

July 28, 2011

TO: Christopher Lundberg, Attorney at Law  
Haglund Kelley Horngren Jones & Wilder LLP

FROM: Teresa Parsons, SPHR  
Director's Review Program Supervisor

SUBJECT: Walker Morton v. Department of Corrections (DOC)  
Director's Review Request No. RULE-10-013

On May 19, 2011, I conducted a Director's review conference regarding Mr. Morton's allegations that DOC violated RCW 41.06.070(3), RCW 49.60.210, and WAC 357-19-195. The conference was held at the Department of Personnel, 600 South Franklin, Olympia, Washington. You represented Mr. Morton, and you both attended the Director's review conference. Valerie Petrie, Assistant Attorney General, represented the Department of Corrections (DOC).

In addition, the following individuals were present and participated in the conference: Cheryl Strange, Assistant Secretary of Health Services at DOC, formerly Deputy Secretary of Correctional Operations and Mr. Morton's Appointing Authority; Earl Wright, Deputy Director of Prisons, Command B and Mr. Morton's supervisor at the time relevant to this review; Donna Haley, Human Resources Director at DOC; Human Resources Consultant (HRC) Investigators Myron Toyama, Department of Social and Health Services, and Jeanette Sills, Employment Security Department; Sidney Clark, Classification Counselor and Teamsters shop steward at Larch Corrections Center (LCC); Robert Stricker, Classification Counselor and Teamsters shop steward at LCC; Torri Fosteer, Fiscal Analyst, LCC; and Fern Gross, Hearings Clerk at LCC.

### **Procedural Issues**

On March 3, 2011, I conducted a preliminary telephone conference with you and Ms. Petrie. We discussed the timeline for exchanging documents and lists identifying exhibits and the individuals expected to attend the Director's review conference. Director's Review Coordinator Karen Wilcox followed up with a notice of scheduling on March 18, 2011. During the telephone conference, as well as at the Director's review conference, I emphasized that a Director's review is an administrative review, not a formal or evidentiary hearing. Therefore, I did not swear in witnesses or record statements made by the individuals present. However, I did allow the individuals present an opportunity to provide clarification about their knowledge of the issues surrounding Mr. Morton's Director's review request.

Additionally, at the outset of the Director's review conference, I asked Ms. Petrie to review the list of items you described as "key undisputed facts" in your opening brief (Exhibit A-6). While

Ms. Petrie stipulated, in part, to some of the items, she disagreed with several of the statements listed. The specific stipulations are later noted in the summary of DOC's response to Mr. Morton's alleged rule violations.

### **Nature of Alleged Violation**

By letter dated September 21, 2010, Cheryl Strange, then Deputy Secretary for DOC, terminated Mr. Morton from his exempt appointment as Superintendent with DOC, effective close of business on September 21, 2010. Ms. Strange terminated Mr. Morton for gross misconduct because he "directed inappropriate and unprofessional behavior and comments . . . toward Ms. Starry Williamson, Human Resource Consultant for Larch Corrections Center (LCC)." Specifically, Ms. Strange stated that on June 22, 2010, Mr. Morton "contacted Ms. Williamson at 9:06 p.m. on her personal cell phone and proceeded to make inappropriate queries of and comments to [Ms. Williamson]." Ms. Strange further concluded Mr. Morton "made unprofessional and disrespectful comments to Ms. Williamson in the workplace" before and after the June 22, 2010 phone call (Exhibit B-1).

Mr. Morton admits his telephone conversation with Ms. Williamson was "99% accurate" (Exhibits B-1 and B-3). He also affirmed this during the Director's review conference. However, Mr. Morton contends Ms. Williamson's statements were taken out of context, and he denies making inappropriate, retaliatory comments toward Ms. Williamson (Exhibits A-6 and B-1). Mr. Morton does not dispute the underlying facts; rather, he asserts this case "hinges on the interpretation of those facts" (Exhibits A-6). Therefore, Mr. Morton alleges DOC's finding of gross misconduct is improper, unwarranted, and a violation of RCW 41.06.070(3), RCW 49.60.210, and WAC 357-19-195 because it renders him ineligible to return to classified service and ended his decorated career (Exhibit A-1).

