

IN THE CIRCUIT COURT OF BOONE COUNTY
THIRTEEN JUDICIAL CIRCUIT
STATE OF MISSOURI

THOMAS WHITENER)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF ASHLAND, MISSOURI,)
)
 Serve: City Clerk Darla Sapp)
 Ashland City Hall)
 101 W. Broadway)
 Ashland, MO 65010)
)
 Defendant.)

Case No. _____

JURY TRIAL DEMANDED

PETITION FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff Thomas Whitener (“Plaintiff”), by and through counsel, in support of his Petition for Damages and Equitable Relief against Defendant City of Ashland (“City” or “Defendant”), states as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a combat veteran of the United States Army.
2. He was honorably discharged on [REDACTED]
3. Since leaving the Army, Plaintiff has worked in law enforcement.
4. In September 2020, he became an officer in the City’s police department.

5. Over the next three years, Plaintiff became a respected and highly visible member of the Ashland Police Department.

6. He has served as the Department's Firearms Instructor, Defense Tactics Instructor, Narcotics Investigator, Field Training Officer, and Interim Sergeant, and he received the Department's Distinguished Service Award.

Plaintiff witnesses misconduct by the Chief of Police.

7. In his role as police officer, Plaintiff repeatedly observed unlawful or unethical conduct by Ashland Police Chief [REDACTED]

8. For example, Plaintiff discovered that Chief [REDACTED] had listed his wife ([REDACTED]) and one of his friends ([REDACTED]) on the Ashland Police Department roster submitted to the Peace Officer Standards and Training Program ("POST") even though neither was actually employed by the City.

9. On information and belief, [REDACTED] included his wife and friend on the City's POST roster so they would be allowed to carry a concealed weapon in every state under the Law Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

10. Plaintiff also discovered that Chief [REDACTED] routinely accessed restricted information through the Criminal Justice Information System (CJIS) without a law enforcement purpose, which he would then publish on a Facebook account under the alias "[REDACTED]"

11. On information and belief, Chief [REDACTED] was terminated from a prior law enforcement job for unauthorized access to CJIS.

12. Plaintiff has witnessed Chief [REDACTED] using racial slurs and other racially charged language, such as asking a Black former employee, “Did you get some weed, Nigga?”; claiming it is not racist for him to use the N-word as long as he did not make a “hard R” sound at the end of the word; and asking African-American employees or job candidates “Where’s the line on racial comments?”

13. On information Chief [REDACTED] bragged that, as the City’s go-to IT person, he snoops through City employees’ email accounts while trying to resolve IT issues.

14. Plaintiff has witnessed Chief [REDACTED] offer to share nude photos of another City employee’s romantic partner.

15. In addition to the Chief’s misconduct in office, Plaintiff has also witnessed Chief [REDACTED] refuse or fail to perform some of his official duties.

16. For example, the City contracted with a vendor named [REDACTED] to update the Department’s policy manuals before [REDACTED] became chief.

17. Although Lexipol has provided Chief [REDACTED] the revised policy language the City paid for and others within the Department have reviewed and commented on the proposed language, Chief [REDACTED] refuses to complete the project.

18. Although Chief [REDACTED] was informed in 2022 that a camera in one of the Department's patrol vehicles was not working, he took no steps to repair or replace the camera until July 2023.

Plaintiff confronts Chief [REDACTED] about his misconduct.

19. Plaintiff became so frustrated with [REDACTED]'s failures and malfeasance that he tried to resign on June 22, 2023.

20. Chief [REDACTED] refused to accept his resignation and asked Plaintiff to stay, which Plaintiff agreed to do.

21. The following day, Chief [REDACTED] met with Plaintiff, Sergeant [REDACTED], and Officer [REDACTED] to discuss their concerns.

22. Chief [REDACTED] admitted at this meeting that he had purposely held up several projects in the past out of spite.

23. When they questioned him about his wife being listed on the Department's roster, Chief [REDACTED] claimed that she had been on the list since she left the Ashland PD back 2019, that he had tried to remove her from the roster, and that he had been unable to remove her because he didn't know her social security number.

