

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: _____

RALEIGH POLICE PROTECTIVE ASSOCIATION,)
and RICHARD ARMSTRONG,)

Plaintiffs,)

-v-

COMPLAINT

HARRY DOLAN, in his official capacity as Chief)
of the Raleigh Police Department, and the CITY)
OF RALEIGH,)

Defendants.)

Preliminary Statement

1. This is an action to redress Defendants' violation of fundamental constitutional rights guaranteed by the Declaration of Rights of the Constitution of North Carolina. Specifically, these are rights guaranteed by Article I, Sections 1, 12, 14, 19, and 35. Plaintiff Raleigh Police Protective Association (RPPA) seeks declaratory and injunctive relief to prohibit Defendants from interfering with the rights of Raleigh Police Officers to freely associate and join and support the Association. Plaintiff Armstrong is a former officer of the RPPA who has been subjected to unjustified disciplinary action in the form of discharge as part of Defendants' efforts to weaken and destroy the RPPA. Plaintiff Armstrong seeks declaratory and injunctive relief restoring him to the position that he held with the Raleigh Police Department before his discharge. He also seeks compensatory damages for economic and other damages he has suffered as a result of the unjustified disciplinary action.

Parties

2. Plaintiff Raleigh Police Protective Association is an unincorporated association whose membership consists of Police Officers employed by the Raleigh Police Department. The Association was formed in or about 1998, and currently represents more than half of the Police Officers employed by the Raleigh Police Department. The Association is headquartered in Wake County, North Carolina.

3. Plaintiff Richard Armstrong is a resident of Wake County, North Carolina. He was employed as a Raleigh Police Officer in or about September, 1997, and promoted to Sergeant in or about January, 2008.

4. Since on or about 2001, Plaintiff Armstrong has been the President of the RPPA. He has actively advocated on behalf of the Association and its members with both appointed and elected officials of the City, and has engaged in other protected activities as an official of the Association. He resigned as President on or about June, 2011.

5. On July 5, 2011, Sgt. Armstrong was fired from his position with the Raleigh Police Department and that discharge was affirmed by Defendant Dolan on or about August 24, 2011. By letter dated September 27, 2011, the Manager of Defendant City of Raleigh also affirmed that discharge.

6. Upon information and belief, Defendant Harry Dolan is a resident of Wake County, North Carolina. Since on or about August, 2007, he has been Chief of the Raleigh Police Department.

7. Defendant City of Raleigh is a municipality created and acting under the laws of North Carolina. Its officials hired Defendant Dolan and have acquiesced in and/or approved

disciplinary actions taken by Defendant Dolan against Plaintiff Armstrong and other supporters of the RPPA.

Facts

8. The RPPA from its inception has advocated on behalf of its members on issues of general concern to Raleigh Police Officers. It has also provided support and assistance to individual members when they have individual grievances or concerns, arising from their employment with the Raleigh Police Department.

9. Officers and representatives of the RPPA have regularly held discussions with members of the Raleigh City Council concerning issues of concern to the Association's members. Officers and representatives of the RPPA have also appeared at council meetings to make presentations concerning issues of concern to the Association's members. This has occurred most particularly with issues arising during the budgetary process, such as issues of staffing, and pay and benefits for Police Officers.

10. At council meetings where officers and representatives of the RPPA would be speaking, many members of the Association would also attend to show their support and their concern regarding the issues being addressed.

11. Over the years officers and representatives of the RPPA have been interviewed and quoted by news outlets on matters of concern to Raleigh Police Officers. This has included appearing in television news cast.

12. The RPPA has regularly endorsed and supported candidates for elected positions in the City. This has included having Association officials appear in political commercials for candidates that have been endorsed, as well as making public statements endorsing the candidates.

13. The political activities of the RPPA to endorse and support candidates has included

endorsing and supporting the present Mayor, Charles Meeker, in all of his successful campaigns for the office of Mayor. It also includes endorsing and supporting the recent campaign of Mayor-elect Nancy McFarlane.

14. As part of its advocacy on behalf of its member Police Officers, officers and representatives of the RPPA have at various times met with the City Manager and/or the Police Chief, to raise concerns and address issues within the Police Department affecting the membership.

15. In terms of assisting individual members with their individual concerns or grievances, the RPPA has a number of “shop stewards” that assist Officers with their concerns, including the filing and processing of grievances under the grievance procedure.

