

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

**BRIAN CHARLES VAETH**

*Plaintiff,*

v.

**Case No. ELH-18-1600**

**MAYOR & CITY COUNCIL OF BALTIMORE,  
FIRE & POLICE EMPLOYEES' RETIREMENT  
SYSTEM OF BALTIMORE**

*Defendants,*

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR IN THE  
ALTERNATIVE SUMMARY JUDGMENT**

On May 31, 2018, Plaintiff Brian Charles Vaeth, a citizen of Maryland and former firefighter for the City of Baltimore, filed suit in this matter alleging that the Baltimore City Solicitor perpetrates fraud on this Court. As Plaintiff has discovered new evidence to support his claims, evidence of which he was not able to obtain prior to the filing of this action due to the actions of Defendants that prevented its disclosure for reasons that are further discussed herein, Plaintiff filed this independent action under the Federal Rules of Civil Procedure. The relief requested in this action is that Defendant's actions be assessed by this Court to see if it has been a victim of that fraud and take whatever action is necessary to protect the judicial function from this reprehensible act reoccurring, actions of which are repugnant to the good order of society that are knowingly being perpetrated on this Court by Defendants.

**INTRODUCTION**

This action is not being brought under Fed R. Civ. P. 60(b), more commonly referred to as the "savings clause", which states, "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court." It follows that an independent action alleging fraud upon the court is completely distinct from a

motion under Rule 60(b), the concept of which challenges the very principle upon which our judicial system is based, the finality of a judgment.

In assessing the actions of Defendants there can only be two logical conclusions that a trier of the fact can reach. One could be that it was due to incompetence. The other could be that it was a matter of retaliation by an employer on an employee for exercising a legitimate, legal right. Regardless of any initial speculation, the findings of that assessment will certainly show that the actions demonstrated by the City of Baltimore resulted in an effort to cover up their wrongdoing and obstruct this Court from performing its normal judicial function. In so doing, the City abandoned their obligation to not only Plaintiff, and to this Court, but to many other members of the Baltimore City Fire and Police Departments who have become disabled in the line-of-duty. While this has been known to occur for years, how extensively this has contributed to the culture of corruption that is being nurtured in Baltimore City is just coming to light.

#### **Defendant's Motion to Dismiss**

Defendants' motion seeks the dismissal with prejudice of this lawsuit on the assertion that it is barred by the doctrine of res judicata, among others. The motion is without merit and must be denied out of hand. Defendants' memorandum in support of their motion is based in large part on court decisions obtained under a cloud of impropriety and is supported by assertions made in those decisions that were based on unsupported facts, apparent beyond counsel's views, and it does not support dismissal under the standard for considering Rule 12(b)(6) motions.

Defendants begin by reciting the actions Plaintiff has undertaken in the state and federal courts in attempting to redress Defendants' misconduct and utter disregard for the law. It has been Defendants' intent to obstruct justice at virtually every turn in this matter because they do not want, nor can they afford, the liability that would result from a finding by the Court that they violate the law. Defendants have been using their positions of trust, as officers of the court, to perpetrate their deceptive practices and infect the judicial process with the sole purpose of interfering with the administration of fair and equal justice, the very fundamental principles of which our justice system is founded, to strip away the authority this Court has over the culture of corruption the City has nurtured for many decades. That all must come to an end.

Through their manipulation of the law, and the granting of immunity for themselves only, Defendants have turned our City and State legislatures into something more akin to a protection racket like that of the MAFIA, instead of institutions of the public trust that they were intended to be. As Plaintiff is now, and will demonstrate through depositions taken, the submission of documents obtained during discovery, and through the testimony of witnesses called to provide facts in support of the allegations made in the complaint, the Court will be able to easily conclude that the allegations of fraud on the court are irrefutable. In the case of such a finding, the decisions in those proceedings mentioned would be rendered void because it is well settled in this Court that, “fraud vitiates everything that it touches.”

