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## Hearing officer to issue written recommendation on suspended fire chief's status



**Fanning Springs Fire Chief Ron McQueen speaks with attorney Sunshine Baynard before the start of the hearing on Thursday (July 7).**

**Story and Photos By Jeff M. Hardison © July 8, 2016 @ 10:37 p.m.**

**FANNING SPRINGS** -- Two lawyers wrangled with concepts and the law for six hours Thursday (July 7) in Fanning Springs as they each showed an administrative hearing officer why they believe their application of the law is correct, despite those concepts being 180 degrees apart.

On one side, there is an argument that Fanning Springs Fire Chief Ronald Arthur “Ron” McQueen is not qualified to be the chief of Fanning Springs Fire Rescue, because he is an employee of the city and the fire department is a career-volunteer fire department.

On the other side, there is an argument that Fanning Springs Fire Rescue is a volunteer department with a volunteer chief, who is qualified to continue serving where he has served as a volunteer since the inception of the restored fire department more than 36 years ago.

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**Fanning Springs Mayor Trip Lancaster awaits the start of the hearing.**

Fanning Springs Mayor Howell E. "Trip" Lancaster III, who took office about a year and a half ago, decided McQueen was not qualified to be the fire chief and Lancaster suspended McQueen.

That suspension happened on Jan. 8. Seven months later, there was a hearing because the chief contested the suspension.

While the quasi-judicial hearing lacked some of the procedural decorum found in a full-fledged courtroom trial, the call for the weighing of facts and evidence to see which way the scales of justice lean was still present.

The written recommended order to be made by the hearing officer for consideration by the Fanning Springs City Council, and the subsequent action from that, may have a phenomenal impact on small towns all over Florida -- potentially causing taxes and fire assessments to skyrocket upward.



**Hearing Officer Dave Wagner prepares to start the hearing.**

The honorable David W. "Dave" Wagner of the Folds & Walker Law Firm of Gainesville is the hearing officer. Attorney Courtney W. Johnson of the same law firm was present, and she will assist in creating the final written order to be provided to the city.

Wagner (and Johnson) replaced attorney M. Michael O'Steen of Cross City, after O'Steen

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granted attorney Sunshine Baynard's request that O'Steen recuse himself as the hearing officer.

Attorney Baynard of Chiefland represents McQueen.

Labor lawyer William H. "Bill" Andrews of Gray|Robinson attorneys at law (Jacksonville), represents the city.

## **Attorney Bill Andrews readies to present the city's side of the case.**

Despite the city recently hiring a higher-priced law firm from Gainesville, in contrast with attorney Conrad Bishop Jr. of Perry, who had served for decades at an incredibly discounted rate, the city chose to hire an even more expensive attorney who specializes in labor law.

As for the newest hearing officer in this case, Wagner is mostly retired now. When he practices, he focuses primarily on local government law. He spent 21 years working as an attorney for Alachua County, serving as county attorney for the last 15 years.

Prior to working for the county, Wagner served for 20 years in the United States Army as an artillery officer (with service in Vietnam). He was a criminal prosecutor; an associate professor at the Army's Judge Advocate School; an administrative and international lawyer in Berlin, Germany; and he served as the medical malpractice claims manager for the Army.

Wagner earned his undergraduate degree at the United States Military Academy in West Point, N.Y., before earning his Juris Doctor degree (with honors) at the University of Florida.

After Wagner makes his written recommendation to either uphold the suspension of Chief McQueen, or to reject the suspension imposed on McQueen by Fanning Springs Mayor Lancaster, the five Fanning Springs City Council members will then vote whether to accept or to reject Wagner's recommendation.

Wagner gave attorney Andrews and attorney Baynard until the end of business on Aug. 8 to submit in writing to Wagner their final summations or their suggested order.



## **City Clerk Sheila Watson testifies to matters to help the city in its presentation of its case.**

Wagner tried to move the hearing along without jeopardizing justice.

