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IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

BRADLEY L. SWEENEY,

Plaintiff-Appellant,

vs.

CITY OF DECATUR,

Defendant-Appellee.

Appeal from the Circuit Court of Macon County, Illinois
Sixth Judicial Circuit, Case No. 2016-L-18

The Honorable A. G. Webber, Judge Presiding

**BRIEF OF
PLAINTIFF-APPELLANT**

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NATURE OF THE CASE

This appeal arises out of the trial court's dismissal with prejudice of Plaintiff Bradley L. Sweeney's amended complaint for retaliatory discharge. (Vol. I, C6-13; A-1). Sweeney's two-count amended complaint alleged a common law claim for retaliatory discharge in Count I, and a statutory claim under the Illinois Whistleblower Act in Count II. (Vol. V, C933-964; A-9).

Plaintiff Sweeney was chief of police for the City of Decatur until February 4, 2016, when he was terminated by the Decatur City Manager. (Vol. I, C933, C938; A-9-14). In Count I, Sweeney alleged that he was terminated for stating his opposition as a citizen of the city manager's proposal for an additional tax; for refusing to speak publicly in support of the tax; and for disclosing to the city manager his belief that the manager's own personal use of police department property was a violation of law and police regulations. (Vol. V, C933-940; A-9-16). In Count II, Sweeney's statutory claim is based on allegations that he was terminated in retaliation for his disclosure to his government employer that he believed the employer's conduct was improper and a violation of law. (Vol. V, C933-942; A-9-18).

The Defendant, City of Decatur, filed a second combined Section 2-615 and Section 2-619 motion to dismiss Sweeney's amended complaint. (Vol. V, C988-1004). On June 7, 2016, the circuit court granted Defendant's Section 2-615 motion and dismissed Sweeney's entire case with prejudice. (Vol. I, C6-13; A-1-8). This appeal followed. (Vol. V, C1022-1031; A-48).

This appeal involves the question as to whether Sweeney's amended complaint states one or more causes of action, and includes interpretation of the Illinois Whistleblower Act.

JURISDICTIONAL STATEMENT

This is an appeal under Supreme Court Rule 301 from a final judgment. The circuit court below entered a final judgment on the pleadings in favor of Defendant City of Decatur on June 7, 2016. (Vol. I, C6-13; A-1). This appeal was filed within thirty days thereafter, on June 30, 2016. (Vol. I, C13; Vol. V, C1022-1031; A-48).

ISSUES PRESENTED FOR REVIEW

I. Whether Section 15(b) of the Illinois Whistleblower Act requires that the whistleblower disclose suspected law violations to “a disinterested party with independent investigative powers?”

II. Whether Plaintiff’s claim under Section 15 of the Whistleblower Act requires both disclosure of a suspected law violation and a “refusal to participate” in the actions deemed to be a violation of law?

III. Whether the trial court erred by failing to construe Plaintiff Sweeney’s allegations as true and in a light most favorable to him as the non-moving party, as illustrated by the circuit court’s statements below:

a. The court mischaracterized Plaintiff’s allegations about his opposition to local tax increases as if Sweeney caused “a heated staff meeting,” “forcefully disagreed,” “disagree vociferously,” used “robust speech,” and told his boss “where to go,” when the complaint does not make such allegations.

b. The court erroneously stated that, “Sweeney does not allege explicitly his speech at the staff meeting or implied failure to publicly support a motor fuel tax as the reason for his termination,” when paragraph 29 of the Amended Complaint clearly makes this allegation.

c. The circuit court order says, “the gist of Sweeney’s common law claim are set forth in paragraphs 19 through 23,” and

this completely ignores Sweeney's allegations at paragraphs 7 through 10 and 27 through 30 of the Amended Complaint, which are alleged as part of his common law retaliation claim.

IV. Whether the trial court erred by misinterpreting the decision in *Barr v. Kelso-Burnett Co.*, 106 Ill. 2d 520 (1985) as eliminating free speech protection for government employees in Illinois who allege that their government employer retaliated against them for speaking out as a citizen?

STATUTES INVOLVED

Illinois Whistleblower Act, 740 ILCS 174/1, et seq., and specifically:

Sec. 15(b). Retaliation for certain disclosures prohibited. (b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

Sec. 20. Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act.

STATEMENT OF FACTS

I. Procedural Facts.

Plaintiff Sweeney filed a two-count complaint for retaliatory discharge against Gleason as City Manager and against the City of Decatur on February 16, 2016. (Vol. I, C15-41). After a hearing on a Combined Section 2-615 and Section 2-619 motion to dismiss, the trial court granted the Section 2-615 motion with leave to amend. (Vol. I, C5). Sweeney filed an amended complaint on April 22, 2016. (Vol V, C933-964; A-9). Count I of the amended complaint alleges a common law claim for retaliatory discharge, and Count II alleges a claim for wrongful discharge under the Illinois Whistleblower Act. (Vol V, C933-964; A-9). Gleason was dropped as a defendant in the amended complaint pursuant to the prevailing case law. (Vol. I, C7; Vol. I, R58-59).

On May 6, 2016, defendant filed another combined Section 2-615 and Section 2-619 motion to dismiss, and it made arguments similar to its earlier motion. (Vol. I, C6; Vol. V, C988-1004). On May 26, 2016, the second motion to dismiss was argued, and on June 7, 2016, the trial court made an extended docket entry order dismissing Sweeney's amended complaint with prejudice. (Vol. I, C6-13; A-1). Within the time permitted for appeal, Sweeney filed his Notice of Appeal and Certificate of Service on June 30, 2016. (Vol. I, C13; Vol. V, C1022-1031; A-48). The record of proceedings and common law record were prepared and the Circuit Clerk's Certificate in Lieu of the Record was filed on August 30, 2016. (Vol. I, C1).

II. Substantive Facts.

The pertinent substantive facts are outlined in Sweeney's Amended Complaint. (Vol. V, C933-964; A-9) and in his Affidavit. (Vol. I, C130-135; A-42). Plaintiff Bradley L. Sweeney was a twenty plus-year veteran of the Decatur Police Department when on January 3, 2015, he was appointed as the Decatur Chief of Police. (Vol. V, C933; A-9). Tim Gleason was appointed as the Decatur City Manager on March 23, 2015. (Vol. V, C933; A-9). After Sweeney disclosed to Gleason his belief that Gleason's personal use of the police department resources was improper, and after his opposition to Gleason's new tax proposal, Sweeney was fired by Gleason on February 4, 2016. (Vol. V, C938; A-14 ¶ 24).

The trial court's order of June 7, 2016 contains the following statements which are significant for this appeal. (Vol. I, C6-13; A-2).

a. "This Court will examine Sweeney's claims solely in light of the City's Section 5/2615 Motion; in other words accepting all of Sweeney's allegations as true, does Illinois case law recognize that he has a claim against the City?" (Vol. I, C7; A-4).

b. "Other than raising the matter of the St. Louis Airport transportation directly with Gleason, Sweeney does not plead that he reported the matter to any government or law enforcement agency." (Vol. I, C9; A-4).

c. “. . .Sweeney does not allege he disclosed his belief the transportation of Gleason to the St. Louis Airport was a violation of law, rule, or regulation to anyone other than Gleason.” (Vol. I, C9; A-4).

d. “. . . disclosing to an alleged wrongdoer his own wrongdoing, and to no one else, would obviate the entire purpose of the Act and celebrate form over substance. This Court agrees with the City's argument. Paragraph 15(b) of the Act clearly contemplates disclosure to a disinterested party with independent investigative powers. Any other interpretation would render the Act an effective nullity.” (Vol. I, C10; A-5).

e. “Sweeney does not allege any reason or circumstance which could have prevented him from disclosing his belief a law, rule, or regulation was being violated to any other agency.” (Vol. I, C10; A-1).

f. “A second problem exists for Sweeney if he is to be protected from discharge under the provisions of the Act. Sweeney has failed to allege he refused to participate in the activity he deemed to be a violation of law.” (Vol. I, C10; A-5).

g. “Case law is clear that Whistleblower Act protection is available only to employees who REFUSE to participate in the alleged violation of law.” (Vol. I, C10; A-5).

h. “Furthermore, the Act protects employees who complain to a government agency about an activity that the employee reasonably

believes constitutes a violation of state or federal law, rule or regulation. 740 ILCS 174/15 (West 2004). Thus "refusing" means refusing; it does not mean "complaining" or "questioning" as Sardiga would have us believe. . . . As seen in the quoted language above, SARDIGA explicitly applies to both Paragraph 15 and Paragraph 20 of the Act. Failure to explicitly allege a refusal to participate in the alleged illegal activity is fatal to a claim for protection under the Act, and warrants dismissal pursuant to Section 5/2615." (Vol. I, C11; A-6).

i. "The gist of Sweeney's common law claim are set forth in Paragraph 19 through 23 in Count I of his Amended Complaint. These paragraphs describe a heated senior staff meeting attended by Sweeney, Gleason, and other City employees. Sweeney pleads he forcefully disagreed with Gleason concerning the motor fuel tax and stated his refusal to publically support it. . . . Moreover, Sweeney's public policy argument also fails. While it is inarguable robust free speech is a keystone of American democracy, it is not an unfettered license to declaim all things at all times to all audiences. Specifically, as the City points, our Supreme Court has declined to extend the right of free speech "into those rights which are applicable to the employer employee relationship." BARR v. KELSO-BARNETT CO., 106 Ill.2d 520, 528 (1985). In plain language, BARR tells us you can't walk up to your boss, tell him where to go, and always expect to keep your job (particularly in

the case of an at will employee.) Neither case law nor this Court's understanding of the public policy (free speech) support Sweeney's claim for common law retaliatory discharge as pleaded by him in his Amended Complaint.” (Vol. I, C12-13; A-7-8). (Emphasis added.)

j. “Here, the speech alleged to have actually occurred was in a closed staff meeting where Sweeney alleges very robust speech took place by both him and Gleason. Sweeney calls this Court's attention to no cases that generally hold an at will employee is privileged to disagree vociferously with his employer on a matter of the employers' policy preference and enjoy immunity from consequences.” (Vol. I, C12; A-7). (Emphasis added.)

k. “Sweeney does not allege explicitly his speech at the staff meeting or implied failure to publically support a motor fuel tax as the reason for his termination.” (Vol. I, C12; A-7).

Paragraph 26 of Sweeney’s amended complaint alleges that his personnel file contains no documentation to support a termination for alleged insubordination by him. (Vol. V, C938; A-14 ¶ 26).

STANDARD OF REVIEW

The standard of review here is *de novo* because the trial court dismissed Plaintiff's case with prejudice on Defendant's Section 2-615 Motion to Dismiss. *Nationwide Advantage Mortgage Co. v Ortiz*, 2012 IL 112755 (1st Dist.) *De novo* review does not require the appellate court to defer to the trial court's judgment or reasoning. *People v. Vincent*, 226 Ill. 2d 1 (2007). This review is completely independent of the trial court's decision, and here the reviewing court performs the same analysis as the trial court. *Khan v. BDO Seidman, LLP*, 408 Ill.App. 564, 578 (2011).

"A cause of action should not be dismissed pursuant to a section 2-615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009); *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008); and *Kindle v. Tennis*, 409 Ill. App.3d 1138 (5th Dist. 2011); and *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 86-87 (1996).

The scope of Section 2-615 motions is limited to challenging the legal sufficiency of the complaint. *Napleton*, *supra*, at 305. The question presented is whether the allegations in the complaint, when viewed as true and in a light most favorable to plaintiff, are sufficient to state a cause of action. *Barowiec v. Gateway 2000, Inc.*, 209 Ill 2d 376, 382 (2004).

Motions under Section 2-615 may not be supported by reference to any facts or exhibits that are not alleged or attached to the complaint. *Scott*

Wetzel Servs. V. Regard, 271 Ill. App. 3d 478, 480-81 (1st Dist. 1995). A claimant need only show a possibility of recovery, not an absolute right to recovery to survive a Section 2-615 motion. *Platson v. NSM America, Inc*, 322 Ill. App. 3d 13, 143 (2nd Dist. 2001).

ARGUMENT

I. Section 15(b) of the Illinois Whistleblower Act only requires disclosure of suspected law violations to government or law enforcement.

The circuit court said Plaintiff Sweeney’s disclosure of a suspected law violation by his government supervisor to that supervisor “would obviate the entire purpose of the Whistleblower Act.” This statement implies that the entire or sole purpose of the Whistleblower Act is to promote reporting of suspected law violations to independent government or law enforcement agencies. This is opposite the holding in the only Appellate Court decision on point. *Brame v. City of North Chicago*, 2011 Ill. App. 2d, 100760. The Act’s primary purpose of protecting whistleblowers is satisfied by protecting a government employee from retaliation for disclosing to his supervisor suspected wrongdoing by the supervisor. As indicated in the *Brame* decision, this is consistent with the plain meaning of the Act. *Id.* at ¶ 12.

