

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CURTIS LARRICK,

Plaintiff,

v.

THE SHERIFF OF BEAVER COUNTY,
PENNSYLVANIA, BEAVER COUNTY,
PENNSYLVANIA and ANTHONY GUY,
*Sheriff of Beaver County in his individual
capacity,*

Defendants.

Civil Action No. 2:16-cv-00282-CRE

MAGISTRATE JUDGE CYNTHIA REED EDDY

ELECTRONICALLY FILED

JURY TRIAL DEMANDED

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S CIVIL COMPLAINT**

AND NOW, come Defendants, THE SHERIFF OF BEAVER COUNTY, PENNSYLVANIA, BEAVER COUNTY, PENNSYLVANIA and ANTHONY GUY, *Sheriff of Beaver County in his individual capacity*, by and through their undersigned counsel, JonesPassodelis, PLLC, and file the within Answer and Affirmative Defenses to Plaintiff's Civil Complaint, averring as follows:

I. Jurisdiction

1. It is admitted that the Court would have jurisdiction over matters asserted under the Civil Rights Act. However, any admission of responsibility for such claims is denied.

II. The Parties

2. Paragraph 2 of Plaintiff's Civil Complaint is admitted.

3. Paragraph 3 of Plaintiff's Civil Complaint is denied insofar as the office of the Defendant Sheriff is characterized as a political subdivision. By way of further response, it is asserted that the Office of the Sheriff of Beaver County is an elected position.

4. Paragraph 4 of Plaintiff's Civil Complaint is admitted.

5. Paragraph 5 of Plaintiff's Civil Complaint is admitted in part and denied in part. It is admitted that Anthony Guy is the current Sheriff, that he operated pursuant to official authority and under color of state law, and that his business address is located as set forth in Paragraph 5. Any characterization of his status as a final policymaker or claims that he is asserted to be liable individually are denied as conclusions of law to which no response is required. Further, any acts of the Defendant Guy were done in his official capacity.

III. Factual Background

6. Paragraph 6 of Plaintiff's Civil Complaint is denied in that, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments relating to the specific years of service and strict proof thereof is demanded at the time of trial.

7. Based on information and belief, Paragraph 7 of Plaintiff's Civil Complaint is admitted.

8. Paragraph 8 of Plaintiff's Civil Complaint is admitted.

9. Paragraph 9 of Plaintiff's Civil Complaint is admitted insofar as the Defendant Guy was the Republican candidate elected in November 2015 in an election against Wayne Kress. The characterization that it was highly contested is denied to the extent that the results of the election showed a strong percentage of the voters chose Defendant Guy.

10. Paragraph 10 of Plaintiff's Civil Complaint is admitted.

11. Paragraph 11 of Plaintiff's Civil Complaint is admitted.

12. Paragraph 12 of Plaintiff's Civil Complaint is admitted insofar as at least some of the duties for Plaintiff Larrick are identified, although it is not believed that the list is necessarily exhaustive.

13. Paragraph 13 of Plaintiff's Civil Complaint is denied to the extent that it refers to the period of time Plaintiff Larrick was supervised by the Defendant Guy, insofar as the Defendant Guy terminated the Plaintiff on the first day Defendant Guy was in office. By way of further response, it is denied that he was never criticized for his performance, insofar as the Defendant Guy learned of critiques about the Plaintiff in the period before the Defendant Guy took office. Any remaining allegations are denied in that, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of these averments and strict proof thereof is demanded at the time of trial.

14. Paragraph 14 of Plaintiff's Civil Complaint is admitted insofar as the Defendant Guy knew Plaintiff to be a member of the Democratic party and a supporter of the prior Sheriff and Wayne Kress.

15. Paragraph 15 of Plaintiff's Civil Complaint is denied as stated, insofar as it is the position of the Defendants that Plaintiff approached Defendant Guy on election day while wearing a T-shirt for the Sheriff's opponent. By way of further response, Plaintiff approached Defendant Guy at a polling place on election day.

16. Paragraph 16 of Plaintiff's Civil Complaint is denied as stated. It is denied that Defendant Guy told Plaintiff he was not happy Plaintiff was supporting Kress for election as Sheriff. In addition, it is denied that Defendant Guy indicated Plaintiff should have talked to him before supporting Kress. By way of further response, Plaintiff approached Defendant Guy

on election day and admitted he was making untrue statements about Defendant Guy. Defendant Guy told Plaintiff that he could have reached out to Defendant Guy about Defendant Guy's plans for the Sheriff's Department rather than repeating statements which were untrue about Defendant Guy's plans for the Sheriff's Department.

17. Paragraph 17 of Plaintiff's Civil Complaint is admitted.

18. Paragraph 18 of Plaintiff's Civil Complaint is admitted.

19. Paragraph 19 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is denied that the termination of Plaintiff Larrick was a layoff as referenced in the quoted sections of the Collective Bargaining Agreement set forth in paragraph 19.