The Defendants correctly assert that Plaintiff has filed many actions against the City since his separation from employment nearly 15 years ago, however, they seem to suggest that those efforts were all unsuccessful. For instance, the October 16, 2000 Petition for Judicial Review was filed in the Circuit Court for Baltimore City (24-C-00005120) challenging the Fire and Police Employees’ Retirement System (“F&PERS”) and sought to overturn the erroneous findings of the administrative hearing examiner that denied Plaintiff disability retirement benefits. Plaintiff was successful, as a result of that action, as he was reinstated to his position by the Chief of Fire Department, upon his finding that the ruling was in error. This reinstatement occurred before the Baltimore City Circuit Court even took up the matter and it was dismissed. Defendants characterize this, as Plaintiff simply choosing to return to work because he failed to get the benefits he desired. This is misleading and knowingly portrayed in this fashion with the intent to deceive anyone reviewing the actions Plaintiff seeks to address. They know full well that the process is spelled out in Article 22 of the Baltimore City Code. Upon the filing of the appeal, a full medical evaluation of Plaintiff commenced, to ascertain the level of his assumed disability by the City. Plaintiff passed the examination and the medical director changed his determination. The Medical Director of Mercy PSI has full discretion of the medical qualifications of firefighters returning to duty from injuries received on the job.

The second action (24C03007014) was filed on September 29, 2003 and was an appeal of the second erroneous decision of the hearing examiner that denied Plaintiff of disability retirement benefits

again. During the time this appeal was filed, Plaintiff was undergoing medical testing due to his being placed in a Vocational Rehabilitation program that was associated with the reopening of the Workers Compensation complaint originally filed for worsening of the condition, associated with the original injury. The result of the medical testing concluded that Plaintiff would require an additional surgery to his spine. This surgery was very invasive and included the fusing of his spinal vertebrae. Plaintiff was not represented by counsel, at this time, and the appeal was dismissed for lack of prosecution on the part of Plaintiff, despite his inability to participate in it because of the surgery and extensive recovery resulting from it. Plaintiff attempted to reopen the appeal for having good cause upon being released by his physician but that request was denied by the Baltimore City Circuit Court.

Defendants assert that, "...a third action filed in the Circuit Court for Baltimore City (24-C-07009752) was filed on December 13, 2007 but was voluntarily moved for dismissal and the same was granted." While being partially true, Defendants fail to recognize that the complaint was voluntarily dismissed, so it could be removed from the Circuit Court for Baltimore City and filed in the United States District Court. This occurred upon the raising of the constitutional questions surrounding their unlawful actions, as the complaint alleged. That action was RDB-08-708 filed on March 17, 2008, upon the granting of Plaintiff's Motion for Voluntary Dismissal, so it could be filed in the federal court.

The other filing Defendants reference is case number WDQ-11-182. In that filing, Plaintiff sought to redress the failure of Defendants to reexamine him under provisions of Article 22§34 (g) Reexamination of members retired on account of disability.<sup>1</sup> It was Plaintiff's attempt not to redress the matter that was

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<sup>1</sup> Article 22, §34 (g) Reexamination of members retired on account of disability.

(1) (i) If a retired member is receiving a disability retirement allowance and has not yet attained age 55, the panel of hearing examiners may require the retired member to undergo a periodic medical examination, but not more often than once in any year, to determine whether he or she has become fit to resume duties in the classification in which he or she was performing duties at the time of retirement.

(ii) The examining physician shall report her or his findings to the panel of hearing examiners. If the examining physician's opinion is that the retiree is able to resume his or her duties, the applicable departmental physician shall conduct a reexamination of the retiree. If the departmental physician concurs, she or he shall certify to the panel of hearing examiners that the retiree is fit for the further performance of duties in the classification in which he or she was performing duties at the time of retirement. If the physicians do not concur, the panel of hearing examiners shall schedule a hearing to determine the fitness of a retiree to perform his former duties.

(iii) After the hearing, the panel of hearing examiners shall submit its determination to the head of the department in which the retiree was employed at the time of retirement.

presented in RDB-08-708, but the continuing violations of Plaintiff's rights after that date. As the hearing examiner's determination that Plaintiff was not disabled from the further performance of his duties has not been disturbed upon appeal, and still stands undisturbed today, Plaintiff sought to assert the rights available to him under Article 22, § 34 (g), as aforementioned. It was a disability determined by the City, as Plaintiff could not be considered to be terminated because of it, that would be blatantly discriminatory. Plaintiff did not quit, so it can only be logically concluded that Plaintiff was retired because of the injury, therefore, Plaintiff was prevented from asserting violations of his future rights under Article 22 of the Baltimore City Code.

Defendants then assert that Plaintiff alleges that the City committed the fraud on this Court in several ways. Plaintiff asserts the fraud was committed when the City produced the fraudulent affidavit. The other actions only demonstrate sufficient support for Plaintiff's allegations that it was the intent of Defendants to remain purposely and maliciously deceptive about all things associated with this matter.

