

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAFFEL PROPHETT
3803 Spring House Lane
Cincinnati, OH 45217

Plaintiff,

-vs-

CITY OF CINCINNATI, OHIO
CITY HALL
801 Plum Street
Cincinnati, OH 45202

-and-

HARRY BLACK, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS
CITY MANAGER OF THE CITY OF
CINCINNATI
CITY HALL
801 Plum Street
Cincinnati, OH 45202

Defendants.

Case No. 1:17-cv-699

Judge _____

COMPLAINT WITH JURY
DEMAND ENDORSED HEREON

I. INTRODUCTION

Raffel Prophett represents the best of Cincinnati. A city resident, he was raised in the West End and Avondale, educated in the Cincinnati Public School system, earned an undergraduate degree at the University of Cincinnati and a Master's Degree from Xavier University. He enlisted as a Private in the Army in 1980 and advanced to Lieutenant, Captain, Major, and ultimately Lt. Colonel and Deputy Director of Plans and Civilian/Military Affairs for the U.S. Third Army. He was deployed overseas in support of the Iraq and Afghanistan wars.

At the same time he was serving on active duty with the Army, and with the U.S. Army Reserves and the Ohio Army National Guard, Mr. Prophett also pursued a career with the

Cincinnati Fire Department. He joined the CFD in 1988 as firefighter. He was promoted to Fire Lieutenant in 1993, Fire Captain in 1999, and Fire District Chief for District 1 in 2011; a position he still holds.

He sought promotion to Assistant Fire Chief in April of 2016 and again in July of 2017. Despite being highly qualified for the position, in fact the most qualified applicant, D.C. Prophett was denied promotion each time, in retaliation for having raised issues in February 2015 and July 2015 with Cincinnati City Manager Harry Black. Mr. Black has labeled D.C. Prophett as a “troublemaker” and thereby sought to tarnish D.C. Prophett’s good name and sterling reputation. Black’s mischaracterization of D.C. Prophett has negatively affected his ability to progress within the CFD, maintain good working relationships with his peers and supervisors, and has strained his professional and personal relationships throughout the CFD.

This lawsuit is an effort to right those wrongs.

II. THE PARTIES

1. Plaintiff Raffel Prophett (“D.C. Prophett” or “Plaintiff”) is a citizen of the United States and resident of Cincinnati, Hamilton County, Ohio. At all relevant times, he has been employed by the City of Cincinnati as Fire District Chief, District 1.

2. Defendant City of Cincinnati is a municipality organized under the laws of the State of Ohio.

3. Defendant Harry Black is a citizen of the United States and a resident of the State of Ohio, and at all relevant times was the City Manager of the City of Cincinnati. Mr. Black is being sued individually and in his official capacity.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1331 because Plaintiff's federal claims arise under the laws of the United States.

5. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

6. This Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367 because Plaintiff's state law claims derive from the same operative facts and are so related to his federal claims over which the Court has original jurisdiction and diversity jurisdiction that they form a part of the same case or controversy.

7. Venue is proper pursuant to 28 U.S.C. §1391 because Plaintiff at all relevant times was employed in this Division and District, and the unlawful conduct alleged in this Complaint took place within this Division and District.

IV. THE FACTS

8. Plaintiff joined the Cincinnati Fire Department ("CFD") in 1988 as a firefighter.

9. Plaintiff was promoted to Lieutenant in the CFD in 1993, Captain, Company Commander: Suppression Operations in 1999, Captain, Weapons of Mass Destruction Coordinator: Special EMS Operations in 2000, Captain, Paramedic Commander: Emergency Medical Services Operations in 2002, Captain, Training Officer: Human Resource Bureau in 2005, and District Chief, District 1 (U-1) Commander: Suppression Operations in 2011.

10. Plaintiff remains the District Chief of District 1 for the CFD.

11. In February 2015, Plaintiff wrote Defendant Black requesting that he investigate a matter brought forth by CFD District Chief Will Jones against CFD Assistant Chief Mose Demasi.

12. Chief Jones had verbalized allegations of wrongdoing against Assistant Chief Demasi on February 13, 2014 and subsequently documented those allegations in writing on February 18, 2014.

13. Under City of Cincinnati Administrative Regulation No. 36, Resolution of Employee Concerns, CFD Chief Richard A. Braun was required to act. Chief Braun failed to do so.

14. Further, given the gravity of Chief Jones' allegations, Chief Braun was required to initiate the investigation process as prescribed in Cincinnati Fire Department Procedure Manual Section 504, and the City of Cincinnati's Personnel Policies and Procedure Manual, Chapter 5. These policies and/or procedure manuals requires that a preliminary investigation occur to determine if the allegations have merit, and if so, that a formal investigation ensue.

15. Plaintiff's request to Defendant Black concluded as follows:

Sir, our overarching goal is to maintain the integrity of the CFD and the city we serve. We support Chief Jones who, at the risk of alienating himself among his peers and superiors, displayed moral courage in coming forward and reporting possible procedural violations against the CFD and our great city. If we are to preserve one of our most cherished core values, integrity, we will need your assistance. Therefore, we respectfully request that your administration prudently respond and visit this matter most urgently.

16. Despite the importance of the matter and the urgency of Plaintiff's request, Defendant Black ignored the matter.

17. In July 2015, Plaintiff received a call from an anonymous individual reporting that CFD Assistant Chief Robert Kuhn appeared to be on duty under the influence of alcohol.

