

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
FILE NO: 1:13-cv-00264**

MARK D. BYRD,
Plaintiff,

v.

**CITY OF ASHEVILLE, and
ASHEVILLE POLICE
DEPARTMENT,
Defendants.**

**FIRST AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

NOW COMES Plaintiff, Mark D. Byrd (hereinafter "Lt. Byrd" or "Plaintiff"), and alleges and complains as follows:

NATURE OF ACTION AND CLAIMS ASSERTED

This action is brought by Plaintiff, a 15- year veteran of the Asheville Police Department, to enjoin a continuing series and pattern of adverse, discriminatory and retaliatory actions by the Defendants against Plaintiff, and seeking damages based on these acts. As more fully set out below, these discriminatory and retaliatory actions include the unjustified placing of adverse written material in Lt. Byrd's personnel file; interference with and exclusion from his normal supervisory duties and responsibilities within the Department; his exclusion, along with others within the Department who have been publicly critical of the management of the Department, from any participation in a tax-payer funded "Strategic Planning Process" ordered by the Asheville City Council in an effort to address, in part, management and other issues raised by an investigation into activities of Chief of Police William Anderson and Captain Stoney Gonce; the publication and broadcasting of defamatory statements concerning Lt. Byrd by Chief of Police William Anderson and others; the assignment by the Defendants, on a punitive and retaliatory basis, of Lt. Byrd to duties and projects in excess of those normally assigned to an officer in his position; and the interference by Defendants with Lt. Byrd's federally protected rights and entitlements associated with the birth of his child under the Family Medical Leave Act.

JURISDICTION AND PARTIES

1. The United States has original jurisdiction over Causes of Action One and Four brought herein under 42 U.S.C. § 2000e -5 and 49 U.S.C. § 2617 respectively, and this Court should exercise its supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the State law claim asserted in Causes of Action Two and Three, in that the state and federal claims derive from a common nucleus of operative facts such that a plaintiff would ordinarily be expected to try them all in one judicial proceeding.
2. Lt. Byrd is a resident and citizen of Buncombe County, North Carolina. He is currently employed by the City of Asheville as one of nine (9) Lieutenants within the Police Department.
3. Defendant City of Asheville ("the City") is a body politic of the State of North Carolina and is located in Buncombe County in the Western District of North Carolina.
4. Defendant Asheville Police Department ("APD") is a division of the City.
5. Lt. Byrd filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on July 2, 2013, for discrimination in the form of retaliation due to (1) his wife having, as an employee of the City of Asheville, engaged in protected activity under Title VII of the Civil Rights Act of 1964. Lt. Byrd's wife had previously sued the City of Asheville and its Police Department for sexual discrimination and sexual harassment by a superior officer, and (2) due to his having filed a previous charge of discrimination with the EEOC on March 16, 2010.
6. On July 9, 2013, the EEOC mailed a notice of right to sue to Lt. Byrd. This notice is attached as Exhibit A to this Complaint.
7. On July 23, 2013, Lt. Byrd filed a charge of discrimination with the Equal Employment Opportunity Commission for retaliation due to (1) his wife having, as an employee of the City of Asheville, engaged in protected activity under Title VII of the Civil Rights Act of 1964; Mr. Byrd's wife had previously sued the City of Asheville and its Police Department for sexual discrimination and sexual harassment by a superior officer, (2) due to his having filed a previous charge of discrimination with the EEOC on March 16, 2010, (3) due to his having filed the July 2, 2013, EEOC Charge, and (4) due to his having made certain public statements on July 11, 2013, in

opposition to discriminatory practices within the City of Asheville and its Police Department.

8. On August 7, 2013, the EEOC mailed to Lt. Byrd a notice of his right to sue. This notice is attached as Exhibit B to this Complaint.

