

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KENT D. JOHNSON,

Plaintiff,

v.

CITY OF PORT CLINTON, OHIO, *et al.*,

Defendants.

CASE NO.

JUDGE

NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT

TO THE HONORABLE JUDGES OF THIS COURT:

Now come Defendants City of Port Clinton, Mayor Michael Snider, Safety Service Director Tracy Colston, and Law Director Dina Shenker who represent to this Court as follows:

1. That there was commenced and is now pending in the Court of Common Pleas for Ottawa County, Ohio, Case No. 24 CVH 011 before Judge Robert G. Christiansen, visiting judge, in which Kent D. Johnson is the Plaintiff.
2. That said action is a suit of a civil nature.
3. That Counts were brought pursuant to 42 U.S.C. § 1983 based upon Plaintiff's presentation of a procedural due process claim that seeks damages.
4. That this Court has jurisdiction over the within action pursuant to 28 U.S.C. §§ 1331 and 1343.
5. That the within action may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441, et seq.

6. This Notice is being filed within thirty (30) days after receipt of the Complaint by Defendants, on January 11, 2024, and that the time for filing this Notice under 28 U.S.C. § 1446(b) has not expired.
7. That all parties required by law to join in this Notice, i.e., have been served, have consented to the removal, and have been so joined.
8. That the written notice of filing this Notice has been given to all other parties as provided by law.
9. That a true and correct copy of this Notice will be filed with the Clerk of Court of Common Pleas for Ottawa County, as provided by law.
10. That there is filed herewith and by reference made a part hereof, a true and correct copy of all process, pleadings, and orders served on the Defendants in said action.
11. That this Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ John D. Latchney

John D. Latchney (0046539)

Hanna, Campbell & Powell, LLP

3737 Embassy Parkway, Suite 100

Akron, OH 44333

T: (330) 670-7602; F: (330) 670-7458

Email: jlatchney@hcplaw.net

Attorney for Defendant City of Port Clinton

CERTIFICATE OF SERVICE

Pursuant to Civil Rule 5(B)(2)(f), I hereby certify that copy of the foregoing was sent via electronic mail, this 17th day of January, 2024, to:

Mark P. Smith (0088538)
John A. Coppeler (0005506)
Flynn, Py & Kruse Co., LPA
165 East Washington Row
Sandusky, Ohio 44870
msmith@flynnpykruse.com
jcoppeler@flynnpykruse.com

Counsel for Plaintiff

/s/ John D. Latchney

John D. Latchney (0046539)

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">Kent D. Johnson</p> <p>(b) County of Residence of First Listed Plaintiff <u>Ottawa</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p> <p style="text-align: center;">Mark P. Smith and John A. Coppeler Flynn, Py & Kruse Co., LPA, Port Clinton, Ohio</p>	<p>DEFENDANTS</p> <p style="text-align: center;">City of Port Clinton, Michael Snider, Tracy Colston, Dina Shenker</p> <p>County of Residence of First Listed Defendant <u>Ottawa</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p style="text-align: center;">John D. Latchney Hanna, Campbell & Powell, LLP, Akron, Ohio</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. § 1983

Brief description of cause:
 Plaintiff has sued for damages claiming a due process violation.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 1-17-2024 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JOHN C. KLAEHN
CLERK OF COURTS
OTTAWA COUNTY, OHIO

2024 JAN -8 P 2:09

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

Kent D. Johnson
423 Adams Street
Port Clinton, Ohio 43452,

Plaintiff,

-vs-

Judge _____

City of Port Clinton
1868 E. Perry Street
Port Clinton, Ohio 43452,

Case No.: 24CVH011

and

Michael Snider
c/o: City of Port Clinton
1868 E. Perry Street
Port Clinton, Ohio 43452,

and

Tracy Colston
c/o: City of Port Clinton
1868 E. Perry Street
Port Clinton, Ohio 43452,

and

Dina Shenker
c/o: City of Port Clinton
1868 E. Perry Street
Port Clinton, Ohio 43452,

Defendants.

VERIFIED COMPLAINT

1. Plaintiff, Kent D. Johnson ("Plaintiff" or "Johnson"), was duly appointed as Fire Chief of the Defendant, City of Port Clinton, in 2008 and has remained in that position at all relevant times referred to herein.

