

**City of Middleton Police Commission
By-Laws and Rules of Procedure**

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ARTICLE 1: MISSION AND JURISDICTION

1.1 Mission. The mission of the City of Middleton Board of Police Commissioners (“Commission”) shall be to provide citizen oversight of the Middleton Police Department (“Department”), Chief of Police (“Chief”), and other sworn law enforcement officers (“subordinates”) so that the Department may protect and assist the people of the City of Middleton.

1.2 Jurisdiction. The Commission shall have the authority vested in it by Section 2.08 of the City of Middleton Municipal Code and Wis. Stat. §62.13 and Chapter 164 of the Wisconsin Statutes. These include the power to:

- a. Appoint the Chief and exercise the power to suspend or remove the Chief for cause;
- b. Approve the Chief’s appointment of “subordinates”;
- c. Adopt rules of procedure for selection of subordinates, including their qualifications, provide for the competitive examination of applicants for subordinate positions; and establish certification lists of applicants for subordinate positions;
- d. Review and act on charges filed with the Commission President pursuant to Wis. Stat. § 62.13(5);
- e. Supervise reductions in the event it is necessary to reduce the number of subordinates;
- f. Schedule a date, time, and place for its meetings subject to Wisconsin’s Open Meeting Law requirements; and
- g. Exercise other powers conferred upon the Commission by the Wisconsin Statutes or the City Ordinances.

1.3 Scope of Rules. These rules apply to the Chief and subordinates.

ARTICLE 2: EMPLOYMENT QUALIFICATIONS AND ELIGIBILITY

2.1 Qualifications of the Chief. The Commission may appoint as Chief a suitable person who need not be a member of the Department or a resident of the City of Middleton. The Commission shall adopt a Job Description for the Chief.

2.2 Qualifications for Subordinate Positions. The qualifications for subordinate positions shall be set forth in the Job Descriptions for each position. Before an individual may be appointed as an entry level subordinate or promoted to a higher subordinate position, the individual must meet the minimum qualifications for the position as set forth in the job description for that position..

2.3 Conviction Record History. An applicant shall not be subject to a pending criminal charge if the circumstances of the charge substantially relate to a protective service position. An applicant shall not have been convicted of any felony, misdemeanor or other offense the circumstance of which substantially relate to the duties of the position.

2.4 Job Description Criteria. Each subordinate must meet the minimum criteria established by Wis. Stat. § 165.85, the Wisconsin Administrative Code Chapter LES 2, and the Law Enforcement Standards Board. Each subordinate must be able to perform the essential functions of the position with or without a reasonable accommodation.

ARTICLE 3: RECRUITMENT, TESTING AND HIRING

3.1 Chief. The Commission shall appoint the Chief, who shall hold office during good behavior, subject to suspension or removal by the Commission for cause. The Commission shall, prior to commencement of recruitment, adopt a specific recruitment and examination procedure designed to assure the most qualified suitable candidate is selected as Chief.

3.2 Subordinates. The Chief shall appoint all subordinates using the selection and promotion procedures in these By-Laws, subject to the Commission's approval.

3.3 General Processes for All Positions.

a. Application. The Commission shall utilize the Department of Justice form application (DJ-LE-330). Notice of job openings shall be posted on the Wisconsin Department of Justice website WILENET and any other location as directed by the Commission or Chief.

Applicants will be required to submit copies of degrees and certifications for verification upon request.

b. Equal Opportunity Policy. The Commission will hire the most qualified applicant for a vacancy regardless of sex, race, religion, creed, color, national origin, age, disability, sexual orientation, ancestry, marital status, arrest or conviction record, military service or any other legally protected status.

c. Misrepresentation. Misrepresentation of any material fact contained in the application shall be sufficient cause for excluding the applicant from the examination process, removing the applicant's name from the eligible list or discharging the employee after hire.

d. Insufficient Application. If an application reveals that the applicant cannot meet the eligibility requirements or the qualifications of the position, that application shall be rejected by the Commission or its designee, without further examination.

e. Terminated Employees. Any person dismissed from the Department for

reasons other than budgetary shall be ineligible to apply again to the Department.

f. Re-entry Applications. Any former Department employee who desires to re-apply shall undergo examinations as determined by the Commission, except as provided in Section 3.3 e. above.

