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KRISTOPHER GANLEY,

Plaintiff

v.

**BOROUGH OF OCEAN GATE,
OCEAN COUNTY PROSECUTOR'S OFFICE,
JOSEPH CORONATO (in his official capacity as
Ocean County Prosecutor), NEW JERSEY STATE
POLICE, STATE BUREAU OF INVESTIGATION,
(in their capacity as custodian of the Central Drug
Registry), and JOHN/JANE DOES 1-10,**

Defendants

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY**

DOCKET NO.: OCN-L-~~0438-17~~

CIVIL ACTION

**FIRST AMENDED
COMPLAINT**

L-49847

Kristopher Ganley, a resident of Ocean County New Jersey, by way of Complaint against Borough of Ocean Gate, the Ocean County Prosecutor's Office, Joseph Coronato (in his official capacity as Ocean County Prosecutor), New Jersey State Police, State Bureau of Investigation (in their capacity as custodian of the Central Drug Registry), and John/Jane Does 1-10, avers as follows:

PARTIES

1. Plaintiff Kristopher Ganley (hereinafter "Plaintiff") is a sworn police officer employed by the Borough of Ocean Gate.
2. Defendant Borough of Ocean Gate is a municipal corporation located in the County of

Ocean. Its offices are located at 801 Ocean Gate Avenue, Ocean Gate, New Jersey 08740.

Ocean Gate is a non-civil service jurisdiction.

3. The Ocean County Prosecutor's Office is located at 119 Hooper Ave, Toms River, NJ 08753.

4. Joseph Coronato is the Prosecutor for Ocean County, located at 119 Hooper Ave, Toms River, NJ 08753.

5. The New Jersey State Police, State Bureau of Investigation is this custodian of the Central Drug Registry pursuant to the New Jersey Law Enforcement Drug Testing Manual, issued by the Attorney General of New Jersey (hereinafter, "Attorney General Guidelines"), and is located at 28 West State Street, Trenton, NJ 08608.

JURISDICTION AND VENUE

6. This Court has jurisdiction under the New Jersey Civil Rights Act (N.J.S.A. § 10:6-2); the Due Process clause of Article 1, Paragraph 1 of the New Jersey Constitution; N.J.S.A. § 40A:14-147, *et seq.*; the Declaratory Judgment Act N.J.S.A. § 2A:16-52 *et seq.*; and the Open Public Meetings Act (OPMA) N.J.S.A. § 10:4-6, *et seq.*

7. Venue is legally proper in the Superior Court of Ocean County because the Borough is located in Ocean County, and all relevant acts occurred in Ocean County. Plaintiff reserves the right to seek a change in venue due to conflicts of interest involving Defendants and/or other grounds.

FACTS

8. Beginning in 2007, Plaintiff was a decorated police officer with an unblemished disciplinary record over his nine (9) years of continuous service to Defendant Borough.

9. Plaintiff was promoted to Sergeant in 2010.
10. Plaintiff was promoted to Lieutenant in 2015.
11. In October 2016, Plaintiff was informed that Plaintiff would be the next Chief of Police in Ocean Gate after the current Chief retired.
12. Upon information and belief, on or about December 1, 2016, Defendant Prosecutor's Office and/or Defendant Coronato asserted control over the Ocean Gate Police Department against the will of the governing body.
13. Upon information and belief, Defendant Prosecutor's Office and/or Defendant Coronato lacked legal authority to assume administrative control over any municipal police department, including the Ocean Gate Police Department.
14. At all relevant times, the Borough of Ocean Gate is responsible and accountable for the administration of the Ocean Gate Police Department.
15. According to N.J.S.A. § 40A:14-118 *et seq.* and well settled case law, municipal police departments are governed by the municipality through the Appropriate Authority as designated by the municipal governing body according to local ordinance.
16. On or about December 8, 2016, Defendant Prosecutor's Office and/or Defendant Coronato issued correspondence to the Ocean Gate Police Department stating *inter alia* that Plaintiff "is barred from being a police officer."
17. Plaintiff, through prior counsel, requested notice of charges and a hearing from the Borough of Ocean Gate, but received no response from Defendant Borough.

18. On or about January 31, 2017, Defendant Borough confirmed in writing for the first time through its attorney that Plaintiff's employment had been terminated without notice of charges or an opportunity for a hearing in violation of N.J.S.A. § 40A:14-147, *et seq.*

19. Upon information and belief, Defendant Prosecutor's Office and/or Defendant Coronato informed Defendant Borough at some point in 2016 that Plaintiff had been required to submit to a "reasonable suspicion" drug test in 2005 at the behest of his then-employer Neptune City Police Department and/or the Monmouth County Prosecutor's Office.

