

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MILWAUKEE DEPUTY SHERIFF'S

ASSOCIATION, by itself and on behalf of its members
821 West State Street
Milwaukee, Wisconsin 53233

and

MICHAEL SCHUH

821 West State Street
Milwaukee, Wisconsin 53233

Case No.: _____

Plaintiff,

v.

DAVID A. CLARKE, JR.,

821 West State Street
Milwaukee, Wisconsin 53233

and

EILEEN RICHARDS

821 West State Street
Milwaukee, Wisconsin 53233

Defendants.

COMPLAINT

The above-named plaintiffs, by their attorneys, Jonathan Cermele and Eggert & Cermele, S.C., as and for claims against the above-named defendants, allege and show to the court as follows:

NATURE OF THE ACTION

1. This action is brought to secure the plaintiffs' rights to freely exercise speech

and association, secured by the First Amendment to the United States Constitution, without incurring retaliation in violation of 42 U.S.C. §1983, as well as plaintiff's right to speech and association, secured by Article I, Section 3 and Article I, Section 4 of the Wisconsin Constitution.

2. This action is also brought to secure the plaintiffs' rights under Chapter 164 of the Wisconsin Statutes, the "Law Enforcement Officers' Bill of Rights," to freely engage in political activity without the fear or implementation of adverse employment consequences stemming from such exercise.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§2201 and 1343, due to violations of plaintiffs' First Amendment rights, secured to the plaintiffs under the Fourteenth Amendment to the United States Constitution. Supplemental jurisdiction is invoked pursuant to 28 U.S.C. §1367, due to violations of Article I, Section 3 and Article I, Section 4 of the Wisconsin Constitution, as well as violations of Chapter 164, Wisconsin Statutes (i.e., Law Enforcement Officers' Bill of Rights.)

PARTIES

4. Plaintiff Milwaukee Deputy Sheriff's Association ("MDSA") is a labor organization with offices located at 821 West State Street, Milwaukee, WI 53233, and has been certified as the exclusive collective bargaining representative of all law enforcement employees of the Milwaukee County Sheriffs' Department ("Department") holding the rank

of Deputy Sheriff (“Deputy”) and Deputy Sheriff Sergeant (“Sergeant”), all of whom are municipal employees, and is a labor organization within the meaning of §111.70(h), Wis. Stats.

5. Plaintiff Michael Schuh (“Deputy Schuh”) is an adult citizen of the State of Wisconsin, residing in the County of Milwaukee, State of Wisconsin, whose working address is 821 West State Street, Milwaukee, Wisconsin 53233, and has, at all times pertinent hereto, been employed as a Deputy with the Department, and an MDSA member

6. Defendant, David A. Clarke, Jr. (“Sheriff Clarke”) was, at all times pertinent hereto, the Milwaukee County Sheriff and chief administrative officer of the Milwaukee County Sheriff’s Department, with offices located at 821 West State Street, Milwaukee, Wisconsin 53233. As Sheriff and head of the Department, Sheriff Clarke had ultimate control over assigning employees within the Department, including, but not limited to, Deputy Schuh. Sheriff Clarke did, at all times pertinent hereto, carry out the duties of the Milwaukee County Sheriff and acted under color of law.

7. Defendant Eileen Richards (“Captain Richards”) was, at all times pertinent hereto, a Milwaukee County employee working for the Department, holding the rank of Captain, and a resident of Milwaukee County. As a Captain, she was a member of the Sheriff’s Command Staff and had, as part of her duties and responsibilities, the dissemination and enforcement of the Sheriff’s directives and orders, including those at issue in this case. As such, Captain Richards did, at all times pertinent hereto, act as the agent of Sheriff Clarke.

FACTS COMMON TO ALL CLAIMS

8. On or about June 1, 2005, public controversy existed as to Sheriff Clarke's use of County tax dollars to assign deputies and sergeants to patrol his personal residence while he was out of town, and to escort him to and from the airport.

9. In response to questioning by a WISN Channel 12 reporter as to the propriety of the Sheriff's use of County tax dollars for those purposes, the MDSA's President, Deputy Roy Felber ("Deputy Felber"), was quoted as saying "[t]o have us go over there and watch his house and not have it afforded to every other taxpayer out there I think is wrong."

10. In Mid-June, 2005, and in response to Deputy Felber's comments and the public scrutiny as to Sheriff Clarke's assignment of Deputies for his personal benefit, Sheriff Clarke directed members of his Command Staff to post a message to all members of the Department, by placing the exact same message on the pen board located in the Court-Bailiff's Roll-Call Room, the Jail Roll-Call Room and the Patrol Roll-Call Room, questioning the courage of the Department's Deputies and strongly suggesting that if the Deputies were not going to follow his plan/directives, they could resign or leave the Department. The message was:

"If you are afraid or have lost your courage then
you should go home so you don't ruin the moral
of the others." Deuteronomy.