FACTS

9. Lt. Byrd joined the City as a Police Officer Trainee in 1998. Following his training period, he worked as a Police Officer. In 2001 he was promoted to the position of Senior Police Officer.
10. In 1999, Lt. Byrd was selected as a member of the Asheville Police Department's Special Weapons and Tactics ("SWAT") Team. It was unusual for an officer with only 1 year of service to be placed on this team. This was done due to his exceptional level of ability and skill in law enforcement.
11. Lt. Byrd remained a member of this Special Team for the following 9 years.
12. In 2004 Lt. Byrd was also selected to become a member of the Department's newly formed Drug Suppression Unit. Initially formed as a specialized and select team to deal with drug trafficking, use, and drug related violence and crime within the City's public housing projects, the work of the Team was so successful that the work of the Drug Suppression Unit was expanded to cover the whole City the following year.
13. Lt. Byrd was one of a very limited number of Officers selected to be a member of both of these specialized teams.
14. In March 2009, Lt. Byrd married a fellow Asheville City Police Officer, the former Cherie Dotson.
15. In March 2010, Lt. Byrd's wife, Cherie Byrd, filed a Title VII lawsuit, captioned *Cherie Byrd v. City of Asheville, Asheville Police Department, and Eric Lauffer*; (1:10-cv-71 WDNC, Asheville Division), against the City of Asheville, the Asheville City Police Department, and Sgt. Eric Lauffer, who had been her direct supervisor, concerning severe sexual harassment by Sgt. Lauffer, and a repeated failure by the City and Department to correct or stop this sexual harassment when notified of it.

16. During that same period of time, Lt. Byrd received his first disciplinary action from a supervisor in the Department. He was given a formal Written Warning for his part in a phone prank involving several employees. He was issued this Warning even though the employee involved did not complain of his actions. Upon information and belief, other employees of the City, including senior managers, have been involved in such pranks within the Department and City, and have not been subjected to any level of disciplinary action.
17. During this same period of time, and following the filing by Cherie Byrd of her lawsuit, both Ms. Byrd and Lt. Byrd were requested by the Department management to turn into the Department their issued firearms. In the case of Lt. Byrd, he was on light duty at this time due to an on-the-job injury. The carrying of an issued weapon while on light duty is specifically authorized by the Department.
18. In addition to being outside the normal practice of the Department, in requesting that Lt. Byrd turn in his authorized weapon while on light duty, the Department knew it would be depriving Lt. Byrd of the opportunity to carry any weapon authorized by the Department, because the Department was transitioning to a new weapon at that time, and due to his injury and light duty status he would not be allowed to qualify on the Department's new weapon. This was an attempt by the Department to retaliate against Lt. Byrd due to the filing of Cherie Byrd's lawsuit.
19. Following the filing of her lawsuit in March of 2010, Cherie Byrd was on Leave. She did not return to employment with the Department following such Leave. In June 2010, Lt. Byrd inquired as to the status of any personal items of Ms. Byrd's still in the possession of the Department. Lt. Byrd was informed that Lt. Chris Reece-Young, the Commander of the Unit where Cherie Byrd had worked, stated there were no personal items belonging to Ms. Byrd within her former Work Unit. However, when a new Lieutenant took over this work unit in August 2010, she was approached by an officer who worked within the Unit, who handed the new supervisor a box of Cherie Byrd's personal belongings. The officer who gave the box to the new supervisor stated that Chris Reece-Young had given the box to her in June 2010, and told her in June to hold it until further notice. Later, in March of 2011, additional items belonging to Ms. Byrd were located within her former work unit.

20. In August 2012, Byrd was promoted to Lieutenant. This promotion resulted from the formal promotional process conducted by the City of Asheville. In this process each candidate is assigned an objective score based on his or her performance on various objective factors and tests. The highest scoring officer is given the first available promotion. Lt. Byrd was the highest scoring officer in this round of promotional scoring and received his promotion due to this score.
21. Since receiving the promotion to Lieutenant, Plaintiff has been subjected to a continuing series of discriminatory and retaliatory actions designed to undercut his effectiveness and performance as a Lieutenant within the Department.
22. During a group discussion concerning the fact that Lt. Byrd had receive a promotion through this process, Captain Tim Splain said to a group of officers words to the effect of "Great, it's good to know we promote people who sue us." At the time he made this comment, Splain was one of four (4) Captains within the Department and a member of the Department's Senior Management Team. This comment was said in a negative and disparaging manner of Lt. Byrd and his attempt to receive a promotion.
23. In October 2012, Lt. Byrd became aware of certain personnel issues which had developed with a younger officer in an unit under his command. Other officers had observed various changes in this younger officer's attitude and behavior, and his immediate supervisor believed these changes may have been related to the officer's developing relationship with a female who had a young child. In reviewing these circumstances, Lt. Byrd recognized the identity of the female as a person who had previously been arrested and charged with a felony offense. He did not know the disposition of this charge. It is against the Rules of Conduct for an Asheville City Police Officer to associate with a known felon or felons. In order to determine the status of this offense, Lt. Byrd checked the NCIC database to determine if the female had, in fact, been convicted of a felony. Following this inquiry, Lt. Byrd informed his supervisor, Captain Tim Splain, of the situation and what he had found. Captain Splain directed Lt. Byrd to counsel the officer concerning his associates, and to put the information into a Memorandum for the file. He expressly directed Lt. Byrd to not complete an incident report for Internal Affairs concerning the matter, which would have been the normal procedure in such a incident.

