

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

SANJAY K. BHATNAGAR,

Plaintiff,

V.

MATTHEW MEYER, individually and in his official capacity as the New Castle County Executive; WILSON B. DAVIS, individually and in his official capacity as the New Castle County Attorney; and NEW CASTLE COUNTY, a municipal corporation,

Defendants.

C.A.No. 21-_____

Jury Trial Demanded

COMPLAINT

1. As the U.S. Supreme Court has repeatedly held at least since Carey v. Piphus, 435 U.S. 247, 266 (1978), the Fourteenth Amendment right to “procedural due process” is one of the few “absolute” constitutional rights and protections enjoyed by American citizens. If certain constitutionally mandated procedures are not followed, a defendant is absolutely liable under 42 U.S.C. § 1983 for nominal, compensatory and punitive damages. There is no balancing of interests, tailoring of remedies or other analysis of the facts and circumstances. The Supreme Court has commanded that any defendant who denies this “absolute” right simply loses because of the “importance to organized society” of the right to procedural due process. Violation of this “absolute” constitutional right similarly mandates liability in this case where a public employee with a protected property interest in his employment was terminated without pre or post termination procedural due process. Once judgment on the pleadings is entered herein under Fed.R.Civ.P. 12(c), a trial on damages is all that will be necessary.

2. This is a civil action for such damages brought by an experienced Delaware attorney who, in the words of defendant and current New Castle County (“NCC”) Executive, Matthew Meyer, was the “best of the best” in the NCC Law Department. Pursuant to laws duly enacted by NCC Council, and personnel policies created by the Human Resources Department at the direction of the County Executive, NCC employees may only be fired from their job for certain specified causes and only when certain procedures are followed. But Plaintiff was deprived of this long established property interest in his employment and summarily fired by defendants in violation of these same NCC laws, policies and procedures. He was given none of the long established and constitutionally mandated procedural protections – neither a pre-termination nor a post-termination hearing – as required by the Due Process Clause of the Fourteenth Amendment. Accordingly, our own District’s precedents have long mandated constitutional liability for such procedural due process violations. See, e.g. Hawkins v. Bd. of Public Educ., 468 F.Supp 201, 208-14 (D.Del. 1973); Pitts v. Key, 511 F.Supp. 497, 501-05 (D.Del. 1981). The result is the same under Third Circuit precedent. See, e.g. Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1078 (3d Cir. 1990) (“Bradley received no hearing, either before or after his suspension, and hence ... he was deprived of due process.”).

3. Plaintiff also brings claims for racial, religious, national origin and sex discrimination under the Equal Protection Clause of the Fourteenth Amendment because the circumstances of his abrupt firing additionally were tainted by discriminatory animus which, *inter alia*, also violated these same NCC laws, policies and procedures.

I. JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, and the Fourteenth Amendment to the U.S. Constitution.

The cause of action arises under 42 U.S.C. § 1983. The claims arose in this judicial district.

II. THE PARTIES

A. Plaintiff.

5. Plaintiff Sanjay K. Bhatnagar is a 44 year old male, 14 year veteran Delaware attorney, a naturalized citizen of the United States and a resident of New Castle County, Delaware.

6. Plaintiff's parents are natives of the Republic of India. They eventually immigrated to England and Plaintiff was born in London in 1976. In 1981, Plaintiff's family immigrated to the U.S. and settled in Downingtown, Pennsylvania.

7. Plaintiff became a naturalized U.S. citizen on March 25, 1992.

8. Plaintiff's national origin is that of the Indian sub-continent and the Republic of India. He speaks both English and Hindi, both official languages of India. In 2004, in homage to his Indian heritage, Plaintiff obtained from the Republic of India a Person of Indian Origin (PIO) Card, which is issued to certain non-Indian citizens whose parents were born in India. PIO Cardholders are entitled to certain rights of Indian citizens, including, visa-less travel to India, admission to various educational institutions, and the right to acquire, hold, and transfer real property.

9. Plaintiff is of the South Asian race and a member of the Hindu religion.

10. As part of his upbringing and heritage, Plaintiff has been, and continues to be, resolutely committed to diversity, inclusion and service to others.

B. Defendants.

11. Defendant Matthew Meyer ("Meyer") is presently the NCC Executive and was first elected to that position in November 2016. He is an American born White male adherent of the Jewish religion. He is sued in both his individual and official capacities.

12. Defendant Wilson B. Davis (“Davis”) is presently the NCC County Attorney and was appointed to that position by defendant Meyer in June 2019, less than 13 months before he summarily fired Plaintiff. He is an American born White male adherent of the Christian religion. He is sued in both his individual and official capacities.

13. Defendant New Castle County (“NCC”) is a municipal corporation organized under the laws of the State of Delaware, which operates the Law Department as one of its municipal departments.

III. FACTS GIVING RISE TO THE ACTION

A. The Protected Property Interest in NCC Employment.

1. The Baseline Delaware Statutes.

14. 9 Del.C. § 1394 states that “Assistant County Attorneys shall serve at the pleasure of the County Attorney.” It continues, stating that “First Assistant County Attorneys shall be selected according to provisions of the Merit System of the [NCC] Code.” The Merit System for NCC is found in Article 3, Chapter 26 of the NCC Code.

15. So as a matter of state law, First Assistant County Attorneys (“FACA”) receive the Merit System protections of Article 3, Chapter 26 of the NCC Code, whereas Assistant County Attorneys (“ACA”) do not receive such protections, unless otherwise specified in Article 3. ACAs do, however, receive protections under other NCC laws, policies, procedures, customs and practices.

16. Defendant Davis has admitted that ACAs receive employment protections under other NCC laws, policies, procedures, customs and practices.

17. As explained below, Plaintiff was an ACA, not a FACA.

18. 9 Del.C. § 1381 addresses the functions of the NCC Office of Human Resources.

Among other things, it explains that the role of the Office is to: “[r]egulate employment according to competency and fitness, to be ascertained when possible by competitive examination and, when not, by due consideration to qualifications and record performance.” 9 Del.C. § 1381(3) (emphasis added).

19. 9 Del.C. § 1383 requires County Council to establish a Human Resources Advisory Board, which, *inter alia*, is to consist of persons with “knowledge of human resources practices and procedures and knowledge and support of merit principles as applied to public employment.” 9 Del.C. § 1383(b)(2).

2. County Council Created Additional Protections for ACAs in Chapter 26 of the NCC Code.

20. Chapter 26 of the NCC Code is entitled “Human Resources.” It is then broken down into three Articles. Article 1 - “In General,” Article 3 - “Merit System” and Article 4 - “Pensions.” There is no Article 2.

21. Although not required to do so by state law, County Council however has chosen to exercise its legislative prerogatives and give all employees of NCC certain legal protections and protected property interests surrounding their employment with NCC, not just those employees protected by the formal Merit System of Article 3. Article 1, the very first section of Chapter 26 of the County Code, explains ‘why’ County Council chose to do so.

22. Article 1, § 26.01.001 explains that the purpose of Chapter 26 is to create a system of human resources administration which is based upon “merit principles and methods” in all aspects of employee relations. This is “designed to attract competent, qualified individuals for employment in County government by way of providing job security and benefits comparable to private industry and other governmental jurisdictions.” The foundational “merit principles” upon

which this is based include: providing job security based upon performance, correcting inadequate performance and ensuring fair treatment of all employees without regard to any protected characteristics, protected rights “or other nonmerit factors.”

23. In other words, NCC promises job security and fair treatment to all employees so that it can, *inter alia*, attract competent, qualified individuals for employment in a highly competitive, modern marketplace. NCC promises that employment would never be terminated based on various protected characteristics, such as religion, “or other nonmerit factors.” Progressive discipline and warnings were to be the norm.

24. Stated another way, even as to NCC employees who are not covered by certain Merit System protections, such employees are still statutorily protected against adverse employment action being taken against them because of protected characteristics “or other non-merit factors.”

25. While the entirety of the Merit System of Article 3 applies only to a certain subset of NCC employees, some of its provisions also apply to all NCC employees when specifically stated. Additionally, certain merit principles of Article 1 also apply to all NCC employees.

**3. NCC Code - § 26.01.021 -
the Equal Employment Opportunity Statute.**

26. Chapter 26, Article 1, § 26.01.021 is entitled “Workplace diversity and equal employment opportunity.” Subsection A. states:

It shall be the policy of the County that all personnel activities will be conducted in a manner as to ensure equal opportunity for all Such activities will be based solely on individual merit and fitness of ... employees related to the specific jobs and without regard to race, color, religion, creed, gender, ... national origin, ... or other nonmerit factors. (Emphasis added).

27. This establishes that “all personnel activities” of NCC, such as those affecting Plaintiff, “will be based solely on individual merit and fitness” of the employees, “and without

regard to” protected characteristics “or other nonmerit factors.”

28. Subsection E of the same Article 1, § 26.01.021 states:

All sections of this Chapter [26] notwithstanding, appeal rights shall be granted to any individual who believes he or she has been discriminated against because of race, color, religion, gender, ... national origin, ... or other nonmerit factors and has been denied equal opportunity in ... discipline ... because of the same.
(Emphasis added).

It continues and explains that the Human Resources Advisory Board, found at § 26.01.010, is empowered to hear all appeals.

29. Subsection E, thus establishes that regardless of all other sections of Chapter 26 of the NCC Code, “any individual” who believes he has been discriminated against in “discipline” because of a protected characteristic “or other nonmerit factors” has the right to appeal to the Human Resources Advisory Board.

30. In addition to the usual categories of discrimination – such as race or religion – it also defines the use of “nonmerit factors” as constituting discrimination.

4. NCC Code - § 26.01.010 - Appeals to the Human Resources Advisory Board.

31. As set forth above, state law requires County Council to establish a Human Resources Advisory Board. Article 1, § 26.01.010 is entitled “Appeals by Employees to the Human Resources Advisory Board.” It creates three categories of employees who can appeal matters to it:

- (1) Merit System employees under Article 3 of Chapter 26;
- (2) Employees protected by the NCC Discipline Policy (discussed below), such as Plaintiff and ACAs; and
- (3) Employees protected by the Equal Employment Opportunity statute, § 26.01.021 (discussed above), such as Plaintiff and ACAs.

32. As already noted above, Plaintiff is not subject to certain protections of the NCC Merit System found in Article 3 of Chapter 26.

