



**CLAY COUNTY SHERIFF'S OFFICE**  
***SHERIFF MICHELLE COOK***

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**Subject:** Internal Affairs Summation SI#2023-072  
**Date:** **09-26-2023**  
**To:** Director Wright  
**From:** Lt. James Murphy # 6884  
**Reference:** Citizen complaint on Sergeant K. Smith

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**Principle:** **Keith Smith – Sergeant of Internal Affairs.**

**Complainant:** Howard Fryer – Clay County Citizen

Referencing the Following alleged Policy Violations:

- 1 – Improper Tolling of an Administrative Inquiry.**
  - 2 - Denying a Member a representative.**
  - 3 - Failure to document investigative steps.**
  - 4 - Failure to document an administrative inquiry.**
  - 5 - Failure to complete a supervisor inquiry within 45 days.**
  - 6 - Failure to inactivate a case after no finding was made in 45 days.**
  - 7 - Failure to notify an employee of the charges before an interview.**
  - 8 - Failure to record a formal interrogation.**
  - 9 - Members shall be courteous to each other.**
  - 10 - Failure to complete an investigation within policy guidelines.**
  - 11 - Failure to notify a member, in writing, of the disposition of a case.**
  - 12 - Lack of knowledge of the job by Sgt. Smith.**
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## **Synopsis**

On 06-14-2023, I received a typed letter, via email, from Howard Fryer. The letter contains twelve separate complaints against Sergeant Smith. On 06-15-2023, I opened a Supervisor Inquiry to investigate the twelve different allegations (noted above). Due to Sergeant Smith being the supervisor of the internal affairs section, I conducted the investigation myself.

## **Principal Notification:**

Principal - Keith Smith – Sergeant of the Internal Affairs Section

On 06/15/2023, at approximately 1500 hours, I notified Sergeant Smith of the complaints against him. I informed him I was conducting the supervisor inquiry due to his position in the internal affairs section. Sgt. Smith stated he understood. I informed Sgt. Smith that I was not prepared to interview him at this time, but stated I would give him notice prior to the interview. Sgt. Smith stated that was fine and stated he did not require representation for his interview.

I also informed Sgt. Smith that I am conducting a supervisor inquiry and the five internal affairs forms are not required. If this inquiry finds violations that could lead to punitive disciplinary action, I will renotify Sgt. Smith and provide him with the forms detailing the rights provided to him under F.S.S. Chapter 112.

## **Details of Investigation**

\*\*\*The complaints alleged by H. Fryer in his letter are listed 1 through 12 (see attached document). In order to try to completely explain the details of the investigation, I have listed my responses, in numerical order, to coincide with the listed allegation.\*\*\*

### **Complaint number one: Improper Tolling of an Administrative Inquiry**

In reference to the improper tolling of the citizen complaint: On 07-05-23, I spoke with Barbara Deniston in finance to confirm the type of leave that was utilized by H. Fryer. Ms. Deniston stated H. Fryer utilized sick leave for some parts of the month of September, but later disputed those hours stating he was placed on "Admin Leave."

It should also be noted that during the time frame in question, Howard Fryer, requested sick leave, utilizing Outlook calendar, September 1<sup>st</sup>, 2022 through September 25<sup>th</sup>, 2022. He also told me (Lt. Murphy) he was going to be on F.M.L.A. to help his wife recover from a surgery.

Although there is confusion about the type of leave H. Fryer was utilizing (due to being place on Admin Leave August 31<sup>st</sup>. 2022 for AI 2022-015), there is clear evidence to support why Sgt. Smith believed tolling this complaint was appropriate. FSS Chapter 112.532 (6)(a)3 clearly states “If the investigation involves an officer who is incapacitated or otherwise unavailable, the running of the limitations period is tolled during the period of incapacitation or unavailability.” Sgt. Smith believed H. Fryer was taking care of his wife and tolled the investigation during that period. Although H. Fryer stated, in his written complaint, he did not provide a waiver to him for the tolling period, the statute does not require a waiver be provided to him. The statute states he (the principal) can toll the investigation by providing a waiver. Even if H. Fryer disagrees with the tolling, there is no evidence that Sgt. Smith tolled this case with any malice or attempted to deceive H. Fryer about the length of the investigation, nor did Sgt. Smith violate any policy of the Clay County Sheriff’s Office, or Florida State Statute.

