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December 20, 2010

PRIVATE AND CONFIDENTIAL

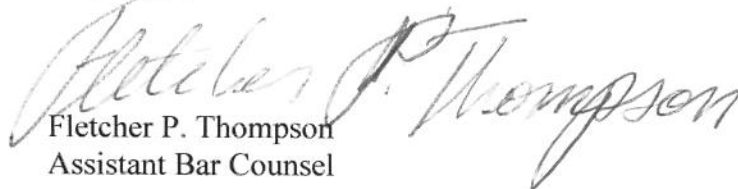
Capt. Douglas S. Wacker
1719 Adams Avenue
San Diego, CA 92116

RE: File No. 2011-0-658
Respondent: Stephanie C. Smith, Esquire

Dear Capt. Wacker:

I have received a response from Col. Stephanie Smith. Based on my review of it and a further review of your complaint, this office will not take any action in this matter at the present time. It appears to me that this matter is in litigation and this office will not interfere in that litigation. If there are any findings that Col. Smith engaged in conduct which would constitute a violation of the Maryland Rules of Professional Conduct, you may advise me. However, at this time we will close our file in this matter.

Very truly yours,


Fletcher P. Thompson
Assistant Bar Counsel

FPT/dll
Enclosure
cc: Col. Stephanie C. Smith



UNITED STATES MARINE CORPS
HEADQUARTERS AND SERVICE BATTALION
MARINE CORPS RECRUIT DEPOT
3800 BELLEAU AVENUE
SAN DIEGO, CA 92140-5199

IN REPLY REFER TO:
1400
SCS
29 Nov 10

From: Maryland Attorney Stephanie C. Smith
To: Assistant Bar Counsel Fletcher P. Thompson
100 Community Place, Suite 3301
Crownsville, MD 21032-2027

Subj: ATTORNEY STEPHANIE C. SMITH RESPONSE TO DOUGLAS WACKER
COMPLAINT NO. 2011 0 658

Ref: Assistant Bar Counsel Thompson's Letter dtd 27 Oct 2010

Dear Mr. Fletcher,

I received the complaint correspondence on 6 November 2010. This response constitutes my initial response as based on the incomplete information provided. The bar complaint includes a copy of a Navy Inspector General Complaint (undated) and a motion that makes reference to enclosures which are not included. Since this is the first time I have seen these documents and I have never had a chance to review the enclosures, my response is incomplete. I respectfully request an opportunity to review all enclosures, documents, or statements that form the basis of this complaint prior to my filing a formal response.

I was in fact the Staff Judge Advocate (SJA) at Marine Corps Recruit Depot, San Diego California from June 24, 2008 till 10 June 2009 when I assumed command of Headquarters and Service Battalion, Marine Corps Recruit Depot, San Diego in June 2009. As the SJA, I was responsible for supervising approximately 18 attorneys and another 11 enlisted personnel or civilians tasked with performing all aspects of legal services, to include military justice. I became acquainted with Captain Douglas Wacker in August 2008, as he was an officer pending disciplinary action and being reported on the Officer Disciplinary Notebook (ODN) as a pending case when I checked in as the Staff Judge Advocate (SJA), Marine Corps Recruit Depot San Diego in late June 2008. The ODN is a reporting mechanism used for SJA offices to track officer misconduct cases to higher headquarters. Captain Wacker was placed on the ODN in February 2008, while he was a law student on the Excess Leave Program

(ELP) for the United States Marine Corps. The ELP is a Marine Corps law education program where the Marine is placed on authorized leave to attend law school at his own expense. While attending law school at University of San Diego, Captain Wacker was administratively assigned to Headquarters and Service Battalion, Marine Corps Recruit Depot, San Diego (HQSVCBN MCRD SD). Captain Wacker's charges stem from allegations raised by two fellow female law students that Captain Wacker allegedly sexually assaulted them while they were substantially incapacitated during a school trip to New Orleans, LA in 2007. These allegations are the subject of felony level charges against Captain Wacker that have been referred to a General Court Martial slated to begin in February 2011.

Per my official duties I was required monthly to report to my superior chain of command the current status of all pending officer cases, including Captain Wacker's case, via the ODN. Also as a routine matter, if there were any significant developments in the case during the month, SJA's are required to notify higher SJA personnel of those issues outside of the normal ODN reporting requirement.

In August 2008, New Orleans authorities officially declined to prosecute the case and the Naval Criminal Investigative Service (NCIS) acting on behalf of the Marine Corps, assumed full control of the investigation. As the SJA, I received periodic briefings from NCIS agents and acted on or oversaw lawyers who took action on the case. After complaints from several law students that Captain Wacker was asking them to keep relevant information from investigators, a military protective order was issued ordering Captain Wacker not to have contact with these law students who were believed to be germane witnesses in his case. The University Of San Diego Law School barred Captain Wacker from their law school campus while the NCIS investigation was ongoing.

The Marine Corps administratively recalled Captain Wacker from excess leave and he was assigned to Headquarters and Service Battalion, Marine Corps Recruit Depot, San Diego. The Battalion Commander at the time, Colonel Ken Helfrich, made a decision to assign Captain Wacker to the G3 Operations office. At the request of the Battalion Commander, and as a normal course, I briefed the G3, Colonel Conlin of the pending charges against Captain Wacker. Colonel Conlin informed me that Captain Wacker would be assigned to work for Major Blaylock. I also briefed Major Blaylock regarding the pending charges for Captain Wacker. I informed them both of the Military Protective Order and the past alleged violations of that order. This was done to have the supervisors, to the extent practicable, ensure compliance with the Military Protective Order that was still in place.

