

KEISHA HUDSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.:
	)	
MONTGOMERY COUNTY, Pennsylvania,	)	
	)	JURY TRIAL DEMAND
Defendant.	)	
	)	
	)	
	)	

JURY TRIAL DEMAND

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COMPLAINT

Statement of the Case

1. In early February 2020, Plaintiff Keisha Hudson, who was then Deputy Chief Public Defender for Montgomery County, Pennsylvania, directed the filing of an extraordinary brief in an extraordinary case of statewide importance. In an amicus brief before the Pennsylvania Supreme Court, Hudson exposed the injustice of the money-bail system in Montgomery County, which jails thousands of presumptively innocent people for no reason other than their ability to pay money.

2. Because of this effort, Hudson and her colleague, then–Chief Public Defender Dean Beer, were fired on February 26, 2020.

3. Defendant Montgomery County, Pennsylvania, has not provided Hudson with a specific reason for her firing, has not formally disciplined her at any point in her four-year tenure, and has not previously found Hudson’s performance to be deficient in any respect.

4. Hudson was fired because she challenged statewide injustice by exposing the truth about Montgomery County’s unjust and unconstitutional bail system.

5. Because the drafting and filing of the amicus brief was not part of Hudson’s officially described ordinary job duties as Deputy Chief Public Defender, the brief was protected speech. She brings this case for First Amendment retaliation under 42 U.S.C. § 1983, and for wrongful discharge under the common law of Pennsylvania.

Parties

6. Plaintiff Keisha Hudson has practiced law in Pennsylvania for the past 15 years. In 2016, after ten years at the Federal Community Defender Office for the Eastern District of Pennsylvania, in Philadelphia, Hudson was recruited by the Public Defender in Montgomery County (“the Office”), which represents indigent clients in criminal cases. She began work as Deputy Chief Public Defender on May 9, 2016.

7. Defendant Montgomery County, Pennsylvania (“the County”), is a municipality formed under Pennsylvania law. The County is governed by a three-member commission, and its day-to-day operations are managed by a Chief Operating Officer, Lee Soltysiak. The County is sued for damages and injunctive relief.

Jurisdiction

8. Hudson brings this action under 42 U.S.C. § 1983 and the law of the Commonwealth of Pennsylvania.

9. This Court has jurisdiction over Hudson’s federal claims under 28 U.S.C. § 1331, and supplemental jurisdiction over Hudson’s state-law claims under 28 U.S.C. § 1367.

Background¹

10. On May 9, 2016, Hudson began her employment at the Office as Deputy Chief Public Defender.

11. At all times during Hudson’s employment at the Office, Dean Beer served as Chief Public Defender.

12. In her role as Deputy Chief, Hudson managed the Office’s day-to-day operations and was responsible for training and supervision of attorneys and interns.

13. Throughout her tenure, Hudson interacted with the County Board of Commissioners and with Soltysiak only to seek approval for budgetary matters, and those contacts were limited to assisting Beer, who was responsible for negotiating the budget with the County.

14. When she began working at the Office, Hudson was given a copy of the Montgomery County Employee Handbook and County Ethics Policy (collectively “employment policies”).

¹ All facts not based on Hudson’s personal knowledge are pleaded on information and belief.

15. The employment policies detail the procedures that the County must follow to discipline an employee accused of violating County rules. In situations in which the County seeks to discipline or dismiss an employee, the employment policies require an investigation, written findings of fact sent to the employee and to each County Commissioner, an opportunity to appeal the findings of fact by the employee, a vote of the Commission on whether a violation occurred, and a written determination based on that vote.

Hudson Works to Reform the Bail System

16. Shortly after Hudson's arrival at the Office, she worked with Beer to find innovative ways to ensure excellent representation of the Office's clients. But she also sought to reform the criminal system in Pennsylvania through advocacy in matters that were not part of day-to-day representation of clients in their specific cases, including efforts to reform the bail system and to address the often-severe collateral consequences of criminal convictions.

17. The bail system in Montgomery County discriminates on the basis of wealth, causing many people, including those not represented by the Office, to be incarcerated pre-trial because they are too poor to pay money bail.

18. In 2019, the Office began working with the local Criminal Justice Advisory Board (on which the Office, the County, the local prosecutor's office, and the local bench were represented) to suggest reforms to the bail system in Montgomery County.

19. The work of the Criminal Justice Advisory Board was conducted privately, and at no point in 2019 did Hudson or Beer publicly criticize Montgomery County's bail system.

