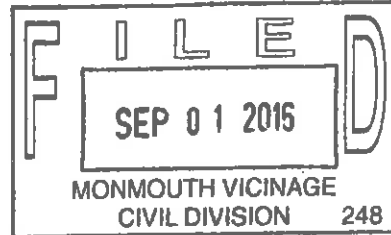


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Police Chief Kevin Sauter



KEVIN SAUTER,	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION: MONMOUTH COUNTY
	:
Plaintiff,	: DOCKET NO.: L-3122-16
	:
v.	: CIVIL ACTION
	:
TOWNSHIP OF COLTS NECK,	: COMPLAINT
	:
Defendant.	:

Plaintiff Kevin Sauter ("Plaintiff"), by and through his attorneys, Sciarra & Catrambone, LLC, by way of the within Complaint ("Complaint"), alleges and says as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff Kevin Sauter against his employer the Township of Colts Neck, as well as principle decision makers, who govern, operate, and are agents and officers for the above referenced entity collectively referenced as Defendants.
2. Plaintiff, a tenured township police officer, and thus protected from suspension from office, seeks judgment of this Court against Defendants for relief permitted under N.J.S.A. 40A:14-150, *et seq.*

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3. Plaintiff is the Chief of Police of Colts Neck Police Department.
4. Defendants encompass the Township of Colts Neck, its police department, and the governing body doing business at 124 Cedar Drive, Colts Neck, New Jersey 07722.
5. Plaintiff seeks immediate dismissal of the charges filed against him and reversal of his five (5) day suspension and reinstatement of back-pay and benefits.

STATEMENT OF FACTS

6. Plaintiff has been employed by the Township of Colts Neck Police Department for thirty-two (32) years.
7. After nine (9) years of service working for the Township of Colts Neck Police Department, initially a patrolman and then sergeant, Plaintiff was named Chief of Police. As of today's date Plaintiff has been Chief of Police for twenty-three (23) years.
8. As Chief of Police, Plaintiff was a member of various trade organizations that included Monmouth County Police Chiefs Association, New Jersey State Police Chiefs Association, and International Association of Police Chiefs of Police. ("IACP").
9. Plaintiff was president of the Monmouth County Police Chiefs Association in 2002 and in 2014/2015 he was president of the

New Jersey State Chief's Association.

10. On January 14, 2016, Plaintiff was served with charges and suspended for five (5) days by the Defendants for allegedly failing to comply with a November 14, 2014 Police Chief's Directive No.: 2014-6 (the "November 2014 Directive"). (Attached hereto as **Exhibit A** is a true and accurate copy of the January 14, 2016 correspondence ("Suspension notice").
11. Defendants alleged in the Suspension Notice that Plaintiff failed to comply with the November 14, 2014 Directive for attending the IACP Chiefs Training Conference and Expo from October 23-28, 2015 without the Township Committee's written consent, violation the directive, and violating the Use of Vehicles Policy by having an officer pick Plaintiff up at the airport with another fellow chief and his wife. **Exhibit A**.
12. The Suspension Notice stated that the November 2014 Directive mandated that Plaintiff "not attend any conferences or training events which require the expenditure of public funds without the written consent of the Township Committee." (**Exhibit A**).
13. Specifically, the Suspension Notice stated the following:

On May 21, 2015, you sent a memorandum to Interim Township Thomas Antos advising him of your intent to attend the IACP conference in Chicago from October 23-28, 2015. You submitted an invoice for attendance at the conference thereby requiring the expenditure of public funds. Your time sheet for that week reflects that you did not take vacation time for your expenditure of additional public funds. Further, it was subsequently discovered that you ordered an On-duty Calls Room

Township police officer to pick you up at the Newark Airport in a Colts Neck Township police car on you return from the conference thereby requiring the expenditure of yet additional public funds. Because public funds were expended, you were required to obtain the "express written consent of the Township Committee." Your failure to do so constitutes a willful refusal to comply with a directive by the "appropriate authority." . . .