16. Sgt. Armstrong, during his nearly ten years as President of the RPPA, has personally engaged in and participated in many of the advocacy activities carried out by the Association. This includes appearing before the City Council to address them on matters of concern to the membership. It also includes being interviewed on numerous occasions by news outlets regarding issues of concern to the membership, and appearing in television news casts.

17. In meetings throughout the years with the Chief or the City Manager, Sgt. Armstrong has usually been outspoken about the concerns of the membership during the discussions.

Actions to Weaken the RPPA

18. In or about October, 2009, a Police Officer reported to Internal Affairs that a prostitute alleged that she had had sex with Sgt. Armstrong. That allegation was investigated and the conclusion from that investigation ultimately was that the allegation was “unfounded”. However, the investigation on Sgt. Armstrong was actively pursued for a period of approximately eighteen months, and substantial amounts of Police Department resources were devoted to attempting to find

some excuse to discipline and discharge Sgt. Armstrong.

19. Upon information and belief, defendant Dolan was aware of the continued investigation regarding Sgt. Armstrong, and approved the commitment of substantial resources of the Department to that investigation.

20. During the course of the investigation not only was a GPS device installed on Sgt. Armstrong's patrol car, GPS devices were also placed on his and his wife's personal vehicles. Additionally, not only were the records from his Police Department cell phone obtained, but subpoenas were issued for the records from Sgt. Armstrong's personal cell phone, as well as the records for the cell phone of his wife.

21. During the course of the investigation, numerous prostitutes in and about the City of Raleigh were interviewed, in an attempt to obtain some evidence that Sgt. Armstrong had engaged in inappropriate activities or comments.

22. In a further attempt to find some evidence of misconduct on the part of Sgt. Armstrong, officers from the Special Enforcement Unit (SEU) and the Threat Assessment Response Unit (TARU) were committed to follow and surveil Sgt. Armstrong both on and off duty. These surveillance officers not only generated records of his movements and location, but took pictures of Sgt. Armstrong.

23. A portion of the investigation centered on Sgt. Armstrong's interaction with an Hispanic woman, Ms. Flores.

24. As part of the activities of "community policing" which Defendant Dolan has encouraged Officers to do, Sgt. Armstrong had befriended Ms. Flores and her six children. He would spend time in the neighborhood of her dwelling, which was in his service area, often playing

in the street with her children or other children in the neighborhood. He would bring her and her children items such as toys, and did so both during his on-duty and off-duty time.

25. At no time did Sgt. Armstrong engage in any inappropriate activities with Ms. Flores.

26. Not only did Sgt. Armstrong befriend Ms. Flores and her children, but Sgt. Armstrong's wife also befriended Ms. Flores and her children. Indeed, Ms. Armstrong took clothing or other items to Ms. Flores and her children.

27. On one or more occasions, Sgt. Armstrong and his wife invited Ms. Flores' children to play with their children, including inviting the Flores children to their child's birthday party. On one or more occasions Sgt. Armstrong also took some of Ms. Flores' children to a movie or dinner to celebrate their birthday.

28. At no time has Sgt. Armstrong denied any of his activities towards Ms. Flores and her children, as none of those activities were in any way inappropriate.

29. The desire of the Police Department to find some excuse to discipline and discharge Sgt. Armstrong was so great that in the spring of 2010 when Ms. Flores moved outside the City, the Police Department installed a surveillance camera on a pole near her new residence, to continue to surveil her home.

30. On February 7, 2011, Sgt. Armstrong was interviewed by Internal Affairs and questioned about whether or not he had had sex with prostitutes or others, including Ms. Flores.

31. At all times during the interview Sgt. Armstrong denied any inappropriate activities with Ms. Flores or any other persons.

32. Also on February 7, 2011, Sgt. Armstrong was placed on "administrative leave" with pay. He was required to turn in his gun, badge, uniforms, vehicle and all other Raleigh Police

Department equipment, and told that he was not to come to work in the Department.

33. Within 12 hours of the end of Sgt. Armstrong's interview with Internal Affairs, the fact that he had been interviewed and the nature of the issues touched on in the interview was leaked to the press. Indeed, a reporter from WRAL-TV, Amanda Lamb, arrived at Sgt. Armstrong's house to question him about the investigation and his interview.

34. Sgt. Armstrong declined to comment or respond to any questions from the press about the investigation, explaining that he had been ordered by officials of the Police Department that he was not to discuss the matter.

35. The investigation of Sgt. Armstrong appears to have been completed as of May 12, 2011 with the production of a report from Internal Affairs. The primary conclusions of that report leading to a recommendation that Sgt. Armstrong be discharged, were that he had engaged in "Sex on Duty", which apparently refers to Ms. Flores. The report also concluded that Sgt. Armstrong had failed to be truthful when he answered questions during the investigation.

