

J. LEWIS CROMER
& ASSOCIATES L.L.C.
ATTORNEYS AND COUNSELLORS AT LAW

J. LEWIS CROMER
JULIUS W. BARR, IV • J. PAUL PORTER • ASHLEY C. STORY
RYAN K. HICKS • SHANNON M. POIVY • CHELSEA R. RIKARD

March 28, 2016

via USPS and email

PERSONAL AND CONFIDENTIAL

Sylvia Murray
Director, DJJ
Post Office Box 21069
Columbia, South Carolina 29221

Re: Larry Vanderbilt

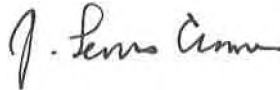
The undersigned attorney represents Larry Vanderbilt, former Department Associate Deputy Director and legal counsel, who was wrongfully terminated after many faithful years of service to his state. His termination has had disastrous effect upon him and has caused extensive and unrepairable damages.

This office is prepared to file discrimination and retaliation charges with the proper agency and more importantly will file immediate civil actions against the department and others unless we can immediately resolve these issues through settlement and conciliation. The present offer for his resignation was insulting and totally unacceptable.

Larry would much prefer to resolve this case but is prepared to take immediate action (see enclosed draft of complaint to be filed) if a proper settlement cannot be negotiated and concluded immediately through legal representation.

Be advised accordingly.

Sincerely,



J. Lewis Cromer

CC: Austin Smith
Elizabeth Hill

Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
IN THE FIFTH CIRCUIT
CASE NO. 2015-CP-40-

Larry Vanderbilt,

Plaintiff,

v.

South Carolina Department of Juvenile Justice,
Darrell T. Scott, Sylvia Murray, and Brett
McGargle

Defendants.

COMPLAINT
(Jury Trial Demanded)

EMPLOYMENT CASE

The Plaintiff complaining of the Defendant respectfully alleges as follows.

PARTIES AND JURISDICTION

1. The Plaintiff, Larry Vanderbilt, is a citizen and resident of Richland County, South Carolina.

2. The Defendant South Carolina Department of Juvenile Justice (Defendant Department) is the State Agency charged with treating, rehabilitating, supervising and providing secure custody for juvenile offenders of criminal law. The Defendant Department is headquartered in Richland County, South Carolina.

3. Defendant Darrell T. Scott is an employee of the South Carolina Department of Employment and Workforce and upon information and belief he resides in Richland County. The Defendant Sylvia Murray and Brett McGargle are, upon information and belief, residents of Richland County.

4. Plaintiff was employed by the Defendant Department in Richland County for over thirty two years preceding this action.

5. This action alleges public policy discharge against the Defendant Department tortious interference with contract (specifically Plaintiff's employment relationship with Defendant) against Defendant Scott, and defamation and civil conspiracy against all defendants.

6. The actions and events giving rise to this claim occurred in Richland County, the parties have sufficient connections to Richland County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

7. Plaintiff, an attorney, was most recently employed as the Associate Deputy for the Office of Legal and Policy Coordination.

8. The Defendant Department hired Plaintiff in August, 1983 as Legal Counsel.

9. Plaintiff, prior to working for the Defendant Department, worked at the South Carolina Attorney General's Office as a Staff Attorney and later as an Assistant Attorney General. Altogether, Plaintiff has worked for the state of South Carolina for over 37 years.

Constructive Discharge

10. The Defendant Department constructively discharged Plaintiff on March 21, 2015, forcing him to resign, with no notice or reason given.

11. Defendant Scott called Plaintiff to a surprise meeting with Defendant Director Sylvia Murray on Monday morning March 21, 2015.

12. Plaintiff, believed Defendant Scott and Defendant Murray desired to discuss any number of legal matters, as the Plaintiff had either scheduled with Defendant Murray or had informed Defendant Murray of his need to meet with her on, and went prepared to discuss these legal issues with her.

13. Instead, Defendant Scott shockingly informed Plaintiff, upon his arrival to Defendant Murray's office, that the Defendant Department had decided to go in a different direction, and that the Department was going to terminate his employment immediately; unless, Plaintiff wished to resign.

14. Plaintiff, totally surprised, responded asking why.

15. Defendant Scott refused to give any reason, but reaffirmed that the Department was "moving in a different direction."