g. Delegation. The Commission may authorize other public or private agencies to conduct a written examination and provide a certified list of those applicants successfully completing the examination.

h. Eligibility for Examination. If an examination is given, it shall be open only to those persons who are eligible for appointment and who possess the requisite qualifications in conformity with the provisions of these By-laws. The Commission may forego or modify any examination whenever it determines such is in the best interest of the Department.

i. Examination Protocol. All examinations shall be carried out under the Commission's supervision. The Commission may designate any suitable municipal, state agency or person to conduct or assist in conducting examinations. The Commission may use the assistance of the Department including the Chief, the City Administrator, outside consultants, and citizens, as appropriate, in carrying out the Commission duties, provided that the final selection of a Chief, and the creation of a Certified List is approved by the Commission.

All examinations shall comply with the following protocol:

1. The examination shall be an assessment process that fairly tests the capacity of the applicants to successfully perform the duties of the position;

2. Any applicant who fails to pass a pass/fail examination shall be removed from the process.

3. Each stage of the examination process shall be administered the same for all applicants eligible for that stage, except for those applicants who are provided with a reasonable accommodation as a result of a disability;

4. The Commission shall establish the criteria used to assess whether applicants pass an examination prior to the examination;

5. Reasonable accommodations shall be made for an applicant with a disability under federal or state law for any examination. Application forms shall advise applicants of this right;

6. Each applicant taking an examination shall follow the instructions given by the person conducting the examination; and

7. Information relative to applicant's scores shall be strictly confidential and shall not be divulged, except insofar as disclosure is required by law, necessary to determine those applicants eligible for additional testing, is permitted by these By-laws, or, if deemed necessary by the Commission, for a purpose related to

administration of the selection process.

8. Applicants, Commission members, or Department employees shall not give assistance to any applicant in any manner during the examination process. A violation of this rule shall subject each applicant involved to exclusion from the examination. Any Commission member or Department employee who violates this rule shall be subject to appropriate sanctions.

9. No applicant shall be given a second or special competitive test in connection with any examination held, unless it is shown to the Commission's satisfaction that the applicant's failure to take or complete the test was due to a manifest error or mistake for which the Commission or its designated assistants are responsible. The Commission may, in the interest of fairness, void the examination and re-test all applicants.

10. The Commission shall apply the appropriate veteran's preference points as provided by Wis. Stat. § 62.13(4)(d).

11. Documents generated during examinations shall be retained by the Commission or its designated representative for seven years after the expiration of the eligibility list for which the examination was held.

12. A candidate for employment previously rejected by a medical examiner shall not take the examinations provided for in these rules until a certificate from a medical examiner shows that the cause for rejection has been corrected or that some reasonable accommodation of the condition has become available.

3.4 Hiring Process for Entry-Level Subordinates.

3.41. The Chief shall advise the Commission of any full time vacancy prior to taking steps to fill the position.

3.42. A Department vacancy or opening shall be filled by an open recruitment, unless otherwise determined by the Commission.

3.43 The Chief shall announce the Department's intent to fill a vacancy or opening by posting or advertising for a period of not less than ten (10) calendar days, unless otherwise determined by the Commission, on WILENET, the city's website and any other location as determined appropriate by the Chief or his/her designee.

The job posting shall contain at least the following information:

- a. Title of the position;
- b. Hourly wage or salary;
- c. Concise description of job duties;
- d. Education, training, and work experience required;
- e. Hiring procedure;

- f. Closing date for applications and where to file; and,
- g. An Equal Opportunity statement.

3.44 Applicants for the position shall apply on DJLE form 330.

3.45. Applications shall be filed no later than the deadline in the job announcement.

3.46. The application will be reviewed to determine if it has been submitted by the deadline, has been completely filled out, and whether the applicant meets the minimum qualifications. Applicants who did not fill out the application appropriately or who do not meet the minimum qualifications may be removed from the process and shall be notified via letter of their status.

3.47. No person shall be eligible for appointment as a subordinate unless that person has been examined (either oral, written or both) pursuant to this section.