The citizens of Baltimore City, and the State of Maryland, have become victims of an illicit scheme perpetrated by our elected officials that has stripped them of their constitutional rights and they have seen the eroding of their freedoms and liberties caused by a legislature that values collecting revenue over providing responsible oversight. Through annual supplemental budget appropriations, the City of Baltimore receives additional taxpayer money through actions taken by the Maryland General Assembly, and by extension the citizens of the State of Maryland are forced to pay the price for the misconduct. Consequently, it is in the public's interest to know if their elected and appointed officials are ethical in all actions taken on behalf of the citizens and that those officials are not committing the abuses brought forth in this action.

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(iv) A member who has been determined to be fit to resume work continues to receive his or her disability retirement allowance until the time the member is reemployed by the City.

(2) A disability retiree who has been certified by the panel of hearing examiners as fit for further performance of duties and who is restored to active service shall cease to receive a retirement allowance. He or she shall again become a member of the retirement system and shall contribute at the current rate of contribution. Any previous service credit on the basis of which his or her service was computed at the time of retirement shall be restored in full and, on his or her subsequent retirement, he or she shall be credited with all service as a member.

### **Analytical Framework for a Rule 12(b)(6) Motion**

“The purpose of a 12(b)(6) motion is to test the sufficiency of a Complaint; ‘importantly, [a Rule 12(b)(6)] motion does not resolve contests surrounding facts, the merits of a claim, or the applicability of defenses.’” *Butler v. U.S.*, 702 F.3d 749, 752 (4th Cir. 2012)(quotation omitted).

“To survive a Rule 12(b)(6) motion, a Complaint must satisfy the pleading standard articulated in Fed.R.Civ.P. 8(a)(2), which requires a ‘short and plain statement of the claim showing the pleader is entitled to relief.’” *Sinclair v. Parnell*, 2014 WL 4052859, \*3 (D. Md., August 13, 2014)(Russell, J.); *Petty v. Sampong*, 2014 WL 4662397 (D. Md., September 16, 2014); Fed.R.Civ.P. 8(a)(2); *Buckler v. Israel*, 2014 WL 1464472, \*4 (S.D. Fla., April 14, 2014); *Baez v. Root*, 2014 WL 1414433, \*2 (S.D. Fla., April 11, 2014). A complaint “attacked by a Rule 12(b)(6) motion does not need detailed factual allegations;” however, (F)actual allegations must be enough to raise a right to relief above the speculative level.” *Id.*, quoting from, *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544, 555 (2007). The complaint must be “plausible on its face” and must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Mancinni v. Broward County Sheriff*, 2014 WL 7792953, \*2 (S.D. Fla., October 21, 2014), citing, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quotations omitted); *Covey v. Assessor of Ohio County*, 777 F.3d 186, 192 (4th Cir. 2015); *Sinclair*, at \*3.

“When considering a motion to dismiss, all facts set forth in the plaintiff’s complaint are accepted as true and the court limits its consideration to the pleadings.” *Mancinni, Id.* Further when considering whether dismissal is appropriate pursuant to Fed.R.Civ.P. 12(b)(6), the court must construe the allegations and draw all favorable inferences in the light most favorable to the plaintiff. *Shiheed v. Shaffer*, 2015 WL 4984505, \*2 (D. Md., August 18, 2015)(Russell, J.).

A complaint may not be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Mancinni, Id.* (Citations omitted). A complaint “must be liberally construed” and “should not be dismissed simply because the court is doubtful that the plaintiff will be able to prove all of the necessary factual allegations.” Indeed, “a well pleaded complaint will survive a motion to dismiss ‘even if it appears that a

recovery is very remote and unlikely.” Spadaro v. City of Miramar, 855 F.Supp.2d 1317, 1328 (S.D. Fla. 2012), quoting from, Twombly, 550 U.S. at 555-556.

The Fourth Circuit has recognized, “[a] lawsuit need not be meritorious to proceed past the motion-to-dismiss stage.” In fact, ‘a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable and that a recovery is very remote and unlikely. To dismiss (a Complaint) because of some initial skepticism would be to mistakenly ‘collapse discovery, summary judgment[,] and trial into the pleading stages of a case.’” SD3 LLC v. Black and Decker (U.S.) Inc., – F.3d –, 2015 WL 5334119, \*17 (4th Cir., September 15, 2015).

