

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

TIM BARR,

Plaintiff,

v.

CIVIL ACTION NO. 10-C- 372
(JURY TRIAL REQUESTED)

RECEIVED
OCT 13 2010
JEFFERSON COUNTY
CIRCUIT COURT

JEFFERSON COUNTY PARKS AND
RECREATION COMMISSION, a public corporation,
PAUL MARSHALL,
TONI MILBOURNE, and
ROBERT SHIRLEY,

Defendants.

PETITION AND COMPLAINT

1. Plaintiff Tim Barr is a resident of Shepherdstown, West Virginia, and, at all times relevant hereto, was employed by the Jefferson County Parks and Recreation Commission (hereinafter, the "Commission") as its Executive Director.
2. Defendant Jefferson County Parks and Recreation Commission is a public corporation created by the Jefferson County Commission pursuant to authority granted under W. Va. Code § 7-11-1, et seq.
3. Defendant Paul Marshall is the President of the defendant Commission.
4. Defendant Toni Milbourne is the Secretary of the defendant Commission.
5. Defendant Robert Shirley is the Sheriff of Jefferson County, and, at all times relevant hereto, a member of the defendant Commission.
6. The Court has jurisdiction of this Petition pursuant to W. Va. Code § 6-9A-6.
7. Defendant Commission is a "public agency" as defined in W. Va. Code §6-9A-2(6).
8. Defendant Commission is comprised of eleven Commissioners who act as its "governing body" as that term is defined in W. Va. Code §6-9A-2(3).

9. Defendant Commission is a “governing body” subject to the requirements of the Open Governmental Proceedings Act (hereinafter, the “Act”).

10. Defendant Commission is required to promulgate rules by which the time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

11. Defendant Commission failed to promulgate rules by which the time, place and purpose of all special meetings are made available, in advance, to the public and news media as required by W. Va. Code § 6-9A-3.

12. Pursuant to the duly enacted By-Laws of the defendant Commission, notice of meetings other than regular meetings shall be give to each Commissioner in person, by email, or by mailing to him or her at his or her last known post office address at least five days before the date therein designated for such meeting a written or printed notice specifying the time and place of such meeting and the business to be brought before the meeting. No business other than that specified in such notice shall be transacted at any special meeting.

13. Defendant Commission’s established practice is to give notice of its special meetings to the public by posting the meeting agenda on its website at least two days before the scheduled meeting.

14. On August 10, 2010, the defendant Commission held an “emergency” meeting at which the Commission voted to terminate the plaintiff’s employment.

15. The August 10, 2010 meeting was held in violation of the West Virginia Open Governmental Proceedings Act in the following particulars:

- a. The meeting was not properly called as an emergency meeting as there was no “emergency requiring immediate official action” within the meaning of the Act.
- b. Any purported need to terminate the plaintiff did not constitute an “emergency requiring immediate official action” within the meaning of the Act.
- c. Any purported need to suspend the Assistant Director did not constitute an “emergency requiring immediate official action” within the meaning of the Act.
- d. The decision to request an outside investigation of the Commission’s financial records did not constitute an “emergency requiring immediate official action” within the meaning of the Act.
- e. The decision to change signature authority for banking purposes did not constitute an “emergency requiring immediate official action” within the meaning of the Act.
- f. Officer elections for vacant positions of Vice President and Treasurer did not constitute an “emergency requiring immediate official action” within the meaning of

the Act.

- g. The agenda for the “emergency” meeting did not explain the facts and circumstances warranting an emergency meeting.
- h. The minutes of the “emergency” meeting did not explain the facts and circumstances warranting an emergency meeting.
- i. The Commission failed to post a notice of the meeting in a public place stating the date, time, place, and purpose of the meeting at least two business days in advance of the meeting.
- j. The Commission failed to post a notice stating the purpose of the meeting in a manner making the public and media aware of the particular matters to be dealt with at the meeting. In particular, a general reference to “employee issues regarding the P&R Director – possible executive session” fails to apprise the public and media that the plaintiff’s termination would be discussed and voted upon by the Commission.
- k. The Commission failed to provide notice of the meeting to all of the Commissioners.
- l. The Commission failed to provide notice of the meeting to the plaintiff.
- m. The Commission failed to apprise the plaintiff that a final action concerning his employment would be taken at the meeting.
- n. The Commission failed to afford the plaintiff his right to request an open meeting pursuant to W. Va. Code § 6-9A-4(b)(2)(B).

