

## BAR COMPLAINT AGAINST TRUMAN STONE

My name is Rebecca Wallis, and I am a concerned citizen of the City of Newberg (“Newberg”) and am upset as to the conduct of certain City Officials regarding all aspects associated with the case of Greg Patton v. The City of Newberg, Yamhill County Circuit Ct Case #17CV-43534. I believe that Truman Stone (“Stone”), in his capacity as full time employee/City Attorney for Newberg has violated various provisions of the Oregon Rules of Professional Conduct associated with the Patton case and the aftermath associated with the Patton case.

In order to articulate what I believe are the violations associated with Stone, it is first necessary to understand the Patton case. Patton, an African American, applied for a position as Asst. Human Resources Director with the City of Newberg. Patton was not hired for the position as Newberg hired a female for that position. Patton believed that he was more qualified than the person that Newberg hired and that he was not hired because of his race. Patton then retained Sean Riddell (“Riddell”) to represent him in a race discrimination case against Newberg.

On or about 3/22/17, Riddell served Newberg a Public Records Request (“PRR” - see enclosed “Public Records Request”) as Riddell was requesting various documents associated with the applications for the Assistant H/R Director’s position (which was the subject of the Patton legal action) Subsequent to 3/22/17, there were a series of e mails between Riddell and Newberg clerk personnel clarifying the PRR (these are enclosed as pages 2-6 of the PRR).

On or about 4/26/17, Riddell serves upon Stone a Statutory Tort Claim Notice and Preservation Letter (“Notice/Preservation Letter” - see enclosed Tort Claim Notice and Preservation Letter) notifying Newberg of the existence of a tort claim by Patton against Newberg for race discrimination in hiring, as well as a detailed request for Newberg to take immediate steps to preserve all relevant evidence including but not limited to computer files associated with the matter.

On or about 4/27/17. Dave Brooks (“Brooks” who is the I/T Director for Newberg and who has been employed by Newberg for approximately 17 years) is made aware of the Notice/Preservation Letter, and he immediately researches the computer data and applicable files to determine the extent of the work necessary to comply with the Notice/Preservation Letter, Brooks immediately determined the following:

- On 3/23/17 at approximately 5:00 pm, Lee received the PRR (see enclosed OSP Report pages 9 and 10)<sup>1</sup>

- On 3/23/17 at approximately 8:43 pm on 3/23/17, Lee sends an e mail to Stone “seeking advice” regarding the PRR (see OSP Report page 10).

- On 3/24/17 (the morning after Lee received the PRR), Lee does the following (see OSP Report page 10):

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<sup>1</sup> The investigation was ultimately assigned to Oregon State Police - OSP, because Stone was alleging that Brian Casey -Chief of Police for Newberg was the person who burglarized Lee’s office - this alleged burglary and association with the entire investigation is discussed in more detail later in this Complaint

- Alters the applicant tracking computer file associated with the Patton hiring process.
- Opens the tracking computer file a second time but does not alter it.
- Opens the tracking computer file a third time for 12 minutes and then saves it.

The file that was opened the third time and then save by Lee is e mailed by Lee to Stone, but the OSP Report does not state when the file was e mailed.

Brooks immediately called for a meeting with Stone and Joe Hannan (City Manager - "Hannan") to inform them of his findings and to discuss the Notice/Preservation Letter. Because of the severity of the matter, Brooks recommended to Stone and Hannan that Brooks be able "to lock Lee out of the files"; ie, prohibit further access by her to alter files. In Brooks' opinion, this action was necessary to prohibit further tampering of evidence by Lee. Neither Stone nor Hannan communicated any comments to Brooks regarding his findings that Lee altered the computer file (s); however, both Stone and Hannan prohibited Brooks from "locking Lee out of the files" - thus, she continued to have access to the computer files. No reason for Stone's and Hannan's directive was communicated to Brooks (see OSP report page 10). Brooks also informed Stone and Hannan that he could recover the original tracking sheet computer file that Lee had altered, but he was specifically instructed to not recover the computer file (see OSP report page 10).

It is unknown what involvement or knowledge, if any, Stone had associated with these allegations associated with Lee allegedly tampering with evidence. However, what is known is that Lee received the PRR on 3/23/17 - at approximately 8:43 pm that same day she e mails Stone asking for advice - the next morning Lee alters the applicant tracking file and then opens the file two more times, saving it once more, and e mails the file she opened a third time to Stone - Brooks immediately brings all these matters to the attention of Stone and Hannan and requests that he be able to lock Lee out of any further access to those files but is denied that request by both Stone and Hannan - and that Brooks informs both Stone and Hannan that he can recover the original file before it is altered but is prohibited from doing so by both Stone and Hannan. Clearly, the inference is that Stone and Lee had some type of communication regarding the Notice/Preservation Request Letter from the time that Lee received it on 3/23 and on 3/24 which was the date that Lee allegedly altered the computer file. One must ask "Why would Stone prohibit Brooks from locking Lee out of further access to the computer files, and why would Stone prohibit Brooks from recovering the original computer file before it was allegedly altered?"

