

From: [Stephen Daveggia](#)
To: [Steve Edwards](#)
Cc: [Conrad Cyriax](#)
Subject: FW: James Hunt and Township of Neptune (Confidential demand letter) GSMJIF 2020207072 (EPL-2019)
Date: Wednesday, September 16, 2020 4:03:00 PM
Attachments: [3194-1002 LETT letter to S. Daveggia with Pre-Litigation Settlement Offer from Hunt's Attorney.pdf](#)

Hi Steve, please see attached demand letter in reference to the James Hunt Matter.

Plaintiff is demanding \$921,453.50 to settle.

I am in the process of preparing the file for our next working group meeting. Eric Bernstein, town attorney, has just recently forwarded the labor investigation report and I am in the process of reviewing same.

Steve, based on my conversation with Eric, however, it appears that Neptune may consider a financial settlement.

After I present the case to the working group committee I will advise.

Thank you,

Summary of Compensation:

With regard to economics, should Chief Hunt retire today, he would be entitled to the following monies as calculated by him pursuant to the terms of his current employment contract with the Township:

<u>Accrued Vacation Days</u>	\$44,444.00
<u>Accrued Sick Time:</u>	\$80,216.50
<u>Compensation ("Comp") Time:</u>	\$ 16,793.00

Total: 141,453.50

In addition to that amount which my client is owed upon retirement pursuant to contract, Chief Hunt herein demands that the Township and/or its insurer pay the amount of Seven Hundred Eighty Thousand Dollars (\$780,000.00) in satisfaction of all claims which he has against the Township. We are open to discussing the timing and manner by which payments for that amount would be made to Chief Hunt.

From: Heather Nevola <[xxxxxxxx@xxxxxxxx.xxx](#)>
Sent: Saturday, August 29, 2020 11:14 PM
To: Stephen Daveggia <[xxxxxxxxxx@xxxxxxxx.xxx](#)>
Cc: Eric Bernstein <[xxxxxxxxxxx@xxxxxxxx.xxx](#)>
Subject: James Hunt and Township of Neptune



CAUTION: External message

Please see the attached correspondence in regard to the above-captioned matter.

*Thank you,
Heather*

Heather L. Nevola

Legal Assistant to Eric M. Bernstein, Esq./Office Administrator

Eric M. Bernstein & Associates, LLC

34 Mountain Blvd., Bldg. A

P.O. Box 4922

Warren, NJ 07059

Tel: 732-805-3360

Fax: 732-805-3346



ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.

A T T O R N E Y S A T L A W

34 MOUNTAIN BLVD., BLDG A.
P.O. BOX 4922
WARREN, NEW JERSEY 07059

(732) 805-3360
FACSIMILE (732) 805-3346
www.embalaw.com

August 29, 2020

Stephen Daveggia, Litigation Specialist
NIP Management Services, LLC, Claims Administrator
900 Route 9 North, Suite 503
Woodbridge, New Jersey 07095

Via Email Only
Personal & Confidential
For Client's Eyes Only
Attorney-Client Privilege

**Re: James Hunt and Township of Neptune
 Our File No. 3194-1002**

Dear Mr. Daveggia:

As per our previous discussion, please find enclosed, for your eyes only, a copy of a pre-litigation settlement offer from Chief Hunt's lawyer, Jeffrey Catrambone, Esq. A copy has also been sent separately to Vito Gadaleta, Neptune Township's administrator, for his information as well. Upon receipt and review of this correspondence and enclosure, please contact me to discuss this matter further.

Very truly yours,
ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.

By: *Eric M. Bernstein*
Eric M. Bernstein, Esq.

EMB/hln

Enclosure

cc (Letter Only) (Via Email Only) (Personal & Confidential):
Vito Gadaleta, Business Administrator

Law Offices
SCIARRA & CATRAMBONE, L.L.C.

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran
Christopher A. Gray#

A Limited Liability Company
1130 Clifton Avenue
Clifton, New Jersey 07013
Telephone: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Mount Laurel Office
Briggs Professional Campus
2057 Briggs Road, Suite 201
Mount Laurel, NJ 08054
Tel. 856-888-7066

Of Counsel
Deborah Masker Edwards*
Cathie Perselay Seidman*
Alan Serrins+

Associate
Frank C. Cioffi

*Admitted NJ & NY Bars
+ Admitted NY Bar
Admitted NJ & PA Bars

August 26, 2020

via email

Eric M. Bernstein, Esq.
Eric M. Bernstein & Associates, LLC
34 Mountain Blvd.
Building A
P.O. Box 4922
Warren, NJ 07059

**Re: Neptune Police Chief James Hunt
Our File No. 20-654**

FOR SETTLEMENT AND FEE-SHIFTING PURPOSES ONLY

Dear Mr. Bernstein:

As you are aware the undersigned represents Police Chief James Hunt. Per your request and in follow-up to your discussions with my partner Charles Sciarra, please accept the following as our pre-litigation settlement demand as to the contemplated complaint which we will file against the Township of Neptune with Chief Hunt as Plaintiff under the New Jersey Law Against Discrimination ("LAD") and the Conscientious Employee Protection Act ("CEPA").

As you are aware Chief's Hunt's current contract runs until December 31, 2020. His retirement, which would not otherwise be required until May 2022 when he reaches age 65, at the expiration of his current contract is contemplated only in the event that a settlement is reached as to all other material terms.

The material terms of any settlement would also include a provision that the Township will continue to defend and indemnify Chief Hunt in all pending and future litigation arising out of his employment as is required by N.J.S.A. 40A:14-155. Any settlement agreement would require that the provision of the contract regarding the purported expiration of the

Chief's right to "paid legal representation" from the Township at the time of his retirement, which is contrary to the Township's statutory obligations, be rendered null and void and provide instead that the Township would continue to defend and indemnify Chief Hunt after he retires in all litigation consistent with the statute cited above. This term is non-negotiable.

With regard to economics, should Chief Hunt retire today, he would be entitled to the following monies as calculated by him pursuant to the terms of his current employment contract with the Township:

Accrued Vacation Days: \$44,444.00
Accrued Sick Time: \$80,216.50
Compensation ("Comp") Time: \$16,793

Total: 141,453.50

In addition to that amount which my client is owed upon retirement pursuant to contract, Chief Hunt herein demands that the Township and/or its insurer pay the amount of Seven Hundred Eighty Thousand Dollars (\$780,000.00) in satisfaction of all claims which he has against the Township. We are open to discussing the timing and manner by which payments for that amount would be made to Chief Hunt.

Plaintiff's claims under the LAD and CEPA arise out of acts of discrimination, harassment, and retaliation over a period of several years, since in or about 2017, with the antagonists being: [1] Dr. Michael Brantley, a Township Committeeman and Chairman of the "Police Oversight Committee" ("POC"); [2] Nicholas Williams, a Township Committeeman and POC member; [3] Barry Colicelli, a civilian consultant for the POC retained by the Township & [4] Michael Burns, former Township Labor Counsel. Plaintiff made numerous verbal and written complaints over a period of several years both internally with Township officials, as well as with the Monmouth County's Prosecutor's Office.

As you are aware, Ellen O'Connell of Inglesino, Webster, Wyciskala Taylor LLC, was retained by the Township, conducted an investigation and concluded that Chief Hunt's claims of harassment constituting a hostile work environment have been sustained, and that those actions were based upon a motivation to replace him with an African-American as Chief.¹ The

¹ While as practitioners in employment-civil rights matters we recognize that an *Aguas* defense is in theory available to an employer under the LAD in an action seeking to impose liability against the employer under a negligence theory for a harassment/hostile work environment claim, the egregious facts including numerous intentional acts by members of the Township Council against Chief Hunt over the course of several years, without any action being taken until December 2019 notwithstanding Plaintiff's numerous complaints, render that defense inapplicable. Additionally, that defense is under the law available as to hostile work environment claims under the LAD only, and not for claims of discrimination and retaliation under the LAD, and is entirely inapplicable to a retaliation claim under CEPA.

report concluded that, *inter alia*: [1] the disciplinary action against Chief Hunt taken by the POC violated the N.J.S.A. 40A:14-118, Township Ordinance, and Attorney General Guidelines; [2] the POC and Colicelli engaged in offensive, hostile and racially motivated behavior against the Chief, including baseless disciplinary action, usurpation of the Chief's authority, and constructive discipline and discharge, as well as illegally interfering with, taking over and removing the Chief's authority from duties regarding police operations, such as internal affairs matters, discipline, scheduling, labor/management relations, the promulgation of SOP's, and promotional processes.

Additionally, Chief Hunt's protected activity under CEPA includes his documented objections to and disclosures to the Prosecutor's office regarding the manner in which DWI's and marijuana-related offenses were adjudicated in Neptune Township Municipal Court, including improper dismissals and downgrades of those quasi-criminal matters. Those complaints, in addition to Chief Hunt's objections to and complaints about the POC's illegal acts outlined *supra*, establish Chief Hunt's status as a *bona fide* whistle-blower under CEPA.

This demand contemplates the risks your client needs to recognize in moving forward with regard to its exposure for Plaintiff's claims for compensatory damages, including but not limited to emotional distress and loss of prospective employment following retirement, and punitive damages. Defendants' assessment of risk should also encompass Plaintiff's fee-shifting application should we prevail at trial pursuant to which we would seek an hourly rate well in excess of \$500 and a fee enhancement. We similarly acknowledge that prevailing at trial is not a certainty and therefore there is some flexibility in our position.

Lastly, please note that this is a pre-litigation demand made in contemplation of no further significant work being done on the file. If we cannot resolve the matter pre-litigation we will file Chief's Hunt's Complaint in Superior Court under the LAD and CEPA and this demand would be withdrawn.

We await your response and thank you for your attention and courtesies.

Very truly yours,

Sciarra & Catrambone, L.L.C.

By: /s/ *Jeffrey D. Catrambone*
Jeffrey D. Catrambone, Esq.

JDC/j

cc: Client

From: [Stephen Daveggia](#)
To: [Conrad Cyriax](#)
Cc: [Steve Edwards](#)
Subject: FW: James Hunt, Jr. v. Township of Neptune (GSMJIF 2020207072/ Our File: 71-0028)
Date: Thursday, December 10, 2020 1:02:00 PM
Attachments: [image001.png](#)
[2020-12-09 Ltr Carrier re Assignment\(144374.1\).pdf](#)

Hi Guys, the Rainone firm has accepted the assignment.

The file will be handled by Matthew Tavares.

Thank you,

From: Matthew Tavares <@>
Sent: Thursday, December 10, 2020 12:53 PM
To: Stephen Daveggia <@>
Cc: Lou Rainone <@>; David Minchello <DMinchello@njrcmlaw.com>; Brian Trelease <@>; Urooj Abbas <@>; Nancy Asmann <@>
Subject: RE: James Hunt, Jr. v. Township of Neptune (GSMJIF 2020207072/ Our File: 71-0028)

 CAUTION: External message

Good Afternoon Steve:

Please see the attached correspondence acknowledging receipt and acceptance of the above referenced file. I will be handling this matter. I have a copy of the complaint, employment investigation, and recommendation letter. Please let me know if there is any additional information that you have that you would like to pass on to me.

I look forward to working with you on this file.

Very truly yours,

Logo_Color_Crop



Matthew R. Tavares, Esq.
555 U.S. Route One South, Suite 440
Iselin, New Jersey 08830
Direct: (732) 709-4182
Fax: (732) 791-1555
Email: [xxxxxxxx@xxxxxxxx.xxx](#)

www.njrcmlaw.com

NOTICE: This message and any attachments contain information which may be confidential and privileged. Unless you are an intended recipient (or authorized to receive for an intended recipient), you may not review, use, copy, disclose, or transmit to anyone the message or any information contained in the message or any attachments. If you have received the message in error, please advise the sender by reply email and delete the message.



RAINONE
COUGHLIN
MINCHELLO
ATTORNEYS AT LAW

Louis N. Rainone
Craig J. Coughlin*
David L. Minchello
Ronald H. Gordon
Carol A. Berlen
John F. Gillick
Brian P. Trelease*
Claudia Marchese
Charles R.G. Simmons*
Anne E. Rowan
Matthew R. Tavares*

* Also admitted in New York

Ruben D. Perez*
Jeremy M. Brooks
Michael S. Spinello
Francesco Guagliardi
Andy G. Mercado

Writer's Direct:
mtavares@NJRCMLaw.com

December 10, 2020

VIA EMAIL (sdaveggia@nipgroup.com)

Stephen Daveggia
NIP Management Services, LLC,
900 Route 9 North, Suite 503
Woodbridge, NJ 07095

Re: James M. Hunt, Jr. v. Township of Neptune
Your Claim No. 2020207072
Docket No.: MON-L-3834-20
Our File No: 71-0028

Dear Mr. Daveggia:

Please be advised that this law firm has been assigned to represent your insured, Defendant Township of Neptune, in the above matter. Please allow this letter to serve as a formal acknowledgment of our receipt of this file and acceptance of that assignment.

As you may be aware, this matter involves claims of retaliation, discrimination, hostile work environment, and CEPA violations brought by the Chief of Police, James J. Hunt, Jr., against the Township of Neptune. Specifically, the Chief alleges that a series of actions taken by a recently formed Police Committee resulted in significant curtailment in his authority, and were taken with a specific intent to remove him from his position and replace him with a chief who is African American.

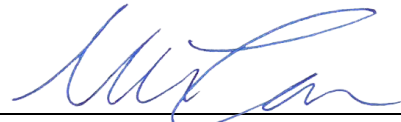
I have written to the Township to request appropriate records based upon my review of the complaint. Further, I will be reaching out to Plaintiff's counsel for consent to extend the time to respond to the complaint. Additionally, I will be reaching out to Eric Bernstein, as your assignment email suggests for more background information.

In accordance with GSMJIF guidelines, I will prepare an update for you within thirty (30) days of the assignment. In the meantime, I intend on preparing and filing a response to the complaint. We will continue to keep you informed of any further developments in this matter. Should you have any questions or concerns, please do not hesitate to contact me at your convenience. Thank you.

Very truly yours,

RAINONE COUGHLIN MINCHELLO, LLC

By: _____



Matthew R. Tavares, Esq.

From: [Steve Edwards](#)
To: [Conrad Cyriax](#); [Stephen Daveggia](#)
Subject: Fwd: JIF Letter
Date: Monday, December 14, 2020 9:07:26 AM
Attachments: [Cannon Letter.pdf](#)
[Gregory J. Cannon - CV - Sobel Han Cannon LLP.pdf](#)

FYI

Sent from my iPhone

Begin forwarded message:

From: Vin Gopal <xxx@xxxxxxxx.xxx>
Date: December 13, 2020 at 3:00:49 PM EST
To: Gregory Cannon <xxxxxxxxxxx@xxxxxx.xxx>, Steve Edwards
<xxxxxxxxxxx@xxxxxxxx.xxx>
Subject: Fwd: JIF Letter



CAUTION: External message

Thnx

----- Forwarded message -----

From: **Steve Gallo** <[xxxxxxxxxxxxxxxx@xxxxxx.xxx](#)>
Date: Fri, Dec 11, 2020 at 12:09 PM
Subject: JIF Letter
To: Vin Gopal <[xxx@xxxxxxxx.xxx](#)>

Please see attached...



BOROUGH OF FREEHOLD

(Sent Via Email - ccyriax@nipgroup.com)

Garden State Municipal Joint Insurance Fund
900 U.S. Route 9, Suite 503
Woodbridge, NJ 07095

Dec. 11, 2020

Attn: Mr. Conrad Cyriax
Senior Vice-President – Claims

RE: JIF Defense Panel

Dear Mr. Cyriax,

I am writing to recommend Mr. Gregory Cannon, Esq. to you for consideration as a member of the JIF's defense panel. Mr. Cannon is well known to me through my former employment with the Borough of Keyport where he performed admirably as our municipal prosecutor. As a former Risk Management professional, I can attest to Mr. Cannon's in depth knowledge of Title 59 as well as his tenacious defense capabilities. As an elected official himself, Mr. Cannon has a unique perspective regarding claims made against public entities and the responsible defense of such matters.

I can, without reservation, recommend Mr. Cannon to you as a highly qualified defense attorney who would be a valuable asset to your panel. He would be a fine addition to your team and would complement the already excellent service that receive from your organization. We would be confident that we were receiving the best possible defense at a reasonable cost should Mr. Cannon be representing our interests.

Thank you, in advance, for your kind consideration. Enclosed, please find Mr. Cannon's resume. Please let me know if I can provide any additional information in this regard.