You violated the "Use of Vehicles Policy" because you were not "on official business" when you ordered a Colts Neck Township police car to pick you up at Newark Airport after returning from conference especially under these circumstances in which you did not receive "express written consent of the Township Committee" to attend the event in the first place. We also understand that your wife accompanied you on the trip and was driven back from the airport in a Colts Neck Police car. She was clearly not on "Township business" thereby constituting an additional violation of this policy. Your use of a Colts Neck police car essentially as a taxi to chauffeur you and your wife back from Newark Airport also constituted a misuse of public property in violation of the Handbook.

We also find that it was unbecoming of Colts Neck's police chief to order the on-duty police shift supervisor out of Colts Neck to Newark to provide you, your wife and another police chief with what was in effect, a taxi ride. . . .
(Exhibit A).

14. The training for chiefs and other high level law enforcement executives further police functions, not only within a department, but promotes better service to the community.
15. Training included, but was not limited to, contemporary policing issues, community policy, active shooter training, and training regarding handling terrorism issues.
16. It is Plaintiff's, as chief law enforcement officer in the Township of Colts Neck, responsibility to run the day-to-day operations of the department which includes training.
17. It is Plaintiff's responsibility as chief of police to assign

- training assignments to officers in his command and himself.
18. Plaintiff had taken sixteen (16) out of state training classes over his twenty-three (23) years as Chief. The out of state training classes were IACP Conferences.
19. Around 2010/2011 Defendants had come up with a verbal policy that it would not pay for hotel or airfare with regard to out of state conferences.
20. Plaintiff used forfeiture funds to off set the cost of training conferences.
21. On or about September 8, 2014, Township Administrator Robert Bowden, Jr. met with Mayor Macnow ("Macnow"), requested Plaintiff provide a list of meetings he may attend outside of Colts Neck that Plaintiff believed would satisfy the 40 core hours of his Police Department work. This list was to be sent to Macnow and copied to the Township Administrator. (Attached hereto as **Exhibit B** is a true and accurate copy of the September 8, 2014 correspondence from Township Administrator Robert Bowden).
22. On or about September 10, 2014, Plaintiff provided a list of events he would or may attend to Macnow and copy to the Township Administrator. (Attached hereto as **Exhibit C** is a true and accurate copy of Plaintiff September 10, 2014 correspondence to Mayor Macnow).
23. On or about November 14, 2014, Macnow issued the November 2014

Directive instructing Plaintiff he may not attend any conferences or training without "written express consent of the Township Committee". Pursuant to the November 2014 Directive Plaintiff was required to seek approval for conference attendance thirty (30) days prior to any requested conference and was required to report on eight detailed items pursuant to the request ("training advisement"). Thereafter, within five (5) days after attendance at any approved conference Plaintiff was required to provide a detailed report satisfying eight (8) requirements ("return advisement"). (Attached hereto as **Exhibit D** is a true and accurate copy of the November 2014 Directive).

24. The Defendants were infringing on the authorities of Plaintiff as Chief of Police regarding training as detailed in Defendants September 2014 correspondence and the November 2014 Directive.
25. On May 28, 2016, Plaintiff submitted a memorandum to Interim Township Administrator Tom Antus regarding the IACP Conference to be held from October 23rd to October 28th 2015 ("October Conference"). This memorandum was in compliance with the November 2014 Directive. (Attached hereto as **Exhibit E** is a true and accurate copy of the May 28, 2016 "training advisement").
26. The October Conference is the subject of the Alleged Violation

referenced in the Suspension Notice.

27. Plaintiff had advised in the May 28, 2016 training agreement that the cost to the Township of the October Conference was a \$350.00 dollar registration fee. **Exhibit E**.
28. On or about June 4, 2015, Plaintiff submitted a purchase order for the October Conference. (Attached hereto as **Exhibit F** is a true and accurate copy of the June 4, 2015 purchase order).
29. In September 2015, Plaintiff inquired as to the status of registration for the October Conference as the registration cost was going to increase. (Attached hereto as **Exhibit G** is a September 9, 2015 e-mail from Plaintiff to the Business Administrator).
30. On or about September 9, 2015, the Township Committeemen approved the October Conference. (Attached hereto as **Exhibit H** is the Purchase Order with the September 9, 2015 Township Committee approval).
31. On September 10, 2015 the Business Administrator forwarded Plaintiff an e-mail verifying October Conference had been approved. (Attached hereto as **Exhibit I** is the e-mail from the Business Administrator confirming the approval of the October Conference).
32. On or about October 7, 2015, Plaintiff informed the newly hired Township Administrator, Kathleen Capristo, "Capristo", that he was attending the October Conference.