During that meeting between Brooks, Stone, and Hannan, Brooks also discussed the Notice/Preservation Letter with both Stone and Hannan and the fact that Newberg was required to comply with the Notice/Preservation Letter and that Brooks had a plan regarding the necessary work required to preserve the data. However, both Stone and Hannan, as "employees superior to Brooks", instructed Brooks that he was not allowed to execute his plan to preserve the computer data. Hence, none of the computer data was preserved, and as such was destroyed and not made available to Riddell (see OSP Report page 10).

*I submit that Stone's actions in directing that Brooks was prohibited from "locking out" Lee from her computer together with Stone failing to take any action associated with Lee's altering of evidence with that allegation substantiated by Brooks together with Stone prohibiting Brooks from recovering the original computer file before it was altered **violated with following Sections of the Rules of Professional Conduct:***

**Section 3.4 (a) which states A lawyer shall not: knowingly and unlawfully obstruct another party's access to evidence and**

**Sections 8.4 (a) It is professional misconduct for a lawyer to: (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law; (4) engage in conduct that is prejudicial to the administration of justice;**

*I submit that Stone's actions in directing that Brooks was prohibited from preserving the computer data pursuant to the Notice/Preservation Letter **violated the following Sections of the Rules of Professional Conduct:***

**Sections 3.4 (a) which states A lawyer shall not: knowingly and unlawfully obstruct another party's access to evidence and Section (d) in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; and**

**Sections 8.4 (a) It is professional misconduct for a lawyer to: (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law; (4) engage in conduct that is prejudicial to the administration of justice;**

On or about 7/11/17, which was subsequent to Lee receiving the PRR as well as a copy of the Notice/Preservation Letter, Lee then alleged that her office (which contained employee information) at Newberg City Hall had been burglarized. However, Lee never notified the Newberg Police Department or any other police agency of this alleged burglary but instead notified Stone of the alleged burglary. Neither Stone nor Lee then notified any police agency of the alleged burglary but instead notified the building maintenance person to replace the lock that had allegedly been tampered with. Months later, Brian Casey ("Casey" - Newberg Chief of Police) learned from Brooks that Lee's office had allegedly been burglarized months before (Brooks had just recently been made aware of the allegation). Casey immediately contacted Stone requesting information as to Stone's knowledge associated with the alleged burglary; however, Stone failed to respond to Casey's inquiry. Casey also contacted Lee requesting information but received very little detailed information from Lee (see OSP Report pages 8 and 9 for details).

Casey then assigned Todd Baltzell ("Baltzell"), a Newberg detective, to investigate the alleged burglary. However, neither Lee nor Stone were cooperative with Baltzell in his investigation (see enclosed Baltzell report). Rather, Stone communicated to City Council

member Denise Bacon that he thought Casey committed the burglary (see page 13 of OSP Report). This allegation was made notwithstanding the fact that Brooks had digital evidence that showed no one other than cleaning personnel were in that area of City Hall building at the time of the alleged burglary - that evidence of Brooks' was sufficient for law enforcement personnel to conclude no one committed a burglary. Because of the allegations regarding Newberg Police involvement with the alleged burglary, investigation was then assigned to Oregon State Police ("OSP" - this was referenced in the footnote on page 1 of this Complaint). However, Newberg City Employees (among them Stone and Lee) were not cooperative with OSP in its investigation - specifically, Lee, presumably being advised by Stone as City Attorney, secreted herself from OSP and refused to communicate to OSP (see OSP Report page 26 and 27). Also, the OSP Report states that at one time Detective Moisan came to the front desk of the Newberg City Hall and asked to speak to Lee. The male he talked to said he would see if she was available. Shortly thereafter, one of the people at the front desk took a call that said that Lee was going to a meeting outside of City Hall. Detective Moisan later learned that the male he spoke to was Stone (see OSP Report pages 26 and 27). Because of the lack of cooperation by Lee and Stone in the police investigations associated with the alleged burglary, Yamhill County District Attorney Brad Berry ("Berry") was contacted regarding whether or not a prosecution should be initiated associated with initiating a false police report regarding the alleged burglary. However, Berry declined prosecution primarily because of witness lack of cooperation as well as the use of attorney/client privilege to frustrate the investigation (see enclosed Berry declination letter).