20. The reform efforts continued through 2019, but to date no significant changes have been made to the County's bail system.

21. People are still jailed every day in Montgomery County for no reason other than their poverty.

The Office Files an Extraordinary Amicus Brief in the Pennsylvania Supreme Court

22. In March 2019, the ACLU of Pennsylvania filed a class-action mandamus petition in the Supreme Court of Pennsylvania, alleging that the bail system in Philadelphia County violated the Federal and State Constitutions: *Philadelphia Community Bail Fund, et al., v. Arraignment Court Magistrates of the First Judicial District of the Commonwealth of Pennsylvania*, No. 21 EM 2019 (“the Philadelphia case”).

23. On July 8, 2019, the Supreme Court of Pennsylvania accepted jurisdiction of the case under its King’s Bench powers to review issues of extraordinary statewide importance.

24. After reviewing the Petition and grant of review by the Supreme Court, Hudson decided to file an amicus brief in support of the Petitioners in the Philadelphia case to show that the constitutional violations alleged in that case were also being committed in Montgomery County and throughout the Commonwealth. Hudson was not representing any client who had been assigned to the Office; rather, she was using this opportunity to promote state-wide reform of the money bail system in Pennsylvania.

25. On February 3, 2020, shortly after the deadline to file amicus briefs had passed, the Office attempted to file the amicus brief. The brief begins with the story of a mother who was jailed for no reason other than her poverty and, as a result, was unable to breastfeed and bond with her newborn child. The brief goes on to explain that her story was not aberrational: Montgomery County’s money-bail system, the brief reads, senselessly separates countless families and disrupts countless lives. The brief argues that the Montgomery County bail system is illegal because cash bail is imposed without consideration of ability to pay and routinely results in illegal pretrial detention when the arrestee cannot pay. Magistrates in Montgomery County, the brief alleges, routinely set unaffordable money-bail amounts for the purpose of detaining people prior to trial, even though such a purpose is expressly forbidden by Pennsylvania law; and, the brief alleges,

they routinely delay hearings at which people could be released from jail, effectively forcing them to waive their rights in exchange for their freedom. The brief describes a system in which crucial decisions regarding people's liberty are made by judges who often do not have formal legal training, without a formal record, without evidence, without counsel, and all in violation of the United States Constitution and Pennsylvania law.

26. The Office's prior recent amicus briefs concerned important issues surrounding the imposition of fees and fines on criminal defendants, but none of the other briefs focused specifically on Montgomery County's pervasive and illegal practices, and none of the other briefs prompted a reaction of any kind from County officials or local judges.

27. Because the deadline to file amicus briefs had passed in the Philadelphia case, the Office filed a motion to docket the brief as though it had been filed on time (referred to as "*nunc pro tunc*," meaning "then as now"). As a result of this motion, the brief was not in fact docketed on February 3, 2020, and was not publicly available at that time.

28. Given the issues in the amicus brief, and in light of the reform efforts that were ongoing in the County, Beer sent Soltysiak and County Solicitor Josh Stein copies of the brief by email. This was done because this filing was intended to promote reform in a case in which the Office was not a party, where the office did not represent a client from Montgomery County, and where the issue was not a part of the required duties of the Office in its representation of clients in their individual criminal cases.

29. Beer had never before sent a copy of an amicus brief to Soltysiak, Stein, or anyone else in County administration.

30. Later the same day, in response, Stein emailed Beer: "[I]s this an amicus brief in support of the litigation against the [Philadelphia defendants] or just an opportunity to complain

about how things work in [Montgomery County]? I fully support your office in its mission to represent its clients, and if what is stated in the brief is true then I can see a desire for change. I just have to question the persuasive value of this brief for the actual underlying case. In some instances, it seems to function as an argument of how things are better in [Philadelphia].”

31. Beer forwarded Stein’s email to Lee Awbrey, who had drafted the brief for the Office, and Awbrey responded that the brief was intended to promote statewide reform and that she concluded, after consulting with other groups writing amicus briefs, that the brief would aid the underlying litigation.

32. Shortly thereafter, Beer added, also in response to Stein, that the goal of the brief was not merely to complain, but rather to show the Supreme Court that the issues in the underlying litigation affected jurisdictions across the state.

33. Stein did not respond.

The President Judge and the County Pressure Beer to Withdraw the Brief

34. Three days later, on February 6, 2020, President Judge of the Court of Common Pleas Thomas Del Ricci asked Beer to come to his office.