20. According to Defendant Prosecutor's Office and/or Defendant Coronato, the drug test submitted in 2005 came back positive for illegal substances at some point in 2005.

21. When Plaintiff resigned from the Neptune City Police Department in 2005, he was not informed of the alleged positive drug test.

22. Plaintiff was later hired by Defendant Borough of Ocean Gate after a thorough background investigation which did not reveal any positive drug test.

23. Under the Attorney General Guidelines and relevant case law, police departments may only drug test sworn police officers as part of a program of random testing or upon "reasonable suspicion" as that term is defined by Fourth Amendment jurisprudence.

24. Upon information and belief, Plaintiff was drug tested in 2005 by Neptune City based upon alleged "reasonable suspicion."

25. However, there were no reliable, articulable facts sufficient to show reasonable suspicion to conduct the drug test in 2005, as required by the Attorney General Guidelines and the United States and New Jersey Constitutions.

26. Plaintiff provided a split sample in 2005 but was not afforded an opportunity to have the split sample tested, as required by the Attorney General Guidelines and applicable law.
27. Upon information and belief, the split sample submitted in 2005 has long since been destroyed.
28. Plaintiff was not afforded an opportunity to list all medications and supplements he had been taking on Attachment A (Drug Testing Medication Information) as required the Attorney General Guidelines prior to submitting to the 2005 drug test; rather, Plaintiff listed the medications and supplements he had been taking on a blank piece of paper.
29. Upon information and belief, the list created by Plaintiff was not provided to the drug testing facility as required by the Attorney General Guidelines and applicable law.
30. Plaintiff was never notified of any positive drug test until December 2016 when his attorney was informed of same.
31. Continuing to the present day, Plaintiff has never been afforded an opportunity to contest the alleged positive drug test from 2005.
32. Upon information and belief, in December 2016, the Ocean County Prosecutor's office arbitrarily submitted evidence of a positive drug test attributed to Plaintiff to the State Drug Registry despite Defendant Prosecutor's knowledge that the 2005 drug test was conducted in derogation of Plaintiff's rights to due process.
33. The sole basis for Plaintiff's termination is the 2005 drug test results, which were obtained in violation of the Attorney General Guidelines, established protocols, and Plaintiff's right to due process.

34. Plaintiff was terminated from his position as a police officer without notice, without a hearing, and without just cause.

COUNT ONE

VIOLATION OF PLAINTIFF'S SUBSTANTIVE DUE PROCESS RIGHTS

**GUARANTEED BY THE NEW JERSEY CIVIL RIGHTS ACT (N.J.S.A. § 10:6-2), THE
NEW JERSEY CONSTITUTION, AND NEW JERSEY LAW**

35. Plaintiff incorporates and re-alleges the foregoing paragraphs as if fully set forth herein.

36. Plaintiff is a permanent police officer with a statutory due process right to notice and a hearing prior to termination or disciplinary suspension without pay. (See N.J.S.A. § 40A:14-147).

37. As a tenured police officer, Plaintiff has a substantive due process right to notice and a hearing prior to termination.

38. By terminating Plaintiff without providing notice or a hearing, Defendants, acting under color or law, deprived Plaintiff of his due process rights, to wit:

- A. The right to receive notice of charges;
- B. The right to be advised by counsel;
- C. The right to pre-hearing disclosure of evidence;
- D. The right to be heard in person and to present witnesses and documentary evidence;
- E. The right to confront and cross-examine witnesses;
- F. The right to be heard by a neutral hearing officer;

- G. The right to receive a written statement by the fact finder as to the reasons for the suspension and the evidence relied upon; and/or,
- H. The right to judicial review pursuant to N.J.S.A. § 40A:14-147, *et seq.*

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Reinstatement;
- B. Dismissal of all disciplinary charges;
- C. Full back pay for the entire period in which Plaintiff's salary has been withheld;
- D. Full back payment of all contributions to the Police and Firemans' Retirement System (PFRS) such that Plaintiff's is made whole with respect to his pension service time;
- E. Full back payment for all out of pocket medical expenses after Defendants removed Plaintiff's health care policy;
- F. Reimbursement of attorney's fees and costs;
- G. The imposition of civil penalties upon Defendants;
- H. An injunctive Order compelling Defendants to provide notice of charges;
- I. An injunctive Order compelling Defendants to convene a hearing;
- J. Immediate removal of Plaintiff's name from the Central Drug Registry; and,
- K. Such other relief as this Court deems just and equitable.