### **The Motion to Dismiss Has No Merit**

Plaintiff alleges the following in the Complaint in this case:

Evidence presented in this matter demonstrates that Plaintiff was seriously injured in the line-of-duty in August of 1996. Plaintiff had surgery and returned to the full scope of his duties as a firefighter following that injury. Plaintiff also filed a report of the incident with the Workers Compensation Commission of Maryland, as required by the Manual of Procedures for the Baltimore City Fire Department. All occurrences that led to his eventual disqualification from his appointed duties were as a result of this injury and this injury alone. (See MacDonald v. WC.)

### **Disqualified from Duty, the First Time 2000 & Denied Disability Retirement Benefits**

In March of 1999, Plaintiff suffered a recurrence of that injury and was deemed to be disqualified from performing the duties of a firefighter by the medical director of the Public Safety Infirmary at Mercy Medical Center (Mercy P.S.I.). He was ordered to file an application for disability retirement benefits from the Fire & Police Employees Retirement System of Baltimore City (F&PERS). A hearing was conducted before the Panel of Hearing Examiners, wherein Plaintiff was awarded Ordinary Disability Benefits.<sup>2</sup> The hearing examiner ruled that Plaintiff’s disability was caused by a weight-lifting incident that occurred on May 8, 1999, without any factual evidence whatsoever demonstrated in the record to support this finding.

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<sup>2</sup> Findings of Mr. Frederick McGrath for the Panel of Hearing Examiners, Bd. of Trustees, F&PERS, Sep. 2000

Plaintiff disputed this erroneous decision by filing an appeal in the Circuit Court for Baltimore City. Before the Court could decide the merits of the appeal, Plaintiff was reinstated to the full performance of his duties and the appeal was ultimately dismissed. It is misleading in the manner to which Defendants attempt to make it appear as if Plaintiff had any control in the decision to reinstate him, or as they portray it, to simply return to work. As the decision to disqualify Plaintiff from his duties was made by the City's medical representative, Plaintiff met the requirements for being eligible for the full line-of-duty disability retirement benefit and since Plaintiff did not desire to be retired in the first place, he followed the rules and disputed this determination in the only manner accepted by the Baltimore City Code, as found in Article 22, Retirement Systems and that was to appeal the determination to the Circuit Court for Baltimore City.

Plaintiff filed a notice to the Workers Compensation Commission of issues related to the worsening of his condition due to this event and Defendants were ordered to pay all obligations to medical professionals and to Plaintiff.

**Disqualified from Duty, the Second Time 2003 & Denied Disability Retirement Benefits**

As a result of the line-of-duty injury suffered in 1996, which required the additional surgery to be performed in July 1999, Plaintiff experienced another incident of extreme pain and had to endure an additional surgery in August of 2002 for the narrowing of the vertebral disc space that was causing compression on the nerve roots. Plaintiff was disqualified from returning to his duties by the medical director of Mercy P.S.I. under the provisions of the National Fire Protection Agency for the physical standards of firefighters, of which were adopted as the standards for the Baltimore City Department, the causation of which already being established. Again, Plaintiff was ordered to file an application for disability retirement benefits from the Fire & Police Employees Retirement System of Baltimore by the Chief of Fire Department, due to the medical director of the Public Safety Infirmary at Mercy Medical Center (Mercy P.S.I.) disqualifying Plaintiff from his duties for the second time. A Functional Capacity Examination was not performed by Mercy P.S.I. prior to December 28, 2002, Plaintiff's "cut-off date" from City employment.

Plaintiff was found to be not disabled from the further performance of his duties, as a firefighter and he was denied from receiving any benefit whatsoever.<sup>3</sup> Plaintiff disputed the determination of the hearing examiner and filed an appeal in the Circuit Court for Baltimore City. The appeal was dismissed for lack of prosecution in November of 2004. It is at this point that the City of Baltimore makes it appear that Plaintiff walked away from that appeal and chose not to pursue it, thereby, their involvement ended in this matter, as the record misrepresents and is attested to by the affidavit submitted to this Court by Division Chief Rod Devilbiss, Jr. in 2009. Plaintiff will show that Defendants involvement did not end in 2004, although try as they may, Defendants, by and through their counsel, fail to represent their actions truthfully.