3.48 The examination shall fairly test the capacity of the applicants to successfully perform the positions or the duties which they seek. The examination may consist of the following stages as determined by the Commission. Any applicant who fails to pass any examination shall be removed from the process at that point and denied the opportunity to participate in further examinations.

a. Written examination. Applicants may be tested using a suitable written law enforcement recruitment exam if approved by the Commission and required as part of the hiring process.

b. Oral Examination. Applicants shall undergo an oral examination to evaluate the applicant's demeanor, character, personality, communication skills and ability. The following criteria will be applied to all oral examination:

1. All applicants shall be asked the same questions other than follow-up questions;

2. Questions shall be work-related and designed to measure job knowledge, experience, and education or to solicit responses that reflect personal qualities that are work-related;

3. Questions shall be designed so as to not lead to the disclosure by an applicant of any protected status (e.g., age or disability);

4. The interview panel will be provided a copy of the position description, application and interview questions;

5. The interview panel will rank the applicants at the conclusion of the interviews for submission to the Chief and Commission;

6. The Chief may sit in on the interviews but shall not participate.

c. **Background Investigation.** A background investigation shall be conducted after an applicant has been certified by the Police Commission and prior to any conditional offer of employment.

3.5 Certified List.

a. The Chief may only appoint a full-time entry-level subordinate from a list of applicants who have been certified by the Commission as eligible for appointment.

b. Upon the conclusion of testing and oral examination, the Commission shall certify a list that contains the names of applicants who have passed and are eligible to be appointed if they successfully pass the background investigation and the medical and psychological examinations.

c. The Chief may conduct a personal interview with the certified applicants. The Chief may extend a conditional offer of employment as an entry-level subordinate to any of the certified applicants. The offer may be conditioned upon the applicant's satisfactory completion of a background investigation, and if successful, then medical and psychological examinations. The Chief does not need to secure further Commission approval in order to extend an offer of employment to a certified applicant.

d. The certified list will expire twelve (12) months from the date of certification unless extended or discontinued by the Commission.

3.6 Medical Examination. An applicant to whom a conditional offer of employment has been made pursuant to Section 3.5 shall be examined by a physician licensed to practice medicine in Wisconsin. The examination shall be solely for the purpose of verifying that the candidate is capable of meeting the essential occupational requirements of the position, and to address those physical and health requirements that relate to the occupational qualifications for the position involved, or the nature of reasonable accommodations required to enable the applicant to meet these qualifications. The results will be maintained in a segregated, confidential medical file.

3.7 Psychological and Personality Testing. An applicant to whom a conditional offer of employment has been made shall undergo a psychological evaluation and personality inventory by a psychiatric social worker, psychiatrist, or other qualified person for the purpose of testing the applicant's psychological fitness for duty. The results of the exam will be maintained in a segregated, confidential medical file.

ARTICLE 4: PROMOTIONS AND TRANSFERS WITHIN THE DEPARTMENT

4.1 Promotions.

a. The Chief may promote a subordinate in the Chief's discretion or through the hiring process set forth in Article 3 from an eligibility list approved by the Commission. The Article does not apply to the position of Chief, which may, at the sole discretion of the Commission, be open to qualified candidates from both inside and outside the Department.

b. The Chief may choose to hold an examination, law enforcement panel interview or both as part of the promotional process. If the Chief determines to promote with examination, the promotional process shall be as follows:

- i. Consistent with the established position description for a vacant position, specific promotional requirements are established in the job descriptions for each position.
- ii. The Chief will provide a notice to Department members of the promotional opportunity via email. The position posting will be open for at least 10 days.
- iii. All qualified subordinates desiring to compete shall apply by completing a letter of interest, resume and submitting all other documents to the Chief.
- iv. If any examination is given it shall be in accordance with Article 3.

4.2 Acting Chief or Supervisory Officers.

a. The Commission may appoint a subordinate as a temporary acting Chief in the event the Chief retires, resigns, is removed for cause, or is temporarily unable to fulfill the Chief's duties.

b. The Chief may appoint a subordinate officer as a temporary acting Sergeant or Lieutenant in the event one of those supervisory officers retires, resigns, is removed for cause, or is temporarily unable to fulfill their duties.

c. Temporary acting Police Chief appointments shall be for a period not to exceed six months, except that the Commission, in its discretion, may extend the appointment for up to an additional six months.