33. However, Plaintiff was protected both by the NCC Discipline Policy and the Equal Employment Opportunity statute, which created protected property interests in his employment. As a result, he also had appeal rights to the Human Resources Advisory Board.

34. Defendant Davis has admitted that Plaintiff is covered by the NCC Discipline Policy.

5. NCC Diversity Policy.

35. In 2017, NCC published a “Workforce Diversity Report.” In that report, under the section entitled “Executive and Legislative Commitment,” it states that “[NCC] is fully committed to diversity in the workforce in all aspects of employment and is guided by its policy of equal opportunities as stated in the [NCC] Code, Section 26.01.021.” (Report at p. 8). As noted above, Section 26.01.021 defines diversity and equal opportunity to include taking any and all employment actions “solely” based upon individual merit and fitness of the employee and “without regard” to a protected characteristic “or other nonmerit factors.”

36. The general NCC “Diversity Policy Statement,” last revised in June 2018, continues and also defines diversity as ensuring that “individuals will be selected for opportunities without regard to ... race, color, national origin, gender, religion, creed, ... or other non-merit factors” in all employment related personnel actions affecting all terms and conditions of employment.

37. The Diversity Policy Statement continues and explains that the NCC Human Resources will issue procedures, directives or instructions to establish and monitor compliance.

6. NCC Personnel Policies & Procedures Manual - Introduction.

38. NCC also has a binding employment policy manual called the NCC Personnel Policies & Procedures Manual (the “Manual”) which includes, among many others, a progressive

discipline policy at Personnel Policy number 1.00. The introduction to the Manual states that it has been created –

in order to provide fair, consistent, and non-discriminatory human resources administration throughout [NCC] in accordance with existing laws and the applicable collective bargaining agreements. These policies will constitute the authority for human resources related decisions with respect to the subject matter covered by their respective policies.... (Emphasis added).

39. The Manual applies to all NCC employees, including Plaintiff.

40. Defendant Davis has admitted that the Manual applies to Plaintiff.

41. County Solicitor Karen Sullivan, the second in command of the NCC Office of Law under defendant Davis, has admitted that the Manual applies to Plaintiff.

42. As discussed in greater detail below, in September 2020, defendants produced to Plaintiff's counsel Plaintiff's personnel file as required under the Delaware Right to Inspect Personnel Files Act, 19 Del.C. § 730, et seq.

43. On June 26, 2017, at the start of his employment with NCC, Plaintiff was required to sign certain official NCC documents in which he was required to acknowledge that he was covered by various NCC policies and procedures. These fully executed documents then were placed in his personnel file, which was subsequently produced to Plaintiff in September 2020 by counsel for NCC at McCarter English.

44. Regarding the Manual which applied to him, one such document that NCC required Plaintiff to execute before he began his employment is titled "Personnel Policies & Procedures Manual Summary Sheet Sign Off." It states –

I, Sanjay Bhatnagar, have received the [NCC] Personnel Policies & Procedures Manual Summary Sheet. I am aware that it is my responsibility to review and become familiar with all NCC policies and as updates and new policies become available to update my

own resource when applicable.

Note to Employee: This form should be signed, witnessed, and will be retained for placement in your personnel file. Please remember to update your personnel policy binder as necessary

45. In another such document required to be executed by all NCC employees, NCC requires a specific acknowledgment that the employee is subject to “Personnel Policy 5.03, Drug and Alcohol Testing for New Castle County Employees.”

46. In another such document, this one entitled “NOTICE,” NCC requires a specific acknowledgment that the employee is subject to monitoring of all communications and notes that the specifics “of these policies are available in your policy book or by contacting the Office of Human Resources and asking for Policy 4.06, Computers and Technology, and Policy 5.01, Voice Mail.”

47. All of these fully executed documents were found in Plaintiff’s official personnel file produced by NCC.

48. Additionally, on June 26, 2017, the first day of his employment with NCC, Plaintiff was provided with an excerpt from the Manual, specifically a hard copy of the fifteen page Personnel Policy 1.00, entitled “Discipline Policy.”

7. NCC Disciplinary Policy – Requirement of Progressive Discipline and Just Cause – No Immediate Terminations Except For Selling Drugs At Work.

49. Personnel Policy 1.00 is entitled “Discipline Policy.”

50. Defendant Davis has admitted that Personnel Policy 1.00, the Discipline Policy, applies to Plaintiff.

51. Under “Objective,” it states -

To establish a policy to insure guidelines for progressive and/or appropriate discipline based on the seriousness of the infraction

when an employee's conduct and/or job performance is inconsistent with the goals of [NCC] Government. (Policy at 1).

52. Under "Statement," it states in relevant part -

[NCC] Government recognizes that the interest of the community and the job security of its employees depend upon the County's success in providing proper, adequate and efficient services to the citizens of [NCC]. In order to attain this end, the County exercises its right to establish rules and regulations which require its employees to be positive and supportive of the goals of effective and efficient County management. (Policy at 1) (emphasis added).

53. Under "Procedure," the very first paragraph states -

Disciplinary action shall be taken only for just cause. Generally, employee misconduct and/or unsatisfactory performance shall be dealt with by the use of progressive, corrective discipline. However, in those instances of major misconduct or major unsatisfactory behavior, more severe discipline shall be taken, depending on the degree of seriousness of the misconduct. In all instances, disciplinary action shall be reduced to writing on the appropriate disciplinary form. (Policy at 1) (emphasis added).

54. The Discipline Policy continues and explains its progressive nature. It starts with oral reprimands and verbal warnings which are then to be documented in writing. (Policy at 1-2).

55. It then continues to written reprimands, which are to reference the prior oral reprimands and are to specifically address the nature of the misconduct and explain which rules, policies or procedures it violates. (Policy at 2).

56. The next step up is suspension, which is to be used when written reprimands have failed to address the misconduct. The suspension section specifically references the "scheduling [of] a disciplinary hearing." (Policy at 4).

57. The final step in the progressive discipline system is dismissal. The Discipline Policy explains that -

Dismissals are discharges which shall be initiated when all

previous progressive corrective disciplinary procedures have failed to correct the employee's conduct, or the County determines that lesser action is insufficient due to the seriousness of the offense. (Policy at 5) (emphasis added).

58. The dismissal section of the Discipline Policy continues and explains, in part, that -

A permanent employee shall receive written notice of dismissal. Such notice will set forth the reasons for the dismissal action. The written notification shall also offer an opportunity for the employee to have a pre-termination hearing in accordance with the Merit System. The written notification shall indicate the time limit within which the employee will have the opportunity to request such hearing. (Policy at 5-6) (emphasis added).

59. Stated another way, the Discipline Policy requires that all permanent employees, regardless of classification as a merit or non-merit employee, be afforded notice and an opportunity to be heard before a disinterested decisionmaker prior to dismissal.

60. The dismissal section of the Discipline Policy continues and discusses some of the specifics of the pre-termination hearing, including the employee having an opportunity to “refute any of the charges upon which the dismissal is based” and explains that the hearing officer is to be the Chief Human Resources Officer for NCC. (Policy at 5-6).

61. Consistent with certain statutory duties created by the Delaware General Assembly and codified at 9 Del.C. § 1381, a later section of the Discipline Policy explains how it is the responsibility of the Chief Human Resources Officer to “monitor all disciplinary actions in the County to insure that basic employee rights are protected and to insure fair, appropriate and consistent action.” (Policy at 9).

62. The Discipline Policy explains that

These rules are designed to provide the employee with notice of the types of proscribed conduct and that violation of those rules could result in disciplinary action. A uniform set of rules provides the supervisor with standard disciplinary guidelines so as to insure fair,

consistent and non-discriminatory treatment of County employees.
(Policy at 9).

63. The Discipline Policy continues and gives four full pages of 42 specific disciplinary prohibitions and the progressive discipline policy that applies to each for a first, second, third, fourth and sometimes fifth and sixth offenses. (Policy at 11-14).

64. Of these 42 specific offenses, the only one that warrants immediate dismissal for a first offense is if the employee sells or distributes drugs or intoxicants on County property or during work hours. (Policy at 13).

65. Even for major offenses – such as bringing explosives onto County property, bringing guns to work, being drunk or on drugs at work, theft of county property, conviction of a crime, fighting, racial harassment of citizens, among others – the employee is suspended first with review for possible dismissal. (Policy at 13-14). And as noted above, suspension results in a pre-termination hearing before a disinterested decisionmaker, the Chief Human Resources Officer for NCC, where the employee is given an opportunity to “refute any of the charges upon which the dismissal is based.” (Policy at 5-6).

66. For “Incompetence or inability to perform assigned work,” for the first offense an oral warning is given which progressively increases up to an eventual dismissal after a fourth offense. (Policy at 11).

67. For “Carelessness and/or neglect of job duties and responsibilities,” for the first offense an oral warning is given which progressively increases up to an eventual dismissal after a fourth offense. (Policy at 12).

68. For “Negligence, carelessness, or failure to follow County-wide or departmental procedures and policies,” for the first offense an oral warning is given which progressively

increases up to an eventual dismissal after a fourth offense. (Policy at 12) (emphasis added).

69. For “Refusal to follow job instructions, directions, or departmental policies and procedures (Insubordination),” for the first offense the penalty is “Suspension-review for dismissal,” and the second offense is “Dismissal”. (Policy at 12). And as noted above, suspension results in a pre-termination hearing before a disinterested decisionmaker, the Chief Human Resources Officer for NCC, where the employee is given an opportunity to “refute any of the charges upon which the dismissal is based.” (Policy at 5-6).

70. Defendant Davis has admitted that all of the above provisions of the Discipline Policy apply to Plaintiff.

71. Nevertheless, as addressed in greater detail below, defendant Davis’ firing of Plaintiff violated the Discipline Policy and did not follow its requirements.

72. Stated another way, Plaintiff received none of the benefit of the above requirements of the Discipline System, including, *inter alia*: four offenses each with progressively increasing punishments; notice of the charges against him; a hearing on those charges; an opportunity to be heard; and an opportunity to refute those charges; all before a disinterested decisionmaker.

B. Plaintiff’s Qualifications.

1. Education.

73. Plaintiff graduated from high school in 1995 and the Pennsylvania State University in May 2000 with dual degrees, with honors, in English and Philosophy.