### **Appeal of the Panel of Hearing Examiners for the Bd of Trustees, F&PERS 2003**

As aforementioned, Plaintiff filed a timely appeal of the decision of the Panel of Hearing Examiners for the Board of Trustees, F&PERS, in the Baltimore City Circuit Court for Baltimore City only days before he had the spinal fusion surgery performed. As is typical of someone who has this type of surgery, Plaintiff's recovery time was extended. It required Plaintiff to remain in a body cast for approximately 6 months. Plaintiff was notified that the appeal was dismissed for lack of prosecution by the Plaintiff while he was recovering from this extensively invasive surgery. Upon this notification, Plaintiff immediately sought to reopen the appeal for good cause but this request was denied. It was impossible for Plaintiff to demonstrate his inability to prosecute the appeal, while recovering from such an extensive spinal surgery that left him largely immobilized for the first 6 months and taking prescription pain medication, because the medical records were not being provided to him, only to Defendants, as they were responsible for paying the costs of the vocational rehabilitation program, as directed by the Workers Compensation Commission. Defendants were well aware of this situation, yet they failed to disclose it to the court.

Defendants characterize this as Plaintiff simply walking away and abandoning the appeal when they knew the reason for it. Plaintiff was self-represented in the matter before the Circuit Court for

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<sup>3</sup> Findings of Mr. Frederick McGrath for the Panel of Hearing Examiners, Bd. of Trustees, F&PERS, Aug. 2003

Baltimore City and for the reason explained in the aforementioned, he was unable to participate in that appeal.

### **Exhaustion of Administrative Remedies**

Plaintiff began the exhaustion of administrative remedies prior to filing suit in the courts. As Plaintiff settled the Workers Compensation claim, due to the extreme financial position the matter has subjected him to, he received the final payment from Defendants associated to that Workers Compensation claim in September of 2006. Plaintiff sought to redress this matter through corresponding with the Mayor of Baltimore City on several occasions. Complaints were also filed with various boards and commissions in Baltimore City government that were charged with oversight to investigate the matter of the hearing examiner's decision and their refusal to reinstate Plaintiff, as provided for by Maryland law. One such filing was with the EEOC and the Maryland State office that oversees Maryland Fair Employment Practices law. The complaint was rejected due to Plaintiff being medically disqualified by the employer with no rational basis for the denial being provided in writing to Plaintiff to explain their determination. Plaintiff was accompanied by another firefighter to the meeting with the EEOC, as a witness to the process and he will provide testimony to the facts surrounding that intake procedure.

The only investigation ever completed was conducted by the Mayor of Baltimore's Office of Constituent Services and the findings of that investigation recommended Plaintiff be reinstated to his duties. This request was ultimately denied for reasons not made available to Plaintiff.

### **In the United States District Court**

In the proceeding at question before this Court, case number RDB-08-708, Plaintiff filed the action seeking redress of this matter. The complaint alleged disability discrimination under the Americans With Disabilities Act, 42 U.S.C. § 1981, et seq., disability discrimination under the Rehabilitation Act, 29 U.S.C. § 701, et. Seq., disability retaliation under Maryland's Fair Employment Practices Act, Md. Ann. Code, Art. 49B, § 16(a)(1)-(2) and (f), violations of the Due Process and Equal Protection Clauses under the 14<sup>th</sup> Amendment to the United States Constitution, judicial misconduct, and breach of contract. Plaintiff alleged that his rights were violated, in relation to his separation from his job after being determined to be medically

disqualified from the duties of being a firefighter by the medical director of the Public Safety Infirmary at Mercy Medical Center. This case was originally filed in the Circuit Court for Baltimore City in December of 2007 and was removed to this Court on March 17, 2008 upon the raising of federal questions of law.

### **Efforts to Deceive this Court**

Defendant's, having not filed answer in that case, instead filed a Motion to Dismiss or in the Alternative for Summary Judgment. Their memorandum supported the motion with statements presented by counsel for Defendants only without evidence, just unsupported assertions offered as testimony by the City Solicitor on behalf of the officials alleged to have committed the misconduct and an affidavit that was fraudulent with sole purpose of deceiving this Court. Plaintiff attempted to obtain the evidence he needed to overcome Defendant's motion by requesting his employment and medical files from the City of Baltimore, of which the Defendants had complete control over. Access to those files were continually denied by the City. Plaintiff filed a Motion to Compel Discovery, so he could obtain that evidence, however, the Court dismissed the complaint before reaching the merits of the motion based on the representations made by Defendants.

The affidavit, which was fabricated by Division Chief Rod Devilbiss, Jr., for the Defendants, was fraudulent because Chief Devilbiss attested to the fact that he was "competent to swear oaths", to "give testimony in a court of law", that he had "personal knowledge of the matter" and was "competent to testify" to those matters.

