

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

71-70-557
99 JUN -9 AM 10:08

MARC A. OTT,

Plaintiff,

v.

Case No. 4:98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually
and in her capacity as a member
of the Kalamazoo City Commission,
the KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally,

Defendants.

O R D E R

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Defendants' Motion for Summary
Judgment (Docket #30) is GRANTED with respect to Counts IV and V.

IT IS FURTHER ORDERED that JUDGMENT is entered in favor of
the Defendants as to those counts and the Plaintiff's Complaint
is DISMISSED.

IT IS FURTHER ORDERED that Defendants' Motion for Summary
Judgment is DENIED with respect to Counts I, II and III;

36

IT IS FURTHER ORDERED that the Plaintiff's state law claims
in Counts I, II and III are DISMISSED without prejudice.

Date:

June 8, 1999

A handwritten signature in dark ink, appearing to read "Robert Holmes Bell", written over a horizontal line.

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (gjf)

June 09, 1999

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UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF MICHIGAN
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01/07/98 11:08
[Handwritten signatures and initials]

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Plaintiff,

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HON. ROBERT HOLMES BELL

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Defendants.

O P I N I O N

The Plaintiff, Marc A. Ott, brings this action against the Defendants, Zadie Jackson ("Jackson"), a member of the Kalamazoo City Commission of the City of Kalamazoo, the Kalamazoo City Commission ("City Commission") and the City of Kalamazoo ("City") alleging breach of contract (Count I); defamation (Count II); intentional infliction of emotional distress (Count III); racial discrimination in violation of both federal law, 42 U.S.C. § 1983, and state law, M.C.L. § 37.2101 et seq.; M.S.A. § 3.548(101) et seq. (Count IV); and deprivation of

35

constitutionally property rights (Count V).¹ Before this Court is the Defendants' Motion for Summary Judgment. The Court has reviewed the briefs in support of and in opposition to the Defendants' motion and has had the benefit of oral argument on June 7, 1999. For the reasons that follow, summary judgment is granted in favor of the Defendants as to the Plaintiffs' federal claims.

I

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In evaluating a motion for summary judgment the Court must look beyond the pleadings and assess the proof to determine whether there is a genuine need for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). If the Defendants carry their burden of showing there is an absence of evidence to support a claim, then the Plaintiff must demonstrate by affidavits, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue of material

¹Amended Compl., Dkt #26.

fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324-25, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In determining a motion for summary judgment, the Court views the evidence in the light most favorable to the opposing party and draws all justifiable inferences in his favor. *Morales v. American Honda Motor Co. Inc.*, 71 F.3d 531, 535 (6th Cir. 1995). Nevertheless, the mere existence of a scintilla of evidence in support of Plaintiff's position is not sufficient to create a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The proper inquiry is whether the evidence is such that a reasonable jury could return a verdict for Plaintiff. *Id.* See generally, *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-80 (6th Cir. 1989).

II

The Plaintiff's complaint sets forth the following allegations: The Plaintiff, an African American, was the City Manager for the City of Kalamazoo ("City"), Michigan from March 1993 until January 27, 1997. On January 27, 1997, the Mayor and Ott executed a Separation Agreement ("the Agreement") that terminated Ott's employment with the City. Paragraph 10 of the Agreement (the "non-disparagement clause") provides:

In addition to whatever non-disclosure agreement and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.

This action arises from an incident which, it is undisputed, occurred after Ott was no longer an employee of the City. It surrounds a conversation Jackson had with Dr. Ralph Chandler that Jackson repeated to other City employees. Jackson told City Attorney Robert Cinabro and Deputy City Attorney Lee Kirk and Gary Hetrick, the Chief of the Department of Safety, that Chandler had told her that he had seen Ott at a political function sponsored by the local Democratic party to honor Detroit Mayor Dennis Archer after Ott's resignation from the City. When Chandler hugged Ott, he could feel a gun. Chandler asked Ott why he was carrying a gun, to which Ott replied "because I have enemies." The Plaintiff alleges that this information was untrue and falsely implied that Ott was a threat to City Commissioners.

Jackson notified the state police on January 27, 1997. The state police subsequently informed her that the gun was not

registered.² Jackson thereafter repeated this information to Kalamazoo Mayor Larson, Vice Mayor Heilman, the City Attorney Robert Cinabro, and the City's labor counsel Tom Hustoles, prior to an executive session of the City Commission on January 27, 1997. The Plaintiff alleges that someone, presumably referring to Jackson, from the City Commission was a "conduit of information" to the *Kalamazoo Gazette* concerning Ott's failure to register the handgun.³ The Plaintiff further alleges that Jackson worked with the Kalamazoo Department of Public Safety in conducting a police investigation into whether Ott owned an unregistered handgun.

The *Kalamazoo Gazette* published a number of articles regarding Ott's gun ownership. On March 2, 1997, it published an article entitled "Ott Failed to Register Handgun."⁴ A subsequent article was entitled "State Police Investigating Ott's Failure to Register Handgun in 1994."⁵ A June 21, 1997 article, entitled "Warrant Sought Against Former City Manager" stated that a warrant request had been forwarded to the Kalamazoo County

²Ott had a concealed weapon permit.

³Pl's Br. in Opp'n to Def's Mtn ("Pl's Br.") at 2.

⁴Pl's Br., Exh. B.

⁵Pl's Br., Exh. F.

Prosecutor's Office seeking charges against Ott for failure to register his handgun. An August 1997 article entitled "No Charge Against Former City Manager Ott" stated that Ott would not be criminally charged for failure to register a handgun.

The Plaintiff alleges that in the spring of 1997, Jackson had a conversation with Chandler in which she "began to badmouth" Ott, stating that "he was abrasive to her, [and] that she didn't like him very well."⁶

The Plaintiff alleges that his job search efforts were "adversely impacted by the ongoing controversy in Kalamazoo."⁷ He sought to "minimize the negative light in which he was depicted by the Gazette articles" by contacting the newspaper.⁸

In a letter to the City Attorney dated May 14, 1997, the Plaintiff alleged that Jackson "is the source of a claim that Marc Ott allegedly carried a gun inside of his suit jacket to a recent event in Kalamazoo at which Detroit Mayor Archer was being recognized."⁹ The letter further alleged that this conduct was

⁶Chandler's Affidavit ¶6.

⁷Pl's Br. at 9. The Plaintiff was employed as of March 25, 1998. Def's mtn, Exh. C.

⁸Pl's Br. at 5.

⁹Pl's Br., Exh. R., Letter to City Attorney Robert H. Cinabro.

"a clear violation of paragraph 10 of the Separation Agreement and General Release" and constituted a "cause of action against her for defamation." In July, 1998, the Plaintiff brought this action in the Kalamazoo Circuit Court. The Defendants removed the case to this Court pursuant to 28 U.S.C. § 1441, invoking the Court's federal question jurisdiction. The Plaintiff's complaint is predicated on the allegedly defamatory comments by Jackson that Ott carried a concealed weapon to a political function.

III

Because jurisdiction in this case is premised upon the presence of a federal question, pursuant to 28 U.S.C. § 1331, the Court will begin its analysis by focusing on the federal claims alleged in Count IV and V.¹⁰

Count IV of the complaint alleges that "the defendants' conduct, by and through their agent and fellow City Commissioner, Zadie Jackson, was motivated by her dislike and racial animus

¹⁰This was the focus of the parties' oral arguments. The Plaintiff has not separately argued the merits of his claim under the Elliott-Larsen Act. Because the state court is guided by federal precedent in this area; *Harrison v. Olde Financial Corp.*, 225 Mich. App. 601, 606, 572 N.W.2d 679, 681 (1997); the Plaintiff's federal constitutional claim will be dispositive of his Elliott-Larsen claim.

toward the Plaintiff Ott who is an African American."¹¹ The defamatory comments, the Plaintiff avers, injured his future employment prospects and violated § 1983 and the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 et seq.

"Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*, 510 U.S. 266, 271, 114 S.Ct. 807, 811, 127 L.Ed.2d 114 (1994) (internal quotation marks omitted). The first step, therefore, is to determine what specific constitutional right allegedly was infringed. The Plaintiff has pointed to no specific constitutional guarantee safeguarding the interest he asserts has been violated.¹²

It is helpful in clarifying the Plaintiff's racial discrimination claim to delineate what he does not claim. The Plaintiff does not allege that his employment was terminated because of his race nor does he allege retaliation. It is undisputed that he was not a City employee at the time the remarks at issue were made. Rather, it appears that the

¹¹Amended Compl., ¶38.

¹²The sole constitutional reference in this claim is the following statement in the Plaintiff's brief: "Does not the equal protection clause provide protection from racial discrimination?" Pl's Br. at 9.

Plaintiff is arguing that Jackson's defamation of him was racially motivated. Presumably, the Plaintiff bases his constitutional claim on the theory that Jackson's defamatory statements, undertaken with racial motivation, inflicted a stigma to his reputation that impaired his future employment opportunities and thus deprived him under color of state law of some "liberty" interest protected by the Fourteenth Amendment.

So construed, the Defendants move for summary judgment on the grounds that the Plaintiff's claim does not implicate a cognizable federal right. The Court agrees.

The Plaintiff's claim is foreclosed by the Supreme Court's holding in *Siegert v. Gilley*, 500 U.S. 226, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991). In *Siegert*, the plaintiff had resigned from his position at a federal government hospital after being threatened with termination and was attempting to obtain his full credentials from the hospital to secure a permanent position with a United States Army hospital located in Germany. *Siegert* alleged that his former supervisor at the hospital had impaired his liberty and property interests by making defamatory statements in a letter recommending denial of *Siegert's* credentials which deprived him of the ability to engage in his profession. The Court dismissed *Siegert's* 1983 claims on the

basis that because the only interest allegedly impaired was that in prospects for future employment, rather than an interest in employment presently enjoyed, Siegert had failed to establish the violation of a constitutional right. *Siegert*, 500 U.S. at 233, 111 S.Ct. at 1794. Of specific relevance to the case at bar, the Court stated that "[d]efamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation. . . . [S]o long as . . . damage flows from injury caused by the defendant to a plaintiff's reputation, it may be recoverable under state tort law but it is not recoverable in a [1983] action." *Id.* at 233-34, 111 S.Ct. at 1794-95.

Any interest Ott may have in his reputation

is simply one of a number which the State may protect against injury by virtue of its tort law, providing a forum for vindication of those interests by means of damages actions. And any harm or injury to that interest, even where as here inflicted by an officer of the State, does not result in a deprivation of any 'liberty' or 'property' recognized by state or federal law, nor has it worked any change of [Ott's] status as theretofore recognized under the State's laws.

Paul v. Davis, 424 U.S. 693, 711-12, 96 S.Ct. 1155, 1165-66, 47 L.Ed.2d 405 (1976). See *Mertik v. Blalock*, 983 F.2d 1353, 1362 (6th Cir. 1993) ("Injury to reputation, standing alone, is not a liberty interest protected by the Fourteenth Amendment").

The Sixth Circuit, in construing *Siegert*, has stated:

[T]here exists no constitutional doctrine converting every defamation by a public official into a deprivation of liberty within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. Rather, the [Supreme] Court has limited the scope of an actionable liberty interest deprivation to situations involving termination of government employment or the loss of a legal right or status previously enjoyed under state or federal law. . . . In other words, when a plaintiff alleges the loss, infringement or denial of a government right or benefit previously enjoyed by him, coupled with communications by government officials having a stigmatizing effect, a claim for deprivation of liberty without due process of law will lie. Defamatory publications, standing alone, do not rise to the level of a constitutional claim, no matter how serious the harm to reputation.

Mertik, 983 F.2d at 1362 (citations and internal quotation marks omitted).

The Plaintiff has not been deprived of any right secured to him by the Constitution of the United States. Jackson's alleged racial motivation does not create a protected right where none otherwise exists. The Court in *Siegert* clarified that the Defendants' subjective intent or state of mind was irrelevant because of the Court's threshold determination of "the lack of any constitutional protection for the interest in reputation." *Siegert*, 500 U.S. at 234, 111 S. Ct. at 1794.

The Court notes that, even assuming that the Plaintiff had identified some federally protected right, the Plaintiff's

evidence falls markedly short of demonstrating racial animus. As evidence of racial intent, the Plaintiff offers a November 1995 newspaper article in which Jackson stated that she was "frustrated" enough with Ott to fire him and that:

If my administrative assistant did that to me, I'd fire him but I have to have three other people and, like it or not, we still live in a society that's afraid to do it because he's black. There's not the guts to do it. . . . It has nothing to do with the color of his skin. It's the quality of what he does. I think others have backed off because he's black.¹³

The Plaintiff expounded during oral argument that Jackson's statement was made during her run for re-election. He contends that she injected the issue of race into a discussion about his performance. The Plaintiff also offers as evidence a statement by David Anderson that "during the early 1990's," he had conversations with Jackson that led him to "believe that she did not like black people."¹⁴ Specifically, she inquired why he was interested in a particular college because "there was nothing but young, white women there."¹⁵

¹³Pl's Br., Exh. H.

¹⁴Pl's Br., Exh. Q, Affidavit of David Anderson.

¹⁵*Id.*

Viewing the evidence in the light most favorable to the Plaintiff, the Court concludes that the Plaintiff's evidence is insufficient to create an issue of fact regarding racial animus. Jackson's quoted statement in the newspaper is too ambiguous to establish any conclusive inferences. Her comment reasonably could be construed as an awareness of her colleagues' concern of ensuing legal liability because Ott is in a protected class, should adverse employment action be taken against him. With regard to David Anderson's affidavit, the Court places little weight on the alleged comment because of both the lack of temporal proximity to this case and its ambiguous nature. The Plaintiff strains to read into these two disparate comments a racial taint. "Isolated and ambiguous comments are too abstract, in addition to being irrelevant and prejudicial, to support a finding of [racial] discrimination." *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 355 (6th Cir. 1998) (quoting *Phelps v. Yale Sec., Inc.*, 986 F.2d 1020, 1025 (6th Cir. 1993)). No justifiable inference of discriminatory intent may be made from these remarks.

IV

The Plaintiff alleges in Count V that he has a constitutionally protected property right in the provisions and

benefits of the Separation Agreement.¹⁶ He asserts that "[t]hat the actions of Defendants, and their agents, previously alleged and incorporated herein by reference, infringed [his] property interest in the Separation Agreement in general and in the non-disparagement clause in particular."¹⁷ The "actions" apparently consist of the allegations that Jackson disseminated information that Ott carried on his possession a handgun to a reception, which he allegedly acknowledged to Chandler who felt the handgun on Ott's person.¹⁸ The Plaintiff contends that "racial animus toward the plaintiff [was] a motivating factor in the breach of the agreement."¹⁹ From this premise, the Plaintiff posits, without citation to authority, that the alleged racial motivation in breaching the contract somehow transforms his contractual rights into rights "deserving of constitutional protection."²⁰ The Plaintiff's theory is unavailing.

¹⁶Amended Compl. ¶5.

¹⁷Amended Compl. ¶47.

¹⁸Amended Compl. ¶17.

¹⁹Pl's Br. at 7.

²⁰Pl's Br. at 8. The Plaintiff clarified during oral argument that the source of this alleged constitutional protection sounds in substantive due process.

According to the Sixth Circuit, no such right exists:

Most, if not all, state created contract rights, while assuredly protected by procedural due process, are not protected by substantive due process. The substantive Due Process Clause is not concerned with the garden variety issues of common law contract. . . . Substantive due process affords only those protections so rooted in the traditions and conscience of our people as to be ranked fundamental. . . . Routine state-created contractual rights are not deeply rooted in this nation's history and tradition

Charles v. Baesler, 910 F.2d 1349, 1353 (6th Cir. 1990)

(citations and internal quotation marks omitted). Accordingly, summary judgment is granted as to this claim.

With respect to both Counts IV and V, the Plaintiff alleges that the City is liable.²¹ Specifically, the Plaintiff alleges that the City Commission should have been aware of Jackson's racial animus and that "their failure to take action to control her actions or censure her . . . renders them liable for her actions."²² In his brief, the Plaintiff "submits that he has a valid claim for vicarious liability against the City of Kalamazoo

²¹During oral argument, however, the Plaintiff acknowledged that Jackson may not have been, at certain times at issue, acting in an official capacity.

²²Amended Compl. ¶40.

due to the failure of the other commissioners to take action to censor [sic] or otherwise discipline defendant Jackson."²³

The Defendants argue they are entitled to summary judgment as to municipal liability in Counts IV and V because there is no "vicarious liability" for § 1983 claims and the Plaintiff has neither argued nor offered any evidence that a policy, custom or practice caused the alleged constitutional deprivation.

"Municipal liability for the actions of employees may not be based on a theory of respondeat superior." *Berry v. City of Detroit*, 25 F.3d 1342, 1345 (6th Cir. 1994), cert. denied, 513 U.S. 111, 115 S.Ct. 902, 130 L.Ed.2d 786 (1995). "Municipalities can be liable under § 1983 where the action of the municipality itself can be said to have caused the harm, as when the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers." *Id.* (quoting *Monell v. Dept. of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 2035-36, 56 L.Ed.2d 611 (1978)). With regard to a theory of liability based upon failure to discipline, only where a city's failure evidences a deliberate indifference to the rights

²³Pl.'s Br. at 8.

of its inhabitants can such a shortcoming be properly thought of as a city policy or custom that is actionable under § 1983.

Berry, 25 F.3d at 1346.

Assuming, *arguendo*, that the Plaintiff has alleged valid constitutional violations, he has offered no evidence to support his claims of municipal liability.

V

Counts I, II, and III contain the Plaintiff's pendent state law claims of breach of contract, defamation and intentional infliction of emotional distress. The Court has determined that the Plaintiff has failed to state a claim under federal law upon which jurisdiction can be based. Accordingly, to the extent that the Plaintiff has asserted claims under state law, the Court declines to exercise pendent jurisdiction over those claims and those claims are dismissed without prejudice. See 28 U.S.C. § 1367(c); see also *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Webb v. McCullough*, 828 F.2d 1151, 1160 (6th Cir. 1987); *Rodgers v. Alvan Motor Freight, Inc.*, No. 1:91-CV-823, 1992 WL 465838, at *5 (W.D.Mich. Jun 12, 1992); *Crooked Lake Development, Inc. v. Emmet County*, 763 F. Supp. 1398, 1404 (W.D.Mich. 1991)

An order and judgment consistent with this opinion will be entered.

Date:

June 8, 1999

A handwritten signature in dark ink, appearing to read "Robert Holmes Bell", written over a horizontal line.

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (gjf)

June 09, 1999

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**DEFENDANTS' REPLY TO PLAINTIFF'S BRIEF
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

The Defendants will briefly respond to the Plaintiff's arguments raised in his
Brief in Opposition to Defendants' Motion for Summary Judgment.

I. RACIAL DISCRIMINATION

The Plaintiff does not come forward with any evidence other than that identified
in the Defendant's Motion for Summary Judgment on the issue of racial discrimination.
The Plaintiff relies solely upon the Kalamazoo Gazette article of November 6, 1995 and

mrs [signature]

- 34 -

the Affidavit of David Anderson to support a claim of racial discrimination on the part of Defendant Jackson. The essence of the Plaintiff's claim is contained in this statement in the Plaintiff's Brief: "Plaintiff has alleged consistently that Defendant's action [sic] were motivated by a racial animus toward the Plaintiff, as evidenced by the above instances." (Brief, pg. 6). What the Plaintiff seems to ignore is that it is the subjective motivation of Zadie Jackson that is in issue, not the Plaintiff's subjective belief as to her motivation. The Defendants are well aware of what the Plaintiff has consistently alleged. What the Plaintiff still fails to do, however, is come forward with any evidence to support his allegations. It is difficult to understand how ambiguous comments made to David Anderson at an uncertain time in the early 1990's relates to racial animus directed toward the Plaintiff. The Plaintiff cites no case law which would suggest that such a tenuous link is proper evidence of motive. The simple fact is that such evidence clearly falls within the Sixth Circuit's admonition that isolated and ambiguous statements are not sufficient to demonstrate a finding of discrimination. *LaPointe v. United Auto Worker's Local 600*, 8 F. 3d 376, 380 (6th Circuit 1993).

