

Jason L. Kafoury (OSB #091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
411 SW Second Avenue, Suite 200
Portland, OR 97204
(503) 224-2647
Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

JAMES M. CLEAVENGER,

Plaintiff,

vs.

**UNIVERSITY OF OREGON (an Agency and
Instrumentality of the State of Oregon), et al.,**

Defendants.

Case No. 6:13-cv-01908-DOC

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' WITNESSES**

Plaintiff hereby requests oral argument on this matter, and responds to defendants' proposed witnesses as follows:

I. SPECIFIC OBJECTIONS

Mark Chase: Junction City Police Chief Mark Chase is listed as potential witness #6 on Defendants' Witness List. Plaintiff was unaware that Mark Chase would be called as a witness in this case because although Chase was the Chief of Police while plaintiff worked at JCPD,

Chase was never plaintiff's direct supervisor and had very little interaction with him. In addition, plaintiff's Personnel File is void of *any* discipline, allegations of misconduct, or any other detrimental materials. (*See attached Ex. 1*). On the contrary, plaintiff has a Letter of Support and Recommendation signed by all the JCPD police officers and dispatchers. (*See Plaintiff Ex. #93*)

In Defendants' description of Mark Chase's potential testimony, they state that Chase may testify about plaintiff's complaint and his testimony (against Chase) made during the investigation. (*see ECMF #111 at page 4*). This investigation of Chase stemmed from circumstances culminating on or about July 18, 2014, when Chase was placed on Administrative Leave for over 6 months by Junction City after the police department's employees got together and filed formal complaints against him seeking his termination. These complaints were investigated, officers and other employees were interviewed (including plaintiff James Cleavenger), and a report was written by an outside agency (Local Government Personnel Institute) hired by the city to conduct the investigation. On 2/10/2015, Defense counsel Andrea Coit sent a Subpoena Duces Tecum (*see attached Ex. #2*) to Junction City requesting a copy of that report as follows:

All documents contained within the internal affairs investigation file on Mark Chase involving complaints by staff at Junction City Police Department against Mark Chase and involving his leave of absence on or about July 18, 2014, through February 2, 2015. This includes but is not limited to all complaints submitted in any form, including electronic, against Mark Chase by James Cleavenger; and any transcripts, summaries, or audio recordings of interviews or statements James Cleavenger gave regarding his complaint against Mark Chase.

Plaintiff has never seen this investigation report that contains Plaintiff's written complaint and interview that Chase is reportedly going to testify about. Plaintiff's counsel Jason Kafoury and defense counsel Andrea Coit came to a verbal agreement during depositions to share access to all discovery materials gained from outside entities through their Subpoenas Duces Tecums, so that wasteful duplicative requests would not have to be made. Despite multiple reminders and requests, Ms. Coit has not followed through and has broken her agreement.

This report is relevant because not only is Chase supposedly going to testify about it specifically, but it could be used to impeach Mark Chase and demonstrate his bias against plaintiff and the many other JCPD officers that plaintiff intends to call as witnesses. Understandably, Chase is angry that plaintiff and most (if not all) of his officers filed complaints against him and wanted him gone. Plaintiff also has reason to believe and will present evidence and testimony at trial that Chase has applied for employment with the Defendants (UOPD) and may still be being considered for a position. Chase has also filed a federal lawsuit against the City of Junction City (see case #15-cv-1028).

It is plaintiff's position that either Mark Chase be prohibited from testifying as a witness in this case at trial, or in the alternative that Defendants be ordered to release the entire investigative report they received from Junction City (as previously promised) so that plaintiffs can review it for potential impeachment evidence and/or evidence of bias towards plaintiff and the many Junction City Police Officers who will be testifying as plaintiff's witnesses in this case.

Chelsea Brandenburg: Plaintiff's ex-wife is listed as potential witness #4 on Defendants' Witness List. Without waiving the right to object to this testimony on grounds of marital privilege, Plaintiff objects as follows:

1. Plaintiff's one and only medication (Adderall) was already disclosed and known to defendants prior to his hiring, through their required medical evaluation.
2. Ms. Brandenburg was never with Plaintiff at work, so how can she testify about the "impairing impacts on his safety capabilities" at work?
3. Beer Bottle incident in 2000: Defendants state that this witness will testify about "the time that Plaintiff was arrested for throwing bottles." This happened in 2000 in Chicago when he did not even know Chelsea. It is a prior bad act that has nothing to do with this case and was already disclosed to the defendants during the hiring process (*see* Def. Ex. 398).
4. The affair started in 2013, after Plaintiff was no longer working for UOPD, and as such is irrelevant.

DATED August 17, 2015.

/s/ Mark McDougal

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Mark McDougal (OSB #890869)
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CERTIFICATE OF SERVICE

I certify that on August 17, 2015, I served or caused to be served a true and complete copy of the foregoing **PLAINTIFF'S OBJECTIONS TO DEFENDANTS' WITNESSES** on the party or parties listed below as follows:

Andrea Coit
Andrea.coit@harrang.com
Harrang Long Gary Rudnick P.C.
360 E 10th Ave, Ste 300
Eugene OR 97401-3273

Via CM / ECF Filing

/s/ Mark McDougal

Jason L. Kafoury (OSB#091200)
Mark McDougal (OSB #890869)
Kafoury & McDougal
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Fax: (503) 224-2673
jkafoury@kafourymcdougal.com
mcdougal@kafourymcdougal.com
Attorney for Plaintiff