Respectfully,

Stephen J. Gallo, ARM, MSM
Borough Administrator

Cc: Hon. Kevin A. Kane, Mayor

Gregory J. Cannon, Esq.
Sobel Han & Cannon, LLP

105 Reids Hill Road, Suite B
Aberdeen, New Jersey 07747

—
365 W. Passaic Street - Suite 270
Rochelle Park, New Jersey 07662

—
45 Rockefeller Plaza, Suite 2000
New York, New York 10111

Office: (201) 399-4321 – Cell: (732) 904-8622 – E-Mail: gcannon@sobelhan.com

RELEVANT EXPERIENCE

Sobel Han & Cannon, LLP, *Rochelle Park/Aberdeen, New Jersey*

- Trial Attorney responsible for matters involving redevelopment law, public entity liability, land use challenges, labor law, environmental claims, tax appeals, condemnation, professional malpractice, and premises liability in New Jersey state and federal courts.
- Serves as Borough Attorney for the Borough of Red Bank, NJ.
- Serves as Borough Attorney for the Borough of Bradley Beach, NJ.
- Serves as Borough Attorney for the Borough of Allentown, NJ.
- Serves as Borough Attorney for the Borough of Roosevelt, NJ.
- Special Counsel to the Municipal Utilities Authority of Jersey City, NJ.
- Serves as Borough Prosecutor for the Borough of Keyport, NJ.

BAR ADMISSIONS

State of New Jersey – 2007

United States District Court for the District of New Jersey – 2007

United States Court of Appeals for the Third Circuit – 2014

United States Bankruptcy Court for the District of New Jersey – 2015

EDUCATION

Villanova University School of Law, *Villanova, Pennsylvania*

Degree: J.D., May 2007

Honors: Honorable J. Hooley Scholarship; Monmouth County Bar Scholarship

University of Notre Dame, *South Bend, Indiana*

Degree: B.A., May 2004 – *Graduated Magna Cum Laude in 3 Years*

Honors: McDonnell Scholarship; O'Neill Scholarship; University Scholarship

From: [Stephen Daveggia](#)
To: [David Minchello](#); ["Lou Rainone"](#)
Cc: [Eric Bernstein \(xxxxxxxxxx@xxxxxxxx.xxx\)](#); [Vito Gadaleta](#); [Gene J. Anthony Esq.](#); [Stephanie Oppegaard](#)
Subject: Police Chief James Hunt vs Neptune Township GSMJIF 2020207072
Date: Monday, December 7, 2020 3:48:00 PM
Attachments: [E FILED Complaint - Hunt v. Neptune Twp..pdf](#)
[202009250913.pdf](#)
[O'Connell Recommendations.pdf](#)
[2019 GSMJIF Defense Counsel Guidelines FINAL.docx](#)

Hi Dave, it was a pleasure speaking with you regarding the James Hunt file. Per our discussion, I have attached a copy of the complaint and a copy of Ms. O'Connell's investigation report for your review.

Provided that there are no conflicts please assume the defense assignment from Eric Bernstein.

I have attached a copy of the GSMJIF defense guidelines for your review. Please note that within thirty (30) days of receipt and assignment of any GSMJIF litigation matter and every ninety (90) days thereafter, counsel shall forward a "90-Day Litigation Plan" to the assigned Claims Professional on each litigated claim.

Counsel will also be required to prepare pre-trial reports at least thirty (30) days in advance of trial as well as to report on any other significant developments in the life of the file.

Thank you,

...

Member: Neptune Township
Plaintiff: James Hunt Jr.

Coverage: EPL (Coverage analysis pending)

Self-insured: Deductible: \$50,000.00

Updates: Plaintiff has filed a four-count complaint alleging the following.

COUNT ONE: (Violation of the New Jersey Conscientious Employee Protection Act, "CEPA", N.J.S.A. 34:19-1, *et seq.*)

COUNT TWO: (Hostile Work Environment in violation of the New Jersey Law Against Discrimination, "LAD", N.J.S.A. 10:5-1, *et seq.*)

COUNT THREE : (Race Discrimination in violation of the LAD)

COUNT FOUR: (Retaliation in violation of the LAD)

Plaintiff has previously made a demand and appears to want to resolve this matter. Plaintiff notes that regarding economics, should Chief Hunt retire today, he would be entitled to the following monies as calculated by him pursuant to the terms of his current employment contract with the Township:

Accrued Vacation Days	\$ 44,444.00
Accrued Sick Time:	\$ 80,216.50

Compensation ("Comp") Time : \$ 16,793.00

Total: \$ 141,453.50

In addition to that amount which James Hunt may be owed upon retirement pursuant to his contract, Chief Hunt demands that the Township and/or its insurer pay the amount of Seven Hundred Eighty Thousand Dollars (\$780,000.00) in satisfaction of all claims which he has against the Township.

Fact Summary: The claim/ litigation involves Neptune Twp. Police Chief, James Hunt, as to the handling or failure to handle his claims and complaints of hostile work environment harassment and retaliation by members of the Neptune Township Police Oversight Committee, which he claims was a targeted effort to remove him as Police Chief to bring in an African American candidate for the position.

The allegations and complaints of the Chief stem from incidents which began to occur late last year. On or about December 15, 2019, Dr. Michael Brantley, Chairman of Neptune Police Oversight Committee served Chief James Hunt via email an "Employee Warning Notice", dated December 12, 2019, concerning an incident that occurred on December 4, 2019. Dr. Brantley sent a copy of that email message and attached Employee Warning Notice to seven (7) other persons, including Acting Dep. Chief Lawrence Fisher, who reports directly to Chief Hunt.

Chief Hunt responded to the notice via email the next day, objecting to the form, process, and substance of the disciplinary action. The Township's then labor counsel, Michael R. Burns, Esq., answered the Chief four (4) hours later, via email message, stating that the "Employee Warning Notice was not disciplinary action but a "non-disciplinary counseling notice." Mr. Burns served on the Chief an "updated counseling notice." Mr. Burns concluded his message saying that, amongst other things, " No other employee has consistently alleged that they are the target of harassment or a hostile work environment in response to their Department Head requesting basic information necessary to promulgate effective policies for the running of the Department." Chief Hunt again objected to the Committee's response to his charges in a message dated December 18, 2019 at 2:05 P.M. Chief Hunt wrote to Mr. Burns and Committeeman Brantley that Mr. Burns' response ignored the Chiefs legitimate complaints of hostility and retaliation by the Police Oversight Committee and their consultant, Barry Colicelli, and their "offensive and hostile behavior to me." The Township then acted to formally investigate these claims and complaints of Chief Hunt to which it hired an outside independent investigator, Ellen O'Connell, Esq. to conduct the investigation. Ms. O'Connell, Esq. conducted the investigation beginning in February of this year and concluded same on or about April 22, 2020. The length of the investigation was due to the delay caused by the COVID-19 pandemic. After the investigation was concluded, Ms. O'Connell, Esq. found the responses to the above inquiries to all be in the affirmative. She ultimately concluded that Chief Hunt's charges of harassment and allegations of hostile work environment have been sustained and that the actions of the Township were based upon a motivation to replace him with an African American.

Thank you, and I look forward to working with you through the handling of this matter.

Steve



600 PARSIPPANY ROAD, SUITE 204
PARSIPPANY, NEW JERSEY 07054
T (973) 947-7111
FAX (973) 887-2700
www.iwwt.law

ELLEN O'CONNELL
Direct: (973) 947-7133
eoconnell@iwwt.law

In the Matter of Township of Neptune

This is a Confidential Document Concerning Personnel Matters

To: Mayor and Township Committee, township of Neptune
From: Ellen O'Connell, Esq., Investigator
Date: April 24, 2020
Re: Investigation of Charges brought by Chief James Hunt
Investigator's Report of Findings: Executive Summary

This is the report of the investigation of charges brought by Chief James Hunt. The investigation started on February 14, 2020 and ended April 22, 2020 and occurred during the Coronavirus pandemic when citizens of New Jersey were under the Executive Order of the Governor to quarantine themselves at home. The quarantine caused delays in the completion of the report.

Background

On December 15, 2019, Dr. Michael Brantley, Chairman of Neptune Police Oversight Committee served Chief James Hunt via email an "Employee Warning Notice" dated December 12, 2019 concerning an incident that occurred on December 4, 2019. Dr. Brantley sent a copy of that email message and attached Employee Warning Notice to seven (7) other persons, including Acting Dep. Chief Lawrence Fisher, who reports to Chief Hunt.

Chief Hunt responded to the via email the next day, objecting to the form, process and substance of the disciplinary action. The Township labor counsel, Michel R. Burns, Esq., answered the Chief four hours later via email message stating, that the "Employee Warning

Notice was not disciplinary action but a "non-disciplinary counseling notice." Mr. Burns served on the Chief an "updated counseling notice." Mr. Burns concluded his message saying, among other things, "[N]o other employee has consistently alleged that they are the target of harassment or a hostile work environment in response to their Department Head requesting basic information necessary to promulgate effective policies for the running of the Department."

Chief Hunt again objected to the Committee's response to his charges in a message dated December 18, 2019 at 2:05 P.M. Chief Hunt wrote to Mr. Burns and Committeeman Brantley that Mr. Burns' response ignored the Chief's legitimate complaints of hostility and retaliation by the Police Oversight Committee and the consultant, Barry Colicelli and their "offensive and hostile behavior to me."

Procedure of Investigation

The Township retained this firm to investigate the Chief's charges of hostile work environment, harassment and retaliation. I sent my plan for this investigation in a letter to the Township dated February 10, 2020, where I outlined the scope of the investigation, as follows:

1. Did the disciplinary action taken by the Police Oversight Committee in December 2019 violate the Chief's rights of due process under the Township's Personnel Policy Guidebook, under the statute, N.J.S.A. 40A:14-118, under the Township ordinance or Standard Operating Procedures of the Police Department and/or under the N.J. Attorney General Guidelines?
2. Has the Police Oversight Committee and/or Barry Colicelli engaged in offensive and hostile behavior toward the Police Chief?
 - a. Has Mr. Colicelli said to Township Police Officers that he "is here to cause trouble"?
 - b. Did the Committee or Mr. Colicelli violate a Township policy against audio recording employees when it met with the Chief on December 4, 2019; was the disciplinary action taken against the Chief for objecting to the recording appropriate?
 - c. Did the Committee or Mr. Colicelli engage in the behaviors set forth in the Police Chief's communication to Township Labor Counsel dated April 24, 2019, and if so, was that behavior improper or violate any of the authorities stated in paragraph 1, above?
 - d. Did the Committee or Mr. Colicelli conduct an investigation into the actions of Township Administrator Mr. Gadaleta, and allowed Mr. Colicelli to be present during that meeting?
 - e. Did the Committee or Mr. Colicelli fail to acknowledge and respond to the Chief's claims of a hostile work environment, harassment and retaliation?
 - f. Did the Committee or Mr. Colicelli charge the Chief with breaking the chain of command when he shared information with the governing body, and was that a valid charge or a pretext for harassment of the Chief?

I interviewed Chief Hunt in the conference room at Town Hall on February 14, 2020. Chief Hunt gave me documents, including four 3-ring binders containing email and disciplinary directives that the Police Committee served on him over a period from October 2017 to December 2020; annual reports; correspondence from the Monmouth County Prosecutor's Office, the U.S. Department of Justice, counsel to the N.J. State Association of Chiefs of Police, and documents related to the Chief's complaints about the handling of cases by the Neptune Township Prosecutor and other records.

I also interviewed the following individuals:

- a. Dep. Chief Lawrence Fisher
- b. Capt. Anthony Gualario
- c. Capt. Michael McGhee
- d. Officer Thomas Blewitt, Jr., Neptune PBA, who was accompanied by PBA counsel, Brian Manetta, Esq., Mets office
- e. Lt. Scott Cox, President, FOP
- f. Introductory Interview only: Dr. Brantley
- g. Introductory Interview only: Nicholas Williams

The Township's consultant, Barry Colicelli, refused to meet with me. I had no communications with Mr. Colicelli.

I met Committeemen Brantley and Williams separately for very short interviews at Town Hall on February 28, 2020. I told each of the purpose of the interview and that I would send them each written questions to review before we met again so that they would know the nature of the charges. Each made an appointment to meet with me again, and later canceled those appointments.

I sent both men written questions on February 28, 2020 and March 2, 2020. On or about March 16, 2020 Michael Celli, Esq., who is Acting Township Attorney for Neptune Township, contacted me and said he represented both Committeemen. In later correspondence Mr. Celli asked for records, and I said that I would not send documents that are in the Committeemen's records. Moreover, presumably, as Acting Township Attorney, Mr. Colicelli has unfettered access to any records.

I told Mr. Celli that, if the Committeemen did not want to give an interview, they could provide me with written answers to the questions instead. Six weeks after I had delivered the questions to the Committeemen, Mr. Celli sent me a letter with a list of documents he wanted me to send. I asked the Committeemen to commit to a date for interviews or to commit to sending me answers in the questions they had since March 2, 2020. When, on April 21, 2020 neither men would commit to an interview or to providing written answers, I concluded that the Committeemen had chosen not to participate and closed the record on April 22, 2020.

Findings of Fact

Committeemen Michael Brantley and Nicholas Williams (the "Committeemen") and Police Committee Consultant Barry Colicelli ("Mr. Colicelli") harassed the Chief of Police James Hunt and created a hostile work environment with the goal of causing the Chief's voluntary or involuntary separation from the Department, with no business or other justification, so that the Committeemen could appoint an African-American chief of police to replace him.

With reference to the plan of the investigation, the following are my findings.

1. Did the disciplinary action taken by the Police Oversight Committee in December 2019 violate the Chief's rights of due process under the Township's Personnel Policy Guidebook, under the statute, N.J.S.A. 40A:14-118, under the Township ordinance or Standard Operating Procedures of the Police Department and/or under the N.J. Attorney General Guidelines?

Yes. The December 2019 disciplinary action is the last in a series of failed attempts to discipline the Chief, and it is difficult to take the December "Employee Warning Notice" out of this context. I have attached a Chart of Directives and Disciplinary Notices served on the Chief by the Police Committee (Appendix A). Some of the "Directives" attempt to curtail the Chief's authority over a particular aspect of the management of the Department. For example, the Committee attempted to remove the Chief's control of overtime assignment, labor grievances, employee discipline and suspension, the disclosure of police records to the civilian consultant, and regulation of appearance of officers in municipal court. I consider those attempts to remove power and authority to be a form of discipline. The Directives attempt to remove those powers unilaterally, with no notice or explanation. The Chart shows attempts to discipline or remove operational authority that, when challenged, were rescinded.

In the case of the December Employee Warning Notice, the Committee charged the Chief with being insubordinate. The Chief had objected to the tape recording of their meeting; accused the members of instituting a "witch hunt" and strenuously objected to the presence of the Committee consultant Mr. Colicelli. He instructed the Deputy Chief not to turn off the tape recorder at the direction of a Committee member. The Employee Warning Notice states that the Committee deemed him to be combative, confrontational and entirely unprofessional. The Employee Warning Notice required the Chief to undergo "counseling" and threatened suspension for a period of up to five days for "future violations of insubordination."

The Chief objected, saying that sending the Notice to the Deputy Chief violated Attorney General Guidelines; that the Township Policy at Page 26, 4.28b "Video Surveillance" prohibits audio records of employees, and that Mr. Colicelli "has been harassing [the Chief] which has created a hostile work environment." The Chief alleges that when he mentioned in that meeting that he felt he was being "targeted" a Committeeman replied, "that hasn't happened lately."

After the Chief objected, Attorney Michael Burns, of the Grace Marmero firm, responded, "Although the header of the letter you received indicates "written warning" the body of the notice is clearly intended to be a non-disciplinary counseling notice." The assertion is mystifying since "warning notice" is undeniably a stage of progressive discipline in the public and private sector. Mr. Burn reduced the "warning" notice to a "counseling notice." However, no attempt was made to respond to the Chief's allegation of harassment.

2. Has the Police Oversight Committee and/or Barry Colicelli engaged in offensive and hostile behavior toward the Police Chief?

Yes.

Over a period starting on October 23, 2017 through December 2019, the Police Committee and Mr. Colicelli (A) repeatedly attempted to charge Chief Hunt with baseless disciplinary action; (B) knowingly engaged in acts that methodically stripped the Chief of the authority over the Police Department, powers which State law delegates solely to the Chief of Police, and (C) performed other actions that had the result of causing undue controversy. See attached Chart of Directives and Disciplinary Actions, Appendix A.