35. In his office, Del Ricci held the still un-docketed amicus brief in his hand.

36. Del Ricci questioned Beer’s motives for filing it.

37. Del Ricci told Beer that he should have consulted with him prior to filing the amicus brief, that the brief should not have been filed, and that he believed some statements in the brief were not accurate.

38. Del Ricci did not identify any statement in the brief that was not accurate.

39. Del Ricci said that the amicus brief was an attack on the court and against him personally and instructed Beer to withdraw it.

40. Del Ricci threatened to withdraw his support from the not-yet-instituted pretrial programs on which the Office had been working, and which could provide significant relief for Defender clients.

41. On February 7, 2020, Stein and Soltysiak met with Beer and Awbrey to discuss the amicus brief. They questioned Beer and Awbrey about their motivations for filing the amicus brief and admonished them for not seeking prior approval from the County.

42. At no point in the conversation did either Stein or Soltysiak take issue with any of the facts alleged in the amicus brief.

43. As a matter of practice and procedure, the County had never requested or required the Chief Defender or the Deputy Chief Defender to seek approval with respect to any litigation-related matter in the office on individual cases, or indeed on any amicus filings.

44. Stein's and Soltysiak's statements (as well as Del Ricci's) reflected the fact that this amicus filing was not done pursuant to the ordinary duties of the Office or of the Chief Defender and Deputy Chief Defender and was not related to the representation of clients of the Office; the County understood that the brief was intended to promote state-wide reform of bail practices. The filing of the brief was an act of advocacy and speech on a matter of public importance.

45. On February 10, 2020, Judge Del Ricci came to the Office to speak with Beer. Beer was in miscellaneous court handling client matters at the time. And so Del Ricci returned to the courthouse and asked Beer to step out of court to speak with him in the hallway.

46. In the hallway of the courthouse, Del Ricci asked Beer if he had decided whether to withdraw the brief.

47. Beer responded that he was waiting to hear from the County.

48. Del Ricci told Beer that he would be filing a complaint with the Pennsylvania Attorney Disciplinary Board against Beer if he did not withdraw the brief.

49. “Look at this face,” Del Ricci told Beer. “This face does not bluff.”

The County Orders Beer to Withdraw the Brief, and He Does

50. Immediately following his conversation with Del Ricci, Beer emailed Stein and Soltysiak about Del Ricci’s threats.

51. In response, Soltysiak wrote: “I believe the best course of action regarding the brief is to withdraw it. I believe the lack of communication both with our office and with courts beforehand was a fatal flaw in strategy and leaves us with very limited options. I do believe there was a way we could have had a different outcome on this issue had the matter been handled differently starting in December and not after the fact in February. I understand a significant amount of work went into drafting the brief, and I commend your office’s commitment to our constituents. However, the lack of strategy and internal communication has undermined that work and is what led me to this decision. Please withdraw the brief immediately.”

52. The following day, Beer approached Del Ricci and said he was going to withdraw the brief.

53. Del Ricci was not satisfied. He said the amicus brief was now public and widely disseminated, and asked Beer what he planned to do about that.

54. Del Ricci said that he was pulling his support for the pretrial program and would no longer consult with Beer or anyone in the Office about criminal-justice issues. He said that he had been considering filing a disciplinary board complaint, but now he would definitely file it.

55. Throughout this conversation, Del Ricci repeated that “a lot of people want you fired.”

56. Beer filed a motion to withdraw the amicus brief on February 11, 2020.

The County's Stated Reasons for its Actions with Respect to Beer

57. On February 13, 2020, Beer sent a letter to Soltysiak requesting clarification regarding his independence in his role as Chief Public Defender. In the letter, Beer summarized his interactions with Soltysiak, Stein, and Del Ricci regarding the amicus brief.

58. On February 20, 2020, Soltysiak wrote in response that although “[t]here is no question that your intentions in regards to providing quality representation to clients are genuine,” Soltysiak had “been very disappointed in the manner in which [Beer] ha[d] sought to advance [criminal-justice reform] on a number of occasions.”

59. This response makes clear that the County viewed criminal-justice reform activities as outside of the ordinary duties of the Chief Public Defender and Deputy Chief Public Defender.

