

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**M. REBECCA DOWNING and
ROBERT G. LEICHLITER,
Plaintiffs**

v.

**YORK COUNTY DISTRICT ATTORNEY
H. STANLEY REBERT and
YORK COUNTY, PENNSYLVANIA,
Defendants**

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: JUDGE:
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: JURY TRIAL DEMANDED
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COMPLAINT

I. Introduction

This complaint is filed on behalf of M. Rebecca Downing, the former Chief of the York County Detective Bureau at the York County District Attorney's Office, and Robert G. Leichliter, her husband, pursuant to 42 U.S.C. § 1983, to recover damages resulting from, and related to, the wrongful termination of Ms. Downing.

II. Jurisdiction

This Court has original jurisdiction over the federal claims asserted herein pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367(a).

III. Parties

1. M. Rebecca Downing is an adult citizen who is a resident of York County, Pennsylvania. She is the former Chief of the York County Detective Bureau, a division of the York County District Attorney's Office.

2. Robert G. Leichliter is an adult citizen who is a resident of York County, Pennsylvania. He is the husband of Ms. Downing.

3. H. Stanley Rebert ("Defendant Rebert") is an adult citizen who is a resident of York County, Pennsylvania. He is the elected District Attorney of York County, Pennsylvania. The District Attorney's Office is located in the York County Judicial Center, 45 North George Street, York County, Pennsylvania 17401. Defendant Rebert is named as a Defendant in his individual and official capacities.

4. York County, Pennsylvania is a municipal corporation and a political sub-division. York County is a third class county bound by The County Code, 16 P.S. 101, *et seq.*

IV. Factual Background

5. Defendant Rebert is the chief law enforcement officer of York County. See 16 P.S. § 1402.

6. Defendant Rebert has final policymaking authority with respect to the hiring and/or firing of the Chief of the York County Detective Bureau ("Detective Bureau"). See 16 P.S. § 1440(a); see also City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988).

7. At all times relevant to the events in question, Defendant Rebert acted under the color of state law.

8. On January 16, 2001, Defendant Rebert hired Ms. Downing to be the Chief of the Detective Bureau at the York County District Attorney's Office ("DA's Office").

9. Prior to being appointed Chief, Ms. Downing worked for the York City Police Department ("YCPD") as a police officer for 27 years; 10 years as a commander.

10. When Ms. Downing retired from YCPD, she held the rank of lieutenant.

11. Ms. Downing is a graduate of the York College of Pennsylvania where she obtained an Associate in Arts (“AA”) degree in Law Enforcement and a Bachelor of Science (“BS”) degree in the Administration of Justice. In addition, she is a graduate of the Villanova University where she obtained a Master of Science (“MS”) degree in Criminal Justice.

12. In addition, Ms. Downing is certified by the Municipal Police Officers Education and Training Commission (“MPOETC”) as an instructor and has served in this capacity at the Harrisburg Area Community College (“HACC”) Municipal Police Academy in addition to other MPOETC approved training facilities around the Commonwealth, where she delivers annual training to municipal police officers for purposes of recertification.

13. Moreover, Ms. Downing is an instructor for the Pennsylvania Commission on Crime & Delinquency (“PCCD”), Pennsylvania State Constables Association (“PSCA”), Pennsylvania Chiefs of Police Association, United States Department of Justice, The Pennsylvania State University, and the York College of Pennsylvania.

14. Finally, Ms. Downing is a member of the following professional organizations: International Association of Chiefs of Police (IACP), International Association of Law Enforcement Planners (IALEP), American Society of Law Enforcement Trainers (ASLET), Pennsylvania Chiefs of Police Association (PCPA); Central Pennsylvania Chiefs of Police Association, York County Chiefs of Police Association, Pennsylvania County Detectives Association, County and State Detectives Association of Pennsylvania, Hostage Negotiators of America (HNA), Concerns of Police Survivors (COPS), South Central Critical Incident Stress Debriefing Team (CISD), and National P.O.L.I.C.E. Officer Suicide Foundation, Inc.

15. Defendant Rebert recruited and hired Ms. Downing because he wanted her to bring her policy writing skills to the DA’s Office to assist him with creating a set of rules and regulations, which would allow him to create a system of accountability in the Detective Bureau after the previous Chief, Kenneth Ingle (“Ingle”), was forced into retirement.

16. While employed by the DA's Office, Ms. Downing achieved and exceeded the employment goals set by Defendant Rebert by turning the Detective Bureau into a professional police organization that now helps to set the standard for other similar law enforcement agencies both locally and nationally.

17. Ms. Downing drafted the York County Detective Bureau General Orders ("rules and regulations") to govern the Detective Bureau, which Defendant Rebert, as the chief policy maker for the DA's Office for York County, subsequently adopted in August of 2002.

18. Ms. Downing's management and supervision resulted in the Detective Bureau becoming MPOETC compliant.

19. In addition, Ms. Downing's management and supervision resulted in the Detective Bureau achieving agency accreditation by the Pennsylvania Chiefs of Police Association on July 14, 2003.

20. To date, only 20 of over 1,000 law enforcement agencies in the Commonwealth have achieved this professional milestone.

21. Moreover, the York County Detective Bureau is only the second county detective agency in the United States known to have achieved accreditation.

22. While bringing order to and creating a system of accountability in the Detective Bureau, Ms. Downing discovered that Defendant Rebert, as the chief policy maker for the DA's Office, employed a policy, practice, and/or custom of improper and/or unlawful conduct.

23. As discussed below, Defendant Rebert was forced to bring a person with Ms. Downing's abilities and professional reputation to the DA's Office to regain the public's trust after Ms. Downing's predecessor, Ingle, was forced to resign.

24. Defendant Rebert wanted to portray to the public that he commanded a professional law enforcement agency.

25. Defendant Rebert believed that, while Ms. Downing would bring order to the Detective Bureau and assist the Detective Bureau in reaching professional standards that few law enforcement agencies ever achieve, he could continue his own policy, practice, and/or custom of unlawful/improper behavior.

