

JAMES L. PLOSIA JR., ESQ. (ID# 023551988)
PLOSIA COHEN LLC
Chester Woods Complex
385 Route 24, Suite 3G
Chester, New Jersey 07930
(908) 888-2547
Attorneys for Plaintiff Brian Kubiel

BRIAN KUBIEL,

Plaintiff

v.

TOMS RIVER BOARD OF FIRE
COMMISSIONERS, FIRE DISTRICT
No. 1, and CRAIG AMBROSIO,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, OCEAN COUNTY

DOCKET NO.:

Civil Action

VERIFIED COMPLAINT

Plaintiff Brian Kubiel ("Plaintiff" or "Kubiel"), with an address of 1026 Kaitlyn Court, Toms River, New Jersey 08753, hereby states by way of Verified Complaint against Defendant Toms River Board of Fire Commissioners, Fire District #1 ("Defendant" or "Fire District"), with its principal offices at 1144 Hooper Avenue, Suite 306, Toms River, NJ 08753:

1. Plaintiff is the Business Administrator for the Fire District, and has been so employed in that position since 2011. Plaintiff is also an elected Councilperson serving on the Township of Toms River's Township Council.
2. Defendant Toms River Board of Fire Commissioners, Fire District #1 is a body corporate and politic charged with the operation and management of a geographic area of the Township of Toms River known as Fire District No. 1.

3. Monica Bisceglie is the Human Resources Coordinator for the Fire District. Bisceglie has been employed in that position for the Fire District for at least the last 15 years.

4. Defendant Craig Ambrosio is an elected Commissioner of the Fire District. Ambrosio is also a paid employee of the Township of Toms River ("Township"). He is the Supervisor of Building and Grounds for the Township.

5. Thus, Defendant Ambrosio in effect supervises the Plaintiff in the latter's paid position as the Business Administrator for the Fire District, and Plaintiff is Ambrosio's employer (as a member of the Township Council).

6. The Plaintiff recuses himself from any action or executive session discussion involving Mr. Ambrosio.

7. Defendant Ambrosio does not recuse himself in his role as Fire Commissioner from any discussion of Plaintiff's terms and conditions of employment as a Fire District employee.

8. There was a regularly scheduled meeting of the Fire District on September 19, 2018. An agenda was created for the meeting, copies of which were made available to the public attending the meeting. See Exhibit A attached.

9. Included on the agenda as the final item was the following notation: "Private Executive Session – Personnel." Plaintiff's understanding was that this executive session was included on the agenda of the possible acceptance of an applicant for a volunteer firefighter position with the Fire District.

10. However, when the Commissioners resolved to go into executive session at the September 19 meeting, Plaintiff was asked to leave the meeting and was not permitted to stay in executive session. As Plaintiff was leaving, he overheard Monica Bisceglie making a statement to the Commissioners that she would like to address the Board.

11. Plaintiff is aware that Bisceglie had previously made a complaint to the Commissioners about his workplace conduct.

12. Plaintiff was not provided with a Rice notice prior to the September 19 executive session.

13. The Commissioners discussed Bisceglie's allegations against Plaintiff and Plaintiff's terms and conditions of employment in their September 19, 2018 executive session.

14. This discussion was conducted without Plaintiff having been provided the legally mandated Rice notice.

15. The following day, September 20, Plaintiff was informed by Monica Bisceglie that, at the conclusion of their executive session at the September 19 meeting, the Commissioners returned to public session and took a public vote to retain the services of a law firm.

16. This law firm was retained by the Commissioners to conduct an investigation into Monica Bisceglie's allegations against the Plaintiff.

17. Commissioner Ambrosio participated in the September 19, 2018 executive session discussion of the Bisceglie allegations against the Plaintiff, and also voted upon the resolution to hire the law firm to investigate these allegations made by Bisceglie against the Plaintiff. In fact, Ambrosio is the Commissioner who moved the Resolution for adoption by the Commissioners in public session.

18. On September 21, another "agenda" for the September 19th meeting was posted on the Fire Commissioners' website. See Exhibit B attached. On that agenda the Commissioners improperly altered the grounds for the executive session resolution. Now the agenda stated that the grounds for the executive session was not simply personnel but "litigation, negotiations, and the attorney-client privilege".