With respect to the November 6, 1995 article, the Plaintiff "contends" that Zadie Jackson "engaged in race baiting." (Brief, pg. 6). What is missing, however, is any evidence to that effect. The Plaintiff asserts that Ms. Jackson was motivated by racial animus in stating that other commissioners were afraid to terminate the Plaintiff because he was black. The Plaintiff makes that assertion in spite of Ms. Jackson's statement at the time that race had nothing to do with her criticism of Ott, and her

sworn testimony to that effect. Again, the Plaintiff's subjective belief about what motivated Ms. Jackson, or any other person, is simply irrelevant.

The Plaintiff may well have been offended by Ms. Jackson's statements. It may be true, as well, that the Plaintiff's past experiences would lead him to be sensitive to such a statement. However, neither the Plaintiff's personal belief about the statement, nor his offense at the statement, is evidence of Ms. Jackson's motivation. Ms. Jackson has consistently denied that Mr. Ott's race played any role in her criticisms of him while he was the City Manager, or in her subsequent actions. The Plaintiff has not come forward with a scintilla of evidence, either direct or circumstantial, that would lead to an opposite conclusion. Therefore, the Plaintiff's claim of racial discrimination must be dismissed.

II. SUBSTANTIVE RIGHT IN SEVERANCE AGREEMENT.

The Plaintiff seems to confuse and blur causes of action. The Plaintiff has filed a claim for breach of contract as a result of the alleged violation of the Separation Agreement. The Plaintiff has filed a separate claim for racial discrimination. Neither of those two causes of action, however, give rise to an independent third cause of action for a constitutionally protected right in the severance agreement.

Although the Plaintiff attempts to distinguish the case law cited by the Defendants, he does not do so in a convincing manner. The cases cited by the Defendants which hold that there is no substantive constitutional right in a contract are all employment cases. The issue of racial animus is completely irrelevant to the issue of

whether the Plaintiff has a constitutional protected substantive right in the Separation Agreement. The inquiry of racial motivation may be significant in a racial discrimination claim, but it adds nothing to the claim that the Plaintiff had a constitutionally protected right in the Separation Agreement. Either he did or did not have a constitutionally protected right in the severance agreement. The alleged motivation of the Defendant does not create a protected right where none otherwise existed.

Most telling is the fact that the Plaintiff cannot cite a single case to support his theory that racial animus creates a constitutionally protected interest in a contract. The reason that the Plaintiff cited no such case is, of course, because no such case exists.

The Plaintiff asserted an independent cause of action claiming a constitutionally protected substantive right in the Separation Agreement. No such right exists and Count V of the Plaintiff's Complaint must be dismissed.

III. MUNICIPAL LIABILITY

The Plaintiff does not deny the fact that there were no additional claimed "breaches" of the Separation Agreement after Mr. McWilliams' letter of May 14, 1997. The Plaintiff acknowledges that he is attempting to impose vicarious liability against the City of Kalamazoo. (Brief, pg. 8: "Plaintiff submits that he has a valid claim for vicarious liability against the City of Kalamazoo. . ."). Such a claim, by definition, is unenforceable. What the Plaintiff seems to argue, in addition to a claim for "vicarious liability," is that the City had an obligation to foresee the alleged breach by Ms.

Jackson. What the Plaintiff completely ignores, however, is the discussion by the Sixth Circuit of the standard for imposing municipal liability in the failure to discipline context. To reiterate the holding in *Berry v. City of Detroit*, 25 F.3d 1342, 1354 (6th Cir. 1994), before municipal liability can be entertained, the Plaintiff must show a history of widespread abuse that has been ignored by the City. The Plaintiff has not even attempted to meet this standard. The claims of municipal liability against the City of Kalamazoo and the City Commission must be dismissed.

IV. QUALIFIED IMMUNITY

The Defendant was apparently not clear in her qualified immunity argument. The defendant will attempt to be more precise.

The Plaintiff asserts that 42 U.S.C. §1981 protects him from racial discrimination in the making and enforcement of contracts. Moreover, the Plaintiff claims that he was entitled to the protection of equal protection against an alleged breach of the Separation Agreement. The first difficulty is that the Plaintiff has pled neither a claim under 42 U.S.C. §1981 nor an equal protection claim. Even assuming that such a claim had been pled, the Plaintiff would still be entitled to qualified immunity. The Defendant apologizes to the Court if she was not clear in her initial discussion of the qualified immunity issue. However, the case law on qualified immunity in this setting clearly demonstrates that Defendant Jackson is entitled to qualified immunity.

In *Poe v. Haydon*, 853 F.2d 418, 431 (6th Cir. 1988), the Sixth Circuit held that for qualified immunity purposes the Court must consider the governmental official's motive or intent in carrying out challenged conduct where unlawful motive or intent is a critical element of the substantive claim. In *Poe*, the Court stated:

Where, as here, discovery has taken place and the Defendant officials have moved for summary judgment on the basis of qualified immunity, we believe the Plaintiff must present direct evidence that the official's actions were improperly motivated in order to have any hope of defeating the motion. *Poe*, 853 F.2d at 432.

The Sixth Circuit clarified *Poe* in *Crutcher v. Kentucky*, 883 F.2d 502, 504 (6th Cir. 1989), where the Court held that the Plaintiff need not bring in an admission "from the lips of her Defendant" to avoid summary judgment, but may rely upon inferential and circumstantial proof that would be strong enough to allow a jury to return a verdict in her favor. *Id.*

The Supreme Court in *Crawford-El v. Britton*, 523 U.S. 574, 118 S.Ct. 1584, 1598 (1998) agreed with the Sixth Circuit's rationale and held that if a Defendant has made a properly supported motion in a claim where subjective motivation is an issue, the Plaintiff must identify affirmative evidence from which a jury could find that the Plaintiff has carried his burden of proving the pertinent motive.

As discussed in the racial discrimination claim, the Plaintiff has failed to come forward with any relevant evidence on the issue of Ms. Jackson's claimed improper motivation. There is no evidence upon which a jury could find that her actions were motivated by racial animus toward the Plaintiff. On the undisputed facts of this case,

therefore, the federal claims against Ms. Jackson must be dismissed on the basis of qualified immunity.

V. DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

The Plaintiff cannot avoid the statute of limitations on the defamation claim. There is no "continuing wrong." All actions alleged in the Complaint took place prior to May 14, 1997, the date of Mr. McWilliams' letter to the City Attorney. The Plaintiff filed this Complaint well after May 14, 1998. Therefore, the statute of limitations has expired and the defamation claim must be dismissed.

Substantively, the Plaintiff asserts that there is not an absolute privilege to report criminal violations. The Plaintiff cites no authority for that proposition, but specifically ignores the unambiguous statement in *Hall v. Pizza Hut of America*, 153 Mich App 609, 615 (1986): "information given to police officers regarding criminal activities is absolutely privileged."

The same is true of the holding in *Nrecaj v. Yono*, 173 Mich App 686, 688-689 (1989) with respect to the intentional infliction of emotional distress claim.

Finally, the Plaintiff asserts that Ms. Jackson is not entitled to the protection of the absolute immunity found in the Governmental Immunity Act, MCLA 691.1407(5). In spite of explicitly alleging that Ms. Jackson was acting as a City Commissioner at the time she allegedly defamed him and inflicted emotional distress upon him (Amended Complaint, ¶¶41, 49), the Plaintiff now retreats from that position and tries to claim

that she was *not* acting as a City Commissioner. Aside from the allegations in the Complaint, however, the undisputed facts of the case do not support the Plaintiffs' position. Ms. Jackson explicitly testified when she discussed this matter with the City Attorney and Chief Hetrick, she was there seeking advice as a Commissioner from the City Attorney. (Dep. Jackson, pgs. 55-56). To the extent that the Plaintiff now is going to attempt to suggest that statements made by Ms. Jackson to Ralph Chandler are actionable, the issue of whether she was acting as a City Commissioner is simply irrelevant. It must be bore in mind that the Plaintiff is alleging defamation and intentional infliction of emotional distress. Ralph Chandler states that Zadio Jackson told him that her contact with Marc Ott was not favorable; that Ott was quite abrasive; that when she requested something from Ott while she was a Commissioner and he was City Manager that Ott told her it was none of her business; and that she did not like Ott very well. Making those statements to Ralph Chandler does not constitute defamation under any stretch of the imagination, nor does it constitute intentional infliction of emotional distress. The issue of whether Zadio Jackson has absolute immunity for those statements need not be reached.

VI. BREACH OF THE SEPARATION AGREEMENT

The Plaintiff now asserts that the statements that Zadio Jackson made to Ralph Chandler, rather than those which she repeated from that conversation, constitute breach of the Separation Agreement. The Plaintiff cites no authority to support the proposition that Zadio Jackson telling a former professor and an avowed friend and

supporter of Marc Ott that her contact with Ott had not been favorable; that he was quite abrasive; that she told him that something was none of her business; and that she did not like him very well constitutes disparagement. To state the proposition is to dismiss it as absurd. The dictionary definition of disparage is "to bring reproach or discredit upon; lower the estimation of." *Random House Dictionary of the English Language*, Unabridged Edition, 1966. It cannot seriously be argued that telling an avowed friend and supporter of a person that the person has been abrasive; contact was not favorable; that he was rude; and that the speaker did not like the person, lowered the estimation of the person in the eyes of the friend and supporter is simply absurd.

With respect to the common sense reading of the non-disparagement clause, the Plaintiff states that there is nothing ambiguous about paragraph 10 of the Separation Agreement. Apparently, then, the Plaintiff is conceding that he has breached the Separation Agreement by bringing this lawsuit and disparaging Zadie Jackson. It is doubtful that the Plaintiff reads the Separation Agreement in such a manner. The unambiguous reading of the Separation Agreement prohibits disparagement concerning the period of time that the Plaintiff was employed by the City of Kalamazoo, not for time immemorial.

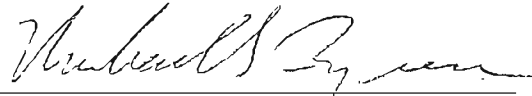
Finally, the Plaintiff has not cited any authority to substantiate his argument that the non-disparagement clause is not void as against public policy to the extent that it would prevent a citizen from reporting possible violations of the law. The Defendants suggest that the law in Michigan is very clear on this point, and the Plaintiff's failure to cite contrary authority speaks volumes on that point.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons the Defendants respectfully request this Honorable Court grant their Motion for Summary Judgment pursuant to Rule 56(c).

DATED: May 21, 1999

PLUNKETT & COONEY, P.C.

BY: 

Michael S. Bogren (P34835)
Attorney for Defendants

BUSINESS ADDRESS:
535 S. Burdick Street, Suite 256
Kalamazoo, MI 49007
Direct Dial: 616/226-8822

00590.81289.33171

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

U.S.D.C. Case No. 4:98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally,

HON: ROBERT HOLMES BELL

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
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PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

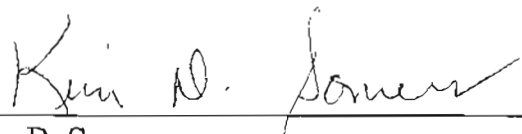
Kim D. Somers, being first duly sworn, deposes and says that she is
employed by PLUNKETT & COONEY, P.C., and that on the 21st day of May, 1999, she
served a copy of the **DEFENDANTS' REPLY TO PLAINTIFFS BRIEF IN**

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, and Proof of Service

upon the following:

MELVIN S. McWILLIAMS, ESQ.
417 Seymour, Suite 9
Lansing, Michigan 48933

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the
United States Mail.



Kim D. Somers

Subscribed and sworn to before
me this 21st day of May, 1999.



00590.81289.26643

DIANE AUSTIN
Notary Public, Kalamazoo County, MI
My Commission Expires Nov. 29, 2000



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May 21, 1999

HAND DELIVERED

District Court Clerk
UNITED STATES DISTRICT COURT
B-35 Federal Building
410 Michigan Avenue
Kalamazoo, Michigan 49007

RE: Ott vs City of Kalamazoo, et al
File No. 4:98-CV-125
Our File No. 00590.81289

Dear Clerk:

Enclosed for filing please find one original and one copy of Defendants' Reply to Plaintiff's Brief in Opposition to Motion for Summary Judgment and Proof of Service, in regard to the above entitled matter.

Should you have any questions or concerns regarding these documents, please to not hesitate to contact us.

Very truly yours,

PLUNKETT & COONEY, P.C.

Michael S. Bogren
Direct Dial: 616/226-8822

MSB:kds
Enclosures
cc: Melvin S. McWilliams, Esq.
00590.81289.26644

DATED: April 15, 1999

PLUNKETT & COONEY, P.C.

BY: Michael S. Bogren

Michael S. Bogren (P34835)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

Melvin S. McWilliams (P26792)
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PLAINTIFF'S ANSWER TO MOTION FOR SUMMARY JUDGMENT

NOW COMES Plaintiff, Marc A. Ott, by and through his Attorney Melvin S. McWilliams, P.C. who request that this honorable court deny Defendants' Motion for Summary Judgement. In support of this Answer, plaintiff states that there exists genuine issues as to material facts and that the defendants are not entitled to judgment as a matter of law, specifically:

(1) There exists evidence demonstrating racial animus on the part of one or more defendants.

- 31 -

(2) That plaintiff has a constitutionally protected liberty or property interest in the Separation Agreement where he has been deprived of a benefit of it by virtue of a racial animus on the part of one or more defendants.

(3) That plaintiff's claim of defamation is not barred by the statute of limitations where the defamatory material continues to exist and continues to injure plaintiff in his search for "comparable employment".

(4) The privilege claim by Defendant Jackson to provide information regarding possible law violations to law enforcement officials is not absolute, but qualified at best.

(5) The state tort law claims against Zadio Jackson for defamation and intent to inflict emotional distress are not barred by the immunity for elected officials under the Michigan Governmental Immunity Act, which immunity is not absolute; moreover there is no immunity where the official is not acting within the scope of her duties.

(6) Whether defendants have engaged in the intentional infliction of emotional distress is a factual issue for determination by the jury.

(7) That contrary to defendant's assertion, the Separation Agreement clearly protects plaintiff from conduct on the part of the city after the termination of his employment.

(8) There is no basis for concluding that the Separation Agreement Non-Disparagement Clause is void as against public policy under the facts of this case.

(9) Plaintiff has suffered significant monetary loss in this matter.


This Answer is based upon the Record of File in this cause and Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment.

WHEREFORE, for the foregoing reasons, plaintiff requests that Defendant's Motion for Summary Judgment be denied.

Respectfully submitted,

DATED: May 13, 1999

MELVIN S. MCWILLIAMS, P.C.

By: 
Melvin S. McWilliams (P26792)
Attorney for Plaintiff
417 Seymour St. Ste 9
Lansing, MI 48933

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

File No. 4: 98-CV-125

v.

HON ROBERT HOLMES BELL

ZADIE JACKSON, individually and her
capacity as a member of the Kalamazoo City
Commission, and the CITY OF
KALAMAZOO, jointly and severally,

Defendants.

**PLAINTIFF'S BRIEF IN
IN OPPOSITION TO MOTION
FOR SUMMARY DISPOSITION**

ORAL ARGUMENT REQUESTED

Statement of Facts

The Plaintiff, Marc A. Ott, was employed by the City of Kalamazoo as its City manager for nearly four years until his resignation on January 27, 1997, pursuant to a Separation Agreement and General Release (hereinafter Separation Agreement) that had been negotiated between the City's representatives and Plaintiff's counsel. See Exhibit A. The release provides in pertinent part for a release of all claims (see paragraph 7), continuation of certain of benefits for up to a one-year (see paragraph 5), a lump sum separation amount and conditional additional severance payment in the event Marc was not able find a comparable position in six months (see paragraph 2 and paragraph 4). Most importantly, the Separation Agreement provided for a mutual nondisparagement provision (see paragraph 10) which reads in part as follows:

In addition to whatever nondisclosure agreements and common-law obligations Marc A Ott has, he also agrees not to say or do anything that the trace the city, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not disclose confidential assistant information to anyone. The commissioners similarly agree not to say or do anything that disparages Marc A. Ott or portrays Marc A. Ott in a negative light. Emphasis added.

Additionally, the paragraph 13 of the separation agreement provides that should be city violate any of its commitments under the agreement, "then Marc A. Ott has a right to pursue any and all claims which he might have under law, this agreement, or in equity."

Subsequent to the execution of the separation agreement and Ott's resignation, it became apparent with the publication of an article in the Kalamazoo Gazette newspaper on March 8, 1997, and that someone from the City Commission was a conduit of information to the Gazette reporter concerning Marc allegedly not complying with the legal requirements for ownership of a handgun he had apparently purchased. See Exhibit B. The article reports that "City commissioners learned of Ott's failure to register the weapon in the waning hours of his (Ott's) nearly four year tenure as Kalamazoo's city manager." The City's then vice Mayor, Alfred Heilman was quoted as saying "it was an extreme concern" when Commissioners learned of the problem. The article also indicates that on January 27, 1997, the day of Ott's resignation, city officials approached the state police at the Paw Paw post to ascertain if the gun was registered. See exhibit B. Deposition testimony of defendant Zadio Jackson confirms that it was her who was the city commission contact with the state police on January 27, 1997.

Q All right. Now, what did you do with that information?¹

A I took it to the state police.

Q Okay. And when did you do that?

A I'm sorry, what?

Q When?

A January 27th.

Q And you recall who you talked to?

A An officer McDonald.

Deposition of Zadio Jackson, p. 16.

Officer McDonald called her back to advise that the gun was not registered.

When asked if she provided information to Mike Tyree, the Kalamazoo Gazette reporter who wrote the March 8, 1997 article concerning Marc Ott having an unregistered handgun, Ms Jackson

¹Serial number information for Ott's handgun she got from her friend Sgt. Martin.

replied, "Not that I remember." Deposition of Zadie Jackson, p.32.

Defendant Zadie Jackson acknowledges that she provided the information from Officer McDonald of the state police to Kalamazoo Mayor Larson, vice Mayor Heilman, the city attorney (Robert Cinabro), and the city's labor counsel (Tom Hustoles) while in the hallway outside of the city commission meeting room prior to an executive session of the city commission held 1:00 p.m. on January 27, 1997. Deposition of Zadie Jackson, p. 19.

She refused to answer questions as to what was discussed in the closed session, on the advice of her attorney. Deposition of Zadie Jackson, pp. 20 through 22.

Defendant Zadie Jackson's interest in the gun registration issue did not began or end with her contacting the State Police January 27, 1997. Rather, she worked directly with Sgt. Thomas Martin of the Kalamazoo department of public safety in the conduct of an unofficial investigation which involved contacting the Battle Creek police department and the Springfield Township Department of Public Safety. This investigation focused on the purchase of weapons from Bill Thompson, a federally licensed gun dealer (who happens to be employed as a police officer in the Battle Creek Police Department) by Marc Ott, Kalamazoo Department of Public Safety Assistant Chief Ray Ampey and former Officer Albert Hampton, and whether Marc misrepresented himself as a police officer to purchase his weapon. All of these individuals including Bill Thompson are African-Americans. The nature and scope of this unofficial investigation is detailed in an official internal investigation (Internal Investigation 97-5) into Sgt. Martin's conduct in complying with departmental policies concerning unauthorized investigations. This **official investigation** was conducted by Inspector James Grace. (Note: this report is too voluminous for inclusion with this Brief, but excerpts are referenced as exhibits). The internal investigative report revealed Defendant Jackson's role in contacting Chief Jim Jenkins of the Springfield Township Department of Public Safety to obtain his help in getting information from the gun dealer Thompson (see exhibit C); then sending

Sgt. Martin to interview Thompson (see exhibit D) and having him report back to her his findings (see exhibit E).

