims made by the several employees listed above.

In light of your denials of inappropriate conduct (and taking into account that you were afforded the opportunity disclose any incidents that may have been interpreted as either influencing or implying you have influence over Judge Tittle's decisions) and based on the reports made to me by the other employees, coupled with your conduct on September 27, 2011, I and my other administrators feel we have no choice but to terminate your employment from the Hunt County Community Supervision & Corrections Department effective immediately.

Due to the severities of the comments and/or actions surrounding the allegations and given that in all likelihood you did, in fact, violate Department rules of ethics and policies, termination, as opposed to other disciplinary actions, is the only way administration feels the problem can be handled.

The basis of your termination is for the following violations:

The main basis for your termination is due to you being deceitful when asked the question as to whether or not you have or have ever implied that you can influence Judge Tittle as it pertains to him making official Judicial decisions, especially since you were given the opportunity to disclose any incidents that could have suggested that you had influenced a decision or implied you could influence a decision as it pertained to Judge Tittle's judicial duties.

The Court Officer position requires that employee to appear in the Courts on a regular basis. An expected level of trust is required of the person in that position. Your deceitfulness, along with your meeting with Judge Tittle to discuss your personal employment matters after meeting with me on September 27, 2011 and your false statements to him, have caused both me and Mr. Washburn to lose any level of trust we had in you prior to these incidents occurring.

In addition your denial of ever having influenced Judge Tittle on a probation or non-probation related matter, as well as your denial that you have implied to others that you have such influence over him, the basis of your termination is also due to Department and Ethics violations as listed below:

Department Violations-

- **Willful violations of department procedures and rules;**
- **Continued refusal to adhere to the chain of command.**

The two bullets above are being used in conjunction with one another to show that you willfully bypassed the Department's chain-of-command in the following manner on two separate times:

1. On February 21, 2011, you indicated to me that Judge Tittle questioned you about the training process that was scheduled to start on March 1, 2011. The training process set to take placed on March 1, 2011, would allow the officers to attend Court and learn how business is conducted in the Courts. You discussed with Judge Tittle your disapproval of the proposed in-court training program, which caused him to issue his email directive that

stated who would be allowed to serve the 196th Court and that the 196th Court would not be participating in the training exercise.

You had known about the training proposal since the early part of January 2011. Up until February 21, 2011, you did not inform me that you had a problem with the training idea. Even if Judge Tittle initiated the discussion with you about the training proposal and asked your opinion on the matter, I feel you circumvented the chain-of-command when you provided him with a negative response. You had ample opportunity to discuss the training proposal with me prior to the date in which it was to begin, but you elected to say nothing to me about any objections you had in the matter. You, on the other hand, had no problem letting Judge Tittle know your displeasure with the idea when he asked you what your thoughts were about the subject.

To make the situation even worse, you were questioning a training idea that had been suggested by the 354th Judicial District Judge (Judge Beacom).

2. On September 27, 2011, you got with me about the discussion you and Mr. Washburn had with each other on September 26, 2011. Mr. Washburn had been requested by me to meet with you to address an issue. After meeting with me on the 27th, you returned to the courthouse and obviously relayed what had been discussed between you, Mr. Washburn and me to Judge Tittle and stated to him your speculations as to why you were called in to answer certain questions. This prompted Judge Tittle to begin his inquiries of me and Mr. Washburn. More specifically, Judge Tittle was under the impression that a defense attorney had lodged a complaint against you, even though you had been told that was not the case.

   As the Director of the Department, Section 76 of the Texas Government Code allows me to conduct the daily operations of the department. As Director, I had every right to address what I perceived to be as serious allegations being made against you. I had been informed that you had either stated or implied to others that you have influence in the decision making processes of the 196th Judicial District Judge. As the Director, I should be able to address a matter with an employee of the Department without those private personnel matters being discussed with one of the Judges.

   You deliberately went to Judge Tittle and, in essence, made a complaint against me and Mr. Washburn and gave him false information that a complaint had been filed against you by a defense attorney.

