

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 0830276

JAY S. SPECHLER, individually,

Plaintiff,

vs.

VICTOR TOBIN, individually,

Defendant.

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VERIFIED COMPLAINT

The Plaintiff, JAY S. SPECHLER, by and through his undersigned counsel, sues the Defendant, VICTOR TOBIN, and states:

NATURE OF THE CASE

The Plaintiff, JAY S. SPECHLER, asserts the following claims against the Defendant in the above-styled action:

- (1) Violating 42 U.S.C. 1983 regarding rights conferred by the Fourteenth Amendment of the United States Constitution ("1983 Action").
- (2) Violating Article I, Sections 2 and 9, and Article V, Section 10(a) and 12(a) of the Florida Constitution.
- (3) Constructively discharging the Plaintiff.
- (4) Intentionally inflicting the Plaintiff with emotional distress.
- (5) Casting a false light on the Plaintiff in the eyes of the public.

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JURISDICTION AND VENUE

1. The Court has jurisdiction to hear the 1983 Action pursuant to Maine v. Thiboutot, 448 U.S. 1, 10-11, 100 S. Ct. 2502, 65 L. Ed. 2d 555 (1980).
2. The Court has jurisdiction to hear the attendant claims because they either seek damages in excess of \$15,000, excluding attorney's fees and costs, or equitable relief.
3. Venue is proper because the acts complained of occurred within the Court's jurisdiction.
4. All conditions precedent necessary to bring this action have either been performed, have occurred, have been waived or otherwise excused.

THE PARTIES

5. The Plaintiff, JAY S. SPECHLER, is a competent adult residing in Broward County, Florida.
6. The Defendant, VICTOR TOBIN, is a competent adult residing in Broward County, Florida.
7. At all times material, the Defendant was acting in his *individual* capacity, though clothed with the authority of Florida law.
8. At all times material, the administrative acts complained of were *ultra vires* in nature.

THE FACTS

9. In 1988, the Plaintiff was elected to the position of County Court Judge in Broward County.
10. The Plaintiff held that judgeship until his letter of resignation was accepted by Governor Crist on April 4, 2008.
11. When the acts complained of below occurred, there were approximately four years remaining in the Plaintiff's fifth term of office.

12. On or about January 17, 2008, the Plaintiff learned from Judge Geoff Cohen that the Defendant mistakenly believed that the Plaintiff was faulting the Defendant for the Defendant's handling of a matter which generated negative publicity.
13. Upon information and belief, the Defendant labored under the false impression that the Plaintiff criticized the manner in which the Defendant conducted an investigation of an incident involving Judge Marina Garcia-Wood.
14. On or about the morning of January 18, 2008, the Plaintiff attempted to "clear the air" and initiated a conversation with the Defendant by emphatically stating that he had never made the purported disparaging remarks about the Defendant. However, that attempt of exoneration was met with Defendant's abrupt statement, "I am done with you."
15. On or about March 8, 2008, the Defendant disseminated an email to all judges and judicial assistants stating that he was not going to disclose to the State of Florida that there was a possibility of obtaining funding for the Traffic Hearing Officers' Program from Broward County.
16. The Defendant requested that the contents of that email be kept confidential since, as he stated, "Why would the State fund the program" if funding was available from the County.
17. The Plaintiff was perplexed and disturbed by the contents of that email, which clearly indicated that the Defendant was employing a somewhat devious strategy.
18. On or about March 19, 2008, the Plaintiff attended a meeting concerning the Traffic Hearing Officers' Program. On that occasion, the Plaintiff indicated to the Defendant that he was troubled by the fact that the Defendant was concealing the potential funding

source from the State and coincidentally inflating the request for funds from the Broward County Commission.

19. The Plaintiff held the firm conviction that the Traffic Hearing Officers' Program could be continued efficiently with less money than the amount projected by the Defendant.
20. On or about March 28, 2008, the Plaintiff received an envelope from the Defendant marked "Confidential".
21. Inside the envelope was a letter dated March 27, 2008 ("notice of banishment") from the Defendant which stated that the Plaintiff was banished from the courthouse, i.e., the Plaintiff could not return to the courthouse without obtaining permission from the Defendant.
22. At no time prior to the delivery of that notice of banishment did the Defendant make any effort to discuss his misconceptions with the Plaintiff. As Chief Judge, the Defendant owed a professional, if not ethical, obligation to confer with the Plaintiff prior to taking such a drastic measure.
23. The notice of banishment also indicated that the Plaintiff should consult with Judge Zeller regarding his assignment to purported civil traffic and parking dockets in the satellite courthouses.
24. However, such an assignment proved to be a sham since no such dockets or division were established in the satellite courthouses at that time.
25. Upon information and belief, the Defendant contemporaneously disclosed the contents of the notice of banishment to Judge Sharon Zeller and others unknown at this time.