According to the drafters of the Act, the primary purpose of the Act is to protect employees who report suspected wrongdoing by providing them a statutory cause of action for retaliatory discharge. Ill. H.R. Trans. 2003, Reg. Sess. No. 63. “The purpose of the Whistleblower Act is to protect statutorily defined employees who report violations of state or federal laws, rules, or regulations. . .” *Larsen v. Provena Hospitals*, 2015 Ill. App. 140255 (4th Dist.) p. 47, citing *Sutherland v. Norfolk Southern Ry. Co.*, 356 Ill. App. 3d 620, 627 (2005). The only Illinois decision directly on point holds that a disclosure to

one's employer satisfies the Act if the employer is a government or law enforcement agency.

Brame v. City of North Chicago, 2011 Ill. App. 2d, 100760, is cited in the circuit court's order, and it illustrates that a government employee who reports suspected wrongful conduct by another employee of the government employer states a cause of action under the Act. In reaching this decision, the *Brame* court interpreted the Act according to the "plain meaning" of its provisions. *Id.* at ¶ 3.

The *Brame* decision is based on the "plain language of the Act." *Id.* at ¶ 3. The following statements from *Brame* interpret the "plain meaning" of Section 15 of the Act:

"We hold that the plain language of the Act supports such a cause of action and that no exceptions apply if the government or law-enforcement agency is also the employer." *Id.* at ¶ 3;

"It is not that a municipal employee like the plaintiff could not have reported to his own governmental employer or that a municipal employee must report to an outside source; the statute requires an employee only to report to a government or law enforcement agency, and no exceptions apply if a government or law-enforcement agency is also the employer." *Id.* at ¶ 12.

Brame also supports that a government employee can state a claim if he discloses suspected law violations to his government employer. The Appellate Court in *Brame* said no exceptions apply to the plain statutory provisions. In other words, it does not matter that the government supervisor's own wrongful conduct is reported because the primary purpose of

the Act is to protect the employee from retaliation by the employer. As indicated by the *Brame* decision, it is not necessary to report to an independent person or agency, so long as the disclosure is to a government or law enforcement agency. *Id.* Here, Sweeney reported the conduct to the Decatur City Manager, who had ultimate control over the police department. *See* Sweeney Affidavit, ¶ 10 (Vol. I, C133; A-45 ¶ 10) and Chapter 13 of City Code of Decatur (Vol. I, C77.)

The *Brame* court did not discuss our circuit court's stated concern that the investigation of conduct could be frustrated if the alleged wrongful conduct is reported only to the individual supervisor suspected of wrongdoing. However, arguably the reporting of suspected law violations to a non-suspected supervisor for the same government or law enforcement employer could lead to less investigation and follow-up. Common sense suggests that because an employer is usually responsible for the actions of its employees, this could certainly dampen an employer's enthusiasm for investigating one of its employees. However, promotion of independent investigations is not the main purpose of the Act.

The main purpose of the Whistleblower Act is to protect employees like Sweeney from retaliation. When the plain language of Section 15(b) is followed, Sweeney's disclosure to his sole government supervisor meets the disclosure requirement of the Act. The investigation of suspected unlawful conduct is also promoted if the government employer's supervisor properly

responds even if the supervisor is the employee suspected of unlawful conduct.

The circuit court erred in construing the statute against its plain meaning, and contrary to *Brame*.¹ This conclusion by the court is reversible error where the result was a Section 2-615 dismissal of Sweeney's complaint with prejudice.

The Appellate Court has repeatedly held that it has no power to change or deviate from the plain language of the statutes. *Seeman v. Wes Kochel*, No. 3-15-0640, 2016 Ill. App. LEXIS 627 (App. Ct. Sep. 19, 2016) ¶24, citing *Albee v. City of Bloomington*, 365 Ill. App. 3d 526, 528 (4th Dist. 2006). This Court's decision in *Albee v. City of Bloomington* interpreted the Public Employee Disability Act according to the plain meaning of the statutory provision. The *Albee* decision includes the following regarding interpretation of statutes:

¹ The trial court also stated that plaintiff "Sweeney does not allege any reason or circumstance which could have prevented his belief a law, rule or regulation was being violated to another agency." (Vol. I, C10; A-1). However, there is no requirement to report to an outside government or law enforcement agency if government is the employer according to the plain meaning of the Act and the holding in *Brame*. Plaintiff Sweeney did allege at paragraph 37 of his Amended Complaint that his "sole supervisor" was the City Manager to whom he was required to report according to police department policy and the Decatur City Code. The reasonable inference from this allegation is that Sweeney communicated to Gleason his belief that the conduct was improper and a violation of law because he was required to report to Gleason as city manager. Gleason was designated as his sole supervising authority. However, once again the circuit court did not view this allegation in a light favorable to Sweeney.

“In interpreting the statute, we must ascertain and give effect to the true intent and meaning of the legislature. *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189 (1990). The best evidence of the legislature’s intent is the language of the statute and, where the language is clear and unambiguous, this court is bound by the plain meaning. *Kraft, Inc.* at 189.”

Id. at 528. Here, Sweeney disclosed to his government employer information about what he believed was improper or unlawful activity. This comports with the plain meaning of Section 15(b) of the Act and the *Brame* decision. The circuit court’s additional requirement of disclosure to a disinterested government or law enforcement agency is reversible error.

II. Plaintiff’s Section 15 Whistleblower Act claim only requires allegation of facts supporting plaintiff’s “disclosure” of a suspected violation of law.

After concluding as a matter of law that Sweeney’s complaint failed because he did not allege a report to government personnel other than his sole supervisor Gleason, the trial court said: “A second problem exists for Sweeney if he is to be protected from discharge under the provisions of the Act: Sweeney has failed to allege he refused to participate in the activity he deemed to be a violation of law.” (Vol. I, C10; A-5). The circuit court then cited *Sardiga v. Northern Trust Co.*, 409 Ill.App.3d 56, 62 (2011) in support of this legal conclusion. However, the *Sardiga* decision does not support the lower court’s interpretation of Section 15(b) of the Act.

The *Sardiga* case involved a non-government employer and a claim under the Section 20 “refusal to participate” provision. The lower court read

the *Sardiga* decision completely out of context. The circuit court order says the Whistleblower Act requires both “disclosure” of suspected unlawful activity and a “refusal to participate,” contrary to the *Sardiga* decision. The *Sardiga* court discussed the separate and distinct Section 15 disclosure requirement in support of its conclusion that Sardiga’s claim under Section 20 “refusal to participate” provision required more than a complaint or “disclosure” to his non-governmental employer.²

On appeal, Sardiga argued that “refusal to participate” should be interpreted as including reporting and objecting or complaining about wrongful conduct. The Appellate Court found, based on the plain meaning of Sections 15(b) and 20, that reporting or disclosing wrongful conduct was a totally separate concept. The court stated that Section 15 deals specifically and exclusively with “disclosure” of wrongful conduct where the Act requires communication to a government or law enforcement agency. *Id.* at 62.

² Sardiga was a private, non-governmental employee who neither disclosed suspected wrongdoing to a government or law enforcement agency under Section 15, nor refused to participate under Section 20. Under these Sections of the Act, Sardiga could have a claim if he refused to participate or if he reported improper conduct to a government or law enforcement agency. Sardiga did participate, based on his own pleading. He argued that reporting his opposition to the wrongdoing to his employer satisfied the Section 20 refusal to participate requirement; but his employer was not a government or law enforcement agency. The Appellate Court in *Sardiga* referenced the separate Section 15 disclosure requirement only to explain why disclosure and refusal to participate are distinct claims under the Act.

The following statement from the *Sardiga* decision leaves no doubt that it does not support the circuit court’s conclusion that Plaintiff Sweeney was required to allege both “disclosure” and a “refusal to participate:”

“The Act protects employees who call attention in one of two specific ways to illegal activities carried out by their employer. It protects employees who either contact a government agency to report the activity or refuse to participate in that activity. An employee who does not perform one of the specifically enumerated actions under the Act cannot qualify for its protections.” (Emphasis added.)

Id. at 62.

Apparently conflating Section 15 and Section 20 of the Act, the circuit court below added a “refusal to participate requirement” to Section 15(b) of the Whistleblower Act despite the above holding in *Sardiga* and rationale of the *Brame* decision. The very specific holding in *Brame* is, “the statute requires an employee only to report to a government or law enforcement agency, and no exceptions apply if a government or law enforcement agency is also the employer.” (emphasis added.) *Brame*, at ¶ 12. Here, as in *Brame*, the government employee (Sweeney) disclosed to his government supervisor his belief that the city manager’s own conduct was a violation of Illinois law. And like *Sardiga*, that reporting alone satisfies the elements of the Act and provides protection to Sweeney.

The *Brame* and *Sardiga* decisions uphold the “plain meaning” of the Act in deciding issues on appeal. *Sardiga*, *supra*, at 61-63. Unfortunately, the

lower court added reporting and refusal requirements that are not contained in the statutory language. This is also reversible error.

III. The trial court failed to construe Sweeney's allegations in a manner most favorable to him as the non-moving party.

Although the trial court acknowledged its obligation to accept all of Sweeney's allegations as true it did not state the companion obligation to view Plaintiff Sweeney's allegations in a light most favorable to him, as required. (Vol. I, C7; A-1). *Barowiec v. Gateway 2000*, 209 Ill.2d 376, 821 (2004). The circuit court's order patently shows that it misread some of Sweeney's allegations and mischaracterized others in dismissing Sweeney's complaint with prejudice. This accumulation of errors demonstrates that the circuit court failed to view Sweeney's allegations as true and most favorable to him as required. The ultimate question for the trial court was whether Plaintiff Sweeney's allegations were sufficient to state a cause of action when deemed true and viewed in a light most favorable to him as the non-moving party. *Id.* at 382. Given the high legal threshold for dismissal with prejudice under Section 2-615, Sweeney clearly was prejudiced by the circuit court's failure to give accurate and favorable consideration to his allegations. Three examples of the circuit court's erroneous view of Sweeney's allegations stand out.

A. The court misread or misconstrued Plaintiff's complaint as alleging (1) "a heated senior staff meeting," (2) that Sweeney "forcefully disagreed with Gleason," (3) that Sweeney alleges "robust

speech took place by both him and Gleason,” and (4) that Sweeney walked up to his boss and “told him where to go.” (Vol. I C12-13; A-7-8).

A motion to dismiss under Section 2-615 admits all well-pled allegations and reasonable inferences are to be drawn from the facts alleged. *Anderson v. Anchor Organization for Health Maintenance*, 274 Ill.App.3d 1001, 1012 (1993). Despite this clear mandate, the circuit court’s order shows that it failed to view Plaintiff Sweeney’s allegations in a favorable light; and it even mischaracterized some of Sweeney’s allegations in ways that disfavored him.

The circuit court held that in Illinois there is no enforceable right to free speech in employment relationships. Ultimately, the court concluded that as an “at will employee” Sweeney could not ever allege a free speech right because he had no right to ever disagree with the city manager. (Vol. I, C13; A-8). Without any factual basis from Sweeney’s complaint and affidavit, the trial court viewed Sweeney’s allegations as depicting forceful disagreements and insubordination.³ Instead of inferring that Plaintiff Sweeney simply stated his objections to the city manager as alleged, the

³ The trial court’s docket entry order describes Plaintiff Sweeney as if he “forcefully disagreed,” “vociferously disagreed,” and “told the city manager, where to go.” (Vol. I, C12-13, A-7-8). Sweeney’s allegations do not contain any statements that would suggest he was forceful, aggressive, or told the city manager where to go.

court's order implies that Sweeney's objections were rude, disrespectful, and insubordinate. (Vol. 1, C12-13; A-7-8).

The circuit court in effect decided a fact question on defendant's Section 2-615 motion to dismiss. This is especially hard to explain because the court actually acknowledged that whether Sweeney was insubordinate is a question of fact not to be decided on a Section 2-615 motion to dismiss:

“Insubordination may provide a nonpretextual basis for termination of an employee who may otherwise be protected by the Act, **but this presents a factual question to be determined by the trier of facts.** COLLINS v. BARTLETT PARK DISTRICT, 2013 Ill.App (2d) 130006.” (Emphasis added.)

(Vol. I, C7; A-1). Despite this correct statement of the law, the circuit court decided this issue anyway. Contrary to its order, Plaintiff Sweeney's amended complaint (A-9-41) and his affidavit (A-42-47) offer no support for the court's negative characterization of Sweeney's conduct or attitude toward City Manager Gleason. Sweeney's affidavit specifically denies that he was “inappropriate, rude, disrespectful and insubordinate.” (Vol. I, C130; A-42). It was, therefore, improper for the circuit court to in effect determine that Sweeney was insubordinate. As a matter of law, the court below was required to view Sweeney's allegations and statements as true and construe them most favorably to him for purposes of the Section 2-615 motion to dismiss. The circuit court did just the opposite.

B. The trial court erroneously stated that “Sweeney does not allege explicitly his speech . . . as the reason for his termination,” when this allegation is patently a part of paragraph 29 of the complaint.

The misreading of Sweeney’s allegation here is obvious. Sweeney explicitly alleged at paragraph 29 of his amended complaint that his actual and constructive speech was protected from retaliation by his government employer; and he alleged that it was the reason for his termination along with his whistleblowing activity. (Vol. V, C939; A-15).

