

Assistant Utah AG Cindy Poulson:
"I have to delete all pornographic
emails at the close of the day."

SWALLOW AND SHURTLEFF CHRONICLED,
PART 35 OF A SERIES

An Affair To Remember. Or To Forget.

*An Assistant Utah Attorney General
allegedly scheduled liaisons on company
time.*

by Lynn Packer
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Utah Assistant Attorney General Cindy Poulson is a survivor. She survived a threat to be fired if she did not clear a past criminal conviction from her record. She didn't. And she wasn't.

She survived getting promoted to an attorney slot based on claims she had three years experience working as an attorney. She apparently did not have any prior attorney experience. But her promotion remains intact.

She outlasted the publication of purported, sexually-charged emails with Craig Barlow, her boss who helped promote her. An internal investigation is underway. (Barlow is not only a division chief but also one of the confidential informants who helped in the criminal investigation into former Attorneys General Mark Shurtleff and John Swallow among others.)

Co-workers scratch their heads. But they know she has friends in high places in the AG's office.

Perhaps what may stretch Poulson's survival skills to the limit, a new batch of emails and text messages have been leaked by an anonymous source to *packerchronicle*, messages that reveal an affair between her and a private Utah attorney during the time she was being promoted and exchanging love notes with Barlow.

Poulson initially declined comment. But after she was sent copies of some of leaked texts between her and the outside attorney she responded through AG press spokeswoman Missy Larsen:

"The relationship was of a personal nature. It was and remains my personal business. The outside relationship did not interfere with the performance of my job and was conducted on my personal time. At no time did it interfere with my working a full week and/or accounting for my time." - Cindy Poulson

The affair began early last year and stretched over four months before it ended. During that time the two parties, according to the messages, would arrange to meet in Salt Lake area hotels but sometimes also in Park City. The texts show some liaisons took place during usual work hours.

Poulson was asked through Larsen to provide proof that meetings did not occur during the workday or how she made up for lost time. She declined. *Packerchronicle* also asked for an interview with her immediate supervisor, Kris Knowlton, Section Chief, Internet Crimes Against Children. She declined.

The leaked text messages contain discussions about when and where to meet and describe things the two planned to do. "Please text me something erotic," one said.

"I cannot wait to do that, I luv you" another read. "And, I enjoy making love with you a lot" and "I woke up dreaming of your hands on my body and you kissing me."

Many were more graphic:

- **I want to feel you inside me.**
- **I cannot wait for you to do that.**
- **I want you to let me *bleep* your *bleep* until you *bleep* in my mouth.**
- **I will miss you tonight but will probably dream you are *bleeping* my *bleep* (and) *bleep* my *bleep* and have your *bleep* inside me.**



Text message: "I have been dreaming of holding you. I have reserved a room at the Courtyard Marriott..."

One text message, on a Sunday last May, said, "Last Ward Council this am. Getting released." That may have been a reference to the fact she had been her LDS Ward's Primary president.

Poulson has at least three phones: an AG office land line, an AG office cell phone and a private cell phone. All of the text messages that she is alleged to have sent are shown to be from her personal

phone number, not the state's. But many of the messages were sent and received during working hours and appear to set up meetings during the workday.

Email was used for some exchanges but at one point that method seems to be discontinued. In one text message Poulson writes, "I have to delete all pornographic emails at the close of the day." She declines disclosing whether the state's system was used for so-called pornographic material.

The AG's office continues to decline disclosing whether the leaked emails between Poulson and Barlow are genuine or fabricated as Barlow claims. (See previous reports 27, 28 and 34 archived on page 2 of this site.) The Utah Department of Human Resource Management (HR) has been investigating that matter going on almost two months. HR attorney Bob Thompson says it may take a while longer to complete.

Thompson will not say whether his investigators have determined that the leaked emails are genuine, but he said it's fair to make that assumption. He said he did not want to get into whether the probe has been expanded beyond the issues raised in a *packerchronicle* report, the news story that triggered the investigation.

Poulson continues working on getting her criminal record cleared, an effort she was told to complete or she could be fired. In May 2013 Poulson asked the state's Bureau of Criminal Identification (BCI) to expunge a drug-related assault-on-a-police officer conviction. But in June BCI denied her petition because she had three or more criminal convictions. Nevertheless, the next month Barlow promoted Poulson despite the conviction remaining on the books. But she did petition the court to overturn BCI's rejection. That matter is pending in Third District Court.

Ken Wallentine, who until the end of this month heads the AG's investigators, and Craig Barlow, both provided letters to support Poulson's efforts to clear her record. (See this site's archive, page 35A, for a link to those testimonials. Wallentine is the one who hired Poulson in 2006. A month or so ago he took her flowers. AG spokeswoman Larsen said it had nothing to do with her enduring bad press reports but to celebrate an AA anniversary.)

Why is the Poulson/unnamed attorney affair relevant?

- As long as Barlow continues claiming the leaked love notes between him and Poulson were faked, the genuine text messages between her and the other attorney are among other pieces of circumstantial evidence that suggest Barlow is not telling the truth. Ditto with Reyes' administration declining to disclose whether the Barlow/Poulson emails are genuine or fake after having had weeks to make that determination.
- There's also the apparent fact that Poulson used the state email system to communicate with both Barlow and the unnamed attorney even with state and AG policies warning that "employees should not expect privacy when using e-mail," "brief personal messages are allowed as long as these messages...do not...have the potential to embarrass the Office or the state," and "e-mail is subject to monitoring as a means of assuring proper function and use."
- The text messages indicate trysts took place on company time. If they did impact what she claims is her "accounting of accounting for my time" she should provide that proof.
- Adultery is illegal. Attorney General Reyes is trying to make the case with the 10th Circuit Court of Appeals that gay marriage should be illegal because, he claims, it damages traditional families and straight marriage. He should not ignore the more real, ongoing and actually provable damage caused to marriages by adulterous affairs. As long as the adultery law is on the books then, especially, attorneys like Poulson who prosecute state law should abide by Utah law themselves.