Following Marc's resignation, Defendant Jackson again involved herself again in matters pertaining to Marc Ott after the gun registration issue had been referred for a State Police investigation. Some time in the Spring of 1997, she ran into Dr. Ralph Chandler of Western Michigan University and began to badmouth Marc, indicating her contact with him was not favorable, that he was abrasive to her, that she didn't like him very well, among other things. See exhibit J, Affidavit of Dr. Ralph Chandler, referencing the State Police Supplemental Incident Report 0002, Incident No. 051-0000850-97. She then reported to City Officials including Chief Hetrick, that Chandler claimed that Ott had a concealed handgun on him at a reception for Detroit Mayor Archer that Chandler felt when he embraced Marc. See Chief Hetrick's letter to the State Police dated April 28, 1997. See exhibit K.

In the aftermath of the first article concerning the handgun issue, the Kalamazoo Gazette intermittently published articles updating its readership as to developments concerning the handgun issue and a state police investigation which was not requested by Kalamazoo Department of Public Safety Director Gary Hetrick until after Mike Tyrce on February 25, 1997, submitted a Freedom of Information Act request for records pertaining to Marc's gun registration. See exhibit N. Included among these articles is an undated one in which it was reported that the State Police were investigating Marc's failure to register the handgun he purchased in 1994 (see exhibit F); an article dated June 21st 1997 indicating that a warrant was being sought against Marc (see exhibit G); an article circa July 1997 indicating Marc was still being paid under the terms of the separation agreement entered six months prior and adding at the end of the article a reference to the ongoing investigation of Marc's failure to properly register a handgun (see exhibit H); and finally an article dated August 12, 1997 in which it was reported that Marc had been cleared of any criminal intent in

connection with any technical violation (see exhibit I). Both exhibits F and I reflect that the Kalamazoo City Commission knew of the registration issue as of January 27, 1997, and that it was discussed in the closed session of the city commission at that time. Also, exhibit F reflects that Kalamazoo Department of Public Safety Director Gary Hetrick attended the closed session and was informed of the gun registration problem at that time.

Throughout his ordeal of being the subject of a state police investigation and having to hire counsel to represent him during the criminal investigation (hired former Ingham County Prosecutor Donald Martin), Marc was continuously engaged in the process of trying to find other employment as a city manager, which was becoming increasingly discouraging. The substance of Marc's testimony at the continuation of this deposition on March 23rd, 1999 (transcript, pp 300-301, exhibit S) was that although he applied for approximately 29 positions, it became clear to him that his candidacy for other city manager positions was being adversely impacted by the ongoing controversy in Kalamazoo. Also Marc testified at his continued deposition about the efforts to minimize the negative light in which he was depicted by the Gazette articles. These efforts included having his attorney contact the Kalamazoo Gazette and make them aware of other facts that bore on the issue, to little avail. See exhibit L. Finally, Ott testified as to having to lower his sights for employment purposes and having to look at non-City Manager positions, positions that were not comparable in terms of responsibility and salary, or which did not involve a public hiring process. Finally, he was offered a position as Assistant to the Mayor/City Administrator in Rochester Hills where he reports directly to the Mayor (strong Mayor form of government). Per his employment agreement, if the Mayor is not reelected this fall he is out of a position. (March 23rd, 1999 transcript, pp. 301-302, exhibit S)

I. THE CLAIMANT HAS FACTUAL SUPPORT FOR THE CLAIM OF RACIAL DISCRIMINATION.

Contrary to Defendants' assertion, Plaintiff has facts to support his claim of racial discrimination. Defendants choose to discount clear-cut evidence that shows Defendant Zadie Jackson's racial animus toward Plaintiff Marc Ott. Jackson, a longtime critic of the Plaintiff, essentially, we contend, engaged in race baiting when she chastised her fellow commissioners publicly about being afraid to terminate Ott because he was black. See Exhibit 8, Kalamazoo Gazette article of November 6, 1995. Moreover, she previously demonstrated her hang up over race with her comments to Kalamazoo resident David Anderson, who is black. Defendant, who was employed by the Registrar's Office at Nazareth College at the time (early 1990's), questioned him as to why he was interested in Nazareth College, because in her words "there was nothing but young white women here." See Exhibit Q, affidavit of David Anderson.

Plaintiff has alleged consistently that Defendants' action were motivated by a racial animus toward the Plaintiff, as evidenced by the above instances. Whether the jury will draw the same conclusions involves genuine issues as to material facts that cannot be determined as a matter of law. Thus, given Ms. Jackson's comments on these occasions and her continued pursuit of Plaintiff Ott with respect to the alleged handgun violations, including claiming that, according to Dr. Chandler, that Ott had a concealed handgun on his person, it cannot be concluded that there are not genuine issues as to material facts concerning whether her conduct was motivated by a racial animus toward Ott.

II. PLAINTIFF OTT DOES HAVE A CONSTITUTIONALLY PROTECTED RIGHT IN THE SEVERANCE AGREEMENT.

Defendants in urging that Plaintiff Ott does not have a constitutionally protected property right in the severance agreement, seeks to narrow as much as possible allegations that have been made. Defendants want to limit the discussion of Ott's property right in the severance agreement to

the discussion that Zadio Jackson had with the City Attorney and the Chief of the Kalamazoo Department of Public Safety concerning her conversation with Dr. Chandler

They choose to ignore however that Jackson badmouthed Plaintiff Ott to Dr. Chandler and that Plaintiff has incorporated into Count V of his Amended Complaint the allegations that Defendants' conduct by and through Ms. Jackson was motivated by her dislike and racial animus toward Ott. See allegation 38, for example, and allegation 48, which incorporates this into Count V of the Amended Complaint. They want to ignore that her claim was totally unfounded given the context of her discussion with Dr. Chandler. As Dr. Chandler affidavit reflects, her did not indicate to her that he felt a handgun but a pager. Moreover, she knew that Chandler had not seen any handgun whatsoever and had indicated to her it was a shame that a friend of Ott "would allow all the information that was being made public to make him think that this pager may have been a weapon, when in fact it was not." Exhibit J.

Defendants have cited several cases which stand for proposition of that there is no constitutionally protected a property right in a contract when you're dealing with the garden variety issues of common-law contract. They cite the cases of Charles v. Baesler, 910 F. 2d 1349 (6th Cir. 1990), Sutton v. Cleveland Board of Education, 958 F. 2d 1339 (6th Cir. 1992), and Ramsey v. Board of education of Whitley County, 844 F. 2d 1268 (6th Cir. 1998). However these cases do not appear to be controlling here, since they don't involve fact situations where it's claimed that the racial animus toward the plaintiff was a motivating factor in the breach of the agreement.

Neither do the other cases cited by defendants concerning a more generalized right not be defamed or disparaged by state actors control here. See Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155, 47 LED 2d 405 (1976); Siegert v. Gilley, 500 U.S. 226, 111 S. Ct. 1789, 114 Lloyd's vision 2d 277 (1991); and Thomson v. Scheid, 977 F. 2d 1017 (6th Cir. 1992). Again, these cases do not seem to have any bearing on the facts here because they don't deal with a breach of contract where

the breach is motivated by a racial animus toward the Plaintiff.

It submitted by plaintiff that such breach of contract is not a mere garden variety common-law contract claim, but one deserving of constitutional protection

III. PLAINTIFF HAS A VALID CLAIM AGAINST THE CITY AND OTHER COMMISSIONERS WHERE THEY FAILED TO CENSURE DEFENDANT JACKSON.

Plaintiff submits that he has a valid claim for vicarious liability against the City of Kalamazoo due to failure of the other commissioners to take action to censor or otherwise discipline defendant Jackson. The separation agreement signed off by Plaintiff Ott contemplated that in the event of a breach, Ott would have to notify the City of the claim breach within 60 days or the breach would be deemed waived. See paragraph 18, exhibit A. Although the City was notified of the claimed breach, they apparently took no action to rein in Ms. Jackson.

Such conduct on the part of the City Commissioners is tantamount to deliberate indifference because the City Commissioners, if not the entire Kalamazoo community knew from her public efforts to garner support for his termination with her comments about his race, that she was out to get plaintiff Ott. See Exhibit M, November 6, 1995 article in the Kalamazoo Gazette. Also, they should have known from Jackson's investigative efforts in which she orchestrated an unofficial investigation concerning Ott's purchase of a handgun using a friend in the Kalamazoo Department of Public Safety, Tom Martin. See excerpts from Internal Investigation, Exhibits C and D. Moreover, they should know from her continued efforts the day of Ott's resignation to a press the unregistered handgun issue and her claims voiced in a closed session that Ott was a danger somehow to them. See exhibit T, deposition of Ray Ampey, pp 12-13. By ignoring her determined and widespread efforts to get Ott, they were indifferent to the need to control her to prevent violation of the separation agreement by her dislike for Ott. See Canton v. Harris, 489 US 378, 109 S. Ct. 1197, 103

L. Ed 2d 412 (1989).

IV. DEFENDANT JACKSON IS NOT ENTITLED TO DISMISSAL ON THE BASIS OF QUALIFIED IMMUNITY.

Contrary to defendants' assertions, defendant Jackson is not entitled to dismissal on the basis of qualified immunity. As stated above, plaintiff Ott has incorporated into his claim of deprivation of property rights that defendant Jackson's conduct was motivated by her racial animus toward Ott. Surely Ott is not limited to protection from racial discrimination only if it occurs specifically and employment, housing, public accommodations, education or similarly protected out benefits, as urged by defendants. Does not the equal protection clause provide protection from racial discrimination? Does not title 42 U S C. 1981 protect Ott from racial discrimination in the making and enforcement of contracts, such as his separation agreement?

It is submitted that these protections are sufficiently historically rooted within our constitutional history to be deserving of protection in an action brought pursuant to 42 U.S.C. 1983. The constitutional right clearly established, as required by Siegert v Gilley, supra, is to be free from racial discrimination in the enforcement of Plaintiff's contract rights

V. THE PLAINTIFF'S CLAIMS OF DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS SHOULD NOT BE DISMISSED.

A. The Plaintiff's Defamation Claimed Is Not Barred by the Statute of Limitations.

Michigan has different accrual rules for determining whether a period of limitations has been tolled. Although the Statute of Limitations for defamation actions is one year, Michigan recognizes the continuing or repeated injury accrual rule which applies here. By taking action to ensure that her claims concerning Ott possessing a concealed handgun made it into the state police report, defendant Jackson ensured that the harm from it would be ever present when a copy of the police report is

requested by a potential employer. See Hodgeson v. Ragnone, 52 Mich App 411, 217 NW 395 (1974); Horyath v. Delida, 213 Mich App 620, 540 NW 2d 760 (1995); Phinney v. Perhulter, 222 Mich App 513 (1997). Ott testified extensively at his deposition concerning his efforts to find employment following his resignation of from the City of Kalamazoo, which included many efforts within one year of the filing of this lawsuit.

Alternately, plaintiff's defamation claim should not be strictly governed by a one-year statute of limitations because the essence of defamation is precisely what the nondisparagement provision in the separation agreement represents. At the very least, defamation is within any reasonable construction of the term disparagement. Thus, the longer six-year statute of limitations applicable to contract actions should apply.

B Defendant Jackson's Statements Alleging Possession of the Concealed Handgun Are Not Absolutely Privileged.

Defendants have cited the case of Hall v. Pizza Hut of America, 153 Mich App 609 (1986) and the case of Nrecaj v. Yono, 173 Mich App 686 (1989) for the position of that defendant Jackson's statements to the city attorney and Police Chief Hetrick are absolutely privileged. Defendants are incorrect in this regard as these cases do not prevent the courts from looking at malice. At best, these cases reflect that any privilege to report possible criminal violations is a qualified privilege. If the report is done maliciously, which we submit it is the case here, it is actionable.

C. The Intentional Infliction of Emotional Distress Is a Valid Cause of Action Here

Plaintiff submits that it is a jury question as to whether defendant Jackson intended to cause

emotional distress with her passing on her distorted version of her discussion with Dr. Chandler. Had her determination to get Ott not been so clear from her efforts to get him as referenced above, one might buy into her claim that she did not engage in any outrageous conduct. It should also be noted that in passing her distorted version of the conversation with Dr. Chandler along, she was not engaged in duties as a City Commissioner, nor was Ott a City Commission matter at that point since he had resigned several weeks prior.

D. The Defamation Claim and the Intentional Infliction of Emotional Distress Claim are not Barred by the Governmental Immunity Act.

For Michigan's Governmental Immunity Act to apply, Jackson, as a legislator, had to be engaged in conduct within the scope of her legislative authority MCLA 691.1407(5). It can't be seriously contended by defendant Jackson that when she badmouthed plaintiff Ott to Dr. Chandler, that she was acting within the scope of her legislative authority. Moreover, we contend that she distorted what Chandler told her an effort to injure the plaintiff. In so doing, she was not engaged in any legislative function at all and could not have been since Ott was long gone from his city employment. Thus, defendant's reliance on the Governmental Immunity Act is misplaced. There is nothing in the case cited by defendants that precludes the court from looking at the facts regarding whether a person is objectively acting within the scope of his/her legislative authority. American Transmission v. Attorney General, 454 Mich 135 (1997).

VI. THE CLAIM FOR BREACH OF THE SEPARATION AGREEMENT SHOULD NOT BE DISMISSED.

A. The Evidence Supports a Claim for Breach of the Separation Agreement.

Plaintiff finds it difficult to believe that the defendants seriously assert that there is no

evidence to support a claimed breach of the separation agreement. Again, defendants ignore that defendant Jackson badmouthed Ott to Dr. Chandler. Then, she distorted the conversation she had with him to pass along her claim that Ott had a concealed handgun according to Chandler. Defendants want to construe paragraph 10 of the separation agreement in such a way as to justify a dismissal of Ott's claim. However, there is nothing ambiguous about paragraph 10. They agreed to not disparage Ott, and when Jackson passed along her distorted version of her discussion with Dr. Chandler to the authorities, and to who knows who else, the agreement was breached.

B The Agreement Is Not Void As Against Public Policy

Defendants' arguments notwithstanding, there's nothing about the nondisparagement provision of the separation agreement that is void as against public policy. The various scenarios outlined by defendants in their brief are far removed from the facts at hand. As discussed above, while protections are afforded to individuals who in good faith report possible violations of the law, malicious reporting will not be protected.

C. The Difficulty of Determining Damages Does Not Prevent a Claim for Breach of the Separation Agreement from Going Forward.

Defendants distort the holding in Gilbert v. Fletcher, 4 Mich App 676 (1966). This case does not prevent the instant case from going forward. Gilbert, supra, is a case in which there was not even a contract. Plaintiff fails to see how Gilbert is relevant here.

Rather, the difficulty of determining damages does not prevent under Michigan law the matter of damages from being submitted. Moreover, mathematical precision in the assessment of damages is not required, where from the nature of the circumstances, precision is not attainable. Nor

does the rule against speculative damages prevent the drawing of reasonable inferences from the fact and circumstances that are put into evidence. 9 Michigan Law and Practice, Sections 1-6, Damages.

RELIEF REQUESTED.

It is requested that defendants' motion for summary disposition be denied.

Date: May 13, 1999.

Melvin S. McWilliams, PC

By: Melvin S. McWilliams P26792

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(517) 482-4928

SEPARATION AGREEMENT AND GENERAL RELEASE

The following is a Separation Agreement and General Release (the "Agreement") by and between MARC A. OTT ("Ott") and THE CITY OF KALAMAZOO, a Michigan municipal corporation (hereafter "City") regarding any and all past and present known and unknown claims and disputes (and their future effects) that have directly or indirectly arisen or could arise out of Marc A. Ott's relationship with the City and/or his separation. It is entered into this 27th day of January, 1997, by and between Marc A. Ott and the City and will be binding upon and inure to the benefit of not only the parties hereto but also their respective heirs, successors, assigns, commissioners, executives, administrators, directors, officers, agents and employees.

In consideration of the mutual promises contained in this Agreement, it is agreed as follows:

TERMS AND CONDITIONS

1. Marc A. Ott voluntarily resigns as City Manager and his employment relationship with the City will terminate effective January 27, 1997.

2. Separation Amount. The parties mutually agree that promptly following execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall pay to Marc A. Ott the total sum of Forty Seven Thousand Nine Hundred Seventy Six Dollars (\$47,976.00), minus applicable deductions, which represents six months of his current base pay as severance pay, plus a sick leave cash payout of one-half of his accumulated sick leave hours (253.5 hours), and a cash payout of his unused accrued vacation pay (444 hours).

3. Deferred Compensation. The parties mutually agree that promptly following the execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall also deposit on behalf of Marc A. Ott into his deferred compensation account administered by the International City Managers Association 1/2 of the sum of \$4,000.00 plus 3.09% of his current salary, which represents the equivalent of one-half of Marc A. Ott's deferred compensation under his current Employment Agreement. The remaining 1/2 will be deposited on January 27, 1998 provided however if Marc A. Ott obtains comparable employment as of July 27, 1997 or thereafter, this second payment shall be reduced pro-rata for any period he is so employed after July 27, 1997. In the event Marc A. Ott obtains comparable employment after July 27, 1997 but prior to January 27, 1998, at Marc A. Ott's written request, the additional amount due will be deposited upon commencement of his new employment.

4. Conditional Additional Severance Payment. In the event that as of July 27, 1997, Marc A. Ott has not found a position comparable to his current position at a comparable salary level, the City shall at the beginning of each month that this situation continues, starting with August 1, 1997, and continuing for a period ending with a final January 1, 1998 payment, pay 1/12th of Marc A. Ott's annual base pay,

minus applicable deductions, at the beginning of each month that this situation continues, minus any income which he earns from regular employment during this period which will be set off against this monthly obligation. As soon as Marc A. Ott after July 27, 1997 obtains comparable employment, any further severance payment obligations under this paragraph shall cease. Marc A. Ott will immediately notify the City Attorney (in writing) of any employment in which he engages on or after July 27, 1997.

5. Benefit Continuance. For a period of 12 months beginning with January 27, 1997 the City shall continue coverage of Marc A. Ott on its group Health, Dental, Life, and Long Term Disability Insurance programs. These benefits shall be provided as set forth under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), with the City paying the necessary COBRA premium payments for the agreed upon period of time. In the event that Marc A. Ott obtains employer paid insurance with respect to any of these insurance coverages from another source during this period, the City obligations under this paragraph regarding any such insurance coverage shall terminate as set forth in COBRA.

6. ICMA Dues. The City will pay Marc A. Ott's International City Managers Association membership dues upon submission of the dues notice.

7. Release of Claims. In consideration of the provisions described in this Agreement, Marc A. Ott, on behalf of himself, his relatives and heirs, executors and administrators, irrevocably and unconditionally releases, waives and forever discharges the City, its commissioners, administrators, agents, directors, officers, employees, representatives, insurance carriers, attorneys, divisions, affiliates and all related parties, and their predecessors, successors, heirs, executors, administrators and assigns, and all persons acting by, through, under or in concert with any of them (collectively "Releasees"), of and from any and all claims, actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorney's fees and costs actually incurred), of any nature whatsoever, known or unknown, in law or equity, arising out of his relationship with the City and/or his separation, including, without limitation of the foregoing general terms, any claims against the City and Releasees arising from or related to his employment with the City or his separation, and any claims arising from any alleged violation by the City of any federal, state or local statutes, ordinances or common laws, including, but not limited to, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Equal Pay Act, the Retirement Income Security Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, the Elliott-Larsen Civil Rights Act, and any other employment discrimination laws, as well as any other claims based on Constitutional, Statutory, common law or regulatory grounds. The City and Commissioners provide the same "Release of Claims" to Marc A. Ott.