19. The law firm which was retained by the Commissioners was LaCorte, Bundy, Varady-Kinsella in Union, New Jersey.

COUNT I

FAILURE TO COMPLY WITH OPEN PUBLIC MEETINGS ACT

20. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1-20 of the Verified Complaint as if fully set forth herein.

21. Defendant Fire District violated the Open Public Meetings Act (“Act”) N.J.S.A. 10:4-7 et. seq. and specifically N.J.S.A. 10:4-13, by improperly adopting a Resolution to go into executive session at its September 19, 2018 meeting.

22. Defendant Fire District violated the Act by improperly altering (the day after the 9/19 meeting) its meeting agenda and specifically by altering the Resolution to go into executive session the day after the 9/19 meeting.

WHEREFORE, the Plaintiff requests the following relief:

1. An Order declaring that the aforementioned actions are violative of the Open Public Meetings Act; and
2. An Order permanently restraining the Fire District from altering after the fact publically distributed agendas for Board of Fire Commissioner meetings.

COUNT II

RICE NOTICE VIOLATION

23. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1-22 of the Verified Complaint as if fully set forth herein.

24. The Fire District failed to provide the Plaintiff with the legally required Rice notice at their September 19, 2018 meeting.

25. The Fire District discussed Plaintiff's terms and conditions of employment in their September 19 executive session despite having failed to provide Plaintiff with the legally required Rice notice.

26. The Fire District took a public action (hiring special legal counsel) at its September 19 meeting based upon the illegal executive session discussion.

27. That public action is void as a matter of law because it was taken after an illegally conducted executive session of the Fire District.

WHEREFORE, the Plaintiff requests the following relief:

1. An Order declaring that the Fire District violated the Act and Plaintiff's legal right to a Rice notice by their actions at the September 19 meeting;

2. An Order voiding the Fire District's appointment of special legal counsel as illegally based upon an improper executive session discussion of Plaintiff's terms and conditions of employment without providing Plaintiff with a Rice notice; and

3. An Order permanently restraining the Fire District from conducting any investigation against Plaintiff based upon the Bisceglie allegations based upon either the September 19 executive session and/or the appointment by the Fire District of special legal counsel at that meeting to conduct said investigation.

4. An Order permanently restraining the Fire District conducting executive session discussions of Plaintiff's terms and conditions of employment without providing Plaintiff with the legally required Rice notice.

COUNT III

28. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1-27 of the Verified Complaint as if fully set forth herein.

29. Defendant Ambrosio participated in the September 19 executive session discussion of the Plaintiff's terms and conditions of employment.

30. Defendant Ambrosio not only voted upon a public Resolution to hire a special legal counsel but made the original Motion to adopt said Resolution.

31. Said action was improper inasmuch as Ambrosio has an irreconcilable conflict of interest which precludes his participation in executive session discussion or taking public votes on any matter involving the Plaintiff.

32. Ambrosio has been put on notice by Plaintiff's counsel that he has an irreconcilable conflict of interest which precludes him from taking any action as a Fire Commissioner in any matter involving the Plaintiff, but Ambrosio has ignored this notice and acted in such matters despite the obvious and overt conflict of interest inherent in such actions. See Exhibit C attached.

WHEREFORE, the Plaintiff requests an Order requiring the following relief:

1. An Order sanctioning Craig Ambrosio for taking both private and public actions in Fire Commissioner matters involving Plaintiff, actions which should never have been taken due to an irreconcilable conflict of interest;

2. An Order voiding the Fire Commissioners' September 19 Resolution hiring special legal counsel inasmuch as that Resolution was discussed and voted upon by Ambrosio despite the aforementioned conflict of interest; and

3. An Order permanently restraining Ambrosio from participating as a Fire Commissioner in any personnel matter involving the Plaintiff.