26. Unbeknownst to Defendant Rebert, however, Ms. Downing's morals and values would not permit her under any circumstances to turn a blind eye to improper and/or unlawful conduct, even when it involved her boss.

27. Defendant Rebert began to feel pressure when Ms. Downing initiated a criminal investigation of his former Chief, Ingle, which resulted in Ingle being convicted for crimes related to the theft of weapons from the DA's Office.

28. Ms. Downing discovered that the improper and/or unlawful conduct that occurred in the DA's Office was a direct result of a policy, practice and/or custom employed by the Defendants and that Defendant Rebert participated in such conduct.

29. Ms. Downing confronted Defendant Rebert on many occasions about his unlawful and/or improper conduct in an attempt to get Defendant Rebert to reform.

30. Defendant Rebert, however, resisted Ms. Downing's attempts to reform him and even went so far as to find ways to circumvent his own rules and regulations so that he could continue his improper and/or unlawful conduct.

31. "[T]he expressive rights of public employees are more restricted than those of public citizens who are not in an employment relationship with the government." Azzaro v. County of Allegheny, 110 F.3d 968, 977 (3d Cir. 1997) (en banc).

32. Ms. Downing, however, spoke out on matters of public concern, which involved the Defendants' policy, practice, and/or custom of improper/unlawful conduct.

33. When Ms. Downing spoke out on these matters of public concern, she did not detract from the effective/efficient operation of the DA's Office; rather, she enhanced the agency by attempting to eliminate improper and/or unlawful conduct that continued to undermine its effectiveness. See Waters v. Churchill, 511 U.S. 661 (1994) (plurality opinion).

34. Ms. Downing's speech related to official misconduct and the functioning of a government agency was protected by the First Amendment to the Constitution (made applicable to the States by the Fourteenth Amendment to the

Constitution) because it related to matters of political, social, and/or other concerns of the community, and was not merely a personal grievance of interest only to Ms. Downing. See Connick v. Myers, 461 U.S. 138 (1983); Hoffman v. Thome, 2002 WL 31513440 (E.D.Pa. Nov. 4, 2002); Edmundson v. Borough of Kennett Square, 881 F. Supp. 188 (E.D.Pa. 1995).

35. When Ms. Downing spoke out on matters of public concern she did so as a citizen and not as an employee merely performing her duties and responsibilities.

36. Even though it was unlikely that Ms. Downing's protected speech would cause a disruption in the workplace, the Defendants attempted to prevent Ms. Downing from speaking out on matters of public concern by unlawfully retaliating against her in part by (1) providing her with disparate treatment in the workplace, (2) subjecting her to baseless internal investigations involving the use of vacation/comp. time, (3) terminating her employment, (4) terminating benefits to which she was entitled, and (5) attempting to ruin her professional and personal reputation. See Connick, *supra*.

37. The following is a non-exhaustive list of some of the matters of public concern that Ms. Downing spoke out on:

38. Throughout Ms. Downing's employment, Defendant Rebert required County employees to run personal errands for him and his family while the employees were being paid by Defendant York County.

39. Ms. Downing advised Defendant Rebert that this practice was improper and/or unlawful, however, this practice continued.

40. In February and March of 2001, Defendant Rebert requested that his subordinates, while being paid by Defendant York County, assemble campaign signs in support of his reelection.

41. In addition, Defendant Rebert requested that Ms. Downing, while being paid by Defendant York County, use a vehicle owned by Defendant York County to pick up an election petition from a local business.

42. Ms. Downing advised Defendant Rebert that these practices were improper and/or unlawful; however, these practices continued.

43. On April 27, 2001, Defendant Rebert refused to discipline a detective who permitted an altered photograph depicting Hillary Clinton with exposed breasts to be displayed in the office.

44. Over the objection of Defendant Rebert, Ms. Downing disciplined the detective for his improper conduct.

45. In July and August of 2001, Defendant Rebert attempted to prevent Ms. Downing from investigating Ingle for theft.

46. While Ingle was ultimately investigated by the Pennsylvania State Police ("PSP") and prosecuted by the Commonwealth of Pennsylvania Office of Attorney General ("AG's Office"), Defendant Rebert intervened in the investigation and prosecution.

47. Ms. Downing insisted that Ingle must be prosecuted to the fullest extent of the law, however, Defendant Rebert refused to prosecute Ingle for \$20,000 worth of stolen property, which was recovered from Ingle's home during the investigation.

48. On August 7, 2001, Ms. Downing received information that Defendant Rebert had previously received a Walther handgun from Ingle, which had been unlawfully removed from evidence at the DA's Office.

49. Ms. Downing also received information that Defendant Rebert kept the gun in his office desk.

50. Ms. Downing retrieved the weapon from Defendant Rebert's desk and placed it back into evidence where it belonged.

51. Ms. Downing advised Defendant Rebert that his conduct was unlawful.

52. On August 29, 2001, Defendant Rebert asked Ms. Downing to use the Commonwealth Law Enforcement Assistance Network (CLEAN) to unlawfully obtain vehicle registration information about a third party for a York County Commissioner.

53. CLEAN is used by the Commonwealth's criminal justice agencies to access driver license and motor vehicle information, state criminal history record

information maintained in the Pennsylvania State Police Central Repository, the Commonwealth's central registry for Protection from Abuse orders, "hot" (stolen and wanted) files, law enforcement messaging capabilities, and a host of other services. See www.psp2.state.pa.us/bts/clean/index.htm

54. CLEAN is the Commonwealth's conduit to NCIC, the FBI's National Crime Information Center, and to NLETS, the National Law Enforcement Telecommunications System.

55. CLEAN maintains connections to over 40 other networks, including the Pennsylvania Justice Network (JNET).

56. JNET interfaces with CLEAN to access criminal history information, arrest data, protection from abuse information, and "hot" files.

57. Defendant Rebert was unable to obtain the requested information on his own because he was not an authorized user of the CLEAN system.

58. An authorized user would include a law enforcement officer such as Ms. Downing.

59. Ms. Downing had previously explained to Defendant Rebert that such requests were unlawful.

60. Defendant Rebert, however, refused to advise the Commissioner that he was not entitled to the requested information and advised Ms. Downing that if she was not willing to provide him with the information to give to the Commissioner, she had to contact the Commissioner to explain.

61. Ms. Downing contacted the Commissioner in question and explained to him that he was not entitled to receive the requested information.

62. The Commissioner apologized to Ms. Downing and stated that he did not know that his request had been improper.

63. In addition, the Commissioner stated that Defendant Rebert and Ingle had provided him with such information in the past.

64. The Commissioner never requested such information again.

65. From September through November of 2001, Ms. Downing presented evidence to Defendant Rebert suggesting that an employee, who he referred to as “Baby Girl,” had stolen crime scene photographs from the DA’s Office and showed them to private citizens at a party.

66. The pictures were from a murder investigation.

67. Ms. Downing advised Defendant Rebert that private citizens were prepared to take a polygraph examination and personally pay the costs involved to further substantiate the claim against “Baby Girl.”

68. Ms. Downing advised Defendant Rebert that the theft of the crime scene photographs could negatively impact the murder investigation and that this matter needed to be resolved immediately.

69. Despite being presented with credible evidence to substantiate the claims asserted against the employee, Defendant Rebert refused to investigate and/or prosecute “Baby Girl.”

70. Prior to October 1, 2001, the York Fair provided Defendant Rebert with approximately \$500 worth of “free” passes to the fair and “free” admission to the fair concerts.

71. Defendant Rebert had the passes distributed to the employees under his command and to the employees working at the York County Court House.

72. In return, Defendant Rebert provided “free” law enforcement to the fair.

73. In one year alone, it cost Defendant York County \$10,000, to provide the fair with “free” law enforcement. [It is estimated that in 2005, the total cost will be around \$14,000.]

74. By accepting “free” passes and by providing the York Fair with “free” law enforcement, Defendant Rebert committed a misdemeanor criminal offense and violated the laws of the Commonwealth of Pennsylvania. See 16 P.S. § 1603.

75. Ms. Downing advised Defendant Rebert that he should not be accepting “free” passes from the fair.

76. In addition, Ms. Downing advised Defendant Rebert that he should not be providing “free” law enforcement to the fair because it was a waste of tax money.

77. As Chief, Ms. Downing was required to regulate the games of chance at the York Fair.

78. When Ms. Downing became the Chief of the Detective Bureau, the York Fair offered to provide her with “free” passes in accordance with the past practice.

79. Ms. Downing refused to accept the “free” passes and instructed the detectives under her command to do the same.

80. Ms. Downing advised the York Fair that the practice was being discontinued.

81. Ms. Downing learned that when Ingle was responsible for regulating the games of chance at the fair, he used to accept the “free” passes with Defendant Rebert’s knowledge and distribute the passes to other York County employees.

82. In addition, the fair vendors provided Ingle with enough stuffed animals every year to fill his vehicle.

83. In October of 2001, there was a fatal accident at the York County Fair involving one of the rides.

84. Ms. Downing’s investigation resulted in the ride being closed and the Agricultural Department banning the ride from ever being assembled in the Commonwealth of Pennsylvania again.

85. On October 1, 2001, Defendant Rebert was advised that because of the actions of his staff, which resulted in the fair ride being permanently closed down, Reithoffer Shows, Inc. (who owns/operates the rides at the York Fair), never intended to return to Defendant York County.

86. When Defendant Rebert was advised of this fact, Defendant Rebert stated that, “that just cost me 500 bucks.”

87. On November 19, 2001, Defendant Rebert requested that Ms. Downing intervene in a DUI investigation involving the wife of the CEO of a large printing company.

88. Ms. Downing refused to intervene and advised Defendant Rebert that it would be improper and or unlawful for him to do so.

89. On December 11, 2001, Defendant Rebert confronted Ms. Downing and requested that the Detective Bureau not arrest Anthony Argento because Defendant Rebert's wife was friends with Argento's aunt.

90. Over Defendant Rebert's objection, Ms. Downing stated that the Detective Bureau intended to make the arrest.

91. Defendant Rebert then requested that the arrest information not be released to the press.

92. Ms. Downing advised Defendant Rebert that the Argento arrest would be treated like all other arrests and that his attempts to intervene were improper and/or unlawful.

93. On December 12, 2001, Defendant Rebert requested that Ms. Downing arrange to have the York County Detectives in the Detective Bureau run a shuttle service to and from a private Christmas party, using vehicles owned by Defendant York County, so that York County employees could attend the party, which was going to be held during normal business hours.

94. Defendant Rebert stated that Ingle had performed this service for him in the past.

95. Ms. Downing advised Defendant Rebert that this was a misuse of Defendant York County's funds and refused to provide Defendant Rebert with the requested shuttle service.

96. On January 31, 2002, Defendant Rebert's wife requested that Ms. Downing provide her with an official DA's Office badge.

97. Ms. Rebert advised Ms. Downing that she wanted to give the official DA's Office badge to a local dentist.

98. Ms. Rebert stated that if she provided the dentist with the official DA's Office badge, the dentist would provide "free" dental work to Youth Build students.

99. Ms. Downing refused to provide Ms. Rebert with the official DA's Office badge.

100. Ms. Downing confronted Defendant Rebert about the improper/unlawful distribution of official law enforcement badges.

101. Defendant Rebert stated to Ms. Downing that he previously had Ingle provide him with the official badges, which he distributed to office personnel and friends.

102. Ms. Downing advised Defendant Rebert that this practice was improper and/or unlawful.

103. At least one official DA's Office badge has been confiscated by a law enforcement officer when a local business man displayed it to the officer during a traffic stop.

104. Ms. Downing insisted on retrieving as many of the unlawfully issued badges as could be located.

105. In addition, Ms. Downing insisted on making sure that all legitimately issued badges were contained in proper badge cases and that the persons receiving official DA's Office badges sign for the badges.

106. On February 26, 2002, Defendant Rebert refused to permit Ms. Downing to take the improperly issued official DA's Office badge from "Baby Girl."

107. On March 28, 2002, Defendant Rebert asked Ms. Downing to intervene in a DUI investigation involving Anastashia Shillito.

108. On April 19, 2002, Defendant Rebert again requested that Ms. Downing run a criminal history check on Shillito.

109. Believing that it was for a lawful purpose, Ms. Downing obtained Ms. Shillito's photograph from JNET.

110. Ms. Downing then asked Defendant Rebert why he wanted the information and Defendant Rebert stated that his wife knew Shillito and he wanted to “get the dirt” on Shillito’s DUI arrest.

111. Ms. Downing advised Defendant Rebert that his request was improper and/or unlawful and refused to provide him with the requested information.

112. Defendant Rebert referred to Ms. Downing as inflexible because unlike her predecessor Ingle, she would not agree to participate in Defendant Rebert’s improper and/or unlawful conduct.

113. On May 30, 2002, Ms. Downing learned that Defendant Rebert intended to hire John Daryman (“Daryman”) as a detective even though Daryman never applied for the open position and the application deadline had passed.

114. Interestingly, Daryman had stated to both Ms. Downing and Defendant Rebert that he did not want to carry a gun or have police powers.

115. Defendant Rebert would later advise Ms. Downing that he wanted Daryman to have police powers and that he wanted Daryman to answer directly to him.

116. On June 3, 2002, the York County District Attorney’s Office conducted three interviews related to the open detective position.

117. Daryman, who had not previously applied for the open detective position, was not interviewed.

118. On June 12, 2002, Ms. Downing cautioned Defendant Rebert that he must properly post all open positions at the DA’s Office.

119. Defendant Rebert, however, continued to refuse to follow the established hiring procedures.

120. On June 15, 2002, Daryman was arrested and prosecuted in Potter County, Pennsylvania, for DUI.

121. Defendant Rebert called the Potter County District Attorney in an attempt to improperly intervene on behalf of Daryman presumably to quash the prosecution.

122. While Defendant Rebert denies this fact, the Potter County District Attorney has since confirmed Defendant Rebert's improper contact.

123. Prior to coming to work for Defendant Rebert and in an effort to make up for a significant reduction in pay, Defendant Rebert promised Ms. Downing an extra week's vacation so that she could continue to teach at the Harrisburg Area Community College ("HACC").

124. Defendant Rebert stated to Ms. Downing in writing that the Chief County Clerk had approved the extra week's vacation.

125. On June 24, 2002, the Chief County Clerk reviewed the writing and informed Ms. Downing that Defendant Rebert never requested or received such approval.

126. Shortly after Ms. Downing confronted Defendant Rebert about the fact that it would be improper to hire Daryman, Defendant Rebert began to harass Ms. Downing about her use of vacation/comp. time.

127. Defendant Rebert began to assert pressure on Ms. Downing in an attempt to make it difficult for her to continue to teach at HACC.

128. In addition, after confronting Defendant Rebert about Daryman, Defendant Rebert began to treat Ms. Downing differently than other employees by making her follow different procedures to account for her use of vacation/comp. time.

129. On September 11, 2002, the Detective Bureau arrested Charles Perez, who was employed as a vendor at the York Fair.

130. Defendant Rebert advised Ms. Downing that Reithoffer wanted Perez to be able to return to work as soon as possible and that she should therefore attempt to obtain a reduced bail.

131. Ms. Downing refused to comply and advised Defendant Rebert that his request was improper and/or unlawful.

132. On October 30, 2002, Defendant Rebert had two detectives from the Detective Bureau, who at the time were being paid by Defendant York County, to take a television, which Defendant Rebert had purchased, to his residence.

133. In addition, he had the detectives retrieve a slot machine, which had been unlawfully removed from evidence, from his home.

134. Defendant Rebert had the two detectives place the slot machine in his office.

135. Ms. Downing advised Defendant Rebert that his conduct was improper and/or unlawful.

136. On October 30, 2002, Defendant Rebert notified Ms. Downing that he planned to offer Daryman a job as a detective.

137. In January of 2003, Daryman retired from the York City Police Department.

138. Defendant Rebert advised Ms. Downing that, over the objections of his office manager and first assistant, he negotiated with the Commissioners to give up an available assistant district attorney position in exchange for their permission to hire Daryman.

139. Also in January of 2003, grant writer Susan Voyzey requested assistance from Ms. Downing with drafting grant applications for a drug program called "Weed and Seed."

140. While Daryman had yet to be hired by the DA's Office, on the instructions of Defendant Rebert, the grant writer for the DA's Office listed Daryman as a detective in a grant application.

141. Ms. Downing advised the grant writer that this was improper and/or unlawful because Daryman was not employed by any law enforcement agency, let alone the DA's Office, at the time.

142. In February of 2003, Daryman traveled with Detective Rodney George, Assistant District Attorney Graff, and PSP Trooper Keith Stone, to

Virginia, Maryland, Georgia, South Carolina and the District of Columbia to participate in the investigation of the murder of Ms. Lillie Belle Allen.

143. Daryman advised Ms. Downing that he was being paid by Chief Deputy Prosecutor William H. Graff.

144. While Daryman was ultimately hired as a detective, he did not become employed by Defendant York County until May of 2003.

145. On March 17, 2003, the date of Ingle's criminal trial, Defendant Rebert stated to Ms. Downing that he needed someone to go to his house to retrieve a couch, which was owned by Defendant York County.

146. Defendant Rebert was afraid that Ingle might testify that Defendant Rebert permitted employees to participate in illegal conduct (i.e., taking stolen property home); thus, he wanted the couch out of his home.

147. Ms. Downing and six detectives under her command confronted Defendant Rebert about his continued efforts to wrongfully hire Daryman.

148. Ms. Downing advised Defendant Rebert that she cannot knowingly permit a violation of the DA's Office's policies and procedures and an unfair labor practice to occur.

149. Ms. Downing attempted several times to assist Defendant Rebert with hiring Daryman as a civilian employee, which would (1) not violate the hiring procedures that were in place, and (2) permit Daryman to work a reduced schedule.

150. Daryman vehemently insisted that he did not want to be hired as a police officer.

151. Defendant Rebert rejected a proposal to have the York County Sheriff's Office hire Daryman in a civilian capacity because he wanted Daryman "to keep his badge and gun" and wanted Daryman to earn \$19 an hour instead of \$13 an hour.

152. On April 7, 2003, Daryman signed the necessary forms so that Ms. Downing could begin to conduct the background check required for employment.

153. On April 8, 2003, Daryman reiterated that he did not want to be a law enforcement officer and that he did not need to carry a weapon.

154. Defendant Rebert, however, again insisted that Daryman must retain his Act 120 certification.

155. On April 9, 2003, Defendant Rebert advised Ms. Downing that he intended to intervene in a West Manchester Township Police Department criminal investigation involving Frank Accardo, who at the time was the boyfriend of "Baby Girl."

156. Defendant Rebert stated to Ms. Downing that West Manchester Township Police Chief Arthur D. Smith, Jr., had already advised him that his attempts to intervene in the investigation were improper.

157. Defendant Rebert, however, was upset because he had advised the Chief that he wanted to review and/or approve any criminal charges filed against Accardo but his wishes had not been honored.

158. The arresting officer had filed criminal charges against Accardo without first seeking Defendant Rebert's authorization.

159. Defendant Rebert had prepared a letter that he intended to send to Chief Smith, chastising him.

160. Defendant Rebert requested that Ms. Downing read the letter and advise him accordingly.

161. Ms. Downing advised him that it was improper and/or unlawful to attempt to intervene in the Accardo investigation and that if he needed to speak to Chief Smith, he should call him instead of writing to him.

162. It is believed and therefore averred that Defendant Rebert subsequently advised Accardo not to take a polygraph examination arranged by the West Manchester Township Police Department.

163. Chief Smith contacted Ms. Downing and advised her that on several occasions, Accardo's girlfriend had contacted his agency, identified herself as an assistant district attorney, and attempted to retrieve police reports and intervene in criminal investigations involving her boyfriend.

164. Ms. Downing advised Defendant Rebert of this fact and Defendant Rebert refused to investigate and/or issue the appropriate discipline.

165. On April 10, 2003, Ms. Downing removed the slot machine (which was previously unlawfully removed from evidence and placed in Defendant Rebert's home) from Defendant Rebert's office and destroyed it along with other evidence that was being destroyed on that date.

166. Defendant Rebert objected because he wanted to keep the slot machine.

167. Ms. Downing, however, advised him that since the slot machine was taken on her watch, it was going to be destroyed.

168. On April 21, 2003, Ms. Downing learned that Office Manager Paul Crouse had begun to fill out the appropriate paperwork to hire Daryman.

169. On April 22, 2003, Defendant Rebert officially notified Ms. Downing that Daryman would be hired over Ms. Downing's objections that the hiring was in contravention of the established rules and regulations.

170. Ms. Downing was further advised that Daryman would report directly to Defendant Rebert thereby bypassing Ms. Downing in the established chain of command.

171. When asked why Daryman would not be placed in the established chain of command, Defendant Rebert stated that he wanted Daryman to be available "in case I have something secret."

172. It is believed and therefore averred that such "secret" investigations would include the unlawful use of the PSP CLEAN system for Defendant Rebert's personal benefit; conduct which Ms. Downing refused to participate in, unlike her predecessor Ingle who has been convicted of crimes.

173. Since the CLEAN system is a computerized system maintained by PSP, PSP will be able to easily determine if Defendant Rebert, or any public official under his command, unlawfully accessed information in the system.

174. On the same date that Defendant Rebert advised Ms. Downing that he intended to hire Daryman (in contravention of the established policies and procedures), Defendant Rebert advised Ms. Downing that one of the Commissioners had accused her of “double dipping.”

175. Defendant Rebert stated that the Commissioner claimed that she was getting paid by the DA’s Office while she was teaching and getting paid by HACC.

176. An investigation of Ms. Downing’s time records, however, established that the “double dipping” complaint was not true.

177. On April 24, 2003, Ms. Downing met with York County Clerk Chuck Noll who assured her that Defendant York County did not suspect her of theft.

178. Noll advised her that she should ignore the false theft allegations.

179. On April 25, 2003, Defendant Rebert confronted Ms. Downing and stated that he had found a way for Daryman to work a “reduced” schedule.

180. Ms. Downing advised Defendant Rebert that if Daryman were to become employed by the DA’s Office as a York County detective, according to the rules and regulations, he would be required to work the same amount of hours as the other county detectives.

181. Ms. Downing continued to object to the anticipated hiring of Daryman, which would be in contravention of the established rules and regulations.

182. On May 7, 2003, Defendant Rebert hired Daryman as a detective.

183. On May 20, 2003, Daryman took the oath of office before Judge Kennedy.

184. Daryman, however, had not yet taken a polygraph examination as required by the established rules and regulations.

185. On May 30, 2003, Defendant Rebert, in retaliation for Ms. Downing’s having spoken out on matters of public concern, again harassed Ms. Downing about her use of comp. time and insisted that she provide him with a special accounting of her time.

186. In August of 2003, in further retaliation for Ms. Downing's having spoken out on matters of public concern, Defendant Rebert began to make demeaning remarks in front of Ms. Downing's subordinates.

187. On August 6, 2003, Ms. Downing reminded Defendant Rebert that Daryman was required to take a polygraph exam.

188. Defendant Rebert assured Ms. Downing that Daryman would be required to take a polygraph exam.

189. It is believed and therefore averred that as of the date of the filing of this Complaint, Daryman has yet to take and pass the required polygraph exam.

190. On the same date, during a meeting with Ms. Downing, Defendant Rebert and Daryman, about the reasons why Defendant Rebert permitted Daryman to work a special schedule (Mon. – Thurs.), Daryman yelled at Defendant Rebert that "you owe me."

191. Ms. Downing pointed out to Daryman that it appeared to her that Daryman should instead "owe" Defendant Rebert.

192. Ms. Downing asked both Daryman and Defendant Rebert why Defendant Rebert "owed" Daryman but neither individual would answer.

193. On August 14, 2003, Ms. Downing advised Defendant Rebert that Graff improperly continued to permit former employees to have and use York County cell phones for reasons unrelated to legitimate official county business.

194. The cell phone bills were being paid with funds from the Drug Task Force.

195. On October 14, 2003, Ms. Downing discovered that Daryman had violated the rules and regulations regarding scheduling.

196. Ms. Downing advised Defendant Rebert.

197. Defendant Rebert pressured Ms. Downing not to discipline Daryman as required by the established rules and regulations.

198. Over Defendant Rebert's objections, Ms. Downing advised Defendant Rebert that she intended to discipline Daryman, as required by the established rules and regulations.

199. On the same date, Defendant Rebert asked Ms. Downing how many detectives she had available to "work the polls."

200. When asked why, Defendant Rebert stated that it was his "last chance to work the crowds" (i.e., to assist other politicians with their campaigns).

201. Ms. Downing advised Defendant Rebert that this practice was not proper and refused to permit Defendant Rebert to assign the detectives under her command to "work the polls."

202. Defendant Rebert assigned detectives from the Detective Bureau to investigate a DUI charge that the N.E. Regional Police Department had filed against Chad Sterner.

203. When Ms. Downing asked why detectives from the Detective Bureau were assigned to this task, Defendant Rebert stated "curiosity."

204. Ms. Downing advised Defendant Rebert that his conduct was improper and/or unlawful and closed the investigation.

205. On October 21, 2003, Ms. Downing issued Daryman a written reprimand for the previous violation of the rules and regulations regarding scheduling.

206. Daryman advised Ms. Downing that "you're not my boss," despite the fact that even though Daryman conducted "secret" investigations for Defendant Rebert, Ms. Downing was the Chief County Detective and Daryman was a subordinate.

207. On the same date, Defendant Rebert called a meeting with Ms. Downing and Daryman.

208. Daryman stated during the meeting that he could not abide by the established rules and regulations and again advised Defendant Rebert that "you owe me."

209. On November 5, 2003, Defendant Rebert requested that the Detective Bureau conduct a criminal history check on Jennifer K. Curran.

210. Defendant Rebert would not advise the Detective Bureau on the reason why he needed this information.

211. Ms. Downing would not permit the Detective Unit to release any information to Defendant Rebert.

212. On November 6, 2003, Defendant Rebert confronted Ms. Downing and asked her for the criminal history on Curran.

213. Defendant Rebert stated that Mike Barley of Barley Convalescent Homes, a political supporter, had requested the information. **(See Attachment A – DOB/SOC Redacted per Middle District Local Rules)**

214. Ms. Downing again advised Defendant Rebert that his request was unlawful and refused to provide Defendant Rebert with the requested information.

215. On March 15, 2004, an individual named Chandrakant Shah was killed in an accident.

216. Ms. Downing stated to Defendant Rebert that she hated when innocent people got killed.

217. Defendant Rebert replied for no apparent reason that Chandrakant Shah “was a terrorist.”

218. Ms. Downing advised Defendant Rebert that his comment was inappropriate.

219. On the same date, Defendant Rebert asked Ms. Downing what she knew about the DUI arrest of Kevin L. Wagner, Sr.

220. Defendant Rebert instructed Downing to “get the file” because he had been contacted by State Representative Ron Miller about the case.

221. Defendant Rebert asked Ms. Downing if she knew whether Wagner was a registered voter.

222. When Ms. Downing advised Defendant Rebert that he should not be concerned about Wagner's voter registration, Defendant Rebert replied "You need to look at things like that."

223. Since the normal practice was that the DA's Office did not get involved in criminal cases until *after* the case had been reviewed by a district justice, and since this case had yet to be reviewed by a district justice, Ms. Downing advised Defendant Rebert that she would not intervene in the investigation and refused to obtain the file as requested.

224. On May 5, 2004, Defendant Rebert attempted to get Ms. Downing to give her secretary her password to her Email account.

225. Ms. Downing refused to give her secretary her password.

226. On July 1, 2004, Ms. Downing informed Defendant Rebert that the detectives and Defendant York County had reached a tentative agreement, which would require detectives to work a 40 hour week.

227. Defendant Rebert was advised that this would mean that Daryman would no longer be permitted to work the reduced schedule that he had been working with Defendant Rebert's permission (in violation of the rules and regulations).

228. On the same date, Ms. Downing advised Defendant Rebert that a sexual harassment incident had occurred in the workplace.

229. Defendant Rebert stated the following: "What sexual harassment? Did I get caught sticking the rolled up \$20 bill down Carletta's bra – I know Randy saw me do it."

230. When Defendant Rebert was advised about what had occurred, that a male attorney had grabbed the buttocks of a female secretary, Defendant Rebert laughed and did not investigate the incident.

231. On August 30, 2004, Defendant Rebert again harassed Ms. Downing about her vacation and comp. time.

232. Defendant Rebert advised counsel for the Fraternal Order of Police (“FOP”) that he would give the FOP whatever they wanted (pay raises, equipment, etc.) as long as the FOP would permit him to keep Daryman.

233. On September 9, 2004, Defendant Rebert advised Ms. Downing that Daryman was going to be promoted to supervisor of the Drug Task Force.

234. This would have removed Daryman from the bargaining unit, permitted him to continue to work a reduced schedule, and allowed him to answer directly to Defendant Rebert.

235. It is believed and therefore averred that Daryman’s salary would have increased to \$50,000 a year.

236. Ms. Downing advised Defendant Rebert that she believed that promoting Daryman would constitute an unfair labor practice.

237. On September 14, 2004, Crouse advised Ms. Downing in the presence of Defendant Rebert that she needed to do whatever Defendant Rebert wanted to be done.

238. Ms. Downing advised them that she would not act improperly for Defendant Rebert.

239. On the instructions of Human Resources Director Susan Luker, Ms. Downing contacted Bob Durant, Esquire, about the Daryman employment issue.

