

**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,

**REPLY TO DEFENDANTS' OPPOSITION FOR LEAVE TO SUPPLEMENT PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS/SUMMARY JUDGMENT**

INTRODUCTION

In reply to Defendants' opposition to Plaintiff's request for leave to supplement his response to their Motion to Dismiss/Summary Judgment, Plaintiff submits that not only does he oppose the latest request of Defendants, he is appalled by it and so should every citizen of Baltimore City, the State of Maryland, and the United States of America be, as well. Evidence shows Defendants' willingness to obstruct the Court's ability to fairly adjudicate claims brought before it adversely affected the proper administration of justice in this case because of their unlawful and unethical conduct, actions of which are abhorrent and repulsive that cannot be tolerated in today's society. Plaintiff intends to demonstrate that the obstruction is more widespread than is being reported or has yet to be discovered by the Court.

Indeed, Gordon B. Johnson, Special Agent in Charge of the Baltimore Division for the FBI, stated that, "Few things threaten our society more than public servants who betray their oath for personal gain." This being absolutely true, as citizens of the United States of America, we all have an obligation to obey the United States Constitution. The citizens of Maryland affirmed this by declaring the federal law to be the "law of the land" upon the ratifying of our state Constitution and we are obligated to obey it, as well. Both documents, which are the very foundation upon which the building of our republic rests, speaks to the

limitation of governmental power. As citizens, we have an absolute obligation and authority to report abuses of power by government officials, especially so when it is perpetrated on the judiciary, thus being detrimental to the administration of justice. It is the judiciary that society looks to in order to ensure that fair and equal protection exists.

The United States of America is still the greatest place on earth wherein people ever assembled together and instituted a government for the good of everyone. Inspired by the Magna Carta and from the commonsense accord that was the Mayflower Compact, to the Convention of the states that ratified the Constitution, the ideals promoted in those documents, and upheld by our courts of law, has been an essential element in ensuring that our greatness continues through resolving disputes between parties equitably. When our judiciary is attacked, and the fundamentals of good order are disregarded in an attempt to manipulate the Court's opinions to serve a purpose that is repulsive to the good order of our society, all who have knowledge of this behavior are compelled to report it. It is a crime not to. Where fairness and equity become victim to official misconduct, as a result of our failure to come forward with complaints, fair and equitable justice simply does not exist, nor can it ever. When this becomes reality, our society based on good order and absolute reverence for the law will certainly be ripe to fail almost immediately thereafter.

In seeing that such egregiously repulsive actions could be undertaken by our government, as Plaintiff has articulated sufficiently in pleadings before this Court to have occurred in this matter, the architects of the Maryland State Constitution enumerated in the Declaration of Rights, "That all government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient." The only lawful manner in which this can be accomplished is by participating in our elective franchise, either by casting a vote or running for elected office and requesting relief of the court. The Declaration of Rights furthers this by granting to the People the sole and exclusive right of regulating the internal government and police thereof. The City of Baltimore should

accept this as an opportunity to prove that they conform to all laws and rules of professional ethics, rather than something they should fight. Instead, they continue to deny Plaintiff's allegations without being required to produce any evidence or even be called to explain their actions. The amount of ink spilled should not be a concern when such similar misconduct, as Plaintiff has alleged prior to it becoming public knowledge, is being reported almost regularly now. In fact, Plaintiff finished a version of this reply and before printing it, he had to add that a report was just published which shows evidence that corruption exists in the Baltimore City Schools System. Plaintiff could virtually supplement his opposition, with leave of the Court of course, every day to add additional evidence of corruption to support his allegations. All Plaintiff would need to do is check the next news cycle. If Defendants' concern is over the quantity of ink "spilled" in litigating this matter, Defendants should recognize the merits of claims that allege misconduct and correct their unlawful conduct. That alone would save a significant number of barrels of it. The doctrine of non-resistance, against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