REQUEST FOR INJUNCTIVE RELIEF

Plaintiff Tim Barr, pursuant to W. Va. Code § 6-9A-6, requests that this Court:

- 1. Enjoin the defendant Commission’s noncompliance with the Open Governmental Proceedings Act and annul the decision to terminate his employment;
- 2. Order that any subsequent actions and decisions of the Commission be taken or made in conformity with the provisions of the Act;
- 3. Order that the plaintiff be reinstated to his position as Executive Director with full back pay and benefits;
- 4. Award the plaintiff his attorney’s fees and expense pursuant to W. Va. Code § 6-9A-7(b).

Count One
(Unlawful Retaliation)

16. Plaintiff hereby incorporates the allegations contained in the paragraphs numbered 1 through 15 of the Petition and Complaint as if fully set forth hereat.

17. Defendant Robert Shirley holds a position of power and authority over staff employees of the Commission, including Cheryl Craigo, a female employee of the Parks and Recreation Commission.

18. Defendant Robert Shirley has the actual or perceived power to alter the terms and conditions of Cheryl Craigo's employment with the Parks and Recreation Commission.

19. Defendant Robert Shirley has engaged, and continues to engage in an inappropriate relationship with Cheryl Craigo.

20. Defendant Robert Shirley has engaged in email exchanges with Cheryl Craigo during work hours which are unprofessional and inappropriate.

21. Cheryl Craigo has engaged in unprofessional and inappropriate email exchanges with Robert Shirley on her work computer during work hours.

22. Defendant Robert Shirley's emails to Ms. Craigo have included the following inappropriate and unprofessional comments:

- a. "Is the ass in today" referring to the plaintiff.
- b. "Lets go get Drunk".
- c. "I am sorry that your boss is an ass! Imagine what his wife must put up with!"
- d. "Try real hard to forget about the p - -k you work with. He is miserable in his own little body and cannot escape. Think of what that must feel like or even what his wife must put up with!!! Think of good things like an ice cold lime margarita (yum yum) on a warm sunny beach with me rubbing on the sun tan lotion, he he he, woo hoo, or the good meal we had earlier, happy thoughts only. :)"

[Emails attached as Exhibit I to Complaint]

23. Defendant Robert Shirley has engaged in extended private closed door meetings with Ms. Craigo in her Commission office during work hours.

24. Defendant Robert Shirley's conduct has exposed and continues to expose the Commission to potential legal liability for creating a sexually hostile work environment for the Commission's female employees.

25. On June 23, 2010, plaintiff confronted defendant Robert Shirley about his unprofessional behavior and email communications with Cheryl Craigo.

26. Defendant Robert Shirley informed the plaintiff that he was going to continue to email and meet with Cheryl Craigo as he desired.

27. Plaintiff reported Defendant Robert Shirley's inappropriate and unprofessional behavior to Commission President Paul Marshall.

28. Defendant Paul Marshall and the Commission failed to take any official action after receiving the plaintiff's report.

29. Defendant Robert Shirley retaliated by instigating and bringing false charges against the plaintiff while he was out of town on vacation.

