

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

TOMMY LEFTWICH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:16-cv-02112-JWL-GLR
	)	
CITY OF PITTSBURG, KANSAS, MEGAN FRY,	)	
MENDY HULVEY, and DARON HALL,	)	
	)	
Defendants.	)	

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**PRETRIAL ORDER**

A pretrial conference was conducted in this case on **March 30, 2017**, by U.S. Magistrate Judge Gerald L. Rushfelt. The plaintiff, Tommy Leftwich, appeared through counsel, Patrick G. Reavey and Kevin C. Koc. The defendants, City of Pittsburg, Kansas, Megan Fry, Mendy Hulvey, and Daron Hall, appeared through counsel, Terelle A. Mock and Andrew D. Holder.

This pretrial order supersedes all pleadings and controls the subsequent course of this case. It will not be modified except by consent of the parties and the court's approval, or by order of the court to prevent manifest injustice. Fed. R. Civ. P. 16(d) & (e); D. Kan. Rule 16.2(b).

**1) PRELIMINARY MATTERS.**

**a) Subject-Matter Jurisdiction.** Subject-matter jurisdiction is invoked under 28 U.S.C. § 1331 and is not disputed.

**b) Personal Jurisdiction.** The court's personal jurisdiction over the parties is not disputed.

c) **Venue.** Venue in this court is not disputed.

d) **Governing Law.** Subject to the court's determination of the law that applies to the case, the parties believe and agree that the substantive issues in this case are governed by the following law:

- 42 U.S.C. §§ 1983 and 1988: First Amendment retaliation, violation of Plaintiff's due process rights
- Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), *et seq.* ("Title VII").

2) **STIPULATIONS.**

a) The parties stipulate as follows:

1. Legible copies of original documents may be offered and admitted into evidence without further objection on the grounds of the best evidence rule.
2. Reproductions, overlays, and other forms of enlargement or enhancement of documents listed as exhibits herein may be used in trial so long as any reproduction or overlay thereof does not otherwise distort the document.
3. Parties and all witnesses may use diagrams, charts or blackboards in order to further facilitate the presentation of evidence.
4. Witnesses called and exhibits used by one party may be called as witnesses or used by any other party to this litigation.
5. Clear and accurate photocopies of original documents may be used in lieu of the originals as evidence in the trial.
6. Documents produced by any party during discovery may be presented as evidence without the testimony of a representative or custodian. This stipulation does not prevent an objection as to relevancy or materiality and is merely designed to eliminate the need for testimony of records custodian.

b) The parties will file additional stipulations on or before 60 days before trial.

**3) FACTUAL CONTENTIONS.**

**a) Contentions of Plaintiff(s).**

Plaintiff was a police officer for the City of Pittsburgh. While employed, he became aware that some male police officers in management were having sexual encounters with junior female officers and in some instances were sexually harassing them. Plaintiff believed this to be unethical, unlawful and adversely affecting Plaintiff and other officers. He also believed the female officers were receiving preferential treatment over male officers in their job assignments, opportunities and promotions.

In July 2013 Plaintiff met with Police Chief Mendy Hulvey and complained to her that he, and other officers, were being harmed by these inappropriate relationships and preferential treatment. He complained that she had not seriously addressed one of these relationships which caused the pregnancy of a junior officer and a resulting abortion. Only after Plaintiff's complaint did Hulvey discipline the offending senior officer with a suspension of five days. Defendant Hulvey took no further action.

In late 2013 and/or early 2014 Defendants had done nothing else to address these complaints by Plaintiff. He had become aware that one of the sexual encounters had occurred during an investigation that resulted in consumption of alcohol, purchased with city funds, intoxication of the junior officer, and sex between her and the other investigating officer, her senior. In January 2014 Plaintiff sought another meeting with Chief Hulvey, as well as with co-defendant Megan Fry, head of the Human Resources Department, to address these concerns.