This action is not an attempt by Plaintiff to relitigate the matters presented to this Court in the previous actions filed. The facts presented in those actions and how they relate to this action should only stand as events that led to Defendants' fraud. To be sure, Plaintiff has not requested any relief for himself. The relief requested in this action, that is independent of the arguments raised in those prior actions, is for this Court to become aware of the misconduct presented in this matter and take whatever action is deemed to be sufficient to ensure and prevent it from occurring again. Clearly, Plaintiff has moved from litigating the matter of his disability retirement benefits and the unlawful employment action presented in it to ensuring that the fraud the City of Baltimore perpetrated against him and this Court, does not happen to another member of the Fire and Police Employees' Retirement System who is similarly situated. Plaintiff respectfully presents the following in support of his request to deny Defendants' request in its entirety.

STATEMENT OF PLAINTIFF'S OPPOSITION

Defendant's begin their opposition by attacking Plaintiff's obvious lack of understanding common legal strategy. It is Plaintiff's belief that introducing evidence to support the allegations made in his complaint was not only proper legal strategy but an absolute requirement. Defendants refer to a letter submitted by Plaintiff that was written by another member of the Baltimore City Fire Department that demonstrates that the very claims that he has made over the past decade are in fact true. The concerns raised in the letter do not occur instantaneously but are the result of an insidious pattern and practice of misconduct that has gone unchecked for years, which is part and parcel of the culture of corruption that has been found to exist by the United States Department of Justice.

Of course, it is Defendants job to provide an adequate defense for their client but in misrepresenting the matter as they do only leads them to commit even more violations of canons of judicial and professional conduct to be perpetrated on this Court and a slippery slope is being created by Defendants, as they continue their efforts cover their misconduct up. In comparison to the allegations made by Plaintiff and the letter written "well after the facts alleged in the Complaint", as Defendants describe it, only demonstrates that the same misconduct has been ongoing for at least the past decade and it is widespread throughout the department. Defendants' actions, in a prior filing in this Court, case number RDB-08-708, led them to file a fabricated affidavit meant solely to deceive the Court. Plaintiff sought to obtain the evidence to overcome the fraud committed by Defendants by filing a Motion to Compel Discovery. The filing of an affidavit to prevent Defendants from having to produce the evidence in their control, which was submitted knowing full well that it was fraudulent by Defendants, not only prevented that discovery from occurring, it had the effect of having the case dismissed. Plaintiff has filed a separate action in the Circuit Court for Baltimore City requesting access to that evidence. This evidence is in the form of his employment and medical files and is in the control of Defendants. The Circuit Court for Baltimore City has scheduled a motion hearing on October 31, 2018 on this Maryland Public Information Act Request filed by Plaintiff to avoid falling into the same trap as demonstrated before. Plaintiff is seeking access to this evidence prior to any attempt by Defendants to prevent it now through the continuation of their fraud.

After Plaintiff filed his opposition to Defendants' Motion to Dismiss/Summary Judgment, the Baltimore City Inspector General released a report that detailed misconduct in the Employees' Retirement System committed by members of the board of trustees. It was Plaintiff's attempt to demonstrate that unethical behavior exists in the process that is providing retirement benefits to City employees, information of which became public knowledge after Plaintiff filed his original opposition to Defendant's pending dispositive motion. Plaintiff met with the Baltimore City Inspector General and turned over what evidence he had to the City prior to the filing of this lawsuit that demonstrated that misconduct exists in the City retirement systems. After waiting a period of time and receiving no response from the Baltimore City Inspector General, Plaintiff sought the requested relief of this Court.