36. Throughout the report of the investigation, and to bolster and manufacture a justification to discharge Sgt. Armstrong, the Police Department repeatedly misrepresents statements made by Sgt. Armstrong during his interview, to justify a finding that he was "untruthful".

37. There is a transcript of the interview with Sgt. Armstrong, and a simple comparison of his statements in that transcript to the misrepresented "paraphrasing" found in the report, not only confirms the inaccuracies and misrepresentations in the report, but also shows that Sgt. Armstrong was truthful.

38. On July 5, 2011, Sgt. Armstrong was terminated from his position with the Raleigh Police Department based on the year-and-half investigation conducted on him. He was then allowed

to obtain a copy of the Internal Affairs investigative file, and it totaled more than 2000 pages.

39. Upon information and belief, the file concerning Sgt. Armstrong is the most extensive file ever developed and generated during an Internal Affairs investigation.

40. Upon reviewing the investigative file, it was learned that there was no transcript of an interview with Ms. Flores, and that the interview that was conducted was not done by the Raleigh Police Department. Rather, the interview was conducted by officials of the Immigration and Customs Enforcement Division (ICE) in the ICE office in Cary, at the request of the Raleigh Police Department.

41. At the time that she was interviewed in the ICE office, Ms. Flores' immigration status was that she was undocumented and could be subject to deportation.

42. The interview with Ms. Flores, which is the only evidence that supposedly establishes that Sgt. Armstrong engaged in sexual activities while on duty, is the only interview done during the entire investigation for which there is no audio recording and no transcript.

43. Ms. Flores was interviewed by the ICE agents for several hours. The summary of the interview confirms that when she was asked whether or not she had had sexual relations with Sgt. Armstrong, Ms. Flores denied that anything like that occurred.

44. It was only later in the interview, after lengthy and continued questioning, that Ms. Flores finally made a statement that she and Sgt. Armstrong had engaged in sexual activity.

45. Upon information and belief, after she provided her statement about Sgt. Armstrong to ICE and Raleigh Internal Affairs, Ms. Flores received some form of official immigration status such that she can remain in this country.

46. Sgt. Armstrong immediately appealed his dismissal, and on August 5, 2011 he had

a meeting with Defendant Dolan as part of the process of that appeal.

47. During the course of his meeting with Defendant Dolan, Sgt. Armstrong pointed out the multiple occasions where the investigative report concludes he was “untruthful” by misrepresenting his statements during his interview. Sgt. Armstrong specifically cited to the pages of the transcript of his interview to show that the representation of his statements in the report were inaccurate, and appeared to be intentional misrepresentations. Sgt. Armstrong further pointed out that at all times he had been truthful in responding to questions during the investigation.

48. During the appeal meeting with Defendant Dolan, Sgt. Armstrong denied that he had ever had sexual relations with Ms. Flores or any other persons while on duty. He also pointed out that in spite of the extensive investigation of him over some 18 months involving Raleigh Police Officers from multiple special units, the house mate of Ms. Flores, a lady with two children of her own, Ms. Becerra, had never been interviewed.

49. Realizing that the excuses relied upon to discharge Sgt. Armstrong did not have substantial strength, at the meeting with Sgt. Armstrong on August 5, 2011, Defendant Dolan began questioning him about matters that had not been relied upon in the recommendation for his dismissal. Those matters involved conversations that Sgt. Armstrong might have had with Sgt. Eric DeSimone and Officer Matthew Cooper.

50. Sgt. DeSimone for many years had been an officer of the RPPA. When Sgt. Armstrong stepped down from being the President in June , 2011, Sgt. DeSimone assumed that office and remains the President today.

51. Officer Cooper is a long time supporter of the RPPA, who has shown up at City Council meetings when presentations were being made about matters of concern to himself and other

Police Officers. He has also served as a shop steward for the RPPA, and has encouraged members who have individual concerns arising from their job to file grievances. He has then assisted those members in the processing of the grievances. He remains a shop steward today.

52. On Monday, August 8, 2011, the Monday after Sgt. Armstrong's appeal meeting with Defendant Dolan, both Sgt. DeSimone and Officer Cooper were called into Internal Affairs and interviewed.

53. On information and belief, Defendant Dolan directed that the Internal Affairs interviews with Sgt. DeSimone and Officer Cooper be conducted.