74. Plaintiff worked for several years as a technical writer before embarking on his dream to become an attorney.

75. He received his J.D., with honors, from the University of Pittsburgh School of Law in December 2005. During law school, Plaintiff earned the Gerald K. Gibson Memorial

Scholarship Award for excellence in bankruptcy law. Plaintiff also interned with the U.S. Bankruptcy Court for the District of Delaware.

76. Plaintiff was admitted to the Delaware Bar in 2006.

77. He received his LLM in taxation from Georgetown University Law Center in May 2009.

2. Community Service.

78. While working in private practice at a prominent Wilmington law firm, Plaintiff participated in the Dupont Legal Department's Diversity Pipeline Project, which sought to interest minority students in a legal career. In such capacity, Plaintiff taught and mentored students at the Howard High School of Technology in Wilmington.

79. In 2007, Plaintiff co-founded the South Asian Bar Association of Delaware ("SABA Delaware"), an independent bar association that aims to serve the needs of attorneys, law students and communities of South Asian descent in Delaware, and to provide a forum and act as a resource for the Delaware community at large regarding the increasing social, economic and legal intersections between the U.S. and South Asia.

80. SABA Delaware's goals and objectives also include the following:

- voice the concerns of South Asian legal professionals and law students, and promote advocacy on behalf of the South Asian community, as a whole;
- provide a forum for professional growth and advancement of South Asian legal professionals and law students;
- develop programs, such as mentoring, recruitment, retention, legal scholarship and education, and engender funding for such programs on behalf of South Asian law students; and
- engage the South Asian community by offering legal referral services and participate in community events.

81. Plaintiff has remained on the Executive Board of SABA Delaware in various roles since its founding. Over the past decade, Plaintiff has been instrumental in hosting numerous events, speakers and CLE's that have been well received by the Delaware bar and judiciary, as well as by local politicians and community leaders.

82. Since 2007, Plaintiff also has been an active member of the Multicultural Judges and Lawyers section of the Delaware State Bar Association. In such capacity, Plaintiff has mentored several law students and junior attorneys and participated in numerous events.

83. Additionally, Plaintiff has been a guest speaker at the DSBA's annual diversity job fair.

84. In honor and gratitude for the role his elder brother has played in his own life, Plaintiff has paid it forward and the Big Brothers, Big Sisters of America has become his favorite charitable organization. Through Big Brothers, Big Sisters, Plaintiff mentored several young men in the community and at Bancroft Elementary School.

85. While employed at NCC, Plaintiff formed an internship program with Delaware Law School. Plaintiff specifically sought minority students from Delaware Law School, and mentored and encouraged them to become members of the Delaware Bar and to consider a career in public service.

86. While employed at the City of Wilmington and NCC, Plaintiff regularly took time out of his personal schedule to train and mentor staff and junior attorneys, typically of minority status, so that they could achieve their God-given potential.

87. In 2020, Plaintiff was elected to serve on the board of his condominium association, an uncompensated position. In such capacity, Plaintiff is a fiduciary for an approximate \$1.5 million annual operating budget that governs and shapes the living conditions of approximately

350 Wilmington residents.

3. Legal Employment.

88. From January 2006 until December 2013, he worked as an associate at several large Wilmington law firms in the area of corporate restructuring, where he represented companies in complex bankruptcy, financial distress and commercial litigation matters.

89. After several years in the private sector, Plaintiff decided to devote his career to public service. In January 2014, he started his journey in the public sector as an Assistant City Solicitor for the City of Wilmington Law Department where he represented the Department of Finance and Wilmington City Council, among other things.

90. Due to his prior legal experience in private practice, he worked extensively for the Department of Finance on resolving high dollar tax/water delinquencies, prosecuted hundreds of monition actions (aka sheriff sales), advised on bankruptcy and tax matters, and drafted and negotiated contracts.

91. In 2014, Plaintiff issued a private letter tax opinion (the first of its kind for the City of Wilmington) that helped facilitate the relocation of Navient Corporation's headquarters from Newark, Delaware, to the Riverfront in Wilmington.

92. In addition, Plaintiff served as parliamentarian for official Wilmington City Council meetings and drafted numerous pieces of legislation. In 2016, Plaintiff played a lead role in forging a compromise between the Mayor's Office and City Council after the annual operating budget failed to pass City Council.

93. In addition to his representation of the Department of Finance and City Council, Plaintiff also was a Freedom of Information Act ("FOIA") coordinator and in such capacity, handled and responded to complex and sensitive FOIA requests, drafted responses to FOIA

complaints, and trained City employees on FOIA compliance.

94. For his service and dedication to the citizens of Wilmington, Plaintiff received an award of excellence from then Mayor Dennis P. Williams.

95. In spring 2017, then NCC Attorney Carol Dulin identified an urgent need in the NCC Office of Law for a highly experienced attorney in the areas of collections, tax and legislation.

96. Following months of targeted recruitment, in June 2017, Plaintiff was lured away from the City by County Attorney Dulin to address this urgent need and work for the NCC Law Office as an Assistant County Attorney I. (“ACA I”).

97. County Attorney Dulin was the predecessor in office to defendant Davis.

98. The job description an ACA I explains that he or she:

Performs specialized professional and confidential legal work for [NCC]; performs legal work as required by the County Attorney, County Solicitor or their designee and as required by the assigned area of expertise.

99. The job description for an Assistant County Attorney II (“ACA II”) explains that he or she does everything that an ACA I does but will also “assume an increasing leadership role.” The only relevant difference in minimum qualifications is that an ACA II is required to have worked for NCC for at least three years before this step is achieved.

100. On June 26, 2020, just two weeks prior to his firing, Plaintiff became eligible for a promotion to ACA II.

C. Plaintiff’s Excellent Work Performance at NCC as an ACA.

1. Job Assignment - Complex Financial Matters.

101. Because of his extensive prior legal experience both in private practice and for the City of Wilmington, County Attorney Dulin assigned Plaintiff primarily to complex taxation and

other complicated financial matters. His clients included the Department of Finance, and the NCC Employees' Pension Board of Trustees (an entity separate and distinct from NCC government), among others.

102. Plaintiff's Personnel File describes the "Position Responsibilities" of the specific ACA position Plaintiff held as follows:

This ACA position is tasked with performing highly-responsible, confidential legal work primarily in support of the Office of Finance. Includes initiating and following through on legal collection matters; preparing legislation for the Office of Finance; coordinating and overseeing legal work handled by financial contract attorneys; spearheading finance-related initiatives such as sheriff's sales; and performing other legal work as assigned by the Office. Tasked with promoting an ongoing attitude of dedication to excellent public service and ensuring that all external and internal customers are provided with the highest quality of timely legal service. Acts as an integral part of the team.

103. At all times, Plaintiff's work performance was excellent.

104. For example, early in his tenure, Plaintiff resolved a tax assessment appeal by a prior owner of the former General Motors plant in Newport, Delaware. The settlement of this tax appeal, which had been outstanding for years, helped pave the way for the property to be sold and repurposed so that it can bring jobs back to the area. Plaintiff additionally resolved several complex tax exemption applications (UrbanPromise Wilmington, The Pilot School) that had been outstanding for several years.

105. Plaintiff later was formally assigned the role of lead sheriff sale attorney. He was charged with the herculean task of overhauling the entire collections process. Accordingly, Plaintiff created a pre-monition demand process that led to the collection of hundreds of thousands of dollars. He prepared a comprehensive legal memorandum that addressed facilitating this process and educated various departments on the nuances of the monition process.

106. Plaintiff successfully prosecuted sheriff sale actions on several vacant properties that had been identified by the NCC Division Code of Enforcement as high priority because they were blights on neighborhoods for several years and citizens had clamored for enforcement. These priority vacant properties had previously been referred to the Office of Law, which was unable to make any significant progress.

107. In total, Plaintiff's efforts in overhauling NCC's sheriff sale program were directly responsible for the collection of several millions of delinquent County tax dollars.

108. Plaintiff also developed an interdepartmental division of tasks and functions so that NCC would have the ability to handle a high volume of collection actions.

109. Plaintiff developed a request for proposal for outside counsel to aid NCC in its vacant housing initiative, and trained outside counsel on various nuances.

110. Plaintiff also resolved a widely publicized sewer dispute with Glasgow Mobile Home Park ("Glasgow"). The Glasgow sewer delinquency had been outstanding since 2015. Through Plaintiff's aggressive efforts, the County obtained approximately \$436,000 in payments.

111. At the direction of defendant Meyer, Plaintiff prepared Executive Order 2018-11, which provided the administrative authority for NCC to initiate monition actions against commercial properties and certain (occupied / non-vacant) residential properties. On July 31, 2018, defendant Meyer signed Executive Order 2018-11 in a well-publicized ceremony in Claymont, DE. Pursuant to Executive 2018-11, Plaintiff initiated the largest action against a landlord in state history, wherein he obtained, inter alia, a settlement check for \$438,000 that he personally delivered to NCC's Chief of Staff, Aundrea Almond.

112. Plaintiff had a lead role in the well-publicized Delaware Board of Trade (DBOT) matter, in which NCC, in 2015, loaned \$3 million to DBOT. Starting in the fall of 2019, Plaintiff,

at the direction of defendant Meyer, negotiated a sophisticated agreement that securitized the loan with marketable stock.

2. Job Assignment - Complex Legislative Matters.

113. In addition to handling complex financial matters at NCC, Plaintiff had numerous legislative accomplishments. For example, Plaintiff drafted an ordinance, now codified at NCC Code Chapter 14, Article 14 (Lodging Tax), which enabled the NCC to begin collecting lodging taxes from hotels in unincorporated sections of NCC.

114. Plaintiff also drafted a special tax exemption for Dot Foods, now codified at NCC Code § 14.06.1203. The tax exemption, which was specifically drafted to be tied to the creation of new jobs, helped facilitate the construction of Dot Foods' 188,000 square foot distribution center in Bear, DE.

115. Additionally, Plaintiff had a lead role in facilitating NCC's participation in the statewide Delaware Property Assessed Clean Energy (D-PACE) program, which enables commercial property owners to finance clean and efficient energy projects. Plaintiff represented NCC in a year-long collaboration with the State Energy Utility that involved sophisticated analysis and interpretation of the 2018 Delaware Energy Act. Defendant Meyer personally requested Plaintiff to attend a public ceremony at the Hercules Building in downtown Wilmington where defendant Meyer was to execute the participation agreement, authorized by County Council Resolution No. 19-150. Just prior to executing the participation agreement, defendant Meyer publicly acknowledged Plaintiff's substantial efforts and personally requested Plaintiff come to the stage and be photographed alongside defendant and several other politicians.

