

**KANEY & OLIVARI, P.L.**  
ATTORNEYS AT LAW

55 Seton Trail · Ormond Beach, FL 32176  
Ph (386) 675-0691 · Fax (386) 672-7003  
www.KaneyOlivari.com

Jonathan D. Kaney Jr.  
Jonathan D. Kaney III  
Michael P. Olivari

December 21, 2011

Mr. George Recktenwald, Interim Director  
Department of Public Protection  
125 West New York Avenue – Room 183  
DeLand, Florida 32720

Mary Anne Connors, Deputy County Mgr.  
County of Volusia  
123 W. Indiana Avenue  
DeLand, Florida 32720

Daniel D. Eckert, Esq.  
County Attorney  
123 W. Indiana Avenue – 3<sup>rd</sup> floor  
DeLand, Florida 32720

**Re: Written Notice of Intentional Violations of Capt. Gardner's  
Rights Under the Police Officer's Bill of Rights**

Dear Mr. Recktenwald, Ms. Connors and Mr. Eckert:

This firm represents Captain Richard S. Gardner. This letter is Captain Gardner's written notice of violations and request for compliance review hearing pursuant to Section 112.534(1)(c)&(d), Florida Statutes.

**1. Violation of Section 112.532(1)(d), Florida Statutes**

On October 18, 2011, Mike Coffin, as Director of the Department of Public Protection, served Captain Gardner with a Notice of Intent to Dismiss ("NOI"). The NOI began by stating that, "as a result" of Captain Gardner's "actions documented in IA 2011-09297", Mr. Coffin intended to dismiss him "from employment with the County of Volusia." On October 24, 2011, Captain Gardner, through counsel, responded in writing to the NOI.

Among other things, the NOI accused Captain Gardner of making two false statements. First, it states: "During the time that you were involved with Officer Gittner, you were asked by a supervisor whether you were having an inappropriate relationship with her, which you denied." That is false. As I stated in my response to the NOI, although Director Sweat asked Captain Gardner about a year ago if he was involved in a relationship with Officer Gittner, Director Sweat asked that question after Captain Gardner and Officer Gittner had broken up. Accordingly, Captain Gardner replied, "No." Captain Gardner's response was true. As I also mentioned, the relationship subsequently resumed, but Director Sweat did not thereafter ask again. Director

December 21, 2011

Sweat confirmed these facts in his December 13, 2011 Sworn Statement. (Direct Sweat 12/13/11 Sworn Statement, pp. 26-28). Captain Gardner incorporates that sworn statement, in its entirety, as evidence in support of this written notice of intentional violations and request for compliance review hearing.

Second, Mr. Coffin's NOI states: "More recently, I asked you whether there was anything in your background which could cause embarrassment to the Division and you said, 'No.'" As stated in my response to the NOI, that statement is false. Mr. Coffin never asked Captain Gardner that question either within or without the internal affairs investigation.

As stated in my NOI response, the conversation that Mr. Coffin referred to was a meeting that included Coffin, Director Sweat and Captain Gardner concerning Coffin's offer to promote Captain Gardner to Deputy Chief earlier this year. Contrary to as falsely alleged in his NOI, the question that Coffin really asked Captain Gardner was: "Obviously, we're in the midst of a lawsuit here. You realize you're going to be the new head of the beach. You have to understand this is a business so don't take this the wrong way. If you are appointed to Deputy Chief, are we going to find out that you had knowledge of the Simmons and Tameris allegations prior to it being reported?" Captain Gardner's answer to that question was no—he did not learn of those allegations until the internal investigations were revealed.

Director Sweat confirmed in his sworn statement that Coffin never asked Captain Gardner the broad question contained in his NOI. (Sweat, pp.32-33,71-72). Also, Director Sweat and Deputy Director Petersohn both confirmed under oath that Coffin did not ask Petersohn that general question when Coffin interviewed him for the same position. That is, both Sweat and Petersohn testified that Coffin's question to Petersohn was also directly related to the Simmons and Tameris case and that Coffin never asked the general question he falsely alleges in his NOI. (Sweat, pp.32-33,71-72; Deputy Director Petersohn 12/6/11 Sworn Statement, pp.13-14).