Utah Policies and Laws

The Attorney General's Administrative Policy Manual permits employees to make limited personal calls on their state cell phones as long as the state is reimbursed. Conversely, if work calls are made on private cell phones the state will reimburse.

The policy is similar for email. "Brief personal messages are allowed" as long as they don't "have the potential to embarrass the Office or the state," among other restrictions.

Email via the state service is subject to monitoring according the manual and employees are told they "should not expect privacy when using e-mail." A Utah

administrative rule says employees cannot “view, transmit, retrieve, save, print or solicit sexually-oriented messages or images.”

State law, on the other hand, says personal emails, even on state networks, are not considered to be records thus not accessible by the public. State employees also have the ability and authority to delete personal emails so they are not stored on state servers.

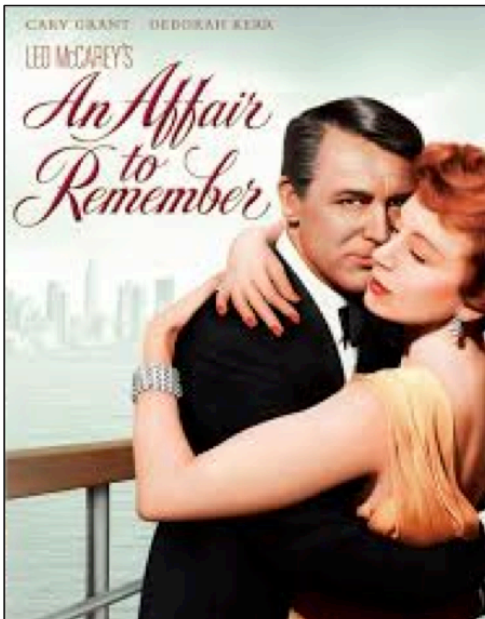
The state handbook has no prohibition against dating among colleagues, affairs with colleagues or other types of fraternization.

Employees are held to what the manual calls a “high standard” when at public events related to their duties or attending events at state expense. There is no mention of any standard at private events.

AG policy does ban certain, unspecified conduct that can result in discipline that could range from a written reprimand to dismissal:

- **Conduct on or off duty, which could or does demean or harm the image of the Office.**
- **Conduct on or off duty, which creates a conflict of interest with the employee’s public responsibilities or affects that employee’s ability to perform his or her job assignments.**

While affairs—secret, sexual relationships between two people, usually short term—are apparently not mentioned in the AG’s or state employee rules there is a law against an affair if one of the parties is married to someone else. Utah criminal code 76-7-103:



Definitions: An affair is a sexual relationship between two people who are not married to each other. Either or both may or may not be married to someone else. If so, then under Utah law, an affair is adultery.

A married person commits adultery when he voluntarily has sexual intercourse with a person other than his spouse.

Sodomy—oral and anal sex—is also against Utah code 76-5-403 whether those who commit it are married or not.

Utah’s sodomy law appears to have been struck down in 2003 when the U.S. Supreme Court invalidated all state sodomy laws in *Lawrence v. Texas*. The opinion held that that private, consensual sexual conduct is protected by the due process and equal protection clauses thus guaranteed by the United States Constitution.

For whatever reason Utah legislators have left their sodomy law intact, perhaps as a way to outlaw homosexual sex. But at one point former Utah Attorney General Mark Shurtleff said he would not use the sodomy statute to prosecute, nor would he encourage any county prosecutor in the state to use the law.

The AG's policy manual requires paralegals and attorneys to abide by the Rules of Professional Conduct. Crimes like adultery could result in lawyer discipline. But there needs to be a link established with their actual law practice. The commentary to the rule says:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice.

The AG's office says Poulson's affair with an outside attorney had nothing to do with the practice of law or any state business. That position is backed up by the anonymous source, who knows the attorney, and says his practice does not involve any state matters.

It's unlikely Utah's sodomy statute will ever be enforced given the Supreme Court decision. It's also unlikely the adultery law will be enforced as a criminal offense. But it has been used as a basis for disciplinary action.

Take, for example, a 1986 federal adultery case involving a West Valley, Utah police officer that took about a decade to litigate. Police Sgt. Gary Oliverson, was disciplined (suspended for 30 days without pay), but not fired or charged criminally, for having sex with at least two women he met through the police-sponsored Explorer Post program. He tried but eventually failed to get Utah's moral turpitude laws--the basis for his discipline--declared unconstitutional. Incidentally, the Utah AG's office helped defend the legality of the state's adultery law.

A Utah federal magistrate who ruled on that case, according to a *Deseret News* account, found that adultery is not a victimless crime and Utah has a right to ban it. Adultery can lead to disease, destruction of the family, the story said. "The results can be tragic and the social costs may impact innocent children and relatives," U.S. Magistrate Ronald Boyce wrote. (The court's rulings indicate the officer was married but the female participants in the Oliverson affairs were unmarried and the conduct occurred during non-duty hours.)

In 2010 the Utah legislature modified the law governing police misconduct and made it much more difficult to discipline an officer for consensual, private sex. But officers could still be disciplined if the sex occurred while on duty.

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