“29. Sweeney’s termination from employment with the City was in retaliation for the following protected conduct by Sweeney:

a. Sweeney’s disclosure regarding Gleason’s personal use of a Decatur police car and uniformed officer;

b. Sweeney’s refusal to make a public statement at the City Council meeting supporting Gleason’s proposed motor fuel tax; and

c. Sweeney’s February 2, 2016 statement in opposition to increasing taxes when he believed other sources of income were available to the City.”

(Vol. V, C939; A-15).

By claiming Sweeney did not explicitly plead that “his speech at the staff meeting or failure to publicly support a motor fuel tax as the reason for his termination,” the circuit court avoided a legal determination as to whether Sweeney’s actual and constructive speech qualifies as a proper basis for a common law retaliatory discharge claim. This and the court’s erroneous

holding that the *Barr* decision eliminates free speech in all employment relationships, preempted this decision.

As a matter of law, the facts alleged by Sweeney sustain his common law claim that Illinois public policy favoring protection of free speech against government infringement was violated by his termination for actual and constructive speech opposing additional taxes. The facts alleged here and the most recent U.S. Supreme Court decision on point support Sweeney's claim. *Lane v. Franks*, 57 U.S. slip op. (2014) (holding that governmental employee speech on matters of public concern is protected). Other U. S. Supreme Court decisions regarding free speech for government employees show an evolution of the law on this point during the past 30 years.

In *Connick v. Myers*, 461 U.S. 138 (1983), the U. S. Supreme Court held that at will public employees cannot generally be discharged for speech on matters of public concern. To determine whether a public employee like Sweeney "spoke as a citizen on a matter of public concern, the Court examines the content, form, and context of a given statement as revealed by the whole record." *Shefcik v. Village of Calumet Park*, 532 F.Supp.2d 965, 974 (N.D. Ill. 2007). Tax increases are a matter of "public concern," but this is a question of law for the Court. *Rankin v. McPherson*, 483 U.S. 378 (1987).

In *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006), the Court discussed facts which supported the need for government employers to control certain speech by their employees. The *Garcetti* decision, however,

does not support Sweeney’s dismissal because Garcetti’s speech was directly related to the plaintiff’s work and workplace. The narrow *Garcetti* decision in 2014 was expanded and explained by the Supreme Court’s unanimous decision in *Lane v. Franks*, 57 U.S. slip op. (2014). In *Lane*, the Supreme Court clarified that speech by government employees on matters of public concern is protected if the speech itself is outside the scope of the employee’s ordinary job responsibilities, even if it is speech made while acting as a public employee. *Id.* at 8 and 10. The Court said:

“The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.”

Id. at 13. *Lane* illustrates that if the public employee’s speech was on a matter of public concern and otherwise constitutionally protected, the ultimate question is whether the government had adequate justification for terminating the employee based on interference with the operation of the government. *Id.* at 15-16.

In the case at bar, the speech at issue concerns taxation, which is a topic outside the scope of Sweeney’s job duties. (Vol. V, C937; A-13 ¶ 20). On February 2, 2016, Gleason ejected Sweeney from a staff meeting immediately after Sweeney stated his personal objection to a further tax. (Vol. V, C938; A-14 ¶¶ 22-23). Two days later, Sweeney was fired when Gleason handed him a letter which said only: “Effective immediately your employment with the City of Decatur is terminated.” (Vol. V, C938, ¶ 24, Ex 4; A-28-29).

The circuit court implied that Sweeney was insubordinate, but there is no support for this in Sweeney's personnel record, his affidavit, or his amended complaint. (Vol. I, C13, C130; Vol. V, C937-939; A-9-18, 42-47, ¶¶ 19-23). And, there is no allegation or evidence in the record that Sweeney's refusal to make public statements, or his speech opposing further taxes, interfered with the operation of city government. The Court's mischaracterization of Sweeney's allegations implies this adverse finding by the court, even though it acknowledged at the outset that this was a fact question for a jury. (Vol. I, C12-13; A-7-8).

Tax increases are of grave concern to all citizens, and under the *Lane* decision, this "clearly mandated public interest" requires defendants to make a "stronger showing of government interests" to overcome free speech protection for Sweeney. *Id.* at 16. In short, Sweeney's allegations satisfy the threshold requirement to be considered speech entitled to protection from government abridgement.

C. The circuit court ignored Sweeney's allegations of "whistleblowing" at paragraphs 7 - 10 and 28 - 30 of the amended complaint in support of his claim for retaliatory discharge.

The circuit court inexplicably failed to consider paragraphs 7 - 10 and 28 - 30 of Sweeney's amended complaint as part of his common law retaliation claim. These paragraphs allege a common law whistleblower report of improper or unlawful activity. These whistleblower allegations are

alleged as a potential factual basis for Sweeney’s common law claim, and they are incorporated as part of Sweeney’s claim in paragraph 29 of the amended complaint. (Vol. V, C939; A-15 ¶ 29). Despite these specific allegations, the circuit court said “the gist of Sweeney’s common law claims are set forth in Paragraphs 19 through 23 in Count I of his Amended Complaint.” (Vol. I, C12-13; A-7-8). It appears the circuit court did not consider these common law whistleblower allegations.

That the circuit court’s order did not mention Sweeney’s Whistleblower allegations in paragraphs 7 - 10 of his pleading as part of Sweeney’s common law retaliation claim is again difficult to understand because they are specifically included in paragraph 29. These allegations alone, or in combination with Sweeney’s allegations in paragraph 19 – 23, support his common law claim. This is another example of the court’s failure to consider plaintiff Sweeney’s allegations as true and most favorable to him.

IV. The trial court misinterpreted the holding in *Barr v. Kelso-Burnett Co.* as eliminating freedom of speech for government employees in Illinois.

The circuit court relied on an inaccurate reading of *Barr v. Kelso-Burnett Co.* to support its holding that in Illinois there is no free speech protection in an employment relationship as a matter of law. Presumably, the court declared this even if government retaliates against an employee for exercising protected speech. (Vol. I, C13; A-8). *Barr v. Kelso-Burnett Co.*, 106 Ill.2d 520 (1985). The *Barr* decision does not contravene the Illinois or U.S.

Constitution to permit the government to punish an employee (or anyone) for exercising free speech. *Barr* involved only private employment, where there has never been a protected right to free speech. *Id.*

Citing the *Barr* decision, the trial court said the Illinois Supreme Court, “has declined to extend the right of free speech” to employment relationships. (Vol. 1, C13; A-8). In making this statement, the circuit court ignored that *Barr* involved private employment only. It also ignored that the *Barr* decision repeatedly confirmed that free speech is protected from government action.

Barr does indicate there is no Illinois public policy supporting free speech protection in private employment relationships. *Id.* at 527-528. But, the *Barr* decision contains the following statement which implies that free speech still applies to infringement by government in Illinois:

“It is well established that the constitutional guarantee of free speech is only a guarantee against abridgement by the government, Federal or State; the Constitution does not provide protection or redress against private individuals or corporations which seek to abridge the free expression of others.”

Barr, supra, 106 Ill.2d 520, at 526.

Ultimately, the *Barr* decision is pertinent in this case because it stands for the proposition that free speech rights protect Illinois citizens from government infringement. *Id.* at 526-527. In *Barr*, the Illinois Supreme Court has confirmed that free speech in the context of employment could only apply to government employees. *Id.* at 528. The Supreme Court ultimately

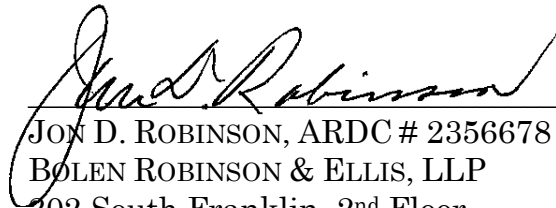
concluded: “The public policy that is mandated by the cited provisions is that the power of government, not private individuals, be restricted.” *Id.* The Court in *Barr* did not, however, decline to extend free speech protection to government employment relationships, as stated by the circuit court. This too is a reversible error leading to the improper dismissal of Sweeney’s case.

CONCLUSION

For the reasons stated above, the trial court's June 7, 2016 order dismissing plaintiff Sweeney's amended complaint with prejudice should be reversed. The court below made numerous errors in interpreting the statute and case law. It also misread plaintiff's amended complaint. The errors, both individually and collectively, warrant reversal.

Plaintiff respectfully requests that this Court (1) reverse the circuit court order which granted defendant's 2-615 motion to dismiss with prejudice, and (2) remand this case for completion of discovery and for trial on the merits of plaintiff's claims.

Respectfully submitted,

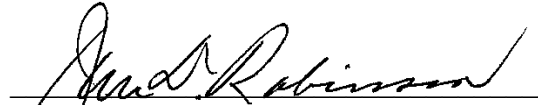
A handwritten signature in black ink, appearing to read "Jon D. Robinson", is written over a horizontal line.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 31 pages.



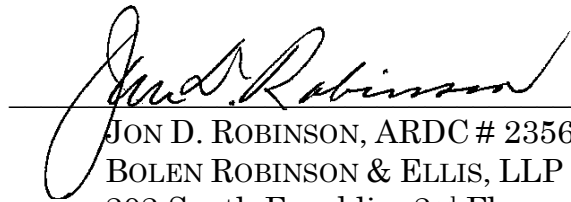
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I, Jon D. Robinson, an attorney, hereby certify that I caused three copies of the Brief of Plaintiff-Appellant to be deposited in the mail postage prepaid, to counsel for the Defendant-Appellee on October 4, 2016 at 5:00 p.m.

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No. 4-16-0492

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

BRADLEY L. SWEENEY,

Plaintiff-Appellant,

vs.

CITY OF DECATUR,

Defendant-Appellee.

Appeal from the Circuit Court of Macon County, Illinois
Sixth Judicial Circuit, Case No. 2016-L-18

The Honorable A. G. Webber, Judge Presiding

APPENDIX

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ORAL ARGUMENT REQUESTED

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[illegible]

WAUKEGAN PARK DISTRICT, 237 Ill.2d 111, 116-117 (2008) with leave to	AGW
replead. On April 27, 2016, Sweeney filed his Amended Complaint which	AGW
did not name Gleason as a party Defendant and did not seek relief	AGW
against him. This Court, for the purposes of the City's pending Motion	AGW
to Dismiss, will consider Sweeney's claims against Gleason abandoned.	AGW
On May 6, 2016, the City filed its Motion to Dismiss Sweeney's Amended	AGW
Complaint, again pursuant to Section 5/2-619.1. Arguments were heard	AGW
on May 26, 2016, and this Court took the matter under advisement. Both	AGW
sides have filed voluminous documents in support of Sweeney's	AGW
Complaints and the City's Motions to Dismiss. Obviously most, if not	AGW
all, of these documents are addressed to the City's Section 5/2-619	AGW
Motion. This Court will not, and need not, reach that motion. A large	AGW
number of those documents concern back-and-forth accusations and	AGW
denials of Sweeney's alleged insubordinate conduct toward Gleason.	AGW
Insubordination may provide a non-pretextual basis for termination of	AGW
an employee who may otherwise be protected by the Act, but this	AGW
presents a factual question to be determined by the trier of facts.	AGW
COLLINS v. BARTLETT PARK DISTRICT, 2013 Ill.App (2d) 130006. This	AGW
Court will examine Sweeney's claims solely in light of the City's	AGW
Section 5/2-615 Motion; in other words accepting all of Sweeney's	AGW
allegations as true, does Illinois case law recognize that he has a	AGW
claim against the City? It is not disputed that as Chief of Police,	AGW
Sweeney was an "at will" employee of the City. In Illinois an at will	AGW
employee is defined as "one who serves at the employer's will, and the	AGW
employer may discharge such an employee for any reason or no reason."	AGW
TURNER v. MEMORIAL MEDICAL CENTER, 233 Ill.2d 494, 500 (2009) Here, at	AGW
argument Sweeney conceded he is not a party to any employment contract	AGW
with the City, or any collective bargaining agreement, and is not	AGW
claiming any special protected status under federal or state	AGW
anti-discrimination statutes or regulations (nor is any such claim	AGW
alleged in Sweeney's Amended Complaint). For this reason, contrary to	AGW
some public perception, the City needed no "just cause" to terminate	AGW
Sweeney's employment as Chief of Police. This right to terminate an at	AGW
will employee is subject to some narrowly defined exceptions. Sweeney,	AGW
as an at will employee was thus subject to termination as Chief of	AGW