60. Soltysiak offered three reasons for his “disappointment.” He wrote that Beer had violated the employment policies by (a) directing summer interns in 2019 to search for prejudiced Facebook posts by police officers, (b) filing the amicus brief without first consulting with the County, and (c) filing records requests regarding telephone rates at the County’s youth detention center.

61. Soltysiak contended that the project of exposing police-officer racism was “outside the scope of what you and those in your office are tasked to do” and, therefore, that directing summer interns to work on the project violated County policy.

62. Soltysiak’s letter characterized Beer’s efforts (including the amicus brief) as “acting on desired reforms in a manner that is outside the intended scope of [his] position.”

63. Soltysiak concluded by writing: “As the Public Defender of Montgomery County, you are appointed by the County Commissioners and tasked under the Pennsylvania Public Defender Act with furnishing legal counsel to any person who, for lack of sufficient funds, is

unable to obtain it. . . . You, and your staff, are zealous advocates for those you are tasked with defending, and your work in that regard is appreciated beyond measure.”

64. Soltysiak did not directly allege that Hudson violated any County policy.

65. The letter mentions Hudson only to note that she, alongside Beer, directed summer interns to search for prejudiced Facebook posts and that she and Beer publicized them.

The County Fires Beer and Hudson for Filing the Amicus Brief

66. On February 26, 2020, Soltysiak asked Beer to come to his office to meet with him and Stein.

67. Soltysiak informed Beer that he had been fired as Chief Public Defender, effective immediately.

68. Beer returned to his office, where he was immediately walked out of the office by security guards.

69. Hudson began to prepare to deal with Beer’s departure.

70. While she was doing so, she received a phone call directing her to meet with Soltysiak and Stein.

71. At that meeting, Soltysiak informed Hudson that the County was requesting her resignation.

72. If she agreed to resign and to sign a separation agreement requiring that she not discuss the circumstances of her departure from the Office, the County would pay her salary through March.

73. Hudson refused to sign the separation agreement.

74. Soltysiak fired her immediately.

75. Hudson was walked out of the building by security guards as soon as she returned to her office.

76. Hudson never received findings of fact, an opportunity to appeal, or a written determination that the Commission found that she had violated County policy.

77. There has never been a public vote of the Commission regarding the firing of Hudson.

The County's Stated Reason Regarding Hudson and Beer's Work to Expose Police Racism is Pretext

78. Beginning of the summer of 2019, Hudson decided that the Office should collect publicly available social media posts by Montgomery County police officers that reflected prejudiced attitudes.

79. Hudson instituted this project because she believes that racism and other forms of prejudice afflict police departments across Montgomery County, to the detriment of her office's clients and others.

80. Beer approved of this project.

81. Hudson asked five summer interns at the Office to assist her by searching the internet for Facebook posts by police officers that reflected prejudiced attitudes.

82. At the end of the summer, Hudson reviewed the interns' work and removed posts that, in her view, were subject to any interpretation that did not reflect a prejudiced attitude.

83. Ultimately, Hudson collected posts from 32 officers.

84. Because publicizing the extent of prejudiced attitudes among police officers might result in those people being removed from duty—as it had recently in neighboring Philadelphia under similar circumstances—Hudson sent the evidence to a local reporter at *The Philly Voice*.

85. Shortly after giving the information to the *Voice*, Hudson told Beer that she had done so.

86. Beer told Hudson that, although he wished he had seen the evidence first, he supported the project and understood Hudson's decision to share the evidence with the press.

87. On August 7, 2019, the *Voice* ran a story about the evidence.

88. According to the *Voice*, the posts included one law enforcement officer pictured in blackface; another criticizing the government for "flood[ing] our nation with Muslims [and] giv[ing] them welfare for life (with multiple wives)"; and another claiming, before he joined a municipal police department, that a family services agency would be more effective if it just "shot and killed all the unfit parents."

89. At no point did Beer suggest that Hudson had violated any rule or policy of the Office, and at no point did Beer suggest that Hudson had violated his instructions.

90. On August 20, 2019, Soltysiak emailed Beer to request a meeting regarding the *Voice* story.

91. On August 22, 2019, Beer met with Soltysiak and Stein.

92. Beer told Soltysiak and Stein that Hudson had provided the evidence of racist Facebook posts to the *Voice*.

93. Beer said that, although he wished he had seen the evidence first, he supported Hudson's project.

94. At no point did Beer suggest that Hudson had violated any Office policy, nor did he at any point suggest that she should be subject to discipline for violating any County policy.