A. Baseless Disciplinary Action and Facts Showing Racial Animus Against Chief Hunt

i. Facts Showing Racial Animus Against the Chief

Chief Hunt was given an email message that was anonymously left for him. The message was allegedly sent by Committeeman Brantley to various persons on November 4, 2013, regarding "Employment opportunities for administration in Neptune," stating:

Friends, Enough time has passed that Neptune Township has becomes (sic) that polished gem that I spoke of in my first campaign for township committee. Moving forwards, I expect that only black candidates will be considered for the positions of Neptune Chief of Police and Superintendent of Schools. – Doc"

Chief Hunt reports that in a meeting with Mr. Colicelli on November 14, 2017; Mr. Colicelli said to him that "Mayor Brantley wanted a black police captain," and the Chief replied by insisting that the Department follow its policies and procedures on promotions. Mr. Colicelli also told Chief Hunt that Mayor Brantley wanted to fill the Deputy Chief position immediately with an African American Captain, Lawrence Fisher.

Committeeman Brantley was instrumental in changing the eligibility standards for candidates for promotion to Deputy Chief. Before the Police Committee revised the promotion standards and procedures, of the three captains only the white police captains were eligible for consideration. After the Committee revised the eligibility criteria, only the African-American captain was eligible for consideration. The criteria were announced, and the representatives of the Superior Officers Association union representatives objected to the revisions. The Police Committee revised the criteria a second time, permitting the African American and the two white Captains to apply for the promotion. The African-American officer was then chosen for the promotion. When asked, Chief Hunt identified a white Captain, with far more extensive education and military experience but fewer years of supervision than the African American captain, who had neither college nor military experience.

In addition to changing the eligibility standard to allow the African American officer to be promoted, the actual elevation to the title of Acting Deputy Chief was hurried, so that the officer could be promoted before the end of the year, when the new, revised standard would come into effect.

On February 10, 2020, the Police Committee passed a resolution promoting the Acting Deputy Chief to Deputy Chief. The Police Committee knowingly ignored the procedures in place under the Township's promotional policy to achieve their goal, a point criticized by the Township Attorney. Today, the only obstacle to swearing in an African American Police Chief, allegedly the stated goal of Committeeman Brantley, is the removal of Chief Hunt.

Given the steps taken by Committeeman Brantley to further the goal stated in the anonymously delivered email, I find that there is a motivation to remove Chief Hunt because of his race.

Adrienne Sanders, the President of the local chapter of the NAACP, was appointed to the Police Committee in October 2017. In The Asbury Park Press article announcing her appointment, the author Austin Bogues described the Police Committee as, “. . . the oversight committee that monitors the township police force.”¹ Ms. Sanders wrote a letter to the U.S. Department of Justice on or about in June 17, 2017 asking them to investigate the working conditions at the police force. Ms. Sanders was quoted in the press as saying,

"We must have zero tolerance for the sexual harassment or discrimination of any person," Sanders wrote in the letter, dated June 17, 2017. "It is seemingly obvious that the Township of Neptune either will not or cannot take the necessary actions to end an alleged culture of harassment and discrimination within their police department."

On February 19, 2019, Delora L. Kennebrew, Chief of the Employment Litigation Section and Michael E. Campion, Assistant U.S. Attorney and Chief of the Civil Rights Unit of the Department of Justice wrote to the Township attorneys saying that, after one year of investigation, they closed their investigation, finding no violations. News of the results of the investigation was not released by the Police Committee.

2. Facts Showing Attempts to Discipline Chief Hunt

On October 23, 2018, Mr. Colicelli served six (6) Memos on Chief Hunt, called "Directives" demanding that he acknowledge receipt of the Directives, and respond within a

¹ In the Township's ordinance, the "Police Committee" is the entity assigned the statutory role of "Appropriate Authority" under the state law permitting municipal law enforcement, N.J.S.A. 40A:14-118. Succinctly stated, the Appropriate Authority is the policy-making arm of the department while the Chief of Police is in charge of operations. In contrast a "police oversight committee" is a watchdog, a civilian review of police. Udi Ofer, *Getting it Right: Building Effective Civilian Review Boards to Oversee Police*, 46 Seton Hall Law Rev. 1033, 1053-61 (2016); Fairley, S, *Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy*, 2020 Cardozo Law Rev. (2020); FOP, Newark Lodge 12 v. City of Newark, 459 N.J. Super. 458 (App. Div. 2019).

short period of time. Chief Hunt had never met Mr. Colicelli before receiving these Directives. Of the six Directives, three were rescinded, after their legal basis was found to be faulty.

On October 4, 2018, the Police Committee reprimanded the Chief for failure to notify Police Committee of incidents in May, August and September. The Chief responded and no further action was taken.

On December 12, 2019, the Committee served the Chief with the "Warning Notice" that labor counsel, Mr. Burns explained was not disciplinary but only a counseling notice and no further action was taken (see above).

Part B: Usurpation of the Chief's Authority and Constructive Discipline, Discharge

Commencing with the July 10, 2017 Ordinance replacing the Police Director with a three-member Police Committee, the Committeemen and Mr. Colicelli repeatedly attempted to and, in fact stripped the Chief of authority to run the day-to-day operations of the Police Department delegated under N.J.S.A. 40A:14-118, thereby disciplining him without due process, or, at worst constructively discharging him from office without due process of law. (Part B).

The Committeemen were appointed in July 17, 2017 to serve as the Appropriate Authority in a unit called, "Police Committee" under the State law that gives municipal governments the power to establish a municipal police department. The Township Ordinance is clear and unequivocal that the Committeemen were appointed to a "Police Committee," to be the Appropriate Authority as defined in N.J.S.A. 40A:14-118.

In October 11, 2017, Mr. Colicelli had been improperly appointed to be a member and Chairman of the Committee despite not being a member of the governing body. At some point before that date, the Committeemen and Mr. Colicelli started calling themselves the "Police Oversight Committee." There is no evidence that the Township authorized the name change.

The Chief of Police is the head of the Police Department, the executive, directly responsible to the Appropriate Authority for the Department's efficiency and day-to-day operations. The role of Appropriate Authority is set by law and precedents. Section 118 says that the Police Committee as Appropriate Authority has powers to adopt and promulgate rules and regulations for the government of the force and the discipline of its members, and the police chief is head of the police force, directly responsible to the Appropriate Authority for the efficiency and routine day to day operations of the force.

Legal precedents describe what the legislators meant when by the power "to adopt rules and regulations for the government and discipline of the force." The New Jersey Supreme Court in Falcone v. De Furia, 103 N.J. 219, 225 (1986) instructed, "The function of the governing body is to formulate fundamental principles to serve as broad guides to the chief of police in making his decisions with respect to discharging his responsibility for the efficiency and routine day to day operation of the police department, Gauntt vs. City of Bridgeton, 194 N.J. Super. 468, 486 (App. Div. 1984)." Recently, the Superior Court Appellate Division held the scope of that authority concerns 'fundamental principles' that are intended to serve as "broad guides to the chief of police," Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458 (App. Div. 2019). In sum, the Appropriate adopts and promulgates policy, and the police chief executes and implements. The Appropriate Authority has no authority to run the police department or exercise authority to operate the force.

Starting in 2018, the Committeemen and Mr. Colicelli have been taking over and exercising powers delegated solely to the Chief, ultimately taking over and removing Chief Hunt's authority over the following key area of police operations:

- i. Discipline They demanded that the Police Committee approve of all discipline and suspension of police officers, which was rescinded based on the letter opinion from the NJ State Association of Chiefs of Police;
- ii. Overtime Scheduling They unilaterally adopted an overtime policy for municipal court appearances of officers. They delayed for two years the Chief's choice to retain Jobs4Blue to handle outside duty.
- iii. Overtime They refused to adopt the overtime procedure prepared by the Department commanding officers;
- iv. Work Schedule They unilaterally and with no consultation with the Chief, had the Department change its schedule to the 12-hour Pitman schedule;
- v. Labor/Management Relations With no notice or consultation with the Chief, they engaged in negotiating terms and conditions of employment with the majority representatives of the patrol and superior officers over day-to-day operations developments and grievances, without notifying the chief. They negotiated grievances, promotion criteria, overtime, assignments and other terms and conditions of employment that plainly impact the operation of the Police Department without notifying or even consulting with Chief Hunt;
- vi. SOPs They revising Standard Operating Procedures (as opposed to policy statements);
- vii. Promotion Criteria and procedure They revised promotional criteria to make an individual officer eligible for promotion to the office of Deputy Chief, a person who was ineligible under the earlier criteria because he lacked college or military experience. The negotiated with the police unions, excluding the Chief;

- viii. Promotion They ignored the stated policy on promotions. They excluded the Chief from promotional procedures and deliberations, and made promotions without following the approved procedure. In an undated memorandum, Labor Counsel Mr. Long wrote that the promotion of the Acting Deputy Chief to Deputy chief was invalid because the Police Committee "failed to follow the appropriate procedures under the current promotions policies..." However, Mr. Long did not insist on any remedy for the defective appointment;
- ix. Police Consultant's Access They allowed the Police Consultant to draft email messages, policies and directives that were served on the Chief, and have sought to have the consultant attend meetings of the Committee and the Chief where confidential information is shared. The attempted to mandate that the Chief send all Police Committee correspondence and records to the outside, civilian consultant; and
- x. The Police Committee usurped the Chief's authority to discipline or handle the employment status of Police Officers K. Davis, Stewart and Hubbard. Mr. Colicelli declared that an officer who had been found unfit for duty should be returned to a "non-sensitive position," usurping the Chief's authority to deploy and assign the force. Moreover, on October 24, 2018, the Committee claimed in a Memorandum dated October 23, 2018 that discipline must be approved by the Police Committee, a conclusion denounced by counsel to the NJ State Association of Chiefs of Police, causing the proposed policy to be withdrawn.

On the following occasions, the Police Committee attempted to take charge of other powers delegated to the police, and were unsuccessful when the Chief objected and was joined by the Monmouth County Prosecutor and the N.J. State Association of Chiefs of Police:

- i. Interfering in the chief's discretion concerning release of information to the public;
- ii. Requesting of confidential Internal Affairs investigation files;
- iii. Inquiring into the Distribution of SOPs to staff;
- iv. Attempted to inject themselves into the selection and approval of police officers for training, and, in particular, at the FBI National Academy; and
- v. Attempted to interfere with Police Officers' appearance in municipal court and overtime pay.

C. Other Acts

Shortly after being serviced with a Disciplinary Notice, the Chief also received a *Rice* notice and a letter from the Township Attorney, Gene Anthony, Esq., saying that the Township was considering withdrawing payment for the lawyers who were defending him for potential punitive damages in an employment-related lawsuit in Superior Court.

The Committee delivered disciplinary memoranda or Directives to the Chief via email, and, more often than not, at times that were most inconvenient to the Chief, such as the day before or during scheduled vacations or out-of-state conferences, or late afternoon or evening on a Friday night.

The Police Committee negotiated with the PBA for the 12-hour Pitman schedule without telling Chief Hung and not engaging him in any part of the process of considering, costing-out and implementing the collectively negotiated agreement. The Chief found out that the Police Committee had negotiated and entered into written agreements by reading about it in the Township Committee's agenda.

Mr. Colicelli declared a new procedure for overtime, including officers' court appearances, telling the Chief to implement it the next day.

The Police Committee empowered labor attorney Michael Burns, Esq. to make decisions concerning discipline and reinstatement for police officers.

The members of the Police Committee addressed the Deputy Chief as, "Chief," in the presence of Chief Hunt, a protocol violation.

- a. Has Mr. Colicelli said to Township Police Officers that he "is here to cause trouble"?

Yes. On April 17, 2018 in a meeting attended by police officers and Mr. Colicelli, to discuss implementation of the Jobs4blue scheduling program, an officer said that "there are no problems here," and Mr. Colicelli replied, "I am here to cause problems." The comment was received as being confrontational and inapt coming from a member of the Appropriate Authority.

- b. Did the Committee or Mr. Colicelli violate a Township policy against audio recording employees when it met with the Chief on December 4, 2019; was disciplinary action taken against the Chief for objecting to the recording appropriate?

Yes; disciplinary action was attempted but then rescinded to "counseling" for demeanor and tone of speech during a meeting with the Police Committee. Section 4.28b of the Township of Neptune, Personnel Police Guidebook, "Video Surveillance" at page 26, states in part,

"Employees are forbidden from video or audio recording conversations with other employees, Department Heads or Supervisors without the knowledge and consent of all parties being recorded. Any employee who becomes aware of any unauthorized disclosure of a video record in a contravention of this policy and/or potential privacy breach has the responsibility to ensure that the Township Administrator is immediately informed of such breach."

Chief Hunt had a good faith belief that because the policy governed employees, the Police Committee's recording of their workplace conversation with him violated the Township policy. When he objected to earlier attempts to record meetings, the Police Committee had relented, giving weight to his belief that the recording was improper.

The "Introduction" says that the Guidebook "is designed to provide our staff with general information." If the policies in the Guidebook apply to a meeting with any employee, then the policy would be violated by a recording made in the workplace without the knowledge *or* consent to the employee and an employee would have an expectation that recordings of workplace conversations are prohibited. On the other hand, had the Police Committee told the Chief that they were taking his statement in connection with a workplace investigation, and

insisted that he answer, the Guidebook policy would likely not necessarily apply. But that is not the case here.

Moreover, the elected officials on the Police Committee are governed by other rules and laws. If they created a recording of their meeting, then the recording may be subject to the Open Public Records Act, and there is no information to show that the Committeemen observed the requirements of preserving the record.

Disciplinary action was taken against the Chief for the way he objected to the recording of the meeting. The "Employee Warning Notice" of December 12, 2019 disciplined him for the "tone and manner that was unprofessional and abusive toward members of the Committee." The Chief responded noting his protests in a lengthy email message dated December 17, 2019 citing flaws in the substance and procedure used in the Notice, and attorney Michael Burns, Esq., reduced the action to a "non-disciplinary counseling notice."

- c. Did the Committee or Mr. Colicelli engage in the behaviors set forth in the Police Chief's communication to Township Labor Counsel dated April 24, 2019, and if so, was that behavior improper or violate any of the authorities stated in paragraph 1, above?

Yes. In the Chief's charge dated December 17, 2019, he states, "I have made it clear I am being harassed and targeted by the [Police Oversight Committee] and your Police Consultant [Mr. Colicelli] and nothing has been done. (See attached notice to township labor attorneys Long and Burns dated April 24, 2019.)" The April 24, 2019 message to Attorneys Douglas Long and Michael Burns concerned the following:

- *Tape Recording* The investigation shows that a meeting of the Chief with Mr. Colicelli and the Committee occurring shortly before the April 24, 2019 email message was tape recorded and the Chief was unaware of the recording. In the December 4, 2019 meeting of the Chief with the Police Committee and Mr. Colicelli another attempt was to record the meeting, over the Chief's objection.
- *Inappropriate Access to IA Files* The Chief asked the attorneys to exclude Mr. Colicelli from the meetings of the Chief and the Police Committee because confidential Internal Affairs matters were being discussed and disclosure to outsiders violates Attorney General Guidelines. Mr. Colicelli was excluded from some meetings. Mr. Colicelli had asked to review Internal Affairs reports in on or about October 3, 2017. On September 8, 2018 Mr. Colicelli was involved in discussions about Internal Affairs matters regarding Sergeant "S." On January 11, 2019, the Committee gave the Chief a Directive to send to Mr. Colicelli "all correspondence related to the Police Oversight Committee" (Memo #0002-19),

to which the Chief objected, including the problem of confidential IA documents and the Attorney General Guidelines. The Committee rescinded the Directive.

- *Incorrect Advice* The Chief charged in his April 24, 2019 email to counsel that Mr. Colicelli has given advice that is “wrong and against the law.” “At least two times the attorney for the NJ State Chiefs [of Police] had to contact the Township attorney to point out his illegal advice. This requires the [Police Committee] to rescind directives.” The investigation shows that this is correct. See Appendix.

- d. Did the Committee or Mr. Colicelli conduct an investigation into the actions of Township Administrator Mr. Gadaleta, and allowed Mr. Colicelli to be present during that meeting?

Yes. In his email message dated December 18, 2019, which is part of the message series constituting his charge, Chief Hunt writes, "[A]t the last meeting [i.e., December 4, 2019] the POC was conducting an investigation into the actions of the BA Mr. Gadaleta before addressing what was on the agenda and allowed Mr. Colicelli to be present during that investigation."

By way of background, on November 27, 2019, the Chief wrote an email message to the Committee, the labor attorneys and members of the governing body saying, "It was brought to my attention by BA Gadaleta that in executive session on Monday night. Dr. Brantley told the Committee the Chief is never around or available to the [Police Committee]. The Chief ended the message writing, "I also want to assure you I have been available and I have received and answered calls or emails . . . I have not received any phone or e-mail requests from Dr. Brantley or Committeeman Williams since the October 2, 2019 meeting. I have made 56 notifications to the POC on ongoing issues. . ." and enumerated several other communications.

