

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DEPUTY SHERIFF'S
ASSOCIATION and
MICHAEL SCHUH,

Plaintiffs,

vs.

Case No. 05-C-0804

DAVID A. CLARKE, JR. and
EILEEN RICHARDS,

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants, by their attorneys, Lindner & Marsack, S.C., by James R. Scott, admit, deny, and aver as follows:

1. Answering paragraph 1 of plaintiffs' Complaint, admit that the action is purportedly brought based upon the cited constitutional and statutory authority but deny any implication that said statutes or constitutional provisions were violated by defendants.

2. Answering paragraph 2 of plaintiffs' Complaint, admit that plaintiffs have brought claims pursuant to Chapter 164 of the statutes but deny that said statutes were violated in any respect by defendants and further aver that said statutes contain no enforcement provisions.

3. Answering paragraph 3 of plaintiffs' Complaint, admit that the jurisdiction is purportedly based on the cited statutes but inasmuch as defendants may not confer jurisdiction by admission deny same.

4-7. Answering paragraphs 4-7 of plaintiffs' Complaint, admit the allegations contained in paragraphs 4 through 7 of plaintiffs' Complaint.

8-9. Answering paragraphs 8-9 of plaintiffs' Complaint, deny the allegations contained in paragraphs 8 and 9 of plaintiffs' Complaint.

10. Answering paragraph 10 of plaintiffs' Complaint, admit that on or about Mid-June of 2005 Sheriff Clarke did post the quoted message on a bulletin board in the Court-Bailiff's Roll-Call Room and Jail Roll-Call Room; deny the balance of the allegations in paragraph 10; aver that it was common practice for the Sheriff to post what he viewed as inspirational quotations and sayings on bulletin boards as well as on memoranda issued by The Office of the Sheriff. Further aver that such quotations were intended for the purpose of challenging, inspiring and/or motivating employees of the Department.

11. Answering paragraph 11 of plaintiffs' Complaint, admit that on or about July 22, 2005 Deputy Schuh made the quoted reference in the Union's newsletter; aver that said newsletter is distributed within the ranks of the plaintiff labor organization and further that the express purpose of Schuh's article was to attack defendant Clarke. Deny that Clarke's posted bible quotation was designed to question the courage of deputies or to address any pending public issue. Further aver that Schuh's response likewise was unrelated to any issue of public concern but was rather motivated by an attempt to damage and harm the reputation of defendant Clarke.

12. Answering paragraph 12 of plaintiffs' Complaint, admit that on or about July 23, 2005 Sheriff Clarke did issue directives concerning the practice of some deputies to store materials in their mailboxes which were intended for official business use matters only.

Further aver that the rule in that respect had been violated numerous times and further allege that such directive was unrelated to Schuh's article in the Union newsletter.

13. Answering paragraph 13 of plaintiffs' Complaint, deny the allegations contained in paragraph 13 and aver that the contents of an article contained in the Milwaukee Journal Sentinel will speak for themselves.

14. Answering paragraph 14 of plaintiffs' Complaint, admit the allegations contained in paragraph 14 of plaintiffs' Complaint but deny the implication contained in the use of the word "ostensibly" that the purpose of the assignment was anything other than that for which it was described.

15. Answering paragraph 15 of plaintiffs' Complaint, admit that Deputy Schuh's new assignment did involve "foot patrol" and accordingly that it did not involve use of a squad car; deny that Deputy Schuh had no back-up and aver that shortly thereafter Schuh was assigned a partner and continues to operate with a partner. Deny any implication that Deputy Schuh was placed in any jeopardy and further aver that Schuh was a competent 15 year veteran of the Sheriff's Department and was at all times armed and equipped with all necessary equipment including radios within which to summon help if necessary. Further aver that Schuh was assigned to work between the hours of 8 a.m. and 4 p.m. during the period of Monday through Friday.

16. Answering paragraph 16 of plaintiffs' Complaint, deny the allegations contained in paragraph 16 of plaintiffs' Complaint but aver that the "Community Initiative Program" was part of the Community Liaison Facilitators and that 5 other officers are assigned to such duties.

17. Answering paragraph 17 of plaintiffs' Complaint, deny the allegations contained in paragraph 17 of plaintiffs' Complaint and aver that said directive speaks for itself and dispute the plaintiffs' characterization of said directive.

18. Answering paragraph 18 of plaintiffs' Complaint, deny the allegations contained in paragraph 18 of plaintiffs' Complaint and aver that Sheriff Clarke has the authority to make reassignments on less than 2 weeks notice.

19. Answering paragraph 19 of plaintiffs' Complaint, deny the allegations contained in paragraph 19 of plaintiffs' Complaint and aver that Deputy Schuh did not require additional training to perform the assignment and further aver that Schuh had previously been assigned to the Patrol Division and was fully capable of carrying out the assignment without additional training.