EXHIBIT A

DISTRICT NO. 1 AGENDA

1144 Hooper Ave

September 19, 2018

- A. Chairman's statement.**
- B. Roll call.**
- C. Receipt of Bids-None**
- D. Motion to approve meeting minutes- September 6, 2018**
 - Communications--- Autenrieth/Ambrosio**
 - Bureau--- Autenrieth/Convery**
 - Fire Academy---Latshaw/Autenrieth**
 - Insurance--- Sipe/Latshaw**
 - Police/Emergency Management--- Convery/Ambrosio**
 - Legislation--- Autenrieth/Latshaw**
 - First Aid Squads---Autenrieth/Latshaw**
 - Township Council/Mayor---Convery**
 - Vehicle Repair/New Apparatus ---Convery/Ambrosio**
 - Officers Association---Ambrosio/Sipe**
 - Administrator's Comments/Attorney's report**
- E. Motion to accept resignations, or removals from the rolls: None**
- F. Applications for membership- None**
- G. Unfinished Business- None**
- H. New Business**
 - 1. Resolution authorizing payment for reimbursement (L-1)**
 - 2. SOG—Request for an Inspector (L-2)**
- I. Bills-September 19, 2018**
- J. Participation by the Public**
- Private Executive Session-Personnel**

EXHIBIT B

DISTRICT NO. 1 AGENDA

1144 Hooper Ave

September 19, 2018

A. Chairman's statement.

B. Roll call.

C. Receipt of Bids-None

D. Motion to approve meeting minutes- September 6, 2018

Communications--- Autenrieth/Ambrosio

Bureau--- Autenrieth/Convery

Fire Academy---Latshaw/Autenrieth

Insurance--- Sipe/Latshaw

Police/Emergency Management--- Convery/Ambrosio

Legislation--- Autenrieth/Latshaw

First Aid Squads---Autenrieth/Latshaw

Township Council/Mayor---Convery

Vehicle Repair/New Apparatus ---Convery/Ambrosio

Officers Association---Ambrosio/Sipe

Administrator's Comments/Attorney's report

E. Motion to accept resignations, or removals from the rolls: None

F. Applications for membership- None

G. Unfinished Business- None

H. New Business

1. Resolution authorizing payment for reimbursement (L-1)

2. SOG—Request for an Inspector (L-2)

I. Bills-September 19, 2018

J. Participation by the Public

Private Executive Session- Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege: Any pending or anticipated litigation or contract negotiation in which the public body is, or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

EXHIBIT C



Plosia Cohen
LAW FIRM

Mail To:

James L. Plosia Jr.
Jonathan F. Cohen
Joseph D. Youssouf*
David J. Ulric

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*Of Counsel

Writer's Email: jyoussouf@aol.com

September 6, 2018

Via Facsimile and Email

Toms River Fire District #1
Board of Fire Commissioners, Fire District #1
1144 Hooper Avenue, Suite 306
Toms River, NJ 08753

Dear Commissioners:

Please be advised that our law firm has been retained to represent District Administrator Brian Kubiel regarding his employment status. It has come to our attention that terms and conditions of Mr. Kubiel's employment may be the subject of discussions at tonight's meeting of the Board. The record does not reflect that our client was ever served with the required Rice Notice. We are in possession of a letter dated July 27, 2018 purporting to "not automatically renew" our client's employment contract at the end of 2018.

We strenuously object to this letter written by Mr. Van Dyke. We do not believe that this letter was properly authorized by a vote at a public meeting. Further, it is our understanding that the terms of the employment agreement automatically renew unless a **notice to terminate** is served upon our client within the 30-day period prescribed in the contract, which has already expired. As you know, public employment rights are clearly implicated in this controversy. And it is our intention to vigorously protect our client's rights to fundamental due process of law, fairness and transparency, in addition to his rights under the mutually executed and enforceable contract of employment.

If you persist in attempting to improperly terminate our client's employment, you will leave us with no alternative to institute suit to reverse what we believe is an illegal and improper

action by a public agency of the State of New Jersey. Please be further advised that we are hereby requesting Commissioner Ambrosio's recusal from any discussions concerning Mr. Kubiel's contract, employment status or terms and conditions of employment. As you are surely aware, Commissioner Ambrosio is an employee of the Township of Toms River where Mr. Kubiel serves as an elected member of the Township Committee. Local government ethics laws clearly prohibit a Commissioner who has a personal or pecuniary interest from voting or participating in discussions that could impair his ability to render impartial judgment. Those conditions certainly exist between Commissioner Ambrosio and Administrator Kubiel, who has always recused himself from any discussion of the Toms River Committee regarding Mr. Ambrosio in his position as a Township employee. We certainly expect that Commissioner Ambrosio should, at a minimum, follow the same ethical standards set forth by our client.