2. His Personnel File.

116. The Delaware Right to Inspect Personnel Files Act, 9 Del.C. § 730, et seq. applies to

government employers, including NCC. See id. at § 731(2). It defines Personnel File to include all “notices of commendations, warnings or disciplines, ... employment history with the employer, performance evaluations” and other related documents. Id. at § 731(3). It requires all covered employers to, upon request, provide to an employee their own Personnel File which is used by the employer “to determine that employee’s own qualifications for employment, promotion ... termination or disciplinary action.” Id. at § 732.

117. After invoking, through counsel, his statutory right to inspect his personnel file in July 2020, outside counsel for NCC provided Plaintiff’s personnel file for inspection in late September 2020.

118. Article 3, § 26.03.802 of the County Code requires that “[a]ll employees ... shall be evaluated annually,” while § 26.03.801 explains that the annual performance evaluation is to be used “as a basis for training, demotion, transfer or dismissal.” This is one of the sections of Article 3 that applies to all employees of NCC, not just to Merit System protected employees.

119. In the three years before his abrupt firing, only one employment evaluation, dated October 11, 2018, was ever completed and placed in Plaintiff’s Personnel File. This was 16 months into his employment.

120. Among other things, it explains:

- for “Quality of Work” – “ACA Bhatnagar jumped into somewhat of a finance legal vacuum at a full run. His LLM and previous relevant experience have been **invaluable**. He is an integral part of the Office of Law.” (Emphasis added).
- for “Quantity of Work/Productivity” – “ACA Bhatnagar works quickly, efficiently, **proficiently**, and accurately, and for the most part exceeds expectations.”
- for “Initiative” – “ACA Bhatnagar “has shown **great initiative**, motivation and **enthusiasm** in launching new programs, in tackling Office of Finance initiatives, and in crafting new procedures for his primary client.” (Emphasis added).

- for “Customer Service and Working Relationships” – “ACA Bhatnagar usually is courteous, helpful and a pleasure to work with.”
- for “Judgment and Common Sense/Decision-making Skills: the ability to handle problems and situations and make correct decisions related to work” – “ACA Bhatnagar is **outstanding** in his primary field of endeavor in the office.” (Emphasis added).
- for “Planning and Organizational Skills: Utilization of time and resources to achieve desired results” – “ACA Bhatnagar earns this **highest mark** for planning and organizational skills.” (Emphasis added).
- for “Oral and Written Communications” – “ACA Bhatnagar’s ability to communicate effectively is **excellent**. His written work product is excellent. His written work product is well-reasoned, and well-organized He also presents effectively verbally. He provides the highest quality of legal service.” (Emphasis added).

121. It was signed by County Solicitor Karen Sullivan and County Attorney Carol Dulin.

3. Other Commendations.

a. 2018.

122. As referenced above, Plaintiff resolved the longstanding dispute with Glasgow, the largest outstanding sewer delinquency in NCC history, approximately \$550,000. In connection with this matter, Plaintiff formulated a comprehensive plan and strategy to collect the outstanding sewer debt, which he submitted for approval to then NCC Chief Financial Officer Brian Maxwell.

123. CFO Maxwell wholeheartedly approved Plaintiff’s plan, and in e-mail dated June 1, 2018, commended Plaintiff for his “excellent work product,” and copied then County Attorney Dulin on his e-mail.

124. Later that same day, Plaintiff received an e-mail in the same e-mail chain from County Attorney Dulin stating that the “CFO just stopped me to state that he found your legal work on this matter to be exceptional. Thank you for reflecting so well on this Office. April [Turner, the Law Officer Manager], please add to his file.” Another e-mail in the same chain

from County Attorney Dulin noted, “Certain they are pleased with your work and strategy.”

125. Notably however, neither of these dual commendations from both the CFO and County Attorney were included in the Personnel File produced to Plaintiff by NCC.

126. Similarly, in an e-mail dated August 3, 2018, in connection with Plaintiff’s role in developing Executive Order 2018-11 (described above) and subsequent actions taken against certain problem property owners, defendant Meyer commended Plaintiff for his role in overhauling NCC’s collection program, stating, “[w]e realize one big reason we are getting results in this effort is your relentless work on the taxpayers behalf.”

b. 2019.

127. In July 2019, then NCC Pension Administrator and Human Resources Benefits Coordinator Susan Lawler praised Plaintiff’s work performance on behalf of the Pension Board. She also explained that plaintiff’s work product, work ethic and attitude were far superior to his predecessor, Judith H. Mitchell. She explained that when Mitchell was representing the Pension Board, Mitchell refused to provide necessary written opinions and generally was neither helpful nor responsive to the needs of her client the Pension Board.

128. In a November 20, 2019 personal note to Plaintiff, defendant County Executive Meyer thanked Plaintiff for his excellent service to the county taxpayers – “Thanks for being such a strong advocate for us ... and continuing to produce results for our citizens.”

c. 2020.

129. As described below, on June 19, 2020, at approximately 10:35 a.m., in his opening remarks before the Support Non-Profits Committee, defendant County Executive Meyer stated that Plaintiff was designated to represent this particular committee because he was the “best of the best.”

130. Later that same day, at approximately 3:00 p.m., defendant County Executive Meyer repeated those words and high praise of Plaintiff to the Support Small Business Committee meeting, another Committee which Plaintiff was assigned to represent.

D. Job Duties At the Time of Termination in 2020.

1. The NCC CARES Act Task Force.

131. At the time of his July 8, 2020 termination, and in addition to his normal duties within the NCC Office of Law, Plaintiff had been assigned one of the most significant roles in his career of government service.

132. In June 2020, Plaintiff was assigned a lead role within the Office of Law legal team supporting the County Executive's CARES Act initiative. Specifically, the County Executive established a Task Force consisting of six distinct committees that was to provide recommendations on how to appropriately distribute \$322 million in CARES Act monies received by NCC from the U.S. Department of Treasury ("Treasury").

133. Plaintiff was assigned to represent as their legal counsel two separate Committees, the Support Small Business Committee and the Support Non-Profits Committee.

134. The Support Small Business Committee was tasked with providing concrete and specific recommendations on investments to support the small business community that has been most impacted by the pandemic.

135. Because of the sheer economic devastation wrought by the pandemic on small businesses - including restaurants, small mom and pop landlords, hotels, Main Street corridor businesses, startups and more – in NCC as a result of the Governor's economic shutdown, time was of the essence in accomplishing this Committee's objectives.

136. The Support Small Businesses Committee held meetings on June 19, June 26, July 1

and July 8.

137. The Support Non-Profits Committee was tasked with providing concrete and specific recommendations on investments to support not-for-profits and charitable organizations that had been most impacted by the pandemic.

138. Because of the vital work performed by non-profits in NCC – such as Habitat for Humanity, the Ministry of Caring, Sunday Breakfast Mission, the Delaware Coalition Against Domestic Violence, the YMCA, Latin American Community Center, Goodwill, Meals on Wheels, Prevent Child Abuse Delaware, and many more – time was of the essence in accomplishing this Committee’s objectives.

139. The Support Non-Profits Committee held meetings on June 19, July 1 and July 8.

140. Both of these Committees were tasked with creating grant programs, to be in compliance with applicable Treasury guidelines, for small businesses and non-profits negatively impacted by COVID-19.

141. On June 19, 2020, at approximately 10:35 a.m., in his opening remarks before the Support Non-Profits Committee, defendant County Executive Meyer stated that Plaintiff was designated to represent this particular Committee because he was the “best of the best.”

142. Defendant Meyer also stated that Plaintiff would have the aid of two law firms, Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) and Young Conaway, to ensure that CARES Act grant funds would be expended to support local non-profit organizations.

143. Defendant Meyer made similar statements and admissions about Plaintiff and the aid of the two law firms later the same day, at approximately 3:00 p.m., in his opening remarks at the beginning of the Support Small Business Committee meeting, another Committee which Plaintiff was assigned to represent.

144. Although June 19, 2020 was an NCC Employee Holiday, Plaintiff worked overtime that day in order to support the County Executive's CARES Act initiative.

145. In the initial weeks of the Task Force creation, there was much confusion among Committee members and the internal legal team as the CARES Act was new law and rife with nuances, complications and federal law requirements.

146. Because the Treasury required the CARES Act funds to be expended by December 31, 2020 – and the work involved with formulating programs that complied with Treasury guidelines, agreeing upon these programs within the Committees themselves, then receiving approval of them from the County Executive, then rolling out them out to the general public, giving deserving non-profits and small businesses sufficient time to analyze and apply for them, and then for NCC to comprehensively review and approve or reject these many applications – time was of the essence if the people of NCC were to be served.

147. NCC already was behind many other jurisdictions across the country which already had their grant programs developed and rolled out by this time.

148. This is why time was of the essence leading into the Committee meetings on July 8, 2020.

2. The Additional Tax Exemptions Deadline.

149. Separate and apart from both his regular duties representing his two normal NCC clients, as well as his CARES Act Committee responsibilities, on or about Wednesday, July 1, 2020, County Solicitor Karen Sullivan took ten complex tax exemption applications, that had previously been assigned to another attorney in the Office of Law but had not yet been completed, and reassigned them to Plaintiff.

150. Notably, this work could have been assigned to several of Plaintiff's colleagues

(including Judy Mitchell, Mary Jacobson, and Laura Hay) in the Office of Law who had substantial experience with such applications and were not as busy as Plaintiff.

151. County Solicitor Sullivan gave Plaintiff a hard deadline of July 8, 2020, to accomplish these ten complex applications.

152. This was the same date that Plaintiff had both of his Task Force Committee meetings. Because time was of the essence, Plaintiff intended to propose possible solutions to both of his Committees in order to get them on track and so that they could roll out grant programs to the public as soon as possible.

153. Because of the reassignment of ten exemption applications by County Solicitor Sullivan, on top of his primary and priority COVID-19 pandemic assignments involving both Committees under the CARES Act, Plaintiff had no other choice but to work over the entire July 4th weekend.