18. Plaintiff immediately reported the complaint to his direct supervisor at the time, CFD Assistant Chief Roy Winston.

19. Subsequently, Kuhn was put on paid leave as the City investigated the allegation.

20. Thereafter, Plaintiff heard from numerous individuals that Defendant Black was describing Plaintiff as a “troublemaker.”

21. In April of 2016, Plaintiff applied for the position of Assistant Fire Chief. He was the most qualified individual applying for the position.

22. Despite being the most qualified individual applying for this position, Plaintiff’s application was denied.

23. Defendant Black was the ultimate decision maker on Plaintiff’s application to become Assistant Fire Chief.

24. Plaintiff applied again for the CFD Assistant Fire Chief in July of 2017.

25. Again, Plaintiff was the most qualified individual applying for the position.

26. Again, despite being the most qualified individual applying for the position, Plaintiff’s application was denied.

27. Again, Defendant Black was the ultimate decision maker on Plaintiff’s application for the position of CFD Assistant Fire Chief.

28. Defendant Black denied Plaintiff’s promotion to Assistant Fire Chief in April of 2016 and July of 2017 in retaliation for the issues Plaintiff raised in February 2015 and July of 2015.

V. THE CLAIMS

**A. COUNT ONE
ABUSE OF POWER**

29. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

30. Defendant Black acted beyond the scope of his authority under the City Charter in denying Plaintiff's promotion to Assistant Fire Chief in retaliation for Plaintiff raising issues in February 2015 and July 2015, as detailed above.

31. As a direct and proximate result of Defendant's unlawful, retaliatory conduct, Plaintiff has suffered injury and damage for which he is entitled to judgment and relief.

**B. COUNT TWO
VIOLATION OF RIGHT TO FREE SPEECH – 42 U.S.C. § 1983**

32. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

33. Plaintiff engaged in constitutionally protected speech or conduct when he complained to Defendant Black in February 2015 asking Black to investigate a matter brought forth by CFD Chief Will Jones, and in July 2015 reporting that CFD Assistant Chief Robert Kuhn appeared to be on duty under the influence of alcohol.

34. Defendant's actions in denying Plaintiff's promotion to Assistant Fire Chief, in retaliation for his protected speech or conduct, violated Plaintiff's right to free speech on matters of public concern as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

35. Defendant's above-described conduct was intentional, malicious, willful and wanton in nature.

36. As a direct and proximate result of Defendant's unlawful, retaliatory conduct, Plaintiff has suffered injury and damages and is entitled to judgment and relief.

**C. COUNT THREE
VIOLATION OF SUBSTANTIVE DUE PROCESS – 42 U.S.C. §1983**

37. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

38. Defendant's actions deprived Plaintiff of his protected interest in his good name and professional reputation.

39. Defendant's intentional, malicious, and wanton actions effectively foreclosed the opportunity for Plaintiff to advance his career within the CFD by unlawfully denying him promotion to the position of Assistant Fire Chief for which he was well-qualified, in retaliation for the issues raised with Defendant Black in February 2015 and July 2015 as detailed above.

40. As a direct and proximate result of Defendant's unlawful, retaliatory conduct, Plaintiff has suffered injury and damage for which he is entitled to judgment and relief.

**D. COUNT FOUR
VIOLATION OF PROCEDURAL DUE PROCESS – 42 U.S.C. §1983**

41. Plaintiff realleges the foregoing paragraphs as if fully rewritten herein.

42. Plaintiff has a property interest in the position of Assistant Fire Chief to which he should have been promoted effective April 2016 and July 2017 as provided by the City Charter.

43. Defendants failed to provide Plaintiff with any pre-deprivation notice or hearing regarding this refusal to promote him to Assistant Fire Chief, in direct contravention of the City Charter and in violation of Plaintiff's due process rights.

44. Defendants failed to provide Plaintiff with any written basis for the promotion refusal or any hearing thereon.

45. Defendants likewise failed to provide Plaintiff with any other post-deprivation process, in violation of Plaintiff's due process rights under the Fourteenth Amendment.

46. In denying Plaintiff pre-deprivation and/or post-deprivation process, Defendants violated Plaintiff's procedural due process rights protected by the Fourteenth Amendment.

47. Defendants' above-described conduct was intentional, malicious, willful and wanton in nature.

48. As a direct and proximate result of Defendants' unlawful, retaliatory conduct, Plaintiff has suffered injury and damage and is entitled to judgment and relief.

WHEREFORE, Plaintiff Raffel Prohett demands judgment against Defendants as follows:

- a. That Plaintiff be promoted to the position of Assistant Fire Chief effective April 25, 2016;
- b. That Plaintiff be awarded compensatory damages including backpay and emotional distress damages;
- c. That Plaintiff be awarded punitive damages;
- d. That Plaintiff be awarded pre-judgment interest;
- e. That Plaintiff be awarded reasonable attorney's fees;
- f. That Plaintiff be compensated for the adverse tax consequences of receiving lump sum awards rather than compensation over several, separate tax years; and
- g. That Plaintiff be awarded all other legal and equitable relief to which he may be entitled.

Respectfully submitted,

/s/ Brian P. Gillan
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JURY DEMAND

Plaintiff hereby demands a trial by jury on all matters so triable.

/s/ Brian P. Gillan