2. Defendant, Michael Snider ("Snider"), at all relevant times referred to herein, is the Mayor of the City of Port Clinton.

3. Defendant, Tracy Colston ("Colston"), at all relevant times referred to herein, is the Director of Safety and Service and an employee of the City of Port Clinton.

4. Defendant, Dina Shenker ("Shenker"), at all relevant times referred to herein, is the Law Director and an employee of the City of Port Clinton.

5. On June 6, 2023, Shenker received a telephone call from an attorney claiming to represent a Port Clinton EMS employee, Rebecca Huskey ("Huskey"), and claiming that Plaintiff had sexually harassed his client.

6. That same day, June 6, 2023, Plaintiff was summoned to the City Building but was not told the purpose for doing so.

7. Upon arriving at the City Building, Plaintiff was confronted by both Defendant Shenker and Defendant Colston.

8. Plaintiff was immediately told by Shenker and Colston that he was going to be placed on paid administrative leave because an attorney had phoned Shenker and alleged that his client, Rebecca Huskey ("Huskey"), had been sexually harassed by him.

9. Defendants Shenker and Colston admitted at the June 6, 2023 meeting

that they did not really have any details regarding the basis for the attorney's claims and that he was in the process of obtaining details and establishing a timeline.

10. Plaintiff was also told at the June 6, 2023 meeting that he was prohibited from being at the Port Clinton Fire Station and from having any contact with Huskey.

11. Defendants Shenker and Colston told Plaintiff at that June 6, 2023 meeting that the City was referring the matter to Clemans Nelson Associates for investigation.

12. After the meeting on June 6, 2023 had concluded, a letter from Huskey's attorney on that same day was faxed to Defendant Shenker in which she was thanked by the attorney for putting Plaintiff on suspension as he had requested. That letter was not shared by Shenker with Plaintiff at that time.

13. Huskey subsequently, through her attorney, filed a complaint on June 9, 2023 in Ottawa County Common Pleas Court for a civil protection order ("CPO") against Plaintiff, which was granted on an *ex parte* basis.

14. The CPO was contested by Plaintiff, with a trial held July 25, 2023 before a visiting judge, Judge Robert Christiansen of Lucas County, sitting by assignment, on Huskey's request for indefinite extension of the *ex parte* CPO.

15. On July 28, 2023, Judge Christiansen filed his order regarding the July 25, 2023 trial, determining that Huskey had failed to prove her allegations against Plaintiff by the required preponderance of the evidence. Therefore, Judge Christiansen's order DENIED Huskey's request for a civil stalking protection order and dismissed the *ex parte* order against Plaintiff which had previously been issued.

16. Following the denial of the CPO by the Ottawa County Common Pleas Court, Plaintiff requested in writing on July 31, 2023 that he be returned to his Fire

Chief position with the City.

17. When the City, by Defendant Shenker, finally did respond to Plaintiff's July 31, 2023 letter by a letter dated August 9, 2023 delivered to Plaintiff's counsel in September, Shenker stated that

"Clemans Nelson & Associates Inc. has not completed their Administrative Investigation and BCI&I have not completed their Criminal Investigation. The City is **required** to wait until **both** investigations are complete in order to review the findings of **both** investigations. Based on the findings of **both** investigations, the City will advise Chief Johnson whether or not he will be subject to a Disciplinary Hearing. The City **cannot** make this decision until we receive the results of **both** investigations." (Emphasis added.)

18. On Friday, December 15, 2023, a report from Clemans-Nelson Associates, Inc., which, along with BCI, had been investigating allegations made concerning Plaintiff, was delivered to Defendant Shenker.

19. Immediately, on that same day, Friday, December 15, 2023, despite not having yet received any report from BCI as referred to in Shenker's letter attached as Exhibit 1, Defendants Snider and Colston had a "Notice of Predisciplinary Conference" hand delivered to Plaintiff, informing him that a predisciplinary conference would be held at 1:00 p.m. on the following Thursday, December 21, 2023 regarding three charges.

20. Two of the charges contained in the Notice related to payroll matters concerning Huskey. The third charge referenced a sexual harassment claim which Huskey had never provided notice of to anyone within the City, including Plaintiff, until her attorney contacted Defendant Shenker on June 6, 2023.

