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*Attorneys for Plaintiff John Barrett*

**JOHN BARRETT,**  
**Plaintiff,**

**v.**

**TOWNSHIP OF HAMILTON (MERCER  
COUNTY); KELLY YAEDE; DAVID  
KENNY; MARTIN FLYNN; and JOHN  
DOES 1-10.**

**Defendant.**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MERCER COUNTY  
DOCKET NO.:

Civil Action

**COMPLAINT AND JURY DEMAND**

**PARTIES**

1. Plaintiff John Barrett (“Barrett”) is resident of the State of New Jersey residing at 852 Holly Berry Lane, Brick, New Jersey 08724.

2. Defendant Township of Hamilton (the “Township”) is a municipality and political subdivision of the State of New Jersey having a principal place of business at 2090 Greenwood Avenue, Hamilton, New Jersey, 08609.

3. Defendant Kelly Yaede (“Yaede”) is the elected mayor and head of the executive branch of the government of the Township, having a business address of 2090 Greenwood Avenue, Hamilton, New Jersey, 08609.

4. Defendant David Kenny (“Kenny”) is the appointed business administrator of the Township, having a business address of 2090 Greenwood Avenue, Hamilton, New Jersey, 08609.

5. Defendant Martin Flynn (“Flynn”) is the appointed chief of staff of the Township, having a business address of 2090 Greenwood Avenue, Hamilton, New Jersey, 08609.

6. Upon information and belief, John Does-10 are fictitious defendants named pursuant to R. 4:26-4, who served as agents, employees, or servants of the Township, Yaede, Kenny and/or Flynn, whom despite diligent inquiry by Barrett, have not yet been identified.

### **FACTS COMMON TO ALL COUNTS**

#### Background

7. At all relevant times, Barrett served as the Township’s chief financial officer (“CFO”) and director of the Township’s Department of Finance.

8. Barrett has obtained tenure in his position pursuant to the provisions of N.J.S.A. 40A:9-140.1 et seq. (the “CFO Statute”).

9. As such, “he shall continue to hold office during good behavior and efficiency and shall not be removed therefrom except for just cause and then only after a public hearing upon written complaint setting forth the charges against him pursuant to [N.J.S.A. 40A:9-140.9].” See N.J.S.A. 40A:9-140.8

10. N.J.S.A. 40A:9-140.9 in turn provides:

***The complaint shall be filed with*** the municipal clerk and ***the director [of the Division of Local Government Services of the Department of Community Affairs]*** and a certified copy thereof shall be served upon the person so charged. ***The director shall thereafter designate a hearing***

**date before the director or his designee**, which shall be not less than 30 days nor later than 60 days from the date of service of the complaint. The hearing date may be extended by the Superior Court for good cause shown upon the application of either party.

**The person so charged and the complainant shall have the right to be represented by counsel and the power to subpoena witnesses and documentary evidence, together with discovery proceedings.**

The Superior Court shall have jurisdiction to review the determination of the director, which court shall hear the cause de novo on the record below and affirm, modify or set aside such determination.

Either party may supplement the record with additional testimony subject to the rules of evidence.

(emphasis supplied).

11. As CFO of the Township, Barrett has statutory and fiduciary obligations to safeguard the Township's funds.

12. Moreover, he has a statutory obligation to certify the availability of funds before purchase orders can be issued and must sign all checks issued by the Township. See e.g. N.J.A.C. 5:30-5.3.

13. At all relevant times, Barrett was an employee, and the Township was his employer, as those terms are defined by CEPA.

Barrett Blows the Whistle on Multiple Instances of Illegal Conduct

14. In or about October, 2018, Barrett objected to and disclosed to the Township's governing body information that he reasonably believed involved the potentially criminal "theft of time" by a Township employee.

15. He also disclosed that he had notified law enforcement authorities concerning the potential theft of time.

16. Thereafter, Barrett was out of work sick on various days.

17. Upon his return, Barrett discovered that two purchase orders had been issued in his absence and purported to be certified without his knowledge or approval.