As explained in my response to the NOI, what Coffin did was replace a question he did ask with a question that he did not ask in order to make it look like Captain Gardner gave a false answer. In other words, Coffin manufactured evidence in order to harm Captain Gardner. That conduct is not only grounds for his dismissal, but is, in fact, also grounds for his prosecution since, among other things, his conduct constitutes "Official misconduct" proscribed by criminal statute Section 838.022, which provides, in relevant part, that: "It is unlawful for a public servant, with corrupt intent . . . to cause harm to another, to: [ ] Falsify, or cause another person to falsify, any official record or official document; . . .". That Coffin's sworn testimony to the contrary in his December 13, 2011 "sworn statement"<sup>1</sup> is false, is evidenced by the sworn testimony of Captain Gardner, Director Sweat and Deputy Director Petersohn. Coffin stands alone here. It is because he lied.<sup>2</sup> That is additional grounds for his dismissal and prosecution.<sup>3</sup>

---

<sup>1</sup>This was an obvious whitewash. This is further evidence of the bad faith nature of the County's "re-opened" investigation into Captain Gardner.

<sup>2</sup>Coffin's interview was conducted at the same time as Director Sweat's interview. Thus, Coffin did not know at the time he gave false sworn testimony that Director Sweat had not lied for him.

December 21, 2011

More importantly, for purposes of this Written Notice of Violations pursuant to Section 112.534(1), Coffin's inclusion of these false allegations in the NOI is not only wrongful because they are false, but is also wrongful because it violated Section 112.532(1)(d) of the Law Enforcement Officers' Bill of Rights, which provides that before the investigative interview, the officer must be provided all statements and other evidence to be used against him. Specifically, Section 112.532(1)(d) provides:

The law enforcement officer . . . under investigation must be informed of the nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. . . .

Captain Gardner requested this information in writing and received only the three witness interviews. No one provided him the manufactured evidence that Coffin included in his NOI.

It is obvious that these violations were intentional. First of all, Coffin lied.<sup>4</sup> That is intentional conduct. Second, the conversations that Coffin twisted and then injected in his NOI were not part of the IA investigation. Nor were they part of the final IA report. That Coffin went out of his way to include these false allegations in his NOI since there was not enough evidence in the IA report to justify his self-serving decision to turn Captain Gardner into a scapegoat for the "anonymous" letter and other pressures Coffin and the County are under, is evidence of intent.<sup>5</sup> People do not unintentionally manufacture evidence to bolster an otherwise unsupportable decision. Simply put, Coffin made up and injected additional "evidence" after the investigation was over. It is obvious that this was done with the *intent* to harm Captain Gardner. I also note that the NOI draft dated 10/17/11 does not contain the allegation of making a false

---

<sup>3</sup>Worse, his "interview" makes it perfectly clear that the County is sweeping Coffin's serious misconduct under the rug. Unfortunately, that is typical behavior of County government, which is, ultimately, the fault of its leadership (or lack thereof).

<sup>4</sup>Coffin also lied when he denied stating that he was motivated by self-preservation due to his political ambitions. In fact, he made that statement in the presence of Jim Ryan and every Captain (excluding Gardner) on the beach. In keeping with the whitewash, the County's "investigators" did not follow up on this.

<sup>5</sup>Further evidence of intent is found in the various ways Coffin manipulated the evidence in his NOI as addressed in Captain Gardner's October 24<sup>th</sup> response thereto.

December 21, 2011

statement. That Coffin, after seeking input from the County Attorney's office, decided to add more "evidence" is, itself, further evidence of intent.

Captain Gardner asserted these intentional violations in his response to the NOI, but the County has done nothing to cure them. Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning these intentional violations of his rights.

2. Violations of Section 112.532(4)(a) and Section 112.533(1)(a), Florida Statutes

Section 112.532(4)(a) provides:

(4)(a) Notice of disciplinary action.--A dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against any law enforcement officer or correctional officer unless the law enforcement officer or correctional officer is notified of the action and the reason or reasons for the action before the effective date of the action.