95. Soltysiak was upset that the *Voice* story came out without his approval and said he planned to send Beer a written notice of discipline as required by the employment policies.

96. No one ever provided Beer a written notice of discipline as required by the employment policies.

97. No one has ever provided Hudson with a written notice of discipline, concerning this or any other matter, as required by the employment policies.

98. No County official ever told Hudson in person or in writing that she had violated County policy.

99. Neither Hudson nor Beer has ever received any written notice of disciplinary action against them regarding these issues or any others, as the employment policies require whenever a County employee is disciplined for violating County policy.

100. The County did not terminate or discipline Hudson or Beer in any way between August 7, 2019, when the *Voice* story ran, and February 26, 2020, when the County fired Hudson and Beer for filing the amicus brief.

The Harm to Hudson

101. Prior to her termination by the County, Hudson had never been fired from any position before.

102. As a result of her termination, Hudson was unemployed for fourteen days.

103. On March 11, 2020, Hudson was hired by the Justice Collaborative, a non-profit dedicated to shrinking and reforming the criminal legal system, on a temporary full-time basis.

104. Hudson searched for a new job each day during those fourteen days.

105. Hudson's job with the Justice Collaborative is scheduled to continue for approximately 90 days.

106. During her period of unemployment, she would have been paid an additional \$2,080.58 after taxes by the County.

107. Her County health insurance expired on February 29, 2020.

108. Because her current employment is temporary, to extend health insurance for herself and her family Hudson must pay \$1,800 per month.

109. As a result of her firing, Hudson lost the opportunity to recover a vested pension, which would have been available after five years of employment.

110. And as a result of her firing, Hudson lost the County's contribution to her 401K retirement-savings plan.

111. Hudson accepted her position at the Office because she wanted to commit her career to improving the quality of representation its clients receive.

112. Her plans to further improve the Office have been derailed by her firing.

113. As a result of her termination, Hudson missed out on opportunities for professional development.

114. As a result of her termination from the Office, she suffered humiliation, loss of reputation, and emotional distress.

Claims for Relief

A. Count One: Damages Under 42 U.S.C. § 1983 for Retaliation in Violation of Hudson's First Amendment Rights

115. Hudson incorporates by reference paragraphs 1–114 of this Complaint.

116. Hudson directed that her office file an amicus brief aimed at reforming statewide practices that jail thousands of legally innocent people because of their poverty.

117. Filing this brief was not part of Hudson's ordinary duties at the Office.

118. In retaliation for filing the brief, the County fired Hudson.

119. As a result, Hudson lost money and the opportunity to advance her career objectives, and suffered emotional distress.

B. Count Two: Injunctive Relief Under 42 U.S.C. § 1983 for Retaliation in Violation of Hudson's First Amendment Rights

120. Hudson incorporates by reference paragraphs 1–114 of this Complaint.

121. Hudson directed that her office file an amicus brief aimed at reforming statewide practices that jail thousands of legally innocent people because of their poverty.

122. Filing this brief was not part of Hudson's ordinary duties at the Office.

123. In retaliation for filing the brief, the County fired Hudson.

124. Hudson is entitled to be restored to her position as Deputy Chief Public Defender and to an order that the County not further retaliate against her.

C. Count Three: Wrongful Discharge in Violation of Pennsylvania Public Policy

125. Hudson incorporates by reference paragraphs 1-114 of this Complaint.

126. Hudson directed that her office file an amicus brief challenging statewide unconstitutional practices.

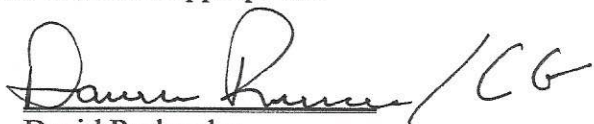
127. In retaliation for filing the brief, the County fired Hudson.

128. Firing Hudson for presenting arguments to the Supreme Court of Pennsylvania, in interference with the independence of the Office, is repugnant to the public policy of the Commonwealth of Pennsylvania as reflected in its Constitution and statutes, and the judicial decisions interpreting its Constitution and statutes.

Prayer for Relief

Plaintiff Keisha Hudson respectfully requests:

- An order against Montgomery County requiring payment of compensatory damages;
- An order requiring Montgomery County to reinstate Hudson to her prior position and to guarantee that she may operate independently in that position;
- An award of reasonable attorney's fees under 42 U.S.C. § 1988;
- And any other relief this Court considers appropriate.


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