3. Plaintiff's Brother Was Hospitalized and Close to Death from COVID-19.

154. On or about June 22, 2020, Plaintiff's brother, with whom he was close, a physician who resides in Arizona, began experiencing symptoms of COVID-19.

155. At that time, Arizona was experiencing a surge in COVID-19 cases and hospitals were close to maximum capacity.

156. Plaintiff's brother's symptoms grew progressively worse. Due to his difficulty in breathing, high fever, and low blood oxygen, Plaintiff's brother was admitted to a hospital on June 25, 2020, even though Arizona hospitals were nearly full because of the Arizona surge.

157. Plaintiff's brother was close to death during his time in the hospital.

158. In normal times, his brother's hospital stay would have been even longer as he was still experiencing low oxygen and needed oxygen support. However, because the hospitals

needed as many as beds as possible and he was no longer the sickest patient, he was released on July 2nd for continued treatment and rest at home.

159. Over the course of the next several weeks, Plaintiff's brother continued to battle COVID-19 and, eventually, fully recovered.

160. Over the July 4 weekend, Plaintiff worked on the 10 tax exemption applications. He ultimately earned sixteen hours of compensatory time for his work.

161. At the same time, the County Attorney was on vacation, including the entire week of July 5, 2020.

162. The County Solicitor also called out sick on Monday, July 6, 2020, creating a long holiday weekend for her.

4. Outside Corporate Counsel Offers to Help.

163. On Monday, July 6, 2020, Plaintiff received a call from his close friend and former law school roommate at Georgetown University Law Center, attorney Sam Kamyans, Esquire, at Akin Gump, after Kamyans discovered Plaintiff's brother was sick with COVID-19 and close to death. During the call, Plaintiff and Kamyans caught up on personal and work matters, including that Plaintiff was distraught about his brother's battle with COVID-19. Plaintiff and Kamyans commented on the random and unique coincidence that Kamyans' law firm was representing NCC under the CARES Act.

164. Because Plaintiff was stressed and sleep deprived due to his work and family situation, Kamyans offered to provide Plaintiff basic assistance with his work related to the CARES Act Task Force Committees. Specifically, Kamyans instructed Plaintiff to send Kamyans an introductory email, which Kamyans would forward to the appropriate partner at Akin Gump. Kamyans was not directly involved in Akin Gump's representation of NCC but desired to assist

his close friend and ultimately Akin Gump's client, NCC.

165. Because Plaintiff had spent sixteen hours over the July 4 weekend to meet the County Solicitor's July 8 hard deadline on the tax exemption applications, Plaintiff lost valuable time preparing for his next two CARES Act Task Force Committee meetings, both on July 8, 2020.

166. Plaintiff strongly desired to present both of his two Task Force Committees with viable solutions at the next respective meetings, both on July 8, 2020. Plaintiff strongly desired to deliver for defendant Meyer on this critical initiative and ultimately, to help local small businesses and non-profits to the best of his ability.

167. Due to his sleep deprivation and overloaded work schedule, Plaintiff took Kamyans up on his offer and asked for some basic help. Specifically, Plaintiff asked if there were readily available grant programs created in other jurisdictions so that Plaintiff's assigned Committees could use such established precedents as a guide.

168. In doing so, Plaintiff exercised his professional judgment and expertise in seeking assistance from outside counsel, consistent with the manner he had done numerous times before in accomplishing the County Executive's priority initiatives.

169. Plaintiff's basic request to outside counsel did not involve any complex issues and would have resulted in little to no legal fees.

170. In addition, Plaintiff believed he had direct and implicit authority from the defendant County Executive, based on his statements at the introductory CARES Act Task Force Committee meetings, to take any reasonable action, including seeking basic help, to accomplish the County Executive's priority initiatives.

171. No written protocol prohibited Plaintiff from seeking help from Akin Gump.

172. More to the point, Plaintiff had no intent of undermining his supervisors or hiding his basic request for assistance from his supervisors. Plaintiff knew his request would not be hidden from his supervisors. Plaintiff was sleep deprived and overworked, and his only desire was to serve his two CARES Act Task Force Committees, and its intended beneficiaries, citizens, local businesses and nonprofit organizations, to the best of his ability.

173. Consistent with several achievements at NCC and elsewhere, Plaintiff exercised his professional judgment and leadership abilities in order to accomplish the task at hand, without jeopardizing anything or accruing unnecessary fees or expenses. As previously noted, Plaintiff has substantial experience in dealing directly with outside counsel.

5. Defendant Davis Irrationally Attacks Plaintiff.

174. After receiving Plaintiff's email, Kamyans forwarded Plaintiff's basic request to the appropriate person at Akin Gump, attorney Susan Lent, Esquire. On Monday, July 6, 2020 at 2:49 p.m., Lent briefly responded to Plaintiff and also copied County Solicitor Sullivan. County Attorney Davis was not copied on the email because he had stated earlier he needed a complete break from work and had to focus on his vacation, notwithstanding the recent formation of the CARES Act Task Force Committees and their importance to the NCC public.

175. On July 7, 2020 at 1:01 p.m., defendant County Attorney Davis, while on vacation, sent Plaintiff an e-mail chastising Plaintiff for asking for this help and claiming that he had violated an unwritten protocol.

176. Defendant Davis argued that Plaintiff should have been able to complete this unprecedented and unique complex task, under a daunting emergency federal law, himself without any help from outside experienced corporate legal counsel.

177. Plaintiff quickly responded to the County Attorney via e-mail just a few minutes

later and answered the questions Davis had asked. Among other things, he explained: that attorney Kamyans was a longtime personal friend who had called him upon learning that Plaintiff's brother was near death from COVID-19; and that Kamyans had brought up Akin Gump's representation of NCC concerning the CARES Act and offered to help. Given the constraints on Plaintiff's time in trying to juggle and complete all of his assigned job responsibilities, Plaintiff explained he thought that asking for help would not be a big deal because it was the only way to get all of his assigned work done within the time constraints given him by his superiors. He also explained that no other members of the two CARES Act Committees had yet had the time to seek out, find and compile these materials. He explained that he was happy to provide further evidence of all of these things if defendant Davis requested it. He wrote that he was "working round the clock – helping others with their loads too." He continued and explained that they could meet with the County Executive and Chief Administrative Officer if there were objections.

178. County Attorney Davis did not respond to Plaintiff's e-mail.

E. Plaintiff Is Terminated Without a Pre or Post Termination Hearing.

179. The next day, on Wednesday, July 8, 2020, Plaintiff began his workday at 8:00 a.m. He attended the Support Non-Profits Committee meeting at 10:30 a.m. and then the Support Small Business Committee at 1:00 p.m. Plaintiff, consistent with the NCC Office of Law flex-time policy, finished his work day at approximately 4:00 p.m. and fell asleep because he was exhausted from not sleeping for several days while trying to get all of the work assigned to him completed.

180. At 5:29 p.m. on July 8, Plaintiff awoke from a phone call from defendant County Attorney Davis. County Solicitor Sullivan also was on the line.

181. Defendant Davis then told Plaintiff “You serve at my pleasure” and that it was time for Plaintiff “to go.”

182. He explained that if Plaintiff did not sign a separation agreement, he would be fired immediately.

183. As defendant Davis testified under oath at Plaintiff’s unemployment compensation evidentiary hearing on November 23, 2020, he told Plaintiff during this call “look Sanjay, you’re going to be terminated. We would like to work out some agreement with you if we can, but if we can’t, then you’re going to be terminated for cause.” He described that “cause” as Plaintiff being “grossly insubordinate” to defendant Davis in his July 7th e-mail to Davis, answering Davis’ questions.

184. At the same hearing, Laura Hay, an ACA II who was the lead attorney for the Department of Human Resources and represented defendant NCC at the hearing, drilled down into the specifics of the decision-making process and lines of authority involved in the decision to fire Plaintiff. Knowing that the County Attorney serves at the pleasure of the County Executive, see 9 Del.C. § 1392, she asked defendant County Attorney Davis –

I just want to underscore, Mr. Davis, when you notified the County Executive of your desire to separate Mr. Bhatnagar, did you get authorization or support for that proposed plan of action?

185. Defendant Davis answered her question and testified that “I got authorization from the County Executive, Matt Meyer.”

186. Defendant County Executive Meyer authorized Plaintiff’s firing.

187. Completely shocked during the July 8th phone call from the defendant County Attorney Davis and County Solicitor Sullivan telling him he was being immediately fired, Plaintiff pleaded for mercy.

188. In response to Plaintiff's pleas for mercy, County Solicitor Sullivan began to laugh at Plaintiff on the call.

189. Plaintiff's phone call with defendant Davis and the County Solicitor lasted two minutes.

190. After hanging up, at 5:36 p.m., Plaintiff texted the following to defendant County Executive Meyer –

Matt – please call me. My brother almost died last week and I haven't slept in days. I've given NCC my life for 3 years. I really love it here and want to continue to serve. 5 min. That's it.

191. Defendant County Executive Meyer did not respond to Plaintiff's text.

192. Shortly thereafter, at 6:02 p.m. on July 8, 2020, defendant Davis e-mailed Plaintiff to his personal email address a proposed separation agreement providing for one month severance, and informed Plaintiff that if he did not sign the agreement, he would issue him a termination letter. Davis told Plaintiff, "as I mentioned on the call, your last day of regular employment with the County is today, 7/8/20. Your e-mail access and badge access will be ended this evening." Davis also provided the link to NCC's Employee Assistance Program.

193. In defendant Davis' own testimony under oath on November 23, 2020, this e-mail "documented" everything he said to Plaintiff during the earlier phone call.

194. Defendant Davis did not provide Plaintiff an opportunity to gather his personal belongings from his office, including certain family and religious items, as is customary.

195. In an e-mail at 7:18 a.m. the next morning, July 9, 2020, defendant Davis informed the Office of Law and others that Plaintiff was no longer an employee of NCC. In his words, "I'm writing to let you know that Sanjay's last day with the Office of Law was yesterday."

196. On July 9, 2020 at 1:26 p.m., the defendant County Attorney emailed Plaintiff at his

personal email and provided him with a deadline of July 10, 2020 at 3:00 p.m. to execute and return a proposed separation agreement providing for one month paid leave.

