

AGENDA
FIRE MERIT COMMISSION
Monday, January 27, 2025

3:30 P.M.

Council Chambers

Municipal Building, 229 S. Second Street, Elkhart, IN 46516

<https://signin.webex.com/join>

MEETING NUMBER (Access Code): 2311 850 4282 MEETING PASSWORD: Fire25
JOIN BY PHONE: 1-415-655-0001

- 1. Call to Order**
- 2. Roll call**
- 3. Approve Agenda**
- 4. Elkhart Common Council Appointment- Mandy Leazenby**
- 5. Election of 2025 FMC Officers**
- 6. Approve Minutes- Regular Meeting November 25, 2024**
- 7. Fire Department**
 - Disciplinary Action- FF Ryan Billings,**
 - Promotion- Chief Jason Gour**
 - Lateral Transfer- Chief David Cushwa**
 - Certify Battalion Chief Promotional List**
 - Promotion Captain Robin Anderson**
 - Disciplinary Notice- FF Marcus Perez, FF LaVarius Macon, Chief David Cushwa**
 - Request for Disciplinary Hearing- Chief David Cushwa**
- 8. IAFF Local 338**
- 9. Public Participation**
- 10. Adjournment**

Rod Roberson
Mayor



Elkhart City Council
229 S. 2nd Street
Elkhart, IN 46516

Aaron Mishler
1st District

Chad Crabtree
2nd District

David E. Henke
3rd District

Dwight Fish
4th District

H. Brent Curry
5th District

LaTonya King
6th District

Alex Holtz
At-Large

Arvis Dawson
At-Large

Tonda Hines
At-Large

December 5, 2024

TO: Elkhart Fire Merit Board

FROM: Angie McKee – Deputy Clerk of the Common Council

RE: Board Appointment

At the Elkhart City Common Council Meeting that was held on Monday, November 18, 2024, the Council voted unanimously to reappoint Mandy Leazenby.

If you should have any questions, please feel free to reach out to me directly.

FIRE MERIT COMMISSION
Monday, November 25, 2024

President Mandy Leazenby called a regular meeting of the Fire Merit Commission (FMC) to order at 3:30 p.m., Monday, November 25, 2024. Clerk Nancy Wilson called the role. Commissioners Mandy Leazenby, Regina Fultes, and Bunita Fields-Buggs, were present. Jim Rodino attended on Webex. Doug Bowlby was absent.

1. AGENDA

A motion was made by Bunita Fields-Buggs and seconded by Regina Fultes to approve the agenda. On motion by Bunita Fields Buggs, seconded by Regina Fultes and carried 4-0, the agenda was amended by adding the certification of the Promotions list, and by removing the Medic Driver/ Operator promotions from the list. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, the amended agenda was approved.

2. MINUTES

On motion by Bunita Fields-Buggs, seconded by Regina Fultes and carried 4-0, the minutes from the Regular Meeting on October 28, 2024 were approved.

3. FIRE DEPARTMENT

Promotions

Chief Rodney Dale recommended the promotion of FF Gene Sanders to Inspector. Investigator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Gene Sanders was promoted to Inspector Investigator.

Chief Dale recommended promoting FF Cory Wise to Captain. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Cory Wise was promoted to Captain.

Chief Rodney Dale recommended the promotion of FF Adam Kuspa to Captain. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Adam Kuspa was promoted to Captain.

Chief Rodney Dale recommended the promotion of FF Matthew Girard to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Matthew Girard was promoted to Lieutenant.

Chief Rodney Dale recommended the promotion of FF Ryan Chris to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Ryan Chris was promoted to Lieutenant.

Chief Rodney Dale recommended the promotion of FF Michael Nemes to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Michael Nemes was promoted to Lieutenant.

Chief Rodney Dale recommended the promotion of FF Chris Schelle to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Chris Schelle was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Jason Gour to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Jason Gour was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF David Blakeship to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF David Blakeship was promoted to Driver/ Operator.