   Your actions in this matter violated the chain-of-command and inappropriately involved Judge Tittle in the daily operations of the Department.

Ethical Violation-

A community supervision officer has the duty and obligation to endeavor to maintain the integrity and independence of the judiciary.

Moreover, a community supervision officer shall not represent to any person that he or she can gain influence or access to anyone because of the officer's position as a community supervision officer or because of the officer's relationship with the Court.

You violated these rules of ethics by actually influencing or implying you can influence the decisions of Judge Tittle. The act of influencing or implying to have the ability to influence the decisions of Judge Tittle gives the appearance that the **integrity** and **independence** of the 196th Judicial District Court is not being maintained.

You have made comments that the relationship between one particular attorney and Judge Tittle is, to say the least, "strained". In one incident, after making this type of statement, you followed it up by saying that this one particular attorney no longer receives Court appointments out of the 196th Judicial District Court. These comments are very serious. Your comments insinuate that, due to the strained relationship between this one particular attorney and Judge Tittle, this attorney no longer receives Court appointments from Judge Tittle based on Judge Tittle's dislike of this particular attorney. I don't believe Judge Tittle would condone these types of comments being made about him regardless of the relationship you have with him.

You told me personally that, during an early release hearing which involved the same attorney, Judge Tittle would have granted the attorney's client an early release if the attorney had tried to work the matter through you.

Even if what you stated to me is an accurate statement, this type of statement is totally inappropriate and it questions the integrity and independence of the 196th Judicial District Court. It also implies that you have influence over Judge Tittle in judicial matters or at least it gives the impression that you do.

You also relayed to me on another occasion that the email directive dated February 21, 2011 was generated in order to preserve your job and position as the Felony Court Officer with the Department. Once again, even if that was the intent of the email directive, your disclosure of the reasons for the directive was very inappropriate. It gives the impression that Judge Tittle is disregarding Section 76 of the Texas Government Code by involving himself in the daily operations and personnel matters of the Department and mandating who among my staff will be allowed to enter his courtroom and serve the probation needs of the 196th Court. These responsibilities and determinations are those of the Director and not of the Courts.

Your most recent violation occurred on September 27, 2011, when you opted to involve Judge Tittle in some of the matters that were discussed between you, me and Mr. Washburn. Your intent was clearly to have the judge look into the matter on your behalf. You were using your relationship with him to have him investigate the matter beyond what had been told to you concerning the issue. You were trying to assert your influence on him. By involving Judge Tittle in this matter, you committed several ethical and statutory violations. Furthermore, you gave the judge false information. In spite of what you were told, you asserted that a complaint by a defense attorney had been filed against you and you were using Judge Tittle to get information to support your erroneous conclusion. Interestingly enough, you did not consult with Judge Beacom, the Administrative Judge, about the issue.

A community supervision officer or other employee shall not make any public statement that falsely or maliciously ridicules or disparages a fellow employee or the operations, policies, and practices of the department.

The statements you made to Judge Tittle regarding an attorney's complaint were false. Your false statements did, however, secure your desired result. Judge Tittle sent to me and Mr. Washburn an email requesting that we provide to him the name of a defense attorney that made a complaint against you and the substance of the complaint. Your action on the 27th appears to be in violation of the rule of ethics quoted above in that the statement you provided Judge Tittle was false. You should not have taken it upon yourself to communicate with Judge Tittle what was discussed between you and your immediate supervisors. As administrators, we should be able to address issues with Department employees without having to involve the Courts given the provisions of Section 76 of the Texas Government Code.

A community supervision officer shall treat all persons with whom the officer comes in contact in his or her official capacity impartially. The officer shall neither treat some individuals more favorably than others; nor shall the officer treat some individuals more adversely than others.