197. Plaintiff did not execute the proposed separation agreement.

198. Defendant Davis has testified, again under oath, that he “issued a termination letter” to Plaintiff.

199. However, no termination letter has ever been received.

200. Since summer 2020, Plaintiff’s attorneys have asked the attorneys for NCC for a copy of that termination letter but a copy has not been provided.

201. In the words of Laura Hay, acting in her capacity as legal counsel for defendant NCC at the November 23, 2020 evidentiary hearing, the “County’s position [is] that [Plaintiff] was terminated.”

202. In direct contradiction to defendant Davis’ earlier insubordination claim, building on the sworn testimony she offered from defendant Davis at that same hearing, in her capacity as legal counsel for defendant NCC, Hay argued in her closing argument that Plaintiff had been fired because of “an isolated act,” specifically because he had e-mailed Akin Gump directly and that this was a “gross deviation” from the standards of conduct expected of all NCC employees and that it justified his firing. (See Hearing transcript at 29-30 - telling the judge that Plaintiff was fired for a “breach of protocol” prohibiting taking questions to this very expensive law firm).

203. The judge in the Unemployment Hearing disagreed with the claims of defendants, and attorney Hay, and in her November 25, 2020 decision, concluded “this tribunal finds Employer failed to establish just cause for [Plaintiff’s] discharge” (Op. at 3) and that Plaintiff “was discharged from his employment without just cause.” (Op. at 3). She agreed that Plaintiff “was told that if he did not resign, he would be discharged” and that he did not resign. (Op. at 2).

204. The “just cause” standard applied in the Unemployment Hearing decision is the same standard applied under the NCC Discipline Policy which forbids disciplinary action to be taken against an employee without “just cause.” (Policy at 1).

205. The judge in the Unemployment Hearing also made a specific factual finding that Plaintiff “believed he had the authority to” contact “outside counsel for basic help.” (Op. at 2).

F. Plaintiff’s Firing Violated NCC’s Own Statutory & Procedural Requirements.

206. Plaintiff was not given any of the protections granted him by the NCC Code or the various NCC policies and customs already detailed at length above.

207. For example, Plaintiff was fired “without regard” for the merit factors and non-discrimination protections required to be considered under NCC § 26.01.021, the NCC Equal Opportunity statute, the NCC Diversity Policy and the NCC Diversity Policy Statement.

208. Consideration of merit factors would have resulted in no discipline whatsoever for Plaintiff under the NCC Progressive Discipline Policy.

209. Alternately, at most, Plaintiff would have received a simple oral reprimand under the NCC Progressive Discipline Policy and would not have been immediately and summarily fired.

210. There was no “just cause” for Plaintiff’s firing in violation of the NCC Progressive Discipline Policy, as the Unemployment judge has already held.

211. Even though the Delaware Right to Inspect Personnel Files Act, 19 Del.C. § 730, et seq., requires that any and all documents that can be used to justify “disciplinary action” against an employee must be in an employee’s personnel file, *id.* at § 732, there is no documentation whatsoever found in Plaintiff’s personnel file to justify Plaintiff’s immediate firing.

212. There is no document “reduced to writing” as required by the NCC Progressive Discipline Policy that justifies Plaintiff’s firing found in Plaintiff’s personnel file or anywhere

else.

213. No disciplinary hearing was ever scheduled, set or otherwise held to address Plaintiff's alleged misconduct in violation of the NCC Progressive Discipline Policy.

214. Defendants never provided Plaintiff with "written notice of the dismissal" in violation of the NCC Progressive Discipline Policy.

215. Plaintiff was never provided with a "written notification" that "offer[s] an opportunity for the employee to have a pre-termination hearing" in violation of the NCC Progressive Discipline Policy.

216. Plaintiff was never provided with the opportunity to "refute any of the charges upon which the dismissal is based" in violation of the NCC Progressive Discipline Policy.

217. Plaintiff was never provided with a hearing in front of the Chief Human Resources Officer of NCC in violation of the NCC Progressive Discipline Policy.

218. Plaintiff's alleged misconduct is in no way comparable to the only other immediately fireable offense set forth in the NCC Progressive Discipline Policy of selling drugs on County property or during work hours.

219. Plaintiff's alleged misconduct is in no way comparable to other major offenses set forth in the NCC Progressive Discipline Policy which would result in suspension and an immediate hearing before a disinterested decisionmaker, such as bringing explosives onto County property or bringing a gun to work.

220. At most, Plaintiff would have received a simple oral warning under the NCC Progressive Discipline Policy and would not have been immediately and summarily fired.

221. Additionally, Plaintiff was not given the option to appeal his immediate firing to the Human Resources Advisory Board as required by NCC Code § 26.01.010 and § 26.01.021.

222. The circumstances of Plaintiff's firing also violated federal law. For example, in the midst of a once in a lifetime health pandemic, NCC failed to provide the continuation of healthcare insurance notices required by the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1161 et seq., that amended the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et. seq. As a result, Plaintiff's health insurance lapsed, a fact which Plaintiff only discovered upon his next doctor's visit when his insurance was rejected and he was forced to pay for his treatment out of pocket.

G. None of the Requirements of the Procedural Due Process Were Met.

223. Plaintiff was not given any kind of pre-termination hearing as required by the Due Process Clause of the Fourteenth Amendment prior to his termination.

224. Plaintiff was not given any kind of post-termination hearing as required by the Due Process Clause of the Fourteenth Amendment after his termination.

225. To this day, Plaintiff still has not received the required post-termination hearing required by the Due Process Clause.

H. Comparable Law Department Attorneys More Favorably Treated with Regard to Their Religion, Race, National Origin, Sex and Other Nonmerit Factors in Discipline.

226. Examples of Law Department attorney employees who in a progressive discipline system were treated more favorably than Plaintiff because of their religion, race, national origin, sex and other nonmerit factors include the following.

1. Judith A. Mitchell.

227. Judith H. Mitchell ("Mitchell") is currently a FACA.

228. Mitchell is Caucasian, female, and upon information and belief, is of the Christian faith, and a United States citizen by virtue of birthright.

a. Pension Board Failures.

229. Prior to Plaintiff's employment beginning in June 2017, Mitchell also represented the NCC Pension Board, which Plaintiff took over at the start of his employment.

230. On July 29, 2019, the HR Benefits Coordinator / Pension Administrator who had been with NCC for at least or approximately twenty-five years expressed her frustration regarding Mitchell's prior representation of the Pension Board. Specifically, Administrator/Coordinator Lawler stated that Mitchell generally refused to provide legal opinions in writing and generally was not helpful or responsive. In contrast, Administrator/Coordinator Lawler praised Plaintiff for his far superior work product, work ethic, and attitude.

b. Absenteeism.

231. During Plaintiff's employment, Mitchell's father was ill and passed away peacefully on June 14, 2018. During this period in which Mitchell needed to tend to her familial and personal needs, Mitchell was generally unavailable to the NCC Office of Law and was absent for weeks and months on end.

c. Failure to Supervise.

232. An FACA, under the applicable NCC Job Specification, serves as chief assistant to the County Attorney, and, *inter alia*, must: possess the ability "to establish and maintain effective working relationships" with all NCC employees; promote "an ongoing attitude of dedication to excellent public service and ensures that external and internal customers are provided with the highest quality of service;" and "oversees legal work handled by the Assistant County Attorneys."

233. At all times during Plaintiff's employment, Mitchell was his direct supervisor.

234. During Plaintiff's employment, Mitchell never provided any substantive feedback of any of Plaintiff's work product. Mitchell was either unavailable as she does not work beyond her

7:00 a.m. - 4:00 p.m. schedule and/or lacked the substantive knowledge to provide meaningful review of Plaintiff's work product, as his assignments were typically complex and expedited.

235. Furthermore, despite being his supervisor, Mitchell never once voluntarily approached Plaintiff to provide guidance or assistance, check in on him, or even exchange simple pleasantries.

d. Lack of Substantive Knowledge of Contract Law.

236. Mitchell's primary area of practice is transactions, which includes contracts and legislation.

237. Mitchell's primary function was contract review and tracking. On several occasions, Mitchell dumped her contract review responsibilities on Plaintiff.

238. Plaintiff expressed his frustration about her actions to defendant County Attorney Davis at a mandatory one-on-one meeting shortly after Davis' appointment in June 2019. County Attorney Davis never followed up with Plaintiff or took any action to stop Mitchell from dumping her work on Plaintiff. In fact, Mitchell's misconduct continued.

239. In February 2020, Mitchell dumped a high priority contract (Authorize.Net) on Plaintiff. When Plaintiff questioned why he was being assigned the matter, County Solicitor Sullivan came to Mitchell's aid and explained that Mitchell only reviews contracts for "legal sufficiency" and does not address substantive / technical issues with contracts. In other words, Mitchell only reviews contracts that she can "rubber stamp."

240. Plaintiff nonetheless took on the Authorize.net assignment. In the course of his due diligence, he determined that the client, the Department of Finance, had no substantive or technical issues with the proposed Authorize.net contract. Rather, the issue was certain boilerplate provisions in the contract that would not pass muster under certain requirements of

County code and internal policy. In other words, the review of the Authorize.net contract was in fact for “legal sufficiency,” and not any of the substantive or technical issues. Plaintiff nonetheless took on what clearly was in Mitchell’s domain, at a time when he was also handling a full workload.

241. Despite all of these performance failures, Mitchell was not summarily fired, nor was she disciplined or charged under the NCC Progressive Discipline Policy.

2. Mary A. Jacobson.

242. Mary A. Jacobson (“Jacobson”) is Caucasian, female, and upon information and belief, is of the Christian faith, and a United States citizen by virtue of birthright.

243. She is currently a FACA, whose primary area of practice is litigation. Jacobson represented the Department of Land Use as an ACA II prior to her promotion to FACA (Litigation) in 2018. Jacobson’s area of concentration as an ACA II was representing the Department of Land Use.

a. Absenteeism.

244. During her years as an ACA II representing the Department of Land Use, it was common knowledge that Jacobson would be absent for large portions of the day. Essentially, Jacobson worked according to her schedule. Upon information and belief, Jacobson was promoted, in part, to FACA so that she would be removed from interacting with and advising Department of Land Use managers and personnel.

b. Unprofessional Conduct on the Job.

