

STATE OF RHODE ISLAND
KENT, S.C.

SUPERIOR COURT

JONATHAN WHEELER

v.

ROBERT NELSON, individually and the
CITY OF WARWICK, by and through its Finance Director
Brian M. Silvia, in his professional capacity only.

COMPLAINT.

1. The Plaintiff Jonathan Wheeler is a resident of the city of Warwick, County of Kent, State of Rhode Island at all times relevant hereto.
2. The Defendant Robert Nelson is, upon information and belief, a Rhode Island Resident who is employed by the Defendant City of Warwick as a Major in its Police Department at all times relevant hereto.
3. The Defendant City of Warwick is sued by and Through its Finance Director Brian M. Silvia, who is sued in his official capacity only. This defendant is described as "Warwick" at all times hereafter.
4. Defendant Warwick employed the Plaintiff as a clerk at all times relevant hereto for the police department.
5. The Plaintiff suffered from coronary artery disease as was known by the Defendant at all times relevant hereto.
6. In May 2015, the Plaintiff was out of work for approximately seven weeks due to the aforementioned medical condition. Later in the year, the Plaintiff was out of work for an additional period of approximately twelve weeks due to the need for additional medical care related to the above-mentioned condition.

7. In or about December 2015, the Plaintiff, while working discovered that an individual John Benoit, who was the head of the garage for the Warwick Police Department was taking a car home at the end of his shift. This violated an executive order from the Mayor and constituted fraud, waste and abuse. The Plaintiff complained about the actions of John Benoit to his superiors at the Warwick Police Department, and specifically to Major Robert Nelson on or about January 15, 2016.
8. In addition, prior to this event, the Plaintiff had been vocal about and/or complained previously at his place of employment about other instances of misconduct to include:
 - a. An officer stealing narcotics from a crime scene with the Plaintiff claiming he would go public about it, and
 - b. A police officer stealing a weapon from a crime scene, and
 - c. Other such misconduct.
9. After his report, the attitude of the command staff and the Major toward the Plaintiff changed and became hostile.
10. On January 29, 2016, the Defendant Major Nelson, and the Plaintiff had an animated discussion after which, Defendant Major Nelson ordered the Plaintiff to get into his office
11. The Plaintiff agreed to go into the office on the precondition that he be allowed to take a medication first for his heart condition and be accompanied by Deputy Chief Babula.
12. Major Nelson refused these preconditions requiring that the Plaintiff immediately respond.
13. When the Plaintiff agreed to go, without said preconditions, the Major walked away from the Plaintiff claiming that a further discussion would be futile.
14. Plaintiff was then witnessed taking a medication by Deputy Chief Babula.

15. On or about February 10, 2016, the Plaintiff was terminated from his employment with the Defendants.

16. Plaintiff seeks more than \$5,000 in damages.

COUNT I.
R.I.G.L. 28-50-1 et. seq.,
(R.I. WHISTLEBLOWERS ACT).

17. The allegations in the prior paragraphs are hereby realleged and incorporated by reference as if set forth in full.

18. In direct response to the Plaintiff's report to Defendant Nelson that a Civilian worker was violating a general order of the Mayor of the City of Warwick, the Defendant Warwick, by and through its employee, Defendant Nelson, violated Rhode Island General Laws § 28-50-3 through:

- a. Discharging the Plaintiff,
- b. Threatening the Plaintiff,
- c. Discriminating against the Plaintiff by denying him the ability to access his needed disability accommodation, namely, the need to take medication for his heart condition.

18. As a result of the above conduct, the Plaintiff has suffered damage, to include the loss of wages, benefits, attorney's fees, cost, and mental and emotional distress.

COUNT II.

RETALIATION PROHIBITED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION – 42 U.S.C. 1983

19. The allegations in the prior paragraphs are hereby realleged and incorporated by reference as if set forth in full.

20. As the First Circuit has recognized, a claim lies under the First Amendment to the United States Constitution as guaranteed to him through the Fourteenth Amendment to the United States Constitution for retaliation by local actors against an individual for exercising the rights guaranteed by that amendment, including the right to engage in free speech over matters of public concern. Camacho-Morales v. Caldero, 68 F. Supp. 3d 261 (D.P.R. 2014)

21. Plaintiff spoke as a citizen upon matters of public concern, when he reported the fraud, waste and abuse and use of the vehicle by the Civilian John Benoit to Defendant Major Robert Nelson.

22. The Defendants have no legitimate interest in curbing the Plaintiff's report of the fraud, waste and abuse by John Benoit.

23. The Plaintiff's report of the unauthorized used of the vehicle by John Benoit was a substantial or motivating factor in an adverse employment action taken against him, namely, the decision of Defendant Major Robert Nelson to terminate the Plaintiff's employment not more than thirty days later.

24. Plaintiff has a remedy for All Defendants' retaliation contrary to the First Amendment rights as guaranteed to him through the Fourteenth Amendment pursuant to 42 U.S.C. §§ 1983 and 1985.

25. As a result of the above conduct, the Plaintiff has suffered damage, to include the loss of wages, benefits, attorney's fees, cost, and mental and emotional distress.

WHEREFORE, Plaintiff request as relief from Defendants:

- A. An Order requiring Defendants to reinstate Plaintiff to his prior position;
- B. An Order requiring Defendants to Plaintiff all back pay and front pay due, to include all amounts due for benefits;
- C. Compensatory and Punitive damages for Defendants' intentional and knowing violations of the Plaintiff's First Amendment Rights pursuant to 42 U.S.C. §§ 1983 and 1985.
- D. Award Plaintiff his costs, including a reasonable attorney's fee, and
- E. Award such further relief as this Court deems fair and just.

Plaintiff,

By his attorney,

/s/ Sonja L. Deyoe
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