30. Defendants Marshall and Milbourne aided and abetted the retaliation by:

- a. Improperly calling a emergency meeting knowing the plaintiff was out of town on vacation and unable to defend himself;
- b. Deliberately failing to provide notice of the meeting to the plaintiff by using his work email when he had advised the Commission that he would be unable to access his work email while on vacation;
- c. Deliberately failing to provide notice of the meeting to the plaintiff by failing to use his personal email or the emergency telephone number which the plaintiff had provided to the Commission before leaving on vacation;
- d. Violating the Open Governmental Proceedings Act by not affording the plaintiff the opportunity to have alleged charges against him discussed in open session with public scrutiny;
- e. Permitting Defendant Robert Shirley, despite his obvious bias, to investigate and interrogate witnesses, confiscate the plaintiff's computer and otherwise orchestrate the plaintiff's termination by moving to consider the plaintiff's termination in closed session; moving to have the W.Va. State Police investigate the plaintiff for alleged forgery; and moving to have Lauren Thurston appointed as interim director in the plaintiff's place;
- f. Barring the plaintiff from the Commission's facilities; and by

- g. Violating the Open Governmental Proceedings Act as otherwise stated in paragraph 15 above.

31. Defendants violated W. Va. Code §5-11-9(7) by engaging in reprisal or retaliation against the plaintiff for expressing opposition to a practice which he reasonably believed violated provisions of the West Virginia Human Rights Act.

32. The unlawful employment practice complained of in paragraph 28 was performed with malice or with reckless indifference to the legally protected rights of plaintiff.

Count Two
(Unlawful Discrimination)

33. Plaintiff hereby incorporates the allegations contained in the paragraphs numbered 1 through 32 of the Complaint as if fully set forth hereat.

34. Defendant Commission relied upon impermissible factors in reaching its decision to terminate the plaintiff in violation of the anti-discrimination provisions of the West Virginia Human Rights Act.

35. The unlawful employment practice complained of in paragraph 31 was done with malice or with reckless indifference to the legally protected rights of plaintiff.

Count Three
(Defamation)

36. The plaintiff hereby incorporates the allegations contained in the paragraphs numbered 1 through 35 of the Complaint as if fully set forth hereat.

37. Defendant Paul Marshall defamed the plaintiff by publishing to the press false accusations of forgery made against the plaintiff in executive session.

38. Defendant Paul Marshall knew or should have known the allegations were false.

39. Defendant Marshall acted with actual malice or with reckless and deliberate disregard for the truth by disclosing the false allegations of forgery.

Count Four
(False Light Invasion of Privacy)

40. The plaintiff hereby incorporates the allegations contained in the paragraphs numbered 1 through 39 of the Complaint as if fully set forth hereat.

41. Defendant Marshall unreasonably placed the plaintiff in a false light before the public by releasing to the press false allegations of forgery which were made against the plaintiff in executive session.

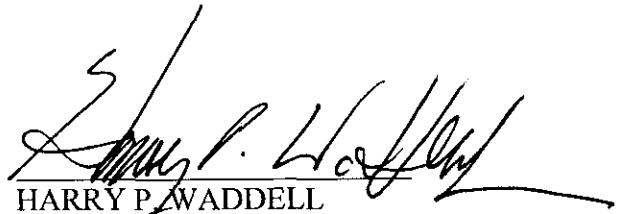
PRAYER FOR RELIEF

42. The plaintiff hereby realleges the contents of the allegations contained in the paragraphs numbered 1 through 41 of the Complaint as if fully set forth hereat.

43. As a proximate cause of the defendants' unlawful conduct set forth above, plaintiff has suffered humiliation, loss of personal dignity, mental and emotional distress, lost wages and loss of future anticipated earnings.

WHEREFORE Plaintiff prays for damages as follows:

- a. General damages in an amount to be proven at trial;
- b. Back pay;
- c. Reinstatement;
- d. Front pay;
- e. Lots of future anticipated earnings;
- f. Punitive damages against the individual defendants in an amount to be proven at trial;
- g. Reasonable costs and attorney's fees; and
- h. Pre-judgment and post judgment interest.

A handwritten signature in black ink, appearing to read "Harry P. Waddell", written over a horizontal line.

HARRY P. WADDELL
300 West Martin Street
Martinsburg, West Virginia
(304) 263-4988
(304) 262-2498 fax
Email: Hwad50@aol.com
WV State Bar No. 3883

Counsel for Plaintiff Tim Barr

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Reply



Reply All

Subject: Re: THANK YOU!! :)

From: "Robert Shirley" <rshirley@jcsdvw.com>

Date: Mon, May 3, 2010 12:25 pm

To: ccraigo@jcprc.org

Priority: Normal

Options: View Full Header | View Printable Version | Download this as a file | View Message details

Good Morning Cheryl!