Section 112.533(1)(a) provides, in relevant part:

(1)(a) Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person, which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. When law enforcement or correctional agency personnel assigned the responsibility of investigating the complaint prepare an investigative report or summary, regardless of form, the person preparing the report shall, at the time the report is completed:

1. Verify pursuant to s. 92.525 that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief.

2. Include the following statement, sworn and subscribed to pursuant to s. 92.525:

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

*The requirements of subparagraphs 1. and 2. shall be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges. . . . (e.s.).*

December 21, 2011

Mr. Coffin intentionally violated these laws when he told Director Sweat to tell Captain Gardner on October 13, 2011 that Captain Gardner would be fired on October 14, 2011 at 5:00 pm if he did not resign beforehand. Coffin admitted he gave that order<sup>6</sup>, even though the NOI was not finalized until October 18, 2011 and even though he had not "notified [Gardner] of the action and the reason or reasons for the action before the effective date of the action" per Section 112.532(4)(a) and had not complied with any of the requirements of Section 112.533(1)(a).<sup>7</sup> This was a violation of law.

Pursuant to Coffin's order, on October 13, Director Sweat summoned Captain Gardner to his office. Director Sweat was clearly upset when Captain Gardner entered his office. Director Sweat informed Captain Gardner that: "They told me that they intend to dismiss you" and that they said Captain Gardner had until 5:00 Friday, October 14, and not one minute later, to resign or be fired. When Captain Gardner asked "Who's they?", Director Sweat said that when he asked Coffin who made the decision, Coffin told him "You don't need to know...it's done." When Captain Gardner asked what policy he violated, Sweat said he did not know.<sup>8</sup> (Sweat, p.74).

Thus, in addition to the violations of law, as set forth above, Coffin's conduct also violated numerous sections of County code. In addition to those cited above and in response to the NOI, Coffin's conduct also violated Merit Rule 86-427, Merit Rule 86-451, and Departmental Standard Directive 27.01.24. Moreover, Mr. Coffin and the County violated the due process policies in place by usurping Director Sweat's authority to make this decision. This constitutes a violation of Departmental Standards Directive 27.01.33. As Director of the Division of Beach Safety and Captain Gardner's immediate supervisor, it was Director Sweat's decision as to what adverse employment action to take, if any, assuming just cause. Indeed, the IA report's cover letter from Deputy Director Jim Ryan to Coffin stated: "By copy of this memorandum, the Director of the Beach Safety Division is directed to review and initiate appropriate disciplinary action."

The fact that Mr. Coffin violated numerous sections of County code in his trumped up, self-serving effort to fire Captain Gardner is further evidence that the Police Officer's Bill of

---

<sup>6</sup>(Coffin 12/13/11 Sworn Statement, p.15).

<sup>7</sup>Coffin admitted under oath that he decided to dismiss Captain Gardner during a "meeting" on October 10, 2011, that included Coffin Jim Ryan, and Director Sweat. (Coffin, p.14). Capt. Dofflemeyer's IA report was not finalized until 10/12/11, at the soonest. Thus, Coffin decided to fire Captain Gardner before the IA report was finalized. Coffin also testified that Director Sweat agreed with Coffin's decision, but Director Sweat's testimony refutes that. Director Sweat was clear that the decision was Coffin's and that Coffin was taking his recommendation all the way to the County Manager. (Sweat, pp.77-78). This constitutes a violation of Departmental Standards Directive 27.01.31 for adjudicating the allegations of misconduct by a person other than the Director of the Beach Safety Division.

<sup>8</sup>That was a violation of Departmental Standards Directive 27.01.24.

December 21, 2011

Rights violations set forth above were intentional. As the Director of the Department of Public Protection, Coffin was fully aware of these code sections as he violated them.

Captain Gardner asserted these intentional violations in his response to the NOI, but the County has done nothing to cure them. Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning these intentional violations of his rights.