245. During her time as an ACA II, Jacobson was heavily involved with the defendant Meyer Administration’s Vacant Spaces to Livable Places program whose objective is to facilitate the redevelopment of vacant properties into healthy, livable homes in order to remove community

eyesores and stabilize neighborhoods.

246. Plaintiff was involved in the internal vacant housing working group, as his subject matter expertise on monitions / sheriff sale process was critical for the program's success.

247. Over the course of a year, Plaintiff attended the weekly vacant housing working program. At such meetings, and in internal communications, Jacobson disparaged and humiliated Plaintiff. At one meeting, Jacobson yelled at the former Chief Financial Officer David Gregor and Department of Finance representatives. Fed up with Jacobson's abusive and unprofessional conduct, Plaintiff caused a meeting to be held in July 2018 with then County Attorney Dulin and County Solicitor Sullivan.

248. At said meeting, Jacobson did not dispute any of the misconduct asserted by the Plaintiff. At the end of said meeting, Jacobson flat out refused to apologize to Plaintiff for undisputed and objectively unprofessional conduct.

249. Jacobson was not disciplined in any way for her misconduct.

250. Following the meeting, and until the end of Plaintiff's employment, Jacobson would not even extend the common courtesy of saying hello when passing by each other in office.

251. Notably, after Jacobson's promotion to FACA, she remained heavily involved with the vacant housing group, even though the initiative had nothing to do with litigation, and the bulk of policy and legal issues had been resolved.

252. Despite all of these performance failures, Jacobson was not summarily fired, nor was she disciplined or charged under the NCC Progressive Discipline Policy.

3. Laura T. Hay.

253. Laura T. Hay ("Hay") is Caucasian, female, and upon information and belief, is of the Christian faith and a United States citizen by virtue of birthright.

a. Lack of Knowledge of Monition Law.

254. Hay previously represented the NCC Department of Finance (Division of Treasury), the same role as Plaintiff, before changing practice areas.

255. Regarding Finance, during the course of Plaintiff's research and investigation as to why NCC lacked the ability to handle a meaningful volume of sheriff's sales, Hay was identified as part of the problem. Indeed, Plaintiff's review of the pleadings Hay filed demonstrated inferior work product. As a result, Plaintiff recreated all the forms and pleadings utilized in NCC's monition process. These forms are being utilized by NCC to this day.

b. Lack of Knowledge of Human Resources Law.

256. Hay is currently an ACA II, whose primary area of focus is labor and employment. She is the lead attorney for the Department of Human Resources.

257. On July 29, 2019, Pension Administrator and Human Resources Benefits Coordinator Susan Lawler, who had been with NCC for at least or approximately twenty-five years expressed her frustration to Plaintiff regarding Hay's performance for HR. Specifically, she stated that Hay's work product "lacked depth and analysis." She further expressed her frustration with Hay's overall lack of cooperation and "non-responsive attitude regarding critical employee issues." In contrast, Coordinator/Administrator Lawler praised Plaintiff's far superior work product, work ethic, and attitude.

c. Lack of Leadership on Important Projects.

258. On October 23, 2019, County Attorney Davis assigned Plaintiff the task of drafting legislation regarding the re-employment of pensioners. The matter was a top priority for the Meyer Administration and involved complicated legal issues. The legislation should have been prepared previously due to the potential impacts on the tax status of the pension program. Hay,

according to the County Solicitor, had prepared a legal memorandum addressing the issues and need for the legislation. Accordingly, Hay was fully capable of drafting the legislation, at least in theory. Instead, defendant County Attorney Davis gave Hay a pass because she lacked the requisite leadership ability and skill to complete the assignment. Instead, Hay would stay on the internal team as the matter affected the Department of Human Resources, Hay's client.

259. On February 6, 2020, Plaintiff, the current Pension Administrator Frank Benevento and County Attorney Davis had a meeting with County Councilpersons Timothy Sheldon and Janet Kilpatrick, who would be sponsors of the legislation, to go over the draft legislation. Plaintiff and the Pension Administrator led the meeting.

260. After the meeting, the Pension Administrator Benevento gave Plaintiff a ride home. During that ride, Pension Administrator Benevento expressed his frustration with Hay, as her feedback on Plaintiff's substantially completed draft circulated in December 2019 demonstrated a lack of knowledge on core issues and caused unnecessary delays. The legislation passed unanimously on May 12, 2020 (Ordinance No. 20-021) solely through the leadership of Plaintiff and the current Pension Administrator, and notwithstanding the unnecessary delays and roadblocks caused by Hay.

d. Lack of Elementary Courtroom Skills.

261. Most recently, Hay represented defendant New Castle County in opposing Plaintiff's claim for unemployment insurance benefits following his July 8, 2020 firing. In a contested hearing before the Delaware Department of Labor with her boss defendant Davis with her, Hay failed to even introduce the County's exhibits into evidence. When she later tried to do so during closing arguments, her request was denied by the administrative law judge. The judge lectured Hay and explained that she had already given Hay multiple opportunities to enter these exhibits

into evidence but Hay had declined to do so. As a result, the Judge explained she was not going to let her do it belatedly after the evidentiary record was closed and closing arguments were already half completed.

262. Despite all of these performance failures, Hay was not summarily fired, nor was she disciplined or charged under the NCC Progressive Discipline Policy.

I. Damages.

263. As a direct and proximate result of the actions of the defendants, as detailed herein, Plaintiff has suffered or will suffer damages including, but not limited to, the full panoply of damages available under federal common law rules for damages. These include physical and emotional pain and suffering, mental anguish, emotional distress, loss of enjoyment of life, humiliation, embarrassment, injury to reputation, disappointment, anger, inconvenience and other non-pecuniary losses and injuries. Psychological, emotional or mental injuries include, but are not limited to: depression; anxiety; trouble sleeping; recurring nightmares; decreased energy and motivation; as well as other psychological, emotional and mental injuries.

264. Economic damages include, but are not limited to: loss of wages; loss of earnings; loss of benefits, including COBRA benefits; loss of pension benefits; loss of retirement benefits; decreased earning capacity; decreased pension and retirement benefits; and other pecuniary losses.

IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

265. All the actions of the defendants described both above and below were taken pursuant to policies, practices and/or customs of NCC and were authorized, sanctioned, implemented, permitted and/or ratified by officials functioning at a policymaking level. For example, Plaintiff was terminated by the County Executive and the County Attorney.

266. By the policies, practices and/or customs of officials functioning at a policymaking

level, NCC has denied Plaintiff his constitutional rights under the Fourteenth Amendment to the United States Constitution.

267. The individual defendants' actions violated clearly established federal constitutional rights of which any official would have known.

268. At all times material hereto the individual defendants participated in, implemented, authorized and/or sanctioned the federal constitutional deprivations described above.

269. At all times material hereto the individual defendants and their agents were acting under color of law. The federal constitutional deprivations described herein are fairly attributable to NCC.

270. The defendants either knew or showed a negligent or reckless disregard for the matter of whether their conduct violated federal constitutional rights.

271. The actions of the defendants and their agents or employees were deliberately, intentionally, willfully, purposefully, and knowingly done in violation of federal constitutional rights and because of the exercise of those rights.

272. Their actions were malicious, outrageous, wanton, and taken with evil motive, in bad faith, out of personal animus and without any reasonable grounds to support them.

273. The exercise of rights under the U.S. Constitution made a difference in all actions adverse to Plaintiff.

274. The exercise of these rights was a motivating, substantial or determinative factor in all actions adverse to Plaintiff.

275. The defendants did not reasonably believe that the actions they took were necessary to accomplish any legitimate governmental purpose.

276. The defendants' actions were motivated by bias, bad faith, and improper motive.

277. The defendants' actions constitute an abuse of governmental power.

278. The defendants' actions do not further any narrowly drawn important, substantial or compelling governmental interest.

279. The defendants' actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

280. The defendants' actions were capricious, irrational, arbitrary, egregious and outrageous.

281. The defendants' actions shock the conscience.

COUNT I (Fourteenth Amendment - Procedural Due Process)

282. Plaintiff repeats and realleges paragraphs 1-281 set out above.

283. The defendants for this count are Meyer and Davis.

A. Property Interests Created by County Law, Policy, Custom and Practice.

284. Plaintiff possessed protected property interests in his employment based on local government laws, policies, customs and practices, both written and unwritten, and from mutually explicit understanding between his government employer and its employee. Stana v. Sch. Dist of City of Pittsburgh, 775 F.2d 122, 126 (3d Cir. 1985).

285. Defendant Davis has admitted that Plaintiff had a protected property interest in his employment.

B. The Process Due Was Pre and Post Termination Hearings.

286. Federal law determines what process is due to Plaintiff. Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 541 (1985).

287. Plaintiff was denied the root requirement of the opportunity for a hearing before he was deprived of his employment. Id. at 542.

288. Plaintiff was denied his right to “notice” of the charges against him. Id.

289. The significance of the private interest “in retaining employment cannot be gainsaid” since Plaintiff’s livelihood was at stake. Id. at 543.

290. Plaintiff also was denied some opportunity to present “his side of the case.” Factual disputes were involved too. The need for a discharge was not clear and “the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect.” Id.

291. Allowing Plaintiff to present his full version of the events would have provided “a meaningful hedge against erroneous action.” Id. at 543 n.8.

292. The governmental interest in an immediate termination of Plaintiff was non-existent, presented no administrative burden nor intolerable delays. No significant hazard was presented by keeping Plaintiff on the job. Id. at 544-45.

293. No “extraordinary situation,” “emergency situation” or “rare exception” to the requirements of a pre-termination hearing exist. Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 570 n.7 (1972). Nor is any “extremely narrow” exception justified. Stana, 775 F.2d at 127.

294. Plaintiff “received no hearing, either before or after his [termination], and hence ... he was deprived of due process.” Bradley, 913 F.2d at 1078.

295. There is a direct causal relationship between defendants’ actions and the harm Plaintiff suffered.

296. Defendants’ actions were the “but for” cause of the termination of Plaintiff.

297. As a direct and proximate result of defendants’ actions, Plaintiff has been injured.

298. Plaintiff’s constitutional right to procedural due process has been denied under the

Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

**COUNT II (Fourteenth Amendment Equal Protection - Race, Religion,
National Origin and Sex Discrimination)**

299. Plaintiff repeats and realleges paragraphs 1-298 set out above.

300. The defendants for this count are Meyer and Davis.

301. This case also can be fairly characterized as a discriminatory discharge of an able Brown skinned South Asian Hindu male, in preference for three native White skinned Christian women employees with less than stellar job performance histories.