24. At this time Captain Splain expressed no disagreement with Lt. Byrd's actions in this matter, nor did he indicate that Lt. Byrd had done anything wrong under the circumstances.
25. Several weeks after this incident, Lt. Byrd learned he was himself the subject of an Internal Affairs investigation. It was alleged that he had improperly accessed the NCIC database during his attempt to determine if the female in question was a convicted felon. On January 7, 2013, Lt. Byrd was given a written "Coaching" record concerning his alleged misuse of the NCIC database access.
26. Such a "Coaching" record is not contestable by the employee and there is no way for the employee to have such a record removed from his file.
27. Despite the fact that a "Coaching" record is not contestable by the employee, the City and Department have a practice of using such records in a manner that is adverse to the employee, especially in any subsequent disciplinary matters.
28. Although he asked both Captain Splain and the Internal Affairs Officer, Lt. Byrd was never told who had initiated the complaint which lead to his investigation by Internal Affairs and the receipt of this written action.
29. Lt. Byrd's use of the NCIC database for the purpose stated was not a misuse of the NCIC database, and is expressly allowed by the rules governing the use of such database. Upon information and belief, other officers within the Department have used the NCIC database for the same or similar purposes and have not been accused of wrongdoing, been given "coaching" records or otherwise treated in an adverse manner by the Defendants. Specifically, upon information and belief, Captain Splain did not receive any such adverse treatment due to his involvement in this incident. The "coaching record" based on this incident was retaliation for Cherie Byrd's lawsuit and the other actions by Plaintiff opposing such discrimination.
30. Since his promotion to the position of Lieutenant, Lt. Byrd has been subjected to an increasing level of interference with what would be his normal command and supervisory functions. These interventions and interferences make it impossible for him to perform properly many of the duties of a Lieutenant within the Police Department.
31. These interventions and interferences include, but are not limited to:

- A. The exclusion of Lt. Byrd in April 2013 from a Disciplinary "Roundtable" concerning an Officer under his command who had lied to Lt. Byrd during an investigation. Lt. Byrd had been instructed to conduct into the misuse of confidential information within the Department. This exclusion resulted in the matter being dealt with by the Department without any input from Lt. Byrd.
- B. Failure to inform Lt. Byrd in June 2013 in his role as Acting Patrol Commander of the arrest of a Buncombe County Sheriff's Deputy by the Asheville Police Department. By policy and by direct order of Chief Anderson, all such critical incidents are to be reported by the Watch Commander to the Patrol Commander or Acting Patrol Commander at the time of the incident. When Lt. Byrd indicated to Chief Anderson that this had not been done, Chief Anderson replied, "No big deal". Chief Anderson had previously lectured his senior staff on the importance of proper notification of the chain of command concerning such critical incidents.
- C. In June 2013, Captain Stony Gonce spoke directly to a Sergeant under the command of Lt. Byrd and gave the Sergeant direction on how to deal with an employee matter. This was done without either informing or involving Lt. Byrd.
- D. On October 29, 2013, Officer Robert Bingaman was killed in an vehicle accident while in his Police Cruiser, and while performing his duties as a Traffic Officer within the Department's Traffic Safety Unit. Lt. Byrd supervised the work of the Traffic Safety Unit. Officer Bingaman and Lt. Byrd had previously served together as partners. On the day Officer Bingaman was killed, Lt. Byrd was the Watch Commander for the Department. Upon learning of the accident, Lt. Byrd immediately reported to the scene and began to work with the other members of the Traffic Safety Unit under his command, both at the scene of the accident and later at the hospital and morgue where Officer Bingaman had been taken. Lt. Byrd secured assistance from the N.C. Highway Patrol to provide his officers with a "Critical Stress Debrief," in an effort to help them with the stress caused by this event. At no point did any member of the Command Staff approach Lt. Byrd or communicate with him concerning the Traffic Safety Unit or the accident and death of Officer Bingaman. At least one member of the Command Staff actively and pointedly ignored Lt. Byrd when he arrived at the accident scene.