FIRE MERIT COMMISSION
Monday, November 25, 2024

Chief Rodney Dale recommended the promotion of FF Lane Stevens to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Lane Stevens was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Andrew Gray to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Andrew Gray was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Tyler Heck to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Tyler Heck was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Phil Miles to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Phil Miles was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Derek Englehart to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Derek Englehart was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Marcus Perez to Driver/ Operator. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Marcus Perez was promoted to Driver/ Operator.

Chief Rodney Dale recommended the promotion of FF Joseph Clawson to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Joseph Clawson was promoted to Lieutenant.

Chief Rodney Dale recommended the promotion of FF Shawn Gordon to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Shawn Gordon was promoted to Lieutenant.

Chief Rodney Dale recommended the promotion of FF Nicholas Lievore to Lieutenant. On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, FF Nicholas Lievore was promoted to Lieutenant.

Pinning Ceremony

The following Firefighters were pinned during the ceremony: Inspector Gene Sanders, Captain Cory Wise, Captain Adam Kuspa, Lieutenant Matthew Girard, Lieutenant Ryan Chris, Lieutenant Mike Nemes, Lieutenant Joseph Clawson, Lieutenant Nicholas Lievore, Lieutenant Shawn Gordon, and Division Chief Noah Lace.

Certification of Promotion List

On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, the FMC certified the Promotional List.

2025 Fire Merit Commission Meeting Dates

On motion by Bunita Fields-Buggs, seconded by Regina Fultes and carried 4-0, the 2025 Fire Merit Meeting dates were approved as presented.

4. ADJOURNMENT

On motion by Regina Fultes, seconded by Bunita Fields-Buggs and carried 4-0, the City of Elkhart, Indiana Fire Merit Commission was adjourned at 4:33 p.m.

_____ Mandy Leazenby, President

Attest: _____ Doug Bowlby, Secretary



01/03/2024

Rod Roberson
Mayor

Fire Merit Commission
229 S, Second Street
Elkhart, IN 46516

Rodney Dale
Fire Chief

RE: Verbal Warning for Ryan Billings

Kristi Sommer
Assistant Fire Chief

The following is a summary of the case and its resolution:

Fire Department
500 East Street
Elkhart, Indiana 46516

An incident report from Battalion Chief Hochstetler was submitted to the Division Chief of Operations on December 14th, 2024. The report stated that Firefighter Ryan Billings did not arrive for duty until 0718. This failure to report on time for duty is a violation of Indiana Code 36-8-3.5-17 Section 17 (2)(A).

Phone: (574) 293-8931
Fax: (574) 522-1023

An investigation confirmed that Firefighter Billings was indeed late for duty on that date.

Email:
fire@elkhartfire.org

The Fire Chief is notifying the Fire Merit Commission that Firefighter Billings received a verbal warning for these violations.

Rodney Dale
Fire Chief

Elkhart Fire
500 East Street
Elkhart, IN 46516

Phone: (574) 293-8931
Fax: (574) 522-1023
Fire.Admin@Elkhartfire.org



Rodney Dale
Fire Chief

Kristi Sommer
Assistant Fire Chief

January 13th 2025

Merit Commission
Municipal Building
229 South Second Street
Elkhart, Indiana 46516

RE: Promotion

Commission Members:

I am informing you of the promotion of Pump Operator Jason Gour to Division Chief of Operations effective January 1st, 2025.

Respectfully,

Rodney Dale
Fire Chief

A handwritten signature in blue ink, appearing to read "Rodney Dale". The signature is written in a cursive style and is positioned to the right of the typed name and title.

Elkhart Fire
500 East Street
Elkhart, IN 46516

Phone: (574) 293-8931
Fax: (574) 522-1023
Fire.Admin@Elkhartfire.org



Rodney Dale
Fire Chief

Kristi Sommer
Assistant Fire Chief

January 13th 2025

Merit Commission
Municipal Building
229 South Second Street
Elkhart, Indiana 46516

RE: Lateral move

Commission Members:

I am informing you of the lateral move of former Division Chief of Operations David Cushwa to Division Chief of Safety, effective January 1st 2025.