In conclusion, the Board may not discuss our client's terms and conditions of employment during public or executive session in tonight's meeting. The Board should serve this law firm with timely Rice Notice in the event that it intends to do so at any future meeting. We assume that the Board agrees with our legal position that the contractually required termination notice has not been provided to our client. In the event that the Board disagrees or seeks clarification, we demand a written notice within fourteen days of receipt of this correspondence.

Respectfully,
/s/ Joseph D. Yousseuf
Joseph D. Yousseuf

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to R. 4:25-4, James L. Plosia Jr., Esq., is hereby designated as trial counsel in the within matter.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, James L. Plosia Jr., certifies on behalf of the Plaintiff as follows:

1. I am an attorney licensed to practice in the State of New Jersey for the above-named Plaintiff in the subject action.
2. The matter in controversy in this case is not, to my knowledge, the subject of any other action pending in any court or arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PLOSIA COHEN LLC
Attorneys for Plaintiff

By: _____

JAMES L. PLOSIA JR.
ID# 023551988

Dated: September 21, 2018

VERIFICATION

I, Brian Kubiel, of full age, certify:

I am the Business Administrator for the Toms River Fire District No. 1. I have read the Verified Complaint and certify that the allegations contained therein are true to the best of my knowledge and belief.

I certified that the foregoing statements made by me are true. I am aware that if any of the foregoing claims and/or statements are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'Brian Kubiel', is written over a horizontal line.

Brian Kubiel

Dated: September 21, 2018

JAMES L. PLOSIA JR., ESQ. (ID# 023551988)
PLOSIA COHEN LLC
Chester Woods Complex
385 Route 24, Suite 3G
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(908) 888-2547
Attorneys for Plaintiff Brian Kubiel

BRIAN KUBIEL,

Plaintiff

v.

TOMS RIVER BOARD OF FIRE
COMMISSIONERS, FIRE DISTRICT
NO. 1 and CRAIG AMBROSIO,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, OCEAN COUNTY

DOCKET NO.:

Civil Action

**BRIEF IN SUPPORT OF PLAINTIFF BRIAN KUBIEL'S REQUEST FOR
TEMPORARY RESTRAINTS**

Of Counsel and on the Brief:
James L. Plosia Jr.

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INTRODUCTORY STATEMENT

This case concerns improper and illegal actions of the Toms River Fire District No. 1 (“Fire District”) and Fire Commissioner Craig Ambrosio (“Ambrosio”). At its September 19, 2018 public meeting, the Fire District went into executive session and discussed Plaintiff Brian Kubiels (“Kubiels”) terms and conditions of employment without providing him the legally required Rice notice. More, this legal violation was not merely a technical one, but resulted in a public action by the Fire District that same night – the hiring of special legal counsel to investigate Mr. Kubiels – which was a void public action because it was based upon the illegal executive session discussion.

The Fire District also violated the Open Public Meetings Act (“Act”) by altering the public agenda for the September 19th meeting. The agenda issued to the public prior to the 9/19 meeting stated that the Fire District will go into executive session to discuss “Personnel” (Plaintiff was one of the “personnel” actually discussed in executive session, albeit without being provided the legally required Rice notice). On the Fire District’s website the following day the meeting agenda had been altered after the fact – now the legal grounds for going into executive session was no longer “personnel” but “litigation, negotiations, and the attorney-client privilege”. Thus, the Fire District not only flouted its legal responsibilities under the Act and its Rice notice obligations, but apparently attempted to “cure” this blatant legal violation by altering (improperly and after the fact) the Agenda for the 9/19 meeting.

Finally, Defendant Craig Ambrosio has violated New Jersey ethics law by acting in a matter in which he has a clear-cut “personal or pecuniary interest”. Despite the fact that Mr. Kubiels, as a Toms River councilperson, is Mr. Ambrosio’s employer (Ambrosio is the Toms

River Supervisor of Buildings and Grounds, and as such is employed by the Toms River Mayor and Council, of which Plaintiff is a member), Ambrosio not only took part in the aforementioned (and illegal) executive session discussion, but voted upon a Resolution (indeed, Ambrosio personally acted moved the Resolution!) to hire a law firm to investigate Mr. Kubiel.