Despite these complaints in July 2013 and February 2014 to Defendants Chief Hulvey and Megan Fry, they made no written statements of their meetings with Plaintiff, until February 21, 2014, the day before his termination. Plaintiff requested a meeting with the City Manager,

co-defendant Daron Hall. Hall requested him to write out his complaints. Hall also indicated that Chief Hulvey would need to be present for any meeting between him and Plaintiff. Plaintiff objected that it would be unfair to include Hulvey, about whom he had the most complaints.

On February 18, 2014, Plaintiff emailed the City governing body a message, referring to “serious policy and ethical wrong doings within the Police Department” and how “they have created an unequal and hostile work environment.” He described his concerns about the Chief of Police and police department and indicated “some sort of community awareness was necessary.” Chief Hulvey responded by speaking with City Manager Daron Hall, who agreed that Plaintiff should be terminated. Hulvey also told her second in command, Timothy Tompkins, to think about policy violations that would support termination.

On February 20, 2014, Chief Hulvey contacted the officer who had become pregnant by a senior officer. Hulvey asked her to make a written statement about her complaints against Plaintiff. Over her own objection, the junior officer complied. Hulvey sent the statement to Defendant Hall, who indicated it needed to be addressed “ASAP”.

On February 21, 2014, Defendants Hulvey and Fry wrote undated documents, purporting to detail what had transpired during their meetings with Plaintiff on February 6 and 7, 2014. On May 16, 2014 (after receipt of Plaintiff’s April 25, 2014 EEOC Charge of Discrimination), Hulvey also wrote an undated statement, detailing the meeting with Plaintiff in July 2013.

On February 21, 2014, Senior Officer Hatcher emailed to Chief Hulvey a summary of a phone conference he had had that day with District Attorney Michael Gayoso. Gayoso reported a meeting he had had that day with Plaintiff, which had included a discussion of the complaints Plaintiff had made to Chief Hulvey and his saying he was out to get Hulvey and Officer Hatcher

and another senior officer fired. Hatcher's summary indicated Gayoso was "concerned that Officer Leftwich is not thinking clearly and to be careful."

On February 22, 2014, Plaintiff was called in to meet with Chief Hulvey and Assistant Chief Tompkins. Plaintiff was told he was terminated. When he asked why, no reason was given. A termination letter was later mailed to him, but with no indication of why he had been terminated. He was first provided with "the reasons" for his termination during an appeal hearing on March 5, 2014. City policy requires that an employee be given advance notice, reasons for termination, and an opportunity to refute the basis for termination. The City agrees they did not comply with this policy, but contend Plaintiff received the benefit of the policy "during the appeal process."

On March 10, 2014, before Plaintiff's appeal had been decided, Chief Hulvey sent "Kansas CPOST" a letter, indicating Plaintiff "was terminated for violation of department policy related to insubordination and creating a hostile and disruptive work environment for fellow employees." This record of Plaintiff's termination is a permanent record (and cannot be revised) with the agency that maintains licensure, ethical and termination information on all law enforcement officers within the State of Kansas.

On March 30, 2014, Plaintiff received a letter from Defendant Hall, indicating his appeal of his termination was denied, and the "decision is final and cannot be appealed to the City Commission." Defendants never intended, nor did they provide Plaintiff with fair consideration or hearings on the two appeals he filed per City policy. Nor did they allow him an opportunity to present information and evidence to show his termination should be rescinded.

**b) Contentions of Defendant(s).**

Plaintiff Leftwich began his employment with the City of Pittsburgh as a police officer on February 14, 2011. He was rehired on December 31, 2012. His employment was terminated on February 22, 2014. Defendants generally deny plaintiff's allegations of unlawful discrimination and retaliation. He was terminated for legitimate, non-discriminatory and non-retaliatory reasons, including insubordination, violation of the chain of command, initiating and pursuing an unauthorized professional standards investigation, and creating a hostile work environment for other employees.