Police at any time by the City "for any reason or no reason" unless he	AGW
could find protection either under the terms of the Whistleblower Act	AGW
or some other "narrowly drawn" public policy exception. (See TURNER p.	AGW
507) In regard to the Whistleblower Act, Sweeney alleges in his	AGW
Amended Complaint that on May 4, 2015, Gleason "told" or "ordered"	AGW
Sweeney to provide to him a police car and to driver to drive him to	AGW
the St. Louis, Missouri airport, and in response Sweeney alleges he	AGW
stated to Gleason this would be "improper" but ultimately	AGW
"involuntarily" allowed the transportation to take place. As stated in	AGW
Sweeney's Complaint:	AGW
7. On or about May 4, 2015, City Manager	AGW
Gleason told Sweeney to provide a police care and	AGW
uniformed officer to drive him to the St. Louis Airport	AGW
so he could catch a plane for a vacation after the	AGW
Decatur "State of the City" breakfast, which was to be	AGW
held on May 7, 2015. Gleason indicated he was short	AGW
on time to catch the flight, and said he thought "a	AGW
police car would get him there on time," the obvious	AGW
implication being that a police car could drive in excess	AGW
of the speed limit without being stopped. In response,	AGW
Sweeney reported to Gleason that this personal use of	AGW
public resources would be improper. At that point,	AGW
Gleason "ordered" Police Chief Sweeney to have the	AGW
police car waiting at the Decatur Civic Center on May 7	AGW
to transport Gleason to St. Louis Airport for his vacation	AGW
trip to California.	AGW
8. After City Manager Gleason ordered Chief Sweeney	AGW
to provide a police car and driver to him for his	AGW
transportation to the St. Louis Airport, Sweeney discussed	AGW
this order with them Deputy Chief Jim Getz prior to May 7,	AGW
2015. Jim Getz also agreed that Gleason's personal use and	AGW
benefit of the police car and drive was improper, but	AGW
ultimately Getz volunteered to drive Gleason to the airport	AGW
in his police vehicle on May 7, 2015.	AGW
9. In response to City Manager Gleason's order, on May	AGW

7, 2015, then Deputy Chief Jim Getz, who was on duty at the	AGW
time, drove Gleason to the St. Louis airport in his police	AGW
vehicle. Office Getz was taken out of service to the public	AGW
for at least five hours on that day. Sweeney involuntarily	AGW
allowed but did not order Gleason's personal use of the	AGW
police resources.	AGW
In an affidavit attached to his Amended Complaint, Sweeney further	AGW
avers:	AGW
9. I deny the claims of paragraph nine (9) of	AGW
Gleason's affidavit. I did not volunteer to have	AGW
Gleason drive to St. Louis. When he told me to provide	AGW
a police car and uniformed driver to the St. Louis Airport,	AGW
I told him I believed it would be improper. Gleason	AGW
immediately overruled me and stated that he was	AGW
"ordering" me to have a police car and driver waiting	AGW
at the Decatur Civic Center to transport him to	AGW
St. Louis on May 7.	AGW
Other than raising the matter of the St. Louis Airport transportation	AGW
directly with Gleason, Sweeney does not plead that he reported the	AGW
matter to any government or law enforcement agency. In his Amended	AGW
Complaint, Sweeney relies on Paragraph 15(b) of the Act which states:	AGW
(b) An employer may not retaliate against an	AGW
employee for disclosing information to a government	AGW
or law enforcement agency, where the employee	AGW
has reasonable cause to believe that the information	AGW
discloses a violation of a State or federal law, rule or	AGW
regulation	AGW
As noted above, Sweeney does not allege he disclosed his belief the	AGW
transportation of Gleason to the St. Louis Airport was a violation of	AGW
law, rule, or regulation to anyone other than Gleason. Sweeney argues	AGW
disclosure of the alleged violation to the alleged violator is	AGW
adequate under the Act. No reported case authority seems to have dealt	AGW
with this question. Closest on point is <i>BRAME v. CITY OF NORTH</i>	AGW
<i>CHICAGO</i> , 2011 IL.App. (2d) 100760 where a police officer reported the	AGW
alleged misconduct of the police chief to the city's mayor, who was	AGW

described as having "general supervision and control" of the police	AGW
department. In BRAME, the mayor was not accused of wrongdoing; and it	AGW
was held the plaintiff's report to the city's mayor was adequate for	AGW
purposes of the Act, even if the report was to "one's own employer who	AGW
also happens to be a government or law enforcement agency." Here,	AGW
Sweeney argues City ordinances give Gleason, as City Manager, overall	AGW
supervisory authority over the police department and hence this	AGW
situation is analogous to BRAME. The City counters that BRAME is not	AGW
analogous, and such an interpretation of the Act would lead to an	AGW
absurd result, since disclosing to an alleged wrongdoer his own	AGW
wrongdoing, and to no one else, would obviate the entire purpose of	AGW
the Act and celebrate form over substance. This Court agrees with the	AGW
City's argument. Paragraph 15(b) of the Act clearly contemplates	AGW
disclosure to a disinterested party with independent investigative	AGW
powers. Any other interpretation would render the Act an effective	AGW
nullity. Sweeney does not allege any reason or circumstance which	AGW
could have prevented him from disclosing his belief a law, rule, or	AGW
regulation was being violated to any other agency. He does allege he	AGW
"discussed" the matter with another officer (who was also the driver	AGW
to St. Louis) but does not plead this was specifically a disclosure	AGW
under Paragraph 15(b) of the Act. Sweeney has not pleaded under the	AGW
plain language of the Act, or the authority of BRAME, adequate	AGW
disclosure of his alleged belief a violation of law occurred. A second	AGW
problem exists for Sweeney if he is to be protected from discharge	AGW
under the provisions of the Act. Sweeney has failed to allege he	AGW
refused to participate in the activity he deemed to be a violation of	AGW
law. Sweeney's Amended Complaint is quite vague on the point. It	AGW
recites (see above) he believed the use of the police vehicle was	AGW
"improper" and finally states that he "involuntarily allowed but did	AGW
not order" use of a police vehicle and driver to transport Gleason to	AGW
the St. Louis Airport. Case law is clear that Whistleblower Act	AGW
protection is available only to employees who REFUSE to participate in	AGW
the alleged violation of law. Mere complaint or questioning is	AGW
insufficient. As was stated in SARDIGA v. NORTHERN TRUST CO., 409	AGW
Ill.App.3d 56, 62 (2011):	AGW

Here, the language of the statute is unambiguous.	AGW
"Refusing to participate" means exactly what it	AGW
says: a plaintiff who participates in an activity that	AGW
would result in a violation of state or federal law,	AGW
rule, or regulation cannot claim recourse under the	AGW
Act 740 ILCS 174/20 (West 2004). Instead, the	AGW
plaintiff must actually refuse to participate. Black's	AGW
Law Dictionary defines "refusal" as "[t]he denial	AGW
or rejection of something offered or demanded."	AGW
Black's Law Dictionary 1394 (9th ed. 2009). Indeed,	AGW
the very title of section 20 "Retaliation for certain	AGW
refusal prohibited," suggests that not every	AGW
refusal qualifies for protection under the Act.	AGW
740 ILCS 174/20 (West 2004). Furthermore, the Act	AGW
protects employees who complain to a government	AGW
agency about an activity that the employee	AGW
reasonably believes constitutes a violation of state	AGW
or federal law, rule or regulation. 740 ILCS 174/15	AGW
(West 2004). Thus "refusing" means refusing; it	AGW
does not mean "complaining" or "questioning"	AGW
as Sardiga would have us believe.	AGW
Read most favorably to Sweeney, he alleges in his Amended Complaint	AGW
that he acquiesced, with complaint or reservations, to Gleason's use	AGW
of the police vehicle. He did not refuse to participate, much less	AGW
forbid officers under his command to participate. As seen in the	AGW
quoted language above, SARDIGA explicitly applies to both Paragraph 15	AGW
and Paragraph 20 of the Act. Failure to explicitly allege a refusal to	AGW
participate in the alleged illegal activity is fatal to a claim for	AGW
protection under the Act, and warrants dismissal pursuant to Section	AGW
5/2-615. See COLLINS v. BATLETT PARK DISTRICT, supra. Sweeney has	AGW
failed to state a claim under the Whistleblower Act. Sweeney also	AGW
alleges claim for common law retaliatory discharge. His Amended	AGW
Complaint alleges he refused Gleason's request that he, along with	AGW
other of the City' department heads, publically support a proposed	AGW
imposition of a motor fuel tax in Decatur. TURNER v. MEMORIAL MEDICAL	AGW

CENTER, supra, set forth the requirements for stating a claim for	AGW
retaliatory discharge:	AGW
To state a valid retaliatory discharge cause	AGW
of action, an employee must allege that (1)	AGW
the employer discharged the employee, (2)	AGW
in retaliation for the employee's activities,	AGW
and (3) that the discharge violates a clear	AGW
mandate of public policy. TURNER at p. 500	AGW
This "public policy" exception is to be defined by the Court and is to	AGW
be "narrowly drawn". TURNER at p. 507. The gist of Sweeney's common	AGW
law claim are set forth in Paragraph 19 through 23 in Count I of his	AGW
Amended Complaint. These paragraphs describe a heated senior staff	AGW
meeting attended by Sweeney, Gleason, and other City employees.	AGW
Sweeney pleads he forcefully disagreed with Gleason concerning the	AGW
motor fuel tax and stated his refusal to publically support it.	AGW
Sweeney alleges Gleason then ordered him to leave the meeting. This	AGW
took place on or about January 26, 2016. Sweeney does not go on to	AGW
plead if he made any statements to anyone for or against the proposed	AGW
motor fuel tax after the staff meeting. Sweeney then alleges on	AGW
February 4, 2016, he was called to Gleason's office and handed a	AGW
letter of termination from his employment by the City as Chief of	AGW
Police. Sweeney now argues that this course of events represents an	AGW
infringement of his First Amendment right of free speech and this in	AGW
turn represents a discharge in violation of a clear mandate of public	AGW
policy. Here, the speech alleged to have actually occurred was in a	AGW
closed staff meeting where Sweeney alleges very robust speech took	AGW
place by both him and Gleason. Sweeney calls this Court's attention to	AGW
no cases that generally hold an at will employee is privileged to	AGW
disagree vociferously with his employer on a matter of the employers'	AGW
policy preference and enjoy immunity from consequences. Sweeney does	AGW
not allege explicitly his speech at the staff meeting or implied	AGW
failure to publically support a motor fuel tax as the reason for his	AGW
termination. It is to be inferred, apparently, from their temporal	AGW
proximity. Again, by what is not pleaded, Sweeney invites this Court	AGW
to supply facts by implication which he has not, or cannot, plead.	AGW

This the Court cannot do. Moreover, Sweeney's public policy argument	AGW
also fails. While it is inarguable robust free speech is a keystone of	AGW
American democracy, it is not an unfettered license to declaim all	AGW
things at all times to all audiences. Specifically, as the City	AGW
points, our Supreme Court has declined to extend the right of free	AGW
speech "into those rights which are applicable to the employer -	AGW
employee relationship." BARR v. KELSO-BARNETT CO., 106 Ill.2d 520, 528	AGW
(1985). In plain language, BARR tells us you can't walk up to your	AGW
boss, tell him where to go, and always expect to keep your job	AGW
(particularly in the case of an at will employee.) Neither case law	AGW
nor this Court's understanding of the public policy (free speech)	AGW
support Sweeney's claim for common law retaliatory discharge as	AGW
pleaded by him in his Amended Complaint. Since this case has attracted	AGW
an understandable level of high public interest and comment and the	AGW
legal principles involved are easily misunderstood, especially given	AGW
the volume of materials made a part of the Court file by both parties,	AGW
it is important to state clearly what is being decided here. As is	AGW
typically the case, a senior manager such as Sweeney generally serves	AGW
at the pleasure of the most senior manager, here Gleason. It is not	AGW
now the job of this Court to determine if Sweeney discharged his	AGW
duties in an exemplary, adequate, or poor manner. The Chief of Police	AGW
in Decatur is an at will employee. In accepting this position, an	AGW
individual knowingly and voluntarily gives up any contractual job	AGW
protections that may exist at a lower rank. A Chief of Police may then	AGW
be discharged by the City at any time "for any reason or no reason."	AGW
The question here and now is whether or not after two attempts Sweeney	AGW
is able to allege sufficient facts to bring him under any exception to	AGW
the rules governing at will employment. He apparently cannot. For	AGW
these reasons, the City's Motion to Dismiss the Amended Complaint is	AGW
allowed with prejudice. Cause stricken. CLERK DIRECTED to send a copy	AGW
of this docket entry to attorneys of record.	AGW
-----	AGW

06/30/2016 Notice of Appeal with Certificate of Service filed. (cc)

07/01/2016 Circuit Clerk's Notice - to (Appellate Court) on file this date.

FILED

APR 22 2016

**LOIS A. DURBIN
CIRCUIT CLERK**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS**

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR,

Defendant.

No. 2016-L-18

VERIFIED AMENDED COMPLAINT

NOW COMES the Plaintiff, Bradley L. Sweeney, by and through his attorneys, Bolen Robinson & Ellis, LLP; and for his Amended Complaint against the Defendant, CITY OF DECATUR, he states:

**Count I
Common Law Retaliatory Discharge**

1. At all relevant times, the Plaintiff, Bradley L. Sweeney, and ("Sweeney") has been a resident of the County of Macon, State of Illinois.

2. At all relevant times, the Defendant, City of Decatur, ("City") was a corporation duly organized under the laws of the State of Illinois with its principal place of business in Macon County, Illinois.