COUNT TWO

VIOLATION OF STATUTORY DUE PROCESS RIGHTS

GUARANTEED BY N.J.S.A. § 40A:14-147

39. Plaintiff incorporates and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

40. N.J.S.A. § 40A:14-147. Removal, suspension of police officer provides, in pertinent part, with emphasis provided:

Except as otherwise provided by law, **no permanent member or officer of the police department or force shall be removed** from his office, employment or position ... for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, **except for just cause** as hereinbefore provided and **then only upon a written complaint setting forth the charge or charges against such member or officer**. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made **and a copy shall be served upon the member or officer so charged**, with **notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint**.

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 date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based**. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

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.

The law enforcement officer may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

41. Prior to removing a permanent police officer in a non-civil service jurisdiction, N.J.S.A. § 40A:14-147 requires the Borough to serve upon the officer “**a written complaint** setting forth the charge or charges against such member or officer.” (Emphasis added.)

42. N.J.S.A. § 40A:14-147 further provides that “[a] failure to comply with said provisions as to the service of the complaint...**shall** require a dismissal of the complaint.” (Emphasis added.)

43. Plaintiff was never served with any “written complaint setting forth the charge or charges against such member or officer” with respect to any alleged positive drug test in 2005.

44. Plaintiff was never served with any “written complaint setting forth the charge or charges against such member or officer” with respect to his apparent termination by the Borough in December 2016.

45. Prior to removing a permanent police officer in a non-civil service jurisdiction, N.J.S.A. § 40A:14-147 requires the Borough to serve upon the officer a written complaint which includes “**notice of a designated hearing** thereon by the proper authorities, which shall be **not less than 10 nor more than 30 days from date of service of the complaint.**” (Emphasis added.)

46. N.J.S.A. § 40A:14-147 further provides that “[a] failure to comply with said provisions as to the service of the complaint...**shall** require a dismissal of the complaint.” (Emphasis added.)

47. Plaintiff was never provided notice of a hearing with respect to any alleged positive drug test in 2005.

48. Plaintiff was never provided notice of a hearing with respect to his apparent termination by the Borough in December 2016.

49. Despite Plaintiff's requests for a hearing, Defendants have refused to afford Plaintiff a hearing as required by N.J.S.A. § 40A:14-147.

50. Defendants have further violated the "45-day rule" from N.J.S.A. § 40A:14-147 by removing Plaintiff more than 45 days after allegedly sufficient evidence to file such charges was obtained by Defendants.

51. N.J.S.A. § 40A:14-147 further provides that "[a] failure to comply with said provisions as to ... the time within which a complaint is to be filed shall require a dismissal of the complaint." (Emphasis added.)

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Reinstatement;
- B. Dismissal of all disciplinary charges;
- C. Full back pay for the entire period in which Plaintiff's salary has been withheld;
- D. Full back payment of all contributions to the Police and Firemans' Retirement System (PFRS) such that Plaintiff's is made whole with respect to his pension service time;
- E. Full back payment for all out of pocket medical expenses after Defendants removed Plaintiff's health care policy;
- F. Reimbursement of attorney's fees and costs;
- G. The imposition of civil penalties upon Defendants;
- H. An injunctive Order compelling Defendants to provide notice of charges;
- I. An injunctive Order compelling Defendants to convene a hearing;

- J. Immediate removal of Plaintiff's name from the Central Drug Registry; and,
- K. Such other relief as this Court deems just and equitable.

COUNT THREE

DE NOVO REVIEW PURSUANT TO N.J.S.A. § 40A:14-150

52. Plaintiff incorporates and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

53. The termination of Plaintiff was excessive and without just cause.

54. Continuing to the present time, Defendant Borough has not served written notification that Plaintiff was formally terminated from the Borough of Ocean Gate Police Department.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Reinstatement;
- B. Dismissal of all disciplinary charges;
- C. Full back pay for the entire period in which Plaintiff' salary has been withheld;
- D. Full back payment of all contributions to the Police and Firemans' Retirement System (PFRS) such that Plaintiff's is made whole with respect to his pension service time;
- E. Full back payment for all out of pocket medical expenses after Defendants removed Plaintiff's health care policy;
- F. Reimbursement of attorney's fees and costs;
- G. The imposition of civil penalties upon Defendants;
- H. An injunctive Order compelling Defendants to provide notice of charges;

- I. An injunctive Order compelling Defendants to convene a hearing;
- J. Immediate removal of Plaintiff's name from the Central Drug Registry; and,
- K. Such other relief as this Court deems just and equitable.