Subsequently, the Department made and executed elaborate plans for the transport of Officer Bingaman's body and his funeral. Although he was the Lieutenant in charge of the Unit in which Bingaman served and in which he was killed, Lt. Byrd was excluded from any role in the planning or execution of these activities by the Department Command Staff. In addition, at the funeral, Lt. Byrd had requested to be seated with the members of the Traffic Safety Unit. However, the Department moved Lt. Byrd and his wife twice during the seating for the funeral service and he was not allowed to sit with the Unit he directed.

- E. All of the incidents outlined in A-D above were handled by senior management of the Department in a manner that was inconsistent with the established policy and practice of Department, and were intended to, and did have the effect of, harming Lt. Byrd's creditability within the Department and ability to carry out the management duties of a Lieutenant within the Department.
32. On the morning of July 11, 2013, Lt. Byrd, and another Lieutenant who held concerns over the management of the Department, including concerns of a management culture within the Department increasingly marked by the repeated use of discrimination, retaliation and intimidation, made or released public statements concerning these matters.
 33. The Asheville Police Department has a total of five (5) Lieutenants who oversee the patrol activities of the Asheville Police Department within the City. Of these five Lieutenants, three (3), including the Plaintiff, have been involved in making or releasing public statements concerning the use and practice of discrimination, retaliation and intimidation within the Department.
 34. Lt. Byrd's public statement was an attempt to oppose illegal discriminatory practices within the Department.
 35. At approximately 10:46 PM on July 12, 2013, the night following the public statement by Lt. Byrd, Chief of Police William Anderson sent out an e-mail, first to the Department Command Staff, and on the following day, July 13, 2013, to every employee within the Department and others outside the Department. In the e-mail, Chief Anderson singled out "a few" employees of the Department whom he indicated were engaged in an effort to lead the department "astray." He also stated that the Department had been "dragged

through the mud.” He contrasted the actions of these “few” employees with what he called the “vast majority” of employees who “are hardworking dedicated individuals that only want to come to work each day to protect and serve. You don’t care about politics or personal praise.” A copy of the e-mails are attached as Exhibit C (e-mail of July 12, 2013) and Exhibit D (e-mail of July 13, 2013) to this Complaint.

36. The e-mails were communicated and published to all employees of the Asheville Police Department and to various persons outside of the Department, and were received by and read by such persons.
37. By making the statements contained in the e-mails, Anderson intended to convey the following meanings, and the e-mails were, by those persons who read them as published, understood and believed to convey the following meanings: (a) that by “a few” the Chief meant to identify Lt. Byrd and the other Lieutenants who had made public statements; (b) that the “few” were not “hardworking” or “dedicated” employees; (c) that the “few” did not want “to protect “ or “serve” the citizens of the City of Asheville; and that (d) the motivation of these “few” was “politics” and a desire for “personal praise.”
38. Anderson’s statements concerning Lt. Byrd as set out above were false statements.
39. This email was meant to and had the effect of further stigmatizing, discrediting and marginalizing Lt. Byrd as an Officer and Supervisor within the Department, and was in retaliation for Lt. Byrd’s activities in opposition to illegal discrimination as set out above.
40. On at least two separate occasions since Lt. Byrd made his public statement and Chief Anderson sent the above derogatory and libelous e-mails, Chief Anderson and Captain Chris Reece-Young, a member of the Command staff of the APD have used the term “Organizational Terrorist” in a manner and context in which they were clearly referring to Lt. Byrd.
 - (a) On or about November 6, 2013, in a Roll Call meeting of the Criminal Investigations Division, Captain Reece-Young, with Chief Anderson present, used the term when referring to the activities of certain persons within the APD.
 - (b) Chief Anderson has himself used this term in talking with third parties about the actions of certain persons within APD.