It should be noted that if H. Fryer had a complaint about the details of the internal affairs investigation, there is a process in place for him to request a “compliance review hearing,” outlined in Florida State Statute Chapter 112. \*\*\*See the investigator notes at the end of this summation for details.\*\*\*

Sgt. Smith is exonerated in complaint number one.

#### **Complaint number two: Denying a Member a representative.**

In reference to this complaint, I conducted an interview with Chief Alexander.

On 06-26-23, at approximately 1100 hours, I contacted Chief Alexander in his office, located at 3799 Irvin Ct.

I informed Chief Alexander that I needed to speak with him about supervisor inquiry 2023-072.

I informed Chief Alexander that the inquiry was in reference to a meeting that occurred in March of 2022, with Sgt. Smith, Sgt. West, and H. Fryer (formerly Sgt. Fryer). Chief Alexander stated he remembered a meeting with Sgt. Smith, and H. Fryer, in his office, but he could not remember exactly when it was. He stated he does not remember Sgt. West being in the meeting.

Chief Alexander stated he and Sgt. Smith were talking to H. Fryer about his role as F.O.P. President, and how it could be interfering with his role as a sergeant in patrol. Chief Alexander stated Sgt. Smith was trying to offer guidance and advice, to H. Fryer, because Sgt. Smith had served as F.O.P. President in the past. Chief Alexander said he believes Sgt. Smith was professional during this meeting. He stated he believes H. Fryer was defensive and almost argumentative. Chief Alexander stated he finally had to speak up in the meeting, because he felt Sgt. Smith was not getting through, and tell H. Fryer that he was not to interfere with investigations being conducted by Internal Affairs. Chief Alexander stated he told H. Fryer he could advise members to contact a representative when appropriate, but that should be the end of his involvement.

Chief Alexander stated he does not remember Sgt. Smith ever throwing any papers across the table or being aggressive about any questions. He stated he spoke up to calm down H. Fryer, not Sgt. Smith.

I asked Chief Alexander what the purpose of this meeting was, he replied with the following: He stated H. Fryer was a new sergeant and new president of the F.O.P. They had a meeting with him to try to give him guidance on how to perform both jobs well. He stated there were no notes taken, no inquiry started, and no discipline was ever discussed. He stated he also told H. Fryer that he did not need a representative because this was not a disciplinary investigation.

Chief Alexander stated he could not remember who scheduled the meeting or who called H. Fryer.

I contacted Sgt. West by phone. He stated he cannot recall being involved in any meeting with Sgt. Smith, H. Fryer, and Chief Alexander.

On 07-11-23, at approximately 0900 hours, I met with Sgt. Smith, in my office, located at 1845 Town Center Blvd., suite 500. I spoke with Sgt. Smith about this meeting. He stated he was asked to speak with H. Fryer, and possibly provide guidance about H. Fryer's role as F.O.P. president. He was asked to do this by Director Barnes because Sgt. Smith had served as F.O.P. president in the past, while also being a supervisor. Sgt. Smith stated he told H. Fryer that the meeting was not a disciplinary meeting, and a representative was not needed. He stated he took no notes during the meeting. He stated no supervisor or administrative inquiries were started or even discussed in reference to that meeting. Sgt. Smith stated he could not recall anyone throwing or shoving papers at H. Fryer. Sgt. Smith stated he did believe H. Fryer was defensive almost to the point of arguing, even though his (Sgt. Smith's) intentions were to try and help H. Fryer adjust to being a new supervisor and the new F.O.P. president.