Respectfully,


Rodney Dale
Fire Chief

Elkhart Fire
500 East Street
Elkhart, IN 46516

Phone: (574) 293-8931
Fax: (574) 522-1023
Fire.Admin@Elkhartfire.org



Rodney Dale
Fire Chief

Kristi Sommer
Assistant Fire Chief

January 13th 2025

Merit Commission
Municipal Building
229 South Second Street
Elkhart, Indiana 46516

RE: Certification of the promotions list effective January 13th, 2025

Commission Members:

I am requesting your certification of the promotions' list which will be in effect for two years from today, it is as follows.

Battalion Chief

1. Josh Miller
2. Matt Walker
3. Robin Anderson
4. Kenny Roth
5. Martin Dyer
6. James Kumm

Respectfully,

Rodney Dale
Fire Chief

Elkhart Fire
500 East Street
Elkhart, IN 46516

Phone: (574) 293-8931
Fax: (574) 522-1023
Fire.Admin@Elkhartfire.org



Rodney Dale
Fire Chief

Kristi Sommer
Assistant Fire Chief

January 13th 2025


Merit Commission
Municipal Building
229 South Second Street
Elkhart, Indiana 46516

RE: Promotion of Robin Anderson

Commission Members:

I am recommending the promotion of Captain Robin Anderson to the position of Battalion Chief, effective January 13th 2025. Robin has satisfied all of the qualifications, is an excellent leader, and will be a positive example to those under his command.

Respectfully,


Rodney Dale
Fire Chief



01/09/2024

Rod Roberson
Mayor

Rodney Dale
Fire Chief

Kristi Sommer
Assistant Fire Chief

Fire Department
500 East Street
Elkhart, Indiana 46516

Phone: (574) 293-8931
Fax: (574) 522-1023

Email:
fire@elkhartfire.org

Fire Merit Commission
229 S, Second Street
Elkhart, IN 46516

RE: Written Warning for Marcus Perez

The following is a summary of the case and its resolution:

An incident report from the Human Resources Department was submitted to the Division Chief of Operations from the Fire Chief on December 19th, 2024. The report stated that Driver Operator Perez used clothing and equipment from the Elkhart Fire Department for personal social media posts while on duty, without the direct approval of the Fire Chief. This failure to request to use Fire Department clothing and apparatus is a violation of Indiana Code 36-8-3.5-17 *Section 17 (2)(B)*.

An investigation confirmed that Driver Operator Perez was indeed using department clothing and apparatus in his social media posts.

The Fire Chief is notifying the Fire Merit Commission that Driver Operator Perez received a written warning for these violations.



Rodney Dale
Fire Chief



01/21/2024

Rod Roberson
Mayor

Fire Merit Commission
229 S, Second Street
Elkhart, IN 46516

Rodney Dale
Fire Chief

RE: 8-hour suspension for LaVarius Macon.

Kristi Sommer
Assistant Fire Chief

The following is a summary of the case and its resolution:

Fire Department
500 East Street
Elkhart, Indiana 46516

An incident report from Battalion Chief Smeltzer was submitted to the Division Chief of Operations on December 25th, 2024. The report stated that Firefighter LaVarius Macon did not arrive for duty until 0730. This failure to report on time for duty is a violation of Indiana Code 36-8-3.5-17 *Section 17 (2)(B)*, and is his second offense in one year.

Phone: (574) 293-8931
Fax: (574) 522-1023

An investigation confirmed that LaVarius Macon was indeed late for the second time in one year.

Email:
fire@elkhartfire.org

The Fire Chief is notifying the Fire Merit Commission that Firefighter LaVarius Macon received an 8-hour suspension for these violations.

A handwritten signature in blue ink, appearing to read "Rodney Dale", is written over a light blue horizontal line.

Rodney Dale
Fire Chief



01/16/2024

Rod Roberson
Mayor

Rodney Dale
Fire Chief

Kristl Sommer
Assistant Fire Chief

Fire Department
500 East Street
Elkhart, Indiana 46516

Phone: (574) 293-8931
Fax: (574) 522-1023

Email:
fire@elkhartfire.org

Fire Merit Commission
229 S, Second Street
Elkhart, IN 46516

RE: 40-hour suspension for David Cushwa

The following is a summary of the case and its resolution:

On December 9th, Division Chief Cushwa did not report to duty as scheduled and was contacted by Assistant Chief Sommer to see where he was. He informed Assistant Chief Sommer that he would not report for duty for the remainder of the month. The actions on December 9th followed a meeting between Fire Chief Dale and Division Chief Cushwa, in which Chief Cushwa needed to report any time taken off to the Fire Chief. These actions are a violation of IC 36-8-3.56-17 Section 17 (2)(C).