20. Answering paragraph 20 of plaintiffs' Complaint, admit that news of the Schuh re-assignment did gain media notoriety and aver further that said media notoriety was generated by plaintiff labor organization with the intention of undermining Sheriff Clarke and damaging his reputation.

21. Answering paragraph 21 of plaintiffs' Complaint, admit that the subject lawsuit was filed on July 27, 2005 but deny that it was served until a significant period of time following the filing.

22. Answering paragraph 22 of plaintiffs' Complaint, admit that on July 28, 2005 Sheriff Clarke issued the revised Directive No. 13-05 and aver further that said policy merely reaffirmed a policy that had been in place since at least 1984 within the Sheriff's Department which restricted the disclosure of confidential information.

23. Answering paragraph 23 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-22 of plaintiffs' Complaint.

24. Answering paragraph 24 of plaintiffs' Complaint, defendants specifically deny each and every allegation contained therein. Defendants further aver that defendant Schuh's speech was not protected and did not relate to a matter of public concern but rather was a personal attack on the integrity of defendant Clarke.

25-30. Answering paragraphs 25-30 of plaintiffs' Complaint, defendants deny the allegations contained therein.

31. Answering paragraph 31 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-30 of the plaintiffs' Complaint.

32. Answering paragraph 32 of plaintiffs' Complaint, deny the allegations contained therein.

33. Answering paragraph 33 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-32 of the plaintiffs' Complaint.

34-40. Answering paragraphs 34-40 of plaintiffs' Complaint, defendants deny the allegations contain therein.

41. Answering paragraph 41 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-40 of the plaintiffs' Complaint.

42. Answering paragraph 42 of plaintiffs' Complaint, defendants deny the allegations contained in paragraph 42 of plaintiffs' Complaint.

43. Answering paragraph 43 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1- 42 of the plaintiffs' Complaint.

44-49. Answering paragraphs 44-49 of plaintiffs' Complaint, defendants deny the allegations contained in paragraphs 44-49 of plaintiffs' Complaint.

50. Answering paragraph 50 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-49 of the plaintiffs' Complaint.

51-57. Answering paragraphs 51-57 of plaintiffs' Complaint, defendants deny the allegations contained in paragraphs 51-57 of plaintiffs' Complaint.

58. Answering paragraph 58 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1- 57 of the plaintiffs' Complaint.

59. Answering paragraph 59 of plaintiffs' Complaint, deny the allegations contained in paragraph 59 of plaintiffs' Complaint.

60. Answering paragraph 60 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-59 of the plaintiffs' Complaint.

61-67. Answering paragraphs 61-67 of plaintiffs' Complaint, deny the allegations contained in paragraphs 61-67 of plaintiffs' Complaint.

68. Answering paragraph 68 of plaintiffs' Complaint, defendants incorporate by reference their previous admissions, denials and averments to paragraphs 1-67 of the plaintiffs' Complaint.

69. Answering paragraph 69 of plaintiffs' Complaint, deny the allegations contained in paragraph 69 of plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

1. Defendants allege that the Complaint fails to state a cause of action for which relief can be granted.

2. Defendants allege that the defendants in their individual capacities are qualifiedly immune from suit under 42 U.S.C. §1983.

3. Defendants allege that defendants in their official capacity are immune from an award of punitive damages under 42 U.S.C. §1983, and Wis. Stat., §893.80(3); further, defendants allege that plaintiffs have failed to state a claim upon which punitive damages may be awarded.

4. Defendants allege that plaintiffs' claims for relief based on 42 U.S.C. §1983 fail to state a claim for relief against defendants in their official capacity insofar as the actions taken toward plaintiffs were not taken pursuant to a municipal policy and custom, nor by a final policy maker.

5. Defendants allege that plaintiffs' claim for declaratory relief fails to state any cognizable claim insofar as there is no private right of action for declaratory relief under any of the statutes, codes, or constitutions cited in the Complaint.

6. Defendants allege that any recovery of damages by plaintiffs under their state law claim is limited to \$50,000 pursuant to the provisions of Wis. Stat., §893.80(3).

7. That as to plaintiffs' state law claim, they failed to comply with conditions precedent to suit as set forth in §893.80(4) Stats.

8. That the plaintiff association lacks standing to pursue the claims set forth in the Complaint.

9. To the extent plaintiffs' claims are based upon Chapter 164 Stats., said statutory provisions provide no remedy nor do they support a cause of action.

10. That all actions taken by defendant Clarke were taken pursuant to his inherent constitutional powers, more specifically enumerated in *Manitowoc County vs. Local 986 B*, 168 Wis. 2d 819, 826 (1992).

11. That defendants are immune from suit for all actions taken within the scope of their employment.

12. That defendants in their individual capacities are qualifiedly immune from suit under 42 U.S.C. §1983.

WHEREFORE, Defendants request that judgment be entered in their favor together with an award of appropriate relief.

Dated at Milwaukee, Wisconsin this 22nd day of August, 2005.

s/James R. Scott
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