11. On or about July 22, 2005, an article written by Deputy Schuh was published in the MDSA's newspaper. That article was in response to Sheriff's Clarke's posting which had questioned the courage of Deputies, and addressed the propriety of the Sheriff's assignment of deputies – at county expense – to patrol the Sheriff's residence and provide

him with an escort. Deputy Schuh's article stated:

Union Member's Response

If you are afraid or you have lost your courage and need two deputies and a sergeant to escort you in and out of the airport and patrol deputies to drive by your house when you're out of town you should resign and go home! Then you would lift the moral of this whole department (a.k.a office).

12. On July 23, 2005, after reading Deputy Schuh's article in the MDSA's newspaper and finding the MDSA's newspaper in the mailboxes of numerous Deputies, Sheriff Clarke directed each and every Deputy whose mailbox contained a copy of the MDSA newspaper to write a "Matter Of" Report explaining the reason for the presence of that newspaper in their mailbox.

13. On July 24, 2005, the Milwaukee Journal-Sentinel published an article identifying the "city's deadliest area;" a single square mile, positioned between West North Avenue and West Burleigh Street, and North 10th Street and North 24th Street, in the City of Milwaukee. The Journal-Sentinel identified that single square mile as having been the location of 13 shootings thus far in 2005 – more than any other square mile in the City of Milwaukee in 2005 – and described that square mile as a "high killing area."

14. On or about July 25, 2005 – the Monday immediately following publication of the MDSA newspaper containing Deputy Schuh's article – Sheriff Clarke re-assigned Deputy Schuh from his former assignment as a bailiff in the Milwaukee County Courthouse, to "Administration," ostensibly to start "the new Community Initiative Program" for the

Department.

15. Deputy Schuh's new assignment was "foot patrol" – without a partner, squad car or any back-up – with a patrol area of "N. 10th Street to N. 27th Street" and "W. North Avenue to W. Burleigh Street;" the exact same square mile that had been identified by the Milwaukee Journal-Sentinel the previous day as the "city's deadliest area."

16. Upon information and belief, Sheriff Clarke's "Community Initiative Program" was staffed by three other deputies, all of whom were volunteers and none of whom were assigned to foot patrol in any area of the City of Milwaukee, let alone the "city's deadliest area."

17. Captain Richards furthered Sheriff Clarke's directive to re-assign Deputy Schuh by authoring an Inter-Office Communication to Deputy Schuh informing him : a) of his new assignment; b) of the geographical area of his responsibility; c) that he was to report to and return from his patrol area via "county transit" (i.e, bus), and; d) that the scope of his duties, included, but was not limited to, the removal of all abandoned automobiles from the streets, alleys and yards, and to convince the residents of his patrol areas that "we're the good guys/we're on their side and can't succeed without their participation."

18. Sheriff Clarke's re-assignment of Deputy Schuh was effective immediately, uniquely timed, and at odds with the policy adopted by Milwaukee County through collective bargaining, that an MDSA member who was to be assigned to a different division or bureau was to be given two (2) weeks notice prior to the effective date of such transfer.

19. Sheriff Clarke's re-assignment of Deputy Schuh was at odds with the Department's own Policies and Procedures which acknowledged the Department's obligation to properly train Deputies in relation to their assignment, prior to effectuating

such assignment.

FIRST CAUSE OF ACTION

42 U.S.C. §1983

Violation of First Amendment Right of Free Speech Under Color of Law

20. The plaintiffs re-allege and re-assert Paragraphs 1 through 19 above, as if fully set forth herein.

21. Sheriff Clarke retaliated against Deputy Schuh for engaging in free speech pertaining to the use of County funds to assign deputies to patrol his own personal residence and escort him to and from the Airport. Deputy Schuh's speech was protected by the First Amendment of the United States Constitution, and was a matter of public concern – it related to the budget of Milwaukee County, the County's use of tax-payer generated funds, and the appearance of impropriety resulting from Sheriff Clarke's assignment of personnel and apportionment of tax dollars for his own personal benefit. The debate surrounding Sheriff Clarke's use of tax dollars for his own personal benefit was a matter of public concern before Deputy Schuh's comments, and would have remained a matter of public concern absent his comments.

22. Upon information and belief, Deputy Schuh's exercise of protected speech was a substantial factor in Sheriff Clarke's decision to retaliate against him by means of re-assigning him from the assignment of bailiff in the Milwaukee County Courthouse to that of a foot-patrol officer in the City's "deadliest area."

23. Sheriff Clarke's interest as a government employer in providing services did

not sufficiently outweigh Deputy Schuh's interest as a MDSA member to comment on behalf of the MDSA on a matter of public concern.