COUNT FOUR

VIOLATION OF THE OPEN PUBLIC MEETINGS ACT

55. Plaintiff incorporates and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

56. Upon information and belief, the governing body of Defendant Ocean Gate at some point discussed terminating Plaintiff without providing Plaintiff with a "Rice Notice" in violation of the Open Public Meetings Act, N.J.S.A. § 10:4-6 et seq.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Reinstatement;
- B. Dismissal of all disciplinary charges;
- C. Full back pay for the entire period in which Plaintiff's salary has been withheld;
- D. Full back payment of all contributions to the Police and Firemans' Retirement System (PFRS) such that Plaintiff's is made whole with respect to his pension service time;
- E. Full back payment for all out of pocket medical expenses after Defendants removed Plaintiff's health care policy;
- F. Reimbursement of attorney's fees and costs;
- G. The imposition of civil penalties upon Defendants;

- H. An injunctive Order compelling Defendants to provide notice of charges;
- I. An injunctive Order compelling Defendants to convene a hearing;
- J. Immediate removal of Plaintiff's name from the Central Drug Registry; and,
- K. Such other relief as this Court deems just and equitable.

COUNT FIVE

REMOVAL OF PLAINTIFF'S NAME FROM THE CENTRAL DRUG REGISTRY

57. Plaintiff incorporates and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

58. Pursuant to N.J.S.A. 52:17B-112(b), it is the duty of "police officers of the several counties and municipalities of this State and all other law enforcement officers to cooperate with and aid the Attorney General" in the performance of his or her duties.

59. Pursuant to its authority under the Criminal Justice Act of 1970, N.J.S.A. § 52:17b-98, *et seq.*, the Attorney General provides for general supervision of law enforcement in the State of New Jersey.

60. The authority granted to the Attorney General by N.J.S.A. § 52:17b-98, permits the Attorney General to establish guidelines, rules, and directives for law enforcement officers and departments within the State of New Jersey.

61. Pursuant to this authority, the Attorney General issued the Attorney General's Guidelines for Drug Testing of municipal police officers in October 1986. These Guidelines were revised in August 1990, September 1998, June 2001, and May 2012.

62. When Plaintiff was instructed to take a drug test based on alleged reasonable suspicion in 2005, the standards, protocols, and procedures set forth in the Attorney General's Drug Testing

Guidelines, then in effect, were violated.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Immediate removal of his name from the Central Drug Registry, which is within the custody of Defendant New Jersey State Police, State Bureau of Investigation;
- B. Immediate removal of any other mention of the results of the 2005 drug test from any and all records, databases, or other repositories maintained by Defendants in this matter; and,
- C. Such other relief as this Court deems just and equitable.

COUNT SIX

DECLARATORY JUDGMENT

63. Plaintiff incorporates and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

64. N.J.S.A. § 2A:16-51 establishes that a party may apply to the Courts of this State for Declaratory Judgment for the “general purpose” of making “uniform the law of [this State].”

65. Pursuant to N.J.S.A. § 2A:16-53, the Courts of this State have the power to determine and declare the rights and status of an individual whose rights and status are affected by statute.

66. As set forth more fully in Count One above, Plaintiff is a permanent police officer with a statutory right to notice and a hearing prior to termination or disciplinary suspension of his employment without pay pursuant to N.J.S.A. § 40A:14-147.

67. As set forth more fully in Count Two above, Plaintiff is a permanent police officer with a statutory right to due process in all termination and disciplinary suspension matters pursuant to

N.J.S.A. § 40A:14-147.

68. As set forth more fully in Count Four above, Plaintiff has a statutory right under the Open Public Meetings Act, N.J.S.A. § 10:4-6, *et seq.*, to receive a "Rice Notice" prior to the governing body of Defendant Ocean ^{Gate}~~Grove~~ discussing termination or disciplinary suspension of his employment as a permanent police officer.

69. Non-random drug tests performed pursuant to police department regulations are government "searches" subject to the New Jersey and United States Constitutions.