16. Plaintiff asked again stating that after 32 years of employment he should get an explanation for his discharge, but Defendant Scott refused to give one.

17. The conduct and verbiage used by Defendant Scott clearly indicated to Plaintiff that he had no choice but to either resign or be terminated immediately.

18. Defendant Murray said nothing during the entire meeting; even though, she was the Director of the Agency for which she and Plaintiff were employed and Plaintiff's direct supervisor.

19. Plaintiff was forced to resign, as opposed to being terminated. This offer was not conditioned upon any sort of release by the Plaintiff.

20. Plaintiff then attempted to leave the room in order to go type his resignation letter, Defendant Scott quickly interjected, "Where are you going?" Plaintiff replied that he was going to type his resignation letter. Defendant Scott directed Plaintiff not to leave the Defendant Murray's office suite, and told him to write his resignation out "long hand" on the legal pad presented to him by Defendant Scott. Defendant Scott stood over Plaintiff while Plaintiff wrote out his resignation in the Director's conference room.

21. Plaintiff, as instructed, hand-wrote his resignation and presented it to Defendant Scott.

22. Defendant Scott then escorted Plaintiff to his office to collect Plaintiff's Department ID and work keys. Plaintiff asked if he could say goodbye to his staff and brief his second-in-command, General Counsel Elizabeth Hill, on a pending South Carolina Freedom of Information Act (SCFOIA) request regarding the separation of Thomas Williams from the Defendant Department, and on a policy revision proposed by Interim Inspector General Freddie Pough, authorizing "frisk" searches of agency staff, visitors and guests upon "reasonable suspicion" while on the Defendant DJJ's grounds, both of which he had been instructed to work on that morning by Defendant MacGargle

23. Defendant Scott denied Plaintiff the opportunity to address his staff or brief Ms. Hill.

24. Defendant Scott also denied Plaintiff the opportunity to remove any of his personal effects.

25. Defendant Scott then escorted Plaintiff out of the building, in plain view of a number of his co-workers who were on-looking, to his car.

26. The Defendant Department also instructed a police officer to follow Plaintiff in a vehicle until he left the Defendant Department's premises.

27. Plaintiff rescinded his resignation on March 22, 2016 (the next day) because his forced resignation was wholly unjustified.

28. Director Murray read Plaintiff's resignation letter at 9:50 am on March 23, 2016.

29. Plaintiff's tumultuous separation from the Defendant Department quickly became widely known.

30. Within two days of his forced resignation, several of Plaintiff's peers as well as lower level employees of the Defendant Department called Plaintiff asking him what he

did to deserve the treatment given him and what “had he done,” with at least one stating to Plaintiff that they treated him “like [he] was a criminal” and had “stolen something.”

31. The later inquiries indicate that many others in the community, inside and outside of the Department, believe and have been told that Plaintiff violated policies, regulations, or laws or was no longer competent to carry out his legal functions.

32. Further bolstering the insinuation that Plaintiff did something to merit discharge, on or before March 24, 2016, Plaintiff’s former co-workers were instructed not to speak to Plaintiff, not to provide him with any of his person effects from his office, and indeed had his office door locked so that no unauthorized entry to his office could occur.

Plaintiff Job History

33. Plaintiff has an exemplary record of employment with the Defendant Department.

34. Plaintiff has no known negative performance or disciplinary history of any sort with the Defendant Department or his predecessor employer the SC Attorney General’s Office over his many years of service.

35. Plaintiff, as Associate Deputy of the Office of Legal and Policy Coordination, was responsible for overseeing the office which provides legal advice and assistance to the Defendant Department, advised other agency staff on the necessary breadth of response to outside SCFOIA requests, sought to ensure compliance with the Prison Rape Elimination Act (PREA), and otherwise sought to ensure compliance with all applicable state and federal laws, rules and regulations. That office, under Plaintiff’s supervision, additionally oversaw policy coordination, Performance Based Standards (PBS), and the Defendant Department’s Release Authority, for indeterminately committed juveniles for status and misdemeanor level criminal offenses, and the Defendant Department’s

reporting to the U.S. Department of Justice on sexual violence that occurred in the Defendant Department's facilities.

36. The Defendant Department has a very unique and particularized set of roles and responsibilities. The Defendant Department is different from Adult Corrections in that the Defendant Department has a statutorily mandated (63-1-10(D)) responsibility to balance rehabilitation, security, and treatment evenly and to do so in the least restrictive setting possible, consistent with public and staff safety.

