

AG asked to examine OSBI director after discipline dispute reveals attorney conflict

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The Oklahoma State Bureau of Investigation Commission conducts a meeting Wednesday, Feb. 21, 2024, to send complaints against OSBI's director to the Oklahoma Attorney General's Office for further investigation. (Michael McNutt)

(Editor's note: *The following article includes reference to a racial slur.* **)**

The Oklahoma State Bureau of Investigation's governing body voted 6-0 on Wednesday to send complaints about the agency's director to Attorney General Gentner Drummond's office for a formal inquiry.

Former special agent Joe Kimmons retired Dec. 11 after rejecting an unusual proposal that would have allowed him to take four months of leave and achieve a retirement date to bearing additional state financial benefits.

As outlined in an email from OSBI attorneys, Kimmons would have been granted the leave if he agreed to pursue a doctor's recommendation that he could not work and if his wife agreed to withdraw a complaint she filed against OSBI director Aungela Spurlock.

A former state trooper who joined OSBI in 2020, Kimmons, who is white, had received his own disciplinary complaint in 2023 for using the phrases “my n—a” and “n—a please” during a phone call with another agent that was overheard by a third OSBI employee in October. Conflict over how that complaint was handled led Kimmons’ wife, Jennifer, to file a complaint with the OSBI Commission alleging Spurlock had abused her power.

Although he says it was incongruent with the agency’s discipline matrix, Kimmons alleges that Spurlock and OSBI attorneys told him he would be terminated unless he obtained a doctor’s note saying “he is currently unable to work” owing to any sort of medical condition. If he received such documentation from a physician and convinced his wife to withdraw her complaint against Spurlock, records show Kimmons was told he could remain employed until reaching his desired retirement date of April 1.

During the negotiations between Kimmons and OSBI in November and December, attorney Richard Smothermon was representing both OSBI and the OSBI Agents Association, a scenario raising conflict of interest questions.

On Dec. 8 while he was still employed by OSBI, Smothermon received an email in his OSBI account from OSBI’s new general counsel, Jana Wallace, regarding the retirement negotiations with Kimmons. About 30 minutes later, Smothermon forwarded the message to his personal Smothermon Law email account. Two minutes later, Smothermon forwarded the email to Kimmons, whose interests he also represented in his capacity as attorney for the OSBI Agents Association.

The unusual situation has raised eyebrows among other OSBI agents and underscores internal concerns about the state’s top law enforcement agency. On Jan. 9, the OSBI Commission called a special meeting with only an executive session for personnel discussions listed on the agenda, but the meeting was cancelled minutes before its scheduled start time. Commissioners, Kimmons and a NonDoc journalist were told by OSBI staff that winter weather had caused the cancelation.

The OSBI Commission had not met again until Wednesday, when commissioners referred the matter to the Attorney General’s Office for investigation after meeting separately with Kimmons and his wife during an executive session that lasted for nearly four hours.

“I welcome the inquiry,” Spurlock said after the commission’s vote.

Commission Chairman Vic Regalado, sheriff of Tulsa County, said he could not comment further on the situation.

Kimmons, who acknowledges he “made a mistake” using a racial slur even in the joking manner he intended it, said after Wednesday’s meeting that he appreciated the OSBI Commission’s willingness to pursue his complaint.

“I’m glad it’s moving forward,” he said. “They’re going to give it to the AG’s office. Now it’s up to the AG to decide if they’re going to look into it. (...) We’re satisfied. At least they see it needs to be looked into, and that’s all I can ask for.”

‘I thought it was fraud’



Oklahoma State Bureau of Investigation director Aungela Spurlock listens during an OSBI Commission meeting Wednesday, Feb. 21, 2024. (Michael McNutt)

In an interview before he spoke privately to the OSBI Commission on Wednesday, Kimmons said Spurlock had violated several OSBI policies and that he would be asking commissioners to terminate her as director, a position she has held since the 2022 retirement of Ricky Adams.

Kimmons, who has nearly 25 years of experience as a state law enforcement officer, also said he was going to ask commissioners to refer his complaint to either the Oklahoma County District Attorney’s Office or to the attorney general.

“At a minimum, I hope to plant seeds that there’s a problem and that there needs to be a closer look taken at what’s going on,” he said.

Kimmons said Spurlock has intimidated several agents and that morale is low. Some are concerned that Spurlock’s husband, Todd, is an OSBI special agent who has been assigned to the Oklahoma Bureau of Narcotics and Dangerous Drugs and a task force. Todd Spurlock is listed as an OSBI witness in the recent six-count felony indictment facing Brent Swadley, Tim Hooper and Curt Breuklander.

Kimmons worked 21 years as an Oklahoma Highway Patrol trooper before transferring to the OSBI three years ago. In 2013, he was cleared of wrongdoing in the non-fatal shooting of a teenager during a traffic stop related to road rage. His 25th anniversary as a state law enforcement officer would have been April 1.

Kimmons said he was told he would be terminated by the OSBI unless he used all of his accrued sick leave to provide him pay for 17 weeks until April 1. To do so, he would have had to find a doctor to claim a medical condition was preventing him from working.

