

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHRIS O'NEIL)	
)	
Plaintiff,)	
)	Case No.
vs.)	
)	
CITY OF RICHMOND, INDIANA,)	
and JERRY PURCELL)	
)	
Defendants.)	Jury Trial Requested

COMPLAINT AND DEMAND FOR JURY TRIAL

NATURE OF THE CASE

1. This lawsuit seeks redress for violations of the Family Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. § 2601 *et seq.*, the Americans with Disabilities Act of 1990 (“ADA”) and Title VII of the Civil Rights Act of 1964, including monetary damages against the City of Richmond and Jerry Purcell for injuries and losses related to retaliation, discrimination and harassment against Chris O’Neil.

JURISDICTION AND VENUE

2. This court has original subject matter jurisdiction of this action pursuant to 29 U.S.C. §2617 and 28 U.S.C. §1331.
3. The claims asserted in this action arose within this district and the alleged retaliation and damage occurred in this district. Venue of this action is therefore proper pursuant to 29 U.S.C. §2617 and 28 U.S.C. §1391.

PARTIES

4. At all times relevant herein, Plaintiff, Chris O’Neil (“O’Neil”) was a citizen of the State of Indiana, residing in the City of Richmond, Indiana.
5. At all times relevant herein, O’Neil was a full-time member of the City of Richmond Fire Department.
6. At all times relevant herein, Defendant City of Richmond, Indiana is an Indiana Political Subdivision which employs Firefighter personnel by and through its lawful subdivision in the City of Richmond Fire Department, including Chief Jerry Purcell (“Purcell”).
7. At all times relevant herein, Defendant Purcell was a citizen of the State of Indiana, residing in Wayne County, Indiana; was Chief of the Richmond Fire Department and acted directly and/or indirectly in the interest of the City of Richmond.
8. Each Defendant satisfies the definition of “employer” and/or “public agency” as provided by FMLA, 29 U.S.C. §2611(4) and 29 C.F.R. §825.108.
9. The Plaintiff is an “eligible employee” as defined in the FMLA, 29 U.S.C. §2611(2).

FACTUAL ALLEGATIONS

10. O’Neil suffers from a mental health disability triggered by many on-duty incidents, including the Dennis Intermediate School Shooting.
11. On January 13, 2022, O’Neil’s treating physician issued a letter to the City wherein she informed officials that O’Neil was seen in her clinic on January

13, 2022, and that it advisable at this time that the patient is excused from work for a duration of time.

12. This letter triggered a medical leave of absence for O'Neil pursuant to the FMLA.

13. The Richmond Fire Department allows for firefighters to take up to one (1) year of FMLA leave for qualifying medical reasons.

14. A firefighter who is on an FMLA leave of absence is required to receive appropriate treatment while on leave in an effort to remedy the ailment that necessitates the leave of absence.

15. The Fire Department furnishes medical evaluation forms to firefighters on leaves of absence to be filled out by their treating medical professional, which are to be returned to the fire department so that progress may be appropriately monitored.

16. Upon information and belief, O'Neil was one of only two (2) firefighters that were required to submit to the medical evaluation forms.

17. At all times relevant, O'Neil satisfied the requirement of ensuring the medical evaluation forms were completed and submitted to the department.

18. On or about February 24, 2022, Chief Purcell called O'Neil's nurse practitioner office and asked if O'Neil could have faked the medical evaluation form that had been submitted on his behalf.

19. On or about February 24, 2022, Chief Purcell contacted O'Neil's nurse practitioner office again, stating he was calling on behalf of Human

Resources, and requested O'Neil's session notes to be sent to Purcell's personal email account.

20. Defendants Purcell and the City of Richmond also ordered O'Neil to appear for approximately four (4) separate fitness for duty evaluations during the 2022 calendar year.

21. In December 2022, Purcell filed disciplinary charges with the City of Richmond Board of Public Works and requested the termination of O'Neil. The charges were fabricated and without merit.

22. O'Neil filed a complaint with the City of Richmond human resources department regarding this retaliation and discrimination.

23. O'Neil also filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). O'Neil received his Determination and Notice of Rights Letter on or about August 20, 2024.