18. First, Purchase Order 18-06169 was certified by Kenny on December 6, 2018 in the amount of \$179.00.

19. Second, Purchase Order 18-06183 was certified by Township employee Richard Mulrine on December 6, 2018 in the amount of \$4,686.36.

20. Purchase Order 18-06183 was of particular concern because it authorized a payment to Yaede for alleged personal travel expenses and Mulrine is Yaede's brother-in-law.

21. Barrett reasonably believed that the execution of both purchase orders violated statutory and regulatory requirements governing municipal funds because he was required to execute the same.

22. Moreover, Barrett also reasonably believed that Mulrine's execution of a purchase order for reimbursement of alleged personal expenses to his sister-in-law violated constituted a conflict of interest and violated other applicable requirements, including, but not limited to, Hamilton Township Code Section 45-18(a)(4).

23. Specifically, Code Section 45-18 provides that "[n]o Township officer and/or employee shall act in his or official capacity in any matter where...a member of his immediate family...has a direct or indirect financial interest or personal involvement that might reasonably be expected to impair his...objectivity or independence of judgment" and Section 45-20 defines "immediate family" to include "sister-in-law."

24. As such, on or about December 11, 2018, Barrett reported the same to the Local Finance Board.

25. On or about, December 12, 2018, Barrett notified the Township of his complaint to the Local Finance Board concerning the purchase orders.

26. On or about December 13, 2018, Barrett participated in conference call with the Division of Local Government Services (the "Division") triggered by his aforementioned complaint to the Local Finance Board along with Kenny, Flynn, and then-Township Solicitor Lindsay Burbage and Richard Mulrine.

27. During the conference call, the Division advised that 1) the purchase orders were in fact illegal and could not be processed without Barrett's signature and approval and 2) Barrett could not be removed or disciplined without filing a complaint for a hearing with the Division as outlined above.

28. In addition, the Township, Yaede, Kenny and Flynn are aware that Barrett had made specific complaints to state and federal law enforcement authorities, as well as Township officials, concerning illegal conduct, official misconduct, and civil rights violations by Yaede.

29. Specifically, Barrett informed state and federal law enforcement authorities, and Township officials, that Yaede had illegally utilized her police protective detail to go to the homes of various citizens of the Township to harass, intimidate and threaten them for political and personal reasons.

30. Yaede, Kelly, and Flynn desired to retaliate against Barrett as a result of the aforementioned reports.

The Township Twice Engages in Retaliatory, Unsuccessful, Sham Disciplinary Actions  
Against Barrett

31. First, prior to the conference call on December 13, 2018, Kenny sent an email to Barrett purporting to remove him and replace him with Mulrine.

32. That decision was summarily reversed by the Division as set-forth above.

33. Second, despite the clear directive that only the Director had authority to discipline or remove Barrett, on December 18, 2018, Kenny served Barrett with a Preliminary Notice of Disciplinary Action purporting to place him on notice that the Township would convene a disciplinary hearing before Kenny on January 17, 2019 wherein the Township would seek to *inter alia* remove him from office.

34. The allegations in the Preliminary Notice of Disciplinary Action were false.

35. Kenny was advised again, in writing, on December 28, 2018, that any attempt to discipline Barrett was required to be filed with the Division in accordance with the CFO statute, but, nevertheless, the Township persisted in pursuing the disciplinary action.

36. Finally, on January 3, 2019, the Township admitted that it could not engage in the sham disciplinary proceeding against Barrett and withdrew the Preliminary Notice of Discipline.

#### Additional Harassment of Barrett

37. In addition, Barrett is the principal and sole member of PM Consultants, LLC, a firm that provides municipal financial consulting services to various governmental entities in New Jersey.

38. Barrett obtained specific written approval to operate this business from the Township.

39. The Township, through Yaede, Kenny, Flynn and John Does-10, have utilized Township resources to attempt to interfere with PM Consultants, LLC's contracts and relationships with its clients.