ARTICLE 5: DISCIPLINE, SUSPENSION, REDUCTION OR DEMOTION

5.1 Suspension or Discharge of the Chief.

a. Investigatory Suspension. The Commission may suspend the Chief upon its own initiative, or pending the investigation of written charges made by a citizen that have been filed with the Commission. The suspension shall be with pay and benefits and shall be for the shortest time during which the charges may be investigated and resolved.

b. The Commission may suspend, demote, suspend and demote or terminate the Chief for cause shown pursuant to the filing of charges pursuant to Wis. Stat. §62.13.

c. The Police Chief shall be notified in writing of the charges filed and the hearing on such charges shall be as set forth in Article 7 to the extent they apply to the Chief.

5.2 Discipline, Demotion, Suspension and Termination of Subordinates

a. The Chief may discipline a subordinate subject to the terms of any applicable collective bargaining agreement or City Handbook. The Commission may review any disciplinary action taken or approved by the Chief if the disciplined subordinate requests such a review.

b. The Chief may suspend a subordinate and must report such suspension to the Commission. A suspended subordinate may request that the Chief file charges with the Commission to support such suspension.

c. The Commission may order the suspension, demotion, or termination of a subordinate for just cause pursuant to the filing of charges against the subordinate under Wis. Stat. §62.13(5).

ARTICLE 6: HEARING PROCEDURE FOR COMMISSION DELIBERATIONS ON DISCIPLINE, SUSPENSION, DEMOTION OR CHARGES

6.1 Filing Charges and Preliminary Meeting.

a. Filing Charges

The Chief, a Commission member, the Commission or any aggrieved person may file charges against the Chief or a subordinate officer and shall be notified of this right upon making a complaint. No offer of reduction of fines or agreement not to prosecute shall be offered in an attempt to induce the complainant to not file or to withdraw filed charges. Charges shall be in writing and will not be investigated if received more than 90 days after the alleged incident unless the complainant can show good cause for not making the complaint within this time frame. The Commission shall make a form available for filing charges, but charges need not be filed on the form. The charges shall include a statement, pursuant to Wis. Stat. § 66.0511(3), that "Whoever makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture." The Charges shall be filed

with the Commission President by mailing the complaint documents to the Middleton Police Department, attention the President of the Middleton Police Commission.

b. Preliminary meeting

1. When charges against an officer or the Chief are filed with the Commission President, the President shall call a special meeting of the Commission to hold a preliminary meeting. Such meeting shall be conducted in accordance with Wis. Stat. §19.85, and in compliance with all of the requirements of the Open Meetings Law. Preliminary meetings regarding the charges should be conducted, if possible within 10 days but not more than 30 days after charges have been filed with the Commission President. Should such filing be within 10 days of the next regular meeting, the preliminary meeting shall be considered at the regular meeting.

2. Notice of such regular or special meeting shall be given in normal and customary manner, but not less than twenty-four (24) hours prior to the meeting. In addition, notice shall be given to the complainant and the accused. A copy of the charge shall be furnished along with the notice to the accused with explanation that delivery does not constitute formal service. If the meeting is set for closed session, the notice shall advise the accused that the accused has the right to demand that the meeting be conducted in open session.

3. At the preliminary meeting, the Commission shall read and examine the charges to assure that the charges are sufficiently specific, related to police duties, sufficient to warrant imposition of discipline within the scope of Wis. Stats. §62.13(5)(em).

4. The Commission shall also determine whether the accused should be suspended with pay pending the hearing on the charges.

5. The accused and the complainant and their attorneys may be heard. However, the preliminary meeting shall not hear or evaluate evidence. Upon request of the Commission President, the Commission's legal counsel shall attend such meeting and advise the Commission as to the proceedings.

6. If at the preliminary meeting the charges are found to be sufficient as to form and nature, the Commission shall recess its meeting and reconvene at a later date for purposes of conducting a formal hearing pursuant to Wis. Stat. § 62.13(5). The Commission shall also make arrangements for service of the charges on the accused pursuant to § 62.13(5)(d).