In making each of these statements, Chief Anderson and Captain Young meant to identify Lt. Byrd and the other Lieutenants who had made public statements critical of the Department leadership as the "Organizational Terrorists," and the persons who heard these statements so understood the identity of the persons referred to, to include Lt. Byrd.

41. On or about July 11, 2013, following an investigation by the City Manager and his subsequent report to the Asheville City Council into certain activities of Chief William Anderson and Captain Stoney Gonce, changes were made by the City and the Department in the assignments of the Captains within the Department. These reassignments resulted in Lt. Byrd being placed under Captain Tim Splain's direct supervision. As set out above, Captain Splain had been directly involved in or responsible for several of the previous retaliatory comments or actions taken against Lt. Byrd, and had been identified by name in the July 2, 2013, EEOC Charging Document as participating in the retaliatory conduct alleged therein.
42. Lt. Byrd has been contacted by other Officers within the Department who have each filed one or more pending Charges of Discrimination against the Department and its current leadership.
43. He has been made aware that these Charges and complaints allege instances where the current leadership of the Department has engaged in discrimination, retaliation, intimidation, and the use of falsehoods, or a combination of one or more of these tactics and practices, to discipline or otherwise take actions concerning the officers, including but not limited to denial of promotions, transfers, removal from duties, and the issuance of non-contestable "Coaching" records. Upon information and belief, such actions within the Department represent a continuing and on-going pattern and practice of discrimination, intimidation and retaliation by the management of the Department.
44. In 2013 Plaintiff's wife gave birth to their child.
45. Following the birth of his child, Plaintiff requested that he be granted Family Medical Leave due to the birth of his child, and completed and submitted the necessary paperwork associated with such a leave request.
46. Plaintiff requested that the leave be intermittent in nature, allowing him to schedule the leave as would best fit the needs of the new born and Lt. Byrd's

wife. The Defendants approved both the leave and the requested intermittent nature of the leave.

47. Although the leave request was approved, the Asheville Police Department has, in practice, interfered with the ability of Plaintiff to take such leave, by repeatedly requiring him to perform work during the requested and approved leave periods.
48. This interference, among other personnel issues being suffered by the Plaintiff, lead Plaintiff to file, on August 26, a grievance with the Asheville City Manager's office.
49. Plaintiff filed this grievance directly with the City Manager because the normal first levels of review of his grievance would have been Captain Splain and then Chief Anderson, and Plaintiff did not believe he would obtain an unbiased review of his grievance issues by the Command Staff due to the previous retaliatory treatment and defamatory statements which Plaintiff had experienced.
50. The City Manager refused to act on Plaintiff's grievance and sent it to the Chief for response.
51. The Chief's response stated, in part, that the problems raised by the Plaintiff "focused on communication issues with your immediate supervisor, Captain Tim Splain." The response went on to state, "Communications issues have been recognized as a problem throughout the Department" and promised that such issues would be addressed in the up-coming "Strategic Operating Plan process." The Chief encouraged Plaintiff to be a part of that process.
52. As to his specific grievance concerning interference with his FMLA rights and entitlement, the Chief suggested that Lt. Byrd submit his request for such leave "within the scope of your normal 30 -day Lieutenant schedule. This will allow you and your supervisor to more effectively plan and manage assignments while still accommodating your FMLA requests."
53. Pursuant to the Chief's directive, Lt. Byrd schedule his next FMLA leave period as part of the normal 30-day Lieutenant Scheduling. This leave included the dates of October 11 and 13, 2013.
54. On October 11, 2013, while on FMLA leave, Lt. Byrd received an e-mail from his Supervisor, Captain Splain. The e-mail was addressed to only Lt. Byrd and another Lieutenant, Jamee Crawford. The e-mail stated that Chief