24. Plaintiff, [REDACTED], and [REDACTED] did not believe Chief [REDACTED]'s explanation.

25. After the meeting, they sent a query to POST to check the Chief's claim that [REDACTED] had simply remained on the Department's roster since her prior employment under the previous chief in 2019.

26. Plaintiff, [REDACTED], and [REDACTED] decided it was best not to socialize with [REDACTED] outside of work anymore because they did not trust him.

27. Worrall then told [REDACTED] that he should not attend social functions with other officers, including Plaintiff's upcoming annual Fourth of July party.

28. On July 4, 2023, Chief [REDACTED] called Plaintiff directly to ask if he could come to Plaintiff's party.

29. Plaintiff told [REDACTED] that he would prefer to keep their relationship strictly professional, and he did not want [REDACTED] to attend because there would be alcohol at the party.

30. The following day, Chief [REDACTED] discussed with Sgt. [REDACTED] removing Plaintiff from his position as Field Training Officer.

31. In early July, POST responded to the query from Plaintiff and the other officers, revealing that [REDACTED] had been removed from Department's roster when she left the Ashland Police Department in 2019.

32. Contrary to the Chief's story, [REDACTED] had been deliberately added back to the Department's roster at Chief [REDACTED]'s

request in 2021 when she left a job at the Boone County Court Marshal's Office to take a non-law enforcement position in Callaway County.

Plaintiff discloses ██████'s misconduct to the City Administrator.

33. On the evening of July 13, 2023, Plaintiff, ██████, and ██████ met at the police station to discuss what to do about ██████.

34. They decided to disclose his misconduct to City Administrator ██████.

35. Over the next several hours, Plaintiff, ██████, and ██████ drafted a memorandum to ██████ enumerating several instances of Chief ██████'s unethical, unlawful, and discriminatory conduct in office.

36. Sgt. ██████ met with ██████ on the morning of July 14 and gave him the memorandum they had all drafted the night before.

37. On July 17, 2023, ██████ sent an email to all City staff stating that Chief ██████ had been placed on administrative leave due to a "personnel matter."

38. The Ashland Board of Alderman held a closed meeting on July 18, but did not immediately appoint an interim chief.

39. The Board asked the Boone County Sheriff's Department to assist with patrols of the City temporarily.

40. Plaintiff, [REDACTED] and [REDACTED] began to worry that the City would sweep [REDACTED]'s misconduct under the rug and retaliate against them for disclosing it publicly.

The City suspends and eventually terminates Plaintiff's employment.

41. On the morning of July 19, 2023, City Administrator [REDACTED] called Plaintiff and placed him on administrative leave pending a "psych evaluation."

42. [REDACTED] sent Sgt. [REDACTED] to Plaintiff's home to take possession of his badge and ID and to hand-deliver a letter stating:

Effective immediately, you are hereby placed on paid administrative leave pending the results of a psychological fitness for duty examination.... You will be notified in writing when your fitness for duty examination is scheduled. You are required to attend this appointment. Failure to do so will result in immediate termination.

43. The Ashland Board of Aldermen appointed an interim Police Chief on July 25, 2023.

44. Plaintiff waited for his evaluation to be scheduled, but no one from the City contacted or communicated with him at all over the next three weeks.

45. Plaintiff's friends and colleagues began calling his house, asking him why he and Chief [REDACTED] had been suspended, and reporting rumors

that he and Chief ██████ must have been involved in something illegal to be suspended at the same time.

46. The City never scheduled Plaintiff's fitness for duty exam.

47. On August 8, Plaintiff received a voicemail from the City Administrator to come pick up his final paycheck.

48. When Plaintiff arrived at City Hall, HR manager ██████ asked him to sign a "letter of resignation" she had prepared for him.

49. Plaintiff told ██████ that he had not resigned.

50. ██████ became flustered and told Plaintiff that he would be terminated if he refused to sign the resignation letter.

51. Plaintiff reiterated that he was not resigning.

52. ██████ told Plaintiff his employment with the City was "ceasing today," and she handed him his last paycheck.

53. Plaintiff was promptly removed from the Department's website.

54. As of this filing, ██████ is still on paid administrative leave and still listed as Chief of Police on the Department's website.