RCW 41.06.070(3) states, in part, the following:

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

WAC 357-19-195 provides, in part, that "[a] permanent employee who accepts an appointment to an exempt position has the right to return to classified service at any time as long as the employee was not terminated from an exempt position for gross misconduct or malfeasance."

As I stated during the Director's review conference, an employee's right to appeal an alleged law or rule violation is limited to a violation of the state civil service law, Chapter [41.06](#) RCW, or rules adopted under it (RCW 41.06.170(2)). The Director's review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017). Since RCW 49.60.210 pertains to the Human Rights Commission, an alleged violation of this statute is not an action available to Mr. Morton under (RCW 41.06.170(2) and WAC 357-49-010(4).

## **Background**

Mr. Morton had worked 36 years in the corrections field, including 20 years in the military. His career included working as a juvenile parole officer, community corrections officer, associate superintendent, and superintendent. Mr. Morton had been a permanent employee with DOC since 1998, and he served as Associate Superintendent at Coyote Ridge Corrections Center and Superintendent at Pine Lodge Corrections Center for about four years until the facility closed. In June 2010, Mr. Morton's supervisor, Mr. Wright, temporarily reassigned Mr. Morton to Larch Corrections Center (LCC) to serve as Acting Superintendent while the permanent Superintendent, Eleanor Vernell, was on vacation. Both Mr. Morton and Ms. Vernell, reported directly to Mr. Wright. During the Director's review conference, Mr. Wright indicated Mr. Morton had just closed the Pine Lodge Corrections Center when he accepted the temporary assignment to LCC (Exhibit C-2).

Around the time of Mr. Morton's temporary assignment, LCC had been going through transition with the possibility of closure. Additionally, the Correctional Program Manager (CPM) and Lieutenant had some ongoing conflicts. As a result, Mr. Wright, Ms. Vernell, and the Assistant Secretary of Prisons, Richard Morgan, agreed it was a good idea to have Mr. Morton sit in for Superintendent Vernell and spend time with staff during her absence. Mr. Wright described the scope of Mr. Morton's temporary assignment as very general and without specific instructions for the three-week period. However, Mr. Wright acknowledged Mr. Morton may have concluded that he had been tasked with assessing a distressed environment due to the existing tensions at LCC.

Mr. Morton's first full day at LCC was Thursday, June 17, 2010. On his first day, Mr. Morton walked around the institution, introduced himself, and talked with numerous staff members. During his two weeks at LCC, he also held daily "check in" meetings with staff. Friday, June 18, 2010 had been Ms. Williamson's regularly scheduled day off. On Monday and Tuesday, June 21 and 22, 2010, Ms. Williamson had attended block training at the institution. The reported comments and behavior Mr. Morton directed toward Ms. Williamson occurred within three business days of working with her.

Mr. Morton's position description as Superintendent at Pine Lodge Corrections Center included the requirement to demonstrate ethics and integrity. Specifically, the Essential Functions (Principal Responsibilities) Section denoted, in part, the following with regard to ethics and integrity (Exhibit B-9):

- Strengthen public confidence in the integrity of facility staff by demonstrating and setting the tone for the highest standards of personal and professional integrity . . .
- Promote an environment of public trust , , ,
- Model appropriate, ethical, responsible, and respectful behavior . . .
- Ensure awareness of and compliance with the Department's Code of Ethics and related policies and laws;
- . . .

DOC's Employee Handbook also describes ethics and integrity, in part, as earning "the trust, respect and confidence of stakeholders and co-workers through consistent honesty, forthrightness, and professionalism in all interactions." The Employee Handbook further lists

Department Expectations, including the expectation to treat staff with dignity and respect (Exhibit B-6).

In addition, DOC has adopted Ethics Policy 800.010, which includes the following directive (Exhibit B-5):

I. General Expectations

- B. Staff will be responsible for knowing and adhering to applicable ethics laws and policies, and for making choices that exemplify an adherence to high ethical standards.

...