An investigation confirmed that Division Chief Cushwa disobeyed a direct order to request time off through the Fire Chief.

The Fire Chief is notifying the Fire Merit Commission that Division Chief Cushwa received a forty (40) hour suspension for these violations.

A handwritten signature in blue ink, appearing to read "Rodney Dale", is written over the printed name and title.

Rodney Dale
Fire Chief

Elkhart Fire Department - Employee Disciplinary Notice

Employee Name David Cushwa Position Division Chief

Department/Division Fire Shift 40hr

Date of Notice _____ Time _____

Date of Alleged Incident 12/09/2024 Time 0700

ALLEGED VIOLATION

Violations are laid out in Elkhart Fire Department Merit Commission Rules and IC 36-8-3.5-17

Neglect of Duty Violation of the Rules Incapacity

Neglect or Disobedience of Orders Absence without Leave Immoral Conduct

Conduct Injurious to the Public Peace or Welfare Conduct Unbecoming a Member Another Breach of Discipline

SUPERVISOR STATEMENT

*Use attachment if necessary.

Facts and Work Rule(s) Violated:

See attached.

Suggested Discipline: Written Verbal _____ Written Warning _____ Suspension Dismissal _____
Other _____ (See Attachment, if applicable)

EMPLOYEE STATEMENT (Use attachment if necessary)

This statement has been recieved and will be disputed for a lack of following city rules of progressive discipline and failure to cite a specific rules, regulation or order and is a step in overreach on this matter. I dispute these charges.

IC 36-8-2.1-5 Procedures; statement of rights

Sec. 5. (a) This section applies to a public safety officer who is the subject of a complaint or an internal investigation.

(b) When a public safety officer is subjected to interview by the public safety officer's department, as described in subsection (a), the following procedures apply:

- (1) The interview shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, unless, in the judgment of the interviewer, the seriousness of the investigation requires an immediate interview.
- (2) The interview shall take place at the public safety officer's department or an equivalent office setting designated by the interviewer.
- (3) The interviewer shall inform the public safety officer of the name, rank, and assignment of the officer or member of the fire department in charge of the investigation, the interviewer, and all other persons present during the interview.
- (4) The interviewer shall present the public safety officer with a statement of rights to be signed by the interviewer and the public safety officer. The statement of rights must be in substantially the following form:

STATEMENT OF RIGHTS

I wish to advise you that you are being questioned as part of an official investigation of the Elkhart Fire Department. You will be asked questions specifically, directly, and narrowly related to the performance of your official duties as a Firefighter or concerning your fitness for service as a Firefighter. You have the constitutional right not to incriminate yourself.

Under no circumstances will your statement be used in any subsequent criminal court action against you. However, factual information contained in the internal affairs file on this investigation, including your statement, is generally discoverable in civil rights litigation filed in federal or state court and may be used to impeach your testimony. In addition, this factual information may be used in any criminal proceeding in which you are a witness.

I further wish to advise you that if you refuse to give a statement or answer questions relating to the performance of your official duties or fitness for duty, you will be subjected to departmental charges that could result in your dismissal from the Elkhart Fire Department.

I have read the above and understand it fully. I sign this statement having been advised of the above rights before any questions have been asked of me.

(5) In a noncriminal case, once a public safety officer is scheduled for an interview under this subsection, the officer in charge of the investigation must provide the public safety officer with a copy of the complaint, if one exists. In a criminal case, the officer in charge of the investigation must inform the public safety officer of the nature of the complaint. The officer in charge of the investigation is not required to disclose the name of the complainant to the public safety officer.

(6) An interview session shall be for a reasonable duration of time and must allow for personal necessities and rest periods as reasonably necessary.

(7) An interview of a public safety officer as described in this subsection shall be tape recorded at the request of either party. A written transcript must be provided to the public safety officer upon request, at no cost to the public safety officer.