33. Capristo was the only witness called by the Defendants to sustain their charges. (Attached hereto as **Exhibit L** is the transcript of Plaintiff's April 28, 2016 disciplinary hearing).
34. Capristo testified that she was not privy to the investigation, had no first hand knowledge regarding the documents in question as she was not hired at the time of their creation, and had no knowledge of the November 2014 Directive other than what was presented to her. (**Exhibit L**, 42:3-4, 82:9-83:24, 104:20-22, 105:9-20, 105:23-106:4).
35. Capristo testified at the disciplinary hearing that Plaintiff's May 28, 2015 training advisement responded to all the eight detailed items in the November 2014 Directive. (**Exhibit L**, 90:22-25).
36. Capristo testified that she was never shown the purchase order submitted by Plaintiff on June 4, 2015 and certified by the Township Clerk, after its approval, on September 9, 2015 until the day before Plaintiff's disciplinary hearing. (**Exhibit L**, 86:9-18, 91:1-92:14).
37. Capristo testified that the October Conference had been approved on September 9, 2015 by the Township Committee. (**Exhibit L**, 96:12-98:18).
38. Capristo testified that she had seen Macnow's Certification that was submitted to the Court wherein he certified that

"None of the five Township Committee members had any knowledge of the Chief's attendance at this conference." (**Exhibit K**, Macnow's Certification dated April 14, 2014, paragraph 5).

39. The November 2014 Directive does not state as to whom training advisements should be filed with.
40. At the disciplinary hearing the Defendants stipulated that the November 2014 Directive does not state that training advisements must be sent directly to individual Township Committee members. (**Exhibit L**, 133:1-3).
41. Since November 2014, Plaintiff's training advisements were routinely initially filed with the Township Administrator.
42. Plaintiff was never told not to submit/file his initial training advisements to the Township Administrator.
43. Since the November 2014 Directive, Plaintiff submitted all his return advisements to the Township Administrator including the return advisement related to the October Conference.
44. Plaintiff has never been instructed that this was improper.
45. The November 2014 Directive makes no reference as to whether or not the Police Chief was required to utilize vacation time for approved training.
46. Capristo testified that the November 2014 Directive issued to Plaintiff made no reference as to whether or not Plaintiff was required to use vacation time for approved training. (**Exhibit**

L, 106:18-107:19).

47. Capristo confirmed at the hearing that there was no policy, rule, regulation, or writing that required Plaintiff, as Chief of Police, to take vacation time for approved training. (Exhibit L, 106:18-107:19).
48. Plaintiff has never been required to use approved vacation time to attend approved conferences.
49. Plaintiff had never been notified to use vacation time for the October Conference.
50. Capristo testified that when Plaintiff submitted his time sheets for the period in October 2015 of the training he said anything about him needing to use vacation time. (Exhibit L, 110:4-18).
51. The November 2014 Directive does not identify prohibited uses of forfeiture funds as related to training conferences.
52. When traveling out of state for conferences it was common practice for Plaintiff to car pool with other chiefs of police to save the various municipalities money, thus having an "inter-local agreement".
53. The means of car pooling would have been for a police car to transport the police chiefs from the various municipalities/townships.
54. This had been Plaintiff's common practice for over the last sixteen (16) times he had traveled out of state for

conferences.

55. Plaintiff never hid this common practice.
56. Upon Plaintiff's return from the October Conference he had a patrol car pick up himself, a fellow police chief, and Plaintiff's wife from the airport.
57. There was full police coverage in Colts Neck on the day that Plaintiff was picked up at the airport.
58. As the October Conference had been approved Plaintiff was returning on official business.
59. On April 28, 2016, a disciplinary hearing was held before a hearing officer unilaterally chosen and paid for by the Township.
60. On August 24, 2016, the Colts Neck Township Committee affirmed its five (5) day suspension of Plaintiff. (Attached hereto as **Exhibit J** is Resolution 2016-108 dated August 24, 2016).