3. On March 23, 2015, Tim Gleason, ("Gleason") became City Manager for Decatur, Illinois; and as such he was acting for and on behalf of the City at all times pertinent to this Amended Complaint.

4. As of January 3, 2015, Sweeney was appointed Police Chief for the City of Decatur, reporting directly to the City Manager. Sweeney was appointed by Gleason's predecessor, then-City Manager Ryan McCrady.

C933

5. Pursuant to the terms of his employment, Sweeney was to be paid an annual salary of \$125,000 plus benefits per Administrative Policy F-101.

6. Sweeney thereafter performed all the terms, conditions, and requirements of his position in a satisfactory and laudatory manner, as indicated by his Performance Evaluation Reports. A copy of Sweeney's most recent Performance Evaluation is attached as Exhibit 5.

7. On or about May 4, 2015, City Manager Gleason told Sweeney to provide a police car and uniformed officer to drive him to the St. Louis Airport so he could catch a plane for a vacation after the Decatur "State of the City" breakfast, which was to be held on May 7, 2015. Gleason indicated he was short on time to catch the flight, and said he thought "a police car would get him there on time," the obvious implication being that a police car could drive in excess of the speed limit without being stopped. In response, Sweeney reported to Gleason that this personal use of public resources would be improper. At that point, Gleason "ordered" Police Chief Sweeney to have the police car waiting at the Decatur Civic Center on May 7 to transport Gleason to the St. Louis Airport for his vacation trip to California.

8. After City Manager Gleason ordered Chief Sweeney to provide a police car and driver to him for his transportation to the St. Louis Airport, Sweeney discussed this order with then Deputy Chief Jim Getz prior to May 7, 2015. Jim Getz also agreed that Gleason's personal use and benefit of the police car and driver was improper, but ultimately Getz volunteered to drive Gleason to the airport in his police vehicle on May 7, 2015.

9. In response to City Manager Gleason's order, on May 7, 2015, then Deputy Chief Jim Getz, who was on duty at the time, drove Gleason to the St. Louis airport in his police vehicle. Officer Getz was taken out of service to the public for at least five hours on that day. Sweeney involuntarily allowed but did not order Gleason's personal use of the police resources.

10. It appears that the actions by Gleason violate one or more of the following local and state laws, policies, ordinances, regulations, and orders:

- a. Section 33-3(c) of the Illinois Criminal Code, the "Official Misconduct" statute, which provides that a public officer commits misconduct, a class 3 felony, when that public officer, acting in his official capacity and with the intent to obtain a personal advantage, performs an act in excess of his lawful authority. (720 ILCS 5/33-3(c)) (See Exhibit 1.);
- b. Decatur Police Department General Order 11-03 regarding the use of department vehicles outside the City limits, which provides in part, "under no circumstances, shall a departmental vehicle be used outside the city limits for personal errands or business." (See Exhibit 2.);
- c. Chapter 8 (Ethics) of the City Code of Decatur, Illinois, which provides "The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the City, is hereby prohibited." (See Exhibit 3.);
- d. The State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et seq.¹; and
- e. Article VIII, Section 1(a) of the Illinois Constitution, which provides that "public funds, property or credit shall be used only for public purposes."²

¹ City Code of Decatur, Illinois, at Chapter 8 (Ethics) incorporates the State officials and Employees Ethics Act, 5 ILCS 430/5-15 and 5 ILCS430/10-10 through 10-40. Gleason is also covered by the Act as an appointed Member of the Illinois Law Enforcement Training and Standards Board.

² The Illinois Supreme Court held that a violation of Article VIII, §1(a) of the Illinois Constitution can serve as a predicate unlawful act for the purposes of the official misconduct statute. *People v. Howard*, 320 Ill. Dec. 868 (2008).

11. Gleason has claimed in recent public statements that he was given permission by now-deceased Mayor McElroy to use a Decatur Police vehicle for his personal transportation to the St. Louis airport to catch a plane for his vacation. Whether or not this claim is true, Gleason is a Member of the Illinois Law Enforcement Training and Standards Board and a former Pekin Illinois Police Lieutenant, and as such, he knew or should have known that this personal use of public police property and an on-duty, uniformed officer was improper and perhaps a violation of Illinois law.

12. Sweeney was never contacted by Mayor McElroy regarding this incident; and prior to this lawsuit, Gleason never claimed to Sweeney that Mayor McElroy approved Gleason's personal use of public resources.

13. Sweeney did not voluntarily participate in Gleason's improper use of a police department vehicle and driver for his personal benefit. To the contrary, Sweeney was ordered to provide the car and driver by Gleason, who believes he has the authority as City Manager to overrule the Decatur Police Chief and established police department policies and orders, including the department's general order (Ex. 2) which prohibits taking police vehicles outside the City limits for any personal benefit.

14. Knowing that his personal use of a Decatur Police vehicle was improper and perhaps a violation of the law by a public official, Gleason should have declined to use the police vehicle for his personal use, even if it was offered by the Mayor as Gleason now claims.

15. Gleason has now admitted that he did not attempt to avoid his use of the police car and on-duty driver by investigating other flights which still would have arrived in California in time for his son's event on May 8, 2015.

16. After Gleason returned from California, during the week of May 11, 2015, Sweeney met privately with him at his office in the Decatur Civic Center. During this one-on-one meeting, Sweeney again disclosed to Gleason that his use of a police car and driver for his personal purposes was improper, and Sweeney indicated he was refusing to allow Gleason to ever again have the personal use and benefit of police department resources.

17. Although City Manager Gleason said he "understood" Sweeney's objection to his personal use of the police car and officer, in retrospect, it now appears City Manager Gleason resented being warned about his personal use of Police Department resources. Sweeney's relationship with Gleason was difficult thereafter.

18. Sweeney was away from his post as Police Chief from September 24, 2015 through January 4, 2016 on an approved leave while he attended the FBI National Academy and for a short vacation with his family after the FBI course.

19. On or about January 26, 2016, City Manager Gleason requested that Sweeney make a public statement at a Decatur City Council meeting to be held on February 1. Gleason told Sweeney he expected him to speak in support of a local motor fuel tax at the February 1 City Council meeting. At that time, Gleason was promoting his request for a new motor fuel tax which was then on the City Council agenda; and Sweeney believed Gleason wanted his statement as further support for the tax increase.

20. Matters of tax policy are outside the scope of Sweeney's job duties as Police Chief, which are set forth in Chapter 13 of the City Code.

21. Sweeney exercised his Constitutional right not to be forced by government to speak by immediately refusing to make the public statement requested by Gleason. Sweeney did not support a motor fuel tax for Decatur; and he refused to make a public statement he believed to be

false and not related to his duties as Chief of Police. Gleason responded with hostility, and he told Sweeney to leave his office.

22. On February 2, 2016, City Manager Gleason and other City department heads, including Sweeney, met at the Civic Center. During this meeting, Gleason requested input from those present. At his turn, Sweeney responded that there were other potential revenue sources for Decatur, and he exercised his Constitutional right to freely speak as a citizen in stating his public opposition to a further tax increase.

23. Gleason immediately became furious and ordered Sweeney to leave the staff meeting. Later, on February 2, and again on February 3, 2016, Gleason impliedly threatened Sweeney with loss of his job by asking him: "Do you know who you work for?" and "Do you want to keep your job as Police Chief?"

24. City Manager Gleason called Sweeney to his office on February 4, 2016. At that time, Gleason asked Sweeney to resign. When Sweeney refused to resign and stated that he had done nothing wrong, Sweeney was given the attached written notice of termination. (See Exhibit 4.)

25. Sweeney had devoted his entire professional life, more than twenty (20) years, to serving the people of Decatur in the Decatur Police Department, and he received consistent performance reviews of "Exceeds Standards," including in his final performance review of November 2014, which is attached. (See Exhibit 5.)

26. Sweeney obtained his personnel file on February, 11, 2016; and there is no documentation of any kind to support Sweeney's termination.

27. The Illinois Department of Employment Security found that Sweeney was fired by the City Manager due to a personal conflict between the two of them: "The City has indicated that

the dispute was personal and not related to [Sweeney's] employment." See the IDIS Determination letter attached as Exhibit 6.

28. At the times he objected to Gleason's use of the police vehicle and on-duty officer as driver, Sweeney had a good-faith belief that the City Manager's personal use of public resources violated the Decatur City Code and Illinois law.

29. Sweeney's termination from employment with the City was in retaliation for the following protected conduct by Sweeney:

- a. Sweeney's disclosure regarding Gleason's personal use of a Decatur police car and uniformed officer;
- b. Sweeney's refusal to make a public statement at the City Council meeting supporting Gleason's proposed motor fuel tax; and
- c. Sweeney's February 2, 2016 statement in opposition to increasing taxes when he believed other sources of income were available to the City.

30. Sweeney's retaliatory termination violates one or more of the following clear mandates of public policy: (1) enforcing the State's criminal code and ethics regulations, (2) the policy of furthering investigation of a crime within a police department, (3) preventing the private use of public resources, in violation of Article VIII(1)(a) of the Illinois Constitution, (4) protecting the First Amendment rights of public employees to speak on matters of public concern outside the scope of their job duties, and (5) protecting the First Amendment right of a public employees to not be coerced by their government employers into engaging in political speech.

31. Gleason has never reimbursed the City of Decatur for the fair and reasonable value of the City resources which Gleason used for his personal benefit.

32. As a direct and proximate result of the Defendant's retaliatory discharge of the Plaintiff, the Plaintiff has suffered damages, including, without limitation, lost income, benefits, emotional distress, and damage to his reputation; and loss of employment since February 4, 2016.

33. City Manager Gleason had actual knowledge of Sweeney's protected activities as described above, and Gleason's termination of Sweeney's employment with the City was a retaliatory response which binds the City as Defendant herein.

WHEREFORE, Plaintiff prays for judgment in his favor and against the Defendant for compensatory damages in excess of \$50,000, for reinstatement to his former post as Police Chief for the City of Decatur, and for such other and further relief as the court deems appropriate.

Count II Illinois Whistleblower Act

Plaintiff Sweeney repeats, realleges and incorporates by references Paragraphs 1-33 of this Complaint as Paragraphs 1-33 of this Count II, as though fully set forth herein.

34. Defendant City is an "Employer" as defined by the Illinois Whistleblower Act, 740 ILCS 174/5, as amended.

35. From on or about May 23, 1995 until February 4, 2016, Plaintiff Sweeney was an "Employee" of the City as defined by the Illinois Whistleblower Act, 740 ILCS 174/5, as amended.

36. Sweeney brings this claim for retaliatory discharge pursuant to 740 ILCS 174/15, which prohibits retaliation for disclosing what Sweeney had reasonable cause to believe was a violation of state or federal law.

37. Sweeney disclosed certain information to Gleason who, as City Manager, was his sole supervisor and authorized by Defendant City to receive such information on behalf of the City government.

38. Sweeney had reasonable cause to believe that the information disclosed to City Manager Gleason concerned violations of the Illinois Constitution, the Illinois Criminal Code, and certain state laws, rules, and ethics regulations.

39. Gleason, acting for and on behalf of the City in his capacity as City Manager, retaliated against Sweeney by terminating his employment because Sweeney disclosed information to Gleason, pursuant to 740 ILCS 174/15, when Sweeney had reasonable cause to believe that the information disclosed a violation of state law.

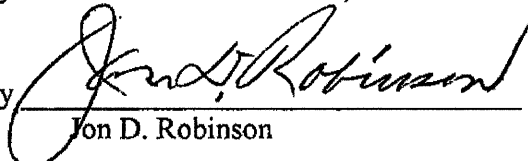
40. Defendant's retaliation against Sweeney violates 740 ILCS 174/15, which prohibits retaliation for these disclosures made to a government or law enforcement agency, being the City of Decatur.

WHEREFORE, the Plaintiff prays for judgment in his favor and against the Defendant, as follows:

- A. Reinstatement with the same seniority status Plaintiff would have had but for Defendant's violation of the Whistleblower Act;
- B. Back pay, with interest and penalties as permitted by statute;
- C. Compensation for reduction in Plaintiff's anticipated pension benefits;
- D. Compensation for litigation costs, expert witness fees, and reasonable attorneys' fees; and,
- E. For any other relief this Court deems just.

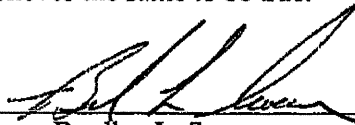
PLAINTIFF DEMANDS A TRIAL BY JURY.

BRADLEY L. SWEENEY, Plaintiff
By BOLEN ROBINSON & ELLIS, LLP

By 
Jon D. Robinson

VERIFICATION BY CERTIFICATION

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

A handwritten signature in black ink, appearing to read 'Bradley L. Sweeney', is written over a horizontal line.

Bradley L. Sweeney

JON D. ROBINSON
BOLEN ROBINSON & ELLIS, LLP
202 South Franklin, 2nd Floor
Decatur, Illinois 62523
Telephone: 217-429-4296
Fax: 217-329-0034
Email: jrobinson@brelaw.com

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR,

Defendant.