**3. Violation of Section 112.532(6)(b), Florida Statutes**

Indeed, rather than cure the violations of Captain Gardner's rights under the Police Officer's Bill of Rights, the County allowed Mike Coffin, the subject of those very complaints, to re-open the investigation into Captain Gardner. Specifically, after the investigation into Captain Gardner had concluded and the IA report had been finalized and after Coffin issued the NOI, to which Captain Gardner responded on October 24, 2011, Mike Coffin notified the undersigned by letter dated October 25, 2011 that he was re-opening the investigation into Captain Gardner.

Mr. Coffin's letter expressly stated that he was re-opening the investigation because Captain Gardner's October 24, 2011 response to his NOI brought forward information which he believed "merits further review for purposes of due process". Coffin elaborated in his sworn interview by stating that it was his decision to reopen the investigation and the intent was to "give Capt. Gardner a full, fair, and complete investigation of the charges against him." (Coffin, p.6). Coffin added that he wanted to reopen the investigation "because Kaney had alleged Official Misconduct." (Coffin, p.7). These were the only reasons given.

None of these "reasons" constitute lawful grounds upon which to open a closed internal affairs investigation. Section 112.532(6)(b) provides in pertinent part:

(b) An investigation against a law enforcement officer or correctional officer may be reopened . . . if:

1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the disciplinary response of the officer.

Again none of the statutory grounds are present here. Coffin's October 25, 2011 letter re-opening the investigation into Captain Gardner did not point to any "significant new evidence" that had "been discovered" since the investigation closed, nor did it point to any evidence that "could not have reasonably been discovered in the normal course of [the] investigation" or evidence that resulted from Captain Gardner's response to the NOI. In fact, his letter did not refer to any evidence at all. There is good reason for that—no such qualifying evidence exists. This is obviously a pretense.

December 21, 2011

Captain Gardner's response to Coffin's NOI did not constitute "new evidence". Nothing in that response was new, except as to the wrongful conduct of Coffin and others. That, obviously, does not constitute grounds to re-open an already closed investigation into Captain Gardner. Re-opening the investigation into Captain Gardner, then, is obviously an act of bad faith on the part of Coffin and the County.

Indeed, Coffin's confession that he wanted to reopen the investigation "because Kaney had alleged Official Misconduct" is an admission that his re-opening of his investigation into Captain Gardner was not pursuant to the statute but, rather, was an act self-preservation and unlawful retaliation. That is, he re-opened the investigation in an attempt to clear himself and, also, since the first investigation did not yield sufficient grounds to terminate Captain Gardner, to get new evidence against him so that Coffin and/or the County could terminate him.

Nothing in the evidence accumulated since Coffin unlawfully re-opened the investigation is new as to Captain Gardner. The only "new" line of questioning was into on-duty calls and texts with Officer Gittner on their personal cell phones.<sup>9</sup> However, the investigators could have attempted to discover this evidence the first time around. Indeed, the first investigation included a review of their county cell phone records. Everything in that stack of documents produced on December 16<sup>th</sup> that pertained to Captain Gardner was either not new or could have been asked for during the investigation before it was unlawfully re-opened.

The investigators in the "re-opened" investigation<sup>10</sup> have also revisited the prior IA finding that Captain Gardner did not supervise Officer Winters in an effort to change that finding. They are also, obviously, trying to establish that Captain Gardner supervised Officer Gittner, even though that line of inquiry was explored the first time around and the IA report did not find this to be true. That is, it is plainly evident from the post-NOI interviews that the

---

<sup>9</sup>See post-NOI witness interviews and Smith's December 13, 2011 letter.

