

Liverman v. City of Petersburg, VA 15-2207 (U.S. 4th Circuit 2016)



Demand: 4.7 Million Against The City of Petersburg, Virginia

Fact Summary: According to the original complaint filed on March 2014, the two plaintiffs, former Petersburg police officers Herbert E. Liverman and Vance R. Richards, argued that they were unjustly punished for posting comments on Facebook that criticized the department for promoting officers they considered too inexperienced.

The comments were reported to former Police Chief John I. Dixon III, and the two officers were found to have violated a policy that Dixon had instituted in April 2013. The policy prohibited department employees from giving out information “that would tend to discredit or reflect unfavorably upon the [department] or any other City of Petersburg department or its employees,” according to the appeals court opinion.

Liverman and Richards were reprimanded and placed on probation. Because they were on probation, they were barred from taking a test to qualify for promotion to sergeant. Source: The Progress Index News)

Court Holding: A three-judge panel of the U.S. Fourth Circuit Court of Appeals found that the police department’s social media policy, put in place in 2013, violated employees’ First Amendment free speech rights. More specifically, the court ruled the policy was too vague and overbroad. The court sent the case back to the lower court to decide whether the city government can be held liable for damages in the case.

Case Update: Recently, the City of Petersburg admitted liability for the damage caused by the social media policy and they settled for an undisclosed amount. The court rejected Police Chief Dixon’s request for “Qualified Immunity”, this opens the chief up to personal liability. Additionally, during a recent audit of my seminar evaluations, we were surprised to find that the attorney who updated the Petersburg police department’s social media policy **attended my class after the lawsuit was filed**. Although her evaluation of my class was very positive, I wish the city would have used my policy review services before they decided to update their social media policy back in 2013.

Lessons Learned:

- The overwhelmed in-house attorney wasn’t a specialist in social media law and relied on vague model policies and association conferences that seem to focus more on employment law warnings, not social media law (i.e. libel, libel by implication)
- The in-house attorney didn’t seek advice from an experienced social media attorney.
- There was no record of specialized employee training from a social media law expert.
- Social Media policymakers are personally liable for policy damages.