8. Future Suits and Proceedings. Marc A. Ott promises not to institute any future suits or proceedings at law or in equity or any administrative proceedings against the City or any of the Releasees for or on account of any claim or cause of

action arising out of his relationship with the City and/or his separation, including but not limited to any claim or cause of action described in paragraph 7, above. The City and Commissioners provide the same promise to Marc A. Ott.

9. Confidentiality. Marc A. Ott agrees that the terms and amount of settlement shall be kept strictly confidential and promises that he shall not disclose, either directly or indirectly, any information concerning this settlement to anyone, including but not limited to past, present, or future employees of the City.

10. Property, Non-disparagement, and Confidential Information. Upon the effective date of this Agreement (January 27, 1997), Marc A. Ott shall leave with or return to the City (no later than 9:00 a.m., January 28, 1997) all property, of any nature whatsoever, belonging to the City, including but not limited to originals and all copies of any keys to City buildings or offices, identification cards, badges, insurance cards (when his COBRA continuation coverage expires), documents, records, notebooks, files, correspondence, memoranda, tapes, disks and similar materials. In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.

11. References. The City agrees to work with Marc A. Ott and his counsel to prepare mutually acceptable references for Marc A. Ott's use in his endeavors to secure future employment.

12. Complete Defense and Indemnification. Marc A. Ott understands and agrees that this Agreement may be used by the City as a complete defense to any claim or entitlement which he or anyone else may subsequently assert against it or the Releasees for or on account of any matter or thing whatsoever arising out of his relationship with the City. The City similarly understands that this Agreement may be used by Marc A. Ott as a complete defense. Marc A. Ott agrees that he will never institute a claim or charge of employment discrimination with any agency or sue the City, or those associated with the City, concerning any claim he may have relating to his employment with the City or his separation therefrom. The City provides the same assurance to Marc A. Ott. If Marc A. Ott violates this release and sues the City or those associated with the City, he agrees that he shall pay all costs and expenses of defending against the suit incurred by the City or those associated with the City, including reasonable attorneys' fees. The City agrees that it will be similarly obligated if it sues Marc A. Ott in violation of this Agreement.

13. Recovery of Separation Payment. Marc A. Ott agrees and understands that if he breaches any of his commitments under this Agreement, then the City will be entitled to recover any money Marc A. Ott receives as part of this Agreement, as well as the right to pursue any and all claims it might have under the law, this Agreement, or in equity. The City agrees and understands that if it breaches any of

its commitments under this Agreement, then Marc A. Ott has the right to pursue any and all claims which he might have under the law, this Agreement, or in equity.

14. Materiality of all Conditions and Obligations. Marc A. Ott and the City understand and acknowledge that all of the conditions and obligations in this Agreement are material and that the non-occurrence or breach of any such condition or obligation by either of them is not allowed and shall result in the non-offending party being entitled to assert any and all rights it may have in law, equity, and/or this Agreement.

15. Complete Agreement. This Separation Agreement and General Release contains the entire agreement between the City and Marc A. Ott and there is no agreement on the part of either party to do any act or thing other than as expressly stated in this Agreement. There shall also be no modifications or amendments to this Agreement unless they are in writing, signed by all of the parties.

16. Full Knowledge and Volition. Marc A. Ott acknowledges that he has read this Agreement, that he understands its meaning and intent, and has executed the Agreement of his own free act and volition with consultation from counsel. He also acknowledges and confirms that the only consideration for his signing this Agreement are the terms and conditions stated in this Agreement, that no other promise or agreement of any kind, except those set forth in this Agreement, has been made to him by any person to cause him to sign this document and that he fully understands its meaning and intent. Marc A. Ott also acknowledges he has been advised to discuss this Agreement with his lawyer and told that in any event he should thoroughly review and understand the Agreement before acting on it. He also acknowledges that he has 21 days to execute and return the Agreement and, after he has executed this Agreement, he has an additional seven days to reconsider and revoke the Agreement, recognizing that he will not be provided anything under this Agreement until at least that seven day revocation period has expired.

17. Review and Revocation Period. Marc A. Ott is hereby offered the opportunity to have twenty-one (21) days to review and consider this Agreement. He shall have seven (7) days following the execution of this Agreement to revoke it. If Marc A. Ott wishes to revoke this Agreement, he must do so by contacting Thomas P. Hustoles, the City's Labor Counsel, Miller, Canfield, Paddock and Stone, P.L.C., 444 West Michigan Avenue, Kalamazoo, Michigan 49007, in writing within this seven-day period, which begins the day after he executes this Agreement. This Agreement shall not become enforceable until the seven-day revocation period has expired.

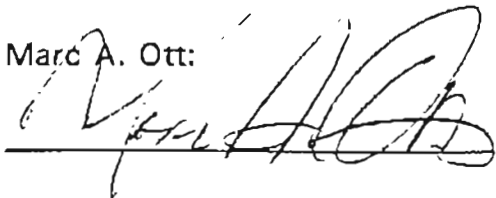
18. Action for Breach. Should Marc A. Ott or the City start any legal action or administrative proceeding, other than described below, against the other with respect to any claim waived by this Agreement, or pursue any method of resolution of a dispute other than mutual agreement of the parties or arbitration, then all damages, costs, expenses and attorneys' fees incurred by the other party as a result shall be the responsibility of the one bringing the suit or starting the proceeding. Any

claimed breach must be brought to the attention of the other party within sixty (60) days of the date the party making the claim knew or reasonably should have known of the breach, and any breach not so reported shall be untimely and waived. Notwithstanding the foregoing, the City may go directly to court to obtain injunctive relief when it believes that Marc A. Ott has breached his nondisclosure obligations and/or disclosed to third parties confidential and/or sensitive information pertaining to the City's operations or in any way breached his obligations in ¶9 or ¶10, above.

19. Acknowledgement. Marc A. Ott acknowledges that he has carefully read this Separation Agreement and General Release and understands its contents and consequences, that he has been given the opportunity to consult with an attorney of his choice, that the only promises made to him to sign this Agreement are those stated in the Agreement, that he has had sufficient time to review this Agreement, and that he is signing this Agreement knowingly and voluntarily, without any coercion, or duress and with the full intent of releasing the City, the Releasees, their successors, agents and representatives from any and all claims (and their future effects) arising from his relationship with the City and/or his separation therefrom. Marc A. Ott also acknowledges he has not relied on any representations, promises, or agreement of any kind made to him in connection with his decision to accept the separation except those set forth in this document.

20. General Conditions. This Agreement can be executed non-simultaneously by the parties. This Agreement shall be construed in accordance with the laws of the State of Michigan. If any part of this Agreement is found to be invalid, the remainder shall still be binding, in effect, and enforceable.

Marc A. Ott:



Dated: 1/27, 1997

THE CITY AND RELEASEES

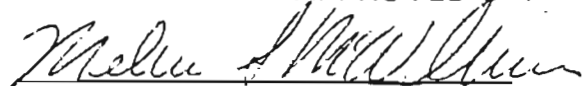
By:



Its: Mayor

Dated: 1/27, 1997

EXPLAINED AND APPROVED BY:



COUNSEL FOR Marc A. Ott

Dated: 1/27, 1997

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

CASE NO: 4:98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in
her capacity as a member of the Kalamazoo
City Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF KALAMAZOO,
jointly and severally,

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COME the Defendants, ZADIE JACKSON, KALAMAZOO CITY
COMMISSION and CITY OF KALAMAZOO, by and through their attorneys,
PLUNKETT & COONEY, P.C., and move this Honorable Court for an Order granting
Summary Judgment pursuant to Rule 56(c). In support of this Motion the Defendants
state:

1. The Plaintiff has filed a five count Amended Complaint claiming breach of
a Separation Agreement which he entered into with the City of Kalamazoo on January

30

27, 1997; defamation; intentional infliction of emotional distress; racial discrimination; and deprivation of property interests in the Separation Agreement.

2. The Plaintiff has absolutely no evidence to demonstrate racial animus on the part of the Defendants.

3. The Plaintiff has no constitutionally protected liberty or property interest either in the Separation Agreement or in being free from defamation at the hands of state actors.

4. The Plaintiff's defamation claim is barred by the statute of limitations.

5. There is an absolute privilege to provide information regarding possible violation of laws to law enforcement officials.

6. The Plaintiff's state law tort claims against Zadie Jackson, for defamation and intentional infliction of emotional distress, are barred by the absolute immunity afforded elected officials under the Michigan Governmental Immunity Act.

7. It is not outrageous, as a matter of law, for a citizen to contact law enforcement officials about possible violations of the law.

8. There has been no violation of the Separation Agreement where the claimed breach related to conduct which occurred after the Plaintiff had ended his employment with the City of Kalamazoo.


9. The Separation Agreement's non-disparagement clause did not pretend to preclude the parties from reporting possible violations of the law, and to the extent that the clause could be so construed, it is void as against public policy.

10. The Plaintiff has failed to demonstrate any evidence of damages as a result of an alleged breach, requiring dismissal of his claimed breach of the Separation Agreement.

WHEREFORE, for the foregoing reasons the Defendants respectfully request this Honorable Court grant their Motion for Summary Judgment pursuant to Rule 56(c), and dismiss the Plaintiff's Complaint with prejudice.

DATED: April 15, 1999

PLUNKETT & COONEY, P.C.

BY: 

Michael S. Bogren (P34835)
Attorney for Defendants

BUSINESS ADDRESS:

535 S. Burdick Street, Suite 256
Kalamazoo, MI 49007
Telephone: 616/382-5935

00590.81289.32256

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

CASE NO: 4:98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in
her capacity as a member of the Kalamazoo
City Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF KALAMAZOO,
jointly and severally,

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

BRIEF IN SUPPORT DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

STATEMENT OF FACTS

Marc A. Ott was the City Manager for the City of Kalamazoo, Michigan from March, 1993 until January 27, 1997. Mr. Ott began his employment with the City of Kalamazoo in April, 1990 as an Assistant City Manager. He was promoted to Deputy City Manager in February, 1991 and was appointed the City Manager in March, 1993. (See resume of Marc A. Ott, attached as **Exhibit A**). On January 27, 1997 Ott executed a Separation Agreement and General Release, which was also executed by Barbara A. Larson, the Mayor of the City of Kalamazoo. (A copy of the Separation Agreement is attached as **Exhibit B**).

Included in the Separation Agreement was a non-disparagement clause which reads in part:

"In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light." (Separation Agreement, ¶10).

Ott was hired by the City of Rochester Hills as City Administrator in February, 1998, with the appointment becoming effective March 25, 1998. (See **Exhibit C**, correspondence from City of Rochester Hills).

On May 14, 1997 counsel for Ott sent correspondence to Robert H. Cinabro, City Attorney for the City of Kalamazoo, alleging that Defendant Zadie Jackson violated the terms of the Separation Agreement. Mr. Cinabro responded in a letter dated May 30, 1997 by categorically denying a breach of the Separation Agreement. (Copies of the letters are attached as **Exhibit D**). The next contact was nearly one year later, when, on April 9, 1998 Ott's counsel again contacted City Attorney Cinabro by mail. (A copy of that letter is attached as **Exhibit E**). There were no new claims of violations or breaches of the Separation Agreement, but a reference back to the previous correspondence sent in May, 1997.

Plaintiff filed suit in Kalamazoo County Circuit Court on July 28, 1998. Defendants timely removed the case to Federal Court based upon the federal claims which were asserted in the Complaint.

The original Complaint consisted of four counts: Breach of Separation Agreement; Defamation; Intentional Infliction of Emotional Distress; and Racial Discrimination. An Amended Complaint filed in this Court added a fifth count of Deprivation of Property Rights in Severance Agreement.

Further facts, if necessary, will be added in a discussion of the issues.

I. THE PLAINTIFF'S CLAIM OF RACIAL DISCRIMINATION MUST BE DISMISSED WHERE THE PLAINTIFF HAS NO FACTUAL SUPPORT WHATSOEVER FOR SUCH A CLAIM.

Count IV of the First Amended Complaint alleges racial discrimination under both 42 U.S.C. §1983 and the Elliott-Larsen Civil Rights Act, M.C.L.A. 37.2101 *et. seq.* Initially, it is not at all clear what alleged actions on the part of the Defendants constitute racial discrimination. Paragraph 38 of the Amended Complaint makes reference to "the Defendants' conduct." Referencing earlier allegations in the Complaint, the only actions which the Plaintiff alleges are found in Paragraphs 16, 17 and 21 of the Amended Complaint. The gist of those three paragraphs is the allegation that Zadie Jackson disseminated false, misleading and defamatory information about Marc Ott; specifically that Marc Ott carried a hand gun and that City Commissioners needed protection from him; and that Ott carried a hand gun to a reception which was attended by a Western Michigan University professor.

Essentially, then, the Plaintiff alleges that the Defendants violated the Elliott-Larsen Civil Rights Act and Ott's right under the Constitution to be free from racial discrimination by defaming him. The Plaintiff's theory, apparently, is that the supposed defamation is alleged to be racially motivated and is, therefore, actionable as racial discrimination. The Plaintiff's theory is flawed.

The only record evidenced that relates to statements made by Zadio Jackson related to Marc Ott concern a discussion that Ms. Jackson had with Dr. Ralph Chandler, a professor at Western Michigan University, and Ms. Jackson's subsequent recounting of that conversation to the City Attorney.

Ms. Jackson testified that Chandler told her that he saw Marc Ott at a reception subsequent to Ott's resignation from the City of Kalamazoo. Ms. Jackson testified that Chandler told her that Chandler gave Ott a hug, and Chandler could feel a gun. Chandler asked Ott why he was carrying a gun, and Ott replied "I have enemies." (Dep Zadio Jackson, pp 39-40). (The cited portions of Zadio Jackson's deposition are attached as **Exhibit F**).

After her discussion with Chandler, Ms. Jackson testified that she related her conversation to City Attorney Robert Cinabro and Deputy City Attorney Lee Kirk. (Dep Jackson, p 40). Ms. Jackson denied that she requested the Chief of the Department of Public Safety or the acting City Manager to further disseminate that information. (*Id.*) Ms. Jackson then testified:

Q When you passed your account of this discussion with Dr. Chandler onto Chief Hetrick, what did you expect to happen?

A I passed it on the City Attorney, Chief Hetrick was there.

Q And I don't want to ask you about your discussion with the City Attorney I guess, but obviously the Chief was privy to this information.

A Yes.

Q Okay. And presumably he was there at that meeting for a reason.

A I went to the City Attorney because I didn't know who else to talk with and that seemed the reasonable thing to do. The Chief was there, yes. I didn't ask for the Chief to be there.

Q Okay. And you did not direct the Chief to send that information to the State Police.

A I did not.

Q Now, you are aware that the Chief did submit that information to the State Police?

A Yes.

Q And how did you become aware of that?

A I don't know, I don't know.

Q Okay. You recall having any discussion with Chief Hetrick about that information and what should be done with that information?

A No.

Q Do you know if he was directed by you or anybody else to pass that information along to the State Police?

A I only know that I did not direct him. (Dep Jackson, pp 47-48).

Ms. Jackson further testified:

Q Now, since the paper had reported that Mr. Ott had registered the hand gun, why was it so important about the time of your conversation with the Chief and the City Attorney that this Chandler information be passed along? Why was that so important to you?

A The City Attorney was the person I went to for advise as a Commissioner and that's what I did. I didn't know what to do so I went to Bob.

Q Well, why would you have to do anything with it?

A I didn't know if I had to do anything with it.

* * *

Q So why would you take it upon yourself to do something with that information?

A I didn't really do anything with the information, I went for advice. (Dep Jackson, pp 55-56).

Other than the discussion between Ms. Jackson, members of the City Attorney's staff and Chief Hetrick, there is no record evidenced of any other statements attributed to the Defendants being disseminated.

There is no evidence, and as far as the Defendants can tell, no allegation, that any of the Defendants had contact with one of the Plaintiff's prospective employers, or his current employer. At the time of the discussion between Ms. Jackson and members of the City Attorney's staff, it is undisputed that the City of Kalamazoo was no longer Mr. Ott's employer. Thus, it is difficult to understand the nature of the Plaintiff's racial discrimination claim. The Elliott-Larsen Civil Rights Act, M.C.L.A. 37.2102(1) provides that the opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, family status, or marital status is prohibited. While federal law does not protect all of the classifications protected under Michigan law, race is certainly a protected class under federal law. Again, however, federal law prohibits discrimination in the areas of employment, housing, public accommodations and education. The Plaintiff has not alleged that he has been discriminated against in any of those areas. The most generous reading of the Plaintiff's Complaint is that he alleges that defamation, which was racially based, harmed his future employment prospects. That, however, is simply not protected under federal or state case law.

Even assuming for the sake of argument, however, that the Plaintiff has identified a specific area which is entitled to protection, he still bears the burden of demonstrating racial motivation or animus. The Plaintiff has no evidence to support such a claim.

The Michigan courts look to the federal courts, and specifically the courts of the Sixth Circuit, in ruling upon discrimination claims brought under Elliott-Larsen. *Harrison v. Olde Financial Corp.*, 225 Mich. App. 601, 609-610, 572 N.W.2d 679 (1998). Thus, federal law will determine the outcome of both the federal constitutional claim (which is apparently what the Plaintiff has asserted) and the Elliott-Larsen claim.

Since the Plaintiff is not alleging that the Defendants discriminated against him in employment, the burden of proof analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973), simply has no application in this case. That in and of itself should call into question whether the Plaintiff has even pled an actionable claim. That aside, however, it is incumbent upon the Plaintiff to come forward with evidence of intentional discrimination.

Direct evidence of discrimination may consist of statements made by a decision-maker (a non-existent entity in this analysis) which show an illegal motive for decisions (another non-existent thing in this case). *LaPointe v. United Auto Workers Local 600*, 8 F.3d 376, 380, (6th Cir. 1993). In the Sixth Circuit, direct evidence has been defined as evidence which, if believed, would require the conclusion that unlawful discrimination was at least a motivating factor in a decision. *Bartlik v. United States Department of Labor*, 73 F.3d 100, 103 n. 5 (6th Cir. 1996).

Sixth Circuit case law holds that isolated and ambiguous statements are too abstract, in addition to being irrelevant and prejudicial, to support a finding of discrimination. *LaPointe*, 8 F.3d at 380, *Gagne v. Northwestern Nat'l Ins. Co.*, 881 F.2d 309, 314 (6th Cir. 1989). The only "evidence" that the Plaintiff claims to have to support proof of racial animus is both isolated and ambiguous.

Mr. Ott testified that he relied upon a newspaper article, dated November 6, 1995, and the statements of David Anderson to substantiate his claim of racial animus against Zadio Jackson. (Dep Marc Ott, pp. 241-244). (Cited portions of Ott's deposition are attached as **Exhibit G**). A review of the newspaper article and a recently produced Affidavit from David Anderson reveal that there is no evidence of racial animus.

The November 6, 1995 newspaper article (a copy of which is attached as **Exhibit H**) contains the following statements attributed to Zadio Jackson:

Jackson said she has been frustrated enough with Ott to want to fire him.

'If my administrative assistant did that to me, I'd fire him. But I have to have three other people and, like it or not, we still live in a society that's afraid to do it because he's black. There's not the guts to do it,' said Jackson.

'It has nothing to do with the color of his skin. It's the quality of what he does. I think others have backed off because he is black.'

Ms. Jackson was asked about those statements at deposition. She testified:

Q Why would you focus on Mr. Ott's skin color in making this comment to the media?

A I didn't focus on his skin color, I focused on his performance.

Q You don't understand that by talking about, there's no guts to fire him because he's black, that you are not bringing his skin color into the discussion?

A But that doesn't mean I was focusing on it because I brought it into the discussion.

Q Okay. Why bring it into the discussion?

A Because there were Commissioners that were afraid that there would be an uproar if he was fired. They were concerned about the black community and the reaction of the black community.

Q And they told you that?

A Yes.

Q Who are we talking about?

A We're talking about Mayor Annen, we're talking about then Commissioner Larson – (Dep Jackson, pp. 61-62).

There is simply no basis to assume racial animus on the part of Zaidie Jackson for a statement which she made sometime after January 27, 1997, on the basis of the November 6, 1995, article. Ms. Jackson testified that in her mind there was not a racial issue involved, it was an issue of performance. However, based upon comments made to her by other Commissioners, she related that there were other Commissioners who would not fire Mr. Ott due to the fact that they perceived there would be an adverse reaction in the black community in Kalamazoo if that occurred. It is simply impossible to perceive Ms. Jackson's comments as showing racial animus. It is even more outlandish to suggest that those comments made in November, 1995 demonstrate racial animus on her part against Marc Ott for statements she made well over one year later. In the words of the *Gagne* court, not only are such comments too isolated and ambiguous to support a finding of discrimination, such comments are also irrelevant and prejudicial in making that determination.

The same can certainly be said of the Affidavit of David Anderson. (A copy of Anderson's Affidavit is attached as **Exhibit I**). Anderson avers that "during the early

1990's" he had negative encounters with Zadie Jackson at Nazareth College "which caused me to believe that she did not like black people." The basis for this extremely subjective belief is that Anderson claims that Ms. Jackson on one occasion allegedly questioned him as to why he was interested in Nazareth College because "there was nothing but young, white women here."

Based upon that single statement, the Plaintiff would have this Court find that a genuine issue of fact has been raised with respect to Ms. Jackson's racial animus for a statement made perhaps seven years later. Such a statement is the epitome of ambiguity. There are a plethora of meanings to the phrase that have nothing whatever to do with racial animus. Moreover, Anderson is unable to testify when the statement was made, other than "the early 1990's." Again, not only is the alleged statement isolated, but it is also remote in time.

A claim of racial discrimination is an extremely serious claim to make, but also a very easy claim to make. It is a far different matter to support such a claim. The Plaintiff has absolutely no proof of racial animus on the part of Zadie Jackson. Since Ms. Jackson is the only Defendant who is alleged to have made statements which were motivated by racial animus, the Plaintiff's claim is unsupported and must be dismissed.

II. THE PLAINTIFF'S CLAIM FOR DEPRIVATION OF PROPERTY RIGHTS IN THE SEVERANCE AGREEMENT MUST BE DISMISSED WHERE THE PLAINTIFF POSSESSES NO CONSTITUTIONALLY PROTECTED SUBSTANTIVE RIGHT IN THE SEVERANCE AGREEMENT.

Count V of the Plaintiff's Complaint is entitled "Deprivation of Property Rights in Severance Agreement." Paragraph 45 of the Amended Complaint alleges that the Plaintiff possessed a property right in the provisions of the Separation Agreement.

Paragraph 47 alleges that the Defendants infringed upon the Plaintiff's property interest in the Separation Agreement by violating the non-disparagement clause. As previously demonstrated, the only event that the Plaintiff can possibly be referencing is Ms. Jackson's discussion with the City Attorney and Chief of the Department of Public Safety regarding her conversation with Ralph Chandler. The Plaintiff alleges in Paragraph 49 of the Amended Complaint that the Defendants were acting under color of law at the time of the alleged deprivation.

The Plaintiff is clearly making a substantive due process claim in Count V. That is, Ott does not contend that the Defendants could violate the Separation Agreement after first according him notice and a hearing. Rather, Ott asserts that the Defendants could not constitutionally breach the Separation Agreement at all.

It is not entirely clear what the nature of the property right is that Ott claims he possessed, and is entitled to constitutional protection. There are two possibilities: a contractual right not to be disparaged, or a more general right not to be defamed by government actors. (It is important to note that the Defendants vehemently deny that any disparagement or defamation took place. The Defendants are simply responding to the allegations raised in the Complaint). Under either theory, the Plaintiff's claim fails as a matter of law.

In *Charles v. Baesler*, 910 F.2d 1349, 1353 (6th Cir. 1990), the Sixth Circuit rejected a similar claim made by a fire department captain. The plaintiff claimed that he had a substantive due process right to promotion. In rejecting the claim, the Sixth Circuit stated:

We conclude that no such right exists. Most, if not all, state-created contract rights, while assuredly protected by

procedural due process, are not protected by substantive due process. The substantive due process clause is not concerned with the garden variety issues of common law contract. Its concerns are far narrower, but at the same time, far more important. Substantive due process 'affords only those protections "so rooted in the traditions and conscience of our people as to be ranked as fundamental." '

The Court went on to hold:

State-created rights such as Charles' contractual rights to promotion do not rise to the level of 'fundamental' interests protected by substantive due process. Routine state-created contractual rights are not 'deeply rooted in this Nation's history and tradition,' and, although important, are not so vital that 'neither liberty nor justice would exist if they were sacrificed.' . . .

In the present case, we do not believe liberty or justice are threatened, in the constitutional sense, by the failure of the government and its officials to abide by their contract with Charles. Governments breach contracts virtually every day without dire consequences ensuing to the human dignity or basic autonomy of the promises. *Id.*

In *Sutton v. Cleveland Board of Education*, 958 F.2d 1339, 1351 (6th Cir. 1992), the Sixth Circuit rejected the claim that the plaintiff's state-created right to tenured employment had substantive due process protection. The Court held:

. . . we are persuaded by the reasoning of *Baesler* that plaintiff's statutory right to be discharged only for cause is not a fundamental interest protected by substantive due process.

Here, as in *Baesler*, we find persuasive Justice Powell's concurrence in *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 229, 106 S. Ct. 507, 515, 88 L. Ed. 2d 523 (1985).

Even if one assumes the existence of a property right, however, not every such right is entitled to the protection of substantive due process. While property interests are protected by procedural due process even though the

interest is derived from state law rather than the Constitution, *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972), substantive due process rights are created only by the Constitution.

In *Ramsey v. Board of Education of Whitley County*, 844 F.2d 1268, 1274-1275 (6th Cir. 1998), the Sixth Circuit rejected a claim for breach a contract, arising out an employment setting, as stating a federal cause of action. The Court held:

We do hold, however, that an interference with a property interest in a pured benefit of employment, as opposed to an interest in the tenured nature of the employment itself, is an interest that can be and should be redressed by a state breach of contract action and not by a federal action under Section 1983.

To the extent that the Plaintiff is asserting a substantive due process right in the Severance Agreement, and asserts that an alleged breach of the Agreement gives rise to a substantive due process claim, the Plaintiff is simply wrong.

The other possibility is that the Plaintiff is asserting a more generalized right not to be defamed or disparaged by state actors. That claims is equally untenable. In *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976), the Supreme Court rejected a constitutional claim brought by a plaintiff who asserted that he had been defamed by the Louisville Police Department. Specifically, the plaintiff's name and photograph appeared on a flyer distributed by the Louisville Police Department containing the names and photographs of "active shoplifters." The plaintiff brought suit, alleging that his inclusion in the flyer would inhibit him from entering business establishments and would seriously impair his future employment opportunities. *Paul v. Davis*, 424 U.S. at 697, 96 S. Ct. at 1159. In rejecting the claim, the Supreme Court held:

But the interest in reputation alone which respondent seeks to vindicate in this action in federal court is quite different from the 'liberty' or 'property' recognized in those decisions. Kentucky law does not extend to respondent in any legal guarantee of present enjoyment of reputation which has been altered as a result of petitioners' actions. Rather, his interest in reputation is simply one of a number which the State may protect against injury by virtue of its tort law, providing a forum for vindication of those interests by means of damages actions. And any harm or injury to that interest, even where as here inflicted by an officer of the State, does not result in a deprivation of any 'liberty' or 'property' recognized by state or federal law, nor has it worked any change of respondent's status as theretofor recognized under the State's laws. For these reasons we hold that the interest in reputation asserted in this case is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law. *Paul v. Davis*, 424 U.S. at 711-712, 96 S. Ct. at 1165-1166.

The Supreme Court followed the *Paul v. Davis* decision with *Siebert v. Gilley*, 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991). In *Siebert*, the plaintiff had been employed at a federal government hospital as a psychologist until 1985, when he resigned. Following his resignation, the plaintiff began working at an Army hospital in West Germany. Because of a requirement that he be "credentialed" to work in an Army hospital, Siebert allowed the Army to obtain job performance information from previous employers. In response to the inquiry, the plaintiff's former supervisor notified the Army by letter that "he could not recommend Siebert for privileges as a psychologist." The supervisor wrote that he "considered Dr. Siebert to be both inept and unethical, perhaps the least trustworthy individual I have supervised in my 13 years at St. Elizabeth's." Siebert was not credentialed and was turned down for another position at an Army hospital. *Siebert*, 500 U.S. at 228, 111 S. Ct. at 1791.

The Plaintiff filed suit against his former supervisor alleging that his statements were defamatory, untrue or made with reckless disregard to truth. He alleged that the defamatory nature of the letter precluded him from finding comparable work in the future, and therefore constituted a deprivation actionable under the Constitution. In rejecting the claim, the Supreme Court held:

The alleged defamation was not uttered incident to the termination of Siegert's employment by the hospital, since he voluntarily resigned from his position at the hospital, and the letter was written several weeks later. The statements contained in the letter would undoubtedly damage the reputation of one in his position, and impair his future employment prospects. But the plaintiff in *Paul v. Davis*, similarly alleged serious impairment of his future employment opportunities as well as other harm. Most defamation plaintiffs attempt to show some sort of special damage and out-of-pocket loss which flows from the injury to their reputation. But so long as such damage flows from injury caused by the defendant to a plaintiff's reputation, it may be recoverable under state tort law but is not recoverable in a *Bivens* action. *Siegert*, 500 U.S. at 234, 111 S. Ct. at 1794.

In *Thomson v. Scheid*, 977 F.2d 1017, 1020 (6th Cir. 1992), the plaintiff claimed that he was deprived of a liberty interest because defamatory statements were made against him by his employers. In rejecting the claim, the Sixth Circuit held:

Defamatory statements alone do not constitute a deprivation of liberty guaranteed by the Fourteenth Amendment. *Paul v. Davis*, 424 U.S. 693, 711-12, 96 S. Ct. 1155, 1165-66, 47 L. Ed. 2d 405 (1976). Where a plaintiff alleges deprivation of liberty because he was defamed in the course of his employment, to be actionable under the Fourteenth Amendment, the defamation must occur in the course of the termination of employment. *Id.*, at 710, 96 S. Ct. at 1165 (citing *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)). Here, Scheid's purported statements were made during plaintiff's investigation, two years before plaintiff resigned and DeWalt's statements were made after plaintiff resigned. It cannot be said that

any defamatory statements affected the termination of plaintiff's employment.

The Plaintiff simply has no liberty or property interest in the Severance Agreement protected by the substantive due process clause. Count V of the Plaintiff's Amended Complaint must be dismissed.

III. THE PLAINTIFF HAS NEITHER PROPERLY ALLEGED A VALID FEDERAL CLAIM AGAINST THE CITY OF KALAMAZOO OR THE KALAMAZOO CITY COMMISSION, NOR CAN THE PLAINTIFF SUPPORT SUCH A CLAIM FACTUALLY.

Paragraphs 39, 40 and 47 of the Amended Complaint allege that the City of Kalamazoo and the City Commission were aware or should have been aware of Ms. Jackson's dislike for Ott and her racial animus toward him, but failed to take any action to control her actions as an officer and agent of the City. That failure, according to the Plaintiff, renders the City of Kalamazoo and the City Commission liable under federal law. Once again, the Plaintiff is mistaken.

In *Bryan County v. Brown*, 520 U.S. 397, 117 S. Ct. 1182 (1997), the Supreme Court reiterated the holding of *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2027, 56 L. Ed. 2d 611 (1978), that in order to impose liability on a municipality under §1983, the plaintiff must demonstrate deliberate action attributable to the municipality by identifying a municipal policy or custom that caused the plaintiff's constitutional injury. A municipality will not be held liable simply because it employs the alleged tortfeasor. Vicarious liability is not an appropriate basis for imposing municipality liability under §1983. *Bryan County*, 520 U.S. at 403, 117 S. Ct. at 1388.

Initially, the Plaintiff has failed to even attempt to identify the municipal policy that he claims was the moving force behind his injury. (It should be kept in mind that it is the Defendants' position that the Plaintiff has not sustained a constitutional injury, which alone is a basis to dismiss the claims against the City of Kalamazoo and the City Commission). It appears that the Plaintiff is attempting to do precisely what *Monell* prohibits: impose liability on the basis that Ms. Jackson was an agent of the City. Such an attempt is obviously precluded by *Monell* and its progeny.

The Plaintiff does assert that the other Defendants failed to censure Ms. Jackson. That conclusion, however, does not rescue the Plaintiff. In *Berry v. City of Detroit*, 25 F.3d 1342, 1354 (6th Cir. 1994), the Sixth Circuit discussed a claim of failure to discipline:

In the failure to discipline context, it is appropriate to apply the deliberate indifference standard adopted by the Supreme Court in *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989), to require a showing of a history of widespread abuse that has been ignored by the City.

The Plaintiff has not alleged, and certainly cannot show, "a history of widespread abuse that has been ignored by the City." In fact, the undisputed evidence in this case demonstrates that Mr. McWilliams complained of a breach of the Agreement by Ms. Jackson in his May 14, 1997 letter. (See **Exhibit D**). There is no assertion, and certainly no evidence, that additional activities took place which the Plaintiff construed to be breaches of the Agreement. Thus, on the undisputed facts of this case, there is absolutely no basis for a finding of municipal liability. The federal claims asserted against the City of Kalamazoo and the Kalamazoo City Commission must be dismissed.

IV. DEFENDANT JACKSON IS ENTITLED TO DISMISSAL ON THE BASIS OF QUALIFIED IMMUNITY.

In *Siegert v. Gilley*, *supra*, the Supreme Court discussed the nature of the qualified immunity defense. The Court began the discussion on qualified immunity as follows: "We hold that the petitioner in this case failed to satisfy the first inquiry in the examination of such a claim; he failed to allege the violation of a clearly established constitutional right." *Siegert*, 500 U.S. at 231, 111 S. Ct. at 1792. The Court then stated:

This case demonstrates the desirability of this approach to a claim of immunity, for *Siegert* failed not only to allege the violation of a constitutional right that was clearly established at the time of *Gilley's* actions, but also to establish the violation of any constitutional right at all. *Siegert*, 500 U.S. at 233, 111 S. Ct. at 1794.

In this case, the Plaintiff has no protected liberty or property interest in the Separation Agreement. Moreover, he has no protected liberty or property interest in being free from defamation. This case is indistinguishable from *Siegert* in that regard, and the result must be the same: Ms. Jackson is entitled to dismissal on the basis of qualified immunity because the Plaintiff has failed to allege a constitutional deprivation in the first instance.

The same result is true with respect to the racial discrimination claim. In light of the fact that the Plaintiff had no liberty or property interest at stake (either in terms of an alleged breach of the Separation Agreement, or alleged defamation), the racial motivation is irrelevant. That is, unless the Plaintiff demonstrates that he has been deprived of employment, housing, public accommodation, education or a similarly protected benefit, motivation that he attributes to an act or for some other claimed

deprivation is constitutionally irrelevant. Put simply, a state law claim of defamation does not become a constitutional claim because the Plaintiff attributes an improper motivation to the speaker. Similarly, a breach of contract does not become a federal claim because the Plaintiff claims the motivation for the breach was improper. There is no case law to support such a contention. For purposes of qualified immunity, therefore, it cannot be said that the law was clearly established in 1997 that to allegedly breach a contract or defame someone with an improper motive constituted a constitutional deprivation. Therefore, the claims against Ms. Jackson must be dismissed on the basis of qualified immunity.

V. THE PLAINTIFFS' CLAIMS OF DEFAMATION AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS MUST BE DISMISSED.

A. The Plaintiff's Defamation Claim is Barred by the Statute of Limitations.

Count II of the Plaintiff's Complaint is entitled "Defamation." The Plaintiff asserts that Ms. Jackson's discussion with the City Attorney and the Chief of Public Safety about her conversation with Professor Chandler constitutes defamation. (Amended Complaint, ¶26). The Plaintiff does not allege when the conversation took place. However, the conversation took place prior to May 14, 1997, which is the date of Mr. McWilliams' letter to the City Attorney complaining of the claimed breach.

M.C.L.A. 600.5805(7) provides a one-year statute of limitations for an action alleging libel or slander. The Plaintiff's Complaint was filed in the Kalamazoo County Circuit Court on July 28, 1998. That is more than one year after the claimed defamation, as evidenced by Mr. McWilliams' letter in **Exhibit D**. Therefore, the Plaintiff's claim for defamation is barred by the statute of limitations.

B. Ms. Jackson's Statements About Potential Violations of the Law Were Absolutely Privileged.

As the previously cited deposition testimony demonstrates, Ms. Jackson had a discussion with the City Attorney and the Chief of Public Safety about her conversation with Professor Chandler because she did not know what she should do with the information. The statements, if true, were potential violations of the law. Chief Hetrick testified:

Q Okay. In your 26 years of experience, have you seen any instance in which someone was charged with carrying a concealed weapon in which no one saw them with a concealed weapon?

A No.

Q Okay. When you passed that information along to the state police, just based upon your knowledge and experience, did you expect Mr. Ott to be charged with carrying a concealed weapon at this reception?

A I didn't have an expectation one way or the other.

Q Okay. Was there a reason why you would pass that information along?

A Yes.

Q Okay. Why would you pass that information along?

A The information that was being relayed to me would give indication, based on what was said, that Mr. Ott may have been carrying a gun, that's why the letter to the state police is worded in such a way, that I'm reporting what has been told to me. (Dep Hetrick, pp. 31-32). (Copies of the cited portions of Hetrick's deposition are attached as **Exhibit J**).

Michigan law does not look favorably upon claims asserted against citizens who report possible violations of the law. In *Hall v. Pizza Hut of America*, 153 Mich. App. 609, 615 (1986), the Court of Appeals stated:

Rather, it was a right and privilege of Nichols secured by the Constitution and laws of the United States to aid in the execution of the laws of her Country by giving information to the proper authorities.

The Court went on to state:

The plaintiff's claims of slander fail for similar reasons. Not only were the essentials of this count not specifically pled as required in *Ledl, supra*, but more importantly, information given to police officers regarding criminal activities is absolutely privileged.

In *Nrecaj v. Yono*, 173 Mich. App. 686, 688-689 (1989), the Court of Appeals, in a similar fashion, held that a citizen need not satisfy an objective standard of reasonableness before she is justified in calling the police. "When a person perceives himself to be in a potentially dangerous situation, he acts consistent with the principles of a civilized society by summoning those who are appointed to investigate such matters enacting upon their judgment."

This decision underlines Michigan's policy of protecting those who report potential offenses of the law.

Ms. Jackson's discussion with the City Attorney and Chief Hetrick regarding her conversation with Professor Chandler is absolutely privileged, and the defamation claim against her must be dismissed.

C. Reporting a Potential Violation of the Law Does Not Constitute Intentional Infliction of Emotional Distress as a Matter of Law.

The intentional infliction of emotional distress claim brought against Ms. Jackson must also be dismissed. In *Hall, supra*, the Michigan Court of Appeals rejected a claim of intentional infliction of emotional distress in a similar setting, holding:

In the present case, there is no evidence which shows that it was defendant's intent to cause the plaintiffs the requisite

emotional distress. The defendant's employee did no more than file a complaint with the law enforcement officials. *Hall*, 153 Mich. App. At 617.

It is simply not "outrageous" for a citizen who receives information regarding the possible violation of the law to seek advice from an attorney as to what she should do. Even assuming that Ms. Jackson had brought the matters specifically to the attention of the Chief of Public Safety, there is still no outrageous conduct involved. Michigan encourages its citizens to report to law enforcement officials; it does not punish them for doing so. Thus, the claims of intentional infliction of emotional distress must be dismissed.

D. Both the Defamation Claim and the Intentional Infliction of Emotional Distress Claim are Barred by the Governmental Immunity Act.

M.C.L.A. 691.1407(5) provides:

Judges, legislators, and the elective or highest appointive executive officials of all levels of government are immune from tort liability for injuries to persons or damages to property whenever they are acting within the scope of their judicial, legislative, or executive authority.

The Plaintiff alleges that Ms. Jackson, at the time she allegedly defamed Mr. Ott and inflicted emotional distress upon him, was acting as a City Commissioner for the City of Kalamazoo. (Amended Complaint, ¶¶ 41, 49). Clearly, then, the state tort law claims asserted against Ms. Jackson are barred by §5 of the Governmental Immunity Act.

In *American Transmission v. Attorney General*, 454 Mich. 135 (1997), the Michigan Supreme Court overruled a holding from the Michigan Court of Appeals in *Garcey v. Wayne County Clerk*, 213 Mich. App. 412 (1995), and held that there is no

subjective element to the absolute immunity provided in §5 of the Governmental Immunity Act. Specifically, the Supreme Court held:

We agree with Judge Young that *Gracey* was incorrectly decided. The Legislature's grant of immunity in M.C.L.A. 691.1407(5); M.S.A. 3.996(107)(5) is written with utter clarity. We need not reach the concern that a malevolent-heart exception might be workable, since the Legislature has provided no such test.

On the undisputed facts of this case, the tort claims against Ms. Jackson must be dismissed. Not only has the Plaintiff alleged that Ms. Jackson acted in her capacity as a Commissioner, but Ms. Jackson explicitly testified that she went to the City Attorney with the information as a Commissioner seeking advice. Under M.C.L.A. 691.1407(5) and the Michigan Supreme Court's decision in *American Transmission, supra*, the state tort law claims against Ms. Jackson must be dismissed.

VI. THE PLAINTIFF'S CLAIM FOR BREACH OF THE SEPARATION AGREEMENT MUST BE DISMISSED.

A. There is No Evidence to Support a Claimed Breach of the Separation Agreement.

The only record evidence that could conceivably support a claim that the non-disparagement clause of the Separation Agreement was breached has to do with Ms. Jackson's discussion with the City Attorney of her conversation with Professor Chandler. It is undisputed that Ms. Jackson's conversation with Chandler came after Mr. Ott had resigned from the City of Kalamazoo. (Dep Jackson, pp 39-40). In the context of paragraph 10 of the Separation Agreement, it cannot seriously be disputed that the non-disparagement agreement relates to matters associated with Mr. Ott's employment with the City of Kalamazoo. This is evident from the language of paragraph 10 which precludes Ott from portraying the City or its services in a negative

light, and further prohibits him from disclosing confidential or sensitive information to anyone. This is obviously only confidential or sensitive information which Mr. Ott would have received during his tenure with the City of Kalamazoo. Similarly, the agreement that the commissioners would not say or do anything that disparages Marc Ott is obviously related to their experiences with him while he was employed by the City of Kalamazoo. Just as the Separation Agreement would not bar a claim by Ott if he had been struck by a City owned vehicle in February or March, 1997, so the non-disparagement clause would not be prospective in nature. By the same token, it is simply not consistent with the Separation Agreement to suppose that Mr. Ott would be precluded from criticizing city services if, for example, the Department of Public Safety allowed his home to burn down in April, 1997, after his separation from the City.

Since it is undisputed that the discussion that Ms. Jackson had with Professor Chandler occurred after the Separation Agreement was executed, and it is similarly undisputed that the reception that Mr. Ott attended with Professor Chandler came at a time after the Separation Agreement was executed, there is simply no claim available that Ms. Jackson's discussions violated the Separation Agreement.

B. To the Extent That the Separation Agreement Can Be Read as Prohibiting Any Party to Report Possible Violations of the Law, the Agreement is Void as Against Public Policy.

The Plaintiff cannot seriously contend that the non-disparagement clause of the Separation Agreement precludes the parties from reporting possible violations of the law. Any report of any possible violation of the law unquestionably constitutes disparagement or negative light. However, Michigan law encourages its citizens to report possible violations of the law. If the Separation Agreement is read in the light

the Plaintiff wishes, it would prohibit Mr. Ott from contacting law enforcement officials if he witnessed a city commissioner commit a murder after he resigned from the City. Similarly, if construed in that light, the non-disparagement clause would prohibit the City from contacting law enforcement officials if an audit disclosed that Mr. Ott had been involved in financial irregularities.

Assume that Ralph Chandler related to Zadie Jackson that in his discussion with Ott, Ott told him that he had been involved in a hit and run automobile accident which resulted in the death of a pedestrian. If Chandler then related that information to Ms. Jackson, according to the Plaintiff's view, if Ms. Jackson disclosed that information to law enforcement officials she would be in violation of the non-disparagement clause. Such a reading is simply inappropriate and violates the public policy of this state.

In *Rushton v. Meijer, Inc.*, 225 Mich. App. 156, 165 (1997), the Michigan Court of Appeals explained:

"A contract which is contrary to public policy is illegal and void. *Federoff v. Ewing*, 386 Mich. 474, 481, 192 N.W.2d 242 (1971). Public policy has been described as 'the community common sense and common conscience, extended and applied through the State to matters of public morals, public health, public safety, public welfare and the like.' *Skutt v. Grand Rapids*, 275 Mich. 258, 264, 266 N.W. 344 (1936). It is expressed in the Constitution, statutes, judicial decisions, or customs and conventions of the people, and it concerns the primary principles of equity and justice.' *Id.*"

To the extent that the non-disparagement clause of the Separation Agreement can be construed to prohibit the reporting of possible violations of the law, it is contrary to public policy and void. As discussed in the defamation issue, Michigan encourages its citizens to report possible violations of the law. In *Gravy v. City of Galesburg*, 71 Mich. App. 161, 166-167 (1976), the Michigan Court of Appeals held that an agreement

executed by a criminal Defendant which released the City from tort claims and return for dismissal of a criminal charge was contrary to the public policy of this State:

"We find that this agreement is repugnant to public policy because contracts of such a nature may tend to deprive the public of their right to vigorous enforcement of penal statutes and ordinances for the predominant purpose of benefiting individual persons, and because contracts executed under such circumstances are inherently coercive."

Several Michigan statutes place an affirmative duty upon police officers to report and prosecute violations of the law. M.C.L.A. 28.31 ("whereas it is the duty of local police and peace officers and the duty of the director of the Department of State Police to cooperate with all other state and local law enforcement authorities in the detecting of crime, enforcing traffic laws, the apprehending of criminals, the preservation of law and order throughout the state. . ."); M.C.L.A. 67.46 ("the police shall suppress riots, disturbances, and breaches of the peace; arrest any person fleeing from justice; apprehend upon view any person found violating a law of this state or an ordinance of the village. . ."); M.C.L.A. 92.4 ("the police shall suppress riots, disturbances and breaches of the peace; pursue and arrest a person fleeing from justice in any part of the state; apprehend a person in the act of violating a law of this state, or an ordinance of the city. . ."); M.C.L.A. 168.941 ("it is hereby made the duty of any police, sheriff or other police officer, present and having knowledge of any violation of any of the provisions of this act, to forthwith institute criminal proceedings for the punishment of such offender.")

The statutes, judicial decisions, customs and conventions of the State of Michigan make clear that any provision of a contract which could be construed as prohibiting a person from reporting violations of the law is against public policy and void. Therefore,

to the extent that the Plaintiff asserts that Ms. Jackson's discussions with the City Attorney of her conversation with Dr. Chandler violated the non-disparagement clause, the claim must be dismissed.

Mr. Ott acknowledged in his deposition that the non-disparagement clause would not preclude commissioners from reporting possible crimes to law enforcement officials. (Dep Ott, pp 255-256).

Ms. Jackson's discussion with the City Attorney and the Chief of Public Safety is simply not a breach of the non-disparagement clause.

C. The Plaintiff Cannot Prevail on a Claim for Breach of the Separation Agreement Where He Cannot Demonstrate Damages.

In *Gilbert v. Fletcher*, 4 Mich. App. 676, 678-679 (1966), the Michigan Court of Appeals held that a failure to show an correlation between a claimed breach of contract and loss or damages to the Plaintiff was fatal to a breach of contract claim. In his deposition, Ott testified that when an applicant is not hired for a job in public administration, the hiring entity will typically not share a reason for not being selected for the position. (Dep Ott, pp 198-199). Ott was unable to provide testimony as to a single time that a prospective employer was even aware of the allegations regarding a handgun, let alone using it as a reason for not hiring him. In sum, the Plaintiff cannot demonstrate that, even if there had been a breach of the non-disparagement agreement, that it damaged Ott in any fashion.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons the Defendants respectfully request this Honorable Court grant their Motion for Summary Judgment pursuant to Rule 56(c) and dismiss the Plaintiff's Complaint with prejudice.

DATED: April 15, 1999

PLUNKETT & COONEY, P.C.

BY: Michael S. Bogren

Michael S. Bogren (P34835)

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00590.81289.32208

Exhibit A

MARC ANTHONY OTT

1111 W. Washington Way
Kalamazoo, MI 49009
Phone: (616) 383-0620

EDUCATIONAL BACKGROUND

- June, 1994 Program for Senior Executives in State and Local Government, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts
April, 1981 M.P.A., Public Administration, Oakland University, Michigan
April, 1979 B.S., Management, Concentration in Economics, Oakland University, Michigan

EMPLOYMENT BACKGROUND

City Manager

Kalamazoo, Michigan (Population: 80,277)
March 1993 to Present

Responsibilities: Administers the work of the entire organization of 960 employees. Directly supervises the Deputy City Manager and all department directors and division managers including Public Works, Transportation, Management Information Systems, Human Resources and Labor Relations, Accounting, Treasury, Assessor's Office, Buildings and Housing Inspections, Neighborhood and Community Development, Recreation, Water, Water Reclamation, and Purchasing. Additionally responsible for preparing the City's annual operating budget, plans, develops, supervises, and implements major City projects and programs; develops a variety of reports requested by the City Commission, meets with developers of various industries and businesses, community groups, and citizens to plan projects and programs, resolves complaints and implements appropriate changes for the betterment of the community.

Deputy City Manager

Kalamazoo, Michigan
February 1991 to March 1993

Responsibilities: Oversaw the Finance, Public Safety, Human Resources, Neighborhood and Community Development Departments and the Economic Development & Planning and Purchasing Divisions; coordinated submission and reviewed department budgets; served as spokesperson for the City; planned, developed, and implemented major City projects and programs; served as City's representative to various committees and boards; represented City Manager at Commission meetings and made policy decisions in absence of City Manager; met with citizens and groups to resolve complaints, plan programs, and implement changes; conducted financial cost impact studies and recommended alternatives.

Assistant City Manager
Kalamazoo, Michigan
April 1990 to February 1991

Responsibilities: Directed the general administration of four departments; managed the development of their budgets and approved all major actions within the departments; served as the City's representative on various committees and boards; developed projects, goals and directions for the City Manager and City Commission as requested.

Administrative Services Officer
City Manager's Office
Grand Rapids, Michigan (Population: 181,843)
January 1987 to April 1990

Responsibilities: Served as Assistant to the City Manager. Directly responsible for coordinating the City's legislative program which included state and federal relations. Acted as a liaison with elected and appointed officials including personal contact with regional, state and federal agencies.

Director of Management Services
City Manager's Office
Grand Rapids, Michigan
December 1984 to December 1986

Responsibilities: Responsible for preparing and administering a budget of approximately \$220,000; supervised two staff members; provided administrative and managerial assistance directly to the City Manager and to City departments throughout the organization.

Administrative Assistant to the City Manager
City Manager's Office
Jackson, Michigan (Population: 39,739)
November 1982 to November 1984

Responsibilities: Served as the principal assistant to the City Manager. Specific responsibilities included research projects; policy analysis; program development and implementation, i.e., employee performance evaluation and development of programs; implementation of ORS Section 504 and affirmative action requirements.

Staff Assistant
Michigan Municipal League
Ann Arbor, Michigan
October 1981 to November 1982

Responsibilities: Responded to inquiries from municipal officials throughout the state regarding local government operations.

Administrative Intern

City Administrator's Office, Southfield, Michigan

Head Resident

Oakland University, Rochester, Michigan

Financial Adjuster

Community National Bank, Pontiac, Michigan

PROFESSIONAL AFFILIATIONS

International City Management Association

Michigan City Management Association, Executive Board Member 1986-1988

American Society for Public Administration

COMMUNITY RELATED ACTIVITIES

Greater Kalamazoo United Way, 1994 Community Campaign, Government Division Chair
Leadership Kalamazoo, Class of 1993

MCMA Winter Conference Planning Committee, 1992

Leadership Grand Rapids, Chairman, 1990

Grand Rapids Art Museum, Board Member, 1989

Urban Institute of Contemporary Art, Board Member, 1989

Leadership Grand Rapids, Executive Board Member, 1987, 1988, 1989

Leadership of Grand Rapids, Class of 1986

Reserve Police Officer Training, Jackson, 1984

Kappa Alpha Psi Fraternity Member

Recycling/Jackson, Inc. - Co-founder and Board Member, 1984

Region II Planning Commission, Executive Board, 1983

HONORS AND AWARDS

Certificate of Achievement, National Emergency Training Center, Emergency Management
Institute, 1984, 1985

Certificate, Jackson Community College Leadership Academy, 1982

Graduate Assistantship, Department of Political Science, Oakland University, 1980-1981

Certificate of Appreciation in the Pursuit of Higher Education, Oakland University, 1979

Community Service Award, Oakland University, 1979

Member, "Who's Who in American Colleges and Universities," 1979

Michigan Industrial Education Award, 1970

SEPARATION AGREEMENT AND GENERAL RELEASE

The following is a Separation Agreement and General Release (the "Agreement") by and between MARC A. OTT ("Ott") and THE CITY OF KALAMAZOO, a Michigan municipal corporation (hereafter "City") regarding any and all past and present known and unknown claims and disputes (and their future effects) that have directly or indirectly arisen or could arise out of Marc A. Ott's relationship with the City and/or his separation. It is entered into this 27th day of January, 1997, by and between Marc A. Ott and the City and will be binding upon and inure to the benefit of not only the parties hereto but also their respective heirs, successors, assigns, commissioners, executives, administrators, directors, officers, agents and employees.

In consideration of the mutual promises contained in this Agreement, it is agreed as follows:

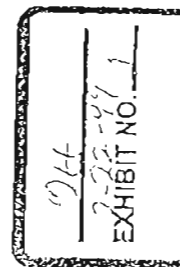
TERMS AND CONDITIONS

1. Marc A. Ott voluntarily resigns as City Manager and his employment relationship with the City will terminate effective January 27, 1997.

2. Separation Amount. The parties mutually agree that promptly following execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall pay to Marc A. Ott the total sum of Forty Seven Thousand Nine Hundred Seventy Six Dollars (\$47,976.00), minus applicable deductions, which represents six months of his current base pay as severance pay, plus a sick leave cash payout of one-half of his accumulated sick leave hours (253.5 hours), and a cash payout of his unused accrued vacation pay (444 hours).

3. Deferred Compensation. The parties mutually agree that promptly following the execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall also deposit on behalf of Marc A. Ott into his deferred compensation account administered by the International City Managers Association 1/2 of the sum of \$4,000.00 plus 3.09% of his current salary, which represents the equivalent of one-half of Marc A. Ott's deferred compensation under his current Employment Agreement. The remaining 1/2 will be deposited on January 27, 1998 provided however if Marc A. Ott obtains comparable employment as of July 27, 1997 or thereafter, this second payment shall be reduced pro-rata for any period he is so employed after July 27, 1997. In the event Marc A. Ott obtains comparable employment after July 27, 1997 but prior to January 27, 1998, at Marc A. Ott's written request, the additional amount due will be deposited upon commencement of his new employment.

4. Conditional Additional Severance Payment. In the event that as of July 27, 1997, Marc A. Ott has not found a position comparable to his current position at a comparable salary level, the City shall at the beginning of each month that this situation continues, starting with August 1, 1997, and continuing for a period ending with a final January 1, 1998 payment, pay 1/12th of Marc A. Ott's annual base pay,



minus applicable deductions, at the beginning of each month that this situation continues, minus any income which he earns from regular employment during this period which will be set off against this monthly obligation. As soon as Marc A. Ott after July 27, 1997 obtains comparable employment, any further severance payment obligations under this paragraph shall cease. Marc A. Ott will immediately notify the City Attorney (in writing) of any employment in which he engages on or after July 27, 1997.

5. Benefit Continuance. For a period of 12 months beginning with January 27, 1997 the City shall continue coverage of Marc A. Ott on its group Health, Dental, Life, and Long Term Disability Insurance programs. These benefits shall be provided as set forth under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), with the City paying the necessary COBRA premium payments for the agreed upon period of time. In the event that Marc A. Ott obtains employer paid insurance with respect to any of these insurance coverages from another source during this period, the City obligations under this paragraph regarding any such insurance coverage shall terminate as set forth in COBRA.

6. ICMA Dues. The City will pay Marc A. Ott's International City Managers Association membership dues upon submission of the dues notice.

7. Release of Claims. In consideration of the provisions described in this Agreement, Marc A. Ott, on behalf of himself, his relatives and heirs, executors and administrators, irrevocably and unconditionally releases, waives and forever discharges the City, its commissioners, administrators, agents, directors, officers, employees, representatives, insurance carriers, attorneys, divisions, affiliates and all related parties, and their predecessors, successors, heirs, executors, administrators and assigns, and all persons acting by, through, under or in concert with any of them (collectively "Releasees"), of and from any and all claims, actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorney's fees and costs actually incurred), of any nature whatsoever, known or unknown, in law or equity, arising out of his relationship with the City and/or his separation, including, without limitation of the foregoing general terms, any claims against the City and Releasees arising from or related to his employment with the City or his separation, and any claims arising from any alleged violation by the City of any federal, state or local statutes, ordinances or common laws, including, but not limited to, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Equal Pay Act, the Retirement Income Security Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, the Elliott-Larsen Civil Rights Act, and any other employment discrimination laws, as well as any other claims based on Constitutional, Statutory, common law or regulatory grounds. The City and Commissioners provide the same "Release of Claims" to Marc A. Ott.

8. Future Suits and Proceedings. Marc A. Ott promises not to institute any future suits or proceedings at law or in equity or any administrative proceedings against the City or any of the Releasees for or on account of any claim or cause of

action arising out of his relationship with the City and/or his separation, including but not limited to any claim or cause of action described in paragraph 7, above. The City and Commissioners provide the same promise to Marc A. Ott.

9. Confidentiality. Marc A. Ott agrees that the terms and amount of settlement shall be kept strictly confidential and promises that he shall not disclose, either directly or indirectly, any information concerning this settlement to anyone, including but not limited to past, present, or future employees of the City.

10. Property, Non-disparagement, and Confidential Information. Upon the effective date of this Agreement (January 27, 1997), Marc A. Ott shall leave with or return to the City (no later than 9:00 a.m., January 28, 1997) all property, of any nature whatsoever, belonging to the City, including but not limited to originals and all copies of any keys to City buildings or offices, identification cards, badges, insurance cards (when his COBRA continuation coverage expires), documents, records, notebooks, files, correspondence, memoranda, tapes, disks and similar materials. In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.

11. References. The City agrees to work with Marc A. Ott and his counsel to prepare mutually acceptable references for Marc A. Ott's use in his endeavors to secure future employment.