I am sorry I was not here to receive your email on Friday, but I was busy working outside of the office.

You are more than welcome. Anything that we can ever do to help you out, just let me know. You will always have my full support. I am sorry that your boss is an ass! Imagine what his wife must put up with! I did order you 4 nice shirts. Womens Size MEDIUM not Mens XL. I will get them to you as soon as they come in. It usually takes about 2 weeks.

I hope that you were able to have a nice weekend out in the hot humid weather.

I will pass on your hellos. Have a wonderful day!

Live, laugh and love.

Bobby Shirley

----- Original Message -----

From: <ccraigo@jcprc.org>

>

To: <Rshirley@jcsdvw.com>

>

Sent: Friday, April 30, 2010 8:29 AM

Subject: THANK YOU!! :)

> Good morning, Bobby! I wanted to say "thank you" for your support! I
> appreciate all the time and effort in which you and your staff put in
> preparing for our field trips! Please say hello to everyone for me. It
> is encouraging to know I have support in our community.

>

> I hope you have a wonderful Friday!



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 Message List
  Delete
  Edit Message as


Forward | Forward as Attachment



Reply | Reply All

New

Subject: Re: Fw: Another Dog For Sale
From: ccralgo@jcprc.org
Date: Thu, May 6, 2010 12:01 pm
To: "Robert Shirley" <rshirley@jcsdww.com>
Priority: Normal
Options: [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [View Message details](#)

Hahaha! That was just what I neededa laugh! Thank you! I missed "cinco d mayo".....and my margarita hehehe..... I called yesterday to see if you were in whoever answered the phone mentioned you left.....wow it's sounds like you had a pretty bad one. I am under stress at home and work.....it can't get any better then that!! I'M READY! WHERE'S MY MARGARITA????? :) I almost stop to drink one..... by myself :/

Anyways....have a great day!! Say hello to the "boss" if she's in the office.

Happy Thoughts,
Cheryl

- > And a very good morning to you girl :)
- > How do u know I already left? Whats your secret? What do u know that I don't?.....hehehe:)
- > What a week!! bagging bad guys,arresting County Commissioners, working drownings in the river, bank robbers on the loose and much, much more.
- > Would someone please get ME a Drink!!!
- > I think I need a week at some beach far, far away!!!
- > And it's not even the weekend yet.
- > Lets go get Drunk?????
- >
- > How are you doing?
- > Is the ass in today? What a joke!
- > Any plans this weekend?
- >
- > Live, laugh and love
- > Have a wonderful day.
- >

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Current Folder: **INBOX**

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Forward Forward as Attachment Reply Reply All

Subject: beautiful week end
From: "Robert Shirley" <rshirley@jcsdww.com>
Date: Fri, June 4, 2010 4:19 pm
To: ccraigo@jcprc.org
Priority: Normal
Options: [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [View Message details](#) | [View as plain text](#)

Hey there lady,

Try real hard to forget about the p---k you work with. He is miserable in his own little body and cannot escape. Think of what that must feel like or even what his wife must put up with!!!! Think of good things like an ice cold Ilme margarita (yum yum) on a warm sandy beach with me rubbing on the sun tan lotion, he he he, woo hoo, or the good meal we had earlier, happy thoughts only. :)

I know with out of doubt thest times are hard but they will soon pass, happy thoughts only. :) Cheryl, you are a tough lady and sometimes life it'self can be tough, but never throw in the towel.

I want you to enjoy the beautiful weekend, be happy and try hard to keep work off your mind. I will be thinking of you this weekend and next week and keep my phone on should you need a friend to talk to. :)

I WILL BE CALLING YOU to check on you and you can always call me.

Have a wonderful and beautiful weekend!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Bobby Shirley

Attachments:

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Move to: **INBOX**



Take Address