Sgt. Smith stated Sgt. West was not in this meeting.

There is no evidence to support the claim that H. Fryer had a need for a representative to be present in this meeting.

Sgt. Smith is exonerated in complaint number two.

### **Complaint number three: Failure to document investigative steps.**

On 07-13-23, at approximately 0900 hours, I made contact with Daniel Matos, via phone, in reference to this complaint. I explained to Mr. Matos what I was performing an inquiry into and asked him if he was willing to speak with me. Mr. Matos stated he was. The following is a summary of our conversation: Mr. Matos stated he documented his investigation correctly. He stated during his recorded interview with H. Fryer, this same issue, was brought up. Mr. Matos stated he explained, at that time, there was not two investigations. He stated when he was assigned this case by Sgt. Smith, there were two possible policy violations, insubordination, and lobbying members of the Clay County board of commissioners. Mr. Matos continued to explain that the preliminary investigation did not reveal any evidence of the second policy violation, so it was not investigated. Mr. Matos stated he explained all of this to H. Fryer and his F.O.P. Representative J.J. Dixon during the interview.

On 07-13-23 I listened to the recording of the interview between Mr. Matos and H. Fryer on 10-20-22. At approximately 13 minutes and 40 seconds into that interview, the above conversation takes place and Mr. Matos clearly explains that there was not a second investigation.

It should also be noted that there are many concerns brought to the attention of internal affairs that do not rise to the level of an investigation. There is no requirement to document every concern that is discussed by internal affairs as an administrative inquiry.

Sgt. Smith is exonerated in complaint number three.

#### **Complaint number four: Failure to document an administrative inquiry.**

On 07-11-23, at approximately 0900 hours, I met with Sgt. Smith, in my office, located at 1845 Town Center Blvd., suite 500. This is a summary of our conversation in reference to this complaint. Sgt. Smith stated he did receive a phone call from Sheriff Cook about the email concern; however, he stated the phone call was not specifically about H. Fryer. He stated during the conversation it was mentioned that the Sheriff "heard" he was investigating members utilizing the agency email system inappropriately. Sgt. Smith stated there had been some discussions about it, but at this time there was no official investigation. Sgt. Smith stated the Sheriff told him about her conversation with H. Fryer. Sgt. Smith said he decided to contact H. Fryer and explain there was no investigation at this time. Sgt. Smith stated he was not ordered to call H. Fryer. Sgt. Smith stated he does not remember the exact words he used, but stated he told H. Fryer that an official investigation was not being conducted. He stated they were looking into the possibility that members, not just H. Fryer, were potentially misusing the agency email system. Sgt. Smith stated he did not provide H. Fryer with written notice because there was no investigation.

In reference to this complaint. On 07-12-23, at approximately 1340 hours, I spoke with Sheriff Cook, in her conference room, located at 901 N. Orange Ave. This is a summary of our conversation: Sheriff Cook stated she does not remember the exact conversation she had with H. Fryer, but stated she remembered this event. She stated during a meeting (possibly a command staff meeting) she heard a discussion about the potential misuse of agency email, for personal use. She stated there were a couple of examples given of the misuse and they included amazon purchases and F.O.P. emails. She stated H. Fryer's name was mentioned, among others, during the conversation. Sheriff Cook stated, out of an abundance of caution she declined to meet with H. Fryer, at that time, because she did not want to interject herself in a possible investigation. She stated she does not remember calling Sgt. Smith to discuss this event specifically but stated it could have come up during a conversation they had.

It should be noted it was determined that several members were utilizing the agency email system for personal use; however, it was not interfering with the normal function or readiness of the Sheriff's Office, so a formal investigation was never started.

As noted in complaint number three, it should also be noted again here, there are many concerns brought to the attention of internal affairs that do not rise to the level of an investigation. There is no requirement to document every concern that is discussed, by internal affairs or the command staff, as an administrative inquiry.