Andrews and Baynard repeated their points and used documents and testimony in an effort to support their contentions.

The attorney for the city presented that perspective first. The attorney for the fire chief presented that perspective second.

Andrews opened his statement of the case by first noting it was the city's contention that McQueen was ineligible for the protection afforded in the Firefighters Bill of Rights. This is

because, Andrews said, those rights are only for people who have attained a Firefighter II level.

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Both sides agree that McQueen is a Firefighter I level.

Andrews said the mayor suspended McQueen because he was not a Firefighter II, which the mayor believed is required for McQueen to be the chief of a fire department. Andrews added that Mayor Lancaster also suspended Chief McQueen because the chief reportedly did not keep the roster for active Fanning Springs firefighters updated with the Fire College in Ocala.

In an attempt to support the mayor's position, Andrews cited a decision by Jeff Atwater, state fire marshal, in which Atwater noted in June that the Avon Park Fire Department, which had no chief, could not have a city manager or public safety director who had not obtained a Firefighter II level of certification to direct the fire department's operations.

As was repeated as a defense against this, the difference between a Firefighter I and Firefighter II level of certification is not relevant if the chief is of a volunteer department and the chief is a volunteer.

Baynard opened her points by noting Chief McQueen was the fire chief in Fanning Springs for all but the first six months of that department's 37 years of continuous service.

Over the course of the six-hour administrative hearing, it was noted that Chief McQueen is given a \$500 monthly stipend for his administrative work as chief. He receives a \$500 added stipend to offset the \$800 monthly fee the city pays for each of its employees to have health insurance, which McQueen once was able to partake in.

Since the insurance is for employees, he cannot be included in it, Baynard said, and the city therefore added to his monthly stipend.

He receives \$12 per call that he responds to, like all other volunteer firefighters. The city pays into the Florida Retirement System for the chief as well.

Fanning Springs Deputy Fire Chief Elania Spain testified that there are other departments that give their volunteers retirement payments too.

Also during the hearing, it was read from the Feb. 7, 2012 City Council meeting, where the chief reminded the council that the volunteer fire chief and volunteer deputy chief are all volunteer positions on this volunteer fire department.

At that same meeting in 2012, then-Mayor Cheryl Nekola said she has always known the fire department to be a volunteer fire department and chief McQueen as a volunteer fire chief. This was in reference to payment to the Florida Retirement System, when one person said McQueen was not a full-time employee and the city therefore could not pay into the system.

Not only did Baynard establish that a reasonable person would see the department as a volunteer department, and the chief is a volunteer chief, and the deputy chief is a volunteer, but she called three men involved in firefighting to add to the information supporting her contention.

Beyond that, Baynard showed the city does not consider Chief McQueen, Deputy Chief Spain or any of the volunteer firefighters to be employees.

Former Mayor Nekola started a Christmas bonus check for employees. It never went to McQueen, Spain or any other volunteer firefighter.

Mayor Lancaster continued that program in 2015, awarding himself a \$500 bonus, as well as the other city employees for Christmas. That bonus did not go to McQueen, Spain or any other volunteer firefighter.

At one point near the end of the hearing, the labor attorney asked about a meter reader who works for the city. That person received a certain payment for his services.

While attorney Anderson attempted to liken the meter-reader's duties to the volunteer life-and-death decisions by the chief, and deputy chief in an effort to establish that this part-time worker was a city employee, he apparently was not well-versed in an answer to a question attorney Baynard posed.

Did that meter reader get the \$500 bonus for Christmas?

Yes, he did, and therefore he is a city employee and the chief, deputy chief and volunteer firefighters are not city employees, Baynard said.

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## **BAYNARD PRESENTS**

The city's side of this case relied on the mayor's interpretation of the Firefighter II qualification requirement, which appears to be for career fire departments.