26. The notice of banishment stated that the Plaintiff had to confer with both Judge Zeller and the Clerk of Court as to the non-existent traffic dockets he would be handling in the future.
27. The notice of banishment placed the Plaintiff in the intolerable position of disclosing his banishment from the courthouse.
28. On March 29, 2008, Judge Zeller gave the Plaintiff permission to enter the Courthouse over that weekend in order to retrieve his personal effects.
29. Both the notice of banishment and condescending consent to retrieve his personal effects caused the Plaintiff to suffer great humiliation and angst.
30. The travail of exiting the courthouse under the above-described circumstances caused great suffering to the Plaintiff, who consistently scored in the top twenty percentile of the judicial bar poll.
31. As of March 31, 2008, the Defendant knew that the Plaintiff's assignment was bogus in nature. There were no such dockets in the satellite courthouses. This fact is demonstrated by the absence of any response from Judge Sharon Zeller's office to the Plaintiff's inquiry about those supposed dockets.
32. On March 28, 2008, approximately two hours after receiving the notice of banishment, the Plaintiff learned from his judicial assistant that a reporter from the *Sun Sentinel* had inquired as to the details surrounding the nature of banishment. Shortly thereafter, the same reporter called the Plaintiff and left a message on his recorder.
33. Within hours of the inquiry from the *Sun Sentinel* reporter, the Plaintiff received telephone calls from reporters from *The Daily Business Review* and the *Miami Herald*. Channel 10 even sent a reporter and cameraman to the home of the Plaintiff.

34. Based on the rapid appearance and inquiries of the media regarding the Plaintiff's banishment and demotion to a non-existent position, it was obvious that the performance and competency of the Plaintiff as a highly commended county judge was being called into question.
35. The ensuing newspaper articles used terms or phrases such as, "barred", "ordered to stay away", and "told not to return" when covering the Plaintiff's inglorious exit from the very courthouse in which he had presided for the last twenty years.
36. When called upon by the press to explain the banishment, the Defendant glibly stated that the letter spoke for itself.
37. The statements in the newspapers and the response of the Defendant obviously cast a shadow or false light over the reputation of the Plaintiff.
38. The Defendant's cryptic and terse response was calculated to cast a pall over the hereto respected and esteemed reputation of the Plaintiff.
39. By banning the Plaintiff from the courthouse, the Defendant deprived the Plaintiff of 1) access to his computer for inter-court communications and research; 2) access to the library for research purposes; 3) the employment of his judicial assistant; 4) the ability to communicate by telephone; 5) collegial contact with his brethren jurists for purposes of discussing the ever evolving laws relevant to their tasks; 6) his right to conduct personal business or transactions requiring the services of the courthouse; 7) the right to engage in litigation regarding personal matters; and finally 8) the opportunity to simply socialize with his judicial colleagues, a vast majority of whom are his friends.

40. In addition to the above-described deprivations, the Plaintiff was grossly subjected to the scorn, derision and vindictiveness of the Defendant, who stripped the Plaintiff of his portfolio, i.e., the services and functions that the Plaintiff was elected to perform.
41. In other words, the Defendant created a truly hostile work environment which proved intolerable to the Plaintiff.
42. Having been stripped of an actual office or function, and required by the judicial code to comply with the Defendant's directive, the Plaintiff was forced to resign in order to protect his legal rights and maintain his self respect.

COUNT I
VIOLATION OF 42 U.S.C. § 1983

43. The Plaintiff repeats, realleges and incorporates by reference the allegations in paragraphs 1 through 39 above, with the same force and effect as herein set forth.
44. At all times material, the conduct of the Defendant was subject to 42 U.S.C. § 1983.
45. The purpose of 42 U.S.C. § 1983 is to deter state actors, and in this case, the Defendant, from using his badge of authority, i.e., his position as Chief Judge, to deprive the Plaintiff of his federally guaranteed rights afforded by the Fourteenth Amendment of the U.S. Constitution and to provide the Defendant relief in that regard.
46. Based on the Plaintiff's banishment from the courthouse and his relegation to a non-existent division, the Plaintiff specifically avails himself of the rights afforded by the Fourteenth Amendment, which states that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1.
47. This is an action brought pursuant to 42 U.S.C. § 1983 because the Defendant misused his vestments of office by barring the Plaintiff from the courthouse without affording the Plaintiff his constitutional right of due process.