DOC has also adopted Sexual Harassment Policy 850.625, which states, in part, DOC "strives to provide staff a work environment free from unsolicited, unwelcome, and inappropriate behavior, and will not tolerate sexual harassment of any kind." The policy includes attachments that describe subtle inappropriate behavior, as well as behaviors in the work environment that exemplify appropriate and inappropriate behaviors (Exhibit B-4).

Mr. Morton acknowledged receipt of DOC's Employee Handbook (Exhibit B-7), and he acknowledged that he reviewed and understood his responsibility to know and follow DOC Policy Directives (Exhibit B-8). Further, Mr. Morton's training record showed he had received Ethics and Sexual Harassment Prevention training (Exhibit B-10) with the most recent Sexual Harassment Prevention training occurring on June 22, 2010, shortly after arriving at LCC (Exhibit B-11).

Mr. Morton had no record of disciplinary action and had been honored for his leadership in the past.

### **Allegations of Gross Misconduct**

DOC alleges Mr. Morton "directed inappropriate and unprofessional behavior and comments" toward Ms. Williamson.

#### **Mr. Morton's comments and behavior toward Ms. Williamson prior to June 22, 2010 phone call**

Ms. Williamson reported Mr. Morton began making references to her being weak, and he repeatedly asked her why she did not stand up for herself (Exhibit B-3, page 3). On the morning of June 21, 2010, Ms. Williamson reported Mr. Morton entered her office, asked if she noticed anything different, pointed at the blinds, and told her not to leave them down for security reasons. When Ms. Williamson indicated her predecessor had instructed her to keep the blinds closed, she reported Mr. Morton started to "jiggle the blinds" and ask if she was getting mad. After stating she was not mad, Ms. Williamson reported that "he made a reference to her being mean" (Exhibit B-3, page 4).

On June 21 and 22, 2010, both Mr. Morton and Ms. Williamson attended block training for at least a portion of each day, which occurred at LCC. In her written statement, Ms. Williamson described an incident where Mr. Morton called her out of the block training to return a call from a recruiter. Ms. Williamson later told her supervisor, Human Resources Manager Karen Hopper,

that she had to walk through the inmate population from the training room to Mr. Morton's office, which made her feel uncomfortable. Ms. Hopper also reported that Ms. Williamson told her "Superintendent Morton did this to 'toughen her up,'" and that he admitted watching her as she walked to his office (Exhibit B-3, page 11). When she returned, Mr. Morton apologized to the class, stating that someone had been disrespectful to Ms. Williamson by not returning her calls and that he sent an email to the individual who called right away. Ms. Williamson described Mr. Morton's behavior as "arrogant, embarrassing and condescending" (Exhibit B-3, page 3).

#### June 22, 2010 phone call

It is undisputed Mr. Morton contacted Ms. Williamson after work on June 22, 2010. Mr. Morton indicated he called Ms. Williamson for business reasons. He stated he had been talking with Ms. Williamson earlier that afternoon about concerns she had with a lieutenant's performance and that he called her that evening to follow up. In addition, Mr. Morton stated he had learned from LCC staff that Ms. Williamson seemed unapproachable and withdrawn, and he noted she kept the blinds to her office shut and the door closed. Based on his observations and comments from others, Mr. Morton concluded Ms. Williamson needed a mentor. Before leaving that afternoon, Mr. Morton offered his telephone number to Ms. Williamson and asked for her telephone number. Ms. Williamson provided him with her cell phone number. Mr. Morton called Ms. Williamson around 6 p.m. that evening and left a message, which she did not return. Mr. Morton contacted Ms. Williamson again around 9 p.m., and Ms. Williamson answered the phone. The conversation lasted approximately one hour.