(8) If at the time of the interview the public safety officer is under arrest or in custody, the interviewer must completely inform the public safety officer of the public safety officer's federal and state constitutional rights regarding self-incrimination prior to the commencement of the interview.

(9) A public safety officer may not be required to waive any immunities under federal or state law at any point in an investigation.

(10) A question posed to a public safety officer must specifically, directly, and narrowly relate to the performance of duties or fitness for service as a public safety officer.

(11) A public safety officer shall have the right to be represented by an attorney or other representative during an interview where the interview relates to the public safety officer's continued fitness for law enforcement service (in the case of a police officer) or fire service (in the case of a firefighter). The public safety officer shall be provided a reasonable period of time to obtain representation, which may not exceed seventy-two (72) hours from the time of request, unless agreed upon by both parties. The attorney or representative may not participate in the interview, except to advise the public safety officer.

As added by P.L.271-2019, SEC.1. Amended by P.L.33-2020, SEC.7.

I understand my rights as listed above

Date/Time 01/15/2025 1525 hours

Name (Firefighter) DAVID F. CUSHWA

Name (Interviewer) _____

Signature 

Signature _____

Employee Disciplinary Notice – Continued

PREVIOUS DISCIPLINARY ACTION: Attach previous discipline Administered in the Past Twelve Months

Chief's Comments (if Necessary)

40 hours

FINAL DETERMINATION: Written Verbal Written Warning Suspension Dismissal Other _____ (See Attachment, if applicable)

D. C. SHAW
Signature of Employee

01/16/2025
Date

Signature of Union Steward (if applicable)

Date

[Signature]
Signature of Division of Operations

1/15/25
Date

[Signature]
Signature of Chief or Assistant Chief

1-15-25
Date

ROUTING: File _____ Human Resource _____ Other _____

At approximately 2:15 p.m. on 2 January 2025, I was asked by Division Chief Gour to come to his office because he "wanted to talk to me at some point today." Upon entering the room and sitting, I was informed that I was being brought up on disciplinary charges at the request of the Fire Chief Rodney Dale. Mr. Gour read me my rights according to the Firefighter Bill of Rights and stated that I may refuse to answer questions asked but in doing so I would be subject to further discipline and possible termination. I informed Mr. Gour that I had no issue with answering questions and asked for a copy of the complaint against me. He provided a document signed by the fire chief that stated that I did not inform the fire chief that I would be using my benefit days (vacation time and other accrued time) for the remainder of the month of December 2024 and that he (fire chief) wanted to discipline me for 40 hour suspension. According to Mr. Gour, he stated that he had a conversation with the fire chief that included Mr. Gour telling Chief Dale that he (Gour) would have to investigate the matter before issuing discipline.

I, Division Chief David Cushwa, gave a verbal statement [responding to the statements posed by Division Chief Jason Gour on 01/02/25 regarding the use of vacation days for Division Chief David Cushwa.](#)

This statement is based on the handwritten notes taken by Chief Gour and amended by Chief Cushwa to form a written statement of the interview conducted on 02JAN2025. (*Please see note for further details.)

Statement:

In the start of questioning, Mr. Gour asked about time off in November of 2024 (vacation days used). He asked if I spoke with Chief Dale about this time off. I stated that I had. Dale said that I did not inform anyone about taking this time off, to which I stated that Chief Dale was off-duty during that time, I entered my time off into my service record which is available to all personnel in the Admin group and I also informed Assistant Chief Sommer of my vacation time. Dale stated that "as a courtesy, he would like to know when I am going to be off." I stated I understand but followed all normal procedures for taking time off.