This action represents the most egregious example of fraud that is being perpetrated on the courts wherein the Baltimore City Solicitor is a party to any litigation and it is much bigger than just this case. Of the one hundred plus commissions and boards of the City of Baltimore, the Baltimore City Solicitor is a board member of several of them. Where they are not a sitting member of a board the Baltimore City Solicitor is legal counsel for them. In the present case Defendant, the Board of Trustees for the Fire and Police Employees' Retirement System of Baltimore City, the Baltimore City Solicitor is legal counsel. In the case of the Panel Hearing Examiners that conducts hearings into the determination of eligibility for retirement benefits from the Board of Trustees for the Fire and Police Employees Retirement System, as provided for in Article 22 of the Baltimore City Code, that Panel of Hearing Examiners is provided for by the Baltimore City Board of Estimates. The Baltimore City Solicitor is a sitting member on the Board of Estimates. In effect the Defendants get to pick their own hearing examiners. Counsel for those City boards and commissions exerts a tremendous amount of influence over how business is conducted by the boards and commissions that they advise, due to the legal impact it presents, and they have voting rights on the boards that they are members of. This extensive entanglement has to present a conflict of interest in this process. Simply put, the Baltimore City Solicitor uses their position of influence to obstruct justice and thwart any meaningful investigation requested by Plaintiff, and many other citizen's as well, into the serious

allegations made in complaints. This is done in an effort to conceal their misconduct and deceive not only plaintiffs who seek the redress of similar actions alleged in this Court, but the Court, as well. To this date, Plaintiff has not been provided a legitimate explanation related to why he was subject to being unlawfully terminated, as a result of the line-of-duty injury he suffered that caused his medical disqualification from his duties, a determination of which was made by Defendants, and was prohibited from receiving the benefits enjoyed by other members of the Baltimore City Fire Department who are similarly situated related to the hiring, firing, promotion, opportunity to earn overtime, and the retention of appointed members suffering a line-of-duty injury.

The Baltimore City Solicitor had a responsibility to ensure the actions taken by the boards were ethical. When an ethics concern is raised, the Baltimore City Inspector General, who incidentally works under the Baltimore City Solicitor, is charged with investigating it. It is not hard to see that when it comes to lower level officials, the misconduct is exposed but when it deals with higher level executives in City Hall, it is swept under the rug. Nothing can be so telling as is the lack of prosecution for those officials involving the corruption that is currently being exposed. It is not that those officials are not at fault for violating the law, or rules of ethics, they are simply never pursued as possible suspects. Plaintiff has provided evidence that the Chief of Staff for the Mayor of Baltimore City ordered the Inspector General's Office not to investigate any complaints against executive level officials in City Hall. It is inconceivable that the City of Baltimore can claim to not have any knowledge of this corruption, as it has been reported to Defendants on numerous occasions in the many complaints Plaintiff has filed with the City of Baltimore relating to it. As a result of every single one of those complaints, of which have never been responded to and is required by the Baltimore City Code, they have never been investigated. The problem this creates is the citizens never truly get answers to their concerns because those officials are never required to present any testimony related to it, they are never held accountable, and any meaningful effort to eliminate corruption in our government is squandered.

Evidence shows that any standard for ethical behavior has been abandoned in City Hall and the Baltimore City Solicitor, as legal counsel, plays a significant role in that. The Fire and Police Employees' Retirement System and the Employees' Retirement System are not separate and distinct boards. As a result of a report by the Baltimore Inspector General, a member of the Board of Trustees for the Fire and Police Employees' Retirement System is being moved to the Employees' Retirement System of Baltimore City, thereby casting doubt on the separate and distinct nature of the relationship between those two boards. In fact, the policies of the two boards are virtually identical, as found in Article 22 of the Baltimore City Code and it is the law regarding it. As the Baltimore City Solicitor is legal counsel for both the Fire and Police Employees' Retirement System and the Employees' Retirement System of Baltimore City, it is a fair assessment that the Baltimore City Solicitor advises them similarly and is too entangled with the operations of those boards for them to be considered separate and distinct, as the City Solicitor contends. Thereby those reports are germane to the instant matter and should not be disregarded just because the City Solicitor states that they are not.

Defendants request that the Court deny Plaintiff leave to supplement his response to the Motion to Dismiss/Motion for Summary Judgment because they assert that, "too much ink has been poured over Plaintiff's claims", yet they consistently show they care very little about the blood Plaintiff spilled in the performance of his duties which brought great credit to the City of Baltimore and the Baltimore City Fire Department. This is demonstrated in the number of departmental commendations he received for actions taken under great personal risk to his life. It is Plaintiff's belief that very few members of the department were cited for as many departmental commendations, as Plaintiff was at the time of his service to the citizens of Baltimore City.