PROPERTY INTEREST

48. Pursuant to Article V, § 10(a) of the State Constitution, the Plaintiff was elected to a six-year term as a County Court Judge, and barring legitimate grounds for removal, would have held that office for approximately four more years.
49. Pursuant to Article V, § 12, of the State Constitution, the Judicial Qualifications Commission was established to investigate and adjudicate the questionable conduct of sitting judges, and then make recommendations to the State Supreme Court as to what remedial steps should be taken.
50. Pursuant to the State Constitution, the Supreme Court is the only judicial authority that can mete out punishment to offending judges.
51. At all times material, Defendant knew that only the Judicial Qualifications Commission was vested with investigatory, accusatory and adjudicatory authority in matters concerning any purported misconduct of the Plaintiff.
52. At all times material, Defendant knew that only the Supreme Court was empowered to remove or otherwise sanction the Plaintiff.
53. Irrespective of the above-described procedures and the jurisdictional restrictions concerning the sanctioning of judges, Defendant banished Plaintiff from the Courthouse, and relegated him to a fictitious position.
54. In sum, the Defendant deprived the Plaintiff of employment, i.e., his six-year term of office, which is a duly protected property interest.

LIBERTY INTEREST

55. It is settled law that the protected liberty interests of all citizens, and therefore the Plaintiff, protected by the U.S. Constitution is one's good name, reputation, honor, and integrity, and the ability to take advantage of other public employment opportunities.
56. The act of banishment stigmatized the good name, reputation, honor and integrity of the Plaintiff, and his ability to perform as a judge.
57. The stigma arose from the act of banishment and demotion that had no justification in law or in fact. From a legal standpoint, the Plaintiff was denied his right of due process. From a factual standpoint, there was no rationale to justify the outrageous acts.
58. The acts were particularly diabolical because they forced the Plaintiff to voluntarily reveal his banishment to others, and, pursuant to law, a forced revelation is attributable to the Defendant.
59. The Defendant imposed draconian sanctions on the Plaintiff in derogation of the Plaintiff's right of due process, which was established to protect his good name and reputation.

PROCEDURAL DUE PROCESS

60. Pursuant to the Fourteenth Amendment of the U.S. Constitution, and Article I, Sections 2 and 12(a) of the Florida Constitution, the Plaintiff was entitled to due process before suffering the indignity of banishment from the Courthouse and the deprivation of his office and function as judge.
61. As a Chief Judge of the Circuit Court, the Defendant obviously had knowledge of the constitutional safeguards of due process.

62. In essence, the Defendant thumbed his nose at the Country's most revered legal documents, the federal and state constitutions, and used the vestments of his position to usurp those powers for himself. He effectively cut the Judicial Qualifications Commission and the Supreme Court out of the investigatory, accusatory, adjudicatory and disciplinary process.
63. The dictatorial banishment from the courthouse constituted an unjustified administrative move motivated by a fiction in the mind of the Defendant.
64. The dictatorial banishment deprived the Plaintiff of the fundamental right of due process which would have enabled him to maintain his most valuable credentials, his integrity and creditability.
65. As a direct and proximate result of the banishment and sham demotion, the Plaintiff was humiliated and placed into a state of continuing anxiety.
66. Plaintiff has retained counsel to bring this action and to pay reasonable fees in that regard.

WHEREFORE, the Plaintiff demands the following relief against the Defendant:

1. Declare that the act of banishment was unconstitutional.
2. Declare that the assignment was a sham.
3. Declare that the Defendant constructively terminated the Plaintiff.
4. Declare that the Plaintiff is eligible for reinstatement to the position he held prior to the notice of banishment.
5. Provide compensatory and consequential damages, including damages for emotional distress, resulting from the acts of the Plaintiff.
6. Provide attorney's fees pursuant to 42 U.S.C. 1988.