Division Chief Devilbiss, Jr. also attested to, among other things, the fact that Plaintiff was a firefighter for the City from 1993 until December 28, 2002, that he had rights under the Baltimore City Charter, Baltimore City Code, and the Rules of the City of Baltimore Civil Service Commission. The affidavit continues to state that under the Rules of the Civil Service Commission,

"...an employee who has reason to believe that his removal is without just cause...shall file within five days after the receipt of an order of removal, a request in writing that the Commission investigate his or her removal and shall contain a statement that he believes that the removal was without just cause as required in the Civil Service Commission Rules...After a diligent search, BCFD can locate no notice of a request to investigate a removal

without just cause on behalf of Brian Charles Vaeth to the Baltimore City Civil Service Commission.”

Chief Devilbiss, Jr., completes the affidavit with the following statement:

“I SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.”

If that affidavit is to be accepted as the truth, Chief Devilbiss would certainly have been aware of the fact that a firefighter, who was similarly situated as Plaintiff, would have filed an appeal in dispute of the determination of the hearing examiner and was placed into a Vocational Rehabilitation Program, due to the assumed disability by the City, and as found by the Maryland Workers Compensation Commission. He would then have found that a dispute was filed with the results of that effort, due to the decision of the hearing examiner being contradictory to the agency’s determination that Plaintiff was not disabled from the full performance of his duties as a firefighter for the Baltimore City Fire Department made while he was being assessed in the Vocational Rehabilitation Program, as ordered by the Workers Compensation Commission. Rule 57 of the Baltimore City Civil Service Commission does not apply in this case, nor does it apply to any member who is medically disqualified by the medical director of Mercy PSI, as Article 22 of the Baltimore City Code provides for the process for members subject to retirement for injuries suffered in the line-of-duty. Chief Devilbiss, Jr., should have been made available to testify concerning this omission of the fact pattern in this case.

#### **Workers Compensation & Vocational Rehabilitation**

Plaintiff was placed in the Vocational Rehabilitation Program, as a result of an award by the Workers Compensation Commission, due to Plaintiff being separated from his employment on December 28, 2002. This effort sought to find Plaintiff suitable employment due to that separation. Plaintiff was offered a position at a local Ritz Camera store, as a retail manager. Plaintiff had no experience in retail sales, or management, and did not agree with the terms of the vocational rehabilitation plan. Plaintiff was

informed that if he did not accept the offer, the vocational rehabilitation program would be discontinued. Plaintiff, in recognition of determination made by the hearing examiner that Plaintiff was not disabled from his duties, requested reinstatement to his duties. This request was denied.

While in the program, Plaintiff's ability to be gainfully employed was assessed by cognitive testing and medical examinations in relation to the injury, to properly place him in the workforce. The program was not set up in response to the decision reached at the administrative hearing. That hearing didn't occur until June of 2003.

Plaintiff was scheduled for a Functional Capacity Examination which was performed in March of 2003 to assess his ability to perform work while in the vocational rehabilitation program. No evidence of the injury, or Plaintiff's medical condition was provided to these examiners, as evidence shows he was awaiting surgery to repair damage to his spine. This information was deliberately withheld from the examiners and the report opined that Plaintiff was "self-limiting" or misrepresenting his abilities. Had those examiners been provided the information that Plaintiff was awaiting surgery, they would never have concluded such a false notion.

Plaintiff received the determination of the hearing examiner's findings that Plaintiff was not disabled from the performance of his duties in September of 2003, he filed a timely appeal of the decision with the Circuit Court for Baltimore City, and he had the spinal surgery that was required in October of 2003. None of this information was submitted by the City of Baltimore to the hearing examiner prior to his determination in the September 2003 decision. The Record Before the Panel of Hearing Examiners for the F&PERS submitted as evidence with the complaint clearly demonstrates this fact. Plaintiff was not provided any records resulting from the vocational rehabilitation program, which included the medical records. Those records were provided to Plaintiff's attorney of record for the matter before the Workers Compensation Commission and not as counsel for the administrative hearing. Plaintiff was self-represented at the administrative hearing, and as his Union, Local 734 had not been receiving payroll deducted dues payments, he was not considered a member, therefore he had no representation from the recognized bargaining unit for firefighters at any time after December 28, 2002.