Upon reviewing the Chtay case and your involvement in the matter, it would appear you had some bias and/or prejudice towards this individual and possibly the attorney representing him in his early release case. It would also appear that you wanted specific measures to be required of Mr. Chtay. There was nothing that would indicate any opposition to him getting an early release other than you and, I would assume, that was due to one out of the three victims requesting he remain on probation. You were very adamant about requiring the probationer to have very restrictive conditions be placed upon him even though the hearing was for an early release and not a violation hearing. It is also peculiar as to why you are putting up so much opposition to this matter given that you don't supervise the offender. I overheard you tell some other officers that you hated Keith Willeford. Mr. Willeford was the attorney hired to handle Mr. Chtay's early release petition. It certainly appears that your dislike of Mr. Willeford influenced your position on the outcome of his client's early release.

Although I have gone through great lengths to explain multiple and sufficient reasons supporting my decision to discharge you, please be mindful that you are an "at-will" employee and I am not legally obligated to state reasons or have any good cause for terminating your employment.

Your final check will indicate you worked through October 7, 2011 and will also include all your vacation and compensation (excluding admin comp) time you have acquired and are eligible to be compensated for per the Department's Policy & Procedures manual which in your case comes to 104 vacation hours. All department property issued to you will need to be returned to the department along with all your keys. Your final physical day with the Department shall be today, October 6, 2011. You will be paid as if you had worked the entire day. Unless told differently your final check will be direct deposited into your account.

If potential employers contact this department for a reference on you, the only information to be given out will be your start date, ending date and last salary amount. If asked if you are eligible for rehire, the answer to this question will be no.

Respectfully Submitted,

Jim McKenzie
Hunt County CSCD Director

CC: Christina Gaston's Personnel File
Hunt County CSCD Fiscal Officer
Hunt County Human Resources Department

Exhibit 10

CAUSE NO. D-1-GN-11-003857

CHRISTINA GASTON,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	250TH JUDICIAL DISTRICT
	§	
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT,	§	
	§	
DEFENDANT.	§	TRAVIS COUNTY, TEXAS

****

ORAL DEPOSITION OF
JOHN WASHBURN
JUNE 6, 2012
VOLUME 1 OF 1

****

CERTIFIED COPY

ORAL DEPOSITION OF JOHN WASHBURN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on the 6th of June, 2012, from 9:22 a.m. to 2:23 p.m., before Coral Hough, CSR in and for the State of Texas, reported by machine shorthand, at the Law Offices of Pemberton, Green, Newcomb & Weis, 2507 Washington Street, Greenville, Texas 75401, pursuant to the Texas Rules of Civil Procedure.

Q. Did you ever tell her that she was being terminated because of her ego?

A. I don't recall saying that specifically, but I quite possibly did because that's exactly my opinion.

Q. Well, did Ms. Gaston ever ask you what your opinion was?

A. No.

Q. Did she ever come to you about more of an explanation as to why she was being terminated?

A. No. After that meeting that morning and then after she left, no, she didn't. We talked briefly just as we walked back up the hall.

Q. And what did you say during that brief talk, if you can remember?

A. I don't remember specifically. If she said that I said that it was her ego, then I won't deny that.

Q. And what would you have meant if you said that?

A. What would I have meant if I had said that? Well, basically what I said before, the number of times that she's mentioned, Well, Steve called me at home, and Steve did this, and Steve's ordering a PSI, but he hasn't done -- her making recommendations outside of what the officers had recommended. She actually sort of seemed to wield things over the officers, thought that position gave her that authority. She talked about her

said.

Q. Well, in that letter Mr. McKenzie asked Judge Tittle to tell him who made the report to him; do you remember that?

A. No.

Q. Does that surprise you that Mr. McKenzie wanted to know who made that report?

A. No, not really, because it's -- the report is not an accurate report. So if it was me, I think I would want to know who made that report, too, because it would be wrong.

Q. Well, how would the 196th get inaccurate information like that?

A. I don't know.

Q. You don't know who could have told him?

A. Christina Gaston's the only one I would know of, but I don't know.

Q. You think Christina Gaston gave that information?

A. I have no reason to believe that she did.

Q. Do you think it's suspicious that within hours of informing the courts that an investigation of Christina Gaston was taking place that e-mail comes through from Judge Tittle?