The investigation shows that there was a meeting on December 4, 2019 of Chief Hunt and the Police Committee. When Chief Hunt arrived Mr. Colicelli was in the room and a tape recorder was on the table. Committeeman Brantley said that before they talked about the business of the meeting, he wanted to discuss the email message the Chief had sent to the Township Committee. Committeeman Brantley said that he was upset because Chief Hunt had received information from an Executive session.

Chief Hunt then asked why the conversation was being tape recorded, and questioned if meetings with other department heads were tape recorded.

Chief Hunt objected to answering the question. He thought that the Police Committee was investigating the Business Administrator and attempting to get a recording of his statement in furtherance of that effort. He thought that they were on a 'witch hunt' and "it was wrong." Earlier in the year, for a Township Committee meeting in August 2019 included a discussion of terminating the employment of Business Administrator Vito Gadelata.

- e. Did the Committee or Mr. Colicelli fail to acknowledge and respond to the Chief's claims of a hostile work environment, harassment and retaliation?

Yes. Chief Hunt had objected to the attempts at discipline and the diminution of his powers and used the word, "harassment" since at least October 2017 when Mr. Colicelli serve Chief Hunt with six Directives. It was not until December 2019 that there was a response.

- f. Did the Committee or Mr. Colicelli charge the Chief with breaking the chain of command when he shared information with the governing body, and was that a valid charge or a pretext for harassment of the Chief?

Township Labor Counsel, Michael R. Burns, Esq., wrote an email message to Chief Hunt on December 17, 2020, responding to Chief Hunt's objection and notifying him that the "warning notice" was really a "counseling notice," and in that message, Mr. Burns wrote,

Finally, please note that no other employee has consistently alleged that they are the target of harassment or a hostile work environment in response to their Department Head² requesting basic information necessary to promulgate effective policies for the running of the Department. Although the [Police Committee] has attempted repeatedly to work with you to effectuate positive change in the Neptune Township Police Department, your response has been to consistently break the chain of command and report directly to the Township Committee, answer only the questions that you are asked and attempt to obstruct the actions of the committee rather than provide constructive or informative feedback." (Emphasis added.)

Mr. Burns provided no examples of times when Chief Hunt "consistently broke the chain of command" by reporting directly to the Township Committee. In his response to the December 12, 2019 Employee Warning Notice, Chief Hunt wrote in his message of December 18, 2019:

"Your next retaliatory act is the accusation that I have broken the chain of command by sharing information with the governing body. While I answer to the Appropriate Authority as it related to policy, I am not restricted from sharing information with the governing body nor am I prohibited from responding to request for information from the Mayor and other members of the governing

² Mr. Burns' message refers to the Police Committee as Chief Hunt's "Department head." ("[N]o other employee has consistently alleged that they are the target of harassment or a hostile work environment in response to their Department Head requesting basic information necessary to promulgate effective policies for the running of the Department. "). It is incorrect to describe the Appropriate Authority as the "Department Head" of either the Chief of Police or the Police Department.

body. This sharing of information has been limited and has been in response to requests from members of the governing body to be kept informed of certain matters, including matters where I feel that the [Police Committee] is targeting me or operating in manner that is disruptive to the operations of the police department.”

Noted above is Chief Hunt's objection to Committeeman Brantley's telling the Executive Committee of the governing body that “the Chief is never around or available to the [Police Committee].” Chief Hunt concluded his November 27, 2019 email message:

I also want to assure you that I have been available and have received and answered calls or emails made by Mayor Rizzo and or Mayor Lane on police related questions. I have not received any phone or e-mail requests from Dr. Brantley or Committeeman Williams since the October 2, 2019 meeting. I have made 56 notifications to the [Police Committee] on ongoing issues, requests for employment, monthly reports, and employee injury issues. Since the last meeting I have received 6 e-mail responses from Dr. Brantley since 10/2/19 acknowledging my notices sent to him and POC and 5 e-mail responses from Committeeman Williams since 10/2/19 acknowledging my notices since to him and the POC.”

In conclusion, the record does not show examples of times when the Chief violated the chain-of-command by communicating directly with the members of the Township Committee. An incident from 2016 may shed some insight into this charge. In October 2016, when Committeeman Williams was “Police Liaison” for the Township Committee, he told the other members of the Township Committee in an email message not to meet with members of the Police Department. He wanted all communications from the Committee to go through him. This point of view, that all communications should go through the Police Committee, could have carried through to 2019 so that the Police Committee considered any direct communications from Chief Hunt to members of the Township Committee a break in the chain of command.

The formal Employee Warning/Counseling Notice of December 17, 2019 does not mention any examples of the accusation. As far as the record shows, there were no earlier

accusations of inappropriate communications to the governing body. Standing alone, then, the facts could be inconclusive as to the question of whether this was a valid charge or a pretext for harassment of the Chief. Given the totality of circumstances described above showing a will to remove the Chief's powers and authority, I conclude that the criticism of breaking the chain of command by talking to members of the governing body is unfounded and was likely yet another step to deprive the Chief of the authority.

Conclusion

I have concluded that, with the few qualifications expressly stated above, Chief James Hunt's charges of harassment and allegations of a hostile work environment have been sustained, and that the actions were based on a motivation to replace him with an African-American.

s/Ellen O'Connell

Ellen O'Connell, Esq. Investigator

Inglesino Webster Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, NJ 07054

EOConnell@iwwt.law
(973) 947-7133
Cell (908) 304-8086

Appendix A

SCIARRA & CATRAMBONE, L.L.C.
 Charles J. Sciarra, Esq. (#011371996)
 Jeffrey D. Catrambone, Esq. (#024491996)
 1130 Clifton Avenue
 Clifton, New Jersey 07013
 (973) 242-2442
 (973) 242-3118 [Facsimile]
Attorneys for Plaintiff

JAMES M. HUNT, Jr.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MONMOUTH COUNTY
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	DOCKET # MON-L-_____ -20
	:	
TOWNSHIP OF NEPTUNE,	:	<u>COMPLAINT & JURY DEMAND</u>
	:	
Defendant.	:	
	:	

Plaintiff James M. Hunt, Jr. ("Plaintiff"), by way of this Complaint brought for relief permitted under the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et seq.* ("CEPA"), and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* ("LAD"), for judgment against his employer, Defendant Township of Neptune ("Defendant" or "the Township"), alleges as follows:

THE PARTIES

1. Plaintiff is currently the Chief of Police for Defendant Township of Neptune.

2. Plaintiff is an employee of the Township within the meaning of CEPA and the LAD.

3. Plaintiff's race is Caucasian.

4. The Township is an employer within the meaning of CEPA and the LAD.

5. The Township is a public entity, municipality and political sub-division of the State of New Jersey.

JURISDICTION & VENUE

6. Jurisdiction is properly laid in this Court under the CEPA and LAD statutes, and Defendant Township is subject to personal jurisdiction in the State of New Jersey.

7. Venue is proper in that the events giving rise to the Complaint occurred within the County of Monmouth.

STATEMENT OF FACTS

8. Plaintiff has been employed as a sworn law enforcement officer for the Township of Neptune since in or about October 1988.

9. During his distinguished 32-year career Plaintiff received special assignments to narcotics details and DEA taskforces as well as received valor awards and special recognitions for his work on major police investigations.

10. Plaintiff has served as the duly appointed Officer in Charge of the Neptune Township Police Department ("the Police Department" or "the Department") since in or about May 2013.

11. Upon being hired as a Police Officer, Plaintiff worked as a patrol officer for eight years and was subsequently assigned to the Detective Bureau.

12. Plaintiff was promoted to the ranks of Sergeant and Lieutenant and served as a Detective-Sergeant and Detective-Lieutenant; during the time he served in those ranks Plaintiff implemented and supervised the Department's Street Crime Bureau, and as a Lieutenant he supervised the Department's Detective Bureau.

13. Plaintiff was then promoted to Captain and while he served in that rank he supervised the Department's Patrol Division.

14. In 2013 Plaintiff was promoted to the rank of Deputy Chief. Shortly thereafter, he became the Officer in Charge of the Department and the acting Chief upon the retirement of Police Chief Robert Adams on June 1, 2013 while Plaintiff was still formally serving in the rank of Deputy Chief.

15. On or about June 20, 2013, Defendant appointed Michael Bascom as Police Director, to whom Plaintiff reported directly as the Township's "appointing [or appropriate] authority". Prior Chiefs of Police had reported directly to the Business Administrator.

16. The Township Committee, Neptune Township's governing body, consists of a Mayor, Deputy Mayor and three (3) Committee Members.

17. Defendant formally appointed Plaintiff as Chief of Police on or about September 14, 2014 and he has served in that rank continuously since that date.

18. In or about the latter part of 2014, Plaintiff reported to Bascom complaints of improper dismissals and down-grading of quasi-criminal matters in Neptune Township Municipal Court, including driving while intoxicated ("DWI")-related offenses, drug offenses and motor vehicle summonses, as well as the failure of the Municipal Court and Municipal Prosecutor to properly subpoena officers in the Department for cases scheduled to be heard in the Municipal Court.

19. Bascom reported Plaintiff's complaints to the Township Committee, who took no action.

20. As a result, Plaintiff advised Bascom that his recourse was to bring his concerns about and objections to these municipal court practices, which Plaintiff reasonably believed to be a violation of law or public policy, to the Office of the Monmouth County Prosecutor, which Plaintiff did.

21. Specifically, on July 15, 2014 Plaintiff emailed Marc LeMieux, the First Assistant to Monmouth County Prosecutor Christopher Gramiccioni, regarding what Plaintiff reasonably believed was the Prosecutor Office's systematic and improper downgrading of drug-related offenses and the remanding of those cases to the Neptune Municipal Court for prosecution.

22. Specifically, Plaintiff felt that this practice was too lenient in prosecuting drug offenses and thus failed to adequately

address the very significant heroin epidemic which exists in society and was a significant public safety issue in the Township.

23. Plaintiff forwarded his email to Bascom the following day, July 16, 2014.

24. On July 17, 2014, Plaintiff also advised Bascom via email of his concerns about the need to subpoena all officers in the Department to appear in Municipal Court in the event there is a "not guilty" plea in any case in which the officer[s] is involved, be it a motor vehicle summons, a DWI matter or a criminal charge; specifically, Plaintiff told Bascom:

The municipal court process in Neptune is broken, none of my officers ever testify or rarely get subpoenaed for cases. When the[y] do the deal is cut already, they appear for 15 minutes, collect two hours OT and the bad guy walks as the other day on a municipal ordinance ... It is common knowledge all attorneys want to come to Neptune or have cases transferred so they get the deal. This is an embarrassment.

25. Defendant took no action in response to Plaintiff's concerns about and objections to the legality of the Township's Municipal's Court's practices but instead retaliated against Plaintiff by way of sustained, continuing course conduct as outlined below.

26. During 2015, Plaintiff on several occasions emailed Police Director Bascom, Neptune Township Municipal Court Administrator Ursula Postell, Municipal Prosecutor James Butler, and Municipal Court Judge Robin Wernik, regarding his concerns about the improper handling and dismissals of municipal court matters including DWI's.

27. Plaintiff as a matter of course had regular contact with Postell as Court Administrator regarding scheduling issues and the subpoenaing of witnesses, including officers, to testify in municipal court matters, pursuant to his role as Police Chief and Head of the Police Department which is responsible for the prosecution of quasi-criminal matters in the Township's Municipal Court.

28. In response, Plaintiff received a letter from Judge Wernik dated September 16, 2015 dismissing his concerns, admonishing Plaintiff for having raised these issues, and falsely suggesting that Plaintiff was in some way attempting to intrude upon the neutrality of the court, despite Plaintiff having done so legitimately and in good faith.

29. On December 30, 2015, Plaintiff emailed Municipal Prosecutor Butler expressing his concerns about the downgrading of shoplifting charges and a DWI matter during a recent court session and requested a meeting with Butler and Bascom.

30. On April 13, 2016, in response to a complaint raised by Plaintiff through Sergeant Michael Zarro of the Department, the Prosecutor's Office issued a memorandum regarding "Prosecution of DWI's in Neptune Township", concluding that the Municipal Prosecutor's rationale for the dismissal of three DWI matters purportedly based upon the 20-minute observation period prior to administration of a breathalyzer test, about which Plaintiff

complained, was without merit and is "directly contrary to governing, published New Jersey law".

31. In the memo Assistant Prosecutor Monica de Outeiro noted that the dismissal rate for DWI's in Neptune Township Municipal Court (34%) was double the dismissal rate of Wall Township (17%), a neighboring municipal court with the highest volume of DWI's in Monmouth County.

32. On April 20, 2016, Plaintiff emailed Bascom regarding what he reasonably believed was the improper disposition of several municipal court matters during a recent court session, including N.J.S.A. Title 39 motor vehicle matters involving license suspensions for defendants with a significant history of violations, and the disposition of a shoplifting matter for a defendant with a very significant history of prior convictions.

33. In his email, Plaintiff stated that "this is probably the best way to document it each week, I wonder how a judge can allow this"; Plaintiff also forwarded his email to First Assistant Prosecutor Lemieux on May 9, 2016.

34. On June 21, 2016, Township Attorney Gene Anthony emailed Plaintiff and Bascom, copying all members of the Township Committee regarding Plaintiff's complaints about and objections to municipal court practices outlined above, reminding Plaintiff and Bascom that Anthony was demanding a meeting regarding Plaintiff's contacts with the County Prosecutor.

35. Commencing in January 2016, newly elected Township Committee Member and Deputy Mayor Nicholas Williams had been appointed as the Committee's "Police Liaison" to the Department and began meeting with members of the Department stating to officers such as Sergeant Elena Gonzalez that he did not like Plaintiff and things were going to change in the future, or words to that effect.

36. On September 27, 2016, a meeting took place between Plaintiff, Bascom, Williams, Municipal Prosecutor Butler and Township Attorney Anthony.

37. During the meeting it was apparent that Anthony and Township Committeeman/Deputy Mayor Williams were displeased with Plaintiff having raised these issues with the County Prosecutor; specifically, Bascom told Plaintiff that they were angry at Plaintiff because "this was a good ole boys' network with the court and the attorneys taking care of each other," or words to that effect.

38. Nonetheless, Plaintiff left the meeting with the understanding that the Municipal Prosecutor will confer with officers prior to any downgrading of any charges, and all officers would be subpoenaed for all DWI cases and motor vehicle cases wherein the driver is alleged to not have insurance coverage or to have operated a vehicle with a suspended license, and that insurance cards would be produced in cases prior to those cases being downgraded.

39. On July 7, 2017, Anthony sent an email to Plaintiff, Bascom, Township Business Administrator Vito Gadaleta, Township Clerk Richard Cuttrell, and all members of the Township Committee, including the Mayor, attaching a letter and a revised ordinance for the Police Department to be proposed at the July 10th Committee meeting, per the instruction of then-Mayor Michael Brantley.

40. The revised ordinance eliminated the position of Police Director and replaced it with a "Police Oversight Committee" ("POC") and named Mayor Brantley, Township Committeeman and Deputy Mayor Williams, and a yet-to-be-identified civilian, as the "appropriate [or appointing] authority", so as to usurp and undermine Plaintiff's authority as Chief of Police, in retaliation for his protected whistle-blowing activity outlined *supra* protected under CEPA and based upon his protected class under the LAD.

41. The ordinance specifically states that the POC "shall be responsible to review the performance of the Police Department", "shall serve as the Executive Head of the Police Department", and "shall review and recommend to the Township Committee all adopted and promulgated rules and regulations for the government of the Police Department and for the discipline of its employees".

42. Plaintiff via email on July 10, 2017 advised Bascom of his objections to and concerns about the proposed ordinance as being

illegal and as interfering with Plaintiff's control over the day-to-day operations of the Police Department.

43. Bascom in turn advised Anthony, Gadaleta and Cuttrell of Plaintiff's concerns and that the matter would be raised with the County Prosecutor, which Plaintiff did via email to Prosecutor Gramiccioni on the evening of July 10, 2017, and which Gramiccioni acknowledged the following day by way of reply email to Plaintiff.

44. The Township Committee approved the ordinance by a vote of 4-1 at its meeting on July 10, 2017, with Mayor Brantley, Deputy Mayor Williams, Township Committeewoman Carol Rizzo, and Committeeman Robert Lane all voting in favor, and Committeeman Kevin McMillian, who was then the police liaison for the Township Committee, voting against the ordinance.