COUNT I

(VIOLATION OF N.J.S.A. 40A:14-150)

61. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.
62. The Township of Colts Neck is non-civil service jurisdiction.
63. Pursuant to N.J.S.A. 40A:14-150 as Plaintiff is an officer in a non-civil service jurisdiction he is entitled to review of

sustained disciplinary charges by the Superior Court of New Jersey.

64. The Superior Court of New Jersey "shall hear the cause de novo on the record below and may either affirm, reverse or modify such conviction." N.J.S.A. 40A:14-150.
65. "Either party may supplement the record with additional testimony subject to the rules of evidence." N.J.S.A. 40A:14-150.
66. Defendants are bound by N.J.S.A. 40A:14-150.
67. Defendants did not have just cause to charge Plaintiff and thereafter suspend him for five (5) days.
68. The local disciplinary hearing was inherently biased against the Plaintiff.
69. Plaintiff seeks a *de novo* review of the charges and five day suspension.
70. Plaintiff seeks to supplement the record.

COUNT II

(VIOLATION OF CHIEF'S BILL OF RIGHTS - N.J.S.A. 40A:14-118)

71. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.
72. N.J.S.A. 40A:14-118 provides in pertinent part:
The governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function

of municipal government, a police force Any such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority:

- a. Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;
- b. Have, exercise, and discharge the functions, powers and duties of the force;
- c. Prescribe the duties and assignments of all subordinates and other personnel

- 73. Plaintiff, by statute, is given the duty to assign all training to the police force, including himself, as a means of exercising and discharging the functions, powers, and duties of the force.
- 74. It is Plaintiff's duty and responsibility as head of the police force to ensure the efficient and routine day-to-day operation of the police department which would include up to date training on critical issues of contemporary policy, community policy, issues surrounding mass shootings, terrorism.
- 75. Defendants' implementation of the November 2014 Directive violated N.J.S.A. 40A:14-118 by restricting Plaintiff's discretion and access to police training which interfered with Plaintiff's duties and responsibilities as head of the police force for the efficient and routine day-to-day operation of the police department.

COUNT III

(VIOLATION OF N.J.S.A. 40A:14-147)

76. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.
77. N.J.S.A. 40A:14-147 states the following:
- A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the day on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. . . .
- A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint. N.J.S.A. 40A:14-147.
78. Defendant unduly and prejudicially delayed the imposition of disciplinary charges against Plaintiff.
79. Defendant had sufficient information to determine if charges should be filed against Plaintiff from May 28, 2014 through September 9, 2014 and failed to do so.
80. Defendant had sufficient information to determine if charges should be filed against Plaintiff immediately after the October Conference and once his time sheets had been filed and failed to do so.
81. Defendants failed to file any charges against Plaintiff until **January 14, 2016** violating N.J.S.A. 40A:14-147, thus the charges should be dismissed against Plaintiff.

COUNT IV

PLAINTIFF'S DUE PROCESS RIGHTS WERE VIOLATED

82. All disciplinary charges must be properly stated and an employee must be given plain notice of the charges. West New York v. Bock, 38 N.J. 500, 522 (1962); Pepe v. Township of Springfield, 337 N.J. Super. 94, 97 (App. Div. 2001).
83. Facial vagueness of a law, ordinance, or an administrative rule and regulation/directive is impermissible and a violation of the essentials of due process of law. Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972); Moiseye v. New Jersey Racing Comm'n, 239 N.J. Super 1 (App. Div. 1989); Aiello v. City of Wilmington, Delaware, 623 F.2d 845, 850 (1980).
84. The January 14, 2016 charges were not properly stated as it did not specify specifically what Plaintiff was being charged with violating Plaintiff's due process rights.
85. The November 2014 Directive is facially vague as per the filing of the training advisements and return advisements.
86. The November 2014 Directive is facially vague as there is no reference to a policy, rule, regulation or specific reference regarding the requirement to use vacation time for approved conferences.
87. The November 2014 Directive is facially vague as it fails to provide adequate notice as the requirements of approval of training requests.