A. Yes.

Exhibit 11

HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT

4515 Stonewall Street (75401) • PO Box 977 • Greenville TX 75403-0977
Voice (903) 455-9563 • Fax (903) 454-9597

October 6, 2011

To: Honorable Richard A. Beacom Jr.
354th & Administrative Judicial District Judge
3rd Floor, Hunt County Courthouse
Greenville, TX 75401

Honorable Stephen R. Tittle Jr.
196th Judicial District Judge
3rd Floor, Hunt County Courthouse
Greenville, TX 75401

Honorable Andrew Bench
County Court at Law #1 Judge
4th Floor, Hunt County Courthouse
Greenville, TX 75401

Honorable F. Duncan Thomas
County Court at Law #2 Judge
2nd Floor, Hunt County Courthouse
Greenville, TX 75401

Judge Beacom, Judge Tittle, Judge Bench, Judge Thomas:

I wanted to inform the Courts that the investigation that I was conducting on Christina Gaston has been concluded and it was determined that due to the nature of the allegations as substantiated by the testimony provided for each allegation, I and my other administrators decided that in the best interest of all the parties involved, Ms. Gaston's employment with the Hunt County Community Supervision & Corrections Department (HCCSCD) should to be terminated immediately. Given the authority granted to me as the Director of the HCCSCD under **Section 76.004 (a-1) (5)** of the **Texas Government Code**, I have terminated Christina Gaston's employment with the HCCSCD as of October 6, 2011.

Ms. Gaston was being investigated for allegedly making comments to me and other HCCSCD employees as well as to other persons that have regular dealings with the Courts. Ms. Gaston's comments indicated she has or can influence the decisions of the 196th Judicial District Judge (Judge Tittle) in both probation and non-probation related matters. There's also documentation in a probationer's case file to indicate she influenced Judge Tittle's final decision in the matter when it went before his Court. Ms. Gaston has also made statements that have implied that Judge Tittle has or had biases and prejudices towards certain defense attorneys and these biases and prejudices could have been a factor in the final decision Judge Tittle had rendered in these matters. These alleged biases and prejudices were not limited to only probation related matters but also to the appointment process used to appoint legal counsel for indigent defendants.

Ms. Gaston made a statement to an individual (not an employee of the HCCSCD) that involved a defense attorney. The comment made by Ms. Gaston to this individual alluded that she would take measures that would prevent this particular defense attorney from receiving any future court

appointments for legal counsel out of the 196th Judicial District Court. The reason behind making this statement was due to her dislike towards this attorney.

Ms. Gaston has made it known to several employees of the HCCSCD, including myself, that the relationship between Judge Tittle and a certain defense attorney is one in which neither like each other. Ms. Gaston followed this comment up with stating that this particular defense attorney, who is disliked by Judge Tittle according to her, no longer receives any court appointments for legal counsel from the 196th Judicial District Court. Ms. Gaston went on to say that the only time this defense attorney is present in the 196th Courtroom is when he is retained as the attorney in the matter. Ms. Gaston's comments insinuate that this particular defense attorney does not get court appointments for legal counsel from Judge Tittle because Judge Tittle does not like him

Ms. Gaston implied to an employee of the HCCSCD at one time that she could have a probationer's conditions modified to what the officer wanted see done. The statement made to this employee went something along the lines of "If I tell the Judge (Judge Tittle) to do it, he'll do it." The officer verified that the probationer's conditions were modified as Ms. Gaston indicated she could do in regards to this matter.

Ms. Gaston has told me personally that a defense attorney would have gotten what he wanted for his client if that attorney would have gone through her on the matter. This implies that she has influence with Judge Tittle, more specifically his final decision in this matter.