Ms. Williamson documented their conversation the next day, and it was included in the investigative report (Exhibit B-3, pages 19-20). During the Director's review conference, Mr. Morton reviewed Ms. Williamson's statements and agreed they were "99% accurate." However, Mr. Morton maintained Ms. Williamson's statements were taken out of context. After discussing a personnel issue, Mr. Morton asked Ms. Williamson whether their conversation would remain confidential, even from Ms. Vernell. During the Director's review conference, Mr. Morton indicated he knew Ms. Williamson had a close working relationship with Ms. Vernell, and he did not want Ms. Vernell to be upset. Ms. Williamson responded to Mr. Morton's question about confidentiality by stating her "position and nature of work [was] confidential" (Exhibit B-3, page 19). Mr. Morton's focus then shifted to Ms. Williamson.

During the investigation, Mr. Morton told investigators the topic of the telephone conversation included "concerns shared by LCC staff regarding Ms. Williamson" (Exhibit B-3, page 13). For example, some LCC staff perceived her as unapproachable, inexperienced, and unprofessional (Exhibit B-3, pages 16, 17, and 25). Mr. Morton indicated staff had also commented on Ms. Williamson having discussions with staff about dating co-workers. Additionally, staff had made Mr. Morton aware of an incident in which Ms. Williamson had reported two employees to Superintendent Vernell after observing inappropriate behavior, described as "horseplay." Staff's perception had been that "Ms. Williamson had made unfounded allegations of sexual harassment . . ." (Exhibit A-2, page 4). However, staff's characterization of the incident had been inaccurate, which Ms. Haley verified in a follow-up call to LCC on the day of the Director's review conference.

Because Mr. Morton concluded Ms. Williamson needed mentoring, he stated he engaged her in a conversation using a number of hypothetical scenarios, as well as his own personal experiences. For example, when discussing whether to put someone on home assignment, Mr.

Morton told Ms. Williamson of his personal experience of being on home assignment due to potential misconduct. Mr. Morton then "shared details about his being accused of sexual harassment and how [Ms. Williamson] reminded him of the person who[m] he allegedly sexually harassed" (Exhibit B-3, page 14). In her written statement, Ms. Williamson stated Mr. Morton told her he had mentored the woman and they had been very close. He then asked Ms. Williamson why she had low self esteem. Mr. Morton then switched the conversation back to the woman he had been discussing and told Ms. Williamson she "reminded him just of her and that the similarities were amazing." He then told her "when the investigation was over and he was brought back to work nothing was found that would substantiate the allegations . . ." (Exhibit B-3, pages 19-20). Mr. Morton denied comparing Ms. Williamson to the woman he allegedly harassed and explained that he shared his experiences with many staff members over the years (Exhibit B-3, page 14).

Ms. Williamson reported that Mr. Morton asked her out during the phone call. She told investigators Mr. Morton "asked her out because he was not going home for the weekend." While Mr. Morton denied asking Ms. Williamson out, he acknowledged they talked about "problems that occur when staff date each other" (Exhibit B-3, page 15). During the Director's review conference, Mr. Morton stated he began a dialogue with Ms. Williamson to determine whether she had actually been dating staff. He stated that he used himself as an example to gauge her response. Prior to beginning the dialogue, Mr. Morton remarked, "this is not about sex" (Exhibit B-3, page 20). Ms. Williamson described the dialogue in her written statement, in part, as follows:

He asked me how I felt about going out for drinks with people from work. I told him that upon my supervisor[']s request I do not go out with people from work. He said that that was a shame and that it was wrong. He told me that he would have his CPM and HR out for lunches all the time. He told me that it is just fine for HR to go out after hours with a superintendent . . . . He then asked me if I would go out with him . . . . I said that I wouldn't because I didn't think it was right and that my supervisor had told me not to go out with people from work. He asked me how old I was . . . . [and then asked] 'aren't you an adult? Can't you make your own decisions' . . . ? Then he asked me why I wouldn't go out with him. I responded that I wasn't comfortable with it. He then told me that whether I went out with him or not was a test and that I have to be a woman and make those kinds of decisions. My response was 'I'll have to think about it' He said 'no never mind, I won't ask you again' I said . . . 'oh good'. [s/c]

During the Director's review conference, Mr. Morton stated he had been concerned with Ms. Williamson's response that she had to think about whether or not to go out with him, which he stated had not been the response he expected from someone in her position. Mr. Morton continued the conversation with Ms. Williamson by talking about how awkward it can be when you go out with people from work. He then proceeded to tell her about a relationship he had with someone he supervised while in the military. Ms. Williamson stated that once again he told her "he wasn't trying to take [her] out to have sex . . ." When Ms. Williamson responded she wouldn't assume that, Mr. Morton asked "why not?" He then said she should never assume a man isn't attracted to her. Ms. Williamson reported that the conversation ended at 10:11 p.m. (Exhibit B-3, page 20). The following day, Mr. Morton contacted Labor Relations Consultant Patti Boday to ask her to mentor Ms. Williamson.