70. Non-random drug testing of municipal police officers requires articulable "reasonable suspicion" as set forth by the New Jersey and United States Constitutions.

71. To satisfy the reasonableness requirement of the Fourth Amendment, a police department must articulate reasonable, individualized suspicion before administering a non-random drug test to a police officer.

72. In 2005, there were no reliable, articulable facts sufficient to establish the requisite reasonable, individualized suspicion before a drug test was administered to Plaintiff.

73. Defendants violated Plaintiff's rights under N.J.S.A. § 40A:14-147 because, in terminating Plaintiff, they relied upon an allegedly positive drug test in 2005 concerning which Defendants knew Plaintiff had been deprived of his statutory right to notice and a hearing concerning the results of the allegedly positive drug test.

74. Defendants violated Plaintiff's rights under N.J.S.A. § 40A:14-147 in 2016 because they deprived him of his statutory right to notice and a hearing prior to termination.

75. Defendants further violated Plaintiff's rights under N.J.S.A. § 40A:14-147 in 2016 because they have deprived on his statutory and substantive rights to due process.

76. Defendants violated Plaintiff's rights under N.J.S.A. § 10:4-6, *et seq.* in 2016 because Defendants deprived Plaintiff of his statutory right to a "Rice Notice" prior to the governing body of Defendant Ocean ~~Grove~~^{Gate} discussing termination or disciplinary suspension without pay of Plaintiff's employment as a permanent police officer.

77. Defendants deprived Plaintiff of his rights under the Fourth Amendment by relying upon an allegedly positive drug test for which there were no reliable, articulable facts sufficient to establish reasonable, individualized suspicion to administer a drug test to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Declaring and finding that, in 2005, Plaintiff's statutory right, pursuant to N.J.S.A. § 40A:14-147, to a notice and hearing before termination or disciplinary suspension without pay, has been violated and granting any and all remedies and relief necessary to cure the violation of Plaintiff's rights;
- B. Declaring and finding that, in 2016, Plaintiff's statutory right, pursuant to N.J.S.A. § 40A:14-147, to a notice and hearing before termination or disciplinary suspension without pay, has been violated by Defendants and granting any and all remedies and relief necessary to cure Defendants' violation of Plaintiff's statutory rights;
- C. Declaring and finding that in 2005, Plaintiff's statutory right, pursuant to N.J.S.A. § 40A:14-147, to due process prior to termination or disciplinary suspension without pay, was violated and granting any and all remedies and relief necessary to cure the violation of Plaintiff's statutory rights;
- D. Declaring and finding that in 2016, Plaintiff's statutory right, pursuant to

N.J.S.A. § 40A:14-147, to due process prior to termination or disciplinary suspension without pay, has been violated by Defendants and granting any and all remedies and relief necessary to cure Defendants' violation of Plaintiff's statutory rights;

- E. Declaring and finding that Plaintiff's statutory right to a "Rice Notice," pursuant to N.J.S.A. § 10:4-6, *et seq.*, has been violated by Defendants and granting any and all remedies and relief necessary to cure Defendants' violation of Plaintiff's statutory rights;
- L. Declaring and finding that Plaintiff's rights under the Fourth Amendment were violated and granting any and all remedies and relief necessary to cure this violation of Plaintiff's rights;
- M. Reinstatement;
- N. Dismissal of all disciplinary charges;
- O. Full back pay for the entire period in which Plaintiff's salary has been withheld;
- P. Full back payment of all contributions to the Police and Firemans' Retirement System (PFRS) such that Plaintiff's is made whole with respect to his pension service time;
- Q. Full back payment for all out of pocket medical expenses after Defendants removed Plaintiff's health care policy;
- R. Reimbursement of attorney's fees and costs;
- S. The imposition of civil penalties upon Defendants;

- T. An injunctive Order compelling Defendants to provide notice of charges;
- U. An injunctive Order compelling Defendants to convene a hearing;
- V. Immediate removal of Plaintiff's name from the Central Drug Registry; and,
- W. Such other relief as this Court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, I hereby certify that to my knowledge the matter in controversy is not the subject of any other pending court action or arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

DESIGNATION OF TRIAL COUNSEL

Peter B. Paris is hereby designated as trial counsel in this matter.

METS SCHIRO MCGOVERN & PARIS, LLP
Attorneys for Plaintiff



By: _____

PETER B. PARIS, ESQ.

Dated: March 13, 2017