Sgt. Smith is exonerated in complaint number four.

**Complaint number five: Failure to complete a supervisor inquiry within 45 days.**

Mr. Fryer noted complaint number five in two parts of his written complaint.

The first part of his complaint is in reference to the meeting with Sgt. Smith and Chief Alexander. As previously documented in complaint number two, there was no supervisory inquiry conducted so it did not need to be completed in 45 days.

In reference to the citizen complaint received on 08-18-23, as noted in complaint one. Sgt. Smith tolled that complaint believing that H. Fryer was on F.M.L.A. to provide care for his wife. Even if H. Fryer disagrees with the tolling, there is no evidence that Sgt. Smith tolled this case with any malice or attempted to deceive H. Fryer about the length of the investigation, nor did Sgt. Smith violate any policy of the Clay County Sheriff's Office, or Florida State Statute.

It should be noted that if H. Fryer had a complaint about the details of the internal affairs investigation, there is a process in place for him to request a "compliance review hearing," outlined in Florida State Statute Chapter 112. \*\*\*See the investigator notes at the end of this summation for details.\*\*\*

Sgt. Smith is exonerated in complaint number five.

**Complaint number six: Failure to inactivate a case after no finding was made in 45 days.**

This complaint is referenced in two parts of H. Fryer's note. It is noted in the meeting that occurred at Chief Alexander's office and we have established that this meeting was not disciplinary in nature. There were no inquiries started, notes taken, or any discipline issued, because of this meeting. I cannot even find a reason for this meeting to be referenced in this complaint.

This is also referenced in the citizen complaint section of H. Fryer's note. As noted in complaint 1 and 5, Sgt. Smith tolled that complaint believing that H. Fryer was on F.M.L.A. to provide care for his wife. Even if H. Fryer disputes the type of leave he was on, Sgt. Smith acted in good faith with no malice intent.

Sgt. Smith is exonerated in complaint number six.

**Complaint number seven: Failure to notify an employee of the charges before an interview.**

As noted in complaint two, this meeting was not any type of disciplinary inquiry. There is no requirement to notify an employee of charges when there are no charges.

Sgt. Smith is exonerated in complaint number seven.

**Complaint number eight: Failure to record a formal interrogation.**

As noted in complaint two, this meeting was not any type of disciplinary inquiry. No interrogation was recorded because there was no interrogation.

Sgt. Smith is exonerated in complaint number eight.

**Complaint number nine: Members shall be courteous to each other.**

This complaint is referenced in two parts of H. Fryer's note. As stated in allegation number two, Chief Alexander stated he thought H. Fryer was rude, almost to the point of being argumentative. Chief Alexander did not believe Sgt. Smith was rude or discourteous during this meeting.

After speaking with Sgt. Smith about the phone call that took place between Sgt. Smith and H. Fryer, Sgt. Smith stated he does not believe he was rude or discourteous to H. Fryer. During the course of this investigation there was no evidence gathered or statements obtained that prove Sgt. K. Smith was rude to H. Fryer.

Sgt. Smith is exonerated in complaint number nine.

**Complaint number ten: Failure to complete an investigation within policy guidelines.**

As noted in complaint 1, 5 and 6, Sgt. Smith tolled that complaint believing that H. Fryer was on F.M.L.A. to provide care for his wife. Even if H. Fryer disputes the type of leave he was on, Sgt. Smith acted in good faith with no malice intent.

Sgt. Smith is exonerated in complaint number ten.

**Complaint number eleven: Failure to notify a member, in writing, of the disposition of a case.**

This complaint is referenced in two parts of H. Fryer's note.

As noted in complaint number three, D. Matos clearly explains to H. Fryer that there is not a second investigation. He clearly explained that the concern about H. Fryer "lobbying" members of the county commissioner's office did not rise to the level of an investigation.

