

HOW NOT TO GET SUED & WHAT TO DO IF IT HAPPENS

FIRE CHIEF'S LEGAL LESSONS LEARNED

Presented by

Chief Chris Barron

WHO ARE WE?...

Chief Chris Barron



- 32 Years In Fire Service
- 22 Years As Chief
- 15 Years Texas Firefighters' Assn. Executive Director
- 2014 International Association of Fire Chief's Association Fire Chief of Year Recipient
- 2012 IAFC John Buckman Leadership Award
- Numerous fire and EMS service certifications
- Education – Associates degree in Fire Technology, Bachelors & Masters Degree in Business Administration
- CEO, Emergency Services Solutions, LLC



WHO AM I?...

MARK ANTHONY SANCHEZ

- Attorney at Law -

- www.sanchezwilson.com



- University of Texas, BA, 1998
- St. Mary's University School of Law, J.D., 1995
- Partner, Sanchez & Wilson, PLLC
- Board Certified – Texas Board of Legal Specialization, Labor & Employment Law
- American Board of Trial Advocates
- San Antonio, Best Lawyers, Labor & Employment, 2013 to present
- San Antonio Business Journal, Best Lawyer, 2016
- Erika Blancarte Sanchez, My Better Half
- Mark, Jr. and Lucas Jesse, My Sons and Pride & Joy
- Paco, English Bulldog/Sanchez Family Mascot (when he's not snoring)

BACKGROUND

- Chief Barron

Chief / Executive Director of Texas Firefighters' Assn.

1st Lawsuit – “The Stolen Logo”

2nd Lawsuit – “The Chronic Liar”

3rd Lawsuit – “I’m hurt!”

RULES

- Federal, Civil, Criminal
- Paid or Volunteer
- It doesn't matter....
 - FLSA
 - Discrimination
 - Injury
 - Harassment in the "workplace"

Former Magnolia fire chief convicted on charges of public corruption



Jose R. Gonzalez, Staff writer

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The investigation found Vincent misused government money by hiring an unqualified person for personal reasons, according to the DA's Office. Prosecuting Assistant District Attorney Darla Faulkner described the arrangement as an "inappropriate sexual relationship between a supervisor and subordinate."

The investigator on the case also found Vincent disregarded the taxpayer-protecting policies and procedures of both Montgomery County Emergency Services District No. 10 and the fire department, according to the DA's Office.

“THIS SIDE OF THE LAW”

- JOHNNY CASH, 1970

- An effective workplace is where mutually accepted unequal relationships meet common goals according to generally defined terms
- Employees file suit based upon their *perceptions* of the employer's action/inaction in the workplace
- Reality check: it is rare for a court to designate that a lawsuit is frivolous



“. . .AND JUSTICE FOR ALL” - METALLICA, 1988

- ESD Insurance – Purchase reputable professional liability insurance coverage
- Funding – Unions and plaintiff’s lawyers often fund litigation against ESDs
- Statutes of Limitation - The law allows months and sometimes years to file suit
- Texas at-Will Employment Doctrine: Absent a contract or statutory violation, either party in an employment relationship may modify any of the terms or conditions of employment, or terminate the relationship altogether, for any reason, or no particular reason at all, with or without advance notice.
- Qualified Immunity – Commissioners, Fire Chiefs, and Command Staff can be sued

“I FOUGHT THE LAW AND THE LAW WON”

- THE CLASH, 1979

- **Pre-screening the applicant:** use a comprehensive written application with disclaimer, background checks, reference checks, drug screens, DMV records, sex offender registry, credit history, education verification, license verification (TCFP), and social media screening.
- **The Interview** – focus on applicant’s background and job requirements. Assume you are being recorded. Keep notes brief and commentary professional.
- **Probationary Period** - There is no Texas or federal law that either prescribes or prohibits employers from treating employees as probationary, initial, trial, introductory, or provisional employees. Probation lets employees know that they will be subject to special scrutiny to become "regular" employees.
- **Progressive Discipline** – Reprimands should identify problems and identify expected improvement. Consider a witness. Failure to improve can result in discharge. Assume you are being recorded. Use the chain of command to benefit the ESD and justify your final decisions.
- **Quick Tips:** address complaints promptly, follow ESD policy, make decisions after careful consideration, and explain your decision.