In June 2013 Chief Hulvey learned of a romantic relationship between two officers, including a policy violation regarding consensual relationships. The offending officer was disciplined.

In July 2013 Plaintiff Leftwich, his wife, Officer Becky Pallucca, and Officer Romine had a verbal altercation. Two days later Leftwich complained that the discipline of another officer, Bowman, was not enough. Defendant Hulvey met with Leftwich to discuss his concerns. He became angry and agitated and made vulgar and disparaging remarks about Officer Romine, called her a whore, wished her to leave, and said she did not deserve to be a police officer. He complained about a text message between Officer Romine and Lt. Cris Hatcher. Chief Hulvey was already aware of their communications and had taken appropriate, responsive action, after which any problem was satisfactorily resolved.

On February 6, 2014, Chief Hulvey and Plaintiff Leftwich met for approximately two hours. Leftwich surreptitiously recorded or tried to record (1) his meeting with Defendant Megan Fry, head of Human Relations, on February 2, 2014, (2) his termination appeal meeting with

Defendants Fry and Hulvey on March 5, and (3) his appeal meeting with City Manager Daron Hall on March 26, 2014.

During the meeting of February 6, Plaintiff Leftwich complained about his performance evaluation and that he had not been selected as “Officer of the Year.” He criticized a number of fellow officers, including Officer Romine. He reiterated his belief that Sgt. Bowman should have been terminated for having an affair with Romine. As reported by Chief Hulvey, Plaintiff became extremely agitated and emotional. He complained about listening to officer conversations all day long and being upset by them. He identified several officers and complained they should be fired. He became extremely aggressive, loud and swearing in his speech, and drew attention from other patrons.

Due to the public meeting place and Leftwich’s agitated state, Chief Hulvey tried to deescalate the situation. She reminded him she could not discuss personnel matters and would appropriately address his concerns. She encouraged him to keep an appointment with Megan Fry of Human Resources.

Prior to this meeting Chief Hulvey was unaware of any improper relationship between Officers Christensen and Hatcher, but she informed Fry of Human Resources and City Manager Hall of Plaintiff’s behavior, comments, and allegation.

On February 7, 2014, Plaintiff Leftwich met with Defendant Fry of Human Resources. Plaintiff surreptitiously recorded the meeting. He reiterated his previous complaints, including those about his performance and that some officers, especially Romine and Bowman, should have been fired.

On February 10, 2014, Chief Hulvey received a notice from the Kansas Peace Officers’ Standards and Training (“KS-CPOST”), indicating it received an anonymous complaint about

issues similar to Plaintiff's complaints. On February 10 Plaintiff also sent to Fry of Human Resources a request for a meeting with Defendant City Manager Daron Hall. Fry asked Leftwich to submit to her by February 12, 2014, written documentation of his concerns. Leftwich failed to do so.

On February 13, 2014, Officer Romine sent Chief Hulvey a message that Leftwich had been questioning her about Sergeant Bowman and was recording his conversations for evidence.

On February 13, 2014, Plaintiff Leftwich called Defendant Fry and expressed concern about Chief Hulvey's presence at the forthcoming meeting. Fry encouraged him to write out his concerns and, at his request, gave him until February 28 to do so. Fry advised they would then schedule a meeting.

On February 14, 2014, Plaintiff Leftwich again canceled his meeting with Defendants Hall and Fry. On that date he also sent an e-mail to the Pittsburg City Commissioners, in which he complained about how his internal complaints had been handled, and requested a meeting.

On February 20, 2014, Officer Romine sent Chief Hulvey an e-mail stating, in part: "Since Leftwich has made his intentions known. . . there is not a single day that goes by without me receiving a text message, phone call, or personal contact from an officer inquiring about my personal endeavors."