As noted in complaint number four, there was no case started about the potential misuse of agency email. Also, as noted, there is no requirement to document every concern brought to internal affairs if the concern does not rise to the level of an inquiry.

Sgt. Smith is exonerated in complaint number eleven.

### **Complaint number twelve: Lack of knowledge of the job by Sgt. Smith.**

This complaint is referenced throughout H. Fryer's note.

The only issue in reference to this complaint that has not already been addressed is the placing of H. Fryer on administrative leave for an extended period of time. It should be noted that Sgt. Smith placed H. Fryer on administrative leave at the direction of Director Barnes. I spoke with Director Barnes who confirmed that the decision to place H. Fryer on administrative leave was made at the director level, in a conversation that included Director Wright. Director Barnes also stated the decision to keep H. Fryer on administrative leave until the investigation was completed, was made at the director level. To say that Sgt. Smith lacks knowledge of his job for following a lawful order by a superior is inaccurate. Also, H. Fryer references being "fit for duty" as a reason that Sgt. Smith should have cancelled the administrative leave. The decision to cancel the administrative leave was not up to Sgt. Smith, therefore he is not lacking knowledge of his job for not doing so.

It should also be noted that in none of the eleven prior complaints does Sgt. Smith appear to have violated any policy of the Clay County Sheriff's Office or any section of F.S.S. Chapter 112. There is no evidence to support the claim that Sgt. Smith lacks the job knowledge to perform his role.

Sgt. Smith is exonerated in complaint number twelve.

### **\*\*\*Investigator's Note\*\*\***

This complaint was received after the imposition of discipline in the underlying events. During the investigation of these events, Sgt. Fryer, did not notify any member if the Clay County Sheriff's Office internal affairs unit of an intentional violation of section 112.532, Florida Statutes. Pursuant to section 112.534, Florida Statutes, the reporting of an alleged intentional violation should be made prior to the completion of the investigation and notification of proposed disciplinary action in order to trigger a compliance review hearing. *See Generally Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So. 3d 798 (Fla. 1<sup>st</sup> DCA 2014).



**Principal Interview:** As noted in the above listed complaints, I spoke with Sgt. Smith, in my office on 07-11-23. The interview was noted in the above details, where relevant to the complaint listed.

### **Disposition Recommendations**

- 1 – Improper Tolling of an Administrative Inquiry. – Exonerated**
- 2 - Denying a Member a representative. – Exonerated**
- 3 - Failure to document investigative steps. – Exonerated**
- 4 - Failure to document an administrative inquiry. – Exonerated**
- 5 - Failure to complete a supervisor inquiry within 45 days. – Exonerated**
- 6 - Failure to inactivate a case after no finding was made in 45 days. – Exonerated**
- 7 - Failure to notify an employee of the charges before an interview. – Exonerated**
- 8 - Failure to record a formal interrogation. – Exonerated**
- 9 - Members shall be courteous to each other. – Exonerated**
- 10 - Failure to complete an investigation within policy guidelines. – Exonerated**
- 11 - Failure to notify a member, in writing, of the disposition of a case. – Exonerated**
- 12 - Lack of knowledge of the job by Sgt. Smith. - Exonerated**

### **Prior Disciplinary Action**

**N/A**

## **Enclosures**

### **Internal Affairs Case File #2023-012:**

- Blue Teams Complaint Report AI #2023-012
  - Internal Affairs Documents (Digital and Hard Copies)
  - Case Related Documents
  - Summation
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***“I the undersigned, do hereby swear, under penalty of perjury that, to the best of my knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another person to deprive, the subject of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.”***

***“Pursuant to FSS 92.525, I declare that the foregoing document and the facts contained therein are true to the best of my knowledge and belief.”***

Respectfully submitted,

A handwritten signature in blue ink that reads "LT James Murphy 6884". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Lieutenant James Murphy  
Internal Affairs Unit

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