Anderson had decided that a Lieutenant was to be deployed as the Department's "Incident Commander" for a public rally in opposition to genetically modified organisms which was to be held in downtown Asheville on October 13, 2013. Normally, the Incident Commander position for such an event would be filled by a Sergeant within the Department - not a Lieutenant. A Lieutenant is deployed for such a position only if there are special circumstances concerning the event, such as a heightened level of threat to public safety during the event. Prior to going on leave, Lt. Byrd had heard this event discussed at several staff meetings, and had not heard that a Lieutenant was to be assigned or would be needed as Incident Commander for the event. When Lt. Byrd asked why a Lieutenant was now being assigned to this particular event, he was told by Captain Splain that he (Splain) "was only doing what he was told to do by Chief Anderson." Later, Lt. Byrd was told that the rationale for the use of a Lieutenant was the heightened threat to public safety posed by this rally.

55. The e-mail directed either Lt. Byrd or the Lt. Crawford to perform the duty, or if unable to do so, for Lt. Byrd to assign another Lieutenant to do so.
56. As a Lieutenant, Plaintiff has no authority to assign another Lieutenant to a particular assignment within the Department, only a Captain or Chief may do so.
57. Because the Lt. Crawford was already acting as the Watch Commander for this shift, Plaintiff was forced to interrupted his FMLA leave and work this rally as the Incident Commander.
58. At a subsequent public rally held on November 24, 2013, in support of the Second Amendment to the U.S. Constitution guaranteeing a citizen's right to bear arms, and North Carolina's law allowing the open display and carrying of firearms, at which it was known that multiply firearms would be present, Chief Anderson allowed a Sergeant to act as the Incident Commander. Plaintiff was not scheduled for FMLA leave on the date of this rally.
59. Upon the completion by Lt. Byrd of all the FMLA leave to which he was entitled in the current 12 month period, Defendants have assigned to Lt. Byrd an increasing number of work assignments, special projects and other duties which are in excess of his normal and required duties, and in excess of such assignments, projects and duties as are normally assigned to a Lieutenant in his position. The Defendants have not made similar levels of assignments to other Lieutenants or other employees who are similarly

situated to Plaintiff. The number and extent of these additional assignments, projects and duties adversely affect Plaintiff and will require him to work extra hours. They are punitive in intent and retaliatory in nature. In addition, Defendants have changed Plaintiff work schedule in a manner that will make it impossible for him to fulfill all of the extra duties placed on him and maintain proper supervision of the patrol and other operational units under his control.

60. On October 28, 2013, Chief Anderson sent a Memorandum to all Police Personnel informing them of the official six "Planning Areas" to be studied and addressed as part of the "Strategic Operating Plan Process" which the Chief had mentioned in his response to Plaintiff's grievance. This Process was directed by the Asheville City Council and Manager as part of the Council's response to the investigation conducted by the City Manager as set out in paragraph 41 above. One of the six areas identified was "Planning Area 3 – Communications". As he had done specifically to Plaintiff in response to Plaintiff's grievance, Anderson encouraged personnel to engage in the planning process, stating, in part:

"Phase II presents you with a unique opportunity to volunteer to participate on one of the above Planning Area teams that meets your interest or expertise. As a member of a Planning team, you will assist with creating and working on strategies that will be used in developing and implementing the team's goals and objectives."

We are excited to have this opportunity to construct a shared vision for our department's future. Thank you for all you have done, and will do, to contribute to this important process."

61. Plaintiff requested he be appointed to serve on Planning Area 3 – Communications."
62. Plaintiff was not selected by the Chief to serve on "Planning Area 3 – Communications" nor was Plaintiff placed on any of the other five Planning Areas.
63. Each of the three Lieutenants who had previously participated in making public statements expressing concern about the management and direction of the Department requested to be assigned to a different Planning Area team – none were selected by the Chief to serve on a team.

64. By contrast, Captain Stony Gonce was placed in charge of the team assigned to "Leadership", Captain Chris Reece-Young was placed in charge of the team assigned to "Communications," and Captain Timothy Splain was placed in charge of the team assigned to "Organizational Structure."
65. As set out above, both Captain Splain and Young have been involved in incidents of retaliation and discrimination complained of herein, and, upon information and belief, Captain Gonce was removed from certain supervisory duties following the investigation into activities by Captain Gonce and Chief Anderson as set out in paragraph 41 above.