<sup>10</sup>In addition to Smith representing the County and Jones, the Sheriff's lawyer, representing Coffin, they are both also serving as investigators. Larry Smith confirmed this in his December 13, 2011 letter wherein he wrote: "The continuation of [Captain Gardner's] investigation is now being conducted by me, Nancye Jones, and Captain Nikki Dofflemyer." See also December 9, 2011, Sworn Statement of Cara Gittner, pages 5 and 6, where Smith states: "[O]n most days I'm the deputy county attorney in charge of litigation. . . . Today my job is to continue the investigation into some allegations which were made about Captain Gardner. Now the reason I'm repeating all that is, is that I'm not here to prosecute anybody today. My job is to investigate." See also December 9<sup>th</sup> Sworn Statement of Tamara Marris, page 5, where Smith states: "Obviously, you've been advised that normally I don't do these. I'm here because this is an important matter to the County. My job is to conduct as thorough an investigation as I can." See also November 22<sup>nd</sup> Sworn Statement of Mindy Greene, page 5, where Capt. Dofflemyer states in the presence of Smith: "Mr. Larry Smith is also present. He will be the lead investigator for this portion of the interview."

December 21, 2011

investigators are trying to alter the IA report.<sup>11</sup> That constitutes a violation of Section 838.022(1), Florida Statutes, which prohibits officials from falsify any official document, or causing another to alter any official document.

Accordingly, for any or all of the reasons set forth above, the re-opening of the investigation was unlawful. This violation, obviously, has not been cured. Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning these intentional violations of his rights.

**4. Violation of Section 112.532(5), Florida Statutes**

As stated above, Coffin's reopening of the investigation constitutes unlawful retaliation against Captain Gardner for his response to Coffin's NOI. That constitutes an intentional violation of Section 112.532(5): "No law enforcement officer or correctional officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this part."

This violation, obviously, has not been cured. Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning these intentional violations of his rights.

**5. Violation of Section 112.532(g)&(i), Florida Statutes**

On December 7, 2011, Deputy Director Joseph Pozzo, expressly as part of the internal affairs investigation of Captain Gardner, issued an unlawful order to Captain Gardner that purported to require him to produce personal cell phone records. On December 12, 2011, Captain Gardner, through counsel, responded to Pozzo's unlawful order by asserting that the order was unlawful and requesting that Pozzo explain the authority that he believes justifies his unlawful order.

On December 13, 2011, investigator Larry Smith sent a question-begging and otherwise non-responsive response to that letter. Of particular import, however, Smith's letter threatened disciplinary action up to dismissal if Captain Gardner did not produce his personal cell phone records in response to Pozzo's order, the unlawfulness of which had already been asserted by Captain Gardner. Also on December 13, 2011, and notwithstanding that Pozzo had already received Captain Gardner's December 12<sup>th</sup> response, through counsel, to his unlawful order, *Mr. Coffin's* secretary called Captain Gardner and told him that Pozzo wanted Captain Gardner in Pozzo's office at 9:00 the next morning and that Captain Gardner was to have his personal cell phone records with him.

The next morning, Captain Gardner was informed that the meeting with Pozzo was postponed until 2:00 that afternoon. At 10:14 am, the undersigned emailed Pozzo a copy of

---

<sup>11</sup>Director Sweat, in his sworn statement, confirmed that Captain Gardner did not supervise either Winters or Gittner. (Sweat pp. 12-14; 41-42).



December 21, 2011

Captain Gardner's December 14<sup>th</sup> response, through counsel, to Pozzo's unlawful order.<sup>12</sup> Then, Captain Gardner went to Pozzo's office at 2:00 pm, as ordered, and produced certain personal phone records that his December 14<sup>th</sup> response to Pozzo's unlawful order (which Pozzo had received over three and one-half hours earlier) said would be produced. Notwithstanding that Pozzo had already received Captain Gardner's written responses to his unlawful order to produce personal cell phone records, Pozzo then proceeded to interrogate Captain Gardner about the records he did not produce as well as Captain Gardner's understanding of Pozzo's unlawful order. Evidently finding the truth inconvenient, Pozzo intentionally mischaracterized the facts by characterizing the records that Captain Gardner produced as the full extent of Captain Gardner's response to his unlawful order. Meanwhile, by that time, Captain Gardner had already responded to Pozzo's unlawful order through counsel twice.