No. 2016-L-18

**AFFIDAVIT OF DAMAGES
IN COMPLIANCE WITH SUPREME COURT RULE 222**

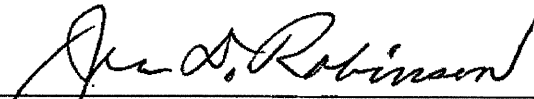
Jon D. Robinson being first duly sworn upon his oath, states and deposes as follows:

1. He is an adult, under no legal disability, with personal knowledge of the matters set forth herein, and if called to testify as to said matters, would testify competently to said matters; he is an attorney, licensed to practice law in the State of Illinois; and he has been so licensed since November 15, 1971.

2. He is a partner with BOLEN ROBINSON & ELLIS, LLP, the law firm retained by the Plaintiff, Bradley L. Sweeney, and he is authorized by the Plaintiff to provide this Affidavit in compliance with Rule 222(b) of the *Rules of the Supreme Court of Illinois*.

3. The Plaintiff seeks relief hereunder in an amount in excess of Fifty Thousand Dollars (\$50,000.00).

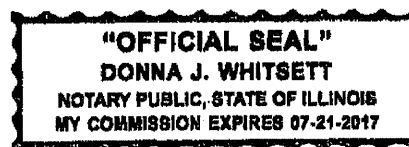
FURTHER AFFIANT SAITH NOT.


Jon D. Robinson

Subscribed and sworn to before me on this 22nd day of April, 2016.


Notary Public

JON D. ROBINSON
BOLEN ROBINSON & ELLIS, LLP
202 South Franklin, 2nd Floor
Decatur, Illinois 62523
Telephone: 217-429-4296
Fax: 217-329-0034
Email: jrobinson@brelaw.com



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L- 18

Exhibit 1
720 ILCS 5/33-3(c)

720 ILCS 5/33-3

Statutes current through Public Act 99-370, except for parts of acts 50, 78, 85, 132, 143, 152, 158, 180, 227-229, 233, 245, 270, 278, 316, 318, 331, 351, 352, and 355 of the 2015 Legislative Session

Illinois Compiled Statutes Annotated > **Chapter 720 CRIMINAL OFFENSES** > **CRIMINAL CODE** > **Criminal Code of 2012** > **Title III. Specific Offenses** > **Part E. Offenses Affecting Governmental Functions** > **Article 33. Official Misconduct**

720 ILCS 5/33-3 Official misconduct

- (a) A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:
 - (1) Intentionally or recklessly fails to perform any mandatory duty as required by law; or
 - (2) Knowingly performs an act which he knows he is forbidden by law to perform; or
 - (3) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
 - (4) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.
- (b) An employee of a law enforcement agency commits misconduct when he or she knowingly uses or communicates, directly or indirectly, information acquired in the course of employment, with the intent to obstruct, impede, or prevent the investigation, apprehension, or prosecution of any criminal offense or person. Nothing in this subsection (b) shall be construed to impose liability for communicating to a confidential resource, who is participating or aiding law enforcement, in an ongoing investigation.
- (c) A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.
- (d) For purposes of this Section, "special government agent" has the meaning ascribed to it in subsection (l) of Section 4A-101 of the Illinois Governmental Ethics Act [5 ILCS 420/4A-101].

History

P.A. 82-790; 94-338, § 5; 98-867, § 5.

Illinois Compiled Statutes Annotated
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L- 18

Exhibit 2
Decatur Police Department General Order 11-03

DECATUR POLICE DEPARTMENT GENERAL ORDER 11-03

SUBJECT:	USE OF DEPARTMENTAL VEHICLES OUTSIDE CITY LIMITS & TAKE HOME VEHICLES.		
EFFECTIVE DATE:	03/11/2011	NO. PAGES:	2
DISTRIBUTION:	All Personnel	RESCINDS:	03-13
INDEX AS:	Use of Departmental Vehicles; Outside City Limits; Take Home Cars; Departmental Vehicles; Driving Outside City Limits	REVIEW DATE:	Annually

POLICY

It shall be the general policy of The Decatur Police Department that no police vehicles; marked or unmarked, shall be driven outside the city limits. It is recognized that in the course of a work day or nature of assignment, there may occur certain circumstances that require or allow an employee to drive a departmental vehicle beyond the city limits. It is further recognized that due to the nature of an assignment or position, a vehicle may be assigned exclusively to a Law Enforcement Officer; referred to as "Take Home Vehicle".

PROCEDURE

I. EXCEPTIONS ALLOWING OPERATION OF DEPARTMENTAL VEHICLES OUTSIDE CITY LIMITS

A. Employees shall not drive or utilize departmental vehicles outside the city limits of Decatur, Illinois unless:

1. They are actively engaged in assisting another officer, whether it is of this department or an outside agency and then, only with the express prior permission of a supervisory officer;
2. They are engaged in a foot or vehicular pursuit normally referred to as "hot pursuit", or responding to an emergency situation based on mutual aid agreements.
3. They are going to or from authorized training that has received prior approval of the Chief of Police and City Manager, and for necessary travel during the course of that training;
4. Under the guidelines of City of Decatur Administrative Policy E-510, a department director may authorize an employee to take a vehicle home if the nature of his/her duties and responsibilities require the availability of a vehicle full time during and after normal work schedules.
 - a. The Chief of Police is the only authority to officially determine, and authorize a take home vehicle for an employee of the Decatur Police Department. The Chief will notify the City of Decatur Fleet Supervisor of individuals assigned and authorized to take vehicles home.
 - b. A take home vehicle will only be officially authorized for, used, and operated by a full-time Law Enforcement Officer; a paid city employee-MSC Fleet Technician is authorized to operate a marked or unmarked vehicle for the sole purpose of maintenance-repair issues.

c. In accordance with IRS Treasury regulations, full-time law enforcement officers authorized a take home vehicle, marked or unmarked, must utilize the vehicle incident to law enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of a unmarked or marked vehicle for vacation, recreation trips or personal use is not a qualified use under the IRS Treasury regulations and shall be a prohibited practice by any employee of the Agency authorized a take home vehicle.

5. They are subpoenaed to court or assigned to an investigation for which travel outside the city limits has been authorized by the Division Deputy Chief and the Chief of Police.

6. They are attending a business related meeting with approval of the Chief of Police.

7. They have been granted permission by their commanding officer in advance to leave the city. Any time permission is granted (outside the restrictions articulated below), the commanding officer shall so notify his Division's Deputy Chief and/or Chief of Police as soon as practical, or

8. They are going to or from a location no further than 3.0 miles outside the city limits for the sole purpose of taking their authorized meal break.

II. FURTHER RESTRICTIONS

A. Beyond the exceptions listed in 1, A, 6, above, under no circumstances, shall a departmental vehicle be used outside the city limits for personal errands or business.

B. Employees shall not be permitted to add attachments, or make alterations to city vehicles.

C. All existing rules and regulations governing the operation of departmental vehicles shall also apply when operating the vehicles outside the city limits.

BY ORDER OF:


Todd A. Walker
Interim Chief of Police

DISTRIBUTION: A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L- 18

Exhibit 3
Chapter 8 (Ethics)
City Code of Decatur

CHAPTER 8

ETHICS

(Adopted, Ordinance No. 2004-44, May 17, 2004)
Effective May 19, 2004

1. **ADOPTION.** The regulations of Sections 5-15 (5 ILCS 430/5-15) and Article 10 (5 ILCS 430/10-10 through 10-40) of the State Officials and Employees Ethics Act, 5 ILCS 430/1-1 et. seq., (hereinafter referred to as the "Act" in this Section) are hereby adopted by reference and made applicable to the officers and employees of the City to the extent required by 5 ILCS 430/70-5.

2. **GIFT ACCEPTANCE PROHIBITED.** The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the City, is hereby prohibited.

3. **GIFT OFFERING PROHIBITED.** The offering or making of gifts prohibited to be offered or made to an officer or employee of the City under the Act, is hereby prohibited.

4. **POLITICAL ACTIVITY PARTICIPATION PROHIBITED.** The participation in political activities prohibited under the Act, by any officer or employee of the City, is hereby prohibited.

5. **DEFINITIONS.** For purposes of this Chapter, the terms "officer" and "employee" shall be defined as set forth in 5 ILCS 430/70-5 (c).

6. **PENALTY.** The penalties for violations of this Chapter shall be the same as those penalties set forth in 5 ILCS 430/50-5 for similar violations of the Act.

7. **OTHER CODE REGULATIONS.** This Chapter does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of City officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Chapter, however, the provision of this Chapter shall prevail in accordance with provisions of 5 ILCS 430/70-5 (a).

8. **AMENDMENTS.** Any amendment to the Act that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the corporate authorities of the City.

9. **ILLINOIS SUPREME COURT ACTION.** (A) If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Chapter shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Chapter shall be deemed repealed without further action by the Corporate Authorities of the City if the Act is found unconstitutional by the Illinois Supreme Court.

(B) If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Chapter shall remain in full force and effect; however, that part of this Chapter relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Corporate Authorities of the City.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L-18

Exhibit 4
Sweeney Termination Letter



CITY OF DECATUR ILLINOIS

#1 GARY K. ANDERSON PLAZA

DECATUR, ILLINOIS 62523-1196

February 4th, 2016

Re: Termination of Employment

Mr. Sweeney,

Effective immediately your employment with the City of Decatur is terminated.

Respectfully,

A handwritten signature in dark ink, appearing to read "Tim Gleason", is written over the word "Respectfully".

Tim Gleason, City Manager

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

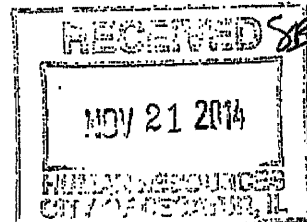
CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L-18

Exhibit 5
Performance Review - Nov. 2014

MANAGEMENT PERFORMANCE EVALUATION
CITY OF DECATUR, ILLINOIS



NAME Brad Sweeney TITLE Police Lieutenant
PERIOD 10/01/2014 - 09/30/2014 DUE DATE 11/07/2014

Section 1 - INSTRUCTIONS FOR COMPLETING EVALUATION FORM

Complete all items in Section 2-A (and, if applicable, 2-B) of the form using the following definitions.

Fully Fails to Meet Standard. Performance that is unacceptable for the position should be assigned this rating. An explanation of the rating must appear in the space provided for each criterion. Explain the degree of improvement needed. Show specific instances where possible.

Needs Improvement to Meet Standard. Performance is substandard, though not totally unsatisfactory. An explanation is required of the degree to which improvement is needed. Show specific instances where possible.

Meets Performance Standard. This rating indicates the employee is performing his or her duties as they should. The quality of performance is good; the employee maintains high performance standards for self and others under his or her supervision.

Exceeds Standard in Limited Aspects. This rating indicates performance above what is expected of a person in this classification. Though not required, an explanation of the rating should appear in the space provided for comments.

Exceeds Standard in Substantial Measure. This rating indicates performance of exceptional nature for a person in this classification. An explanation of the rating must appear in the space provided for comments.

Although you are encouraged to comment on all ratings you give, you are only required to comment on those that "fully fail to meet standard", "need improvement", and "exceed standard in substantial measure". To rate an employee's performance on Performance Measures 1 through 4 on the following page, please first review that person's job description. To rate performance on Measure 40, please review the City's Mission Statement at the "Mission" tab on the City's intranet site (<http://decweb01/>).

Sign and date the form as the "Rater". If someone other than the supervisor rated the employee, that individual should also sign in the appropriate place. Complete all sections as appropriate. Prior to presenting the evaluation to the employee, forward the completed form to the Department Director and await its return with signature. Department Directors, please forward all completed forms to the Human Resources Division, and review with employee only after the concurrence of Human Resources.

Performance Goals

Assigning major goals and objectives, projects, or special assignments is the supervisor's responsibility. Supervisors are to use them in the determination of the employee's performance at the conclusion of the rating period. The goals may be developed by the employee, the supervisor, or both. Midyear projects and special assignments do arise, which will, from time to time, take precedence over previously agreed upon goals and objectives. In those cases, revisions to the goals are appropriate and should also be mutually agreed upon.

The completed evaluation packet should therefore include a completed form 2-1-57 and any attachments generated in the evaluation process. If you have questions about the process, please contact the Human Resources Division.

**MANAGEMENT EMPLOYEE
PERFORMANCE EVALUATION
CITY OF DECATUR, ILLINOIS**

Section 2 – PERFORMANCE MEASURES

Please rate the employee on each of the following Performance Measures, using the associated Performance Standard for that measure. Use the following scale of 0 to 4 to rate the employee on each measure, where

- 0 = fully fails to meet performance standard
- 1 = needs improvement to meet standard
- 2 = meets performance standard
- 3 = exceeds standard in limited aspects
- 4 = exceeds standard in substantial measure

Please note that all ratings of 0, 1 and 4 require written justification for the rating.