FIRST CAUSE OF ACTION –
VIOLATION OF TITLE VII

66. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 65 above.
67. Defendants engaged in retaliation against Lt. Byrd in the terms, conditions and privileges of his employment because of his wife's opposition to illegal discriminatory actions within the Department and because of his own activities in opposition to illegal discrimination within the Department.
68. Defendants' actions as alleged herein violate the provisions of Title VII, 42 U.S.C.S. § 2000e *et. seq.*
69. As a result of these illegal, discriminatory and retaliatory actions by the Defendants, Plaintiff has been harmed in the terms, conditions and privileges of his employment in that false, misleading, adverse and derogatory material has been placed in his personnel file, and his ability to properly carry out the responsibilities of his position as a Lieutenant with the Asheville Police Department has been harmed and compromised.
70. As a further proximate result of Defendants' actions as alleged herein, Lt. Byrd has suffered inconvenience, mental anguish, loss of enjoyment of life, humiliation and other non-pecuniary losses.

**SECOND CAUSE OF ACTION –
DEFAMATION PER SE**

71. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 65 above.
72. William Anderson and Chris Reece-Young, acting in their official roles as the Chief of Police and Captain and on behalf of the Defendants, falsely and maliciously composed and published the defamatory statements concerning Plaintiff in Plaintiff's profession as set out in paragraphs 35, 36, 37 and 40 above.
73. Defendants statements were false, malicious and libelous, were not privileged, and were made with the intention to injure Plaintiff in Plaintiff's good name and standing in Plaintiff's profession and career as a law enforcement officer, and to cause a belief that Plaintiff was incompetent to discharge the duties and practices of that profession and career. By reason of the publication of these libels, Plaintiff has been injured in his good name and credit and his professional reputation and standing as a law enforcement officer, and has been stigmatized, all of which will work greatly to Plaintiff's injury in his career and profession, including his chances of continued promotion and opportunities for future employment within law enforcement.
74. Plaintiff has sustained the general damages in that Plaintiff, as a direct or proximate result of Defendants' defamatory publications, has been defamed in his profession in an amount in excess of \$75,000.00

**THIRD CAUSE OF ACTION-
DEFAMATION PER QUOD**

75. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 65 above.
76. Additionally, or in the alternative to the Second Cause of Action, William Anderson and Chris Reece-Young, acting in their official roles as Chief of Police and Captain, and on behalf of the Defendants, falsely and maliciously composed and published the defamatory statements concerning Plaintiff in Plaintiff's profession as set out in paragraphs 35, 36, 37 and 40 above.

77. Defendants' statements were false, malicious and libelous, and were made with the intention to injure Plaintiff in Plaintiff's good name and standing in Plaintiff's profession and career as a law enforcement officer, and to cause a belief that Plaintiff was incompetent to discharge the duties and practices of that profession and career. By reason of the publication of these libels, Plaintiff has been injured in his good name and credit and his professional reputation and standing as a law enforcement officer, has been stigmatized, and has been held to public contempt and ridicule, all of which will work greatly to Plaintiff's injury in his career and profession, including his chances of continued promotion and opportunities for future employment within law enforcement and otherwise.
78. Plaintiff has sustained special damages in that Plaintiff, as a direct or proximate result of Defendants' defamatory statements and publications, has been harmed in an unknown sum at this time, but upon information and believe, in excess of \$10,000, due to lost opportunities for secondary employment in the field of criminal justice instruction and training.

**FOURTH CAUSE OF ACTION –
INTERFERENCE WITH FMLA RIGHTS AND ENTITLEMENTS**

79. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 65 above
80. Defendant is an "employer" as that term is defined in 29 U.S.C. § 2611 (4).
81. Plaintiff is an "eligible employee" as that term is defined in 29 U.S.C. § 2611 (2).
82. Plaintiff was entitled to 12 weeks of leave upon the birth of child pursuant to the provisions of 29 U.S.C. § 2612.
83. Defendant has interfered with Plaintiff's right to such leave in violation of 29 U.S.C. § 2612 (a) (1).