*I submit that Stone's actions in counseling and advising Newberg City Employees (including but not limited to Lee by secreting herself) to not cooperate with the police investigations associated with the alleged burglary, as well as Stone himself not cooperating violated the following Sections of the Rules of Professional Conduct:*

**Section 3.3 (a)(5) - A lawyer shall not knowingly engage in other illegal conduct or conduct contrary to these Rules.**

**Section 8.4 (a)(3) - It is professional misconduct for a lawyer to (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law; (4) engage in conduct that is prejudicial to the administration of justice;**

*I submit that Stone's actions in making a statement to Denise Bacon that he believed Casey was responsible for the alleged burglary was a knowingly false statement particularly since Brooks had accounted for everyone who had been inside City Hall at the time of the alleged burglary violated the following Sections of the Rules of Professional Conduct:*

**Sections 3.4 (a) which states A lawyer shall not: knowingly and unlawfully obstruct another party's access to evidence and Section (d) in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; and**

**Sections 8.4 (a) It is professional misconduct for a lawyer to: (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (3) engage in conduct involving dishonesty, fraud, deceit or**

**misrepresentation that reflects adversely on the lawyer's fitness to practice law; (4) engage in conduct that is prejudicial to the administration of justice;**

Lee eventually filed Workplace Harassment claims against Brooks, Casey, and Police Captain Jeff Kosmicki, alleging that these 3 individuals "harassed" her associated with the alleged burglary allegations made by her. Based on these complaints, Newberg then retained outside counsel to investigate these claims. As a side note, all 3 individuals deny there was any workplace harassment by any of them against Lee and refute many of the allegations and conclusions set forth in the Investigate Report by Heather Martin - see enclosed investigate report. I would submit that any investigation by Heather Martin is irrelevant to the conduct of Stone, but I am including this report for your records.

The Patton case eventually proceeded to trial in September 2019 - the trial lasted approximately 1 ½ days. At trial, Brooks testified regarding the fact that he was not allowed to preserve the computer files pursuant to the Notice/Preservation Letter, but he was specifically prohibited from testifying that Stone refused to allow him to preserve the said files by reason of attorney/client privilege. Evidence associated with Lee allegedly altering evidence by altering the computer employee tracking file was also presented at trial, as Lee denied altering any evidence. Patton had requested economic damages in the form of wage losses in a range of approximately \$75,00 - approximately \$95,000 and non-economic damages in an amount of \$200,000. The jury only deliberated 90 minutes to award Patton \$83,500 in economic damages and the entire amount of \$200,000 in non-economic damages. Certain legal persons have informed me that in arriving at a verdict in such a short period of time, one can conclude that the jury believed that Anna Lee **altered evidence and that there was a nefarious purpose by the City of Newberg regarding prohibiting Brooks from preserving the evidence.**

*I submit that Stone's actions in acquiescing with outside counsel to use attorney/client privilege to prohibit Brooks from being able to testify that he was prohibited by Stone from preserving the computer files pursuant to the Preservation Letter **violated the following Sections of the Rules of Professional Conduct:***

**3.3 (a)(5) - A lawyer shall not knowingly engage in other illegal conduct or conduct contrary to these Rules.**

**8.4 (a)(3) - It is professional misconduct for a lawyer to (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law; (4) engage in conduct that is prejudicial to the administration of justice; or**

I submit that Stone, from the time he directed that Brooks was prohibited from preserving the computer data pursuant to the Preservation Letter inserted himself "right in the middle" of the Patton action as well as all issues associated with that action (the alleged "burglary", the non-cooperation by the City employees (including Lee and Stone) in the police investigations, etc.) as Stone became a potential defendant in potential legal action against the City - either by Patton, but also by Brooks, Casey, and/or Kosmicki (as all 3 have filed Tort Claims against Newberg) -

however, Stone continued to counsel and advise and be involved with Newberg during this entire time.

*I submit that Stone's actions in continuing to advise and counsel the City of Newberg subsequent to when he prohibited Brooks from preserving the computer data **violated the following Sections of the Rules of Professional Conduct:***

**RULE 1.7 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:**

**(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer**

The personal interest of Stone in defending himself against legal claims which could be filed by Patton, Casey, Brooks, and/or Kosmicki made it impossible for him to continue advising and counseling the Newberg as to any aspect associated with the Patton matter.

I am certainly available for any follow up questions you may have. The following is a list of persons to contact regarding investigating all of the above:

Dave Brooks - Newberg I/T Manager 503-538-9421 (City of Newberg Number)  
 Brian Casey - Newberg Police Chief 503-538-8321  
 Jeff Kosmicki - Newberg Police Captain 503-538-8321  
 Todd Baltzell - Newberg Police Detective 503-538-8321  
 Anna Lee - Newberg H/R Director 503-538-9421  
 Ted Moisan - OSP Detective - unknown phone #  
 Denise Bacon - Newberg City Council Person - contact Newberg City Hall as to how to Contact her  
 Joe Hannan - former City Manager for Newberg - contact Newberg City Hall as to how to Contact him  
 Brad Berry - Yamhill County District Attorney - 503-434-7539

Anybody else you want here

Respectfully Submitted,

Rebecca Wallis  
 Address and phone number go her

Enclosures:

Public Records Request  
 Tort Claim Notice and Preservation Letter  
 Report of Detective Todd Baltzell

OSP Report