

**RESPONSE OF CHIEF ERVIN PORTIS  
TO RISK MANAGEMENT ASSOCIATES, INC. REPORT**

**This response is being made by former Chief Ervin Portis (referred to herein as "Chief Portis"), in response to the report prepared by Risk Management Associates, Inc. ("RMA"), following the investigation which RMA undertook on behalf of the City of Jackson.**

The investigation involved a myriad of allegations made against me and other individuals. I am aware that RMA failed to find supporting evidence for ninety percent of those allegations. I am in agreement with those findings of the investigators. However, I have strong objections to the conclusions reached by RMA in those allegations which they claim to "sustain". I am profoundly disappointed in the quality of RMA's investigation into those allegations, and also with the sweeping generalities contained in the report, which were then used in reaching some of the conclusions set forth.

I will only deal with the most troubling conclusions here. These are:

- 1) that I created a hostile work environment in the Jackson Police Department, by relying only on discipline;
- 2) that I engaged in subterfuge or misleading behavior, in regard to the JNET investigation into the question of drug trafficking by Sarah Mead; and
- 3) that a female detective was subjected to sexual harassment in the workplace, by me.

In regard to the first conclusion, that I created a 'hostile work environment' at the Jackson Police Department, there is no definition of that term contained in the report. It is simply a subjective conclusion, stated as fact. Although the investigators deny that they were conducting an investigation into my management style, that is exactly what they proceeded to do. In fact, they detail what "accepted management and leadership practices" are, and then state where, in their opinion, I fell short of those practices. The investigators claim that police officers (who are members of a collective bargaining unit), should have been empowered by the Chief of Police, to manage their own time and resources.

While acknowledging that there are three labor unions representing the police department employees, the investigators do not advise the reader that the Chief of Police is bound by collective bargaining agreements, in regard to the disciplining of union employees. They find fault with my adherence to rules and discipline "consistently applied", and reach a conclusion that I should have been a kinder, gentler boss of a police department which they acknowledge needed consistent discipline when I got there.

It is my understanding that none of the investigators have ever held the job of Chief of Police of any city or town. Before the investigation officially began, RMA investigators met with me. At that time, they shared with me their complaints about a

former police chief they had worked for. According to the investigators, that police chief had two personalities; an agreeable persona he showed to the public, and a disagreeable persona which he displayed to employees at the department. How coincidental does it seem, that this is exactly the conclusion the investigators reached in regard to me, and set forth in their report, almost word for word? Perhaps the City could have saved a lot of money, if the investigators had simply been asked to write a report detailing their opinion of police chiefs in general, and to insert my name in the blanks, where applicable.

As to the inference that I somehow acted improperly in allowing "an appearance of a conflict of interest" to occur in the Sarah Mead JNET investigation, I deny this conclusion reached by the investigators. Because there are criminal charges now pending against Ms. Mead, I will not comment in detail on that erroneous conclusion. I have received information that the investigators did not even speak with key individuals, in reaching their conclusion. For example, although they reference a Michigan State Police Lieutenant as being in charge of the JNET unit at the time of the investigation, it is my understanding that they never even spoke to that individual about the matter. Without speaking to him, how could the investigators reach any legitimate conclusion as to any "subterfuge" in regard to the treatment of the Sarah Mead tip?

In regard to the final matter, the allegation that I sexually harassed a female detective, it is troubling that the detective in question was afforded anonymity, while my name is dragged through the public spotlight, and I am forced to defend anonymous accusations. The investigators also misapplied *Garrity*, in dealing with this particular matter. Under *Garrity*, a police officer can be compelled to testify against themselves, but that body of law applies only in those situations in which it is that officer, who has been accused of wrongdoing. This was not the case, in this instance. However, in deference to the individual's expressed wish to remain anonymous, I will refrain from naming her at this time.

In regard to her allegations, RMA's report leads the reader to believe that I admitted to making several statements alleged to have been made. This is untrue. They note initially that the alleged conduct occurred for "several years", but ended in late 2001 or early 2002. I would note that this is beyond the statute of limitations for any cause of action alleging sexual harassment. Statutes of limitations exist to guard against individuals bringing stale claims, based upon allegations which may be remembered incorrectly with the passage of time.

During my interview, I acknowledged making one comment approximately ten years ago, which I considered inappropriate in retrospect. I later expressed my regret and apologized to the detective for that remark. One comment does not constitute a case of sexual harassment, nor does it rise to the level of a hostile environment based on sex.

In an apparent attempt to avoid embarrassing the detective in question, RMA conveniently omitted the context of that one comment in their report, and went on to

wrap several alleged statements together, as though I had admitted to making all of them. In reality, I did not admit to anything, other than that one comment made in jest. I vehemently denied any other allegations.

Although the detective is alleged to have kept a journal, it should be noted that the keeping of a journal does not necessarily make the writer's perceptions of former conversations the truth. They are merely the perceptions of the writer. Subjective feelings that one has been sexually harassed, does not make that opinion a fact. It is also troubling that the detective apparently took the time to write things down which she claimed were offensive to her, but never took the time to make one simple report either to me or to the City Manager. The obvious conclusion to be drawn from behavior such as this, is that the writer is 'setting up' a potential target, for a sexual harassment claim.