302. Plaintiff is an able, Brown skinned, South Asian, Hindu male.

303. Plaintiff was qualified for continued employment with NCC.

304. At all times material hereto he was a diligent, honest, and loyal employee who always performed his job in an exemplary manner. His only written job evaluation was exemplary.

305. Plaintiff was immediately terminated for a minor offense in the Manual while three comparable attorneys were not discharged for similar minor or more serious offences in the Manual.

306. As detailed above, at least three comparable Law Department attorneys were treated more favorably by defendants because of their religion, race, national origin, and sex – Judith H. Mitchell, Mary A. Jacobson and Laura T. Hay.

307. Any alleged legitimate non-discriminatory reason for the treatment of these three employees is a pretext for intentional discrimination on the basis of religion, race, national origin and/or sex.

A. Pretext Analysis.

1. Indirect Evidence of Intent.

308. Any reason for this treatment offered by the defendants is unworthy of credence since Plaintiff can demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the proffered legitimate reasons that a reasonable fact finder can rationally find them unworthy of credence and hence infer that the defendants did not act for the asserted non-discriminatory reason.

309. For example, one such “contradiction” in the reason for Plaintiff’s termination follows. In his July 8th phone call to Plaintiff, Davis claimed the reason for termination was Plaintiff being “grossly insubordinate” to defendant Davis in his July 7th e-mail to Davis, answering Davis’ questions to Plaintiff.

310. However, in direct contradiction to defendant Davis’ earlier insubordination claim, building on the sworn testimony she offered from defendant Davis at the unemployment compensation hearing, in her capacity as legal counsel for defendant NCC, Hay argued in her closing argument that Plaintiff had been fired because of “an isolated act,” specifically because he had e-mailed Akin Gump directly and that this was a “gross deviation” from the standards of conduct expected of all NCC employees and that it justified his firing. (See Hearing transcript at 29-30 - telling the judge that Plaintiff was fired for a “breach of protocol” prohibiting taking questions to this very expensive law firm).

311. As another example of a “weakness” or “inconsistency” in the proffered legitimate reason for termination is the fact that under NCC progressive discipline policies an employee can only be terminated in such a manner if out of 42 specific offenses, the only one that warrants immediate dismissal for a first offense is if the employee sells or distributes drugs or intoxicants on County property or during work hours. (Policy at 13).

312. Even for major offenses – such as bringing explosives onto County property, bringing guns to work, being drunk or on drugs at work, theft of county property, conviction of a crime, fighting, racial harassment of citizens, among others – the employee is suspended first with review for possible dismissal. (Policy at 13-14). And as noted above, suspension results in a pre-termination hearing before a disinterested decisionmaker, the Chief Human Resources Officer for NCC, where the employee is given an opportunity to “refute any of the charges upon which the dismissal is based.” (Policy at 5-6).

313. As an “implausibility,” Plaintiff was not given any of the protections granted him by the NCC Code or the various NCC policies and customs already detailed at length above.

314. For example, Plaintiff was fired “without regard” for the merit factors and non-discrimination protections required to be considered under NCC § 26.01.021, the NCC Equal Opportunity statute, the NCC Diversity Policy and the NCC Diversity Policy Statement.

2. Direct Evidence of Intent.

315. Alternatively, plaintiff can demonstrate pretext because the natural probative force of all direct and circumstantial evidence establishes that it is more likely than not that a motivating or determinative cause of the adverse employment actions was the religion, race, national origin and/or sex of the Plaintiff.

316. Davis had a history of disparate treatment of favored employees over Plaintiff whose religion, race, national origin and sex differed from Plaintiff.

317. For the 13 months before Defendant Davis terminated Plaintiff, after he assumed his County Attorney position, and while Plaintiff was employed, Davis always made Plaintiff feel uncomfortable in his presence. He did not treat Mitchell, Jacobson and Hay in this manner, so as to make them feel uncomfortable in his presence.

318. Davis also made Plaintiff feel unwelcome and uneasy in his presence. He did not treat Mitchell, Jacobson and Hay in this manner, so as to make them feel unwelcome and uneasy in his presence.

319. Except for the initial meeting Davis held with all Law Department staff when he took office, not once did Davis ever approach Plaintiff to engage in small talk or even simple pleasantries. Davis barely acknowledged Plaintiff's existence. He did not treat Mitchell, Jacobson and Hay in this manner, so as to make their existence barely acknowledged in his presence.

320. For example, Davis would never even say "hello" to Plaintiff. He did not treat Mitchell, Jacobson and Hay in this manner and instead he would say "hello" to them.

321. Davis also generally excluded Plaintiff from being accepted in the office. He did not treat Mitchell, Jacobson and Hay in this manner, so as to exclude them from being accepted in the office.

322. Davis' preferential treatment for Mitchell, Jacobson and Hay was intended to help provide cover for their well-known deficiencies and lack of ability to perform on sophisticated legal matters.

323. Davis also distributed workload in the office inequitably in favor of these three staff members.

324. Plaintiff was juggling twelve time sensitive projects while his brother was thought to be dying from COVID-19.

325. As permitted by NCC policy, custom and practice Plaintiff sought legal help from co-counsel on the CARES Act project.

326. Plaintiff was immediately fired for seeking such assistance.

327. All three native White skinned Christian women employees with less than stellar job

performance histories and background were not instantly terminated for any of their serious performance shortcomings.

328. Plaintiff also did not hide the fact that he was a member of the Hindu religion. For example, he noticeably displayed on his work desk for all to see a religious artifact, called a “Ganesh,” which resembles an elephant. In the Hindu religion, Ganesh is believed to be the “remover of obstacles” and is customarily displayed by Hindus at the front entrance of their home, in the car and at work.

329. When Plaintiff was terminated he was not allowed to gather his personal belongings. When his personal belongings were eventually returned to Plaintiff his Ganesh was missing and it has apparently been destroyed out of hostility to Plaintiff’s Hindu religious beliefs.

3. Circumstantial Evidence of Intent.

330. The circumstantial and direct evidence of intent proves invidious discriminatory purpose. Examples include the following.

331. The destruction of the Hindu “Ganesh” religious artifact of Plaintiff when he was terminated.

332. The NCC progressive discipline policy does not permit a termination in this situation but defendant Davis terminated Plaintiff anyway.

333. Additionally, defendant Meyer suddenly authorized Plaintiff’s termination despite the fact that previously he had recently praised the work of Plaintiff. As noted above, On June 19, 2020, at approximately 10:35 a.m. and again later that same day at approximately 3:00 p.m., in his opening remarks before the Support Non-Profits and Support Small Business Committees, Meyer admitted that Plaintiff was designated to represent each of these Committees because he was the “best of the best.” In a November 20, 2019 personal note to Plaintiff, Meyer thanked Plaintiff for

his excellent service to the county taxpayers – “Thanks for being such a strong advocate for us ... and continuing to produce results for our citizens.”

334. In handling the termination of Plaintiff there were departures which occurred from the normal procedural sequence.

335. As already detailed at length above, Plaintiff’s termination violated numerous NCC statutes, policies and procedures.

336. The specific sequence of events leading up to the immediate termination evidences discriminatory intent.

337. Given the totality of the circumstances, a reasonable fact-finder could conclude that the defendants intentionally and purposefully treated Plaintiff less favorably than others because of his religion, race, national origin and/or sex.

338. As a direct and proximate result of defendants' actions, Plaintiff has been injured.

339. Plaintiff’s constitutional right to the equal protection of the law and to be free of religious, race, national origin and/or sex discrimination has been denied under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

COUNT III (Fourteenth Amendment - Municipal Liability - Maintenance of Policies, Practices and Customs)

340. Plaintiff repeats and realleges paragraphs 1-339 set out above.

341. The defendant for this count is defendant NCC.

342. All decisions made by the individual defendants were policies, practices and/or customs fairly attributable to NCC.

343. For example, pursuant to 9 Del.C. § 1394, defendant Davis had final authority to establish municipal policy with respect to terminating Plaintiff’s employment as an ACA.

344. As a result, when he fired Plaintiff, his actions were fairly attributable to NCC.

345. Similarly, pursuant to 9 Del.C. § 1116, defendant County Executive Meyer has final authority to establish municipal policy in certain specific areas. This state statute dictates that the County Executive “shall” –

- “See that the duties and responsibilities of the executive and administrative agencies of the County are properly performed.” Id. at (1).
- “See that the ... regulations of the County are enforced.” Id. at (2).
- “Receive and examine complaints made against any ... employee for neglect of duty or malfeasance in office.” Id. at (5).

346. In “authorizing” Plaintiff’s firing, defendant Meyer failed to see that the duties and responsibilities of the executive and administrative agencies of the County were properly performed.

347. In “authorizing” Plaintiff’s firing, defendant Meyer failed to see that the regulations, procedures, policies and laws of NCC were enforced.

348. In “authorizing” Plaintiff’s firing, defendant Meyer failed to properly examine complaints about Plaintiff’s job performance pursuant to those same regulations, procedures, policies and laws.

349. As a result, defendant Meyer’s actions were fairly attributable to NCC.

350. As a direct and proximate result of defendant NCC’s policies, practices and/or customs, Plaintiffs has been injured.

351. Plaintiff’s constitutional rights to procedural due process and equal protection have been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

Wherefore, Plaintiff prays that the Court:

- A. Enter separate judgments against the each of the individual capacity

defendants and NCC.

- B. Enter a declaratory judgment declaring the acts of each of the defendants to be a violation of Plaintiff's constitutional rights.
- C. Enter a judgment against the individual capacity defendants and NCC, jointly and severally, for compensatory damages, including but not limited to lost wages, back pay, pension, COBRA and other benefits, for future or front pay, loss of earning capacity, physical and emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, injury to reputation and other damages.
- D. Enter judgment against the individual capacity defendants for punitive damages.
- E. Issue a reparative injunction directing that each of the individual capacity defendants write a letter of apology to Plaintiff, apologizing for their illegal violations of Plaintiff's constitutional rights.
- F. Award Plaintiff attorney's fees, costs and pre and post judgment interest for this action.
- G. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

/s/ Stephen J. Neuberger

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