ARGUMENT

Fed. R. Civ. P. 15(d) provides that this Court "may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented."

The initial Complaint alleging that Defendants commit fraud on the Court was filed on June 4, 2018.

On September 12, 2018, Defendants filed a Motion to Dismiss or in the Alternative Summary Judgment. Defendants assert that the Court lacks subject-matter jurisdiction under Rule 12(b)(1) and that Plaintiff fails to state a claim under Rule 12(b)(6). That motion is currently pending before this Court.

Plaintiff filed an Opposition to Defendants' Motion to Dismiss or in the Alternative Summary Judgment on September 29, 2018.

Since the filing of his opposition motion, Plaintiff has obtained knowledge of additional information that is relevant to this matter that was not available prior to the filing of that opposition. Plaintiff's motion is an attempt to submit that additional information which came to his knowledge after the filing of that opposition that is relevant to this action and should be made known to this Court. The information supports the assertions Plaintiff made in his complaint that corruption is ongoing today and has not stopped since he began filing complaints regarding it.

Rule 15(d) provides that, "The court may permit supplementation even though the original pleading is defective in stating a claim or defense."

"It is also clear that plaintiffs can cure jurisdictional defects in their original complaints by means of a supplemental pleading." *Harris v. Garner*, 216 F.3d 970, 993 (11th Cir. 2000) (emphasis in original) (discussing *Mathews v. Diaz*, 426 U.S. 67 (1976)); see also *Harris*, 216 F.3d at 997 (referring to "the enormous body of caselaw applying Rule 15(d) to cases in which plaintiffs must supplement their complaints in order to state a case or cure a jurisdictional defect").

Leave to file a supplemental pleading pursuant to Rule 15(d) "should be liberally granted unless good reason exists for denying leave, such as prejudice to the defendants." *Walker v. United Parcel Serv., Inc.*, 240 F.3d 1268, 1278 (10th Cir. 2001) (citation omitted).

"The court should apply the same standard for exercising its discretion under Rule 15(d) as it does for deciding a motion under Rule 15(a)." *Southwest Nurseries, LLC v. Florists Mut. Ins., Inc.*, 266 F. Supp. 2d 1253, 1256 (D. Colo. 2003) (citing *First Savings Bank v. U.S. Bancorp*, 184 F.R.D. 363, 368

(D.Kan.1998) (noting that Rule 15 is intended to facilitate a full adjudication of the merits of the parties' disputes)).

No good reason exists to deny the leave requested by Plaintiff's motion. No prejudice to the Defendants will result from this Court's acceptance of the attached supplemental pleading because the motion was timely filed during the period within which permits pleadings to be amended.

Moreover, there will be no substantive prejudice to Defendants because the supplemental pleading includes no new claims, only new events and other factual material bearing upon jurisdiction and are fully supportive of previously stated claims.

Finally, leave is appropriate here because the purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible. See *Rezaq v. Nalley*, 07-CV-02483-LTB-KLM, 2010 WL 965522 (D. Colo. Mar. 15, 2010) (unpublished) (citing 6A Charles A. Wright, et al., *Federal Practice & Procedure* § 1504 (2d ed. 1990 & Supp.2009)). Efficiency in this litigation will be promoted by this Court's acceptance of the attached supplemental pleading for filing.

In conclusion, Plaintiff respectfully requests the Court to deny Defendants' opposition to Plaintiff's supplement to his response to Defendants Motion to Dismiss/Summary Judgment for the reasons presented herein. The misrepresentations made in this case by Defendants are violations of the Rules of Professional Conduct for lawyers under the American Bar Association and judicial canons regarding candor towards the tribunal and must be investigated further.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Nottingham, Maryland 21236
[REDACTED]

Dated: October 30, 2018

CERTIFICATE OF SERVICE

I, Brian Charles Vaeth, hereby certify that a copy of the foregoing has been mailed to counsel for the City of Baltimore via USPS first class, postage prepaid, this 30th day of October 2018.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236