40. Moreover, upon information and belief, Yaede, Kenny, Flynn and/or John Does1-10 have leaked false and negative information about Barrett to the news media.

41. Specifically, upon information and belief, in connection with a press story involving the illegal purchase orders, Yaede, Kenny, Flynn, or John Does1-10 provided a years-old picture of Barrett to the reporter and falsely claimed it constituted evidence that Barrett was sleeping during work hours.

42. Moreover, on January 2, 2019, Kenny and Flynn, without notice, attempted to confiscate Barrett's laptop computer, which is the computer he possesses and utilizes to perform his statutory functions as CFO and would have, as a practical matter, prevented him from performing the same and acted as a *de facto* suspension or termination without hearing or notice.

The Township's Current, Third Attempt to Retaliate Against Barrett

43. On or about January 4, 2019, while Barrett was away on vacation, the Township filed a tenure charge seeking Barrett's removal as CFO with the Director (the "Tenure Charge").

44. The allegations in the Tenure Charge are false and pretextual reasons to justify the illegal retaliation against Barrett.

45. Barret was scheduled to return to work on Monday, January 14, 2019

46. On Friday, January 11, 2019, the Township wrote to Barrett purporting to advise that he was suspended with pay until further notice.

47. The Division responded, advising the Township that it had not filed any application to suspend Barrett.

48. Nevertheless, the Township continues to impose the unauthorized suspension on Barrett in violation of the CFO Statute and his right to procedural due process of law.

49. Applicable laws and policies, including the Township’s own employee handbook require that all personnel and disciplinary matters remain strictly confidential.

50. The Township Handbook provides, in pertinent part:

**Personnel Files**

The Township maintains personnel files on each employee. **All records and documents pertaining to your employee with the Township shall be maintained by the Personnel Office and remain confidential. ...**

The Official [personnel] file shall include at least the following:

h. **Disciplinary actions...** ...

Disclosure of Employee Information  
**The Township will not disclose personal information without your consent unless required by law or court order....**

(emphasis supplied)

51. Despite the applicable laws and regulations, and its own aforementioned policy the Township, through Kenny, publicly released a copy of the Tenure Charge.

52. The purpose of releasing the Tenure Charge was to further retaliate against, embarrass, harass, and demean Barrett and discourage him from providing additional information to relevant authorities concerning the aforementioned illegal activity he had reported.

Other Relevant Facts

53. Upon information and belief, as all relevant times, Kenny, Flynn, and John Does1-10 were acting at the specific direction of Yaede.

54. At all relevant times, Yaede, Kenny, and Flynn constituted the upper management of the Township.

**COUNT I**  
**Violation of the Conscientious Employees Protection Act, N.J.S.A. 34:19-1 et seq.**  
**(“CEPA”)**

55. Barrett repeats the allegations of all preceding paragraphs as if set-forth at length herein.

56. By way of all of the foregoing and other conduct, Barrett objected to, disclosed, and refused to participate in an activity, policy or practice which he reasonably believed would be a violation of a law, or a rule or regulation promulgated pursuant to law, or public policy.

57. In response to Barrett’s aforesaid objection, disclosure, and refusal, the Township, Yaede, Kenny, Flynn and John Does1-10 have retaliated against Barrett by *inter alia* 1) filing fraudulent, false illegal disciplinary charges against him 2) purporting to remove or suspend him from his position 3) interfering or attempting to interfere with PM Consultants, LLC, 4) leaking false information about him to the news media, and 5) releasing confidential and protected personnel information about him to the public.

58. As a direct and proximate result, Barrett has suffered and continues to suffer damages, including, but not limited to, pain, suffering, humiliation and embarrassment.