On February 21, 2014, Crawford County Attorney Michael Gayoso informed Lieutenant Hatcher that Leftwich had accused Hatcher of using his rank to get female officers to have affairs with him and to keep them from reporting the affairs. Gayoso expressed concern for the physical safety of Hatcher and Hulvey, given Leftwich's behavior. After Hatcher reported this to her, Hulvey discussed it with City Manager Daron Hall. Hall verified Gayoso's statements. Hall and Hulvey decided that Leftwich would be terminated the following morning on February 22.



On February 22, 2014, Leftwich met with Chief Hulvey and Lieutenant Tim Tompkins and was informed he had been terminated.

Plaintiff Leftwich appealed his termination on February 27, 2014. On March 5 he was informed he had been terminated for insubordination, conducting an unauthorized professional standards investigation, and creating a hostile work environment. On March 11, 2014, Chief Hulvey issued Leftwich a written response, notifying him his appeal had been denied.

On March 4, 2014, Officers Christensen and Romine told Hulvey they had met with an attorney, because of Plaintiff's threats of litigation. Officer Christensen disclosed that she and Lieutenant Hatcher had consensual sex one time at the end of an assignment. On March 5 Hatcher admitted to the encounter. He also resigned.

On March 19, 2014, Leftwich appealed Chief Hulvey's decision to Defendant Hall. Leftwich and Hall met on March 26 and March 31. Hall informed Leftwich his appeal was denied.

#### **4) LEGAL CLAIMS AND DEFENSES.**

##### **a) Legal Claims of Plaintiff(s).**

Plaintiff asserts that he is entitled to recover upon the following theories:

##### **1. Retaliation for exercise of First Amendment Speech (42 USC §§ 1983, 1988) against all Defendants:**

Plaintiff engaged in speech (both written and verbal) concerning serious misconduct by police officers and superiors at the City Police Department. Plaintiff's speech concerned matters of great public concern, to include police misconduct, failures of superiors to investigate and prevent the violation of civil and criminal laws, and failures to investigate or address claims of alleged unlawful discrimination, harassment, and retaliation.

Plaintiff's protected speech went beyond concerns for his own personal self and his own personal employment situation, and included matters that affected the community at large, and City residents and taxpayers.

In speaking to the City Commission, Plaintiff was engaging in speech as a citizen and not merely as an employee of the City Police Department.

In speaking to and reporting misconduct in the Police Department to entities and persons outside of the City, Plaintiff was engaging in speech as a citizen and not merely as an employee of the City Police Department.

All of the Defendants, acting under the color of State law, engaged in retaliation against Plaintiff for his protected speech by failing to abide by their own policies with respect to discipline and termination, terminating his employment and failing to seriously consider his appeals, placing false, erroneous and defamatory information and documents in his permanent record and file at the City, disparaging his name and reputation within the City Police Department and City of Pittsburg, and communicating to the Kansas CPOST false, erroneous, and defamatory reasons as to why his employment was terminated, knowing such reasons would remain a permanent record available to potential employers and others, further damaging Plaintiff's employment opportunities and reputation.

**2. Failure of due process (42 USC §§ 1983, 1988) against all Defendants:**

Defendants Hulvey, Fry, and Hall, in their individual capacities, and the City, gathered, schemed, and fabricated reasons for terminating Plaintiff's employment (all under the color of State law) in order to conceal their common purpose of retaliating against Plaintiff for exercising his First Amendment rights.

Defendants' failure to provide any notice to Plaintiff of why he was being terminated (as is required by the City's own regulations), and then, after the termination, providing reasons that were fabricated, defamatory, and used as a pretext for retaliation, mandated that Defendants provide Plaintiff a name-clearing hearing.

Even before the first step of the City appeal process was completed, Defendants provided a permanent record to the Kansas CPOST as to why Plaintiff was terminated, and that record contains false, erroneous, pretextual, and defamatory reasons for why Plaintiff was terminated and, given that these records are available to any law enforcement agencies and members of the public, Plaintiff's reputation, character, and honor have been permanently damaged.

Defendants have placed their erroneous, defamatory, false, and pretextual reasons for Plaintiff's termination into Plaintiff's permanent employment file maintained by the City.