Missouri's due process protections for law enforcement officers.

55. In 2021, Missouri enacted the Law Enforcement Bill of Rights ("Bill of Rights"), which provides various procedural protections for police officers.

56. Under the Bill of Rights, “[l]aw enforcement officers who are ... terminated ... shall be entitled to a full due process hearing.” § 590.502.3.

57. Such due process hearings must include the following components “at a minimum”:

- (1) The right to be represented by an attorney or other individual of their choice during the hearing;
- (2) Seven days' notice of the hearing date and time;
- (3) An opportunity to access and review documents, at least seven days in advance of the hearing, that are in the employer's possession and that were used as a basis for the disciplinary action;
- (4) The right to refuse to testify at the hearing if the officer is concurrently facing criminal charges in connection with the same incident. A law enforcement officer's decision not to testify shall not result in additional internal charges or discipline;
- (5) A complete record of the hearing shall be kept by the agency for purposes of appeal. The record shall be provided to the officer or his or her attorney upon written request;
- (6) The entire record of the hearing shall remain confidential and shall not be subject to disclosure under chapter 610, except by lawful subpoena or court order.

§ 590.502.3 RSMo.

58. Any disciplinary action taken against the officer following a due process hearing

shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be delivered or mailed promptly to the law enforcement officer or to the officer's attorney or representative of record.

§ 590.502.4 RSMo.

59. A law enforcement officer disciplined or discharged in violation of the Bill of Rights “may seek judicial enforcement of the requirements of this section ... in the circuit court for the county in which the law enforcement agency or governmental body has its principal place of business.” § 590.502.9 RSMo.

60. Upon finding that a law enforcement agency or governmental body has violated any provision of the Bill of Rights, “a court shall void any action taken in violation of this section,” and “may also award the law enforcement officer the costs of bringing the suit including, but not limited to, attorneys’ fees.” § 590.502.10 RSMo.

61. Any lawsuit to enforce the Bill of Rights must be brought within one year. § 590.502.10 RSMo.

Missouri’s protections for public whistleblowers.

62. In 2018, Missouri amended its state whistleblower law to extend whistleblower protections to municipal employees.

63. Under the amended statute, no public employer “shall ... take any disciplinary action whatsoever against a public employee ... for the disclosure of information which the employee reasonably believes evidences:

- a. A violation of any law, rule or regulation; or
- b. Mismanagement, a gross waste of funds or abuse of authority, violation of policy, waste of public resources, alteration of technical findings or communication of scientific opinion, breaches of professional ethical canons, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law;

§ 105.055.3 RSMo.

64. A person who alleges a violation of § 105.055 RSMo “may bring a civil action against the public employer for damages within one year after the occurrence of the alleged violation ... in the circuit court for the county where the alleged violation occurred [or] the county where the complainant resides.”

§ 105.055.7(1)-(2) RSMo.

65. In rendering a judgment in an action brought under § 105.055 RSMo, the court “shall order, as the court considers appropriate, actual damages and may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees.” § 105.055.7(4) RSMo.

PARTIES, JURISDICTION, AND VENUE

66. Plaintiff is an adult resident of Boone County, Missouri.

67. Plaintiff was a “public employee” as that term is defined in § 105.055.1(3) RSMo.

68. Defendant City is a municipal corporation and fourth-class city established pursuant to the constitution and laws of the State of Missouri.

69. City has its principal place of business in Boone County, Missouri.

70. City is a “public employer” as that term is defined in § 105.055.1(3) RSMo.

71. At all times relevant to this petition, Plaintiff was employed by City as a “law enforcement officer” as that term is defined in § 590.502 RSMo.

72. Venue is proper in this Court on Count I pursuant to § 590.502.9 RSMo because City has its principal place of business in Boone County, Missouri.

73. Venue is proper in this Court on Count II pursuant to § 105.055.7(2) RSMo because the violations alleged in this petition occurred in Boone County, Missouri, and Plaintiff resides in Boone County, Missouri.

74. This Court has subject-matter jurisdiction over Plaintiff’s claim pursuant to Article 5, section 14 of the Missouri Constitution.