21. Each of the three charges referenced in the December 15 Notice warned Plaintiff that "A violation of a Group III Offense is discipline for cause up to and

including termination of employment.” All three charges covered in the Notice are listed as Group III Offenses in the City’s employee handbook.

22. Huskey’s payroll paperwork in question was reviewed and approved in each instance by Defendant Colston and the City Auditor before payment was made to her.

23. After Plaintiff’s attorneys request that the December 21, 2023 predisciplinary conference be continued in order that the Clemans Nelson report could be adequately reviewed and in view of the imminent holidays, the City agreed verbally to move that conference to January 9, 2024.

24. On the afternoon of January 5, 2023, Plaintiff received a Notice of Predisciplinary Conference scheduled for January 9, 2024.

25. Plaintiff’s attorneys had met with the three individual Defendants on January 4, 2024 to discuss the claims being asserted herein, the lack of due process afforded to Plaintiff, the Ohio Revised Code requirements to terminate a fire chief, and the legal bases for Defendants not to pursue their stated course of conduct to terminate Plaintiff.

26. Upon information and belief, the City and the individually named Defendants intend to go forward with the predisciplinary conference on January 9, 2024 and the termination of Plaintiff from employment with the City, the result of which will cause significant financial losses to Plaintiff according to the Defendants.

27. Defendants’ planned actions are in violation of Plaintiff’s due process rights and the provisions of the Ohio Revised Code found at R.C. 735.35 et seq. and 124.40, and the requirements of the City necessitating both investigatory reports, and Defendants will proceed unless restrained and enjoined by this Court from doing so.

FIRST CLAIM

28. Plaintiff incorporates by reference the allegations contained in paragraphs 1-27 as though fully restated herein.

29. Defendants violated Plaintiff's due process rights in their suspension of him on June 6, 2023 by, among other things, not informing him in advance of the allegations made against him, not informing or permitting him to consult with counsel concerning the allegations, potential responses which could be made to those allegations, Defendants' intention to suspend him as fire chief, and consideration of the consequences of the suspension without good cause on Plaintiff personally.

Defendants also failed to provide Plaintiff with a copy of the June 6, 2023 letter from Huskey's attorney in order that he might consider it and determine an appropriate response.

30. The manner in which Plaintiff was suspended from his position as Fire Chief by Defendants was unlawful and exposed Plaintiff to embarrassment and humiliation.

31. Defendants have failed and refused to pay Plaintiff certain sums which he otherwise would have received at the end of year 2023.

SECOND CLAIM

32. Plaintiff incorporates by reference the allegations contained in paragraphs 1-31 as though fully restated herein.

33. Defendants have failed and refused to follow the required processes specified in the Ohio Revised Code pertaining to the suspension and/or termination of a fire chief, contending that those ORC provisions have no application to the actions they have taken or plan to take. Moreover, Defendants' intended actions are apparently in

violation of the City's own requirements that necessitated the receipt of the BCI report before any decision could be made on discipline.

34. Defendants have threatened that Plaintiff stands to suffer significant and important financial losses if they proceed with their intended actions, including loss of compensation as Fire Chief and loss of earned benefits to which he is entitled.

35. Defendants' intended actions in holding a predisciplinary conference and in terminating or otherwise affecting Plaintiff's rights as Fire Chief are a violation of his due process rights.

THIRD CLAIM

36. Plaintiff incorporates by reference the allegations contained in paragraphs 1-35 as though fully restated herein.

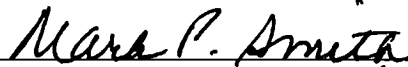
37. Defendants' actions and conduct have caused Plaintiff emotional distress for which he has incurred costs and expenses for treatment which is on-going in nature.

38. Unless enjoined by this Court from doing so, Defendants will continue to wrongfully and unlawfully refuse to follow the requirements of the Ohio Revised Code, causing financial losses and harm and damage to Plaintiff's reputation as a member of the Port Clinton Fire Department since 1992 and the Fire Chief since 2008.