[Cushwa took time off in November and told Chief Sommer verbally that he would be using vacation time. Chief Cushwa stated that he told his superior officer and followed the procedure. Chief Cushwa recalls a verbal conversation in Chief Dale's office in which Chief Dale stated he wanted to be informed when Chief Cushwa went on vacation. Chief Cushwa stated that he put time off in his service record. However, he knows Chief Dale does not look at the service records. Chief Cushwa also noted that everyone in the administration can access service records.](#)

[Administration time off since \(and prior to\) July 2020 was just put into service records, and you did not have to tell anyone. This had been the case with chiefs such as Chad Carey, Steve Kamp and Shaun Edgerton.](#)

[When asked if there was a written procedure, Chief Cushwa said there was not, but it was operated according to past practice.](#)

[Chief Cushwa said he took time off from December 4th to the 31st. He stated that he told Chief Sommer after the December 11th administrative staff meeting that he would be taking the rest of the month off.](#)

I did work on departmental service records and vacation lists from December 3rd through the 7th at various time during my vacation and did not enter these times in my service record as was a customary practice of Administrative personnel that frequently work longer hours and on my days off and weekends to maintain operational efficiencies. These times can be found in the Time & Attendance folder by seeking "created by" and time and date stamped. I also was at the Command Staff Meeting on Wednesday, December 11th, 2024 and worked the remainder of that day.

JG
I did
not say
that

Chief Cushwa stated that he did not notify Chief Dale but used his accrued time off when he found out he was being reassigned without cause or reason to the Battalion Chief's office (a move that would be considered a demotion) on 02DEC2024 and he would not be allowed to carry over any vacation time into the next year as Chief Dale was going to allow the administrative staff to do from 2024 to 2025.

Chief Cushwa again stated that all time off was put into his service records and Assistant Chief Sommer again was notified that Cushwa and Division Chief Kornrump would be off for the remainder of the year, using vacation time.

Chief Dale contacted Chief Cushwa via phone on 03DEC2024 and informed me that I was being reassigned to a Safety Officer role at the Division Chief level.

* Note: Text that is written in black was authored by David F. Cushwa and text in blue are the notes as recorded by Jason Gour and submitted to Cushwa to act as a written statement of the interview notes of 02JAN2025.

A Signature that the statements made were accurate



David F. Cushwa

06 JAN 2025

Date/Time

**ELKHART FIRE DEPARTMENT
INCIDENT REPORT**

CONFIDENTIAL


DATE OF INCIDENT: 12/04/2024 TIME OF INCIDENT: 0800

INCIDENT NUMBER: David Cushwa FILE: _____

REQUIRES IMMEDIATE ATTENTION: Yes PAGE 1 OF 1

NARRATIVE: Division Chief David Cushwa decided to take vacation from December 4th thru December 31st without notifying myself, Chief Rodney Dale, or anyone else. Chief Cushwa only marked his time off in his service record. Chief Cushwa and I had a conversation once before in November of 2024 concerning him taking time off and not informing me. I told Chief Cushwa directly when his time is going to be used, I am to be notified. It is my recommendation that Division Chief Cushwa be given 40 hours off, thanks.

Fire Chief


Rodney Dale

NAME/RANK _____

IC 36-8-2.1-5 Procedures; statement of rights

Sec. 5. (a) This section applies to a public safety officer who is the subject of a complaint or an internal investigation.

(b) When a public safety officer is subjected to interview by the public safety officer's department, as described in subsection (a), the following procedures apply:

- (1) The interview shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, unless, in the judgment of the interviewer, the seriousness of the investigation requires an immediate interview.
- (2) The interview shall take place at the public safety officer's department or an equivalent office setting designated by the interviewer.
- (3) The interviewer shall inform the public safety officer of the name, rank, and assignment of the officer or member of the fire department in charge of the investigation, the interviewer, and all other persons present during the interview.
- (4) The interviewer shall present the public safety officer with a statement of rights to be signed by the interviewer and the public safety officer. The statement of rights must be in substantially the following form:

STATEMENT OF RIGHTS

I wish to advise you that you are being questioned as part of an official investigation of the Elkhart Fire Department. You will be asked questions specifically, directly, and narrowly related to the performance of your official duties as a Firefighter or concerning your fitness for service as a Firefighter. You have the constitutional right not to incriminate yourself.

Under no circumstances will your statement be used in any subsequent criminal court action against you. However, factual information contained in the internal affairs file on this investigation, including your statement, is generally discoverable in civil rights litigation filed in federal or state court and may be used to impeach your testimony. In addition, this factual information may be used in any criminal proceeding in which you are a witness.