APPLICATION OMISSION



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SUMMONS IN A CIVIL ACTION

To:

“SEND LAWYERS, GUNS & MONEY” - WARREN ZEVON, 1978

- **Summons in a Civil Case:** “A lawsuit has been filed against you.”
- **Contact your attorney and insurance carrier immediately**
- **Duty to Preserve Evidence** - “arises only when a party knows or reasonably should know that there is a substantial chance that a claim will be filed and that evidence in its possession or control will be material and relevant to that claim.” Evidence includes written documents, photos, video, audio, electronic data (email & text messages) on computers, servers, cell phones, etc.
- **Witnesses** - Identify employees who are “privileged persons,” i.e. able to authority to obtain legal services or act on rendered advice. Interview fact witnesses early and separately.



“DON’T TAKE ME ALIVE” - STEELY DAN, 1976

The Process

- The Court
- Pre-Trial – Written discovery, depositions, dispositive motions, and settlement
- Trial – Evidence, jury selection, and jury charge
- Post-Trial – Motions for judgment, attorney’s fees, new trial, and appeal



A SAMPLE DEPOSITION- RANCH DRESSING



WILDLAND LEADERSHIP



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RESPONSE TIME



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“IT’S FIVE O’CLOCK SOMEWHERE” - ALAN JACKSON, 2003

Once it’s over

- A ton of bricks lifted off your shoulder
- Celebrate your victory or the fact the lawsuit is over
- Take some time off/away

LIFE AFTER A LAWSUIT

- Over sensitive for a while for every altercation
- Constantly watching your back
- Becoming somewhat of a recluse for a while

TIPS FROM THE CHIEF

- Try not to take it personal! But when you get delivered a lawsuit on Christmas eve, it doesn't make for an enjoyable holiday!
- Have a good lawyer!
- Have your lawyer's number handy!
- Take time for yourself during the process! It will become overwhelming!
- Learn from others – don't make mistakes others have made (ie hiring practices, discrimination, disciplinary procedures, etc.)

TIPS FROM THE CHIEF

Lessons learned:

- Be careful! Watch your back!
- Document, document, document!!
- Don't assume everyone is trying to be your friend
- **Business is business** / don't try and be everyone's friend!

Sex, Diamonds, Misuse Of Public Funds Sink Magnolia VFD Into Abyss Of Treachery Under Terminated Chief Vincent

By admin on March 2, 2021 · No Comment

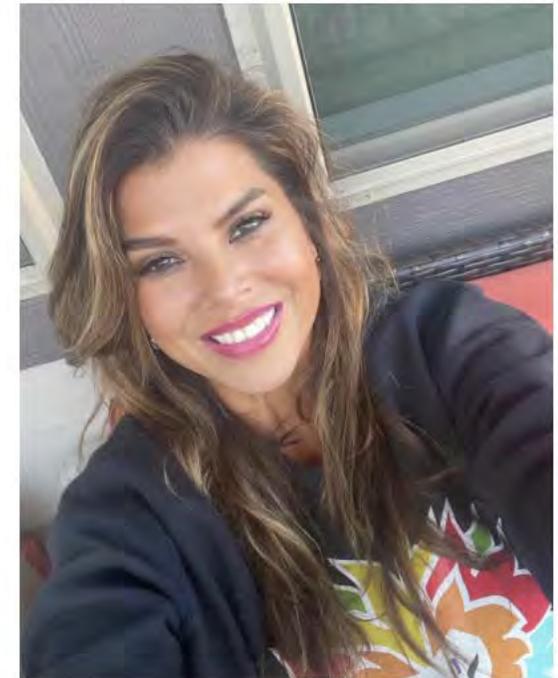


Image: Magnolia Volunteer Fire Department Assistant Fire Chief Elise Noriega, who has never had any fire training, and receives \$142,000 per year, plus other benefits.

TIPS FROM THE CHIEF

Do you have insurance?

- Coverage at the business
- Type
- Personal coverage
- Umbrella home coverage

If your paid personnel form a union, work with them, talk to them, meet with them regularly!!

TIPS FROM THE CHIEF

- If you are a VFD receiving government tax payers funding, you ARE subject to the open records act!
 - Don't think you are exempt!
- If you are making that transition from VFD to ESD or a paid department, make sure you understand the rules and laws governing paid departments, personnel, etc

QUESTIONS & ANSWERS

THANK YOU!

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