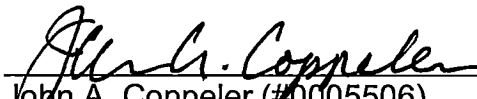
39. Plaintiff has no adequate remedy at law and will suffer permanent and irreparable harm to his reputation along with a loss of income and other financial consequences if Defendants are permitted to continue to wrongfully and unlawfully attempt to terminate his employment with the City or otherwise suspend his receipt of income and benefits which he currently has.

WHEREFORE, Plaintiff demands judgment against each and all Defendants and those persons or entities in active concert and participation with them for a temporary

restraining order and for a preliminary and permanent injunction to prohibit Defendants from any actions or conduct concerning Plaintiff's employment as Fire Chief of the City of Port Clinton or otherwise act to interfere with income and benefits he currently receives, all in disregard of the provisions of the Ohio Revised Code; an order requiring Defendants to comply with the provisions of the Ohio Revised Code as set forth herein; for payment of all sums owed to and earned by Plaintiff as Fire Chief; for compensatory damages in excess of \$25,000 for denial of his due process rights and for additional compensatory damages in excess of \$25,000 for negligent infliction of emotional distress; for punitive damages; for attorney fees and costs of this action; and for such other relief as may be appropriate in the circumstances.



Mark P. Smith (#0088538) *gmc*
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Sandusky, OH 44870
Telephone: (419) 625-8324
Fax: (419) 625-9007
Email: msmith@flynnpykruse.com
Attorneys for Plaintiff

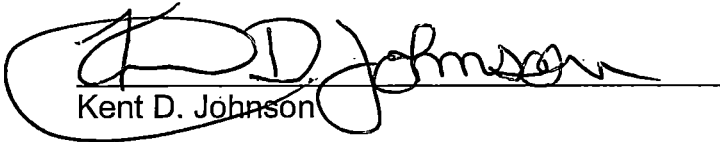


John A. Coppeler (#0005506)
Flynn, Py & Kruse Co., L.P.A.
115 West Perry Street
Port Clinton, OH 43452
Telephone: (419) 734-3174
Fax: (419) 734-3175
Email: jcoppeler@flynnpykruse.com
Attorneys for Plaintiff

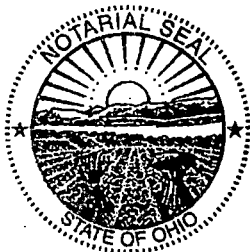
VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF OTTAWA)

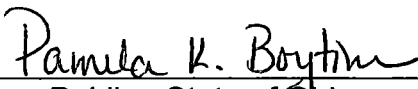
Kent D. Johnson, being first duly sworn, deposes and says that he is the Plaintiff herein, that he has reviewed the allegations set forth in this complaint, and that those allegations are true and accurate based upon his personal knowledge of the matters set forth herein.


Kent D. Johnson

Sworn to and subscribed in my presence this 8th day of January,
2024.



PAMELA K. BOYTIM, NOTARY PUBLIC
State of Ohio
My Commission Expires Feb. 20, 2028


Notary Public - State of Ohio
Commission Expires: 2/20/2028

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please serve a copy of the Summons and Verified Complaint upon Defendants, by the Sheriff of Ottawa County, Ohio at the address for Defendants shown in the caption of the Verified Complaint.



Flynn, Py & Kruse Co., L.P.A.
Attorneys for Plaintiff

JOHN C. KLAEHN
CLERK OF COURTS
OTTAWA COUNTY, OHIO

2024 JAN -8 P 2:09

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

Kent D. Johnson,	:	
	:	
Plaintiff,	:	
	:	
-vs-	:	Case No. <u>24CVH011</u>
	:	
City of Port Clinton, et al.,	:	
	:	
Defendants.	:	

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND FOR PRELIMINARY INJUNCTION**

Plaintiff, Kent D. Johnson, hereby moves this Court for an order pursuant to Civ.R. 65(A), temporarily restraining Defendants, City of Port Clinton, Mayor Michael Snider, Tracy Colston, Director of Safety and Service, and Law Director Dina Shenker, from proceeding with any actions or conduct concerning Plaintiff's employment as Fire Chief of the City of Port Clinton or otherwise act to interfere with income and benefits he currently receives, until such time as Plaintiff's motion for preliminary injunction can be heard and determined.