240. Defendant Rebert subsequently learned that Ms. Downing had contacted Durant.

241. It is believed and therefore averred that Durant advised the Salary Board that promoting Daryman would constitute an unfair labor practice.

242. The Salary Board refused to approve Defendant Rebert’s request to promote Daryman.

243. Defendant Rebert and Crouse confronted Ms. Downing because they were upset that she had contacted Durante, notwithstanding the fact that she had been told by Luker to do so.

244. In October of 2004, Ms. Downing advised Defendant Rebert that it was improper for him to refuse to investigate, discipline, and/or prosecute an employee for (1) stealing and improperly displaying crime scene photographs, (2) unlawfully representing that they were an assistant district attorney, (3) improperly attempting to intervene in criminal investigations, and (4) coming to work while addicted to cocaine.

245. On October 5, 2004, Defendant Rebert stated that he wanted Ms. Downing to resign.

246. Ms. Downing refused to resign.

247. Defendant Rebert stated that if she would not resign she would be terminated.

248. On October 7, 2004, Defendant Rebert advised Ms. Downing that she should be loyal to him, insinuating that she should support his corrupt and unlawful practices.

249. Ms. Downing stated that she would not lie for him and that there were more important powers out there than him.

250. She further advised him that he often requested that she do unethical or unlawful acts on his behalf.

251. Defendant Rebert stated that he is the District Attorney and therefore, he could do anything.

252. Defendant Rebert had often told Ms. Downing that it is easier to ask for forgiveness tomorrow than to ask for permission today.

253. Defendant Rebert asked Ms. Downing if she could find it in herself to support the promotion of Daryman, the person who conducted his "secret" investigations.

254. Ms. Downing stated that she could not support the promotion for the reasons previously stated.

255. Defendant Rebert stated that if that were the case, he would need a couple of days to consider her future with the DA's Office.

256. On October 13, 2004, Defendant Rebert advised Ms. Downing that her employment would be terminated.

257. On October 15, 2004, at 9:00 a.m., Defendant Rebert summoned Ms. Downing to his office.

258. When Ms. Downing entered Defendant Rebert's office, Defendant Rebert stated to Ms. Downing that "it's over."

259. At that time, Assistant Human Resources Director Terri Kodish presented Ms. Downing with separation papers in an attempt to get Ms. Downing to resign.

260. Ms. Downing refused to resign.

261. On December 15, 2004, Ms. Downing received an official letter from Defendant Rebert which stated in part the following: "As District Attorney, I have lost confidence in you. Therefore I am exercising my 1620 rights and I am terminating your employment effective at 4:30 PM today, December 15, 2004."

262. While Defendant Rebert claims that he terminated Ms. Downing because he "lost confidence" in her, Defendant Rebert actually terminated Ms. Downing because she spoke out on matters of public concern and opposed his corrupt and unlawful practices.

263. Because of Ms. Downing's accomplishments specified in paragraphs 9-21 of this Complaint, Defendant Rebert would not have taken the employment actions specified in paragraph 36 of this Complaint had Ms. Downing not spoken out on the above-stated matters of public concern. See Baldassare v. State of New Jersey, 250 F.3d 188, 194-95 (3d Cir. 2001).

264. Defendant Rebert continues to unlawfully retaliate against Ms. Downing by continuing to attempt to damage her reputation in the community and in her profession.

265. The above-stated actions have (1) caused Ms. Downing to suffer both financially and emotionally, and (2) caused irreparable damage to Ms. Downing's reputation in the community and in her profession.

266. The following are examples of the damage to Ms. Downing's professional reputation:

267. On January 3, 2005, due to the fact that Ms. Downing was wrongfully terminated and no longer a law enforcement officer, Ms. Downing was forced to resign from the York County Chiefs' Association.

268. At the time when Ms. Downing was forced to resign from the Association, Ms. Downing held the office of President.

269. In further retaliation, Defendant Rebert caused many false/defamatory statements to be published.

270. The false/defamatory statements in question caused further harm to Ms. Downing's reputation in the community and in her profession.

271. The defamatory statements had the effect of deterring third parties from associating and/or dealing with Ms. Downing.

272. The following is a non-exhaustive list of the defamatory statements that Defendant Rebert caused to be published:

273. Defendant Rebert stated that Ms. Downing was terminated "for cause" when in fact Ms. Downing's termination letter states that she was terminated because Defendant Rebert lost confidence in her, and when in reality, Ms. Downing was terminated in retaliation for speaking out on matters of public concern.

274. Defendant Rebert stated that Ms. Downing was terminated in part because she refused to attend staff meetings because "it was a waste of her valuable time."

275. To the contrary, documents exist to establish that Ms. Downing not only attended all meetings as required but was prepared to participate in said meetings in a professional manner.

276. Defendant Rebert stated that Ms. Downing was terminated in part because she envisioned "an independent police agency superior to other departments."

277. To the contrary, many local police chiefs have already responded to Defendant Rebert's false statements by publicly verifying that they received professional law enforcement related assistance from Ms. Downing and that when Ms. Downing was Chief of the Detective Bureau, there was no competition or strain between the Detective Bureau and their respective agencies.

278. Finally, Defendant Rebert stated that Ms. Downing quit the York County Quick Response Team ("QRT Team") despite an extensive background and experience in hostage negotiations.

279. To the contrary, while at the DA's Office, Ms. Downing was a liaison to the QRT Team and remained in that capacity until the date of her wrongful termination.

280. More specifically, during 2004, Ms. Downing actively participated in several QRT Team committee meetings during which time she assisted in revising and updating the QRT Team protocol.

281. The above-stated actions negatively impacted the marriage between Ms. Downing and Mr. Leichliter, thereby causing a loss of consortium claim pursuant to the laws of the Commonwealth of Pennsylvania.

282. Defendant York County, through its Commissioners, knowingly permitted Defendant Rebert to act unlawfully and acquiesced in his unlawful conduct when they refused to intervene to prevent the unlawful termination and when they permitted benefits to be improperly terminated.