These actions are violative of black letter law New Jersey employment and public entity law. As such, they must be voided by this Court, and the fruits of these illegal actions (i.e. the retention of a law firm to investigate the Plaintiff) must not only be voided but the Defendants must be restrained from conducting any investigation of Mr. Kubiel under the current cloud of official misconduct which shrouds the Defendants' actions.

STANDARD OF REVIEW

An application for a temporary injunction is decided under the standard set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). Garden State Equality v. Dow, 216 N.J. 314, 320 (2013); Morris County Transfer Station, Inc. v. Frank's Sanitation Serv., Inc., 260 N.J. Super. 570, 574 (App. Div. 1992). Under this test, the party seeking relief must show 1) that it will suffer "irreparable harm" if the temporary injunction is not granted; 2) that the law underlying the issue before the court is settled; 3) that there is a reasonable probability of success on the merits; and 4) that, greater harm will occur if the injunction is not granted than if it is granted. Crowe v. De Gioia, 90 N.J. 132-34. The moving party has the burden of proving each Crowe factor by "clear and convincing evidence." Garden State Equality v. Dow, supra at 320, citing Brown v. City of Patterson, 424 N.J. Super. 176, 183 (App. Div. 2012); see also B & S Ltd. V. Elephant & Castle, 388 N.J. Super. 160, 167-68 (Ch. Div. 2006) (plaintiff must show by clear and convincing evidence that an injunction is necessary to prevent irreparable harm, that plaintiff asserts a settled legal right, that the material facts are uncontroverted, and that plaintiff's harm weighs more heavily). If the case concerns an issue of "significant public importance", the court must take the public interest into account in addition to the Crowe factors. Garden State Equality v. Dow, supra at 321, citing McNeil v. Legislative Apportionment Comm'n of N.J., 176 N.J. 484 (2003).

N.J.S.A. 10:4-12 sets forth 9 exceptions which allows New Jersey public entities to go into executive session. Exception 8 allows such entities to discuss personnel issues; however, in order to exercise this "executive session" right, the public body must provide the employee(s) to be discussed a Rice notice. See, e.g., Kean Fedn. Of Teachers v. Morell, 233 N.J. 566, 573

(2018). Failure of a public body to do so renders any public action resulting from or taken in whole or in part from that executive session discussion voidable. Allan-Deane Corp. v. Twp. of Bedminster, 153 N.J. Super. 114, 120 (App. Div. 1977).

N.J.S.A. 10:4-13 requires a public body in New Jersey prior to going into executive session to adopt a resolution stating the general nature of the topic of the subject to be discussed. New Jersey Courts interpreted that requirement as mandating public entities to state, with the greatest degree of specificity possible without revealing confidential information, the precise nature of the topic to be discussed in executive session.

LEGAL ARGUMENT

POINT I

DEFENDANT FIRE DISTRICT VIOLATED PLAINTIFF KUBIEL'S RIGHTS UNDER THE OPEN PUBLIC MEETINGS ACT

The facts in this matter are set forth at length in the Verified Complaint filed by the Plaintiff in this case. On September 19, the Toms River Board of Fire Commissioners for District No. 1 had a discussion in executive session of Plaintiff Kubiel's terms and conditions of employment without having provided Plaintiff with the legally required Rice Notice prior to said discussion. That action is illegal under the Open Public Meetings Act and the judicial decisions setting forth the legal obligations imposed upon public entities in this State with respect to discussions of employees' terms and conditions in public and executive sessions. The law requires that said public entity provide any such affected employee the option to have that discussion be in public, and the only way that an employee has the opportunity to exercise that right is if he/she is given a Rice Notice prior to the public entity's executive session discussion.