COUNT I: RETALIATION

The Plaintiff, Chris O'Neil, by counsel, incorporates all material statements in rhetorical paragraphs 1-23 and further states:

24. The Defendants retaliated against the Plaintiff for exercising his statutory right to medical leave when Defendants deliberately contacted his nurse practitioner, insinuated O'Neil was untruthful, and requested O'Neil's medical records.

25. The Defendants retaliated against the Plaintiff for exercising his statutory right to medical leave when Defendants deliberately ordered O’Neil to appear for four (4) fitness for duty evaluations during 2022.

26. The Defendants further retaliated against the Plaintiff for exercising his statutory right to medical leave when Defendants deliberately fabricated and filed disciplinary charges against O’Neil and requested his termination.

27. At all times relevant hereto, Defendants were prohibited to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA, including discriminating and/or retaliating against employees who lawfully request leave under the FMLA. See 29 U.S.C. §2615, and 29 C.F.R. 825.220.

28. As a direct and proximate result of the Defendants’ actions, Plaintiff has incurred and is now incurring damages, and respectfully prays that this Court enter Judgment against the Defendants for:

- a. Liquidated damages pursuant to the FMLA, 29 U.S.C. §2617;
- b. Reasonable attorneys’ fees and costs; and
- c. Such other further relief as the Court deems just and proper.

COUNT II: DISCRIMINATION AND HARASSMENT

BASED ON DISABILITY

29. The Plaintiff, by counsel, incorporates all material statements in rhetorical paragraphs 1-28 above and further states:

30. Title I of the Americans with Disabilities Act of 1990 (“ADA”) prohibits discrimination in employment against qualified individuals on the basis of disability.

31. Defendants have violated the ADA in the following ways:

- a.** Intrusive comments and questions about O’Neil’s disability;
- b.** Singling out O’Neil for different treatment based on disability;
- c.** The failure of the City of Richmond to stop the harassment and discrimination after it was reported;
- d.** Disparate treatment based on O’Neil’s disability.

COUNT III: DEFAMATION

32. The Plaintiff, by counsel, incorporates all material statements in rhetorical paragraphs 1-31 and further states:

33. Defendants, by and through Jerry Purcell, made and published communications with defamatory imputation, known to be false, regarding O’Neil’s reputation by insinuating and/or accusing O’Neil of falsifying the medical evaluation form submitted on his behalf.

34. Defendants, by and through Jerry Purcell, made and published communications with defamatory imputation, known to be false, when disciplinary charges were filed against O’Neil with the City of Richmond Board of Works.

35. Such communications by Purcell were made with the intent to harm O’Neil, his reputation, and his standing within the Fire Department, the local firefighters union, and City of Richmond community.

36. The false and defamatory communications made by Purcell were calculated and intentional and caused O’Neil immense reputational and emotional harm.

37. As a direct and proximate result of Defendants’ actions, O’Neil suffered embarrassment, emotional distress, and damages, including special damages.

WHEREFORE, Plaintiff, Chris O’Neil, demands judgment against Defendants in an amount sufficient to compensate the Plaintiff for his damages, prejudgment interest, costs of this action, and all other relief just and proper in the premises.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Date: November 13, 2024

Respectfully submitted,

SMID & MERCHANT LLC

/s/ Michael J. Bruzzese

MICHAEL J. BRUZZESE, #33756-49

EDWARD J. MERCHANT, #26882-49

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Chris O'Neil

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Smid & Merchant, LLC 12115 Visionary Way, Fishers, IN 46036 317-416-8621

DEFENDANTS

City of Richmond, Indiana, and Jerry Purcell

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC 2601; 42 USC 12101; 42 USC 2000e. Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 200,000 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/13/2024 SIGNATURE OF ATTORNEY OF RECORD Michael J. Bruzzese (33756-49)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

Chris O'Neill

Plaintiff(s)

v.

City of Richmond, Indiana and Jerry Purcell

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Fire Chief, Jerry Purcell
Richmond Fire Department
101 S. 5th St.
Richmond, IN 47374

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Smid & Merchant, LLC
12115 Visionary Way, Suite 174
Fishers, IN 46038

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

Chris O'Neill

Plaintiff(s)

v.

City of Richmond, Indiana and Jerry Purcell

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) City of Richmond, Indiana
c/o City Attorney, Andrew J. Sickman
50 N. 5th St.
Richmond, Indiana 47374

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Smid & Merchant, LLC
12115 Visionary Way, Suite 174
Fishers, IN 46038

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk