

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AL FLORA, JR.,

Plaintiff

v.

**LUZERNE COUNTY and ROBERT C.
LAWTON, COUNTY MANAGER,
in his official capacity,**

Defendants.

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**HONORABLE
A. RICHARD CAPUTO**

CIVIL ACTION - LAW

NO. 3:12-CV-00665

STIPULATION

1. Plaintiff Al Flora, Jr. ("Plaintiff Flora") commenced this action by Verified Complaint on April 10, 2012, alleging: (1) that he is the Chief Public Defender for Luzerne County; (2) that Defendants had threatened to fire him because of his First Amendment protected activity; and (3) that Defendants' plans to discharge him would violate the public policy of Pennsylvania and constitute wrongful discharge.
2. Also on April 10, 2012, Plaintiff Flora filed a Motion for Preliminary Injunction seeking to enjoin Defendants from taking adverse action against him.
3. Defendants deny that they have threatened Plaintiff's employment or taken any action against him that would violate his First Amendment rights or the public policy of Pennsylvania.

4. With respect to Plaintiff's position with the County, the parties stipulate:
- a. The voters of Luzerne County (the "County") in 2009 approved a changed in the structure of County government;
 - b. Pursuant to such a referendum, the County was required to transition to a Home Rule Charter;
 - c. Pursuant to such a transition, a Home Rule Transition Committee was put in place to handle the administration of the conversion to the new government structure under the Home Rule Charter;
 - d. The Home Rule Transition Committee notified current holders of appointed offices that their previous appointments to office would expire by virtue of the adoption of the Home Rule Charter and that the County intended to advertise such positions and fill them in accordance with the process(es) set forth in the new charter;
 - e. Pursuant to such transition, the Home Rule Transition Committee prepared a job description for the position of County Public Defender, also known as Chief Public Defender, and posted such description on the County website in October 2011 in conjunction with the solicitation of applications for such position;

- f. The Home Rule Transition Committee sent a written notice to Plaintiff Al Flora, Jr. ("Plaintiff Flora") of such intention and invited him to apply for re-appointment;
- g. On October 20, 2011, Plaintiff Flora submitted a letter of interest in obtaining appointment to the position of Chief Public Defender under the new charter;
- h. The Home Rule Transition Committee continued to solicit and to receive applications for the position of Chief Public Defender through mid-December 2011;
- i. The Home Rule Transition Committee has referred the application for the position of Chief Public Defender to the County Manager;
- j. The County Manager, Defendant Robert Lawton, did not assume his duties until February 24, 2012;
- k. The County Manager has the authority under section 4.08A of the Home Rule Charter to recommend candidates as heads of Executive Departments to the County Council for confirmation to a permanent appointment, including the position of Chief Public Defender;
- l. The County Manager has not yet exercised his authority under section 4.08A to make recommendations for Chief Public Defender to the

County Council and is not in a position to make such a recommendation in the near future;

- m. The County Manager has the authority under section 4.08C of the Home Rule Charter to make an interim appointment to the position of Chief Public Defender, which appointment is effective for ninety (90) days;
- n. The County Manager has yet to exercise the authority to make an interim appointment and Plaintiff Flora remains under consideration for both an interim appointment and for recommendation for confirmation to County Council;
- o. Until such time as the County Manager exercises his authority either to make a recommendation to County Council or to make an interim appointment, Plaintiff Flora continues to act as Chief Public Defender;
- p. The County initiated a hiring process for the office of Chief Public Defender prior to and independent of any comments and/or criticisms of Plaintiff Flora relating to the funding and/or operations of the Office of Public Defender.
- q. The County is entitled to pursue the hiring process for the position of Chief Public Defender previously initiated, and the County Manager may make an interim appointment in accordance with the provisions of the

Home Rule Charter or a recommendation to the County Council for a permanent appointment.

5. It is further stipulated that Plaintiff Flora shall remain in his current capacity until such action by the County Manager.
6. It is further stipulated that Plaintiff Flora will not be subjected to any adverse employment action in retaliation for First Amendment protected activity.
7. Based upon the representations and stipulations contained herein that Plaintiff Flora has to date suffered no wrongful termination and is not currently in imminent danger of termination, the parties stipulate to the withdrawal of Plaintiff Flora's Motion for Preliminary Injunction (Docket Document 3) without prejudice to Plaintiff Flora's right to seek relief in response to the future actions of the Defendants with respect to his position.

8. It is further stipulated that the parties agree to not seek attorneys' fees relative to this Stipulation and/or the Motion for Preliminary Injunction. By signing this Stipulation, the parties reserve the right to attain attorneys' fees in the event this federal action proceeds to trial and/or Plaintiff Flora renews his Motion for Preliminary Injunction.

BY THE PARTIES:

For Plaintiff Al Flora, Jr.

/s/ Mary Catherine Roper

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For Defendants Luzerne County and
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SO ORDERED

 4/19/12

A. Richard Caputo
United States District Judge