No Rice Notice was ever given to Plaintiff. This failure in itself violates the Open Public Meetings Act; however, Defendant Fire District compounded the violation by taking a public action (a vote to appoint special legal counsel to investigate allegations made against Plaintiff) after the illegal executive session discussion. To make matters still worse, having violated Plaintiff's Rice notice rights, then taking a public action based upon said illegal discussion, the Fire District apparently attempted to "cover its tracks" by inappropriately rewriting history – attempting to alter the "agenda"-based grounds for the executive session discussion. The agenda provided to the public at the September 19th meeting states that the executive session was to

discuss “personnel”; however, in an Orwellian attempt to erase history, the agenda posted on the Fire District’s public website on September 21 states that the executive session was for discussion of “matters relating to litigation, negotiations and the attorney/client privilege”. Not only is this post hoc attempt to escape the illegality of their prior action inappropriate in itself, but this cover up attempt is particularly egregious given the fact that it attempts to obfuscate what actually happened on September 19 – that is, an executive session discussion of the terms and conditions of Plaintiff’s employment.

Based upon well settled law and the Fire District’s illegal actions, the immediate and permanent relief sought by the Plaintiff is amply justified. Any public action taken by the Fire District based upon the illegal executive session discussion is void as a matter of law (at least until the Fire District attempts to cure this violation). Until and unless such a “cure” is effectuated, Plaintiff is entitled as a matter of law to the temporary and permanent injunctive relief he seeks.

POINT II

FIRE COMMISSIONER AMBROSIO’S ACTIONS VIOLATED LOCAL GOVERNMENT ETHICS LAWS AND GUIDELINES

Commissioner Ambrosio is a Toms River municipal government employee. His “employer” is, collectively, the Toms River Mayor and Council. Plaintiff Kubiel has served as a Toms River councilperson for some fifteen years; as such, Ambrosio’s “employer” is Mr. Kubiel and the Toms River Mayor and Council. Conversely, Plaintiff Kubiel as the Business

Administrator for Fire District No. 1 in Toms River is in effect “employed” by Mr. Ambrosio, who is one of the Fire District’s Board of Fire Commissioners.

For this reason, Plaintiff assiduously recuses himself, as a Toms River councilperson, from any discussions or actions which might directly impact Ambrosio’s terms and conditions of employment as a Toms River employee. For whatever reason, however, Ambrosio does not do the same with respect to his role as Fire Commissioner, despite the fact that his taking actions with respect to Plaintiff Kubiel as a Fire Commissioner of necessity are governed by the same ethical principles as guide Mr. Kubiel’s recusals as a councilperson and despite the rather obvious “personal” interest he had with respect to Mr. Kubiel.

Concerned that Ambrosio continued to involve himself in matters concerning Kubiel’s terms and conditions of employment, Kubiel had his attorney write a letter to the Board of Fire Commissioners explaining the obvious conflict of interest that Ambrosio had regarding any action Ambrosio as Fire Commissioner might take concerning the Plaintiff, and warning him that he needed to cease any such actions in the future. See Exhibit C to the Verified Complaint. Rather than heeding this sage and legally correct advice, Defendant Ambrosio, for his own strange reasons, not only ignored the warning, but took an active part in the discussion of Plaintiff’s terms and conditions of employment at the 9/16 Fire District executive session. To make matters worse, Ambrosio returned with the Fire Commissioners to public session on September 19 and actually moved a Resolution to appoint a law firm to conduct an investigation into allegations against the Plaintiff, then voted on that resolution.

It is clear beyond cavil (except, remarkably to Defendant Ambrosio) that Ambrosio’s actions constituted an impermissible and unethical conflict of interest. Thus, any actions taken

by the Fire District in which Mr. Ambrosio took part and which involved the terms and conditions of employment of Plaintiff Kubiak must be voided, and Ambrosio should be permanently restrained in the future by this Court from engaging in any such inappropriate conduct in the future.

POINT III

PLAINTIFF IS ENTITLED TO IMMEDIATE TEMPORARY RESTRAINTS

Not only is Plaintiff entitled to the permanent injunctive relief sought in the Verified Complaint, he is also entitled to immediate temporary restraints in the form of the Defendants being immediately restrained from hiring “special legal counsel” or conducting any investigation into Plaintiff’s conduct. This is true because either of those actions would necessarily be based upon the illegal private session discussion by the Fire District at its 9/19 meeting, Defendant Ambrosio’s unethical involvement in said discussion and public action at that same meeting, and the Fire District’s improper and ex post facto alteration of their 9/19 meeting agenda (which is a transparent attempt to justify the Fire District’s illegal executive session).