WHEREFORE, the plaintiff prays this Court for the following relief:

1. That the Court issue an Order directing the Defendants to remove all adverse material as identified herein from Plaintiff's Personnel File, remove the extra duties and assignments placed on Plaintiff, and enjoining the Defendants from engaging in any further instances of retaliation against the Plaintiff;
2. That the Court award sufficient damages to compensate plaintiff for his inconvenience, mental anguish, loss of enjoyment of life, humiliation and other non-pecuniary losses caused by defendant's retaliatory and discriminatory practices;
3. That this Court award Plaintiff any lost leave time, sick time, wages or other privileges of employment caused by Defendants' actions;
4. That this Court award exemplary or punitive damages as allowed by Title VII, 42 U.S.C.S. § 2000-e *et. seq.*
5. That this Court award Plaintiff all general damages incurred by him due to the defamatory statements of the Defendants;
6. That this Court award Plaintiff all special damages incurred by him due to the defamatory statements of the Defendants;
7. That this Court issue an Order enjoining the Defendants from any interference with Plaintiff's exercise of his rights and entitlements under 26 U.S.C. § 2610 *et seq.*;
8. That this Court award Plaintiff damages equal to the following for any violation of 26 U.S.C. § 2615: any wages, salary, employment benefits, or other compensation denied or lost to Plaintiff by reason of the violation; or if no wages, salary, employment benefits, or other compensation have been denied or lost to Plaintiff, any actual monetary losses sustained by the Plaintiff as a direct result of the violation, up to a sum equal to 12 weeks of wages or salary for the employee; the interest on the amounts described above calculated at the prevailing rate; and an additional amount as liquidated damages equal to the sum of the amounts awarded herein.
9. That this Court award Plaintiff his reasonable attorney fees and costs incurred in this action as provided in 42 U.S.C. § 2000e-5 and 26 U.S.C. § 2615, or any other applicable provision of law;

10. For such other or further relief as this court shall deem just and appropriate

**AND, WHEREUPON, PLAINTIFF DEMANDS A TRIAL BY JURY,
PURSUANT TO RULE 38 OF THE FEDERAL RULES OF CIVIL
PROCEDURE**

This the 14th day of January, 2014.

**ADAMS HENDON CARSON CROW &
SAENGER, P.A.**

s/ John C Hunter

John C. Hunter

NC Bar No.: 13197

72 Patton Ave.

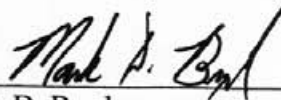
Asheville, NC 28801

(828) 252-7381

Attorneys for Plaintiff

VERIFICATION

I verify that I am the Plaintiff in the foregoing First Amended Complaint, that I have read the contents thereof, and that the statements therein are true and accurate of my own personal knowledge, except for those statements or allegations made upon information and belief, and as to those statements, I believe them to be true.

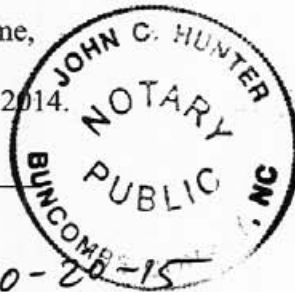


Mark D. Byrd

Sworn to and verified before me,

This the 14th day of January, 2014.


Notary Public



My Commission Expires: 10-20-15

CERTIFICATE OF SERVICE

I certify that I served the attached First Amended Complaint on all Defendants to this action by U.S. Mail, First Class Postage paid, and addressed as follows:

Asheville Police Department
c/o Chief William J. Anderson, Chief of Police
100 Court Plaza
Asheville, NC 28801
PO Box 7148
Asheville, NC 28802

City of Asheville
c/o Gary Jackson, City Manager
70 Court Plaza
Asheville, NC 28801
PO Box 7148
Asheville, NC 28802

This the 17th day of January, 2014.

**ADAMS HENDON CARSON CROW &
SAENGER, P.A.**

s/ John C Hunter

John C. Hunter

NC Bar No.: 13197

72 Patton Ave.

Asheville, NC 28801

(828) 252-7381

Attorneys for Plaintiff