12. Complete Defense and Indemnification. Marc A. Ott understands and agrees that this Agreement may be used by the City as a complete defense to any claim or entitlement which he or anyone else may subsequently assert against it or the Releasees for or on account of any matter or thing whatsoever arising out of his relationship with the City. The City similarly understands that this Agreement may be used by Marc A. Ott as a complete defense. Marc A. Ott agrees that he will never institute a claim or charge of employment discrimination with any agency or sue the City, or those associated with the City, concerning any claim he may have relating to his employment with the City or his separation therefrom. The City provides the same assurance to Marc A. Ott. If Marc A. Ott violates this release and sues the City or those associated with the City, he agrees that he shall pay all costs and expenses of defending against the suit incurred by the City or those associated with the City, including reasonable attorneys' fees. The City agrees that it will be similarly obligated if it sues Marc A. Ott in violation of this Agreement.

13. Recovery of Separation Payment. Marc A. Ott agrees and understands that if he breaches any of his commitments under this Agreement, then the City will be entitled to recover any money Marc A. Ott receives as part of this Agreement, as well as the right to pursue any and all claims it might have under the law, this Agreement, or in equity. The City agrees and understands that if it breaches any of

its commitments under this Agreement, then Marc A. Ott has the right to pursue any and all claims which he might have under the law, this Agreement, or in equity.

14. Materiality of all Conditions and Obligations. Marc A. Ott and the City understand and acknowledge that all of the conditions and obligations in this Agreement are material and that the non-occurrence or breach of any such condition or obligation by either of them is not allowed and shall result in the non-offending party being entitled to assert any and all rights it may have in law, equity, and/or this Agreement.

15. Complete Agreement. This Separation Agreement and General Release contains the entire agreement between the City and Marc A. Ott and there is no agreement on the part of either party to do any act or thing other than as expressly stated in this Agreement. There shall also be no modifications or amendments to this Agreement unless they are in writing, signed by all of the parties.

16. Full Knowledge and Volition. Marc A. Ott acknowledges that he has read this Agreement, that he understands its meaning and intent, and has executed the Agreement of his own free act and volition with consultation from counsel. He also acknowledges and confirms that the only consideration for his signing this Agreement are the terms and conditions stated in this Agreement, that no other promise or agreement of any kind, except those set forth in this Agreement, has been made to him by any person to cause him to sign this document and that he fully understands its meaning and intent. Marc A. Ott also acknowledges he has been advised to discuss this Agreement with his lawyer and told that in any event he should thoroughly review and understand the Agreement before acting on it. He also acknowledges that he has 21 days to execute and return the Agreement and, after he has executed this Agreement, he has an additional seven days to reconsider and revoke the Agreement, recognizing that he will not be provided anything under this Agreement until at least that seven day revocation period has expired.

17. Review and Revocation Period. Marc A. Ott is hereby offered the opportunity to have twenty-one (21) days to review and consider this Agreement. He shall have seven (7) days following the execution of this Agreement to revoke it. If Marc A. Ott wishes to revoke this Agreement, he must do so by contacting Thomas P. Hustoles, the City's Labor Counsel, Miller, Canfield, Paddock and Stone, P.L.C., 444 West Michigan Avenue, Kalamazoo, Michigan 49007, in writing within this seven-day period, which begins the day after he executes this Agreement. This Agreement shall not become enforceable until the seven-day revocation period has expired.

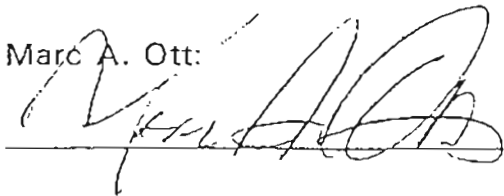
18. Action for Breach. Should Marc A. Ott or the City start any legal action or administrative proceeding, other than described below, against the other with respect to any claim waived by this Agreement, or pursue any method of resolution of a dispute other than mutual agreement of the parties or arbitration, then all damages, costs, expenses and attorneys' fees incurred by the other party as a result shall be the responsibility of the one bringing the suit or starting the proceeding. Any

claimed breach must be brought to the attention of the other party within sixty (60) days of the date the party making the claim knew or reasonably should have known of the breach, and any breach not so reported shall be untimely and waived. Notwithstanding the foregoing, the City may go directly to court to obtain injunctive relief when it believes that Marc A. Ott has breached his nondisclosure obligations and/or disclosed to third parties confidential and/or sensitive information pertaining to the City's operations or in any way breached his obligations in ¶9 or ¶10, above.

19. Acknowledgement. Marc A. Ott acknowledges that he has carefully read this Separation Agreement and General Release and understands its contents and consequences, that he has been given the opportunity to consult with an attorney of his choice, that the only promises made to him to sign this Agreement are those stated in the Agreement, that he has had sufficient time to review this Agreement, and that he is signing this Agreement knowingly and voluntarily, without any coercion, or duress and with the full intent of releasing the City, the Releasees, their successors, agents and representatives from any and all claims (and their future effects) arising from his relationship with the City and/or his separation therefrom. Marc A. Ott also acknowledges he has not relied on any representations, promises, or agreement of any kind made to him in connection with his decision to accept the separation except those set forth in this document.

20. General Conditions. This Agreement can be executed non-simultaneously by the parties. This Agreement shall be construed in accordance with the laws of the State of Michigan. If any part of this Agreement is found to be invalid, the remainder shall still be binding, in effect, and enforceable.

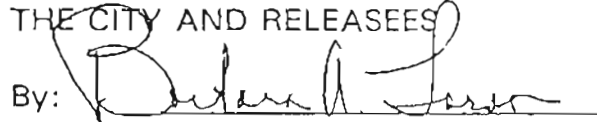
Marc A. Ott:



Dated: 1/27, 1997

THE CITY AND RELEASEES

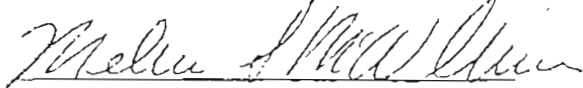
By:



Its: Mayor

Dated: 1/27, 1997

EXPLAINED AND APPROVED BY:



COUNSEL FOR Marc A. Ott

Dated: 1/27, 1997

Exhibit C

THE CITY OF ROCHESTER HILLS

MAYOR'S
OFFICE

DATE: 18 February 1998

TO: Barbara Brooks, Director of Human
Resources

RE: Appointment of Assistant to the
Mayor/City Administrator

KENNETH D. SNELL, Mayor

Pursuant to the authority granted to me by the city charter, I hereby appoint Marc Ott as the Assistant to the Mayor/City Administrator. His appointment shall be effective on Wednesday, 25 March 1998.

Please initiate the appropriate paperwork to effect his hiring as a city employee, in accordance with the specific job offer detailed in my 10 February 1998 letter to him.

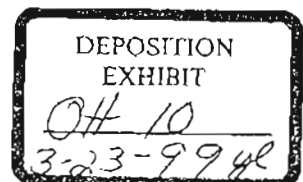
Please let me know if you need additional information.



KENNETH D. SNELL
Mayor

c: M. Ott
B. M. Peters
B. A. Jasinski

am-ca.mem

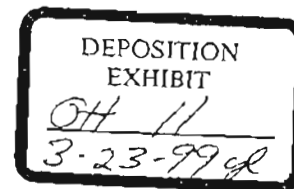


City of
ROCHESTER HILLS

Kenneth D. Snell, Mayor

10 February 1998

Marc A. Ott
4761 Wimbledon Way
Kalamazoo, MI 49009



Dear Mr. Ott:

I am pleased to present to you this offer of employment for the mayor-appointed position of Assistant to the Mayor/City Administrator for the city of Rochester Hills:

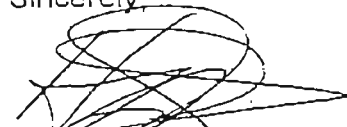
- **Salary** - \$76,003 per year to start; after a six-month performance appraisal that demonstrates acceptable accomplishment of mutually agreed-upon, specific objectives, the salary will be increased to \$79,685 per year.
- **Health Benefits** - (Details are in the enclosed "1998 Flexible Compensation Program" packet)
 - Medical insurance* - Blue Cross Blue Shield or Health Alliance Plan HMO (coverage starts on the first day of the month that follows 60 days on the job)
 - Dental insurance* - Delta Dental (coverage starts on the first day of the month that follows 60 days on the job)
 - Short-term disability insurance* (coverage starts on the first day of the month that follows 6 months on the job)
 - Long-term disability insurance* - can purchase additional coverage (coverage starts on the first day of the month that follows 6 months on the job)
 - Life insurance* - can purchase additional coverage (coverage starts on the first day of the month that follows 6 months on the job)
 - Accidental death & dismemberment insurance* - (coverage starts on the first day of the month that follows 6 months on the job)
- **Pension** - Defined contribution plan; city contributes an amount equal to 10% of compensation, beginning with the first pay period after six months on the job. *If I don't win reelection in 1999 and you don't retain the Assistant to the Mayor/City Administrator position, we will pay you the value of the pension account as additional compensation at the end of my current mayoral term.* (Smith-Barney is the financial consultant for this pension. Currently, six money managers invest the pension funds; each money manager is rated "four diamonds".) The normal vesting period for this pension is five years of service. This pension can be rolled over into another tax-deferred investment when you leave the city's employ.
- **Deferred Compensation** - Voluntary, city-run "457" plan. In 1998, the city will match one dollar for each dollar you contribute, up to a maximum of \$4000 contributed by the city. In 1999 and beyond, the city will match 50 cents for each

Mr. Marc Ott
10 February 1998
page 3

that you may meet with many directors to be briefed on activities in their departments. Additionally, you may wish to visit us a second day prior to 16 March.

Again, I thank you for your strong, continued interest in this position. Please let me know if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to be "KENNETH D. SNELL", written over a circular scribble.

KENNETH D. SNELL, Mayor
City of Rochester Hills

KDS:
Enclosure

c: B. M. Peters
B. A. Brooks

Exhibit D

Law Offices

MELVIN S. McWILLIAMS, P.C.

Business and Law Center
121 East Allegan
Lansing, MI 48933Phone (517) 482-4928
Fax (517) 372-9760

May 14, 1997

RECEIVED
CITY ATTORNEY

MAY 16 1997

Mr. Robert H. Cinabro
City Attorney
City of Kalamazoo
234 W. Cedar Street
Kalamazoo, MI 49007-5162AM PM
7 8 9 10 11 12 1 2 3 4 5 6
▲RE: Commissioner Zadia Jackson
Violations of the Separation Agreement and General Release.

Dear Mr. Cinabro,

It has come to this office's attention that Zadia Jackson has engaged in violations of the Separation Agreement and General Release between the City of Kalamazoo and Marc Ott. The full extent of the violations is unknown. However, it is known that she is the source of a claim that Marc Ott allegedly carried a gun inside of his suit jacket to a recent event in Kalamazoo at which Detroit Mayor Archer was being recognized. Commissioner Jackson has apparently claimed that Dr. Chandler, who works for Western Michigan University, told her that he felt what he thought was a gun when he hugged Marc Ott at the reception. Zadia Jackson also has claimed that Mr. Ott told Dr. Chandler that he was carrying a gun, which is utterly false. Mrs. Jackson has passed this information along to others, including the Chief of Police, and has directed that the Chief communicate the same to the State Police for inclusion in the investigation being conducted by the State Police of Marc Ott. Perhaps your office has received this information from Mrs. Jackson as well. It is to my understanding that Dr. Chandler is abhorred by the statements that Mrs. Jackson has attributed to him and has indicated that the statements are a total fabrication on her part.

If this information is true, not only is Mrs. Jackson's conduct a clear violation of paragraph 10 of the Separation Agreement and General Release, it is even more importantly an entirely new cause of action against her for defamation. If the information is true, her conduct also violates statutory and ordinance provisions prohibiting false reporting as it is totally a fabrication on her part and has no substance to it whatsoever. If the information is true, giving direct orders to the Chief of Police and other employees violates your Charter as well. Even if you believe that Dr. Chandler did say these things, Mrs. Jackson clearly intended to disparage Marc Ott by passing along something negative and having it be the subject of additional investigation and negative news reports.

If this information is true, it becomes plain that Mrs. Jackson is willing to do anything within her power to ruin Marc Ott in every way that she can, and she is willing to use others to do it. If this information is true, she is out of control and not fit to serve on the City Commission.

This letter constitutes notice pursuant to paragraph 18 of the breach of the non-disparagement provisions of paragraph 10 by Mrs. Jackson. Additionally, as indicated above, the allegations she is making are defamatory and totally fabricated and therefore constitutes a separate cause of action against her, the redress of which is not restricted by the Separation Agreement and General Release. If this information is true, given Mrs. Jackson's malicious and outrageous conduct, it is our intent to pursue Mr. Ott's legal remedies in this matter to the full extent allowed. Obviously the Commission needs to address this matter as well, because by her conduct, if this information is true, she has fundamentally undermined and violated the letter and spirit of the agreement that we worked hard to reach. If you determine that any of this information is not true, I request that you advise this office right away.

Please advise if you have any questions

Sincerely,



Melvin S. McWilliams
Attorney at Law

MSM/jlb
cc: Marc Ott

FILED
5/16/77

THE CITY OF



OFFICE OF THE CITY ATTORNEY

234 W. Cedar Street
Kalamazoo, Michigan 49007-5162
Telephone: (616) 337-8185
FAX: (616) 337-8922

May 30, 1997

Melvin S. McWilliams, Esq.
Business and Law Center
121 E. Allegan
Lansing, MI 48933

Re: Your Letter of 5/14/97 -- Allegations Regarding Commissioner
Zadie Jackson

Dear Mr. McWilliams:

I have carefully reviewed the contents of your letter of May 14, 1997. In the second-to-the-last sentence of your letter, you state as follows: "If you determine that any of this information is not true, I request that you advise this office right away."

Since you have asked for a reply, I hereby state unequivocally based on all evidence I have received that the allegations of a violation of the Separation Agreement and General Release between Marc Ott and the City of Kalamazoo are not true and are therefore denied categorically. While it is true that Commissioner Jackson passed along information to the appropriate law enforcement authorities, such information having been voluntarily given to her by another citizen, the evidence I have received shows that Commissioner Jackson did not under any circumstance either (a) violate the Separation Agreement and General Release, (b) defame Marc Ott, or (c) otherwise violate any statutory or ordinance provisions. In addition, I have no evidence whatsoever that Commissioner Jackson directed orders to the Chief of Public Safety or any other city employee.

With respect to your assertion that Mr. Ott has been defamed, be advised that the City of Kalamazoo and the City Commission vigorously deny this contention. Not only is truth an absolute defense to any defamation claim, but citizens of this state enjoy an absolute privilege, or, at the bare minimum, a qualified privilege to report possible criminal activity to law enforcement officials. Shinglemeyer v Wright, 124 Mich 230 (1900); Powers v Vaughn, 312 Mich 297 (1945); Hall v Pizza Hut of America, Inc., 153 Mich App 609 (1986). Moreover, you are equally aware that governmental immunity insulates high-level public officials from any

MELVIN S. McWILLIAMS, ESQ.
MAY 30, 1997
PAGE 2

tort liability for actions taken in good faith in furtherance of official duties. MCL §691.1407(5); American Transmissions v Attorney General, 454 Mich 135 (1997).

Your letter states a number of conclusions as to intent and other opinions as to the actions and motives of Mrs. Jackson. If you have evidence of anything that you wish to bring forward, I will of course carefully review your evidence with Commissioner Jackson. In the absence of such evidence, I can only state that as a public official, I am under an absolute duty to not only uphold the law but to protect other public officials from intimidation, harassment, or other attempts to discredit them personally or professionally.

As for your allegation regarding an alleged breach of Mr. Ott's Separation Agreement, be advised that established precedent in Michigan supports the proposition that a party contesting an agreement must tender back all the consideration he or she received under the agreement and/or release prior to or simultaneously with the commencement of any proceeding raising a legal claim in contravention of the agreement. Stefanac v Cranbrook Education Community (after remand), 435 Mich 155 (1990).

Yours very truly,



Robert H. Cinabro
City Attorney

RHC/cc
cc w/att: Kalamazoo City Commission

04/13/1998 12:22 51737

Exhibit E.

Law Offices

MELVIN S. McWILLIAMS, P.C.

Capital View Building
417 Seymour, Suite 9
Lansing, MI 48933Phone (517) 482-4928
Fax (517) 372-9760

April 9, 1998

Via Fax (616) 337-8922

Mr. Robert H. Cinabro
City Attorney
City of Kalamazoo
234 W. Cedar Street
Kalamazoo, MI 49007-5162

Re: Demand for Arbitration

Dear Mr. Cinabro:

As you know, I represent Marc Ott. We have been worried for some time about things happening in the aftermath of Marc's settlement with the City as previously expressed to you.

I have prepared for filing the enclosed complaint for filing in court to address these issues and damages suffered by Mr. Ott. We are prepared to file this in court but don't wish to do so out of respect for the terms of the settlement agreement. Accordingly, to the extent that the settlement agreement controls, this is a demand for arbitration.

My review of the settlement agreement indicates that some agreement has to be reached concerning the form and means of settling disputes concerning breaches of the agreement. Until we have reached an agreement on this, and as consideration for me not filing immediately to toll the running of any statute of limitations, I request that you agree to waive the running of any statutes of limitation pending our reaching an agreement concerning the method, terms and conditions of proceeding with our complaint in a different forum.

To be acceptable to us, the forum will have to incorporate a means to compel the attendance of witnesses, provide for discovery, a record and a method for review of the arbitrator's decision, and other basics. Strictly speaking, only the breach of contract claim is subject to the method of resolution contained in the Separation Agreement, however if an acceptable agreement can be worked out we may be willing to arbitrate all the claims. Also please note that Zedie Jackson is also named in this if her individual capacity as well. I need to know if your office will represent her in this capacity as well.

Because time is of the essence, I would appreciate a prompt response.

Very truly yours,



Melvin S. McWilliams
Attorney at Law

MSM/jc
Enclosure

cc: Marc Ott

Exhibit F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,
Plaintiff,

vs

File No: 4: 98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, the KALAMAZOO
CITY COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,
Defendants.

----- /

DEPOSITION OF ZADIE JACKSON

Taken by the Plaintiff on the 10th day of March, 1999, at
the offices of Michael S. Bogren, 535 South Burdick,
Suite 256, Kalamazoo, Michigan, at 10:40 a.m.

APPEARANCES:

For the Plaintiff: Mr. Melvin S. McWilliams
Melvin S. McWilliams & Associates
417 Seymour, Suite 9
Lansing, MI 48933

For the Defendant: Mr. Michael S. Bogren
Plunkett & Cooney
535 S. Burdick, Suite 256
Kalamazoo, MI 49007

Reported for
KAL-REPORTING
By
Michele A. Toth
CSR-2702 CP-RPR

received
3-15-99

1 A The Blue Dolphin?

2 Q Yes. If it wasn't the Blue Dolphin --

3 MR. BOGREN: Are you referring to the
4 discussion she had with Dr. Chandler?

5 MR. MCWILLIAMS: Well, yeah.

6 BY THE WITNESS:

7 A Then the answer is yes.

8 BY MR. MCWILLIAMS:

9 Q Okay. And specifically I'm asking about something
10 that happened at a reception, okay, which may or may
11 not have been at the Blue Dolphin.

12 A I don't know where the reception was, that's what --

13 Q That caused you some pause, okay. But just to make
14 sure we're talking about the same event, let me just
15 clarify, you were not at the reception yourself;
16 were you?

17 A No, I wasn't.

18 Q And you did have some contact and some discussion
19 with Dr. Ralph Chandler of Western Michigan
20 University who you know.

21 A Yes.

22 Q Yes, okay. And as a result of that discussion you
23 did pass along information to others regarding your
24 perception of what Dr. Chandler told you.

25 A Yes.

1 Q Okay. And what is your recollection that you --
2 that he told you and that you passed along?

3 A He told me that he was at a reception for Dennis
4 Archer, that Marc came to the reception, that he
5 gave Marc a hug, that he could feel a gun and he
6 said to Marc, why are you carrying that and Marc
7 said, I have enemies.