Captain Wacker alleges that these actions went beyond normal coordination and were done to preclude him from preparing a defense to his charges. This is not true.

On June 10, 2009, I left my position as the SJA of MCRD San Diego and I assumed command of HQSVCBN, MCRD San Diego. As the Commanding Officer I am responsible for nearly 1000 Marines, Sailors and Civilian Marines who work in support of the HQSVCBN mission to support the training of recruits and the making of 19000 Marines annually. My battalion is broken up into several sections which each section having defined missions in furtherance of the overall goal of making Marines.

On 24 September 2009, the Depot, in coordination with numerous state and local emergency management authorities, conducted a joint exercise to test the Depot's emergency management response to a "lone shooter" crisis. The exercise was called Aztec Fury 2009. The lone shooter scenario represents an individual with a weapon that occupies a position on the base and begins to shoot at innocent civilians or unarmed Marines. My Battalion was heavily engaged in supporting this exercise with personnel, manpower support and equipment. During this exercise, and in the event of a real emergency, my battalion has over 500 Marines and Sailors who have the primary responsibility of responding to the crisis. In support of this exercise, each section within my battalion was tasked to develop internal emergency action plans which included a security in place shelter within their workspaces as well as accountability procedures to report to a centralized call in center to report accountability for their personnel. We also established different groups of personnel who were especially trained to reinforce the main command buildings around the base to protect the key leaders. Almost all of these actions were exercised during Exercise Aztec Fury.

In Captain Wacker's complaint to Navy Inspector General he alleges that I referred to Captain Wacker as a rapist, and a potential "Lone Shooter". This is not true. Captain Wacker was assigned by the G3 to be the Exercise Coordinator of Exercise Aztec Fury. As such, Captain Wacker was tasked with briefing all relevant information concerning Aztec Fury to each section who was preparing their shelter in place response plans. As the Battalion Commander I felt that based on the seriousness of the pending criminal charges against Captain Wacker, that he should not be privy to this sensitive but unclassified information. Captain Wacker was being handed every sections' emergency response plan for the entire Depot response. My battalion was using exercise Aztec Fury to prepare emergency action plans that would be used and periodically reviewed as part of the real world Depot Force Protection Plan. I was unable to address my concerns regarding this issue with the G3 himself as he was on

leave pending surgery. I raised my concerns with the SJA, Colonel Richardson, the Chief of Staff, Colonel Huenefeld, and LtCol Trapp, who was the Aztec Fury Mission Assurance officer for the exercise and the Force Protection officer for the Depot. I had these conversations after I attended the confirmation brief for my battalion personnel to ensure we were ready for our role in exercise Aztec Fury. During this confirmation brief, key leaders from every section briefed their security plan to my battalion Force Protection Officer, Major Bennett and to Captain Wacker. Captain Wacker was the G3 representative taking the briefs and collecting the emergency action plans. In my discussions with the SJA, the Chief of Staff, and LtCol Trapp I never accused Captain Wacker of being a lone shooter, nor did I ever refer to him as a rapist. I referred to him pending criminal charges for rape and sexual assault and stated that in my opinion I did not think that Captain Wacker should be privy to this information given the fact that his pending criminal charges had not been adjudicated. Further, Exercise Aztec Fury exercise participants were from every major local and state emergency response organization as well as all DoD agencies. Since this was a significant coordination effort, media inquiries and media coverage was expected. Captain Wacker briefed that he, as the exercise coordinator, would be available to respond to media inquiries if required. I also felt that having an officer pending serious criminal charges potentially briefing the media was inappropriate. I stand by that decision and my rationale for removing Captain Wacker from the G3 when G3 personnel refused to curtail Captain Wacker's participation in the exercise. Regrettably, because there was a disagreement with this decision between the G3 and my battalion personnel, and without my knowledge or consent, Lieutenant Colonel Bond, my Executive Officer, sent a terse and inappropriate email to several G3 personnel. When I found out about this email, I sent an immediate retraction of his comments. I sent an immediate retraction of Lieutenant Colonel Bond's email because it was unprofessional, offensive, and inappropriate. I also understood my requirement to ensure Captain Wacker had a fair trial and wanted to rectify the potential impact that this email could have on Captain Wacker's case. These actions by Lieutenant Colonel Bond are the genesis of Captain Wacker's complaint.

Due in large part to Lieutenant Colonel Bond's email and in order to safeguard Captain Wacker's right to an impartial hearing, Captain Wacker's case was transferred in total to another command. A second Article 32 pretrial investigation (akin to a civilian grand jury investigation) was conducted. A second Article 32 investigating officer independently examined all relevant information and recommended to the convening authority to refer felony charges against Captain Wacker. To date, two pretrial investigating officers have independently

examined all relevant information in Captain Wacker's case and have recommended referral of felony level criminal charges of rape and indecent assault against Captain Wacker. Captain Wacker's General-Courts Martial is slated to begin in February 2011.

I categorically deny Captain Wacker's claim that I have violated applicable rules of professional responsibility in any manner. I am confident that the allegations raised by Captain Wacker in this bar complaint will be litigated at a motions hearing currently set for February 2011. I respectfully request that the bar commission delay all investigation into this matter until after the motions phase of his case. This will assuage my concerns that I have not been given the relevant information that has formed the basis of his complaint and will resolve, at least as far as the military courts are concerned, the basis for his complaint.

All further correspondence in this matter can be referred to my home address which is 7 Wharton Road, San Diego, CA 92140. I also can be reached at (703) 298-5992.

Very Respectfully Submitted,



S. C. SMITH