88. The November 2014 Directive is facially vague as it does not define what the Township Committee considered to be an expenditure of "public funds".
89. The November 2014 Directive is facially vague as it does not set forth prohibited use of forfeiture funds.
90. The November 2014 Directive is facially vague and subjective as there is no means of clearly knowing what conduct would subject Plaintiff to suspension, thus subjecting him to injury by the vagueness of the directive.
91. Plaintiff has been subjected to arbitrary and discriminatory enforcement of the November 2014 Directive.
92. Defendants' failure to provide plain notice of the charges and reliance on a facially vague directive has violated Plaintiff's due process rights.

COUNT V

(DEFENDANTS HAVE COMMITTED A CIVIL FRAUD)

93. A fraud on the Court occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Triffin v. Automatic Data Processing, Inc., 411 U.S.

Super. 292, 298 (2010) quoting Aoude v. Mobile Oil Corp., 802 F.2d 1115, 1118 (1st Cir.1989); Perna v. Elec. Data Sys. Corp., 916 F.Supp. 388, 397 (D.N.J. 1995).

94. Fraud on the Court does not require reliance. Id.
95. Based on a Court's equitable powers, it possesses an inherent power to sanction an individual for committing a fraud on the Court either on its own motion or on application from the party effected. Id.
96. As the Township of Colt's Neck is a non-civil service jurisdiction, jurisdictionally the record of this matter is before the Superior Court including the false certification filed by former Mayor and Township Committeeman Macnow.
97. Defendants are aware that the appeal of this discipline to the Superior Court consists of the entire record of the disciplinary hearing. N.J.S.A. 40A:14-150.
98. Macnow filed his certification at the disciplinary hearing knowing that it was false in an attempt to interfere with the hearing officer's ability to impartially adjudicate the matter by improperly influencing the hearing officer and hampering Plaintiff's defense.
99. This same false certification was presented to the Township Administrator, who was the sole witness for the Defendants at the disciplinary hearing, to prove the charges filed against Plaintiff.

100. Defendants supplied the Township Administrator with the false certification all the while withholding crucial documents from the Township Administrator that demonstrated the approved purchase order for the October 2015 conference was in the way before the disciplinary hearing.

101. The Township Administrator had no personal knowledge of the documents, knew nothing of the investigation of Plaintiff, and had no knowledge of the November 2014 Directive other than what was presented to her by Defendants.

102. Defendants have committed a fraud on the Court.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. For an Order dismissing the administrative charges for failure to prove the charges by a preponderance of the evidence;
- b. For an Order dismissing the administrative charges for violating N.J.S.A. 40A:14-147;
- c. For an Order dismissing the administrative charges for violating N.J.S.A. 40A:14-118;
- d. For an Order dismissing the administrative charges for violating Plaintiff's Due Process Rights;
- e. Awarding Plaintiff damages, including, but not limited to equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay.

as well as all commensurate pension benefits, and other benefits with respect to Plaintiff's employment, and ~~any other relief~~ for emotional distress, any statutory fines, compensation for adverse tax consequences for a lump sum award, together with both pre-judgement and post-judgement interest and attorneys fees and costs, including but not limited to fees associated with R. 40A:14-155, as well as any enhancements pursuant to the case law, and costs of court;

f. Awarding sanctions against Defendants for fraud upon the court; and

g. For such other, further, additional and different relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Charles J. Sciarra, Esq. is hereby designated as trial counsel.

Respectfully submitted,
Sciarra & Catrambone, LLC

BY:


Charles J. Sciarra, Esq.

Dated: September 1, 2016

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending Superior Court action or arbitration, other than those proceedings outlined herein.
2. No other court action or arbitration proceeding is contemplated at this time.
3. There are no other parties to be joined in this action at the present time.

BY: Charles J. Scerra /BY: DME
Charles J. Scerra, Esq.

Dated: September 1, 2016