45. On July 17, 2017, Vito Gagliardi, an attorney representing Plaintiff as Chief of Police, wrote a letter to Township Attorney Anthony advising of Plaintiff's objections to the ordinance as usurping his authority by, *inter alia*, naming a subordinate officer to the POC, giving the POC a role in police discipline, assignments and procedures, and requiring Plaintiff to provide as Chief of Police daily reports to the POC, all of which are in violation of state statutory law, including N.J.S.A. 40A:14-118, commonly known as the "Chief's Bill of Rights", and Attorney General Guidelines governing the operations of a Police Department in the State of New Jersey.

46. The Township Committee again approved the ordinance upon a second reading at its meeting on July 24, 2017.

47. On August 10, 2017, Plaintiff's counsel wrote to Anthony and advised that legal action would be filed if the ordinance was not modified.

48. On September 1, 2017, Defendant, by way of Mayor Brantley, removed McMillian as the Township Committee's police liaison.

49. On September 12, 2017, Plaintiff met with Brantley, who was identified as the "Chairman" of the POC, and Williams, at which time they discussed issues related to the Police Department, including a new off-duty scheduling system for officers in the Department, 'Jobs4Blue', which was to be approved at the next Township Committee meeting; nonetheless, Brantley unilaterally tabled the issue.

50. Brantley also failed to communicate with Plaintiff regarding other issues critical to the Police Department during September 2017, including the need to amend the Department's rules and regulations to reflect the implementation of the POC as was required for the Department's pending re-accreditation by the New Jersey State Association of Chiefs of Police.

51. Plaintiff contacted Williams to discuss department-related issues on September 28, 2017 by phone and identified himself as "Chief", and Williams dismissively replied, "Chief? I know a lot of Chiefs".

52. Shortly after that meeting, a copy of an email message was anonymously provided to Plaintiff; the email is dated November 4, 2013 from then-Township Committeeman Brantley to several individuals, including Township Business Administrator Gadaleta, then-Township Committeeman and Mayor Randy Bishop, and then-Township Committeeman and Deputy Mayor Eric Houghtaling, and reads as follows:

Friends,

Enough time has passed that Neptune Township has becomes [sic] that polished gem that I spoke of in my first campaign for township committee. *Moving forward I expect that only black candidates will be considered for the positions of Neptune Chief of Police and Superintendent of Schools.* (emphasis added).

53. On October 2, 2017, Cuttrell notified Plaintiff that the Township, specifically Mayor Brantley and Deputy Mayor Williams, named Barry Colicelli, a civilian and private consultant, Chairman of the POC.

54. Colicelli's appointment was illegal as the applicable ordinance provided that only a member of the Township Committee could be designated as POC Chairman.

55. Plaintiff was never introduced to Colicelli, consulted on his appointment, or even advised that Plaintiff was required to answer to him.

56. Immediately upon Colicelli's appointment, Defendant, specifically Colicelli, Williams and Brantley, excluded Plaintiff

from discussions regarding the approval of a settlement agreement for a police officer who had been suspended without pay due to disciplinary and fitness for duty issues.

57. By way of email on October 3, 2017, Plaintiff advised Defendant of his concerns regarding the settlement agreement, specifically about the officer being found by a doctor as unfit for duty.

58. Plaintiff also previously denied Colicelli access to the officer's internal affairs files pursuant to applicable law, including Attorney General Guidelines.

59. Plaintiff attended a long-planned and approved conference for the International Association of Chiefs of Police in Philadelphia from October 20th-25th 2017 in Philadelphia.

60. While Plaintiff was at the conference, on October 23, 2017, Colicelli emailed Plaintiff six (6) memoranda demanding Plaintiff's "immediate attention and action", specifically requiring Plaintiff to acknowledge receipt of the 6 memoranda within two (2) days and to provide the information demanded and otherwise comply with Colicelli's illegal demands by wholly unreasonable and onerous deadlines.

61. The subject memoranda are contrary to law in that they demand that Plaintiff, a Chief of Police, comply with the directives of a civilian police consultant regarding, *inter alia*: [a] the requirement that Plaintiff provide notification to the POC of

"unusual incidents" such as serious crimes or incidents within the Township; [b] prohibiting the Department from making public safety notifications to the public but instead requiring those to go through the POC; [c] the disclosure of the personnel, disciplinary, and internal affairs records for a Neptune Township Police Sergeant to a civilian "consultant"; [d] requiring Plaintiff to provide a breakdown of Neptune Police overtime expenditures from 2014-2016; [e] requiring Plaintiff to provide a copy of all current Department policies and procedures; & [f] requiring Plaintiff to provide a written explanation as to his review of grievances filed by PBA Local 74, the collective bargaining unit for sworn law enforcement officers of the Department.

62. On October 26, 2017, Plaintiff engaged in protected whistle-blowing activity regarding Colicelli's illegal directives by contacting the Monmouth County Prosecutor's Office, advising Colicelli, both in writing, that the directives contained in the memoranda were in violation of Attorney General Guidelines and state statute[s].

63. In response, Prosecutor Gramiccioni emailed Plaintiff directly advising that his office was "looking into it" and "there's some issues for sure".

64. The following day, on October 27, 2017, Colicelli replied by way email in a disrespectful tone dismissing Plaintiff's good faith concerns regarding the illegality of Colicelli's demands, and also

imposed further unreasonable deadlines upon Plaintiff for compliance.

65. On Friday October 27, 2017, Colicelli via email demanded that Plaintiff meet with the POC that Monday, October 30, 2020, without any prior notice.

66. Plaintiff responded by advising Colicelli that the tone of Colicelli's emails and his demands upon Plaintiff, a Chief of Police, were condescending and disrespectful, reminded Colicelli that they have never met and Colicelli had never even been to the Department, and that Plaintiff was experiencing a hostile work environment created by Defendant.

67. In response to Plaintiff's disclosures to the Monmouth County Prosecutor, Prosecutor Gramiccioni wrote a letter to Colicelli dated October 30, 2017 advising that "we have concerns over some of the information requested by the Oversight Committee as it pertains to existing State law and State/County law enforcement policies applicable to each municipal police department".

68. At the meeting on October 30th, during which Plaintiff, Brantley, Williams, Anthony, Colicelli (whom Plaintiff had still never met before) were present, Plaintiff explained his concerns about and objections to Colicelli's directives contained in the memoranda cited *supra* and provided legal authority to support his arguments that Colicelli's demands were illegal.

69. In that regard, Plaintiff continued to refuse to disclose any officers' internal affairs records to Colicelli, a civilian consultant, in compliance with his good faith understanding of his legal obligation not to do so.

70. Colicelli and Anthony begrudgingly acknowledged that Plaintiff was correct and agreed to redraft the memoranda but ultimately never did so.

71. On November 14, 2017, Plaintiff met with Colicelli. During that meeting, Plaintiff expressed his concerns about the potential promotion of then-Police Captain Larry Fisher, who is African American, to the rank of Deputy Chief, which Mayor Brantley was actively advocating should occur immediately.

72. Plaintiff advised Colicelli that he was concerned that Fisher was not eligible to be promoted to Deputy Chief because did not have the educational background and degree requirements under the existing Standard Operating Procedure ("SOP") governing police promotions.

73. Plaintiff reduced his concerns to writing by way of email to Colicelli on November 16, 2017, stating that "I feel strongly that violating the attached SOP or changing the eligibility requirements for one individual will have great consequences for the agency in the form of damaged morale and costly litigation".

74. On November 27, 2017, Anthony submitted via email to all members of the Township Committee and the Township Administration

including Plaintiff a proposed amendment to the police promotional SOP, eliminating the educational requirement for all officers but implementing a requirement that all candidates for Deputy Chief have ten years supervisory experience, thereby effectively eliminating all candidates except Fisher.

75. On that same date Colicelli emailed Plaintiff in response to his November 16th email, wherein Colicelli explicitly took issue with Plaintiff raising his concerns about fairness in the promotional process and Plaintiff asserting that the Township acting in an arbitrary and capricious manner.

76. Defendant through Colicelli sought to silence Plaintiff by admonishing him for raising his concerns, specifically warning Plaintiff that "we take issue with that statement and want to caution you on such verbiage in the future".

77. In response, on December 3, 2017 Plaintiff emailed Colicelli, Brantley and Williams, reaffirming his reasonable belief that the Township was acting in an arbitrary and capricious manner in disregarding the requirements of the promotional SOP and that the POC was attempting to bully and intimidate Plaintiff from expressing his good faith and well-grounded concerns.

78. Plaintiff also emailed Colicelli, Brantley and Williams on December 8, 2020 stating his objections to, *inter alia*: [a] not being given notice that personnel issues related to Fisher, specifically his potential promotion to Deputy Chief, were going

to be discussed at a Township Committee meeting on December 4, 2017; and [b] the Township Committee falsely suggesting at the most recent public meeting that Plaintiff had not followed proper procedure regarding an amendment to the policy for the police promotional process removing the Police Director's role in that process.

79. Plaintiff wrote a letter to all members of the Township Committee, as well as Anthony, Colicelli, and Gadaleta, on December 15, 2017 reaffirming his concerns in his December 8th email and his objections to the POC excluding him from discussions regarding police-related matters, which is in violation of law, including but not limited to the Chief's Bill of Rights.

80. The Township ultimately promoted Fisher to Acting Deputy Chief on December 21, 2017 and improperly excluded Plaintiff from that process including directing that Plaintiff was not permitted participate in candidate interviews; Defendant did not permanently promote Fisher to the Deputy Chief rank until in or about February 2020.

81. Plaintiff had memorialized his concerns about being shut out of the promotional process in an email to Colicelli, Williams and Brantley on December 18, 2017.

82. On or about January 18, 2018, Plaintiff learned that he was excluded from a meeting between Brantley, Williams, Gadaleta, and

new labor counsel for the Township wherein legal matters involving the Department were discussed.

83. On or about January 26, 2018, Colicelli submitted two memoranda to Plaintiff requesting clarification on budgetary issues which were purportedly not previously addressed, and issues regarding chain of command within the Department.

84. In reality, Plaintiff had previously met with the POC and Colicelli regarding the budgetary issues and no one had indicated that there were any outstanding issues, and Plaintiff had properly and in compliance with law governing the Police Department sought to ensure that officers were not reporting directly to civilian members of the POC.

85. Plaintiff documented these legitimate concerns in emails dated January 30th and 31st 2018 and received a sarcastic and unprofessional response from Colicelli.

86. On February 20, 2018, Plaintiff learned that the POC was scheduled to meet with representatives of the PBA, without any prior notice to Plaintiff, at which time Plaintiff was concerned that members of the POC would illegally review confidential internal affairs documents and would discuss confidential internal affairs investigations, as well as new scheduling requests.

87. This is illustrative of Plaintiff's overall and very substantial concerns outlined throughout this Complaint about the

POC's systematic, continuing, and illegal attempts to interfere with his day-to-day operations of the Department.

88. Plaintiff memorialized his concerns in an email to Colicelli, Williams, Brantley, Township Labor Counsel Douglas Long, Gadaleta, and the other members of the Township Committee on February 21, 2018.

89. At a meeting on February 22, 2018, Colicelli referred to Deputy Chief Fisher as "Chief" verbally in Plaintiff's presence as well as in several emails beginning in March 2018, in order to undermine and harass Plaintiff and disrespect his authority.

90. At a meeting on or about April 17, 2018 during which the members of the Command Staff of the Police Department were present, including Deputy Chief Fisher, Captains McChee and Gualario, and Lieutenant Zarro, Colicelli stated that the Plaintiff "was here to cause trouble," or words to that effect, in order to again usurp Plaintiff's authority and to harass him.

91. On May 2, 2018, Colicelli emailed Plaintiff an overtime policy prepared by the POC without the input of anyone from the Department, including Plaintiff, and ordered its implementation within 1-2 days, again interfering with the day-to-day operations of the Department over which Plaintiff has control by statute.

92. The following day, May 3, 2018, Plaintiff sent an email to Colicelli, the POC, the other members of the Township Committee, Township counsel, Gadaleta, and members of the Police Command

Staff, outlining Plaintiff's concerns about and objections to the implementation of the police overtime policy, including that it was in several respects incompatible with existing Department policies and procedures.

93. On May 17, 2018, Bascom notified Plaintiff via email that the Township Committee, without previously consulting Plaintiff, sought to hire Colicelli as an "advisor" to the POC at a monthly pay rate of \$2,000, or \$24,000 per year, and wished to pay him retroactively for his "volunteer" work as Chairman of the POC for the past seven (7) months.

94. Bascom advised Plaintiff, the POC, and the Township Committee via emails on May 17th, 18th & 21st that the Township could not pay Colicelli retroactively, and that the funds to pay Colicelli going forward would have to come out of the Police Department's budget, which did not account for Colicelli's hiring, and thus there would have to be cuts to the Department's budget in other areas.

95. On May 21, 2018, Colicelli resigned from his unpaid position as Chairman of the POC in which he had been serving since October 2017.

96. Pursuant to a Township Committee Resolution adopted on June 11, 2018, Defendant appointed Colicelli as "consultant to the Police Oversight Committee" at a rate of \$2,000 per month for the balance of 2018.

97. On August 7, 2018, Plaintiff emailed Gadaleta, Williams and Brantley as an FYI about a media inquiry he received about an arrest by the Department the prior Friday night, August 3rd; then-Mayor Williams responded and advised that he had received an inquiry about the incident.

98. Plaintiff responded to Williams stating that the Department had conducted an investigation of the circumstances of the arrest, and Plaintiff requested that the Mayor contact him if he receives any such inquiries in the future, as the Department, not Township Administration, is responsible for media contacts regarding public safety issues such as accidents, road closures, and police responses to crimes and other critical incidents.

99. Williams was reportedly and misguidedly angry at Plaintiff that Williams had not been given notification of what was in reality a police matter which Plaintiff and his Department were handling.

100. On August 9, 2018, Williams emailed the Neptune Township PBA President Thomas Blewitt about a meeting to occur regarding the overtime policy for the Department without any intention of including Plaintiff, the head of the Department, in the meeting, which is another attempt by Defendant to illegally circumvent and arrogate Plaintiff's authority as Police Chief.

101. On August 19, 2018, Colicelli emailed Williams, Brantley and Township counsel regarding Plaintiff's proposed overtime policy

which he submitted on August 10, 2018, and that email was subsequently forwarded to Plaintiff.

102. In his email Colicelli falsely suggested that Plaintiff "shirks his responsibilities as Chief executive of the Department" and suggested that because Plaintiff supposedly did not comply with Colicelli's illegal directives to Plaintiff, which were in fact illegal, disciplinary action against Plaintiff would be appropriate.

103. On September 8, 2018, Plaintiff emailed Township counsel regarding his concerns about Colicelli being provided with information related to an internal affairs investigation of an officer in the Department, as that would be violative of Attorney General Guidelines.

104. On September 17, 2018, Plaintiff emailed Mayor Williams regarding the issue of the notification required by Plaintiff to Township Administration about critical incidents in the Township.

105. Plaintiff told Williams he was incorrect in stating that Plaintiff refused to advise the Mayor of any incident until the investigation of it is complete; instead, Plaintiff reminded him that he and Brantley had been immediately notified of critical incidents such as accidents, road closures, fires, and shootings which may result in requests for information from the media or the public.

106. Plaintiff also again advised Williams that a meeting with the POC was required to discuss important administrative issues affecting the Police Department which had not been addressed by the POC.

107. On September 26, 2018, Brantley emailed Plaintiff, wherein Brantley identified himself as the Chairman of the POC for the first time, demanding that Plaintiff provide his rationale for Plaintiff's selection of a supervising officer from the Department to attend the FBI National Academy for eight weeks and the impact of that selection upon the Department's operations.

108. Plaintiff responded via email on September 28, 2018 that: [a] Plaintiff had notified the POC back on July 24th via email that he had selected Captain Gualario to attend the academy and provided a detailed description of the training involved; & [b] training was within the Chief's authority under statutory and case law and no prior approval was required.

109. Thus, Defendant, through Williams and the POC, again sought to undermine Plaintiff as Chief and cast doubt upon a decision he had made two months prior to send one of his Captains to training which he had worked hard to attain.

110. On October 4, 2018, the day before a long-scheduled and approved conference from October 5th-10th in Orlando, Florida Plaintiff was attending for the International Association of Chiefs of Police, Plaintiff received via email from Brantley: [a]

a directive that all of Plaintiff's decisions as Chief regarding police disciplinary matters involving a suspension or termination be subject to review by the POC prior to the imposition of any such discipline; & [b] an "employee warning notice" from the POC against Plaintiff for alleged neglect of duty and failure to comply with POC department policy, arising out of Chief Hunt's alleged failure to notify the Mayor and the POC of three incidents which took place within the Township, with a demand for a purported "plan for improvement" and threatened suspension of Plaintiff for future purported violations.