Riot

37. A riot occurred at the Defendant Department's Broad River Road Complex (BRRC) on February 26, 2016.

38. That riot garnered state-wide media attention as well as intensified attention on the Defendant Department by the South Carolina General Assembly.

39. Plaintiff had no culpability, work related deficiencies, or negative relation to that riot in any way.

Roles and Responsibilities

40. Plaintiff (and his office) was, however, charged with assisting the Department's media office in responding to SCFOIA requests and other media requests about the riot and the employment status of Defendant Murray and certain of her senior level staff.

41. Plaintiff (and his office) was additionally tasked with responses to the South Carolina House of Representatives' Oversight Committee's inquiries of the Department, after two initial responses made by the Defendant Department's legislative and media office were reasonably criticized for being curt, incomplete, evasive, and lacking in detail, and after the Defendant Department and its Director were insinuated to be in contempt of the General Assembly's requests.

42. South Carolina Code Annotated Section 30-4-10 *et seq.* is the South Carolina Freedom of Information Act. That law states that “it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.”

43. SCFOIA constitutes a clear mandate of public policy in the state of South Carolina.

44. It is also a clear mandate of public policy that the South Carolina General Assembly has legislative oversight over State Executive Agencies. S.C. Code Ann. § 2-2-10 *et seq.* Furthermore, it violates that clear mandate of public policies to mislead the Legislature with incomplete or misleading responses to legally made inquiries. *See*, S.C. Code Ann. § 2-2-100.

45. Plaintiff, a lawyer, considers the duties explicit in SCFOIA and the General Assembly’s right to legislative oversight of extreme importance.

46. However, the Defendant Department of late has taken on a more noncompliant and confusing demeanor wherein “stone-walling” occurs, details are often omitted, and words “parsed” by Defendant Department prior to Plaintiff (and his office) taking over responsibility for those responses. After having done so, Plaintiff and members of his office have been treated as “less than team players” by certain people within and outside of the Department due to the forthrightness of their proposed responses to valid SCFOIA requests, legislative oversight efforts and media and advocacy groups’ requests for reports on mistreatment of incarcerated youth.

SCFOIA Inquires

47. Following the February 26 riot, WACH Fox News sent the Defendant Department a SCFOIA request which asked for all event reports related to the February 26, 2016 it also included a related media inquiry to the Defendant Department about the events that transpired during the riot.

48. Plaintiff handled the gathering and redacting of the requested event reports, but was then instructed by Defendant MacGargle, Senior Deputy Director for Defendant Department and others, that “we are not giving out the event reports.”

49. Brett McGargle, Senior Deputy Director for the Defendant Department then instructed Plaintiff to manufacture and set forth a valid reason under SCFOIA for withholding the requested event reports.

50. Plaintiff responded, reasonably, that there was not really a valid reason under SCFOIA for withholding, after redacting, the event reports, but that the only possible viable reason was that there was a pending investigation. However, Plaintiff cautioned that the pending investigation exception to SCFOIA was only applicable where:

- (A) [the release would] disclos[e] [the] identity of informants not otherwise known;
- (B) the premature release of information to be used in a prospective law enforcement action;
- (C) [the release would] disclos[e] investigatory techniques not otherwise known outside the government;
- (D) [would] endanger[] the life, health, or property of any person; or
- (E) [the release would] disclos[e] any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

51. Plaintiff informed McGargle that he believed none of the exceptions were applicable in response to WACH Fox’s request.

52. Despite Plaintiff’s warnings, Plaintiff’s office was instructed to draft the SCFOIA legal justification for non-disclosure.

53. McGargle verbalized frustration at Plaintiff's reasonable caution, leading Plaintiff to believe he was being viewed as less than a team player; because he was insisting on a strict adherence to SCFOIA and on following South Carolina Attorney General Opinions regarding openness with respect to public records.

54. The response to the SCFOIA Request from WACH Fox News was due on the date of Plaintiff's termination.

55. A number of other SCFOIA request responses similar in nature to the WACH Fox request, for which Plaintiff was also responsible, were set to be due in the days and weeks following Plaintiff's discharge.