283. In addition, Defendant York County employed a policy, practice, and/or custom, which caused and/or permitted the unconstitutional conduct that resulted in injury to Ms. Downing and Mr. Leichliter.

284. Since Defendant Rebert is the chief policy maker for Defendant York County in the DA's Office, Defendant York County is bound by Defendant Rebert's unlawful policy decision(s) to retaliate against Ms. Downing.

IV. Claims

COUNT 1 – Ms. Downing v. Defendants

285. Paragraphs 1-284 are incorporated herein by reference.

286. Ms. Downing's interest in commenting on the above-stated matters of public concern outweighed the Defendants' interest in promoting efficiency and Ms. Downing's protected speech was a substantial and/or motivating factor in the Defendants' decision to retaliate against her by taking the above-stated adverse employment actions.

287. The Defendants' actions of retaliating against Ms. Downing by taking the above-stated adverse employment actions for speaking out on matters of public concern violated the First Amendment to the Constitution made applicable to the states by application of the Fourteenth Amendment to the Constitution.

288. Moreover, it is believed and therefore averred that Defendant Rebert's individual conduct was motivated by evil motive or intent, or in the alternative involved reckless or callous indifference to the federally protected rights of others.

WHEREFORE, Ms. Downing respectfully requests that the Court grant judgment in favor of the Plaintiffs and against the Defendants and hold the Defendants jointly and severally liable to her and award the following relief:

- a. Compensatory Damages – including but not limited to out-of-pocket expenses and damages related to impairment of reputation, personal humiliation, mental anguish and suffering;
- b. Equitable Relief – to include but not limited to reinstatement or injunctive relief;
- c. Back pay – to include but not limited to lost salary, anticipated salary increases, bonuses, fringe benefits, sick and annual leave, comp time, medical expenses, value of insurance benefits, and expenses for job search;
- d. Front pay;
- e. Pre and post judgment interest;

- f. Punitive Damages against Defendant Rebert in his individual capacity;
- g. Attorney's Fees and Costs pursuant to 42 U.S.C. § 1988; and
- h. Any other relief that the Court deems appropriate.

COUNT 2 – Ms. Downing v. Defendant York County

289. Paragraphs 1-288 are incorporated herein by reference.

290. In the York County DA's Office, Defendant Rebert is the ultimate/final policy maker for York County.

291. Defendant York County employed a policy, practice and/or custom, which caused the injuries in question.

292. Defendant York County was placed on notice and failed to intervene and/or prevent the above-stated harm.

WHEREFORE, Ms. Downing respectfully requests that the Court grant judgment in favor of the Plaintiffs and against the Defendants and hold the Defendants jointly and severally liable to her and award the following relief:

- a. Compensatory Damages – including but not limited to out-of-pocket expenses and damages related to impairment of reputation, personal humiliation, mental anguish and suffering;
- b. Equitable Relief – to include but not limited to reinstatement or injunctive relief;
- c. Back pay – to include but not limited to lost salary, anticipated salary increases, bonuses, fringe benefits, sick and annual leave, comp time, medical expenses, value of insurance benefits, and expenses for job search;
- d. Front pay;
- e. Pre and post judgment interest;

- f. Attorney's Fees and Costs pursuant to 42 U.S.C. § 1988; and
- g. Any other relief that the Court deems appropriate.

COUNT 3 – Plaintiffs v. Defendants

293. Paragraphs 1-292 are incorporated herein by reference.

294. The Defendants' collective actions of retaliating against Ms. Downing by terminating her employment for speaking out on matters of public concern violated Art. I, § 7 of the Pennsylvania Constitution.

295. Moreover, it is believed and therefore averred that Defendant Rebert's individual conduct was motivated by evil motive or intent, or in the alternative involved reckless or callous indifference to the federally protected rights of others.

WHEREFORE, the Plaintiffs respectfully requests that the Court grant judgment in favor of the Plaintiffs and against the Defendants and hold the Defendants jointly and severally liable to them and award the following relief:

- a. Compensatory Damages – including but not limited to out-of-pocket expenses and damages related to impairment of reputation, personal humiliation, mental anguish and suffering;
- b. Equitable Relief – to include but not limited to reinstatement or injunctive relief;
- c. Back pay – to include but not limited to lost salary, anticipated salary increases, bonuses, fringe benefits, sick and annual leave, comp time, medical expenses, value of insurance benefits, and expenses for job search;
- d. Front pay;
- e. Pre and post judgment interest;
- f. Punitive Damages against Defendant Rebert in his individual capacity; and

- g. Attorney's Fees and Costs; and
- h. Any other relief that the Court deems appropriate.

Count 4 – Plaintiffs v. Defendant Rebert

296. Paragraphs 1-295 are incorporated herein by reference.

297. Defendant Rebert's official and individual actions in retaliating against and terminating Ms. Downing's employment for speaking out on matters of public concern including matters related to incidents of wrongdoing and/or waste violated Pennsylvania's Whistleblower Law, 42 P.S. § 1422 *et seq.*

WHEREFORE, Ms. Downing respectfully requests that the Court grant judgment in favor of the Plaintiffs and against the Defendants and hold Defendant Rebert liable to her and award the following relief:

- a. Compensatory Damages – including but not limited to out-of-pocket expenses and damages related to impairment of reputation, personal humiliation, mental anguish and suffering;
- b. Equitable Relief – to include but not limited to reinstatement or injunctive relief;
- c. Back pay – to include but not limited to lost salary, anticipated salary increases, bonuses, fringe benefits, sick and annual leave, comp time, medical expenses, value of insurance benefits, and expenses for job search;
- d. Front pay;
- e. Pre and post judgment interest;
- f. Loss of Consortium;
- g. Punitive Damages against Defendant Rebert in his individual capacity;
- h. Attorney's Fees and Costs; and

i. Any other relief that the Court deems appropriate.

V. Jury Trial Demand

298. Paragraphs 1-297 are incorporated herein by reference.

299. Plaintiffs demand a trial by jury.

RESPECTFULLY SUBMITTED,

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