111. The warning notice was without any legitimate basis and was imposed upon Plaintiff by Defendant with harassing, discriminatory, and/or retaliatory intent in violation of the LAD and CEPA.

112. Also on October 4, 2018, Township Attorney Anthony sent letters, one to Chief Hunt directly, questioning whether the Township would continue to provide defense and indemnification to Plaintiff in lawsuits in which he is named as a Defendant, notwithstanding that the Township is statutorily required to do so under N.J.S.A. 40A:14-155, and advising that the representation of Plaintiff by attorneys provided by the Township would be discussed at a Township Committee meeting on October 22, 2018.

113. By way of email on October 17, 2018 Plaintiff advised Township labor counsel Douglas Long that the disciplinary directive

referenced above was illegal and that he intended to challenge the warning notice as being meritless.

114. On October 19, 2018, the agenda for the October 22nd Township Council meeting was posted indicating that an unidentified individual would be named as a member of the POC; that individual turned out to be Adrienne Sanders, a vocal and public critic of the Police Department and President of the local chapter of the NAACP.

115. Also, on the morning of the October 22nd meeting Defendant added an agenda item regarding a purported agreement with the PBA providing for the implementation of a 12-hour "Pittman" work schedule for officers in the Department, a very significant change to the operations of the Department, as well as changes to the overtime policy.

116. Plaintiff was never consulted or advised by the POC about these issues and this is yet another tactic by Defendant to usurp Plaintiff's authority as Chief and obstruct his lawful day-to-day operations of the Police Department.

117. By way of letter from his counsel dated November 5, 2018 to the Township's counsel, Plaintiff objected to the disciplinary directive served upon Plaintiff by the POC on October 4, 2018 as it removed Chief Hunt's ability to discipline officers in the Department, in violation of N.J.S.A. 40A:14-118, the Chief's Bill of Rights, as well as applicable case law.

118. Also, on November 5, 2018, Plaintiff emailed the County Prosecutor expressing his concern about cases in Neptune Township Municipal Court wherein marijuana-related offenses were being dismissed and instead municipal ordinances were then issued by an officer who was not the arresting officer or otherwise involved in the case at issue.

119. Prosecutor Gramiccioni responded via email to Plaintiff on November 7, 2018 advising Plaintiff that his office was "reviewing the actions by your municipal prosecutor" and that the Prosecutor's Office would advise Plaintiff of their findings and how they will proceed.

120. On November 7, 2018, Plaintiff provided in writing via email a detailed response to the warning notice dated October 4, 2020 issued by the POC upon Plaintiff, asserting that there was no legal or factual basis for the notice.

121. Plaintiff's 6-page memo refutes in detail the allegations regarding the notification of three incidents for which Defendant issued the warning notice with discriminatory, harassing and/or retaliatory intent, and addresses the issues detailed *supra* regarding Defendant's illegal conduct in violation of the LAD and CEPA which seeks to undercut and seize Plaintiff's authority as Chief of Police in violation of law.

122. On November 20, 2018, Plaintiff issued an SOP to all officers in the Department to maintain a process to ensure that the Police

Chief, members of the Command Staff and other Police Department personnel, and the Monmouth County Prosecutor's Office, where appropriate, are advised of "notable occurrences arising from police-initiated or public requests for police services".

123. Plaintiff's issuance of this SOP to the Department is consistent with Plaintiff's duties and authority as Police Chief.

124. On or about November 21, 2018, Defendant rescinded the POC's directive dated October 3, 2018 and served upon Plaintiff on October 4, 2018 regarding police discipline but never provided formal notice to Plaintiff that the directive had been rescinded; Defendant's meritless "warning notice" to Plaintiff was never rescinded.

125. On or about December 20, 2018, Plaintiff emailed Cuttrell, members of the POC and the Township Committee, Gadaleta, and Township counsel expressing his concerns about and objections to Defendant's approval of an agreement with the PBA regarding the Department-wide implementation of the new 12-hour Pittman schedule, which very significantly impacted the operations of the Department and resulted in additional tax-payer cost, without consulting Plaintiff.

126. On or about January 4, 2019, Plaintiff learned via email from Township Clerk Cuttrell that Defendant would adopt changes to the Police Department rules and regulations required for the Department to obtain accreditation, changing the appointing

authority from the Police Director to the POC, which Plaintiff had openly and repeatedly advocated for as being required for the past three years without Defendant taking any action.

127. On January 7, 2019, Defendant ordered Plaintiff to include the POC in the Department's organizational chart, or "table of organization ("TO").

128. This was another attempt by Defendant to improperly place the POC within the chain of command in the Police Department and assert control over the day-to-day operations of the Department, which is contrary to law and directly obstructs Plaintiff's authority as Police Chief.

129. On January 11, 2019, Brantley as Chairman of the POC issued a directive to Plaintiff that Colicelli be copied on all correspondence related to the POC.

130. By way of email dated January 15, 2019 to Defendant including members of the POC and the Township Committee and Gadaleta, Plaintiff acknowledged that while he is required to make certain disclosures to the POC on very specific matters, disclosure of personnel and internal affairs records to a private consultant is violative of Attorney General Guidelines.

131. Plaintiff further stated that if Defendant did not reconsider the order then he would report the matter to the County Prosecutor; Township Committeewoman/then-Mayor Carol Rizzo tersely replied within eight minutes of Plaintiff's email, "No"; Williams

responded that the POC would forward to Colicelli all notifications from Plaintiff to the POC "as we deem appropriate".

132. Plaintiff reported his concerns about and objections to this illegal order via email to Prosecutor Gramiccioni on January 15, 2019.

133. On January 17, 2019, Plaintiff emailed Defendant, specifically Township counsel, Brantley and Williams, again expressing his objections to the POC being placed in the Police Department's organizational and administration SOP, specifically the Department's TO or "flow chart".

134. The POC should not be in the chain of command in the ranks of the Police Department but should instead only be designated as the appointing authority under Rules and Regulations to whom the Chief reports regarding administrative functions of the Department only.

135. Plaintiff as Police Chief directs the day-to-day law enforcement operations of the Department and reports directly to the County Prosecutor and the State Attorney General in that regard, not the POC or its private civilian consultant.

136. In short, Defendant's continuing, blatant interference with and obstruction of, and its brazen attempts to arrogate, Plaintiff's control over the Police Department as outlined throughout this Complaint, are contrary to well-established law and constitute a continuing course of illegal, harassing and

retaliatory conduct against Plaintiff in violation of CEPA and the LAD.

137. In fact, via email on February 1, 2019 in direct reply to an email from Plaintiff approximately one hour earlier attaching a revised TO for the Department, Williams illogically, and revealingly, expressed his misplaced and troubling concern about the County Prosecutor's Office and the Attorney General's Office being included in the Neptune Police Department's table of organization, notwithstanding that those two agencies indisputably have direct oversight over the law enforcement functions of the Police Department pursuant to well-established law, whether the POC and Colicelli like it or not.

138. By way of email dated February 1, 2019, Plaintiff made Township Committee members and the POC, including then-Mayor Rizzo, Brantley and Williams, aware of the disposition of cases in Neptune Township Municipal Court, which is further evidence of Defendant's notice of Plaintiff's concerns about and objections to the manner in which cases were being disposed of in the Municipal Court, which Plaintiff reasonably believed was in violation of law and/or public policy; in fact, Plaintiff had consistently been sending weekly updates to the POC of the municipal court calendar and dispositions of cases and Defendant took no action in response thereto.

139. On February 11, 2019, the Township approved an increase in the monthly payment to Colicelli as the POC's "consultant", which came out of the Department's budget, from \$2,000 to \$2,500.

140. On February 19, 2019, the United States Department of Justice issued a letter to the Township advising that it had closed out an investigation, without any action being taken, of allegations by Adrienne Sanders, President of the NAACP who was also a member of the POC as of October 2018, that the Department, specifically Plaintiff, had engaged in a pattern of or practice of discrimination, harassment or retaliation, as those allegations were without merit.

141. In March 2019, Defendant, specifically the POC, failed to consult with and advise Plaintiff of the settlement of a disciplinary matter of an officer in the Department.

142. On April 4, 2019, while Plaintiff was on vacation, Brantley as Chairman of the POC forwarded to Plaintiff a directive regarding municipal court overtime that "no other officers should be assigned to the court other than what is necessary for security purposes".

143. On April 9, 2019, Plaintiff responded to Brantley via email, copying among other individuals Bascom, Brantley, Rizzo, Gadaleta, members of his Command Staff and the Municipal Court Administrator Ursula Postell, stating that while Plaintiff was open to measures to attempt to minimize overtime, the Department has no authority to interfere with the Court's oversight over the matters before it

and its scheduling and subpoenaing of officers ordering them to appear for individual cases.

144. The day prior, on April 8, 2019, Plaintiff received via email, from Brantley's Township email account while Plaintiff was at a meeting with Brantley, a notice of Plaintiff's alleged failure to properly notify the POC about an incident at the Township's high school in which the POC falsely asserts that Plaintiff was in some way derelict in his duties.

145. Plaintiff responded via email on April 9, 2019 outlining why the POC's allegations against Plaintiff were inaccurate and thus without any factual basis.

146. Nonetheless, Plaintiff emailed Brantley and Deputy Chief Fisher on April 11, 2019 confirming their prior conversation about the alleged issue, Brantley's admission that Plaintiff was doing a good job as Chief, and that Plaintiff or in his absence Fisher are available to Brantley via phone at any time, "24/7".

147. A meeting to discuss administrative issues within the Department occurred on April 19, 2019 between Plaintiff, Fisher, members of the POC, and Colicelli.

148. Colicelli surreptitiously audio-recorded the meeting, was disruptive and incessantly interrupted whenever Plaintiff spoke.

149. On April 24, 2019, Plaintiff emailed Township counsel about his concerns regarding Colicelli and his behavior at the April 19th meeting, including that he felt Colicelli provides incorrect and

illegal directives to the POC, is not proficient in contemporary police practices, should not attend future POC meetings where internal affairs and disciplinary matters are discussed, that Colicelli is performing a disservice to the POC and the Department, and that he has continually threatened and targeted Plaintiff by way of baseless charges and accusations.

150. On or about June 4, 2019, Plaintiff learned that the POC was going to meet with union representatives from the Fraternal Order of Police ("FOP") which represented a group of officers in the Department about a new proposed policy for the police promotional process, even though the POC had never discussed any such proposed policy with Plaintiff as Chief.

151. At a meeting between Plaintiff and the POC on or about July 15, 2019, Williams asked Plaintiff if he had a meeting with then-Mayor Rizzo where Plaintiff advised her that the POC does not like him, or words to that effect.

152. On or about August 8, 2019, Plaintiff received a phone call from Monmouth County Assistant Prosecutor Michael Costanza who advised Plaintiff that Township Attorney Anthony had contacted the Prosecutor's Office via letter dated April 10, 2019, without copying Plaintiff on the letter or otherwise advising or noticing him, wherein Anthony requested information about the Township's use of forfeiture funds and approvals for usage of those funds.

153. By way of Anthony's request, the Township sought to circumvent Plaintiff's role as Chief in making use of forfeiture funds, to illegally bestow that role upon the POC, and to purportedly allow those funds to be utilized for normal budgeted operating expenses, salary and/or overtime, which is contrary to law.

154. Assistant Prosecutor Costanzo confirmed to Plaintiff that he has always communicated with the Department directly and had always found its requests for usage of forfeiture funds to be proper and complete.

155. Costanzo also told Plaintiff that the Prosecutor will advise the Township that funds will be distributed only for non-budgetary items and only by Plaintiff as Chief of Police.

156. Prosecutor Gramiccioni confirmed by way of letter to Anthony dated August 9, 2019 that Attorney General Guidelines and statutory law provide that the chief executive of a law enforcement agency, here Plaintiff as Police Chief, has the sole discretion to administer forfeited funds and property, and "to date, a review of expenditure requests from the Neptune Township Police Department finds all requests comport with the relevant AG Guidelines".

157. The Prosecutor also reminded the Township that forfeiture funds can only be used for a "law enforcement purpose" and not for budgeted operating expenses or salary or overtime.

158. On August 12, 2019, Plaintiff advised the POC, the Township Committee, Gadaleta and Cuttrell of new State legislation signed

into law the week prior banning law enforcement-style badges previously provided to Neptune Township elected officials per their request identifying them as "police commissioners" or "public safety" officials.

159. A meeting was scheduled to occur between Plaintiff, with Deputy Chief Fisher also attending, and the POC on September 24, 2019.

160. On September 20, 2019 Plaintiff confirmed his attendance with Township labor counsel Michael Burns so long as Colicelli was not going to be present, per Plaintiff's email to Township counsel on April 24, 2019 outlined *supra*.

161. Nonetheless it was apparent to Plaintiff that Colicelli was going to attend the meeting, and Plaintiff received an agenda for the meeting which was prepared by Colicelli; ultimately, Defendant postponed the meeting for reasons unrelated to Plaintiff's concerns.

162. Ultimately, the meeting occurred on October 2, 2019 with Plaintiff, Fisher, Burns, Williams, Brantley and Colicelli being present; Plaintiff voiced his objection to Colicelli's presence at the meeting.

163. At the meeting, Brantley admitted that correspondence from the POC is in reality routinely drafted and sent by Colicelli.

164. During the meeting, scheduling, overtime, and promotional issues were discussed; a new promotional policy was being

negotiated at that time between the POC and the police unions without Plaintiff's involvement, and Plaintiff had still not been presented with a copy of that policy.

165. On October 31, 2019 Plaintiff sent via email to the Monmouth County Prosecutor the most current list of DWI cases where the motorist was charged under N.J.S.A. 39:4-50 et seq., including "DRE" cases which require a drug recognition expert, for review by the County Prosecutor.

166. This is in relation to Plaintiff's ongoing concerns about and objections to the downgrading and dismissal of DWI cases over the prior three years in the Neptune Township Municipal Court where those cases should instead have been prosecuted, as outlined *supra*.

167. In his October 31, 2019 submission to the Prosecutor, Plaintiff provided written summaries of three cases where the Municipal Prosecutor dismissed DWI charges, and the Court accepted those dismissals, where in fact there existed sufficient evidence to prosecute those matters and the Neptune Township Police Officer involved in the matter was prepared to move forward to trial.

168. The County Prosecutor replied to Plaintiff advising that his office would investigate the matter and confer with the County Prosecutor's Appellate Unit Director, Monica Do Outeiro, who also oversees the DRE program and is the Municipal Court Liaison.

169. The POC was fully aware of Plaintiff's complaints regarding the issue of improper downgrading and dismissals of DWI matters in

Neptune Township Municipal Court and Plaintiff's related disclosures to the Prosecutor's Office; Defendant retaliated against Plaintiff based upon this protected whistle-blowing activity.

170. At a Township Committee meeting on November 25, 2019, Brantley falsely and maliciously informed the Committee that Plaintiff did not make himself available to the POC.

171. On November 27, 2019 Plaintiff emailed the POC and the Township Committee, Gadaleta, Township counsel and Fisher, advising that: [a] Brantley's statements at the November 25th meeting were false as the POC had not reached out to Plaintiff since the October 2, 2019 meeting outlined *supra*; [b] Plaintiff nonetheless had made all notices to the POC regarding administrative issues within the Department as was legitimately required; & [c] Plaintiff had previously advised the POC that he is always available by phone, 24/7, as also outlined *supra*.

172. A POC meeting occurred on December 4, 2019 at which Plaintiff, Fisher, Brantley, Williams, Colicelli and Burns were present.

173. Brantley opened the meeting, which Colicelli was again audio recording, by raising Plaintiff's November 27, 2019 email.

174. Plaintiff stated that the POC was targeting him, which they denied, and Plaintiff demanded that Colicelli leave, which he refused to do; ultimately, issues related to the Pittman schedule, grants, and the promotional policy were discussed at the meeting.

175. On December 16, 2019, Defendant, through Brantley, served Plaintiff via email with an "Employee Counseling Notice", falsely alleging that Plaintiff was "insubordinate" and "unprofessional" during the POC meeting on December 4th.

176. Defendant's Employee Counseling Notice states that Plaintiff was to be "counseled" with the threat of future discipline, including suspension.

177. That employee counseling notice is without any legitimate basis and Defendant issued it to Plaintiff with discriminatory, harassing, and/or retaliatory intent.

178. On December 17, 2019, Plaintiff submitted his response to the notice to all members of the Township Committee and the POC, Gadaleta, and Township counsel, demanding that it be immediately withdrawn and removed from his employee file.