Mr. Morton's comments and behavior toward Ms. Williamson after the June 22, 2010 phone call

Following the June 22, 2010 phone call, Ms. Williamson reported Mr. Morton continued to make several inappropriate comments to her during his morning "check in" meetings. For example, Ms. Williamson stated Mr. Morton made remarks that included the following (Exhibit B-3, page 3):

"You are the youngest in the room"  
"You need to learn your job; I will teach you"  
"I will put you on a time out"  
"You are mean, you need to be nice"

Three of the individuals interviewed as part of the investigation stated they heard Mr. Morton make some portion of these comments (Exhibit B-3, pages 6-8).

Around June 30, 2010, Ms. Williamson excused herself from a telephone meeting she was having with Mr. Morton and Superintendent Vernell. When Superintendent Vernell later questioned Ms. Williamson about leaving the meeting, Ms. Williamson remarked that Superintendent Morton had been teasing her about her age. Ms. Williamson then confided in Superintendent Vernell and told her about the June 22, 2010 evening telephone call from Mr. Morton. After Superintendent Vernell returned to LCC on July 6, 2010, Ms. Williamson provided her with the statement she documented on June 23, 2010, the day following Mr. Morton's phone call. Superintendent Vernell advised Ms. Williamson to report the incident to her supervisor, Ms. Hopper (Exhibit B-3, pages 4 and 5).

On July 8, 2010, Mr. Morton met with his supervisor, Prison Administrator Earl Wright, Assistant Secretary of Prisons Richard Morgan, and HR Director Donna Haley. They presented Mr. Morton with Ms. Williamson's statement. Outside investigators Myron Toyama and Jeanette Sills conducted the investigation into Ms. Williamson's allegations. On September 9, 2010, Mr. Morton attended a Name Clearing hearing with Deputy Secretary Cheryl Strange. Mr. Wright and Ms. Haley were also present. During this meeting, Mr. Morton had an opportunity to review the allegations, including the investigative report. Mr. Morton acknowledged his behavior "embarrassed the agency" and "went outside [his] boundaries." Mr. Morton acknowledged he should not have made the phone call to Ms. Williamson, admitted he made a mistake, and apologized (Exhibit B-1, page 3). During the Director's review conference, Mr. Morton clarified that he apologized for embarrassing the agency, not because he had admitted to any wrongdoing.

On September 21, 2010, Ms. Strange terminated Mr. Morton from his exempt appointment as Superintendent for gross misconduct (Exhibit B-1, pages 3-5).

**Summary of Mr. Morton's Alleged Rule Violation**

Mr. Morton asserts the underlying facts in this case are largely undisputed. Rather, Mr. Morton states the interpretation of the facts is in dispute. Mr. Morton asserts his interactions with Ms. Williamson have been taken out of context, and he denies he called Ms. Williamson to facilitate a sexual encounter. Mr. Morton further denies any retaliatory behavior against her after the phone call. Mr. Morton claims the investigation was flawed because statements he and other staff members made were excluded from the report, which described his character, as well as Ms. Williamson's. In addition, Mr. Morton claims the report included unsupported allegations

and opinions about him from Ms. Williamson's supervisor. As a result, Mr. Morton asserts DOC management already made assumptions about his conduct prior to meeting with him. Mr. Morton contends the only way to justify the charge of gross misconduct is to show he had sexual intent when he called Ms. Williamson. Mr. Morton, however, contends his words did not express sexual intent and the circumstances of his phone call did not support sexual intent.