“I have normal, 47-year-old aches and pains,” Kimmons said. “I never went to the doctor. That’s why I resigned the next week, because I didn’t feel it was right. I thought it was fraud. I’d be lying to my doctor or get my doctor to agree to commit fraud and lie for me.”

During his career, Kimmons said he had accumulated 680 hours of sick leave, which amounted to more than \$30,000. If he were unable to find a doctor, Kimmons was told he would have to use his annual leave, which would have forced him to retire before April 1.

The offer to Kimmons also required his wife to withdraw her complaint against Spurlock.

“And she had to agree not to file further complaints, nor will any information be leaked to the news or press regarding the OSBI or the director,” Kimmons wrote in his complaint. “I feel I am being blackmailed to request my wife to withdraw her complaint in an attempt to avoid termination. I will not bow down to protect a director who has no moral compass and who is way out of line of government abuse, authority and power.”

Kimmons retired from OSBI on Dec. 11 and recently became a deputy with the Grady County Sheriff’s Office.

Smothermon represented agency and association

During the early part of his investigation, Kimmons was being represented by Richard Smothermon, the attorney for the Oklahoma State Bureau of Investigation Agents Association. But Smotherman, a former district attorney for Pottawatomie and Lincoln counties, was also serving as interim general legal counsel for OSBI itself. He previously worked as OSBI’s general counsel until 2021 when he filled a court-appointed position on the Pardon and Parole Board. He resigned from that board in August and resumed work for OSBI assisting with a general counsel transition, which has been completed.

“It’s odd. There were deep concerns with several agents over him playing both roles,” Kimmons said. “I had asked the Agents Association president in the very beginning that I wanted another attorney because of the conflict, and he said absolutely not.”

Jennifer Kimmons said as her husband’s investigation continued, they limited how much information they gave to Smothermon.

“Which role was he playing? Was he playing the attorney side for the bureau or was he representing [my husband] as a client? We don’t really know,” she said. “We just kind of stopped talking to him and telling him what we were going to do because you’re like you’re going to go back and tell them exactly what our plan is.”

Smothermon did not return phone calls seeking comment prior to the publication of this article. The OSBI Agents Association did not respond to an email.

‘Offensive, unsolicited, unprofessional’



Former Oklahoma State Bureau of Investigation agent Joe and Jennifer Kimmons talk while waiting Wednesday, Feb. 21, 2024, outside an OSBI Commission executive session. (Michael McNutt)

Kimmons was being disciplined for using racially inappropriate language while speaking to OSBI agent Fernando Diaz during a telephone conversation Oct. 23. Kimmons said he was on duty when Diaz called him about 5:45 p.m., and he erroneously thought Diaz was off duty. Unknown to Kimmons, Diaz had the call on speakerphone in his vehicle. A civilian employee of the OSBI also was in the vehicle.

“Diaz and I are very close personal and professional friends,” Kimmons wrote in his complaint. “We joke around with each other privately all the time.”

Kimmons said he meant the term to Diaz as “my brother,” but the OSBI employee, a white woman, wrote that Kimmons’ use of the word should “not be in any way tolerated or condoned by the OSBI or the citizens we serve.”

“I found these utterances to be offensive, unsolicited, unprofessional, uncomfortable and intolerable. I believe this word has a negative connotation which is specifically derogatory towards Black and brown people,” the OSBI civilian employee wrote. “I also believe that the majority of American society shares this opinion and that the negative history behind the use of this term is common knowledge to Kimmons, professionals, and the general public alike.”

Kimmons said he questioned why he was eventually placed on administrative leave when OSBI policy and procedures state administrative leave is allowed only for employees involved in a use-of-force incident or who have been issued pre-termination papers.

OSBI’s discipline matrix calls for informal discipline, formal discipline, paid suspension, demotion and, finally, termination, Kimmons said. He said he received previous disciplinary action for violating an OSBI policy by identifying himself as an agent while off duty when he intervened in a dispute between his mother-in-law and a man she was evicting from rental property.

For the October investigation, Kimmons said he was suspended with pay Nov. 6 pending the outcome of an internal investigation. He said Smothermon told him the officer conducting the investigation had recommended a punishment of a couple days of unpaid suspension, but that Spurlock proceeded to seek his termination.

Kimmons said Wednesday he was wrong and “made a mistake” using the offensive word when talking with Diaz.

“I was having a private conversation with a dear friend who, in the beginning, I thought was alone and off duty,” Kimmons wrote in his complaint. “This was in no way inciting racial tension, disharmony, discrimination or biased (sic). I am saddened [the employee] was offended by this.”

However, in Jennifer Kimmons’ original six-page complaint to OSBI commissioners, Secretary of Public Safety Tricia Everest and Gov. Kevin Stitt, she expressed less remorse for her husband’s diction.

“This cancel culture has got to stop in the government sector. We cannot continue to give attention to everytime someone is offended over something,” Jennifer Kimmons wrote. “If we want to be a top 10 state, you have no choice but to remove Director Spurlock from this leadership position. We cannot afford to be firing honest, hardworking, Godly, and integrity-filled Oklahomans over minor, resolvable issues.”

Read the Dec. 8 email offer to Joe Kimmons

(Correction: This article was updated at 9:20 a.m. Thursday, Feb. 22, to note that Kimmons was on duty as an OSBI agent when he said a racial slur.)