As grounds for his motion for a temporary restraining order, Plaintiff represents to the Court that immediate and irreparable harm, loss, injury, and damage will result to Plaintiff before notice can be given and Defendants or their attorneys can be heard in opposition, as more fully appears from the Verified Complaint filed herein, as well as by

the Certificate of Plaintiff's attorney showing that all reasonable efforts have been made to notify Defendants by telephone of the order sought by Plaintiff.

Further, as grounds for his motion for preliminary injunction, Plaintiff represents to the Court that the issuance of a preliminary injunction will not cause Defendants undue inconvenience or loss until this matter can be determined on the merits, and will prevent irreparable harm and injury to Plaintiff as well.



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Email: msmith@flynnpykruse.com
Attorneys for Plaintiff



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115 West Perry Street
Port Clinton, Ohio 43452
Telephone: (419) 734-3174
Fax: (419) 734-3175
Email: jcoppeler@flynnpykruse.com
Attorneys for Plaintiff

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please serve a copy of the foregoing Motion for Temporary Restraining Order and for Preliminary Injunction upon Defendants, along with a copy of the Summons and Complaint, by the Sheriff of Ottawa County, Ohio at the address for Defendants shown in the caption of the Verified Complaint.



Flynn, Py & Kruse Co., L.P.A.
Attorneys for Plaintiff

JOHN C. KLAEHN
CLERK OF COURTS
OTTAWA COUNTY, OHIO
2024 JAN -9 A 9:49

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

KENT E. JOHNSON,

Plaintiff,

v.

CITY OF PORT CLINTON, OHIO, *et al.*,

Defendants.

CASE NO. 24CVH011

JUDGE CHRISTIANSEN

**DEFENDANT CITY OF PORT CLINTON'S OPPOSITION TO PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

Introduction

Plaintiff's Motion is woefully inadequate and fails to establish any of the four elements necessary for the issuance of a temporary restraining order or preliminary injunction. For the reasons which follow, Plaintiff's Motion should, and must, be denied.

Statement of Facts

Plaintiff Kent Johnson has been on administrative leave with pay from his position as Fire Chief since June 2023 pending a third party independent investigation by Clemans Nelson of claims that he sexually harassed a female subordinate and committed payroll irregularities, *i.e.* authorizing payment of that same employee for hours she did not actually work. The investigation was completed.

On December 15, 2023, Clemans Nelson issued a report concluding that (1) Plaintiff intentionally overpaid the female subordinate; and (2) Plaintiff violated the City's policy against sexual harassment by sending unwelcome and sexually suggestive text messages to the complaining female employee.

On December 15 2023, the City served Plaintiff with notice of the charges against him and an opportunity to be heard on December 21, 2023, either orally or in writing. A copy of that Notice of Predisciplinary Conference is attached hereto. However, Plaintiff's counsel requested a continuance, which the City granted.

On January 5, 2024, the City served a new Notice of Predisciplinary Conference to Plaintiff which provides Plaintiff with due process, *i.e.* notice and an opportunity to be heard, on January 9, 2024. Essentially, Plaintiff has taken the unprecedented action of filing this lawsuit in an attempt to stop the hearing which would provide him with due process.

Law and Argument

Separation of powers and injunctive relief generally

"The first, and defining, principle of a free constitutional government is the separation of powers." *State v. Bodyke*, 126 Ohio St.3d 266, 2010 Ohio 2424, ¶39, 933 N.E.2d 753. "While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government." *S Euclid v. Jemison* (1986), 28 Ohio St.3d 157, 158-159, 503 N.E.2d 136; *State ex rel. Cydrus v. Ohio Pub. Emps. Retirement Sys.*, 127 Ohio St.3d 257, 2010 Ohio 5770, ¶2, 938 N.E.2d 1028; *State v. Sterling* (2007), 113 Ohio St.3d 255, 259.

"[E]ach of the three grand divisions of the government must be protected from encroachments by the others, so far that its integrity and independence may be preserved." *State*, 113 Ohio St.3d at 259. In *State ex rel. Bryant v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464, 473, 166 N.E. 407, we held: "The essential principle underlying the policy of the division of

powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others." *Id.* at 259; see also *Bodyke*, at ¶44.