Ms. Gaston informed a HCCSCD officer that the reason her probationer did not receive an early release was due to who the probationer had hired as his attorney to represent him in the matter. A statement such as this insinuates Judge Tittle's decision in this decision was based on bias and prejudice towards the probationer's attorney.

Ms. Gaston also disclosed to me that a defense attorney (I'll identify him as XX) that was representing a probationer at an early release hearing would have his request denied. Ms. Gaston went on to say the reason for the denial would be based on how Judge Tittle feels about the attorney representing the probationer in the matter. According to Ms. Gaston, Judge Tittle had made a statement to her that went something along the line of " XX always gets his way in the Courts but that isn't going to happen in my Court." Ms. Gaston's comments insinuate that Judge Tittle's final decision on the matter would not be based on the merits of the case but rather the feelings Judge Tittle has towards the defense attorney representing the probationer in the matter.

These allegations are the results of me looking into matters that I happen to either overhear Ms. Gaston say to other employees and I asked those employees what was said to them by Ms. Gaston or they are the result of what Ms. Gaston has said to me personally. My employees do not come to me or my other administrators on a regular basis to report what they feel could be possible misconduct on Ms. Gaston's part. Many officers may not even realize that some of the actions taken, comments made or chronological entries written by Ms. Gaston could in fact be construed as a department or ethical violation. With this being said, it is possible that several other violations have occurred and they are at this time unknown to me or any of my other administrators.

The integrity and independence of the Judiciary must be maintained. As Director, it is my responsibility to take the measures necessary to insure this is carried out by my staff. In Ms. Gaston's situation, the best way to insure that this ethic is being adhered to was to terminate her from the Department.

I hope the Courts understand the position I was in and my rationale for terminating Ms. Gaston from the Department. I particularly hope that Judge Tittle understands the course of action I chose

to take in regards to Ms. Gaston's situation. Since the 196th Judicial District Court had been the recipient of all Ms. Gaston's comments, statements and implications, I hope Judge Tittle realizes I was only looking out for the best interest of his Court when I ultimately decided to terminate Ms. Gaston from the Department.

Now to address the issue of Court coverage:

I'm asking John Washburn to establish contact with each of the District Courts to see how each would like to handle the issue of Court coverage. It's my understanding that the 196th Court holds criminal court on Mondays & Wednesdays and usually nothing is set on Fridays. From what I've gathered in the past, the 354th Court addresses criminal cases every day of the week. Judge Beacom goes to Rains County typically on Fridays so there's usually no Court on Fridays in the 354th.

Please let Mr. Washburn know what your Court expects of him as the Court Officer. I would ask the Courts to bear with us during this transition period. We do plan on keeping a fulltime Felony Court Officer on staff but it may take some time to find a suitable candidate for the position. The position will be offered internally to those officers that are interested in applying for the position and who also meet the qualifications for the position. If the position cannot be filled internally due to either no one applying for the position or those that do apply it is determined they do not meet the qualifications required of the position, the Department will look outside for a replacement. I or Mr. Washburn will keep the Courts updated on the status of finding a replacement.

I'm also requesting that Mr. Washburn to contact District Attorney Walker and let him know the situation regarding Court coverage in the absence of a fulltime Court Officer and what the Department's plans are for insuring Court coverage and the efforts we'll be taking to get another Court Officer in place.

It was also discussed between Mr. Washburn and me that maybe a meeting between the two of us and the District Judges might be advantageous in that we can discuss how we'll meet the needs of the Courts as it applies to Court coverage. This meeting, if we're able to have it prior to the first criminal court day after Ms. Gaston's termination, might ease the tension level between the Department and the 196th Court and would make the situation for Mr. Washburn and the 196th Court a little more comfortable before Mr. Washburn begins his stint as the Department's temporary Felony Court Officer.

Once again I apologize for any inconvenience this situation has caused the Courts. Please be assured that we are taking steps to insure this situation is remedied as soon as possible.

Respectfully Submitted,

Jim McKenzie
Hunt County CSCD Director