24. At all times pertinent hereto, Sheriff Clarke was acting under color of law, but was not protected by qualified immunity because, at the time of such actions, it was well-established that retaliation for the exercise of protected speech on a matter of public concern was violative of the First Amendment. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

25. The retaliatory actions of Sheriff Clarke were based upon Deputy Schuh's exercise of his free speech rights guaranteed by the First Amendment of the United States Constitution and, therefore, violated 42 U.S.C. §1983.

26. As a direct and proximate cause of Sheriff Clarke's retaliatory actions, Deputy Schuh has suffered damage to his reputation, real and probable injury to his person, extreme mental anguish, physical suffering, attorneys fees and other expenses.

27. Sheriff Clarke's actions were made with reckless and callous indifference to the federally protected rights of others, such as Deputy Schuh, thus warranting punitive damages.

SECOND CAUSE OF ACTION
Article I, Section 3 of the Wisconsin Constitution
Violation of Right of Free Speech Under Color of Law

28. The plaintiffs re-allege and re-assert Paragraphs 1 through 27 above, as if fully set forth herein.

29. For the reasons set forth in Paragraphs 1 through 27 above, Sheriff Clarke's

retaliatory re-assignment also violated Deputy Schuh's right of free speech under Article I, Section 3 of the Wisconsin Constitution.

THIRD CAUSE OF ACTION

42 U.S.C. §1983

Violation of First Amendment Right of Free Association Under Color of Law

30. The Plaintiffs re-allege and re-assert Paragraphs 1 through 29 above, as if fully set forth herein.

31. Sheriff Clarke retaliated against Deputy Schuh for engaging in free association with the MDSA. Deputy Schuh's association was protected by the First Amendment of the United States Constitution and was a matter of public concern, as Deputy Schuh authored the Article published in the MDSA newspaper in his capacity as an MDSA member, and on behalf of the MDSA, for the purpose of collectively expressing the MDSA's concerns about the already public debate over the budget of Milwaukee County, as well as Sheriff Clarke's use of taxpayer generated funds for his own personal benefit.

32. Upon information and belief, Deputy Schuh's exercise of his protected association with the MDSA was a substantial factor in Sheriff Clarke's decision to retaliate against him by means of re-assigning him from the assignment of bailiff in the Milwaukee County Courthouse to the "city's deadliest area."

33. Sheriff Clarke's interest as a government employer in providing services did not sufficiently outweigh Deputy Schuh's right to associate freely with the MDSA.

34. At all times pertinent hereto, Sheriff Clarke was acting under color of law, but

was not protected by qualified immunity because, at the time of such actions, it was well-established that retaliation for the exercise of protected association on a matter of public concern violated the First Amendment. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

35. The retaliatory actions of Sheriff Clarke, in re-assigning Deputy Schuh based upon the exercise of his free association rights guaranteed by the First Amendment of the United States Constitution, violated 42 U.S.C. §1983.

36. As a direct and proximate cause of Sheriff Clarke's retaliatory actions, Deputy Schuh has suffered damage to his reputation, real and probable injury to his person, extreme mental anguish, physical suffering, attorneys fees and other expenses.

37. Sheriff Clarke acted with reckless and callous indifference to the federally protected rights of others, including Deputy Schuh, thus warranting punitive damages.

FOURTH CAUSE OF ACTION
Article I, Section 4 of the Wisconsin Constitution
Violation of Right of Free Association Under Color of Law

38. The Plaintiffs re-allege and re-assert Paragraphs 1 through 37 above, as if fully set forth herein.

39. For the reasons set forth in Paragraphs 1 through 37 above, Sheriff Clarke's retaliatory re-assignment also violated Deputy Schuh's right to free association under Article I, Section 4 of the Wisconsin Constitution.

FIFTH CAUSE OF ACTION

**Section 164.015 and Section 164.03, Wis. Stats
Violation of Wisconsin's Law Enforcement Officers' Bill of Rights**

40. The plaintiffs re-allege and re-assert Paragraphs 1 through 38 above, as if fully set forth herein.

41. Section 164.015, Wis. Stats., unequivocally provides that:

No law enforcement officer may be prohibited from engaging in political activity when not on duty or not otherwise acting in his official capacity, or be denied the right to refrain from engaging in political activity.

42. Section 164.03, Wis. Stats., unequivocally prohibits recrimination against a law enforcement officer as a result of the free exercise of the rights provided under chapter 164:

No law enforcement officer may be discharged, disciplined, demoted or denied promotion, transfer or reassignment, or otherwise discriminated against in regard to employment, or threatened with any such treatment, by reason of the exercise of the rights under this chapter.