Although Defendants allowed Plaintiff to appeal the decision to terminate, they failed to allow Plaintiff a hearing to fully present his side of things, to contest the reasons belatedly provided to Plaintiff as a basis for his termination, and to present evidence and witnesses, all in an effort to clear his name of the defamatory, false and pretextual reasons for his termination.

### **3. Sex Discrimination (Title VII) against Defendant City of Pittsburg:**

Plaintiff complained about what he believed to be sexual harassment against female police officers in the City Police Department.

Plaintiff claims that, if he was female instead of male, his complaints would have been taken seriously and acted upon, and he would not have been terminated.

### **4. Retaliation (Title VII) against Defendant City of Pittsburg:**

During his employment with the City, Plaintiff observed that female police officers were given more and better opportunities, assignments, and promotions, than male officers; and this

was particularly the case with female officers engaged in romantic relationships with management level officers.

Plaintiff complained about the preferential treatment and, once he became aware that some of the relationships were the result of sexual harassment by management level officers, he raised concern about and complained of the sexual harassment.

Plaintiff's complaints of sex discrimination and sexual harassment constituted "protected activity" for purposes of Title VII, meaning the City of Pittsburgh was prohibited from retaliating against Plaintiff for making the complaints.

The City did not seriously investigate Plaintiff's complaints, opting instead to brush off his complaints and subject him to retaliation and a hostile work environment for making them, and to pretextually construe Plaintiff's complaints and reports as somehow violating City policy.

Ultimately, the City terminated Plaintiff in retaliation for him complaining about and reporting sex discrimination and sexual harassment in the City Police Department.

**b) Defenses of Defendant(s).**

Defendants asserts the following defenses:

1. The individual defendants are entitled to qualified immunity.
2. Plaintiff's conduct was not protected by the First Amendment.
3. Plaintiff's First Amendment claims are barred because Plaintiff's speech was made pursuant to his official duties.
4. Plaintiff's speech was not made on matter of public concern.
5. Even if Plaintiff could establish that his conduct constituted protected free speech, the City's interests in avoiding disruptions to its internal operating and employment relationships outweighs Plaintiff's free speech interests (if any).
6. Even if Plaintiff could establish that his conduct constituted protected free speech, the City would have decided to terminate Plaintiff in the absence of such conduct.

7. Plaintiff's due process rights were not violated; any statement (1) does not impugn his good name, honor, or reputation; (2) is undisputedly true; (3) does not foreclose future employment opportunities; (4) was not published; and (5) was capable of being rebutted by Leftwich through his termination appeal
8. Leftwich was terminated for a legitimate, non-discriminatory reason, and cannot identify evidence from which a trier of fact could conclude that the actual basis for his termination was gender discrimination or retaliation. There is no evidence of pretext.
9. Leftwich cannot meet the prima facie burden for reverse gender discrimination. There is no evidence of pretext.
10. Plaintiff was not retaliated against for engaging in protected conduct, but was terminated for legitimate non-retaliatory reasons. There is no evidence of pretext.

**5) DAMAGES AND NON-MONETARY RELIEF REQUESTED.**

- a. **Lost Wages and Employment Benefits (from termination to trial):**  
**\$82,156.00.**
- b. **Future Lost Wages and Employment Benefits (after trial): \$8,740.74 per year**  
**for a period of ten years.**
- c. **Prejudgment and Post-judgment Interest.**
- d. **Emotional Distress and Reputational Damages: \$1,125,000**
- e. **Punitive Damages against Individual Defendants:**  
  
**Defendant Fry: \$100,000**  
  
**Defendant Hulvey: \$300,000**  
  
**Defendant Hall: \$300,000**
- f. **Attorney's Fees (42 U.S.C.A. § 1988; 42 U.S.C.A. § 2000e-5(k)): To be determined by Court.**
- g. **Reinstatement of Plaintiff as a Pittsburg Police Officer: To be determined by Court.**

- h. A cease and desist order, removal of defamatory and pretextual documents and information from any files maintained by the City as to Plaintiff's employment as a police officer, an injunction against the City forbidding it from disclosing the above-referenced documents and information, and requiring the City to submit any verdict in Plaintiff's favor to Kansas CPOST, with a request that Kansas CPOST provide the judgment, or reference thereto, to anyone who requests from them any documents about Plaintiff's employment with the City.**

**6) AMENDMENTS TO PLEADINGS.**

None.