7. Should the charges be found at the preliminary meeting to be insufficient as to form and nature, the charges shall be dismissed. If it appears that the defects in the charges may be cured by provision of additional detail or facts, the Commission may grant the complainant up to thirty (30) days in which to supplement the complaint.

8. If at the preliminary meeting the Commission concludes that even if the allegations are proven, the discipline would not reach the level of suspension, reduction-in-rank or termination, the Commission shall refer the

complaint to the Chief for further handling as warranted or, if involving the Chief, shall determine whether lesser discipline is warranted.

6.2 Scheduling Conference

a. If at the preliminary meeting the Commission concludes that the charges are sufficient to warrant a hearing, the Commission shall conduct a scheduling conference to be held at least five (5) days before the hearing. The accused and the complainant shall be notified in writing of the date, time, and place of the pre-hearing conference.

b. The following matters shall be accomplished at the scheduling conference:

1. Witness lists and any prior written or recorded statements or reports of witnesses shall be exchanged by the parties and/or counsel;
2. Exhibits, if any, shall be exchanged; and
3. Witness or exhibits not submitted at the scheduling conference may be introduced at the hearing only if the Commission determines that there was a satisfactory or sufficient reason for such exclusion from the pre-hearing conference.

c. If neither the complainant nor the complainant's counsel appears at the scheduling conference, the Commission shall dismiss the charges unless a satisfactory reason for the nonappearance is provided. Such dismissal shall be documented in writing to each of the parties and counsel within two (2) days of such dismissal. If the accused or designated counsel does not appear, and no satisfactory reason for nonappearance is provided, the Commission may impose sanctions prohibiting the introduction of exhibits or witnesses on behalf of the accused and reimbursing other parties (including the Commission) for expenses incurred in attending the pre-hearing conference.

6.3 Hearing on Charges. A public hearing with respect to the charges may be held at regular or special meetings of the Commission at such time as shall be determined by the Commission. Hearing procedures are as follows:

a. Hearings shall be open to the public, except that the Commission may deliberate in closed session. The Commission's vote following deliberations will take place in closed session, unless the accused requests that the vote take place in open session.

b. The accused and the complainant shall be entitled to representation by counsel. An attorney appointed by the Commission shall serve as counsel for and advise the Commission on specific matters, its hearing procedures, the merits of alleged infractions of department rules and its determinations, and the rendering of advice as requested by the Commission or the Chief. Attendance at meetings by the attorney shall be at the direction of the Commission. The Commission shall designate an attorney to serve as prosecuting counsel for all charges filed by the Chief. Complainant citizens shall prosecute their complaints before the Commission either by themselves or by counsel they retain at their own expense.

c. All testimony of witnesses shall be under oath in the form and manner

provided by Wis. Stats. Chap. 887.

d. At the hearing, the order shall be as follows:

1. Reading of the charges by the President, Vice-President or Secretary of the Commission;
2. Testimony and introduction of evidence by the complainant to substantiate the charges with right of cross-examination by the accused;
3. Testimony and introduction of evidence by the accused with right of cross-examination by the complainant;
4. Complainant's arguments; and
5. Accused's arguments

e. **Disciplinary Standard.** No subordinate may be suspended, reduced-in-rank, suspended and reduced-in-rank, or removed by the Commission based on charges filed by the Commission, the Chief or any aggrieved person unless the Commission determines that there is just cause to sustain the charges. In making its determination, the Commission shall apply the following just cause standards, to the extent applicable, as required by Wis. Stat. § 62.13(5)(em):

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct;
2. Whether the rule or order that the subordinate allegedly violated is reasonable;
3. Whether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order;
4. Whether the effort described under subsection 3 was fair and objective;
5. Whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate;
6. Whether the Chief is applying the rule or order fairly, and without discrimination against the subordinate; and
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the Chief's department.

f. **Decision of the Commission**

1. The Commission shall carry out its decision in conformity with Wis.

Stat. § 62.13 (5)(e). If the Commission finds the charges are not sustained, the accused shall be immediately reinstated and all lost pay restored. If the Commission determines that the charges are sustained, the accused, by order of the Commission, may be suspended or reduced-in-rank and/or removed, as the good of the service may require.

2. The decision and findings of the Commission shall be in writing and shall be filed within three (5) working days of the hearing.