179. Plaintiff also objected to the notice being disclosed to Fisher, his subordinate, reiterated his prior and continuing complaints regarding the conduct of Colicelli and the POC, and advised that he was being targeted, was being harassed, and was the victim of a hostile work environment.

180. Plaintiff again provided a written complaint of harassment and retaliation by way of email on December 18, 2019.

181. The Township, through a memorandum from its Human Resources Director dated December 27, 2019 to Plaintiff, acknowledged Plaintiff's "complaint of harassment, retaliation, and hostile

work environment allegedly created by the Police Oversight Committee, their consultant, the township attorney and labor attorneys", and advised that a "prompt and thorough investigation will be conducted".

182. Defendant was nonetheless aware of throughout, and is liable for, the intentional, illegal conduct of Colicelli and the POC against Plaintiff for the prior three years in violation of the LAD and CEPA.

183. The Township Committee was reorganized as of January 2, 2020 for that year with the five (5) Committee Members in the following positions: Robert Lane as Mayor, Kevin McMillian as Deputy Mayor, Committeeman Michael Brantley and Nicholas Williams remaining in their role as POC members, and Carol Rizzo also serving as a Committeewoman.

184. On or about November 21, 2020, Brantley advised Plaintiff that he would not be permitted to participate in candidate interviews for the pending Deputy Chief promotional process, which had never been the case in the past with any promotional process in the Department.

185. With regard to Plaintiff's complaints outlined *supra* regarding practices in the Neptune Township Municipal Court, members of County Prosecutor Gramiccioni's staff conferred and met with Neptune Township Municipal Prosecutor James Butler in February 2020 to address Plaintiff's good faith concerns and

objections regarding those municipal court practices, including the issues related to DWI downgrades and dismissals cited by Plaintiff, wherein, for example, the Municipal Prosecutor was directed going forward to confer with the charging officer prior to any matter being resolved, as that was not done in the past.

186. At a Township Committee meeting on January 27, 2020, Brantley announced that the Township would be promoting four Police Officers to the rank of Sergeant, without any prior notification by the POC to Plaintiff of this decision being announced to the public.

187. On February 14, 2020, Plaintiff met with attorney Ellen O'Connell of Inglesino, Webster, Wyciskala & Taylor, a law firm whom the Township hired to investigate Plaintiff's December 2019 complaints of a hostile work environment.

188. On April 20, 2020 Plaintiff provided a written complaint to the Township via email regarding incidents that had occurred to that point in 2020 constituting a "continued pattern of harassment, being excluded from the promotional process, not being contacted on promotional process notifications, contacting of subordinates under [my] command without notification, the purposely done after-hours weekend notifications which continues against me by the POC creating the hostile work environment reported in the past and which they continue with to this day".

189. The Inglesino firm issued a report dated April 24, 2020, making the following findings of fact: **[a]** the disciplinary action

taken by the POC against Plaintiff in December 2019 violated Plaintiff's due process rights under the Township's Personnel Police Guidebook, N.J.S.A. 40:14-118, Township Ordinance, Police Department SOP's, and New Jersey Attorney General Guidelines; **[b]** the POC and Colicelli engaged in offensive and hostile behavior towards Plaintiff as Police Chief from October 2017 through December 2019, including baseless disciplinary action and racial animus, finding that *"there is a motivation to remove Chief Hunt because of his race"* (emphasis added); **[c]** Colicelli and the POC engaged in the "Usurpation of the Chief's Authority" and the imposition of "Constructive Discipline, Discharge" against Plaintiff, specifically, "commencing with the July 10, 2017 Ordinance replacing the Police Director with a three-member Police Committee, the Committeeman and Mr. Colicelli repeatedly attempted to and, in fact, *stripped the Chief of authority to run the day-to-day operations of the Police Department delegated under N.J.S.A. 40A:14-118, thereby disciplining him without due process, or, at worst, constructively discharging him from office without due process of law*" (emphasis added); & **[d]** the POC and Colicelli "have been taking over and exercising powers delegated solely to the Chief, ultimately taking over and removing Chief Hunt's authority over the following key area[s] of police operations": discipline, overtime scheduling and policy, work scheduling, labor and management relations, Police SOP's, promotional criteria and

policy, civilian police consultant's access to confidential information, and attempting to "take charge of other powers delegated to the police, and were unsuccessful when the Chief objected and was joined by the Monmouth County Prosecutor or the N.J. State Association of Chiefs of Police", including interference with the Chief's discretion regarding release of information to the public, improperly requesting review of internal affairs files, inquiring into distribution of SOP's to police personnel, interfering with training decisions, and attempting to interfere with police officers' appearances in municipal court and overtime pay.

190. The Inglesino report concludes with its finding that "*Chief James Hunt's charges of harassment and allegations of a hostile work environment have been sustained, and that the actions were based on a motivation to replace him with an African-American*" (emphasis added).

COUNT ONE

(Violation of the New Jersey Conscientious Employee Protection Act, "CEPA", N.J.S.A. 34:19-1, et seq.)

191. Plaintiff reasserts and re-alleges each and every previous paragraph as if fully set forth herein.

192. Plaintiff engaged in "whistle-blowing" activities in that he: [a] disclosed, or threatened to disclose to a supervisor or to a public body an activity, policy or practice of Defendant that Plaintiff reasonably believed is in violation of a law, or a rule

or regulation promulgated pursuant to law; or [b] provided information to a public body conducting an investigation, hearing or inquiry into any violation of a law, or a rule or regulation promulgated pursuant to law by Defendant; or [c] objected to, or refused to participate in an activity, policy or practice which Plaintiff reasonably believed: (1) is in violation of a law, or rule or regulation promulgated pursuant to law; or (2) is fraudulent or criminal; or (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

193. In retaliation for his whistle-blowing activities, Plaintiff suffered adverse employment action(s) and other retaliatory acts at the hands of Defendant, as outlined above.

194. Further, in addition to retaliation, Plaintiff has suffered harassment constituting a hostile work environment at the hands of Defendant, for which Plaintiff's protected whistle-blowing activity was a motivating factor.

195. Defendant's collective actions against Plaintiff combine to make up a pattern and continuing course of retaliatory and harassing conduct against Plaintiff. Same was done by Defendant in retaliation for Plaintiff's whistle-blowing activities described herein, in violation of CEPA.

196. Defendant's adverse employment actions against Plaintiff were without any legitimate and/or lawful purpose. The purported rationale for Defendant's adverse employment actions were pre-

textual and were advanced in order to mask Defendant's retaliatory intent.

197. Defendant's collective retaliatory and harassing actions against Plaintiff constitute violations of CEPA.

198. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated. Plaintiff has also suffered economic and non-economic loss.

199. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, physical injury, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, and is incurring legal expenses and other expenses as a result of Defendant's actions.

200. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and civil rights, and Plaintiff is entitled to punitive damages under applicable law.

COUNT TWO

**(Hostile Work Environment in violation of the New Jersey Law
Against Discrimination, "LAD", N.J.S.A. 10:5-1, *et seq.*)**

201. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

202. Defendant violated Plaintiff's rights protected under the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1, *et seq.*

203. Defendant's complained of conduct would not have occurred but for Plaintiff being a member of a protected group.

204. Defendant's conduct was sufficiently severe or pervasive to make a reasonable person who is a member of a protected group, in this case Plaintiff's race, believe that the conditions of employment were altered and the working environment was hostile or abusive.

205. By and through the actions described herein, Defendant engaged in a continuing course of conduct against Plaintiff and created a harassing and hostile work environment for Plaintiff.

206. Defendant Township is strictly liable for the intentional conduct alleged herein.

207. Defendant's actions and activities were unwarranted and uninvited.

208. Despite repeated requests for these activities to cease, Defendant failed to take timely, sufficient action with regard to ceasing these activities.

209. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

210. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendant's actions.

211. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and civil rights, and Plaintiff is entitled to punitive damages under applicable law.

COUNT THREE

(Race Discrimination in violation of the LAD)

212. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

213. Defendant's actions against Plaintiff outlined herein constitute discrimination and disparate treatment of and against Plaintiff based upon his race in violation of the LAD, N.J.S.A. 10:5-1, *et seq.*

214. The stated rationale for Defendant's adverse actions against Plaintiff was pretextual and thus demonstrative of Defendant's discriminatory intent.

215. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

216. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendant's actions.

217. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and

civil rights, and Plaintiff is entitled to punitive damages under applicable law.

COUNT FOUR
(Retaliation in violation of the LAD)

218. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

219. Defendant's adverse actions as outlined above constitute retaliation against Plaintiff as a result of Plaintiff having engaged in protected activities in violation of the LAD, N.J.S.A. 10:5-1, *et seq.*

220. Plaintiff's complaints constituting protected activity were reasonable and made in good faith.

221. The stated rationale for Defendant's adverse actions against Plaintiff was pretextual and thus demonstrative of Defendant's retaliatory intent.

222. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

223. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendant's actions.

224. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and

civil rights, and Plaintiff is entitled to punitive damages under applicable law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

a. Awarding Plaintiff damages, including, but not limited to, any and all equitable, punitive and compensatory damages, lost benefits, wages and rights, including but not limited to front and back pay, as well as all commensurate pension/retirement benefits, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, any statutory fines, compensation for the adverse tax consequences of a lump sum award, together with both pre-judgment and post judgment interest and attorneys' fees and costs under the LAD and/or CEPA's fee-shifting provisions, as well as any enhancements pursuant to the case law, and all litigation-related costs and expenses;

b. For an Order of the Court directing Defendant to expunge Plaintiff's personnel and all other employment records of all disciplinary matters which are the subject of this Complaint;

c. For an Order of the Court entering dismissal with prejudice and expungement of all disciplinary charges and all resulting disciplinary action and penalties against Plaintiff imposed by Defendant, as outlined herein; and

d. 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.* (# 011371996) is hereby designated as trial counsel for Plaintiff.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues involved herein.

Respectfully submitted,
SCIARRA & CATRAMBONE, L.L.C.,
Attorneys for Plaintiff

By: /s/ Jeffrey D. Catrambone, Esq. (#024491996)

Dated: November 30, 2020

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 action before any Court.
2. No other action or arbitration proceeding is contemplated.
3. There are no other parties to be joined in this action at the present time.

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

By: /s/ Jeffrey D. Catrambone, Esq. (#024491996)

Dated: November 30, 2020

Civil Case Information Statement

Case Details: MONMOUTH | Civil Part Docket# L-003834-20

Case Caption: HUNT, JR. JAMES VS TOWNSHIP OF NEPTUNE

Case Initiation Date: 11/30/2020

Attorney Name: JEFFREY DANIEL CATRAMBONE

Firm Name: SCIARRA & CATRAMBONE

Address: 1130 CLIFTON AVE

CLIFTON NJ 070130000

Phone: 9732422442

Name of Party: PLAINTIFF : Hunt, Jr., James, M

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA)

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: James M Hunt, Jr.? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that 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 *Rule 1:38-7(b)*

11/30/2020

Dated

/s/ JEFFREY DANIEL CATRAMBONE

Signed



600 PARSIPPANY ROAD, SUITE 204
PARSIPPANY, NEW JERSEY 07054
T (973) 947-7111
FAX (973) 887-2700
www.iwwt.law

ELLEN O'CONNELL
Direct: (973) 947-7133
eoconnell@iwwt.law

June 4, 2020

Mayor and Township Committee
Township of Neptune
25 Neptune Blvd,
Neptune NJ 07753

In Re Investigator's Recommendations related to Charges
of Police Chief James Hunt

Dear Mayor Lane and Members of the Township Committee:

This is a confidential communication of counsel concerning potential litigation, and personnel matters. It is intended to be excluded from disclosure under state and federal rules of evidence concerning admissibility, the attorney work-product privilege and the Open Public Records Act.

You asked for my recommendations in response to the issues presented in the April 24, 2020 Report of the Investigation of the Charges of Chief Hunt. My response is presented in two parts. In Part One, I address the legal and operations issues related to Chief Hunt individually, and the potential damages and remedies flowing from his claim of disparate treatment and harassment on the basis of his race. In Part Two I address municipal governance and chain-of-command issues

Point One – Concerning the Personal Claims

If the Township has not done so already, please give notice of the claim to your insurance carrier.

Chief Hunt filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission in December 2019, and that claim is still before the agency. He had an interview scheduled in March, 2020 that was delayed because of the public health emergency. The EEOC will conduct an intake interview. An agent of the EEOC will decide whether there is merit to the claim and, if so, serve the Township with a Complaint, Interrogatories and a Document Demand.

The Township will have about thirty days to respond, and provide a Position Statement. At that point the agency may schedule a meeting to mediate a settlement. If that fails, then there will be further investigation by the agency and the Director will decide whether the facts justify a Complaint. If so, then the case may be transferred or go to trial¹ (see fn. 1)

The Chief does not need to go to an administrative agency in order to sue under the New Jersey Law Against Discrimination. He could sue in Superior Court, Monmouth County, anytime within the two year statute of limitations for redress of an "adverse employment action."

Suffering an "adverse employment action" is a predicate element of the claim of discrimination, and is defined as any negative job action that has a material effect on the employee's job status, such as termination, demotion, failure to promote, transfer or denial or reduction of compensation or benefits. In addition, suffering a "hostile work environment" is considered an adverse employment action. The facts will support a finding of constructive demotion (i.e., the effect of unilateral actions of taking away power and authority have the same effect as if he had been demoted); and a hostile work environment. Simply state, the Chief has suffered adverse employment action.

The law permits the following remedies for a successful discrimination plaintiff:

1. Payment for lost compensation and benefits;
2. Cash award for humiliation, pain and suffering;
3. Counsel fees and expenses paid by the non-prevailing party,
4. Equitable relief such as an order restoring the workplace to the conditions that were in place pre-discrimination, or that removes the source of discrimination, and
5. Punitive damages. They require proof of egregious, intentional misconduct and participation in the misconduct by "upper management" employees, or who were willfully indifferent to, the wrongful conduct. I do think this is not a punitive damages case.

Recommendations:

A. Consider entering into negotiations or a mediated settlement with Chief Hunt in exchange for a release of claims and waiver of any right to a jury trial for events occurring up to now. As for the elements in such a settlement agreement, see below.

¹ <https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>

B. Chief Hunt has not communicated to me that he suffered any economic losses for compensation, contributions to his pension or reduction in any group benefit as a result of the alleged discrimination. The governing body may wish to review the Chief's salary and benefits package for the last two years to make sure that he has received the salary increases and benefits to which he is entitled, and that he has received comparable salary increases given to his peers. In other words, confirm that the Chief has no economic losses during the two-year statute of limitations.

C. Pain, suffering humiliation Chief Hunt spoke meaningfully about the impact of the way he was treated by the Police Committee. He noted the upset caused by disciplinary action served on him with no notice when he was on vacation or the day before his vacation; caused when he learned about a new overtime schedule, or the hiring of new police officers when these developments were announced at meetings of the governing body, when he learned about the adoption of a new 12-hour schedule when a "side bar agreement" amending the PBA's labor agreement was on the agenda for a meeting of the governing body. It would be reasonable to expect an award of damages for humiliation, pain and suffering. The amount of that award would be a function, in part, of what he said and how he said it. It is also my experience that the wife of the executive affected by adverse employment action is a very compelling witness for pain and suffering endured by an otherwise stoic spouse. In view of a discussion of a release, with no counsel fees expended by Chief Hunt, a modest amount could be considered, but only if he asks for it.

D. Counsel fees awarded to a successful plaintiff can likely reach high five up to law six figures. If Chief Hunt chooses to be represented by a lawyer, the Township could offer to pay fees up to a \$2,500 cap for negotiating the Agreement.

E. Equitable Relief A Superior Court judge in a Law Against Discrimination case has the power to order actions or the cessation of actions to end discrimination. In this case, a judge could enter an order restoring the Chief to the powers and authority he had before the discrimination; compel Committeemen Brantley and Williams to recuse themselves from discussing and voting on any matter involving Chief Hunt and the Police Department. A judge could prohibit them from having any ability to serve in a role related to the Police Department. In Part Two, below, there are other recommendations regarding adjustments to chain-of-command and governance questions.

E. Remove from the chief's personnel jacket and file any reference to the Warnings, Counseling Notices, Directives, corrective notices, and, in particular, those notices described in the Appendix to the Investigator's report. Deliver a Memorandum to the Chief confirming that this has been done, and saying that it is the intention of the Committee to restore his personnel record to show his unblemished record of performance of duty occurring before the involvement

of the Police Committee and its Consultant, Barry Colicelli. Offer to allow him to review the file in the office of the Human Resources Director to confirm that his has been done.

F. As regard the Police Committee Consultant, Barry Colicelli, demand the return of all documents, recordings and electronically stored information that refer or relate to Chief Hunt and the Township, permitting him to keep no copies, with the sole exception being his billing records.