"Great caution should be exercised when a court of law enjoins the functions of other branches of government." *Dandino v. Hoover* (1994), 70 Ohio St.3d 506, 510, 639 N.E.2d 767. "Caution should be exercised in granting injunctions especially in cases affecting public interest **where the court is asked to interfere with or suspend the operation of important public works or to control the action of another department of government.**" *Country Club Hills Home Owners Assn. v. Jefferson Metro Housing Auth.* (7th Dist. 1981), 5 Ohio App.3d 77; *Leaseway Distrib. Centers, Inc. v. Dept. of Adm. Serv.* (10th Dist. 1988), 49 Ohio App.3d 99, 106, 550 N.E.2d 955, 962 (emphasis added). "[O]nly those rights which are unequivocally guaranteed should be enforced through an injunction against governmental entities." *Danis Clarkco Landfill Co. v. Clark County Solid Waste Mgmt. Dist.* (1995), 73 Ohio St.3d 590; 653 N.E.2d 646.

The evidentiary standard is clear and convincing evidence.

A party must show by clear and convincing evidence that immediate and irreparable injury, loss or damage will result to the applicant and that no adequate remedy at law exists. *Dayton Metro. Hous. Auth. v. Dayton Human Rel. Council* (2d Dist. 1992), 81 Ohio App.3d 436, 442, 611 N.E.2d 384, jur. mot. over'd, 65 Ohio St.3d 1457, 602 N.E.2d 253. "In an action for a temporary or permanent injunction, the plaintiff must prove his or her case by clear and convincing evidence." *LCP Holding Co. v. Taylor* (11th Dist.), 158 Ohio App.3d 546, 553, 2004-

Ohio-5324, ¶33, 817 N.E.2d 439, 444, citing *Franklin Cty. Bd. of Health v. Paxson* (10th Dist.), 152 Ohio App.3d 193, 2003-Ohio-1331, 787 N.E.2d 59, at ¶ 25.

The elements necessary to establish entitlement to injunctive relief.

Generally, in determining whether to grant an injunction, a court must look at the “character of the case, the particular facts involved, and factors relating to public policy and convenience.” *Cementech, Inc. v. Fairlawn*, 109 Ohio St.3d 475, 2006-Ohio-2991, ¶10, 849 N.E.2d 24. A party seeking a preliminary injunction bears the burden of establishing, by clear and convincing evidence, that

- (1) there is a substantial likelihood that the plaintiff will prevail on the merits;
- (2) the plaintiff will suffer irreparable injury if the injunction is not granted;
- (3) no third parties will be unjustifiably harmed if the injunction is granted; and
- (4) the public interest will be served by the injunction.”

Gimex Properties Corp. v. Reed (6th Dist.), 2022-Ohio-4771, ¶ 61, 205 N.E.3d 1, 15. Plaintiff cannot meet any of these elements.

A. Plaintiff cannot succeed on the merits.

Generally, an injunction is an extraordinary remedy in equity where no adequate remedy exists at law. *Garono v. State* (1988), 37 Ohio St.3d 171, 173, 524 N.E.2d 496 . “An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law.” *Toledo v. AH & TO, Inc.* (6th Dist.), 2023-Ohio-2790, ¶19, 222 N.E.3d 1222, 1227. “[I]njunctive relief, as an equitable remedy, is appropriate only if the movant demonstrates that immediate and irreparable injury, loss or damage will result without the relief and that no adequate remedy at law exists.” *Byers DiPaola Castle, L.L.C. v. Portage Cty. Commrs.* (11th Dist.), 2015-Ohio-3089,

¶67, 41 N.E.3d 89, 102. Accordingly, injunctive relief should be denied where a party “has failed to allege any specific irreparable harm that will result if the injunctive relief is not granted.” *Id.* at ¶69.

Plaintiff is a classified civil service employee whose employment is governed by R.C. Chapter 124. R.C. § 124.34(A) provides, in relevant part, that “The tenure of every officer or employee in the classified service of the *** cities, ***, holding a position under this chapter, shall be during good behavior and efficient service. No officer or employee shall be *** removed [except] *** for incompetency, inefficiency, unsatisfactory performance, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, ***, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony while employed in the civil service.