3. The Secretary shall keep a record of each hearing, name and address of the accused and complainant, a brief description of the charges involved, and the final disposition of the case.

4. The Secretary shall also record for each case all other important data and dates concerning the case, such as the date of filing the notice to appear, date of service and to whom served, date of posting of notice of hearing, and the dates of hearings, continuances, and final determinations. All exhibits and documents involved in the hearing, including a transcript of the proceedings, shall be filed with the Secretary.

g. Appeal. Any persons suspended or terminated after the Commission's hearing may appeal the Commission's order to the Circuit Court by serving written notice stating the grounds upon which the appeal is based, to the Commission Secretary within ten (10) working days after the order is filed. Within five (5) working days of service, the Commission Secretary shall certify to the Clerk of Circuit Court the records of the proceedings, including all documents, testimony and minutes. After the taking of such appeal, the proceedings shall be governed by the provisions of Wis. Stats. § 62.13(5)(i).

ARTICLE 7: COMMISSION ADMINISTRATION

7.1 Meetings. The Commission shall meet as necessary to meet its statutory obligations but no less than one time per year. The meetings shall be held at the Middleton Police Department or any other place selected by the Commission within the City of Middleton.

7.2 Officers. The Commission shall annually elect from among its members a President, Vice-President and Secretary. Should a permanent vacancy occur within the Commission officers, that vacancy will be filled, by election, at the next regularly scheduled meeting.

7.3 Special Meetings. All special meetings of the Commission shall be held at the place where the regular meetings are held, if possible. Special meetings may be called at any time by the President, or by any two members, by causing a written or oral notice of the special meeting to be personally delivered to each Commissioner. If a Commissioner cannot be found, notice may be delivered by leaving a written copy of the notice at the Commissioner's usual place of abode in the presence of a member of their family of suitable age and discretion.

7.4 Quorum. Three Commission members constitute a quorum in order to transact business. All Commission decisions shall be made by a majority vote of members present.

7.5 Order of Business. The Commission's regular order of business shall be:

- a. Roll call
- b. Public Comment
- c. Consideration of the preceding meeting minutes
- d. Consideration of communications from the Police Chief
- d. New business
- e. Unfinished and miscellaneous business

7.6 Commission President Duties. The Commission President shall preside over all Commission meetings and hearings. She or he shall receive written charges filed against the Chief or subordinates, and when necessary, the Commission President may issue subpoenas to compel the attendance of witnesses in accordance with Wis. Stats. Chap. 885. In the event of the Commission President's absence or disability, the Vice-President shall assume the duties of the President.

7.7 Commission Secretary Duties.

- a. Attend all Commission meetings and hearings, provide for the taking and recording of testimony and other evidence received at hearings, preserve the evidence in a permanent record, and certify the record to the Circuit Court when required by law.
- b. The Secretary at the direction of the Commission President may conduct correspondence on behalf of the Commission. Any Commission member designated by the Commission President may also conduct correspondence on the Commission's behalf.

ARTICLE 8: CONSTRUCTION OF BY-LAWS

8.1 Conflict of Laws. Should any Federal or State law or regulations or provision of the Municipal Code of the City of Middleton, or the final decision of any court of competent jurisdiction affect any provision of these By-Laws, the provision or provisions affected shall be deemed to be amended to conform to the law, regulation, ordinance or decision. These By-Laws shall be construed to be consistent with the requirements of Federal and State law and local ordinance. In the event a conflict exists between these by-laws and any lawful collective bargaining agreement in effect covering any employee over which the Commission has jurisdiction, the terms of the collective bargaining agreement shall control.

8.2 Repeal of Rules. These rules shall not be repealed, amended or modified except by majority action of the Commission at a Commission meeting.

8.3 Severability. In the event any portion of these By-Laws is found to be invalid, the remaining portion shall stand.

8.4 Liberal Construction. These by-laws shall be liberally construed to further the purposes for which the Commission exists and to allow the fair and efficient disposition of matters within its jurisdiction. No violation of these By-laws shall be deemed to affect the outcome of any

proceeding unless such violation affects the substantial rights of any party before the Commission.

Adopted: 09/21/2023

Laura Albert
Laura Albert, President

Sheila M. Hibner
Sheila Hibner, Secretary.