Advocacy Access

56. In addition to the 2/26 riot, during the months preceding Plaintiff's discharge several juvenile dormitories were severely damaged due to juveniles rioting, setting fires, physically damaging, and escaping from these dormitories, and to a decision made by Defendant Department to physically harden a number of dormitories. .

57. As a result, as many as thirty juveniles who would have otherwise been in these dormitories, were moved to alternative juvenile detention facilities where many of those juveniles were locked in individual cells for extended periods of time each day, with some only allowed out onto wings in handcuffs and leg shackles.

58. In addition, at least one juvenile was placed in a intake/holding room without bathroom facilities or a mattress on lockdown for approximately 7 days with no access to other juveniles and only limited access to staff resulting in this juvenile having to urinate and defecate into a metal grate on the floor in the center of the locked room in which he was held.

59. Plaintiff was not responsible for or involved in the decision to put or keep the Juveniles described in paragraphs 56-57 in the detention center or the particular juvenile in paragraph 58 into the holding room.

60. Plaintiff did however reasonably indicate to another Deputy Director and Defendant Murray, when asked for legal opinion, that an activist or group of activists (for a disability advocacy group,) who inquired to the Defendant Department about the events described in paragraphs 56-58, did have the right to come view the facilities in question and could take photographs of what they observed.

61. Plaintiff's opinion in response to this inquiry was given in January, 2016.

62. Defendant Murray criticized and rebuked the Plaintiff for having these legal opinions and in particular his legal opinion that the outside advocacy groups should be allowed to take pictures. The Defendant Director told the Plaintiff that he would be dealt with later, her exact words being "after her return."

63. In addition Plaintiff's office filed event reports citing alleged physical abuse and/or failure to properly report abuse that allegedly occurred at these same facilities during this time and were admonished for not being "team players" and for not "keeping it within the family" by Defendant MacGargle.

Inspector General Inquiries

64. During the month preceding Plaintiff's termination, Defendant Department's House Oversight Sub-Committee Chairman Rep. Kirkman Finlay requested, through his overall Committee Chairman, that the Office of the Inspector General undertake to investigate the Defendant Department's Event Reporting System (ERMIS), its juvenile disciplinary reporting and progressive discipline/levels systems (BARJ). In order to conduct this review, the Office of the State Inspector General requested from the

Defendant Department documents which included identifiable information on juveniles, citing the need for these documents in order to cross check and properly evaluate the Defendant Department's disciplinary reporting systems.

65. The Director of the Defendant Department did not want the Department to disclose to the Inspector General juvenile identifiable information in the event reports and the juvenile disciplinary process so that the Inspector General could cross-check the same.

66. Plaintiff received disapproval from the Defendant Murray when he informed her that the State Inspector General had statutory authority to access these reports and also that under SCFOIA the Defendant Department should be fully transparent and forthcoming with the Office of the Inspector General.

Defendant Scott

67. Defendant Scott, who carried out Plaintiff's termination, did not work for the Defendant Department.

68. Rather, Defendant Scott was "on-loan" by the Governor from the Department of Employment and Work Force.

69. Defendant Scott portrayed himself to the Plaintiff and other members of Defendant Murray's Executive Management Team (EMT) to be the Governor's "clean-up guy" or "fixer."

70. Plaintiff is a retired-rehired Associate Deputy Director who does not have grievance rights.

71. Throughout state agencies over the past several years, the Office of the Governor has encouraged Department Directors (including previous Directors at the Defendant Department) to eliminate where possible all retired-rehired staff, who like the Plaintiff are

older, experienced employees usually in management positions who perform valuable services while receiving retirement benefits for their many years of valuable service.

72. Defendant Scott, who was not even employed by the Defendant Department or within Plaintiff's chain of command, fired the Plaintiff without explanation.

**FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANT DEPARTMENT**
(Public Policy Discharge)

73. Plaintiff realleges paragraphs 1 through 72 herein.

74. That the actions described herein, not limited to Plaintiff's pretextual constructive discharge, but including each and every event and occurrence, threat, intimidation, and obstruction to the performance of Plaintiff's mandated duty to report and advise violates the clear public policy of the State of South Carolina.

75. Such policy requires that the Department, like all departments of the State carry out the intent and letter of the law dealing with its omission and operations including the truthful, complete and automatic reporting under requests for information particularly the information referred to in which the public has a keen and necessary interest.