20. Paragraph 20 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which no response is required. By way of further response, it is not believed that any 30 day notice was required as referenced in the section of the Collective Bargaining Agreement set forth in paragraph 20 of the Civil Complaint.

21. Paragraph 21 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which no response is required. By way of further response, it is not believed that any 30 day notice was required as referenced in the section of the Collective Bargaining Agreement set forth in paragraph 19 of the Civil Complaint.

Count I

42 U.S.C. § 1983

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In his individual capacity

22. The foregoing responses to paragraph 1 through 21 of Plaintiff's Civil Complaint are incorporated by reference as though fully set forth at length herein.

23. Paragraph 23 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which to response is required.

24. Paragraph 24 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which to response is required. By way of further response, Defendant Guy admits he was acting under color of state law.

25. Paragraph 25 of Plaintiff's Civil Complaint is admitted.

26. Paragraph 26 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which to response is required.

27. Paragraph 27 of Plaintiff's Civil Complaint makes allegations about "Defendant Larrick". Larrick is the Plaintiff, not the Defendant. To the extent the reference was intended to be "Defendant Guy", paragraph 27 is denied insofar as it contains conclusions of law to which to response is required.

28. Paragraph 28 of Plaintiff's Civil Complaint is denied insofar as it contains conclusions of law to which no response is required. By way of further response, as to any allegations of damage, same are denied in that, after reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of these averments and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants, THE SHERIFF OF BEAVER COUNTY, PENNSYLVANIA, BEAVER COUNTY, PENNSYLVANIA and ANTHONY GUY, *Sheriff of Beaver County in his individual capacity*, deny all claims for relief in subparts (a) through (h) of the "WHEREFORE" clause of Plaintiff's Civil Complaint and demand that judgment be entered in their favor and against the Plaintiff.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

29. Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

30. Plaintiff has failed to exhaust all administrative remedies to the extent same existed either under his Collective Bargaining Agreement or under applicable law.

THIRD AFFIRMATIVE DEFENSE

31. Defendants assert the applicability of the County Code, including but not limited to, provisions providing authority for the Sheriff to make employment determinations, 16 P.S. § 1620.

FOURTH AFFIRMATIVE DEFENSE

32. The termination of Plaintiff was made based on legitimate and non-discriminatory reasons.

33. Other persons in addition to Plaintiff were terminated and/or demoted, some of whom were supportive of Defendant Guy and/or his party.

34. Defendant Guy evaluated Plaintiff along with others and made determinations about their employment effective the first day of office of Defendant Guy.

35. Defendant Guy believes, and thereafter avers, that a high percentage of the employees, including law enforcement personnel, were believed to be members of the opposite political party from Defendant Guy.

36. Persons who supported Defendant Guy's political opponent were retained in the Office of the Sheriff.

FIFTH AFFIRMATIVE DEFENSE

37. Plaintiff has failed to set forth a claim of municipal liability against the county or the Office of the Sheriff.

SIXTH AFFIRMATIVE DEFENSE

38. Defendant Guy acted in his official capacity at all times.

39. Plaintiff fails to set forth a claim for individual liability against Defendant Guy.

SEVENTH AFFIRMATIVE DEFENSE

40. Plaintiff has failed to mitigate his own damages.

EIGHTH AFFIRMATIVE DEFENSE

41. Any and all applicable affirmative defenses as set forth in Federal Rule of Civil Procedure 8(c) are raised as additional defenses to the causes of action asserted herein.

WHEREFORE, Defendants, THE SHERIFF OF BEAVER COUNTY, PENNSYLVANIA, BEAVER COUNTY, PENNSYLVANIA and ANTHONY GUY, *Sheriff of Beaver County in his individual capacity*, demand that judgment be entered in their favor and against the Plaintiff.

JONESPASSODELIS, PLLC

By: s/Marie Milie Jones
MARIE MILIE JONES, ESQUIRE
PA I.D. #49711

Gulf Tower, Suite 3510
707 Grant Street
Pittsburgh, PA 15219
Phone: (412) 315-7272
Fax: (412) 315-7273
E-Mail: mjones@jonespassodelis.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded to all counsel of record by:

- U.S. First Class Mail, Postage Paid
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Facsimile Transmittal
- UPS Delivery
- Electronic Filing/Service

at the following address:

Samuel J. Cordes, Esquire
Samuel J. Cordes & Associates
245 Fort Pitt Boulevard, 2nd Floor
Pittsburgh, PA 15222

JONESPASSODELIS, PLLC

Date: May 10, 2016

s/Marie Milie Jones
MARIE MILIE JONES, Esquire

Counsel for Defendants