Mr. Morton asserts he called Ms. Williamson for a work-related purpose and that she willingly accepted the call, which lasted one hour. Mr. Morton contends staff had raised concerns about Ms. Williamson ranging from her unavailability to discussions about dating relationships at work and unfounded sexual harassment claims. Mr. Morton concluded Ms. Williamson needed guidance, and he offered to find a mentor. Mr. Morton contends it was in that context he engaged Ms. Williamson in a discussion to assess her reaction to certain questions. Mr. Morton asserts he set the tone up front with his statement: "This is not about sex." Mr. Morton contends Ms. Williamson did not express any concern during or after the phone call and that she even entertained the idea of going out with him when she "misinterpreted one of [his] comments as being a sincere request for a date . . . rather than a tool to uncover her thinking process about interacting with co-workers . . ." (Exhibit A-6, page 2). Mr. Morton emphasizes he ended the call by telling Ms. Williamson he was going to contact a mentor, and he asserts he called Ms. Boday the next day.

Additionally, Mr. Morton asserts he had been highly regarded for his leadership abilities and contends DOC failed to consider his exemplary record, which included no prior discipline. Mr. Morton alleges DOC's finding of gross misconduct was improper and, therefore, a violation of RCW 41.06.070(3) and WAC 357-19-195.

### **Summary of DOC's Response to Alleged Rule Violation**

DOC does not agree Mr. Morton's comments were taken out of context. Rather, DOC describes Mr. Morton's conduct as inappropriate and unprofessional. Further, DOC disputes several of the key facts identified by Mr. Morton (Exhibit A-6). DOC stipulates to the following:

- Mr. Morton had no prior disciplinary record;
- Mr. Morton had been temporarily assigned as LCC's Superintendent;
- He reported through a different chain of command than Ms. Williamson;
- He contacted Ms. Williamson after hours with the call lasting one hour;
- No other person at LCC reported Mr. Morton for sexual harassment;
- The date Ms. Williamson filed her statement may have been after Mr. Morton's temporary assignment concluded.

However, DOC disagrees with the other statements described as key undisputed facts. DOC asserts Mr. Morton began making disrespectful comments to Ms. Williamson within four days of arriving at LCC. DOC claims Mr. Morton failed to treat Ms. Williamson with dignity and respect when he called her after working hours and engaged her in a dialogue filled with sexual innuendos. DOC contends Mr. Morton specifically asked her not to tell Superintendent Vernell about their conversation and quickly crossed the line by focusing the conversation on Ms. Williamson. DOC contends Mr. Morton continued to query Ms. Williamson even after she answered his questions. For example, DOC asserts Mr. Morton continued the dialogue by asking why she would not go out with him, telling her it was a test, saying he would not ask



again, and then pursuing the conversation by talking about how awkward it can be to go out with people from work.

DOC contends Mr. Morton's telephone dialogue and other comments were demeaning and made Ms. Williamson feel uncomfortable and embarrassed. DOC disagrees that intent is required to determine sexual harassment and notes DOC's policy provides several illustrations describing sexual harassment. DOC further notes Mr. Morton had just attended a refresher course on sexual harassment prevention as a segment of the block training on June 22, 2010, prior to his evening telephone call to Ms. Williamson. In addition, DOC contends Mr. Morton was held to a higher standard as a superintendent and asserts he violated DOC's sexual harassment and ethics policy directives and failed to adhere to the agency's expectations of an executive administrator. DOC contends Mr. Morton's actions created a substantial risk and liability for the agency and reached the level of gross misconduct. Therefore, DOC asserts Mr. Morton failed to prove DOC violated RCW 41.06.070(3) and WAC 357-19-195.