I further wish to advise you that if you refuse to give a statement or answer questions relating to the performance of your official duties or fitness for duty, you will be subjected to departmental charges that could result in your dismissal from the Elkhart Fire Department.

I have read the above and understand it fully. I sign this statement having been advised of the above rights before any questions have been asked of me.

(5) In a noncriminal case, once a public safety officer is scheduled for an interview under this subsection, the officer in charge of the investigation must provide the public safety officer with a copy of the complaint, if one exists. In a criminal case, the officer in charge of the investigation must inform the public safety officer of the nature of the complaint. The officer in charge of the investigation is not required to disclose the name of the complainant to the public safety officer.

(6) An interview session shall be for a reasonable duration of time and must allow for personal necessities and rest periods as reasonably necessary.

(7) An interview of a public safety officer as described in this subsection shall be tape recorded at the request of either party. A written transcript must be provided to the public safety officer upon request, at no cost to the public safety officer.

(8) If at the time of the interview the public safety officer is under arrest or in custody, the interviewer must completely inform the public safety officer of the public safety officer's federal and state constitutional rights regarding self-incrimination prior to the commencement of the interview.

(9) A public safety officer may not be required to waive any immunities under federal or state law at any point in an investigation.

(10) A question posed to a public safety officer must specifically, directly, and narrowly relate to the performance of duties or fitness for service as a public safety officer.

(11) A public safety officer shall have the right to be represented by an attorney or other representative during an interview where the interview relates to the public safety officer's continued fitness for law enforcement service (in the case of a police officer) or fire service (in the case of a firefighter). The public safety officer shall be provided a reasonable period of time to obtain representation, which may not exceed seventy-two (72) hours from the time of request, unless agreed upon by both parties. The attorney or representative may not participate in the interview, except to advise the public safety officer.

As added by P.L.271-2019, SEC.1. Amended by P.L.33-2020, SEC.7.

I understand my rights as listed above

Date/Time 01/02/2025 1422 hrs

Name (Firefighter) DAVID F. CUSHWA

Name (Interviewer) [Signature]

Signature [Signature]

Signature Jason Gour

Sommer, Kristi

From: Sommer, Kristi
Sent: Thursday, May 9, 2024 3:43 PM
To: Dale, Rodney; Kornrumpf, Will; Gerber, Aaron; Cushwa, David; Sullivan, William
Subject: time off

Good Afternoon,

As a common courtesy, we need to be sending out an email to this group when we are taking time-off.

Thank-you

Kristi Sommer
Assistant Chief

Fire Chief Rodney Dale gave a statement to Division Chief Jason Gour on 01/02/25 regarding the use of vacation days for Division Chief David Cushwa.

Statement:


Chief Dale stated that he had a verbal conversation with Chief Cushwa in November regarding Chief Cushwa taking time off and not reporting it to the Fire Chief.

Chief Dale stated that he was very clear in his communication and that it was a direct order to report vacation time to the Fire Chief.

Chief Dale stated that he was unaware that Chief Cushwa was taking any time off in December.

On the morning of December 9th, Chief Dale directed Assistant Chief Sommer to find out why Chief Cushwa was not there. She came back to him and said that he would be taking the rest of the month off. Chief Dale said he was unaware of Chief Cushwa taking time off, and it went directly against the order that was given in November.

Signature that the above statements are correct.



Fire Chief Rodney Dale

1/03/24
Date/Time 1:30 p.m.

Assistant Chief Kristi Sommer gave a statement to Division Chief Jason Gour on 01/02/25 regarding the use of vacation days for Division Chief David Cushwa.

Statement:

Chief Sommer said she doesn't recall Chief Cushwa officially telling her he was taking the day off in November but was aware of him taking the day off through outside work communication.

Chief Sommer was not informed of specific dates that Chief Cushwa would be taking off outside of November 27th and Days until December 9th.

Chief Sommer was under the impression that Chief Cushwa would be back to work on the 9th, so she spoke with him on the phone after Chief Dale directed her to find out where he was on the morning of the 9th.