Captain Gardner repeatedly invoked his right to counsel during this interview, but Pozzo kept asking questions anyway. This constitutes an intentional and uncured violation of Section 112.532(i), Florida Statutes, which provides: "At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service." Moreover, Pozzo's interview was not recorded in intentional violation of Section 112.532(g), Florida Statutes. This violation is incurable.

Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning these intentional and uncured violations of his rights.

6. **Violation of Section 112.534(1)(b), Florida Statutes**

Investigator Smith scheduled a second interview of Captain Gardner, this time as part of the "re-opened" investigation, for December 16, 2011. After reviewing the evidence produced before the inspection, Captain Gardner, through counsel asserted the uncured violations of his rights provided by the Police Officer's Bill of Rights addressed above and requested that the agency head be notified. Investigator Smith nevertheless proceeded to interrogate Captain Gardner. This constituted a blatant and intentional violation of Captain Gardner's rights provided by Section 112.534(1)(b), Florida Statutes, which provides: "If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation. *Once this request is made, the interview of the officer shall cease*, and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation." (e.s.) This time, Captain Gardner's counsel was present and, despite protests by investigator Smith, was able to stop his intentional violation of Captain Gardner's rights before it continued.

Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning this uncured, intentional violation of his rights.

---

<sup>12</sup>Even if Pozzo's order were not spawned from the unlawfully and maliciously re-opened investigation, it would still be unlawful for the reasons set forth in the December 14<sup>th</sup> letter.

7. **Violation of Section 112.534(1)(b), Florida Statutes**

On December 20, 2011, Pozzo sent Captain Gardner an inter-office memorandum wherein he states that Captain Gardner is guilty of insubordination due to: (1) his refusal to comply with Pozzo's unlawful order to produce personal cell phone records; and (2) his assertion of his rights under the Police Officer's Bill of Rights at the outset of this "second" interview on December 16, 2011. This constitutes an intentional and uncured violation of Section 112.534(1)(b), Florida Statutes, which provides: "If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation. Once this request is made, the interview of the officer shall cease, *and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.*" (e.s.) These statutes are not secrets and the violations of them are not unintentional.

Pursuant to Section 112.534(1), Captain Gardner hereby demands a compliance review board hearing concerning this uncured, intentional violation of his rights.

8. **Violation of Section 112.534(1), Florida Statutes**

On December 20, 2011, Larry Smith sent Captain Gardner a letter wherein he advised Captain Gardner that his claims of violations of his rights under the Police Officer's Bill of Rights are "unfounded". Specifically, Smith wrote: "We have determined that these claims are unfounded." This constitutes a uncured, intentional violation of Section 112.534, Florida Statutes, which requires that such claims be adjudicated in a compliance review hearing before a compliance review panel within ten (10) working days.

Smith's December 20<sup>th</sup> letter also advises Captain Gardner that he has "decided to submit the additional witness statements and documentary evidence to the appointing authority for a final disciplinary action." He fails to mention just who the "appointing authority" is. Of more significance, however, is the fact that this constitutes a continued violation of Section 112.532(6)(b) since the "re-opened" investigation is unlawful.

**Conclusion**

Captain Gardner hereby demands a compliance review hearing to address the violations set forth above within the statutory deadline of ten (10) working days. Section 112.534(1)(d), Florida Statutes. Pursuant to the same section, Captain Gardner selects Detective Sergeant Michael Fowler, Daytona Beach Shores Department of Public Safety, to serve as a member of the compliance review panel. Detective Fowler has agreed to serve as Captain Gardner's selection to the panel and has gained permission to do so from his Chief of Police, Chief Stephan Dembinsky. Please advise as soon as possible who the County selects so that those two panel members can choose a third pursuant to the statute.

December 21, 2011

Copies of the documents referenced herein will be attached to the original of this letter that will be mailed. Meanwhile, the letter itself is served by facsimile and/or email today.

Sincerely,



**Jonathan D. Kaney III**

Telephone (386) 675-0691

[jake@kaneyolivari.com](mailto:jake@kaneyolivari.com)

JDK:rk

Enclosures