### **Director's Determination and Rationale**

Mr. Morton had the burden of proving DOC erred in charging him with gross misconduct and therefore, violated RCW 41.06.070 and WAC 357-19-195 by not reinstating him to a classified position. In light of DOC's finding of gross misconduct, I considered the former Personnel Appeals Board's (PAB's) definition of gross misconduct as follows:

Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

In this case, Mr. Morton's actions were clearly inappropriate for a high level administrator, and he violated DOC's Policy Directives 800.010 and 850.625 regarding ethics and sexual harassment. Mr. Morton's conduct affected DOC's ability to create a functional, respectful work environment free from harassment and intimidation. Mr. Morton admitted Ms. Williamson's statements about his behavior had been 99 percent accurate. His assertion Ms. Williamson's statements had been taken out of context is not supported by the preponderance of facts.

When considering Mr. Morton's conduct, Ms. Strange stated she considered Mr. Morton's personnel record and reviewed the entire investigation but focused on the investigative findings. The investigators indicated they focused on the specific interactions that occurred between Mr. Morton and Ms. Williamson and did not include extraneous information volunteered by those interviewed. The investigation, however, did include general observations and perceptions of both Mr. Morton and Ms. Williamson, as described by LCC staff. The LCC staff who participated in the Director's review conference reiterated their perceptions and had an opportunity to clarify information for the record. Ms. Strange, who also participated in the Director's review conference, listened to staff's comments but did not believe they mitigated Mr. Morton's behavior. While Ms. Strange recognized that a number of employees welcomed Mr. Morton's presence, given the atmosphere at LCC, she still concluded Mr. Morton's actions reached the level of gross misconduct.

Ms. Strange considered Mr. Morton's phone call to Ms. Williamson, as well as the tone and content of the ensuing discussion, highly inappropriate. Furthermore, Ms. Strange was not convinced the purpose of the call centered on Ms. Williamson needing to be mentored. Both Ms. Strange and Mr. Wright stated that even if Mr. Morton's phone call had started with a business reason, any legitimate reasons for the call could have waited until the next day. Ms. Strange concluded the nature of the call quickly deteriorated and evolved into an unusual and inappropriate discussion for a superintendent to have with a subordinate employee. Ms. Strange did not find Mr. Morton's reasons for the phone call persuasive or credible. She did not believe he knew Ms. Williamson well enough to determine whether she needed mentoring after working with her just three days. Ms. Strange stated that had it been Mr. Morton's desire to follow up on staff complaints about Ms. Williamson's performance, he had other avenues available like going to her supervisor, the Regional HR Director.

Further, had it been Mr. Morton's desire to provide leadership and guidance to Ms. Williamson, Ms. Strange found the line of questioning he pursued and the scenarios he posed very odd and inappropriate. For example, Mr. Morton pursued the conversation by questioning Ms. Williamson about why she would not go out with him or telling her not to assume a man was not attracted to her, and then stating it was not about sex. Ms. Strange emphasized the power differential between Mr. Morton's and Ms. Williamson's positions and believed the dialogue had been confusing and uncomfortable for Ms. Williamson. Ms. Strange described Mr. Morton's approach of initiating a personal discussion in a call to Ms. Williamson between 9:00 – 10:00 p.m. as inconsistent with mentoring and leadership or creating an environment for success.

Additionally, Ms. Strange was concerned about the comments Mr. Morton made to Ms. Williamson in the presence of others, such as referencing her age or telling her she needed a time out. While Ms. Williamson stated Mr. Morton teased everyone, Ms. Strange believed his comments to Ms. Williamson were of a personal nature and had the appearance of calling her out in front of others. Ms. Strange was also troubled with Mr. Morton's decision to call Ms. Williamson out of training during offender movement. In particular, Ms. Strange had been concerned with Mr. Morton's lack of awareness about how Ms. Williamson perceived his comments and behavior, and he failed to treat her with dignity and respect.

The PAB previously addressed a situation in which a high level manager engaged in sexually harassing and inappropriate behavior toward female subordinates. The employees' perceptions had been that Appellant "was well connected with . . . management." As a result, one employee "expressed shame and embarrassment" that she was unable to tell the manager his behavior was unacceptable. None of the employees reported the manager's behavior; however, it came to light during another investigation. Similar to Mr. Morton's case, the PAB concluded "Appellant was a long-term employee who promoted up the ranks . . . to a Washington Management position . . . . Therefore, Appellant had the knowledge and experience necessary to understand his responsibility to model appropriate and proper workplace behavior." The PAB concluded Appellant's misconduct "undermined the department's ability to ensure that its employees were protected from any form of harassment in the workplace." Green v. Dep't of Social & Health Services, PAB No. DISM-03-0115 (2005).