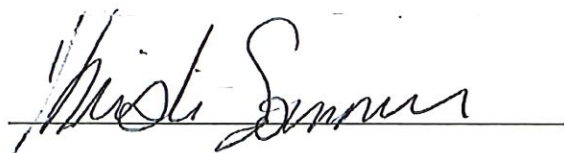
Chief Sommer does not recall any conversation with Chief Cushwa on December 11th after the administrative staff meeting.

Chief Sommer said she only knew that Chief Cushwa planned to be off work after the 9th by looking at his service records.

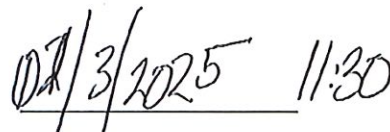
However, Chief Sommer stated that she knew he would be taking some time off at the end of December but was unaware of when that would be.

Chief Sommer stated that Chief Cushwa informed her on the phone on the 9th that he would be taking the rest of the year off.

Signature that the above statements are correct.



Assistant Chief Kristi Sommer



Date/Time

Wednesday 22 JAN 2025

David F. Cushwa
Division Chief, Elkhart Fire Department
500 East Street
Elkhart, IN 46516

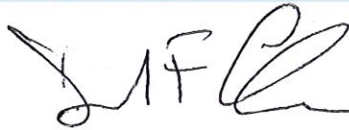
To: Mandy Leazenby, Fire Merit Board President
Nancy Wilson - Administrative Assistant to Corporate Counsel;
Board of Public Safety, Fire Merit Commission (and others)
229 S. Second St.
Elkhart, IN. 46516

Re: Request for Hearing

Dear Nancy and Merit Board President Leazenby,

I have been issued discipline by the fire chief that has yet to be presented to the Fire Merit Commission. Once this is presented, I would like to request a hearing in contest to the discipline of a 40-hour suspension issued by Fire Chief Rodney Dale. I am currently seeking legal representation for this hearing (when scheduled). Thank you.

David F. Cushwa
Division Chief
Elkhart Fire Department
500 East Street – FD Headquarters
Elkhart, IN 46516
(574)293-8931 EFD
(574)536-4443 Mobile



RECEIVED
JAN 22 2025

FIRE MERIT COMMISSION

NW

Decision of the Fire Merit Commission on Discipline

TO:

David Cushwa
500 East Street
ELKHART, IN 46516

Charges:

Neglect or Disobedience of Orders

Eligibility for Review of Objection to Discipline (check one):

- The objection to discipline is deemed filed within 48 hours of a written notice of discipline. Therefore, the Commission will review the disciplinary action.
- The objection to discipline is not deemed filed within 48 hours of a written notice of discipline. Therefore, the Commission will not review the disciplinary action.

Decisions regarding a public hearing (check one):

- The Commission will review the objection to discipline and **will grant a public hearing**. A notice of hearing will be served on David Cushaw personally with 14 days in advance of the hearing. **(Please fill out notice of hearing provided. You are finished with this form.)**
- The Commission will review the objection to discipline but **will not grant a public hearing**.

If the Commission chooses not to grant a public hearing, will you make use of Executive Session during your review of the discipline? (check one)

- The Commission **will hold an Executive Session** to review the discipline. Notice of the Executive Session will be published with specific reference to IC 5-14-1.5-6.1(a)(6). Therefore, the review of discipline cannot take place today.
- The Commission **will not hold an Executive Session** to review the discipline. Therefore, if the Commission chooses, the review of discipline may take place immediately.

If the Commission chooses not to grant a public hearing, but chooses to utilize Executive Session during its review process (which must be published), please identify both the date and time when the review of the objection to discipline will take place:

- The review of discipline will take place on the following date _____.
- The review of discipline will take place at the following time _____ AM/PM.

If the decision is made to review the objection to discipline now, please fill out this form in its entirety.

A Motion may be made to uphold or reverse the discipline. The Commission may discuss that Motion and the Commission may open up the floor to Public Comment if it desires.

The Fire Merit Commission makes the following ruling (check one):

- The Fire Merit Commission upholds the discipline
- The Fire Merit Commission reverses the discipline

Reasoning (if any):

Dated the _____ of _____, 2025.

**Mandy Leazenby, President
City of Elkhart Fire Merit Commission**