54. On August 8, 2011, Officer Cooper was placed on "administrative leave" with pay. He was required to turn in his gun, badge, uniforms, vehicle and all other Raleigh Police Department equipment, and told that he was not to come to work in the Department.

55. On August 8, 2011, Sgt. DeSimone was also placed on "administrative leave". While he was required to turn in his gun and badge, he was allowed to continue working in the Police Department at a desk job.

56. On information and belief, Defendant Dolan directed that both Sgt. DeSimone and Officer Matthew be placed on administrative leave.

57. Upon information and belief, the allegations used to justify placing Sgt. DeSimone and Officer Cooper on administrative leave involve either a violation of an order not to discuss matters that had been covered during an Internal Affairs interview, and/or that they had not been truthful in responding to questions during an interview with Internal Affairs.

58. Upon information and belief, neither Sgt. DeSimone nor Officer Cooper violated any directive that they received from Internal Affairs; nor were either of them untruthful in their

responses to questions from Internal Affairs.

59. Sgt. DeSimone and Officer Cooper have now been on administrative leave for some 11 weeks with no formal disciplinary action having been taken, and they remain in that status today.

60. In contrast to the treatment of Sgt. DeSimone and Officer Cooper, in September of 2009, another Police Sergeant was interviewed several times during an Internal Affairs investigation. At each interview he received a specific order, usually both in writing and verbally, not to discuss his interview or the on-going investigation in which the interview was conducted, with anyone else.

61. In spite of the very specific and clear orders given to this Police Sergeant, Internal Affairs learned that he had repeatedly been discussing the on-going investigation with other members of the Police Department. Indeed, Internal Affairs confirmed this Sergeant's violation of the express orders, by obtaining a recorded and transcribed statement from another Sergeant, confirming that he was initiating discussions about the specifics of the on-going Internal Affairs investigation.

62. When interviewed specifically about whether or not he had been discussing the specifics of the Internal Affairs investigation with other members of the Police Department, this Sergeant was not truthful in his answers.

63. In spite of unequivocal evidence that this other Police Sergeant had repeatedly and flagrantly violated the orders not to discuss his Internal Affairs interviews and not to discuss the Internal Affairs investigation, and evidence that he was not truthful when he was asked about violating the orders, this Sergeant has never been subjected to administrative leave or suspension of any sort for his violation of the multiple orders and his untruthful responses to questions from Internal Affairs.

64. The much different treatment of Sgt. DeSimone and Officer Cooper, is primarily a

result of retaliation against them for their support of, and their active roles with the RPPA.

65. Following the appeal meeting between Sgt. Armstrong and Defendant Dolan on August 5, 2011, the Police Department's Internal Affairs Division did finally interview Ms. Becerra, the house mate of Ms. Flores.

66. Ms. Becerra was interviewed on August 17 and 18, 2011. In those interviews she indicated that Sgt. Armstrong had at all times behaved appropriately towards her, her children, Ms. Flores, and Ms. Flores' children. Ms. Becerra also indicated that at no time had she observed anything to indicate any improper relationship between Sgt. Armstrong and Ms. Flores.

67. In spite of the fact that Defendant Dolan was specifically shown the misrepresentations about Sgt. Armstrong's statements during his interview and how he [Sgt. Armstrong] had actually been truthful; and in spite of the fact that the interview with Ms. Becerra showed no inappropriate activity or relationship between Sgt. Armstrong and Ms. Flores, on August 24, 2011, Defendant Dolan upheld the discharge of Sgt. Armstrong.

68. Sgt. Armstrong appealed his discharge to the next step which was to the City Manager. He met with the Manager on September 19, 2011, and made him aware of the irregularities and inconsistencies in the investigation that was done. He also made him clearly aware that at no time had he, Sgt. Armstrong, ever engaged in sexual activity with anyone while on the job. In spite of this, on September 27, 2011, the Manager upheld Sgt. Armstrong's dismissal.

Harm and Damages

69. As a result of the discharge of Sgt. Armstrong, the long-term President of the RPPA, and then the placing of the current President, Sgt. DeSimone, and a strong supporter of the RPPA, Officer Cooper, on long term administrative leave, many of the members of the RPPA have become

fearful that if they continue be members and supporters of the Association, their careers as Police Officers will be seriously damaged because of Defendant Dolan's attitude toward the Association and its officers and members.

70. Over the past several months since the discharge of Sgt. Armstrong, the RPPA has had approximately 30 members resign from the Association.