And Mayor Lancaster's decision showed the mayor had determined Fanning Springs Fire Rescue was a combination career-volunteer fire department, rather than being a volunteer department, because the city paid Chief McQueen and Deputy Chief Spain a "salary," even though those "employees" did not have regular hours, normal benefits and could not be docked pay if they did not respond to a fire or other call.

Retired Fire Chief Will May was the first witness to speak on behalf of Chief McQueen's position in the hearing.

May's career as a professional firefighter included 15 years with the Gainesville Fire Department. He was the deputy chief in Gainesville, running full operations, before transferring to Alachua County.

Then he spent another 20 years with Alachua County Fire Rescue Department. That department had become named Alachua County Public Safety by the time May retired.

At that time, May was the chief of fire-rescue and the director of public safety. May has a certification as Firefighter II, as well as other credentials as an instructor and incident commander for structural fires and wildland fires.

For the past three-plus years, May has served as a volunteer with Fanning Springs Fire Rescue.

May told Baynard that he was familiar with all of the fire departments in the area from the time he was in Gainesville. She asked him whether he thought Fanning Springs Fire Rescue was a career fire department, a combination career-volunteer or a volunteer fire department.

He said that to the best of his knowledge Fanning Springs was a volunteer department. Through contractual arrangements in Alachua County, he had worked with volunteer departments when he was active there.

May responded to Baynard's questions and showed he was familiar with the issue.

When she asked if Chief McQueen's certification to be a Firefighter I qualified him to be the chief of Fanning Springs Fire Rescue, May said, "Yes it does."

"I can't think of any reason why it wouldn't qualify him (McQueen) for the position (as chief of Fanning Springs Fire Rescue)," May said. "He is certified as Firefighter One under Florida rules. And that would entitle him to be a chief of a volunteer fire department."

With May having a Firefighter II certification and McQueen having a Firefighter I certification, Baynard asked, could May take commands from McQueen. May said that as a volunteer with Fanning Springs Fire Rescue, he has and will take commands from Chief McQueen.

Baynard qualified that by saying this is allowed in May's view from his training and experience. He responded that it is allowed.

Another misconception that apparently had to be quelled was that a Firefighter I cannot enter a burning building to help extinguish a fire. That flaming misconception was extinguished through the testimony.

May also helped listeners understand how Fanning Springs Fire Rescue was not a career department, because everyone on the payroll would be a Firefighter II. There would be designated shifts when they would be on duty.

May said there is no set schedule for the chief and other volunteers in Fanning Springs. The volunteers all just respond to any call when they are available.

The question of whether McQueen is an employee or a volunteer was also answered by May in regard to the alleged \$1,000-a-month "salary" from the city.

No way," May said. "No."

A career firefighter or chief would receive an annual salary, paid vacation, sick leave, retirement and a portion of the medical insurance, May said.

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McQueen does not receive any other bonus that other employees are given by the city, May answered when Baynard asked. May said that he knew several other cities use Firefighter I chiefs for volunteer departments across Florida.

When asked, May said there are between 600 and 700 fire departments in Florida, and the majority are volunteer fire departments.

The next fire chief Baynard called to testify is from Dixie County.

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## Cross City Fire Chief Danny Liles

Cross City Fire Chief Danny Liles is the manager of Ace Hardware of Cross City, he said.

Chief Liles has been the fire chief in Cross City for 30 years, and he has served on that department for 43 years. He is a Firefighter I. That city's fire department is all volunteers, he said.

They work in cooperation with the Dixie County Fire Services Department. Cross City Assistant Chief Darian Brown is a Firefighter II. He takes orders from Chief Liles, just like one other Firefighter II that is on the Cross City Fire Department.

In his other position, Dixie County Emergency Services Division Chief of Fire Operations Brown helps people all over Dixie County.

Liles said Fanning Springs has a volunteer fire department, just like Cross City. Liles said that like McQueen, he gets a stipend from the city for his volunteer service as fire chief.