Perhaps if the investigation had been conducted by a Michigan private investigation firm, or by Michigan attorneys, the investigators would have demonstrated a familiarity with Michigan law and an understanding of the proper elements of a viable sexual harassment claim. A review of Michigan case law involving sexual harassment claims, would have disclosed that a key element to any claim of sexual harassment is that the conduct complained of must be 'unwelcome'.

Another required element is that the conduct be reported, if a procedure is in place for reporting such behavior. There was such a procedure in place, at the Jackson Police Department. Never did the detective avail herself of that procedure. She did not advise me that she considered anything which I said to her to be sexual harassment, nor did she ever inform me that any communication I had with her was unwelcome. In fact, she acknowledged that she never reported anything to anyone, at any time.

Although the report summarily excuses her failure to report anything as being due to a fear of retaliation, the law does not allow for such an excuse, given the facts of this particular claim. The law requires a report because there is a fundamental fairness issue implicit in any situation involving a claim of sexual harassment. Otherwise, an individual could make sexual comments in the workplace, participate equally in sexual banter, even engage in a consensual sexual relationship with individuals with whom they work, while never reporting anything or complaining about anything, and then suddenly claim that the entire course of conduct had been unwelcome sexual harassment from which she should have been protected. Notice is one of the key elements in sustaining a claim of sexual harassment. When a reporting mechanism is in place, as it was during my tenure at Chief of Police, the burden is on the complainant to duly report any alleged acts of sexual harassment.

In fact, the detective in this matter did exactly the opposite. In connection with her job, she routinely signed an affirmation that she was not being sexually harassed by anyone. In addition, she sent me unsolicited "Thank You" cards, telling me what a great boss I was. Attached are copies of the text of those cards, written and signed by the detective in question. As you can see, nothing about these communications would

lead any rational person to believe the writer had any problem at all with her boss. Spontaneous cards expressing praise and gratitude, are not something an employee sends to a boss who has sexually harassed that employee. No claims about fear of retaliation can counter such conduct.

Other overt conduct by the detective also supports the position that no sexual harassment occurred. Twice, in the past year, the detective asked me if she could use me as a reference on job applications. In connection with one of those applications, I made a call on her behalf, to the hiring entity. I was helpful, not harmful, to the individual in question. My assistance was given at her request, and was based upon her record of job performance and absolutely nothing else.

It is difficult to imagine a sexual harassment investigation that could be any more biased in favor of a complainant. To state categorically, as the investigators do in their report, that my conduct was "by definition" sexual harassment in the workplace, is a misstatement of the law. The facts of the matter, even as recited by the investigators in their report, would not support such a finding by a court. The legal conclusion of sexual harassment announced by RMA, as agents of the City of Jackson, exhibits a reckless and complete disregard for my personal and professional reputation. That reckless assertion is the most troubling conclusion in the report.

During the course of the investigation, RMA, Mr. Ross and Mrs. Brechtelsbauer issued a press release inviting anyone who wished to address the allegations against me to come forward. In response, and at the request of Mrs. Brechtelsbauer, I referred several people to Mrs. Brechtelsbauer or RMA, so that they could be interviewed. I contacted one police chief, a gentleman who has served as an expert witness on behalf of the Jackson Police Department, to write a letter on my behalf. Mr. Ross talked that police chief out of writing the letter, saying "it was not necessary." It is an even more profound disappointment to me, that some of those people who were supportive of me were not interviewed, or were told that their support was "not necessary." Clearly, the investigators were not interested in speaking to anyone who wanted to tell them anything positive.

Compare that behavior by the investigators, to the zeal with which they explored any and all claims made by those who were not supportive of me, including allegations which were made anonymously. It is mystifying that one would (or could) investigate such anonymous allegations, when one is unable to even interview the complaining "witness".

It is also difficult to understand how the investigators can claim they were even-handed in their investigation into allegations regarding me, when they refused to interview people who could provide positive feedback as to particular matters. Their claim of neutrality is also belied by the fact that statements made by those employees who did speak in support of me, were summarily dismissed in the report as being motivated either by fear, or by some sort of misguided sense of 'loyalty'.

The investigators claim that they interviewed numerous witnesses, however witnesses are rarely referred to by name in the report. In fact, in many instances,

statements of witnesses appear to have been lumped together as some type of generic assertion. A fair and complete report would have listed all witnesses by name, with attribution to particular witnesses, of the statements made by those witnesses. Although the investigators reached the correct conclusion on the majority of the issues, they completely dropped the ball on the issues which mattered most to me.

The report from that investigation was then released to the media by the City of Jackson, as my employer. This release resulted in the reckless publication of anonymous allegations and inaccurate conclusions. Even a public figure is protected from the reckless publication of false allegations and erroneous conclusions.

I am requesting that any future publication or dissemination by the City of Jackson, its agents and/or employees, be accompanied by a copy of this letter responding to the inaccuracies contained in the report, and that this response be sent to those entities and individuals to whom the report has already been released.

Ervin Portis

November 2, 2007