In this case, Ms. Strange indicated her decision to terminate Mr. Morton for gross misconduct had been greater than a violation of the sexual harassment policy. It was also based on Mr. Morton's lack of judgment and awareness of how his actions impacted others. Ms. Strange emphasized that as a superintendent in charge of operations in a prison facility, he was required

to carry out his duties in a highly responsible manner. She noted that ethics and integrity are an important part of DOC's philosophy and communicated regularly to leadership and staff. Because he was in a leadership position, Mr. Morton was held to a higher standard.

Ms. Strange emphasized the critical nature of modeling appropriate behavior and working as a team in a prison environment. Ms. Strange believed Mr. Morton's actions had the potential to upset the tone of the environment and exacerbate already existing challenges at LCC. While Ms. Strange recognized Mr. Morton had been well liked by a number of LCC staff, she concluded he used very poor judgment in his interactions with Ms. Williamson. As a result, his actions impacted her ability to trust future decisions requiring a high level of integrity, trust, and respect. Ultimately, Ms. Strange determined Mr. Morton's actions created a liability for DOC and affected the agency's ability to provide a respectful environment for Ms. Williamson and potentially other employees in the future.

While Mr. Morton's conduct is not identical to examples of behavior identified as gross misconduct in prior PAB decisions, it specifically relates to the PAB's conclusions regarding gross misconduct. For example, the PAB previously determined that an employer has a responsibility to provide its employees with a work environment free from harassment and intimidation where employees are treated with respect and dignity. When an employee's actions affect an agency's ability to provide such an environment or create an offensive work environment, that employee's actions constitute gross misconduct. Bloshenko v. Dep't of Social & Health Services, PAB No. DISM-00-0080 (2002).

In this case, Ms. Strange determined that Mr. Morton's actions put the agency's ability to provide a respectful environment free from harassment at risk. Therefore, Ms. Strange's decision to terminate Mr. Morton for gross misconduct was reasonable under the circumstances, and Mr. Morton failed to prove DOC violated RCW 41.06.070(3) and WAC 357-19-195.

### **Appeal Rights**

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office has moved to a new location at 521 Capitol Way South, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Walker Morton  
Valerie Petrie, AAG  
Donna Haley, DOC  
Connie Goff, DOP

Enclosure: List of Exhibits

**WALKER MORTON v DOC**  
**RULE-10-013**

A. Walker Morton's Exhibits

1. Letter of request for Director's review from Christopher Lundberg, attorney dated October 19, 2010
2. Affidavit of Sidney Clark, Classification Counselor at Larch Corrections Center
3. July 1, 2010 thank-you email to Morton Walker from Richard Stricker, DOC
4. September 21, 2010 termination notification letter from Cheryl Strange, Deputy Secretary at DOC
5. Email from Mr. Lundberg listing individuals to attend Director's review conference for Walker Morton
6. Rebuttal to DOC's Opening Brief

B. DOC's Exhibits (includes list of possible "witnesses")

1. September 21, 2010 Termination Letter
2. September 1, 2010 Intent to Terminate Letter
3. August 31, 2010 Investigation Report with addendum from Torri Fosteer
4. DOC Sexual Harassment Policy 850.625
5. DOC Ethics Policy 800.010
6. DOC Employee Handbook
7. Acknowledgement of Receipt of the DOC Employee Handbook
8. Acknowledgement of Receipt of Personnel Policy Directives
9. Walker Morton's Executive Management Service Position Description
10. Training Profile for Walker Morton
11. June 22, 2010 Class Roster for Sexual Harassment Prevention
12. Respondent's Opening Brief

C. Additional Exhibit request by Director's Designee

1. July 20, 2011 email from Teresa Parsons to Donna Haley, DOC, requesting copy of Mr. Morton's employment history.
2. Employee History with DOC