

# Holland & Knight

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## MEMORANDUM

To: Village President Ed Ritter  
Village of Carpentersville, IL

From: Steven M. Elrod  
Village Attorney

Date: May 12, 2014

Re: Investigation of Complaint by Christopher Scholl

## BACKGROUND

By letter dated March 27, 2014, you asked me to conduct an independent investigation of the written complaint dated March 13, 2014 ("**Complaint**") made by Village of Carpentersville Firefighter/Paramedic Christopher Scholl against Village of Carpentersville Village Manager Mark Rooney.

In his Complaint, Mr. Scholl alleges that, on two separate occasions, Village Manager Rooney made comments about Mr. Scholl to, or that were overheard by, other employees of the Village that were "sexually charged" and "undeniably of a sexual nature." Further, Mr. Scholl alleges that the comments had the "effect of humiliation and definitely makes for an offensive atmosphere with which to work in." He concludes that these comments violate the Village's Discrimination, Harassment and Sexual Harassment Policy.

On April 7, 2014, I met in person with Mr. Scholl at the Carpentersville Village Hall. Mr. Scholl confirmed that the basis for his complaint consisted of the comments made to other employees by Mr. Rooney on two separate occasions. Mr. Scholl stated that, while he was not present on either occasion, he believed that they occurred during labor negotiation meetings between management and union representatives; one in early December, 2013 and the other in early

March, 2014. Mr. Scholl said he understood, from talking to some of the firefighters who were present that the comments about him were: "his balls are so large that he must need a yellow wheelbarrow to carry them around" and that he is a "sexual expert" or a "fucking expert" (collectively, the "**Comments**") Mr. Scholl also stated that it was his understanding that these Comments were made "in a joking manner" and "were not intended to be serious." Nevertheless, Mr. Scholl advised me that he was upset and embarrassed that the Comments were made in front of his fellow firefighters, and that he believes that the Comments constitute sexual harassment, and create a hostile work environment.

I assured Mr. Scholl that the Village President and Village Board take seriously any allegation of sexual harassment, and that I would fully investigate the matter. He requested that my investigation consist not only of talking to Village management, but also to the members of the firefighter union and others that were present on the two occasions that the allegedly offensive Comments were made. Mr. Scholl provided me with a list containing the names of nine persons who he believed witnessed the two comments. As noted below, I talked individually with each of the nine persons on the list.

#### **SUMMARY OF INTERVIEW SCHEDULE**

In connection with this investigation, I first met with the complainant, Mr. Christopher Scholl. We met at the Village Hall on April 7, 2014 and talked for more than 90 minutes. At Mr. Scholl's suggestion, I also met with the following nine employees of the Village of Carpentersville:

<b><u>Name</u></b>	<b><u>Title</u></b>	<b><u>Date</u></b>
Richard Nieves	Lieutenant	April 9, 2014 (telephone)
Christopher Bolliger	Lieutenant	April 9, 2014 (telephone)
Chad Parker	Firefighter	April 9, 2014 (telephone)

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Brian Simpson	Firefighter	April 9, 2014 (telephone)
Anthony Ferrerio	Firefighter	April 9, 2014 (telephone)
Todd Middendorf	Battalion Chief	April 9, 2014 (telephone)
Linda Mogren	HR Director	April 7, 2014 (in person)
Alan Popp	Public Safety Director	April 7, 2014 (in person)
John Skillman	Deputy Fire Chief	April 7, 2014 (in person)

In addition, after I met with all of the above individuals, I met with Village Manager Mark Rooney via telephone on April 10, 2014.

#### **FACTUAL FINDINGS**

Based on my investigation, it appears that the alleged Comments were made at or around the time periods stated by Mr. Scholl (the first of the Comments was made on December 9, 2013 and the second two of the Comments were made on March 7, 2014). On both dates, Mr. Rooney was participating in a collective bargaining/labor negotiation meeting. Most all of the witnesses recall the Comments being made by Mr. Rooney. The firefighters that I interviewed recalled the specific, verbatim words of the Comments exactly as alleged by Mr. Scholl, without any assistance by me. However, the others did not recall the specific words of the Comments until I read them from Mr. Scholl's complaint. Once I read the allegations, these witnesses recalled that, generally and for the most part, the Comments were made. One witness could not recall the specifics at all. There is some minor disagreement as to exactly when during the course of the labor negotiations the Comments were made. The firefighters state that the Comments were made during the meetings; while the management recall that the Comments were made either before the actual meeting started, or as the meeting was breaking up. There is no disagreement that the Comments were connected with the labor negotiations.

Mr. Rooney does not deny that the Comments were made. However, he and many of the others interviewed point to the context in which the Comments were made. Specifically, the Comments occurred during or around a sometimes heated and tense labor negotiations where it is not uncommon for foul language to be used. Mr. Rooney claims that he made the remarks as a joinder to other critical comments that were being made about Mr. Scholl by others in the room. Mr. Rooney claims that he used the words "**sexual** expert" initially in order to avoid using a profane word. When asked by others in the room what he meant by "sexual expert", he then used the words "fucking expert." Mr. Rooney notes that the parties were engaged in difficult and complicated negotiations and that tempers flared. He believes that everyone who heard the Comments knew that he intended them in a "tongue-in-cheek" manner. However, on reflection, he acknowledges that the Comments could be perceived differently if taken out of context.

## **CONCLUSIONS**

I approach this conclusion strictly from a legal perspective, and as a matter of law. I accept Mr. Scholl's word that he feels embarrassed and harassed by the Comments made about him by Mr. Rooney. But, that does not make Mr. Rooney's comments unlawful. The law does not prohibit all harassment in the workplace -- the law only prohibits harassment **based upon sex**. As the United States Supreme Court recognized in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), crude or degrading rough-housing must be distinguished from sex harassment or sex discrimination. The law is implicated "only when severe or pervasive conduct creates an objectively hostile or abusive work environment, so that the conditions of employment differ **on account of sex** ..." *Shafer v. Kal Kan Foods, Inc.*, 417 F.3d 663 (7<sup>th</sup> Cir. 2005). I do not find that Mr. Scholl became a target of remarks made by Mr. Rooney because of sex. I do not find that the Comments were sexually charged or of a sexual nature. There is no evidence of sexual harassment within the meaning of the federal law. I have also reviewed the Village of Carpentersville Discrimination, Harassment, and Sexual Harassment Policy dated

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June, 2013 ("**Village Policy**"). I do not find that the allegations in Mr. Scholl's complaint amount to a violation of the provisions set forth in the Village Policy.

There is no dispute that the Comments were made by Mr. Rooney in reference to Mr. Scholl, that the Comments may be considered to be crude, and that Mr. Scholl was offended. As such, I recommend that Mr. Rooney be instructed to refrain from making such remarks about Mr. Scholl or any other Firefighter during labor negotiations or in a similar context. However, because I find that the allegations of the complaint by Mr. Scholl do not amount to unlawful conduct under any applicable law, I recommend that no further action be taken.

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