76. That as a direct and proximate result of the treatment and constructive discharge of the Plaintiff in violation of public policy he has sustained the loss of his job, back pay and front pay and benefits, loss of earning capacity, loss of reputation, embarrassment humiliation, and mental anguish, pain and suffering in an amount of actual damages to be considered by a jury.

**FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT SCOTT**
(Tortious Interference with Contract)

77. Plaintiff realleges paragraphs 1 through 76 herein.

78. The Defendant Scott met, conspired and schemed with others to contrive a plan to remove Plaintiff from his position for false and pretextual reasons and to use in some way such to blame and scapegoat him and another Department official for negative and damaging events taking place at the Department which Defendant Scott has or should have known were not Plaintiff's fault nor responsibility and in so doing he intentionally and wrongfully interfered with Plaintiff's employment, proximately causing the Plaintiff damages.

79. Plaintiff's damages as alleged consist of the loss of his job, back pay and front pay and benefits, loss of earning capacity, reputational harm, embarrassment, humiliation and mental anguish. Plaintiff is also entitled to an award of punitive damages for the Defendant Scott's wrongful and intentional conduct as stated. All to be assessed by a jury.

**FOR A THIRD CAUSE OF ACTION
AGAINST BOTH DEFENDANT DEPARTMENT AND THE DEFENDANTS SCOTT,
MURRAY AND MCGARGLE
(Defamation)**

80. Plaintiff realleges paragraphs 1 through 79 aforesaid.

81. That the heightened attraction directed to the Department by the media, SC General Assembly, various advocacy groups and the public regarding the recent rioting, escapes, destruction of property, juvenile physical and sexual abuse and lack of security and safety coupled with the sudden unexpected termination of the Plaintiff and another senior officiant the Department created a direct inference that the Plaintiff was complicit and a cause for the rampant violations of law and procedure giving rise to these events and incompetent to perform his duties.

82. These actions amount to defamation by actions as well as words and are defamatory per se. Plaintiff is therefore entitled to an amount of nominal damages under the law.

83. Such actions were falsely contrived, known to be false and taken with reckless disregard for the truth or the consequences suffered by Plaintiff, an innocent victim and one who tried to perform his duties in accordance with law and in the best interest of the public.

84. Such actions have been published and republished as well as false and defamatory statements relating to Plaintiff's separation from the Department or suggestions as to his culpability for wrongful conduct within the Department.

85. Such intentional and malicious behavior by the Defendants acting with the course and scope of their employment have proximately caused Plaintiff to sustain severe and continuing reputational harm, embarrassment and humiliation as well as the loss of his job and economic losses as associated therewith. Plaintiff is also entitled to an award of punitive damages against the individual Defendants in an award to be assessed by a jury.

**FOR A FOURTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES
(Civil Conspiracy)**

86. Plaintiff realleges paragraphs 1 through 85 aforesaid.

87. That the individual defendants and others, in concert and on many occasions, met, conspired, schemed and planned to formulate and carry out an agenda to harm the Plaintiff, remove him from his position with the Department and to cause him special damages distinct from simply removing him as a working retiree by scapegoating him for failures and negative events at the Department which were in no way his fault.

88. That such actions were intentional and performed outside of the scope of Defendants' duties and responsibilities and amount to an unlawful civil conspiracy for which the Defendants are liable for actual and punitive damages.

89. Such damages include but are not limited to proximately caused reputational harm, embarrassment, humiliation and mental anguish, pain and suffering, loss of employment and benefits as well as an amount of punitive damages to be assessed by a jury.

PRAYER OF RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant Department for actual and other damages as alleged herein upon each of his claims in an amount to be determined reasonable by a jury. Plaintiff prays for an award of both actual and punitive damages against each of the named individual Defendants herein in amounts to be considered by a jury as well as an award for costs and attorney's fees against all Defendants where applicable and any such other relief as the Court in law or equity may deem just and proper. Plaintiff also prays for pre-judgment interest on all damages as recoverable.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: _____

J. Lewis Cromer (#1470)

J. Paul Porter (#100723)

1418 Laurel Street, Suite A (29201)

Post Office Box 11675

Columbia, South Carolina 29211

Phone 803-799-9530

Fax 803-799-9533

Attorneys for Plaintiff

March 28, 2016
Columbia, South Carolina