59. At all relevant times, the Township, Yaede, Kenny, Flynn and John Does1-10 acted maliciously or with willful wanton disregard for Barrett’s rights such that their violations of CEPA are especially egregious

**WHEREFORE**, Plaintiff John Barrett demands judgment against the Township of Hamilton, Mayor Kelly Yaede, David Kenny, Martin Flynn, and John Does1-10 for:

- A. Compensatory Damages.
- B. Consequential Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. Such other and further relief as the Court deems just and proper.

**COUNT II**  
**Violation of Constitutional Rights**

60. Barrett repeats the allegations of all preceding paragraphs as if set-forth at length herein.

61. Barrett is entitled to various constitutional rights, including, but not limited to, the rights to due process of law, equal protection under the law, freedom of speech, and to petition the government for the redress of grievances.

62. By way of all of the foregoing, the Township, Yaede, Kenny, Flynn and John Does1-10 have violated Barrett's constitutional rights.

63. As a direct and proximate result of the aforesaid violations, Barrett has suffered and will continue to suffer damages.

**WHEREFORE**, Plaintiff John Barrett demands judgment against the Township of Hamilton, Mayor Kelly Yaede, David Kenny, Martin Flynn, and John Does 1-10 for:

- A. Compensatory Damages.
- B. Consequential Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. Such other and further relief as the Court deems just and proper.

**COUNT III**  
**Supervision of Tenure Charge**

64. Barrett repeats the allegations of all preceding paragraphs as if set-forth at length herein.

65. As set-forth above, the Township filed the Tenure Charge against Barrett pursuant to the CFO statute.

66. The CFO statute grants the Superior Court the power to *inter alia* 1) extend the time of the hearing as necessary to accommodate the needs of the parties for good cause, 2) ensure the CFO has the right to full discovery proceedings as required by the statute, 3) review the decision of the Director, and 4) consider such supplementary evidence and testimony as the parties may present.

67. As such, the Superior Court can and should maintain jurisdiction over the Tenure Charge, subject to the primary jurisdiction of the Director, to consider applications by the parties for extensions, review of the decision or such other and further relief as may be just and proper.

**WHEREFORE**, Plaintiff John Barrett demands judgment against the Township of Hamilton, Mayor Kelly Yaede, David Kenny, Martin Flynn, and John Does 1-10 for:

- A. Judgment reversing any adverse decision against him by the Director.
- B. Compensatory Damages
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. Such other and further relief as the Court deems just and proper.

**DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Colin G. Bell, Esquire as trial counsel.

**JURY DEMAND**

Plaintiff, John Barrett, hereby demands a Trial by Jury as to all issue so triable.

**DEMAND FOR INSURANCE INFORMATION**

**PLEASE TAKE NOTICE THAT DEMAND IS HEREBY MADE** pursuant to R. 4:10-2b that Defendants produce any and all insurance agreements under which an insurance business may be liable to satisfy part or all of any judgment entered in this action or which may entitle any Defendant to reimbursement or indemnification for any payments made to satisfy the judgment.

**CERTIFICATION**

The undersigned hereby certifies that:

a) Confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b);

b) To the knowledge of the undersigned, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding nor is any other action or arbitration proceeding contemplated, except 1) the Tenure Charges and 2) that Barrett has filed a Notice of Tort Claim with the Township and reserves the right to assert common law torts for defamation, tortious interference, false light and related claims upon and expiration of six months from the date of filing of the Notice of Tort Claim pursuant to N.J.S.A. 59:8-8; and

c) The undersigned knows of no other party who should be joined in this action, except that PM Consultants, LLC has filed a Notice of Tort Claim and reserves the right to assert claims for defamation, tortious interference, false light and related claims upon the expiration of six months from the filing of the Notice of Tort Claim pursuant to N.J.S.A. 59:8-8.

I am aware that if any of the foregoing statements are knowingly false, I am subject to punishment.

HANKIN SANDMAN PALLADINO  
WEINTROB & BELL  
Counsellors at Law  
A Professional Corporation

/s/ Colin G. Bell  
Colin G. Bell, Esquire

Dated: January 15, 2019