Section 2-A: PERFORMANCE MEASURES - FOR ALL PERSONNEL				
#	Performance Measure	Performance Standard	Rating (0 - 4)	Rater's Justification (required for ratings of 0, 1 & 4)
01	Execution of Duties	Performs all assigned work of the approved position description for the job, as well as other assigned duties	4	Currently performs the duties that were once performed by both a Lieutenant and a Deputy Chief. Remains active in field operations by being the ACT Commander and Bike Patrol Coordinator.
02	Job Knowledge and Skills	Possesses the job skills and abilities described in the position description for the employee's position	4	Bachelors Degree from the University of Illinois. Experience in two of the three Divisions. Demonstrate a vast knowledge in the areas of Communications, budgets, internal affairs, and numerous administrative duties.
03	Quality of Work	Consistently provides work product that is of acceptable quality for the assignments given	4	Received compliments and praise from city legal on the quality of the formal interrogations and internal investigation. Monthly reports and day to day operations are of high quality.
04	Quantity of Work	Consistently provides the necessary quantity of work to provide service and fully complete assignments	4	Responsible for the Communications Center, hiring and recruiting, FOIA, internal affairs investigations, crime prevention, evidence, records, chaplain committee, anti-crime team and the bike patrol unit.
05	Interest in Position	Demonstrates by words and actions an enthusiasm for the position and a desire to undertake the work involved	4	Exhibits a positive attitude towards the missions and goals of the Department. Consistently seeks advancement within the organization.
06	Prioritizing Skills	Identifies work by criticality and time sensitivity, and is able to articulate reasons for that for each task	4	Monthly reports are always submitted on time. Numerous deadlines are kept without delays.
07	Problem Solving	Thinks through problems and job issues, and provides reasonable options for implementation	3	Extremely resourceful. Has developed a network of contacts within and outside the city government.
08	Efficiency	Produces negligible waste in using material, financial and human resources in the timely execution of duties	4	Extremely efficient, hands on supervisor that delegates a proper amount of work to maximize the efficiency of my Division. Ensures accuracy by all.
09	Technological Skills	Shows proficiency in the use of technology and information systems in the execution of duties	4	Exceptional technical skills. Utilizes numerous databases on a daily basis with no difficulty. RMS, SMS, CAD, PS data base, VMware, etc.

#	Performance Measure	Performance Standard	Rating (0 - 4)	Rater's Justification (required for ratings of 0, 1 & 4)
10	Time Usage and Scheduling Flexibility	Effectively manages work time to meet deadlines, and exhibits a willingness to modify schedule as needed	4	Willingly adjusts schedule to attend community walks, community issues, testing days, and worked long days to facilitate the move to the new building.
11	Expression of Ideas & Skill in Communicating	Demonstrates communication skills needed to effectively convey thoughts to others and to complete assignments	3	Holds monthly meetings in Division. Meets with supervisors daily. Available 24/7
12	Initiative	Consistently demonstrates initiative needed to start and complete work on time and on budget	4	Remains "gung-ho" about the profession. Operates within the limits of budget line items.
13	Judgment	Consistently exercises discernment in work matters which benefits the employer and the public	4	Offers opinion on personnel matters that are both positive and negative issues. Strongly supports the decision that is rendered.
14	Attitude	Exhibits positive interaction and cooperation with the public, customers and fellow employees	4	Extremely positive attitude. Creates harmony in the workplace. Respects others' values and workspace. Positive example to all.
15	Focus on Public Service	Demonstrates an orientation toward serving the public by consistently focusing on meeting the public's needs	4	Truly enjoys being active in the community. Participates in neighborhood meetings, walks, etc... Often attends city council meetings on own accord.
16	Goal Orientation	Identifies, articulates, undertakes and accomplishes tasks in a mission-oriented fashion	4	Supports, develops, and reaches goals that have been set.. Continually strives to do better each month, quarter, and year.
17	Team Approach	Raises legitimate matters with fellow employees and provides meaningful input in appropriate situations	3	Encourages team work by allowing staff members to take the lead on projects and implement projects. Ensures compliance with all work rules and that the product is completed timely and properly
18	Listening Skills	Clearly demonstrates an ability to absorb and reiterate others' positions and empathize with them	3	Strong communication skills. Is able to gain support from staff by listening to them.
19	Adherence to Policy and Rules	Complies with City policies in furthering City mandates, and actively references them when uncertain about them	4	Has thorough understanding of both the Department policy and the City's Administrative policy. Utilizes both while handling internal affairs matters. Often called upon to conduct additional research in this area.
20	Use and Care of City Property	Properly uses and maintains City property and equipment to complete assigned tasks and to maximize useful life	4	Very protective of the new facility. Demonstrates a need to maintain and care for the facility daily. Major player in the design, planning, and move into the new department.
21	Safety Compliance	Adheres to safety rules and requirements, and applies them consistently in the execution of duties	3	Not involved in a vehicular accident this past year. Represents the Department at the monthly City Safety meetings.
22	Observance of Leave Policies	Ensures that all leaves are taken in compliance with policy and departmental operating procedures	3	All holidays, vacations, sick leave, and FMLA leave taken by staff is approved well in advance.
23	Fair and Consistent Treatment	Applies fair and consistent treatment to others in all aspects of the job, without showing favoritism	4	Demands and expects the same level of productivity and professionalism from all members of staff.

#	Performance Measure	Performance Standard	Rating (0 - 4)	Rater's Justification (required for ratings of 0, 1 & 4)
24	Professional Development	Seeks to further City career by seizing opportunities for career education and advancement	4	Has tried for years to attend Northwestern's School of Police Staff & Command. Canceled twice due to low enrollment. Most recently applied for the FBI National Academy.
25	Orientation Toward Position	Maintains workplace appearance, environment and disposition appropriate for job held and interaction anticipated	4	Neat and professional in appearance. Office is tidy and squad car is clean inside and out.

Section 2-B: PERFORMANCE MEASURES - FOR SUPERVISORY PERSONNEL ONLY

26	Planning and Organizing	Effectively plans and organizes work, and anticipates and identifies potential issues and concerns	4	Establishes monthly, quarterly, and yearly goals for Division. Goals are aimed to facilitate the overall mission of the Department.
27	Leading and Coaching	Effectively guides others, inspires team work, negotiates means to meet goals, and resolves disputes	3	Leads by example. Will not ask staff to do anything he would not or have not done.
28	Issue Follow Through	Demonstrates the ability to pursue issues through problem identification, solving and resolution	4	Does not avoid or ignore problems. Identifies them and finds the best possible solutions in a timely manner. Always finishes tasks and assignments on time.
29	Decision Making Skill	Demonstrates an ability to act decisively and effectively in work matters after determining and weighing inputs	4	Very alert to making good decisions that are in the best interest of the Department and protects the City from unnecessary liability.
30	Support of Subordinates	Maintains good working relationships with subordinates to obtain desired work outcomes	3	Has a good working relationship with subordinates. Has groomed some of them for advancement within the Department.
31	Evaluating Subordinates	Routinely assesses, documents and provides feedback to subordinates regarding their performance	4	Subordinates evaluations are always completed fairly and timely. Proper documentation for all ratings.
32	Training of Employees	Ensures that subordinates attend all training programs required for continuing competency in their jobs	4	Ensures staff are current and up to date on hot topics in law enforcement by scheduling them for the needed training. Oversees all DPD training.
33	Budget and Project Management	Attends to budgetary controls, prepares budgets, and adheres to financial and budgeting policies	4	Directly involved in department budget. Has cut the operating budget for the communications center for the third straight year.
34	Policy Enforcement and Use of Corrective Action	Actively monitors subordinates' adherence to City policies and corrects deviations from them	4	When necessary, delivers shift counseling and progressive discipline to subordinates to correct misbehavior. Oversees and/or investigates all I/A investigations.
35	Safety Rules Enforcement	Ensures that all safety rules are followed in the execution of subordinates' duties and on-duty actions	3	Ensures staff has the needed safety equipment to properly do their tasks and assignments.
36	Preparation of Reports	Prepares, as required, reports and forms with clear and concise information for the reader's benefit	4	Monthly reports are always on time, neat, and easily read. Internal affairs investigations meet the required time lines.

#	Performance Measure	Performance Standard	Rating (0 - 4)	Rater's Justification (required for ratings of 0, 1 & 4)
37	Promotion of Equal Opportunity	Encourages workplace respect and equality among employees, monitors behavior and resolves issues	4	Does not allow abusive language or horseplay in the workplace. Works closely with EAP and other mechanisms to advance respect in the work place.
38	Acceptance & Advocacy of Policy Changes	Consistently shows support for changes in policy when they occur, and advocates for them with staff	4	Stays on top of the on-going changes within the Department, and ensure that policy accurately reflects the way we do business.
39	Service Orientation Support	Promotes an overarching philosophy of service to the public among those in subordinate positions	4	Supports the need to be transparent to the public. Fulfills FOIA requests and respond to inquires from the general public in a professional and timely fashion.
40	Commitment to City Mission	Shows by ongoing effort an orientation to achievement of the mission of the organization and officials	4	Very supportive of the Department's mission and strives to gain the public's confidence by providing strong leadership.

Section 3 – EMPLOYEE GOALS

Section 3-A – PROGRESS ON GOALS IN PERFORMANCE PERIOD: (refer to prior year evaluation for goals, and indicate progress in the area below) No specific goals established.

Section 3-B – GOALS FOR UPCOMING YEAR:
(list goals in area below)

1. Register for a higher level of training at the FBI National Academy.
2. Complete an accurate inventory register of my Division's assets.
3. Implement a strategy or incentive plan to reduce the number of officer involved accidents.

Section 4 - EMPLOYEE COMMENT

(use space below to provide comments)

Section 5 – SIGNATURES

Employee

Date:

Rater

Date:

Department Director

Date:

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager

Defendants.

No. 2016-L-18

Exhibit 6
IDES Determination Letter

Illinois Department of Employment Security

P.O. Box 19509
Springfield, IL 62794
Phone: (800) 244-5631 • TTY: (800) 244-5631
Fax: (217) 557-4913
www.ides.illinois.gov



BRADLEY L. SWEENEY
1424 W GROVE RD
DECATUR, IL 62521-9130

Date Mailed: 03/14/2016
Claimant ID: 5761897

Determination

(Este es un documento importante. Si usted necesita un intérprete, póngase en contacto con el Centro de Servicio al Reclamante al (800) 244-5631)

The following determination has been made in connection with the claim for unemployment insurance benefits.

Based on the issue included in this letter, you are eligible for benefits or wait week credit as long as you meet the eligibility requirements.

Wait week credit will be granted and/or benefit payment will be ordered for each week.

Please read each determination carefully as it may include benefit reductions.

Issue 001 602A - Misconduct

Allow Effective 02/07/2016 - 12/31/9999

Was the claimant discharged for misconduct connected with the work? The evidence shows the claimant was discharged from CITY OF DECATUR because of a dispute with his supervisor. The claimant was fired by the city manager due to a personal conflict between the two of them. The city has indicated that the dispute was personal and not related to the claimant's employment. Since the claimant's action, which resulted in his discharge was not a violation of a reasonable rule or policy of the employing unit, the claimant is not ineligible for benefits from 02/07/2016 in regard to this issue.

FOR INFORMATION REGARDING YOUR RIGHTS UNDER ILLINOIS' UNEMPLOYMENT INSURANCE ACT AND THE EXACT LANGUAGE OF THE ACT AND IDES RULES, PLEASE VISIT THE AGENCY'S WEBSITE AT www.ides.illinois.gov/UIRights.

FOR INFORMATION ON HOW TO OBTAIN FREE LEGAL SERVICES SEE IMPORTANT NOTICE BELOW.

If you require further details concerning the information in this letter, please contact the Agency at the phone number listed above.

Please see appeal rights listed below and additional information regarding this determination.

C962

001 602A - Misconduct - 820 ILCS 405/602A provides that an individual shall be ineligible for benefits for the weeks in which he has been discharged for misconduct connected with his work and, thereafter, until he has become re-employed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks. The term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit. The previous definition notwithstanding, "misconduct" shall include any of the following work-related circumstances: 1. Falsification of an employment application, or any other documentation provided to the employer, to obtain employment through subterfuge. 2. Failure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual. 3. Knowing, repeated violation of the attendance policies of the employer that are in compliance with State and federal law following a written warning for an attendance violation, unless the individual can demonstrate that he or she has made a reasonable effort to remedy the reason or reasons for the violations or that the reason or reasons for the violations were out of the individual's control. Attendance policies of the employer shall be reasonable and provided to the individual in writing, electronically, or via posting in the workplace. 4. Damaging the employer's property through conduct that is grossly negligent. 5. Refusal to obey an employer's reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act. 6. Consuming alcohol or illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner, on the employer's premises during working hours in violation of the employer's policies. 7. Reporting to work under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies. 8. Grossly negligent conduct endangering the safety of the individual or co-workers. For purposes of paragraphs 4 and 8, conduct is "grossly negligent" when the individual is, or reasonably should be, aware of a substantial risk that the conduct will result in the harm sought to be prevented and the conduct constitutes a substantial deviation from the standard of care a reasonable person would exercise in the situation. Nothing in paragraph 6 or 7 prohibits the lawful use of over-the-counter drug products as defined in Section 206 of the Illinois Controlled Substances Act, provided that the medication does not affect the safe performance of the employee's work duties.