71. Unless prompt equitable and injunctive relief is granted, it is highly likely that the RPPA will suffer a serious loss of membership and support, and may even cease to exist.

72. Unless prompt equitable relief is granted, Raleigh Police Officers will suffer irreparable harm in that they will be continually deprived of the right to join with other Police Officers and effectively advocate on behalf of themselves and other Officers.

73. As a result of being placed on administrative leave for nearly five months before his discharge, Sgt. Armstrong suffered a loss of income in that he was prevented from serving as a Police Officer in an off-duty capacity, and receiving pay for that duty from various private businesses.

74. As a result of his discharge on July 5, 2011, Sgt. Armstrong has suffered a substantial loss of pay, as well as loss of fringe benefits, including but not limited to, retirement, health insurance, and leave.

75. As a result of the investigation of him being made public to the press, his prolonged period of suspension, and then his discharge, Sgt. Armstrong has suffered substantial damage to his reputation and career, and suffered humiliation, distress, and anguish.

76. Plaintiffs have no other effective remedy.

First Claim
Right of Assembly, Petition, and Free Speech

77. Plaintiffs reallege and incorporate Paragraphs 2 through 76 above.

78. The actions of Defendants, and particularly Defendant Dolan, against the individual Plaintiff and other officers and supporters of the RPPA, were carried out with the intent to weaken and ultimately destroy the Raleigh Police Protective Association as an effective advocate for Raleigh Police Officers.

79. Those actions have already weakened the RPPA in that a significant number of members have withdrawn from the Association, and others have indicated that they are also considering withdrawing.

80. The actions of Defendants, and particularly Defendant Dolan, towards Plaintiff Armstrong, has damaged him in his profession, entitling him to compensatory damages.

81. The actions of Defendant, and particularly Defendant Dolan, to subject officers and supporters of the RPPA such as Plaintiff Armstrong, to unjustified and disparate discipline, violates Article I, Sections 1, 12, 14, and 35 of the Constitution of North Carolina.

Second Claim
Equal Protection and Due Process

82. Plaintiffs reallege Paragraphs 2 through 84 above.

83. The prolonged and extensive investigation of Sgt. Armstrong with the use of substantial resources in the form of officers from special units of the Police Department; as well as the use of the questionable search warrants or subpoenas to try to obtain evidence to justify retaliatory actions against him, constitutes a violation of the right to equal protection and substantive due process.

84. The placing of other officers and supporters of the RPPA on prolonged administrative leave, violates their right to equal protection and substantive due process. This is apparent given that the Police Department developed compelling evidence confirming that another Police Sergeant who is not active in the RPPA, engaged in serious violations of orders that he was given, and was untruthful when questioned by Internal Affairs about those violations, yet he was not placed on administrative leave or suspended or discharged.

85. The actions taken by Defendants, and particularly Defendant Dolan, to subject Plaintiff Armstrong and other officers and supporters of the RPPA to unjustified and disparate discipline, violate their rights and the rights of the Association guaranteed by Article I, Sections 1, 19, and 35 of the Constitution of North Carolina.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Grant a trial by jury on all issues so triable.
2. Declare that the actions of Defendants alleged in this Complaint violates the rights of Plaintiffs guaranteed by Article I, Sections 1, 12, 14, 19 and 35 of the Constitution of North Carolina.
3. Grant preliminary and permanent injunctive relief prohibiting Defendant Dolan, other officials of the Police Department, and/or officials of the City of Raleigh from engaging in actions to intimidate and discourage Police Officers from joining, supporting, and taking an active role in the Raleigh Police Protective Association.
4. Reinstate Plaintiff Armstrong to his position as a Police Sergeant, with full back pay, fringe benefits, and seniority, as if he had never been discharged.

5. Grant Plaintiff Armstrong compensation for the damage to his professional reputation, humiliation, anguish, and distress that he has suffered as a result of the actions of Defendants.

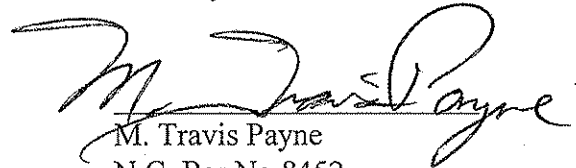
6. Grant Plaintiffs pre-judgment and post-judgment interest on all damages awarded, to the maximum extent allowed by law.

7. Grant Plaintiffs their costs including reasonable attorney's fees, in bringing and prosecuting this action.

8. Grant such other and further relief as to the Court seems just and proper.

This the 26th day of October, 2011.

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