### **The Decision in RDB-08-708**

The Court found that Plaintiff's claims all suffered from procedural flaws that prevented the Court from reaching the merits of his allegations. From the Court's opinion it states the following:

“Therefore, without making any findings on the veracity of the underlying factual contentions, this Court must dismiss Plaintiff's case with prejudice.”

The Court continued to state:

“Counsel for Defendants indicated at the hearing of August 7, 2009, that there are three key dates that are repeatedly relevant in reviewing Plaintiff's claims. Those dates are: (1) December 22, 2002, Plaintiff's last day of employment with the Baltimore City Fire Department; (2) August 31, 2003, the day Plaintiff was denied full line-of-duty benefits for the last time; and (3) March 17, 2008, the date Plaintiff filed this lawsuit. Another relevant date that is worth mentioning at the outset is November 7, 2007, the date that Plaintiff alleges that he filed a complaint with the EEOC.”

The Court then explains that the lawsuit was dismissed because Plaintiff should have brought his claims within the three-year statute of limitations in Maryland. As the Americans With Disabilities Act does not prescribe a time limit on filing claims in relation to it, the Court utilizes the provisions found in Maryland Law that set a three-year statute of limitations on civil lawsuits, unless another statute extends that time. In Maryland, there is a five-year statute of limitations on the reopening of Workers Compensation Claims for the worsening of condition.

Plaintiffs took the litigation into a world of total make believe. In what has become typical behavior from Defendants, they used their position of trust to manipulate the proceedings to work only in their favor. The fraudulent affidavit, along with the testimony of counsel for Defendants, had the effect of having the lawsuit dismissed. Whether it is in the administrative hearing process, or in the courts, it makes no difference to Defendants. Their ultimate goal is to be deliberately deceptive and if people's lives were destroyed in the process, so be it.

If not for the affidavit, the Court would have become aware that the decision of the administrative hearing examiner was not final until the appeal of the determination was dismissed by the Circuit Court for Baltimore City on in November of 2004. At this time, Plaintiff was enrolled in the vocational rehabilitation

program which worked to prevent Plaintiff from filing a lawsuit against the City of Baltimore for discrimination, as it was intended to place Plaintiff in other employment, until those efforts were unsuccessful and the Workers Compensation Claim was settled and the filing of the original lawsuit in the Baltimore City Circuit Court followed in December of 2007. Had the Court been aware of this, the statute of limitations defense would be unsuccessful, as the complaint would not have been considered untimely until much later that it did. The affidavit prevented the Court from addressing this, despite Plaintiff raising an objection to it at the time.

#### **Additional Filings in this and the U.S. District Court of Appeals**

Plaintiff filed a Motion to Reconsider under Fed. R. Civ. P. 60(b) based upon the failure of Defendants to disclose key facts and relevant evidence that has infected every facet of litigating this matter. As Plaintiff did not have the evidence available to demonstrate the factualness of his arguments, only his testimony, as the City controlled it all and continued to deny Plaintiff access to it, the motion was denied. Plaintiff filed an appeal of the decision of this Court in the U.S. Court of Appeals, but that appeal offered no evidence that the Court erred. As stated, Plaintiff does not allege that the Court was corrupted by Defendant's actions. It is Plaintiff's contention that the Court was as much a victim of the fraud, as Plaintiff was.

In 2011, Plaintiff filed a separate action WDQ-11-0182, seeking to redress the fact that Plaintiff was not re-examined for his fitness for duty annually, as provided for in Article 22 of the Baltimore City Code. In this action, Defendants asserted the same fraudulent defense before the Court and the complaint was dismissed for res judicata. Again, Defendants denied access to the evidence, Plaintiff's employment and medical files. Without it, Plaintiff could not properly present his case. A subsequent appeal was denied by the U.S. Court of Appeals. This means that the fraud was perpetrated on both this Court on two different occasions and in the appeals that followed those dismissals. In total, the fraud has been committed before city and state investigatory agencies, and on several courts.

Because of the fraud, Plaintiff has not been provided a fair and equal opportunity to present his claim to this Court. The denial of access to his employment and medical files by Defendants was to blame for it.