If you disagree with this determination, you may complete and submit a request for reconsideration/appeal. A letter will suffice if you do not have an agency form. Your request must be filed with the Illinois Department of Employment Security within thirty (30) calendar days after the date this notice was mailed to you. If the last day for filing your request is a day that the Department is closed, the request may be filed on the next day the Department is open. Please file the request by mail or fax at the address or fax number listed above. Any request submitted by mail must bear a postmark date within the applicable time limit for filing. If additional information or assistance regarding the appeals process is needed, please contact the Agency at the phone number listed above.

If you file or have filed a request for reconsideration/appeal, continue to certify for benefits as long as you remain unemployed or until you are otherwise instructed, even though you will not receive benefits unless the appeal is decided in your favor.

Si no está de acuerdo con esta determinación, puede completar y presentar una solicitud de reconsideración / apelación. La apelación puede ser enviada por correo o fax a la Agencia, en la dirección o número de fax que aparece arriba. La apelación debe ser presentada dentro de los treinta (30) días a partir de la fecha de envío. Si la apelación se envía por correo, debe tener matasellos dentro de los treinta (30) días a partir de la fecha de envío. Si usted presenta una apelación, continuará certificando para beneficios mientras usted permanece desempleado.

Si su solicitud resulta en una apelación, una audiencia se llevará a cabo ante un árbitro que le dará la oportunidad de presentar pruebas. Se le notificará por adelantado de la hora y lugar de la audiencia.

Para obtener información adicional sobre sus derechos de apelación visite nuestra pagina de internet en www.ides.illinois.gov/UIRights.

BRADLEY L. SWEENEY

03/14/2016

Important Notice

IDES contracts with private law firms to provide limited free legal services (consultation and/or representation at IDES administrative hearings) to claimants and small employers who are eligible for this service. These independent law firms are not part of IDES. Representation at your hearing is not automatic and depends, in part, upon the facts in your case.

Note: A small employer is an employer which reported wages paid to less than twenty individuals, whether part time or full time, for each of any two of the four calendar quarters preceding the quarter in which its application for legal assistance is made.

If you are interested in this legal service, call the applicable telephone number right away after receiving a ruling against you or notice of an appeal. Any delay in calling could result in your not being able to obtain this service. Normal working hours are from 8:30 a.m. until 5:00p.m., Monday through Friday.

Claimants:**(SSN ending with 0-4)**

Toll-Free: (800) 884-6591

Out of State: (847) 991-9240

TTY: (866) 848-5609

(SSN ending with 5-9)

Toll-Free: (888) 430-1776

Phone: (847) 251-1776

TTY: (847) 251-6985

Small Employers:**(UI Acct. No. ending with 0-4)**

Toll-Free: (866) 641-4288

TTY: (312) 641-6403

(UI Acct. No. ending with 5-9)

Toll-Free: (877) 849-2007

TTY: (866) 802-8732

C964

FILED

APR 25 2016

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS**

**LOIS A. DURBIN
CIRCUIT CLERK**

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR,

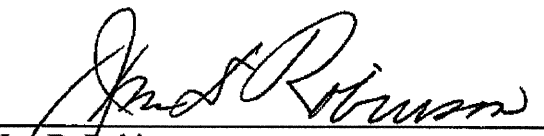
Defendant.

No. 2016-L-18

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that I emailed and mailed a true and exact copy of the Verified Amended Complaint filed in the above captioned case via electronic mail and by depositing same in the United States Mail at 5:00 p.m. properly addressed to the following this 25th day of April, 2016.

Jerrold H. Stocks jstocks@decatur.legal
Edward F. Flynn eflynn@decatur.legal
Featherstun Gaumer Postlewait et al
225 North Water Street, Suite 200
P.O. Box 1760
Decatur, IL 62525



Jon D. Robinson

JON D. ROBINSON
BOLEN ROBINSON & ELLIS, LLP
202 South Franklin, 2nd Floor
Decatur, Illinois 62523
Telephone: 217-429-4296
Fax: 217-329-0034
Email: jrobinson@brelaw.com

C965

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

FILED
APR 11 2016
LOIS A. DURBIN
CIRCUIT CLERK

BRADLEY L. SWEENEY,

Plaintiff,

vs.

CITY OF DECATUR, and TIM
GLEASON, City Manager,

Defendants.

No. 2016-L-18

AFFIDAVIT OF BRADLEY L. SWEENEY

I, Bradley L. Sweeney, being duly sworn, do hereby depose and state under oath as follows:

1. I am the Plaintiff in Macon County Cause No. 2016-L-18, and I make this Affidavit in response to Defendants' Combined Motion to Dismiss and the Affidavits of Tim Gleason and Jim Getz filed herein on February 25 and April 5, 2016.

2. I deny the claims made in paragraph four (4) of Tim Gleason's Affidavit that at any time in February 2016, I was "inappropriate, rude, disrespectful, and insubordinate"; deny that I was trying to undermine Gleason as City Manager; and deny that I was trying to embarrass Gleason. On the contrary, as soon as I stated my personal objection to further tax increases for Decatur citizens, Gleason became angry and ordered me to leave the February 2, 2016 staff meeting.

3. I deny Gleason's claims in paragraph five (5) of his Affidavit that I offered on three separate occasions to resign as Police Chief of Decatur. Because the Decatur City Manager had sole authority to terminate me as Decatur Police Chief, and because City Manager Gleason

was so obviously angry with me for opposing his motor fuel tax during the February 2, 2016 staff meeting, I became convinced that he was planning to fire me. I became especially concerned about this when he avoided my calls and other attempts to contact him during the day of February 3, 2016.

I finally got through to Tim Gleason around 5:00 p.m. on February 3, 2016. During that call, my goal was conciliation and compromise even though I had done nothing other than oppose the city manager's personal use of city resources, state my opposition to Gleason's proposed motor fuel tax, and refuse to make a public statement supporting Gleason's motor fuel tax. To that end, I tried to calm Gleason and attempted to find out if he was planning to fire me. I recall that during the evening phone call with Gleason on February 3, 2016, I asked if he expected me to resign as police chief. In response, Gleason just told me that we should meet at his office the next day, February 4, 2016, at 10:00 a.m.

Prior to the February 4, 2016, meeting with City Manager Gleason, I did type and print a draft retirement letter which was never delivered. At the time I prepared the letter, I feared Gleason's anger might lead him to fire me, and I thought retiring before being fired might be necessary to preserve the pension I've earned over the last twenty-years. After preparing the draft retirement letter, I learned that I did not need to submit a "retirement letter" to receive my pension at retirement age. At that point, I decided not to offer to retire because I did nothing to justify being terminated.

4. I was fired by City Manager Gleason on February 4, 2016 when he gave me the one-sentence termination letter which is attached hereto. I received this letter on February 4, 2016, immediately after I refused to resign as police chief.

5. City Manager Gleason did not ever tell me specifically that I was being fired because I challenged and opposed his personal use of a police department vehicle and driver, or because of my statements opposing his proposed motor fuel tax. However, Gleason's attitude toward me changed after I advised him that his use of a police car and driver for his personal benefit was improper and could never happen again. Because of my lawsuit, I would not expect Gleason to admit that he retaliated against me for opposing him on anything.

6. During my February 4 meeting with Gleason, he did verbally claim: that I had not communicated with him as he desired; that I was allegedly rude to a labor mediator; and that I failed to utilize a previously ineffective HVAC vendor whom he preferred. However, at no time prior to February 4, 2016 when I was fired with the attached letter, did I ever receive a caution, warning or any other notice that questioned or criticized my work as the Decatur Police Chief.

7. As of seven (7) days after my firing, my personnel file contained no evidence of any warnings or negative reviews from Gleason.

8. In retrospect, it now appears that after I opposed City Manager Gleason's personal use of a police vehicle and driver in May 2015, Gleason began to look for a reason to terminate me.

9. I deny the claims of paragraph nine (9) of Gleason's affidavit. I did not volunteer to have Gleason driven to St. Louis. When he told me to provide a police car and uniformed driver to the St. Louis Airport, I told him I believed it would be improper. Gleason immediately overruled me and stated that he was "ordering" me to have a police car and driver waiting at the Decatur Civic Center to transport him to St. Louis on May 7.

10. I deny the following statement contained in the Jim Getz Affidavit filed by Defendants: "Chief of Police Sweeney approved and ordered me to transport City Manager Gleason." I did not ever indicate that I approved of Gleason's use of police department resources for his own personal benefit and I did not order Getz to drive Gleason to St. Louis. I did, however, concede that as Decatur City Manager, Gleason had ultimate control over the police department.

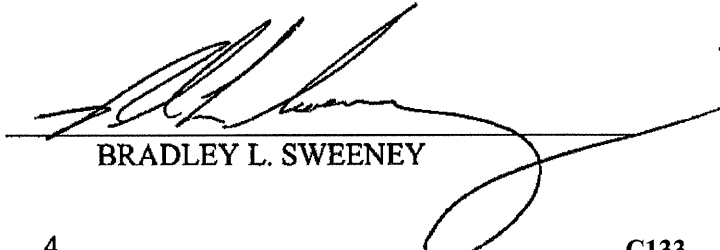
I cannot know what Jim Getz was thinking at the time about the City Manager's use of a police car and driver. I do know that I met with Jim Getz in his office regarding the City Manager's directive to provide a car and driver. During our meeting, I recall Jim Getz agreed that Gleason's use of a police car and driver was not proper. Getz has apparently changed his position now that he reports directly to Gleason, who takes the position that he can fire the Police Chief at any time for any reason.

Based on his statements at the time, Getz understood that we had little choice in the matter given Gleason's direct orders as City Manager.

11. I deny that I was insubordinate, and deny that I was ever untrustworthy or untruthful with regard to any aspect of my work for the City of Decatur. I also deny that I interfered with any State Police investigation, and deny the remaining claims made by Gleason in paragraph 12.(a-g) of his Affidavit.

12. Finally, I deny that I "acknowledged the truthfulness and accuracy" of the reasons Gleason verbally gave for my termination, as he now claims at paragraph 13 of his Affidavit.

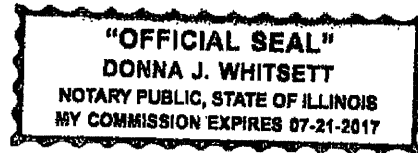
FURTHER AFFIANT SAITH NOT.


BRADLEY L. SWEENEY

STATE OF ILLINOIS)
)
COUNTY OF MACON) SS

SUBSCRIBED AND SWORN to before me this 11th day of April, 2016.

Donna J. Whitsett
NOTARY PUBLIC





CITY OF DECATUR ILLINOIS

#1 GARY K. ANDERSON PLAZA

DECATUR, ILLINOIS 62523-1196

February 4th, 2016

Re: Termination of Employment

Mr. Sweeney,

Effective immediately your employment with the City of Decatur is terminated.

Respectfully,



Tim Gleason, City Manager

C135

FILED

JUN 30 2016

APPEAL TO THE FOURTH DISTRICT APPELLATE COURT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

LOIS A. DURBIN
CIRCUIT CLERK

BRADLEY L. SWEENEY,

Plaintiff-Appellant,

vs.

CITY OF DECATUR,

Defendant-Appellee.

No. 2016-L-18

Hon. A. G. Webber
Judge Presiding.

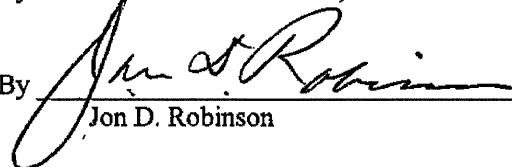
NOTICE OF APPEAL

Plaintiff-Appellant, Bradley L. Sweeney, by Jon D. Robinson of BOLEN ROBINSON & ELLIS, LLP, pursuant to Illinois Supreme Court Rule 303, appeals to the Appellate Court of Illinois for the Fourth District from the Order entered in the Macon County Circuit Court on June 7, 2016 granting Defendant-Appellee's Motion to Dismiss the Amended Complaint. See the attached docket entry order marked Exhibit A.

By this appeal, Plaintiff-Appellant will ask the Appellate Court to reverse the order of June 7, 2016, and remand this cause with direction to reinstate the Amended Complaint for trial on the merits as to all claims, or for such other and further relief as the Appellate Court may deem proper and just.

BRADLEY L. SWEENEY, Plaintiff-Appellant
By BOLEN ROBINSON & ELLIS, LLP

By


Jon D. Robinson

JON D. ROBINSON (ARDC #2356678)
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C1022

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I mailed a true and exact copy of the above and foregoing document, by depositing the same in the United States Mail at Decatur, Illinois, properly addressed with proper postage to the following this 30th day of June 2016.

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

SWEENEY, BRADLEY L	)	
Plaintiff/Petitioner	)	Appellate Court No: 4-16-0492
	)	Circuit Court No: 2016L18
	)	Trial Judge: A G Webber
v	)	
	)	
	)	
CITY OF DECATUR ET AL	)	
Defendant/Respondent	)	

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