COUNT II
VIOLATION OF ARTICLE I, SECTIONS 2 AND 9, AND
ARTICLE V, SECTION 12(a) OF THE FLORIDA CONSTITUTION

67. Plaintiff repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 57, with the same force and effect as if herein set forth.
68. At all times relevant and material, the Defendant was subject to the laws of Florida, with particular reference to Article I, Sections 2 and 9, and Article V, Section 12(a) of the State's Constitution.
69. As indicated above, the Defendant ignored and avoided the investigatory, accusatory, adjudicatory and disciplinary processes established by law in order to justify an irrational and unjustified grudge against the Plaintiff.
70. The banishment and sham assignment deprived the Plaintiff of his due process rights articulated in the Constitution of the State of Florida.
71. As a direct and proximate result of the banishment and sham demotion, the Plaintiff was humiliated and placed into a state of continuing anxiety.

WHEREFORE, the Plaintiff demands the following relief against the Defendant:

1. Declare that the act of banishment was unconstitutional.
2. Declare that the assignment was a sham.
3. Declare that the Defendant constructively terminated the Plaintiff.
4. Declare that the Plaintiff is eligible for reinstatement to the position he held prior to the notice of banishment.
5. Provide compensatory and consequential damages, including damages for emotional distress, resulting from the acts of the Plaintiff.

COUNT III

CONSTRUCTIVE DISCHARGE

72. Plaintiff repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 57, with the same force and effect as if herein set forth.
73. From an objective standpoint, Defendant made the working conditions for the Plaintiff so difficult that he was compelled to resign.
74. In addition to the multitude of deprivations suffered by the Plaintiff, he was relegated to a fictitious position that caused extreme embarrassment.
75. The Plaintiff was unjustifiably placed in a position of infamy, thereby subjected to the critical eyes of the Defendant and the court personnel at large.
76. The act of banishment caused such a deep-seated feeling of humiliation that the Plaintiff was forced to resign in order to preserve his legal rights and own self respect.

WHEREFORE, the Plaintiff demands judgment in his favor against the Defendant for compensatory damages, including but not limited to the loss or diminution of wages and salary, unsalaried compensation, loss of fringe benefits, monies securing new employment, mental and emotional distress, damage to reputation, court costs and punitive damages upon receiving leave of court.

COUNT IV **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

77. Plaintiff repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 57, with the same force and effect as if herein set forth.
78. At all times material, the Defendant deliberately or recklessly orchestrated the banishment of the Plaintiff from the courthouse and manufactured the bogus assignment of tasks, knowing that there was a high degree of probability that the Plaintiff would suffer emotional distress.

79. By ignoring the constitutional safeguards and, more specifically, the due process rights of the Plaintiff, the Defendant acted in an outrageous manner. The acts complained of exceeded the bounds of decency, and therefore cannot be condoned in our civilized community.
80. The above acts complained of were the proximate cause of the emotional distress suffered by the Plaintiff.
81. The emotional distress was severe in nature, since it caused the Plaintiff to suffer public humiliation, grief, and embarrassment.
82. The ostracism foisted on the Plaintiff caused severe psychological damage which affected the Plaintiff's capacity to enjoy life.

WHEREFORE, the Plaintiff demands judgment in his favor against the Defendant for compensatory damages for past, present and future, medical or psychological expenses, pain and suffering, loss of income, impairment of earning capacity, loss of enjoyment of life, and costs of suit, and for such other and further additional relief and the Court deems just and proper under the circumstances. The Plaintiff will also seek punitive damages upon obtaining leave of court.

COUNT V
FALSE LIGHT INVASION OF PRIVACY

83. Plaintiff repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 57, with the same force and effect as if herein set forth.
84. As alleged above, the Defendant either disclosed the notice of banishment to the public or placed the Plaintiff in the untenable position of having to voluntarily disclose the banishment to the public.
85. Irrespective of the source of disclosure, the disclosure placed a false light on the ability, competency, and temperament of the Plaintiff as a sitting judge.

86. At all times material, Defendant knew that there was no legal or factual justification for the acts complained of.
87. At all times material, Defendant knew that the immediate response of the public at large would be one of derision.
88. Having been deprived of due process in order to exonerate himself, the Plaintiff is still the object of derision.
89. The acts complained of have caused the Plaintiff to suffer from severe emotional distress.

WHEREFORE, the Plaintiff demands judgment in his favor against the Defendant for compensatory damages for past, present and future, medical or psychological expenses, pain and suffering, loss of income, impairment of earning capacity, loss of enjoyment of life, and costs of suit, and for such other and further additional relief and the Court deems just and proper under the circumstances. The Plaintiff will also seek punitive damages upon obtaining leave of court.

JURY DEMAND

Plaintiff demands trial by Jury of all issues so triable as of right.