As far as a difference between Firefighter I and Firefighter II, Liles said the Firefighter II designation is what is sought to be on a career fire department.



"In your small outlying areas, Firefighter I is sufficient," Liles said.

Liles said everyone on the department is a volunteer, and the city sends them each a W-2 form for the IRS statements of income at the end of the year. The IRS lists them as employees, he said, but they are all still volunteers.

**Bronson Fire Chief Dennis Russell takes the oath that says he will tell the truth. All of the witnesses were sworn in before they testified.**

"There's nobody at the station 24/7 or even part of that time," Chief Liles said. "It's strictly volunteer."

It would be devastating to the Cross City Fire

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Department if the state required it to have a Firefighter II to be the chief, Liles said as he answered Baynard's question.

Chief Liles said about 75 percent of the fire departments in the country are staffed by volunteers. There are many Florida departments with fire chiefs who are certified as Firefighter I, he said.

Another local chief who is a Firefighter I was called to testify.

Bronson Fire Chief Dennis Russell works for the Levy County Department of Public Safety in maintenance, but he is also the volunteer chief at Bronson.

Russell has been a firefighter for 37 years, he said, and he has been the chief in Bronson for four years.

Chief Russell gets \$12 a call for responding to calls. He is paid a \$700 stipend monthly for his duties as chief in Bronson, he said. Chief Russell has Firefighter II volunteers who take orders from him as chief.



## **Fanning Spring Volunteer Deputy Fire Chief Elania Spain testifies on behalf of Fanning Springs Volunteer Fire Chief Ron McQueen.**

Spain gave testimony in the hearing.

Spain works part-time in Gilchrist County and part-time in Dixie County, and she serves as the volunteer deputy chief in Fanning Springs.

Spain said she chose to earn certification as a Firefighter II so that she could work at a career

department as well as being a volunteer.

In a career department, she said, the firefighter is on a particular schedule and they have to be there for that time. There is no "come and go as you please."

Career firefighters are paid a set amount of annual salary, Spain continued. They get benefits, vacation time, sick time, and the like – which is not what is given to her or Chief McQueen by the City of Fanning Springs.

Spain made it clear to any person listening that she and Chief McQueen are volunteers, just like the other volunteers on this department. Fanning Springs Fire Rescue, she said, is a volunteer department.

Spain has been active in the Fanning Springs Fire Rescue for 11 years.

Spain said that as volunteers, she and Chief McQueen are given a nominal fee and benefits, just as Florida law allows for volunteers.

Chief McQueen was the last volunteer fire chief Baynard called to testify.

According to Florida law, the payment by the City of Fanning Springs of reasonable benefits and a nominal fee to a volunteer firefighter, or volunteer fire chief, or volunteer deputy chief, does not make them an employee.

McQueen, who is a former county administrator for Gilchrist County, said he was always careful when he came before the Fanning Springs City Council, because "as a volunteer, I receive payment for expenses. That's \$12 to go to a fire.

"I think I receive a reasonable benefit (as a volunteer)," he continued, "because, if the city is paying \$800 (per employee, per month) for medical, I'm getting \$500 towards benefits. Now, they don't tell me how to spend that. I get a nominal fee (\$500 monthly) for being (volunteer) fire chief..."

McQueen said he has always been a volunteer fire chief, and this recently amended aspect of the law for Firefighter II was just added after the Firefighter I requirement for all volunteers.

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“I think we are really talking about semantics,” McQueen said, “rather than examining what this really means.”

The volunteer fire chief said that if he worked for a professional fire department with set schedules and was provided with a pay commensurate with his job function, and if he was under the authority of people who could discipline him for not going to a fire, then he would have to have earned the Firefighter II certification.

The chief said he does not disagree with the Florida law outlining what is required for a career or professional firefighter.

“I am a member of a volunteer fire department,” McQueen said. “I served this city with distinction for 37 years. Am I an employee? According to (the) IRS, yes. Am I a volunteer? Yes.”