COUNT I – Violation of § 590.502 RSMo

75. Plaintiff incorporates by reference all paragraphs of this Petition as if fully set forth herein.

76. The City is a governmental body and a political subdivision of the State of Missouri.

77. The City employed Plaintiff as a law enforcement officer from September 2020 until August 2023.

78. The City placed Plaintiff on paid administrative leave from his position as a law enforcement officer on or about July 19, 2023, “pending the results of a psychological fitness for duty examination” to be scheduled by the City.

79. The City never scheduled a psychological fitness for duty examination for Plaintiff.

80. The City terminated Plaintiff’s employment as a law enforcement officer on or about August 8, 2023 without explanation.

81. The City violated § 590.502.3 RSMo by terminating Plaintiff’s employment without affording him a full due process hearing.

82. Plaintiff’s termination in violation of § 590.502 RSMo is void, entitling him to reinstatement with backpay.

83. Plaintiff brings this action against the City to enforce his rights under § 590.502 RSMo within one year of his termination.

84. Plaintiff is also entitled to recover the costs of bringing this lawsuit to enforce his rights under § 590.502 RSMo, including, but not limited to, his attorneys’ fees.

WHEREFORE, Plaintiff respectfully asks this Court to grant judgment in his favor and against Defendant City, declaring the City's termination of Plaintiff's employment without a full due process hearing void; ordering his immediate reinstatement with backpay; awarding him his costs of litigation, reasonable attorneys' fees, and post-judgment interest; and granting such other relief as the Court deems just and proper.

COUNT II – Violation of § 105.055 RSMo.

85. Plaintiff incorporates by reference all the paragraphs of this Petition as if fully set forth herein.

86. Defendant City is a “public employer” as that term is defined in § 105.055.1(3) because it is politic subdivision of the State of Missouri.

87. At all times relevant to this petition, Plaintiff was a “public employee” as that term is defined in § 105.055.1(2) because he was an employee of Defendant City.

88. Between June 22 and July 14, 2023, Plaintiff disclosed to Sgt. [REDACTED], Police Chief [REDACTED], and City Administrator [REDACTED] information that Plaintiff reasonably believed to be evidence of Chief [REDACTED]'s statutory violations and abuses of authority, including falsely reporting to POST that [REDACTED] and [REDACTED] were officers in the Ashland Police Department and accessing restricted criminal justice databases without a law enforcement purpose.

89. Between June 22 and July 14, 2023, Plaintiff disclosed to Sgt. [REDACTED], Police Chief [REDACTED], and City Administrator [REDACTED] information that Plaintiff reasonably believed to be evidence of Chief [REDACTED]'s mismanagement of the Ashland Police Department, including his failure to complete the revision of the Department's policy manuals, his failure to repair or replace necessary equipment within a reasonable time, his offer to show officers nude photographs of another City employee's romantic partner, and his invasion of City employee's email archives without their (or the City's) permission.

90. The City terminated Plaintiff's employment because of his disclosure of Chief [REDACTED]'s unlawful acts, mismanagement, and abuses of authority to Sgt. [REDACTED], Chief [REDACTED], and Administrator [REDACTED].

91. As a direct and proximate result of his termination, Plaintiff sustained damage, including lost wages and benefits, emotional distress, humiliation, and loss of reputation.

92. Plaintiff brings this action to remedy the City's violation of § 105.055 within one year of his termination.

93. Plaintiff is entitled to trial by jury on his § 105.055 claim.

94. Plaintiff is entitled to recover his costs and reasonable attorneys' fees for pursuing this action.

WHEREFORE, Plaintiff respectfully asks this Court to grant judgment in his favor and against Defendant City and award him actual damages, costs of litigation, reasonable attorneys' fees, post-judgment interest, such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims triable to a jury.

Respectfully submitted,

TGH Litigation LLC

/s/ J. Andrew Hirth

J. Andrew Hirth #57807
Brooke Davids #64434
28 N. 8th Street, Suite 317
Columbia, MO 65201
Andy@TGHLitigation.com
Brooke@TGHLitigation.com
Phone: 573 256 2850
Fax: 573 213 2201
Attorneys for Plaintiff