The Notice of Predisciplinary Conference apprises Plaintiff of the charges and an opportunity to be heard—the very due process that he claims he’s being deprived of in his Complaint. Indeed, the U.S. Supreme Court, in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544, 105 S. Ct. 1487, 1494, 84 L. Ed. 2d 494 (1985), held that to require more than this “prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.” *Id.* at 546, 105 S.Ct. at 1495. As the Ohio Supreme Court observed in *Loc. 4501, Commc'ns Workers of Am. v. Ohio State Univ.*, 49 Ohio St.3d 1, 3, 550 N.E.2d 164, 166 (1990):

* * * Indeed, courts construing the Supreme Court's language in *Loudermill* have required only the barest of a pretermination procedure, especially when an elaborate post-termination procedure is in place * * *.” *Loudermill v. Cleveland Bd. of Edn.* (C.A. 6, 1988), 844 F.2d 304, 310–312.

As noted by the Supreme Court in *Loudermill*, the purpose of the constitutionally required pretermination hearing is not to definitively resolve the factual or legal issues involved in a termination. Rather, it is **simply “an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action * * *.”** *Cleveland Bd. of Edn. v. Loudermill*, *supra*, 470 U.S. at 545–546, 105 S.Ct. at 1495.

(Emphasis added).

Should the initial decisionmaker determine that Plaintiff's employment should be terminated, R.C. § 124.34(C) provides the more elaborate post-termination procedure to be followed. That Section states, in relevant part:

In the case of the suspension for any period of time, or a fine, demotion, or removal, of a chief of police, a chief of a fire department, ***, who is in the classified civil service, **the appointing authority shall furnish the chief or member with a copy of the order of suspension, fine, demotion, or removal, which order shall state the reasons for the action. The order shall be filed with the municipal or civil service township civil service commission.** (Emphasis added).

Thereafter, that same Section provides Plaintiff with an adequate remedy before the civil service commission:

Within ten days following the filing of the order, the chief or member may file an appeal, in writing, with the commission. If an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

If the employee is not satisfied with the decision of the civil service commission, that Section provides a further appeal is available to the common pleas court:

An appeal on questions of law and fact may be had from the decision of the commission to the court of common pleas in the county in which the city or civil service township is situated. The appeal shall be taken within thirty days from the finding of the commission.

The Ohio Supreme Court has consistently found that the right to appeal under R.C. § 124.34 is an adequate remedy at law. “[T]o the extent that [the classified state civil-service employee] asserts that [his employer’s] actions constitute a wrongful reduction in [his] position, [he] had an adequate remedy in the ordinary course of law by way of administrative appeal under R.C. 124.34.” State ex rel. Turner v. Houk, 112 Ohio St.3d 561, 563, 2007-Ohio-814, ¶9, 862 N.E.2d 104, 106, citing State ex rel. Chivalas v. Tompkins (1998), 83 Ohio St.3d 171, 173, 699 N.E.2d 58; State ex rel. Fenwick v. Finkbeiner, 72 Ohio St.3d 457, 459, 1995-Ohio-108, 650 N.E.2d 896, 898(appeal under R.C. § 124.34 was an adequate remedy at law); Westlake Civ. Serv. Comm. v. Pietrick, 142 Ohio St.3d 495, 500, 2015-Ohio-961, ¶ 24, 33 N.E.3d 18, 22 (chief of a fire department in the classified civil service, had the right under R.C. 124.34(C) to appeal the civil service commission’s decision to the common pleas court on questions of law and fact).

B. The public interest will not be served by the issuance of an injunction.

Plaintiff has been on paid administrative leave since June 2023. As such, the City has had to pay another employee to serve in the role of interim Fire Chief. It’s not in the taxpayers interest to continue paying an employee whose performance has been unsatisfactory for an indefinite period of time.

Conclusion

Plaintiff’s Motion should, and must, be denied.

Respectfully submitted,

/s/ John D. Latchney

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CERTIFICATE OF SERVICE

Pursuant to Civil Rule 5(B)(2)(f), I hereby certify that copy of the foregoing was sent via electronic mail, this 9th day of January, 2024, to:

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