G. Authorize the Chief, in consultation with the Appropriate Authority, to reverse the actions implemented by the Police Committee that constitute constructive demotion, such as restoring promotional criteria and procedures; reviewing overtime assignment policy and procedure; re-consideration of the 12-hour Pittman schedule; restoring authority over discipline and the degree of discipline; consideration of assignment of disabled officers and fitness-for-duty; return authority regarding consultation and responses to FOP and PBA grievances. Ask labor counsel to advise the Chief and educate the Appropriate Authority concerning the boundaries between policy-making and the scope of the Chief's authority over these aspects of operations.

H. Instruct labor counsel, according to his discretion, to communicate to the leadership of the FOP and the PBA that it is an unfair labor practice for a collective negotiations representative to engage in end-run negotiations of terms and conditions of employment with members of the governing body or the Appropriate Authority, and take steps necessary to restore the Chief's authority over negotiation of operations issues.

I. Insist that only Chief Hunt be addressed, "Chief."

Part Two – Governance

A. The chain of authority in municipal governing starts with the law of the State of New Jersey from which all municipal powers and authority are derived. Those laws include the authority to have a municipal police department and, in particular, N.J.S.A. 40A:14-118.

Municipal police departments are overseen by both the County Prosecutor and the Appropriate Authority, defined in 40A:14-118. Speaking broadly, the Appropriate Authority establishes policy, and the Chief of Police is the executive with authority to implement the policies and be responsible to the appropriate authority to run day-to-day operations.

Under the plan of municipal management, the responsibility to tell these parties when authority is mismanaged or improperly exercised is municipal counsel's, based on counsel's ethical responsibilities to the Township. The Township has retained new labor counsel. Prior counsel allowed boundaries to erode between the Appropriate Authority and the Chief of Police and did not protest actions of the Appropriate Authority when they violated policies and procedures. In some ways, the Appropriate Authority was not held accountable by the municipal attorney or the Committee. I recommend that labor counsel be apprised of the issues raised in the Investigator's Report, and of the Appropriate Authority's improperly having taken over and exercising the Chief's authority. The governing body could ask labor counsel to describe the roles and authorities of the Chief and the Appropriate Authority, and to continue that instruction going forward. The drafting of the revised police ordinance will be a good forum for that education.

B. Please amend the Township ordinance to remove the "Police Committee" and name the Business Administrator as the Appropriate Authority; a Police Director would be a second choice. Anecdotally, my experience with Townships of Neptune's size is this is the best model and insulates the governing body from overreaching or domination by strong personalities.

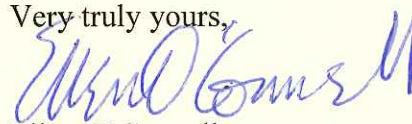
C. Revise the municipal police ordinance so that it correctly states the powers, duties, chain of command and division of authority complies with N.J.S.A. 40A:14-118.

D. Committeemen Brantley and Williams should exercise no authority over and recuse themselves over police matters in general and Chief Hunt in particular. They should each be ineligible to serve in any role overseeing the police department. This term could be in the settlement agreement discussed in Part One.

F. Recent history shows that when the Chief Hunt did not settle unfair labor practices or grievances, the Township prevailed in them. When the Appropriate Authority took control of disputes, they had a pattern of settlement which only spawned more grievances and litigation. It will likely be prudent that when the Chief gives an opinion about probability of success concerning grievances, unfair labor practices or employment law disputes, that the Township litigate.

Thank you for the opportunity to have been of service.

Very truly yours,



Ellen O'Connell

From: [Steve Edwards](#)
To: [Stephen Daveggia](#); [Conrad Cyriax](#)
Subject: Fwd: Medical Monitoring Orders
Date: Wednesday, February 10, 2021 11:38:45 AM
Attachments: [Director's Memo Medical Monitoring.pdf](#)
[osc_dwc_dpb_investigative_report.pdf](#)

Senator Gopal asked

Can me of you guys call in for 5-10?

But if your jammed, no worries gents.

Sent from my iPhone

Begin forwarded message:

From: Vin Gopal <xxx.xxxxx.xxxx@xxxxx.xxx>
Date: February 10, 2021 at 1:23:05 AM EST
To: Vin Gopal <xxx@xxxxxxxxx.xxx>
Subject: Fwd: FW: Medical Monitoring Orders

 CAUTION: External message

Randy Brause of Leitner, Tort, DeFazio Esq. is doing a quick zoom on the below this Monday, Feb 15th at 11:30am to 11:45am.
I wanted to see if you or someone from your team was free to jump on briefly to learn more? Zoom info at bottom of email
Thanks as always

----- Forwarded message -----

From: Randy Brause <[xxxxxxx@xxxxxxxxx.xxx](#)>
Date: Fri, Feb 5, 2021 at 4:02 PM
Subject: FW: Medical Monitoring Orders
To: Vin Gopal <[xxx.xxxxx.xxxx@xxxxx.xx](#)>

Enclosed please find Director Wojtenko's Memorandum prohibiting respondents from

entering into Medical Monitoring Orders when a petitioner is receiving an Accidental Disability Pension ("ADP").

It has been the practice to enter into Medical Monitoring Orders when petitioner

is receiving an ADP

which eliminates the employer from making partial total or total disability payments. Based on the

the strict reading of the statute, it was Pensions, not the employer, who was entitled to the offset

unlike Ordinary Disability Pensions where the employer took the offset. However, this method

was both encourage and endorsed by the Division of Workers' Compensation.

This will result in significant increased costs to municipalities who can no longer enter into Medical Monitoring

Orders. The directive takes immediate effect. The judges are no longer permitted to adjourn these matters

pending an ADP decision since the employer no longer has the option of entering into this type of arrangement.

We welcome the opportunity to discuss how to deal with this new reality at your convenience.

Randolph Brause

Joe DeFazio

Steve Leitner

John Tort

Leitner Tort DeFazio & Brause P.C.

244 Fernwood Avenue

Edison, New Jersey 08837

Tel: 732-417-9700

Fax: 732-417-9156

xxxxxxx@xxxxxxx.xxx

--

Vin Gopal

Follow me on twitter @vingopal

Follow me on Facebook @ <https://www.facebook.com/senatorgopal/>

Vin Gopal is inviting you to a scheduled Zoom meeting. Join Zoom Meeting
<https://zoom.us/j/95908202239> Meeting ID: 959 0820 2239 One tap mobile
+19292056099,,95908202239# US (New York) +13017158592,,95908202239# US
(Washington DC) Dial by your location +1 929 205 6099 US (New York) +1 301 715
8592 US (Washington DC) +1 312 626 6799 US (Chicago) +1 669 900 6833 US (San
Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) Meeting ID: 959
0820 2239 Find your local number: <https://zoom.us/j/95908202239>



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 381, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

MEMORANDUM

February 4, 2021

To: All Judges of Compensation and Members of the Bar

From: Russell Wojtenko, Jr., Director and Chief Judge

Subject: Accidental Disability Pensions & Medical Monitoring Settlements

Effective immediately, the N.J. Division of Workers' Compensation shall eliminate its Accidental Disability Pensions and Medical Monitoring and Coverage Policy, as set forth in former Director and Chief Judge Peter J. Calderone's November 16, 2006 Memorandum to all judges and attorneys, titled "Public Employee Pension Issues Affecting Workers' Compensation Awards", and August 25, 2011 Memorandum to all judges and attorneys, titled "Accidental Disability Orders".

The aforementioned Memorandums of November 16, 2006 and August 25, 2011 are hereby rescinded.

The N.J. Division of Workers' Compensation shall discourage medical monitoring and coverage settlements as a stand-alone form of workers' compensation benefit for public employees who receive an accidental disability pension and will not approve such settlements if proposed by the parties.

All Judges of Compensation shall proceed in the normal course with all claim petitions brought by Petitioners who have applied for, or received, an Accidental Disability Pension in accordance with New Jersey's Workers' Compensation Statute, as well as any applicable provision of the N.J. Administrative Code, and appropriate case law.

In addition, no claims before the N.J. Division of Workers' Compensation will be adjourned for the N.J. Department of Pension's final determination of a petitioner's eligibility for an accidental disability pension.



WORKERS'
COMPENSATION

"Opportunity. Stability. Dignity."

*New Jersey is an Equal Opportunity Employer
Printed on Recycled and Recyclable Paper*

AD-18.14 (2/20)



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 381, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

MEMORANDUM

Accidental Disability Pensions & Medical Monitoring Settlements

February 4, 2021

Page 2 of 2

In accordance with N.J. Division of Pensions and Benefits' Fact Sheet #45, titled "Workers' Compensation" published in February 2014, either the Workers' Compensation Petitioner, who has applied for, or received, an Accidental Disability Pension, or the Respondent, shall immediately notify the N.J. Division of Pensions and Benefits that a Workers' Compensation claim is pending in the N.J. Division of Workers' Compensation before a Judge of Compensation shall adjudicate a workers' compensation claim.

The adjudication of all workers' compensation claims brought by Petitioners for or approved recipients of Accidental Disability Pensions shall result in either: 1) a monetary judgment after trial, 2) a fair and just Section 22 settlement based on weeks of benefits, 3) a fair and just lump sum monetary Section 20 settlement due to jurisdictional, liability, or casualty grounds, or 4) dismissal of the Petitioner's claim for failure to meet the burden after trial.

Furthermore, in accordance with N.J. Division of Pensions and Benefits' Fact Sheet #45, upon granting of a judgement, settlement award, or dismissal by a judge of compensation, the Petitioner shall immediately send a copy of same to the N.J. Division of Pensions and Benefits.

This Memorandum shall not apply to workers' compensation cases involving occupational disease and continued medical monitoring.

Russell Wojtenko, Jr.
Director and Chief Judge of Compensation
Department of Labor and Workforce Development
N.J. Division of Workers' Compensation



WORKERS'
COMPENSATION

"Opportunity. Stability. Dignity."

*New Jersey is an Equal Opportunity Employer
Printed on Recycled and Recyclable Paper*

AD-18.14 (2/20)

From: [Steve Edwards](#)
To: [Stephen Daveggia](#); [Conrad Cyriax](#)
Subject: Fwd: Medical Monitoring Orders
Date: Wednesday, February 10, 2021 11:38:45 AM
Attachments: [Director's Memo Medical Monitoring.pdf](#)
[osc_dwc_dpb_investigative_report.pdf](#)

Senator Gopal asked

Can me of you guys call in for 5-10?

But if your jammed, no worries gents.

Sent from my iPhone

Begin forwarded message:

From: Vin Gopal <xxx.xxxxx.xxxx@xxxxx.xxx>
Date: February 10, 2021 at 1:23:05 AM EST
To: Vin Gopal <xxx@xxxxxxxxx.xxx>
Subject: Fwd: FW: Medical Monitoring Orders

 CAUTION: External message

Randy Brause of Leitner, Tort, DeFazio Esq. is doing a quick zoom on the below this Monday, Feb 15th at 11:30am to 11:45am.
I wanted to see if you or someone from your team was free to jump on briefly to learn more? Zoom info at bottom of email
Thanks as always

----- Forwarded message -----

From: **Randy Brause** <[xxxxxxxx@xxxxxxxxx.xxx](#)>
Date: Fri, Feb 5, 2021 at 4:02 PM
Subject: FW: Medical Monitoring Orders
To: Vin Gopal <[xxx.xxxxx.xxxx@xxxxx.xx](#)>

Enclosed please find Director Wojtenko's Memorandum prohibiting respondents from

entering into Medical Monitoring Orders when a petitioner is receiving an Accidental Disability Pension ("ADP").

It has been the practice to enter into Medical Monitoring Orders when petitioner

is receiving an ADP

which eliminates the employer from making partial total or total disability payments. Based on the

the strict reading of the statute, it was Pensions, not the employer, who was entitled to the offset

unlike Ordinary Disability Pensions where the employer took the offset. However, this method

was both encourage and endorsed by the Division of Workers' Compensation.

This will result in significant increased costs to municipalities who can no longer enter into Medical Monitoring

Orders. The directive takes immediate effect. The judges are no longer permitted to adjourn these matters

pending an ADP decision since the employer no longer has the option of entering into this type of arrangement.

We welcome the opportunity to discuss how to deal with this new reality at your convenience.

Randolph Brause

Joe DeFazio

Steve Leitner

John Tort

Leitner Tort DeFazio & Brause P.C.

244 Fernwood Avenue

Edison, New Jersey 08837

Tel: 732-417-9700

Fax: 732-417-9156

xxxxxxx@xxxxxxxxx.xxx

--

Vin Gopal

Follow me on twitter @vingopal

Follow me on Facebook @ <https://www.facebook.com/senatorgopal/>

Vin Gopal is inviting you to a scheduled Zoom meeting. Join Zoom Meeting
<https://zoom.us/j/95908202239> Meeting ID: 959 0820 2239 One tap mobile
+19292056099,,95908202239# US (New York) +13017158592,,95908202239# US
(Washington DC) Dial by your location +1 929 205 6099 US (New York) +1 301 715
8592 US (Washington DC) +1 312 626 6799 US (Chicago) +1 669 900 6833 US (San
Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) Meeting ID: 959
0820 2239 Find your local number: <https://zoom.us/j/95908202239>



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 381, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

MEMORANDUM

February 4, 2021

To: All Judges of Compensation and Members of the Bar

From: Russell Wojtenko, Jr., Director and Chief Judge

Subject: Accidental Disability Pensions & Medical Monitoring Settlements

Effective immediately, the N.J. Division of Workers' Compensation shall eliminate its Accidental Disability Pensions and Medical Monitoring and Coverage Policy, as set forth in former Director and Chief Judge Peter J. Calderone's November 16, 2006 Memorandum to all judges and attorneys, titled "Public Employee Pension Issues Affecting Workers' Compensation Awards", and August 25, 2011 Memorandum to all judges and attorneys, titled "Accidental Disability Orders".

The aforementioned Memorandums of November 16, 2006 and August 25, 2011 are hereby rescinded.

The N.J. Division of Workers' Compensation shall discourage medical monitoring and coverage settlements as a stand-alone form of workers' compensation benefit for public employees who receive an accidental disability pension and will not approve such settlements if proposed by the parties.

All Judges of Compensation shall proceed in the normal course with all claim petitions brought by Petitioners who have applied for, or received, an Accidental Disability Pension in accordance with New Jersey's Workers' Compensation Statute, as well as any applicable provision of the N.J. Administrative Code, and appropriate case law.

In addition, no claims before the N.J. Division of Workers' Compensation will be adjourned for the N.J. Department of Pension's final determination of a petitioner's eligibility for an accidental disability pension.



WORKERS'
COMPENSATION

"Opportunity. Stability. Dignity."

*New Jersey is an Equal Opportunity Employer
Printed on Recycled and Recyclable Paper*

AD-18.14 (2/20)



PHILIP D. MURPHY
Governor

State of New Jersey

SHEILA Y. OLIVER
Lieutenant Governor

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 381, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

MEMORANDUM

Accidental Disability Pensions & Medical Monitoring Settlements

February 4, 2021

Page 2 of 2

In accordance with N.J. Division of Pensions and Benefits' Fact Sheet #45, titled "Workers' Compensation" published in February 2014, either the Workers' Compensation Petitioner, who has applied for, or received, an Accidental Disability Pension, or the Respondent, shall immediately notify the N.J. Division of Pensions and Benefits that a Workers' Compensation claim is pending in the N.J. Division of Workers' Compensation before a Judge of Compensation shall adjudicate a workers' compensation claim.

The adjudication of all workers' compensation claims brought by Petitioners for or approved recipients of Accidental Disability Pensions shall result in either: 1) a monetary judgment after trial, 2) a fair and just Section 22 settlement based on weeks of benefits, 3) a fair and just lump sum monetary Section 20 settlement due to jurisdictional, liability, or casualty grounds, or 4) dismissal of the Petitioner's claim for failure to meet the burden after trial.

Furthermore, in accordance with N.J. Division of Pensions and Benefits' Fact Sheet #45, upon granting of a judgement, settlement award, or dismissal by a judge of compensation, the Petitioner shall immediately send a copy of same to the N.J. Division of Pensions and Benefits.

This Memorandum shall not apply to workers' compensation cases involving occupational disease and continued medical monitoring.

Russell Wojtenko, Jr.
Director and Chief Judge of Compensation
Department of Labor and Workforce Development
N.J. Division of Workers' Compensation



WORKERS'
COMPENSATION

"Opportunity. Stability. Dignity."

*New Jersey is an Equal Opportunity Employer
Printed on Recycled and Recyclable Paper*

AD-18.14 (2/20)