**New Evidence Not Available to Plaintiff Prior to 2016**

Upon the unfortunate circumstances surrounding the death of Freddie Gray while in the custody of the Baltimore Police Department, a period of civil unrest prompted the Mayor of Baltimore City, Stephanie Rawlings-Blake, to request an investigation by the U.S. Department of Justice Office of Civil Rights into the pattern and practice of the department. The findings of that investigation were quite shocking to say the very least. It found that misconduct ran rampant through the department, investigations were not being conducted properly, evidence was mishandled, or overlooked, and even destroyed. What is most disturbing of all is the finding that an unconstitutional scheme was perpetrated on citizens of Baltimore that led to the unlawful arrest of tens of thousands of people every year. The Baltimore City Solicitor is the legal representative of the Mayor's Office, in relation to the officers of the Baltimore Police Department whose office supported the misconduct demonstrated by the department to assist in accomplishing the City of Baltimore's "Zero-Tolerance Policy" on crime that was started by former Mayor Martin O'Malley. The findings were so reprehensible, the U.S. DOJ referred to the City's actions, as not just a mere pattern and practice of misconduct, but a culture of corruption that led to many people being subjected to unconstitutional violations of their rights.

Plaintiff's continual complaints to the City of Baltimore were identical to the findings of the United States Department of Justice, as evidence shows Plaintiff forwarded to Defendants identical complaints on many occasions long before the events that prompted the federal investigation. These complaints occurred while seeking a review of the misconduct demonstrated by them in this matter and the evidence of which is quite voluminous. Evidence shows that these investigations were nothing more than a means for the City Solicitor to obstruct justice and manipulate investigations being conducted into the matter. All investigations wherein the City Solicitor had influence over the boards and commissions performing them, were rejected. Much of this obstruction of justice continues to the present time.

In August of 2018, a retiring Deputy Chief published a letter on the internet that was critical of the command staff of the Baltimore City Fire Department. Among the very serious allegations contained in the letter that included amoral character, the lack of personal and professional integrity, and demoralization of the Baltimore City Fire Department as an organization, mirror the many complaints Plaintiff has submitted to the Mayor and City Council of Baltimore City in the past. The Deputy Chief continues to allege bullying and details of efforts to cover up the violating of department policies by the command staff. It details outright incompetence, but more importantly, it details an alleged conspiracy between the recognized bargaining unit for employees conspiring with the command staff to violate the policies of the Baltimore City Fire Department in promotional opportunities for a member.<sup>4</sup> Defendants knew these conditions persisted in the BCFD, due to the many times Plaintiff filed complaints that detailed the identical behavior demonstrated by other members of the command staff. Plaintiff intends to call this and other members of the Baltimore City Fire Department to provide testimony on this matter.

### **CONCLUSION**

While it is true that Plaintiff does not understand the trivialities of everyday trial litigation, the actions of Defendants should not be considered to be the result of harmless error, or to an issue that can be spun in their favor by withholding relevant evidence for the purpose of obstructing justice and preventing the disclosure of information that would hurt their defense when Defendants are in control of evidence related to it. Defendants assert that the Court permits them to make mistakes, but mistakes should not be permitted in cases where somebody's life hangs in the balance. Plaintiff has requested a hearing, so those trivialities of everyday trial litigation can be made apparent to him, as justice has not been properly served in this matter. As Plaintiff has stated in the complaint and would further state herein, the failure for justice to be served is not the fault of the Court, it is the fault of Defendants and the fraud they committed.

Plaintiff has filed a Public Information Act action in the Baltimore City Circuit Court that seeks the disclosure of the contents of Plaintiff's employment file that would further refute the unsubstantiated

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<sup>4</sup> "Final Thoughts" BCFD Deputy Chief Safety and Risk Management (Exhibit 1)

statements offered by Defendants to this Court. At this time, Defendants have not fully complied with that request. Plaintiff is seeking this information because its contents would paint a drastically different picture than the one Defendants have presented. It is because Defendants control that evidence and have done everything in their power to obstruct justice and block the release of this evidence.

For the reasons presented in the complaint, and in this response to Defendants' motion, Plaintiff requests that the motion be denied and for the Court to permit Plaintiff to discover the evidence that Defendants have in their possession and control, to support his allegations that they commit fraud on this Court.

Respectfully,

Brian Charles Vaeth  
8225 Poplar Mill Road  
Baltimore, Maryland 21236  
(410) 931-4423

Dated: September 29, 2018

**CERTIFICATE OF SERVICE**

I, Brian Charles Vaeth, hereby certify that a copy of the foregoing complaint has been mailed to counsel for the City of Baltimore via USPS first class, postage prepaid, this 1st day of October 2018.

Respectfully,

Brian Charles Vaeth  
8225 Poplar Mill Road  
Baltimore, Maryland 21236  
(410) 931-4423