43. By speaking out publicly on behalf of the MDSA – and in doing so furthering the MDSA's position as to Sheriff Clarke's inappropriate use of County tax dollars for his own personal gain – Deputy Schuh engaged in political activity and affiliation with the MDSA, as recognized under Section 164.015, Wis. Stats.

44. By re-assigning Deputy Schuh to the "city's deadliest area," Sheriff Clarke discriminated against Deputy Schuh as a direct and proximate consequence of his having

exercised his right to engage in political activity and affiliation with the MDSA, as protected under Section 164.015 and Section 164.03, Wis. Stats.

45. By re-assigning Deputy Schuh to the “city’s deadliest area” as a result of his having exercised his rights under Section 164.015, Wis. Stats., Deputy Schuh has suffered a tangible loss of reputation, as recognized under *Gustafson v. Jones*, 290 F.3d 895 (7th Cir. 2002).

46. Sheriff Clarke’s callous disregard of Deputy Schuh’s rights under Section 164.015, Wis. Stats., evidences the Department’s continued willingness to effectuate adverse employment consequences as the result of the free exercise of rights afforded under Chapter 164, Wis. Stats.

SIXTH CAUSE OF ACTION
42 U.S.C. §1983

Violation of First Amendment Right of Free Association Under Color of Law

47. The Plaintiffs re-allege and re-assert Paragraphs 1 through 46 above, as if fully set forth herein.

48. By engaging in retaliatory employment actions against Deputy Schuh as a result of his having exercised his protected First Amendment right of speech and association, as well as his protected rights under Chapter 164, Wis. Stats., (i.e., Law Enforcement Officers’ Bill of Rights), Sheriff Clarke endeavored to prevent other MDSA members from freely associating with the MDSA, by sending a clear message that if any MDSA member were to publicly oppose him by voicing the MDSA’s concerns as to his policies and/or directives, they too would be subject to the same adverse employment

actions which befell Deputy Schuh.

49. Upon information and belief, the MDSA's collective expression and association – as contained in Deputy Schuh's article published in the MDSA's newspaper – was a substantial factor in Sheriff Clarke's decision to re-assign Deputy Schuh to the "city's deadliest area," without proper notice and without proper training.

50. Sheriff Clarke's interest as a government employer in providing services, did not sufficiently outweigh the MDSA's collective right to freely associate and voice dissatisfaction with Sheriff Clarke's policies that had become a matter of public concern.

51. At all times pertinent hereto, Sheriff Clarke was acting under color of law, but was not protected by qualified immunity because, at the time of such actions, it was well-established that retaliation for the exercise of protected association on a matter of public concern violated the First Amendment. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

52. The retaliatory actions of Sheriff Clarke in re-assigning Deputy Schuh – so as to send a message to other MDSA members not to publicly oppose his policies – were based upon the free association rights guaranteed by the First Amendment of the United States Constitution, and violated 42 U.S.C. §1983.

53. As a direct and proximate cause of Sheriff Clarke's retaliatory actions, the MDSA has suffered a tangible loss to its ability to organize, affiliate, associate and collectively express the opinion of the MDSA membership, as well as damage to its reputation, attorneys fees and other expenses.

54. Sheriff Clarke acted with reckless and callous indifference to the federally protected rights of others, including all MDSA members, thus warranting punitive damages.

DEMAND FOR RELIEF

WHEREFORE, the plaintiff prays that this Court:

1. Declare and enter a judgment to the effect that defendants' retaliatory re-assignment of Deputy Schuh operated to:
 - A. Deny Deputy Schuh his rights of free speech and free association, in violation of the First Amendment of the United States Constitution;
 - B. Deny Deputy Schuh his rights of free speech and free association in violation of Article I, Section 3 and Section 4 of the Wisconsin Constitution;
 - C. Deny Deputy Schuh his right to engage in political activity without adverse employment action, or the threat thereof, as allowed under Chapter 164, Wis., Stats.;
 - D. Deny the MDSA its collective right to free association with and among its membership, in violation of the First Amendment of the United States Constitution;
2. Order defendants to return Deputy Schuh to his former assignment as bailiff in the Milwaukee County Courthouse;
3. Allow a trial as to damages;
4. Award compensatory damages in an amount to be determined at trial;
5. Award punitive damages in an amount to be determined at trial;
6. Award the plaintiffs their costs, disbursements and attorneys fees in this action, pursuant to 42 U.S.C §1988; and
7. Award such other relief as may be deemed just, equitable and appropriate.

Dated at Milwaukee, Wisconsin, this 27th day of July, 2005.

EGGERT & CERMELE, S.C.
Attorneys for Plaintiffs, Milwaukee Deputy Sheriff's
Association and Michael Schuh

/s/ _____

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Plaintiffs hereby demand a trial by jury or not less than 12 persons.