**7) DISCOVERY.**

Under the scheduling order and any amendments, the discovery deadline was March 30, 2017.

Unopposed discovery may continue after the deadline for completion of discovery so long as it does not delay the briefing of or ruling on dispositive motions or other pretrial preparations. The parties have agreed to take the depositions of Henry Menghini and Michael Paasch after the discovery deadline. Although discovery may be conducted beyond the deadline for completion of discovery if all parties are in agreement to do so, under these circumstances the court will not be available to resolve any disputes that arise during the course of such extended discovery.

**8) MOTIONS.**

**a) Pending Motions.**

- Plaintiff's Motion for Discovery [ECF Doc. 68]

**b) Additional Pretrial Motions.**

After the pretrial conference, the parties intend to file the following motions:

- Defendants intend to file a motion for summary judgment.

- Both parties intend to file motions *in limine*.
- Plaintiff intends to file a motion for sanctions, and to request relief in the form of striking some or all of Defendants' defenses.

The dispositive-motion deadline is extended through **April 20, 2017**.

The parties should follow the summary-judgment guidelines available on the court's website:

<http://www.ksd.uscourts.gov/summary-judgment/>

Consistent with the scheduling order filed earlier in this case, the arguments and authorities section of briefs or memoranda must not exceed 30 pages, absent an order of the court.

**c) Motions Regarding Expert Testimony.**

Not applicable. Neither party has designated an expert witness in this case.

**9) TRIAL.**

The trial docket setting, as established in the scheduling order and any amendments, is **October 2, 2017, at 9:30 a.m., in Kansas City, Kansas**. This case will be tried by jury. Trial is expected to take approximately 5 days. The court will attempt to decide any timely filed dispositive motions approximately 60 days before trial [*or as otherwise stated in the scheduling order*]. If no dispositive motions are timely filed, or if the case remains at issue after timely dispositive motions have been decided, then the trial judge will convene another pretrial conference to discuss, among other things, the setting of deadlines for filing final witness and exhibit disclosures, exchanging and marking trial exhibits, designating deposition testimony for presentation at trial, motions in limine, proposed instructions in jury trials, and proposed findings of fact and conclusions of law in bench trials.

IT IS SO ORDERED.

Dated April 11, 2017, at Kansas City, Kansas.

**s/Gerald L. Rushfelt**  
Gerald L. Rushfelt  
U. S. Magistrate Judge

Prepared and submitted by

**FISHER, PATTERSON, SAYLER & SMITH, LLP**  
3550 S.W. 5<sup>th</sup> Street  
Topeka, Kansas 66606  
Office: (785) 232-7761 | Fax: (785) 232-6604  
Email: tmock@fisherpatterson.com  
aholder@fisherpatterson.com

**s/Terelle Mock**  
Terelle A. Mock #21465  
Andrew Holder #25456  
**ATTORNEYS FOR DEFENDANTS**

Approved by:

**REAVEY LAW LLC**  
Livestock Exchange Building  
1600 Genessee, Suite 303  
Kansas City, Missouri 64102  
Off: (816) 474-6300 | Fax: (816) 474-6302  
preavey@reaveylaw.com; kkoc@reaveylaw.com

**s/Patrick G. Reavey**  
Patrick G. Reavey, KS #17291  
Kevin C. Koc, KS #24953  
**ATTORNEYS FOR PLAINTIFF**