Such immediate injunctive relief is essential in this matter. If such relief is not ordered by this Court, the Defendants will in effect be allowed to take further action (i.e. hire special legal counsel and begin an investigation) based upon their illegal actions at the September 19 meeting. Thus, Plaintiff asks this Court to grant the immediate injunctive relief being sought.

CONCLUSION

Based upon the foregoing reasons and above-cited authorities, Plaintiff Brian Kubiak requests that this Court grant to Plaintiff the relief sought in the Verified Complaint and accompanying Order to Show Cause.

PLOSIA COHEN LLC

By: _____

James L. Plosia Jr.

Dated: September 21, 2018

JAMES L. PLOSIA JR., ESQ. (ID# 023551988)
PLOSIA COHEN LLC
Chester Woods Complex
385 Route 24, Suite 3G
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Attorneys for Plaintiff Brian Kubiel

BRIAN KUBIEL,

Plaintiff

v.

TOMS RIVER BOARD OF FIRE
COMMISSIONERS, FIRE DISTRICT
NO. 1 and CRAIG AMBROSIO

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, OCEAN COUNTY

DOCKET NO.:

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER being brought before the court by James L. Plosia Jr., Esq., attorney for Plaintiff Brian Kubiel ("Kubiel"), seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the Verified Complaint filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to R. 4:67-2 and for good cause shown.

IT IS on this _____ day of _____, 2018,

ORDERED that the Defendants Toms River Board of Fire Commissioners, Fire District No. 1 ("Fire District") and Craig Ambrosio ("Ambrosio") appear and show cause on the _____ day of _____, 2018 before the Superior Court at the Ocean County Courthouse in Toms River, New Jersey at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered:

1. Finding that the Defendant Fire District violated the notice requirements to Plaintiff Brian Kubiak as set forth in N.J.S.A. 10:4-7 et. seq.;
2. Permanently restraining the Fire District from altering after the fact publically distributed agendas for Board of Fire Commissioner meetings.
3. Declaring that the Fire District violated the Act and Plaintiff's legal right to a Rice notice by their actions at the September 19 meeting;
4. Voiding the Fire District's appointment of special legal counsel as illegally based upon an improper executive session discussion of Plaintiff's terms and conditions of employment without providing Plaintiff with a Rice notice; and
5. Permanently restraining the Fire District from conducting any investigation against Plaintiff based upon either the September 19 executive session and/or the appointment by the Fire District of special legal counsel at that meeting to conduct said investigation.
6. Permanently restraining the Fire District conducting executive session discussions of Plaintiff's terms and conditions of employment without providing Plaintiff with the legally required Rice notice.
8. Sanctioning Craig Ambrosio for taking both private and public actions in Fire Commissioner matters involving Plaintiff, actions which should never have been taken due to an irreconcilable conflict of interest;
9. Voiding the Fire Commissioners' September 19 Resolution hiring special legal counsel inasmuch as that Resolution was discussed and voted upon by Ambrosio despite the aforementioned conflict of interest; and

10. Entering immediate temporary restraints prohibiting the Defendants from proceeding with any investigation into Plaintiff's conduct until such time as Defendants void their illegal actions as set forth in the Verified Complaint; and

10. Permanently restraining Ambrosio from participating as a Fire Commissioner in any personnel matter involving the Plaintiff.

And it is further **ORDERED** that:

1. A copy of this Order to Show Cause, Verified Complaint and Brief and all supporting Affidavits or Certifications, if any, submitted in support of this application be served upon the Defendants within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The Plaintiff must file with the Court its proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this Order to Show Cause and the relief requested in the verified complaint and proof of service of the same by _____, 2018. The answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court of Ocean County and a copy of the papers must be sent directly to the chambers of Judge _____.

4. The plaintiff must file and serve any written reply to the Defendants' Order to Show Cause opposition by _____, 2018. The reply papers must be filed with the Clerk of the Superior Court in the County listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of Order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the Order to Show Cause and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the County listed above. A directory of these offices is available in the Civil Division Management Office in Ocean County Superior Court and online http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$175.00 filing fee payable to the "Treasurer, State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to the Plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJLAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal

assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.