8 Q At least that was your recollection of that
9 conversation with Dr. Chandler.

10 A Yes.

11 Q Who did you tell this -- give this information to?

12 A City Attorney Cinabro, Deputy City Attorney Lee
13 Kirk, and Chief Hetrick.

14 Q Okay. Now, did you make any request of the Chief
15 that he do anything with that information?

16 A No.

17 Q You did not ask him to pass that along to the State
18 Police?

19 A I did not.

20 Q Did you ask the then City Manager, Acting City
21 Manager, to direct the Chief to pass that
22 information along?

23 A I did not.

24 Q Now, subsequently you were interviewed by James
25 Martemucci, correct?

1 have, in fact, been a weapon when, in fact, it was
2 not. Did Dr. Chandler state that to you?

3 A No.

4 Q When you passed your account of this discussion with
5 Dr. Chandler on to Chief Hetrick, what did you
6 expect to happen?

7 A I passed it on to the City Attorney, Chief Hetrick
8 was there.

9 Q And I don't want to ask you about your discussion
10 with the City Attorney I guess, but obviously the
11 Chief was privy to this information.

12 A Yes.

13 Q Okay. And presumably he was there at that meeting
14 for a reason.

15 A I went to the City Attorney because I didn't know
16 who else to talk with and that seemed the reasonable
17 thing to do. The Chief was there, yes. I didn't
18 ask for the Chief to be there.

19 Q Okay. And you did not direct the Chief to send that
20 information on to the State Police.

21 A I did not.

22 Q Now, you are aware that the Chief did submit that
23 information to the State Police?

24 A Yes.

25 Q And how did you become aware of that?

1 A I don't know, I don't know.

2 Q Okay. You recall having any discussion with Chief
3 Hetrick about that information and what should be
4 done with that information?

5 A No.

6 Q Do you know if he was directed by you or anybody
7 else to pass that information along to the State
8 Police?

9 A I only know that I did not direct him.

10 Q Do you recall if the Chief provided you a copy of
11 his letter to the State Police?

12 A I think Bob Cinabro did.

13 Q Okay. That might be at least one way you might know
14 what happened?

15 A Yes.

16 Q Okay. So it's your testimony as I understand it,
17 that even though this additional information went to
18 the State Police, that was not at your request or at
19 your direction and you don't know exactly why it
20 went there.

21 A I didn't direct anybody to do it.

22 Q Okay. All right. And you also don't know if
23 anybody else did, you're saying you did not.

24 A I did not.

25 Q And I'm asking you whether you know if anyone else

1 firms go about checking the background of individual
2 potential candidates?

3 A Not really how, I know they do. They gave us all
4 sorts of information but exactly how, no.

5 Q You are aware that they do police background checks;
6 are you not?

7 A Yes.

8 Q Okay. And in Mr. Ott's case did it occur to you
9 when you passed this information along to the Chief
10 that you got from Dr. Chandler allegedly, that that
11 would end up in a police file and would be available
12 for future employers of Mr. Ott to take a look at --

13 A No.

14 Q (Continuing) -- if they did background checks?

15 A No.

16 Q You didn't even think about it.

17 A No.

18 Q Now, since the paper had reported that Mr. Ott had
19 registered the handgun, why was it so important
20 about the time of your conversation with the Chief
21 and the City Attorney that this Chandler information
22 be passed along? Why was that so important to you?

23 A The City Attorney was the person I went to for
24 advice as a Commissioner and that's what I did. I
25 didn't know what to do with it so I went to Bob.

1 Q Well, why would you have to do anything with it?

2 A I didn't know if I had to do anything with it.

3 Q Okay. Because obviously you weren't a witness.

4 A No.

5 Q You obviously didn't see a handgun.

6 MR. BOGREN: It's been asked and
7 answered.

8 BY THE WITNESS:

9 A No, I never saw a handgun.

10 BY MR. McWILLIAMS:

11 Q Uh-huh. So why would you take it upon yourself to
12 do something with that information?

13 A I didn't really do anything with the information, I
14 went for advice.

15 Q Okay. Miss Jackson, given what you know today, do
16 you think you were careless or reckless in passing
17 along information that you did not have personal
18 knowledge of?

19 MR. BOGREN: Object to form of the
20 question, also calls for a legal conclusion.
21 You can answer.

22 BY THE WITNESS:

23 A Was I reckless?

24 BY MR. McWILLIAMS:

25 Q Yes, were you careless or reckless --

1 you know the article I'm talking about?

2 A Yes.

3 Q Okay.

4 MR. BOGREN: (Indicating).

5 MR. McWILLIAMS: Thank you.

6 Q In this article you are quoted as saying that, if my
7 Administrative Assistant did that to me, I'd fire
8 him but I have three other people and like it or
9 not, we still have a society that's afraid to do it
10 because he's black.

11 You're obviously talking about firing Mr. Ott
12 because of something that you were unhappy with in
13 November of '95. Now maybe that occurred that week,
14 maybe it occurred some period of time prior to that
15 date.

16 Why would you focus on Mr. Ott's skin color in
17 making this comment to the media?

18 A I didn't focus on his skin color, I focused on his
19 performance.

20 Q You don't understand that by talking about, there's
21 no guts to fire him because he's black, that you are
22 not bringing his skin color into the discussion?

23 A But that doesn't mean I was focusing on it because I
24 brought it into the discussion.

25 Q Okay. Why bring it into the discussion?

1 A Because there were Commissioners that were afraid
2 that there would be an uproar if he was fired. They
3 were concerned about the black community and the
4 reaction of the black community.

5 Q And they told you that?

6 A Yes.

7 Q Who are we talking about?

8 A We're talking about Mayor Annen, we're talking about
9 then Commissioner Larson --

10 Q You said Larson; did you not?

11 A Yes.

12 Q Okay. Did you say Ed Annen?

13 A Yes.

14 Q Okay. Now, Barbara Larson didn't have a problem
15 being part of the move to get Mr. Ott to resign
16 however when he did, in fact, resign though,
17 correct?

18 A But that's 18 months later.

19 Q Okay, or thereabouts 18 months later. How long had
20 you been on the City Commission at this point in
21 time?

22 A Two years.

23 Q Okay. In fact, this article appeared November 6th,
24 1995 on a Monday. And the little box in the article
25 suggests that the election -- the Commission -- City

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

-vs-

CASE NO. 4:98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of
the Kalamazoo City Commission,
the KALAMAZOO CITY COMMISSION,
and THE CITY OF KALAMAZOO,
jointly and severally,

HON. ROBERT HOLMES BELL

VOLUME 2

Defendants

D E P O S I T I O N

of MARC A. OTT, a witness called by Defendant,
taken before Yvonne E. Lantz, Certified Shorthand
Reporter and Notary Public, at 417 Seymour, Suite 9,
Lansing, Michigan, on Tuesday, March 23, 1999, noticed
for the hour of 9:00 a.m.

COPY

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Certified Shorthand Reporters
Grand Rapids - Kalamazoo - Battle Creek
Bloomfield Hills - Jackson - Lansing
Toll Free (800) 878-8750

1 you any questions about why you were no longer with
2 Kalamazoo?

3 A. Generally I remember talking about that.

4 Q. And how did you respond to that, if you can recall?

5 A. As I did in Durham, again, I felt that I needed to be
6 mindful of my separation agreement with the City of
7 Kalamazoo, so again I generally characterized it as a
8 mutual agreement between the two of us to separate.

9 Q. Okay. In the phone interview with Oakland County, were
10 any questions asked you about the gun incident, the
11 investigation performed by the state police?

12 A. I don't recall.

13 Q. Okay. Other than the letters that we see in the file
14 here, November 6, December 16 and the November 25 of
15 1997 and the phone interview, did you have any
16 communications or contacts with Oakland County
17 pertaining to your application?

18 A. Other than interviews and the paper you see here, no.

19 Q. Okay. Did anyone tell you what was the rationale behind
20 the decision not to select you?

21 A. No, and you've asked me that now, and I'm probably going
22 to continue to do that with respect to each of these.

23 Q. Okay.

24 A. And I guess I just want to say for the record that I've
25 been in this business a long time and, quite frankly,

1 you know, what you're asking me was I asked about is
2 typically the kind of thing in terms of a reason for not
3 selecting someone that you're not apt to hear. You
4 know, the profession I'm in, it's a pretty tight circle,
5 so to speak, particularly within your own state.
6 Everybody generally knows or has heard of everyone and
7 when something happens in another municipality,
8 particularly among, you know, city managers and what
9 have you, we hear about it, and people talk to each
10 other, and so it isn't necessarily something that in the
11 city management profession that someone is going to ask
12 you about or certainly not share with you as a reason
13 for your not getting selected for a position.

14 That doesn't mean that they don't know, and I
15 would tell you just based on my experience that, in
16 fact, they do know because they make those kinds of
17 inquiries, you know. It's the kind of off the record
18 stuff, you know, that people do, you know, one mayor
19 calls the other or city manager calls another city
20 manager about an applicant, a candidate for deputy or
21 assistant city manager and they find out, and they make
22 decisions based on that kind of information and I have
23 no doubt, based on 18 years of experience, that that
24 occurred in my case.

25 Q. Okay. Well, let me just make sure that I understand so

1 marked for identification.)

2 BY MR. CALLAHAN:

3 Q. Back on the record. Mr. Ott, I'd like to refer you to
4 interrogatory question twelve in your answer and it's on
5 page ten of your answers and you were asked in this
6 interrogatory, State each and every fact upon which you
7 relied to support your allegation that Zadie Jackson was
8 motivated in any of her actions by dislike and racial
9 animus towards plaintiff and your answer was, subject to
10 other discovery, she engaged in race baiting with her
11 fellow commissioners and the media, indicating that she
12 would fire me and that they were afraid to because I am
13 black. Also I am informed that she has also made known
14 her views about the place of black men in her capacity
15 as an employee, as registrar of Nazareth College, which
16 if true, reflects a low disregard and bigotry towards
17 black men. You recall providing that answer?

18 A. Yes.

19 Q. And I just want to break that answer into two parts,
20 based upon the sentences there. The race baiting that
21 you're referring to in there in the media indicating she
22 would fire you and that other commissioners were afraid
23 to because you were black, since it -- was the statement
24 attributed to her in the article, New Leader May Signal
25 A Fresh Start With Ott, which had been marked as Exhibit

1 2 at the first day of your deposition, is that a fair
2 statement?

3 A. Yes, it is.

4 Q. Okay. Are you aware of any other articles that would
5 pertain to that statement that she was race baiting and
6 that other commissioners were afraid to terminate your
7 position because you were black?

8 A. No, I'm not.

9 Q. Okay. Since signing that interrogatory answer on March
10 9, 1999, have you been able to come up with other facts
11 that would support that allegation?

12 A. No, but I have not really had an opportunity to have any
13 substantive discussions with my attorney since the last
14 deposition, so I would at this point continue to stand
15 by this statement for the time being.

16 Q. Okay. And the question, then, would be this is the only
17 fact that you have in your possession that would support
18 that allegation, what was contained in this article, and
19 then something that she said about the place of black
20 men in her capacity as registrar of Nazareth College?

21 A. Yes, subject to other discovery.

22 Q. Okay. And the second part of that answer pertains to --

23 MR. McWILLIAMS: Now, Mr. Callahan, let me
24 just say, so that it's clear what we're talking about
25 too, we did take three depositions ourselves or I did

1 last week, I believe, or ten days or so ago, in
2 Kalamazoo, and it could very well be that some of the
3 information that arose out of those depositions would
4 likewise be supportive and consistent with our response
5 here in terms of facts that tend to support that.

6 MR. CALLAHAN: Okay.

7 MR. McWILLIAMS: And so it's clear, I haven't
8 had the chance to discuss that in any kind of detail
9 with Mr. Ott for this deposition.

10 MR. CALLAHAN: Okay. And that can always be
11 covered by supplementation of answers.

12 BY MR. CALLAHAN:

13 Q. But the second part of your interrogatory answer
14 pertains to statements attributed to Zadie Jackson in
15 her capacity as registrar of Nazareth College, and in
16 particular, you answer in interrogatory 14 that the
17 person who would support that testimony would be someone
18 by the name of Anderson?

19 A. Um-hum.

20 Q. Okay. And who's that Anderson individual, can you tell
21 me, please?

22 A. I'm acquainted with the Anderson family, in fact, became
23 acquainted with a number of sons when I worked in the
24 City of Grand Rapids and that's essentially how I know
25 of the family. Excuse me.

1 (Off the record discussion.)

2 BY MR. CALLAHAN:

3 Q. Back on the record. I believe in your interrogatory
4 answer you identify him as witness 30 on your witness
5 list and that would be a David Anderson?

6 A. Yes.

7 Q. Okay. And what did David Anderson allegedly hear Zadie
8 Jackson say?

9 A. He didn't say it directly to me, this is information
10 that was related to me by my attorney and in the course
11 of discovery, I think we're going to be able to be more
12 specific about in regard to what Mr. Anderson has to say
13 relative to Zadie Jackson and her comments about black
14 men.

15 Q. Well, what is your understanding of what Zadie Jackson
16 allegedly said to or around David Anderson?

17 A. Again, because I want to be real accurate about my
18 understanding, you know, at this time I would prefer not
19 to answer and until I have had an opportunity to have a
20 more specific discussion about this issue with my
21 attorney.

22 Q. Well, and I'm not asking you for specifically what he
23 said but what is your understanding of what he said?

24 A. My answer to your question --

25 MR. McWILLIAMS: Let me do this because the --

1 police report and what you testified to previously in
2 this proceeding that would be -- would constitute
3 disparaging remarks that Zadie Jackson made about you?
4 I mean, is there anything that we haven't covered yet?

5 A. I don't have anything to add at this time.

6 Q. Okay. And there's nothing that you're aware of?

7 A. No, if I was, I would state it now.

8 Q. Okay, okay. And the same thing with Gary Hetrick,
9 whatever disparaging comments she made to Hetrick would
10 be contained in that police report and in what you
11 already testified to?

12 A. Yes.

13 Q. Okay. Hypothetically speaking now, is it your position
14 that Zadie Jackson or any other commissioner or city
15 official would have been precluded from reporting if
16 they suspected or believed that you had committed a
17 crime like murder?

18 A. Excuse me?

19 Q. Okay. Let's assume that Zadie Jackson or a city
20 commissioner or a city official had reason to believe
21 that you had committed murder, hypothetically speaking.
22 Is it your position that they would have been precluded
23 by that non-disparaging clause in the separation
24 agreement from reporting that to an investigator or the
25 police?

1 MR. MCWILLIAMS: I'm going to object to that.
2 That calls for a legal conclusion, it also calls for
3 speculation and so I'm going to object to it on that
4 basis. I would also additionally object because I don't
5 think the way you put that question is really relevant
6 to the question that will have to be answered in part
7 relative to this case because you said they had reason
8 to believe and we are -- I think you will see from our
9 claim that the nature of the kinds of allegations that
10 Ms. Jackson was passing along does not rise to that
11 level of truly having a reason to believe, it's really
12 maintaining and carrying out her agenda to undermine at
13 each opportunity she had Mr. Ott, even after he had
14 given her what she wanted in terms of his managerial
15 head.

16 MR. CALLAHAN: And my question is directed
17 towards is it the understanding of what could or could
18 not be done under the boundaries of this non-disparaging
19 clause, so if you could read him back the question and
20 your objection is on the record.

21 MR. MCWILLIAMS: Yeah.

22 (Requested portion of the record
23 was read by the reporter.)

24 THE WITNESS: No, if they had -- if they had
25 reason to believe I had killed someone, but, again, you

Kalamazo

Monday, November 6, 1995

Kalamazoo

New leaders may signal a fresh start with Ott

BY ED FINNERTY
KALAMAZOO GAZETTE

The election of a new Kalamazoo City Commission Tuesday may improve its uneasy relationship with City Manager Marc Ott, whose actions one commissioner says are tolerated because Ott is black.

Problems between Ott and some current commissioners were aired in January when Ott called for the commission to publicly assess his performance.

Commissioners Sally Appleyard, Curtis Haan, Zedie Jackson and Barbara Larson all complained about communications with the manager, saying Ott had cut off their contact with other employees and didn't brief them on issues until days or even hours before commission meetings.

Jackson said she has been frustrated enough with Ott to want to fire him.

"If my administrative assistant did that to me I'd fire him. But I have to have three other people to back me up or we still live in a society that's afraid to do it because he's black. There's not the guts to do it," said Jackson.

"It has nothing to do with the color of his skin. It's the quality of what he does. I think others have backed off because he is black."

Other commissioners deny that Ott's race has dictated how they treat him.

But several have said privately that Ott "played the race card" when he called for public talks with commissioners over his performance in January. The audience had a far greater number of blacks than usually attend meetings and some, such as former mayor Beverly Moore, spoke in Ott's defense.

Ott said he did not orchestrate the turnout at the meeting or play a "race card."

At least five new commissioners will be elected Tuesday as only Jackson and Larson, both complete in their first terms, are seeking re-election.

Appleyard, Jackson and Haan each gave Ott poor grades during his last formal job evaluation in

Israe



Loah Rabin, center, widow of Israeli Prime Minister left, as her daughter Dalia Philosoph looks on at state at the Knesset in Jerusalem on Sunday.

Country thrust i

BY ETHAN BRONNER
THE BOSTON GLOBE

the
VOTE
NOV. 7, 1995



Mark
Ott



Zedie
Jackson

Off!
3-22-95
EXHIBIT NO. 2
Mary Howland

ELECTION

From Page A1

Ott also said he doesn't "know how to respond" to Jackson's remarks about his race.

"I am the city manager of Kalamazoo and I really don't know what my race has to do with that," he said.

"As city manager I am either performing my job well or I'm not," he said.

"I think that anyone who would raise the race issue ... is out of touch with what I think are the sentiments of the kind of people we have here in Kalamazoo."

Vice Mayor Alexander Lipsey, who with Commissioner Robert Straits has been a strong supporter of Ott, said a commissioner "couching this as a racial thing" is unfair.

"If Bob (Straits) or I felt there was a need to change managers," Lipsey said, "we would have enough fortitude to be able to do it."

Ott got high marks for his performance in February from Straits, Lipsey, Larson and Mayor Edward Annen Jr., earning a "satisfactory" overall score of 7.2 and a \$5,266 raise.

"He's a very intelligent man. I think he's got a lot of great ideas," Larson said. "I think it's just how he communicates ... I think he will see the light and change."

Said Ott: "I plan on continuing what I have always done."

"Communications is a two-way street ... I have always, I remain now, and I will in the future be open to doing all that I can to assure that there are good communications between the mayor, commissioner and the city manager."

The next commission won't include any of the seven members who were serving when Ott was named city manager in February 1993.

Ott's tenure began on a controversial note when the commission scuttled a national search and promoted Ott from deputy manager. He was named successor to James Holgersson in a 5-2 vote.

Annen, who was then vice mayor, and Haan opposed the appointment, calling it a power play engineered by Moore, who was then mayor, and other commissioners.

"It's probably a good opportunity for Marc to have a new commission come on and let them make their own judgement on him," Straits said.

Candidates have talked about relations between the commission and city manager during the campaign. Most have said the new commission should try to bury the hatchet with Ott and concentrate on working as a team.

"I see it as an opportunity to work with at least five new city commissioners who I'm sure will come ... with a great deal of energy and enthusiasm," Ott said.

*I plan on
continuing what
I have always
done.'*

Mark Ott
City manager



President Clinton and Israeli Ambassador Yitzhak Mordechai look at a book for slain Israeli Prime Minister Yitzhak Rabin in Washington. First lady Hillary Rodham

RABIN

From Page A1

under a bright Jerusalem sun: "Now it falls to all of us who love peace and all of us who loved him to carry on the struggle for which he gave life and for which he gave his life."

Clinton's tribute took a personal tone for the man he called a "chaver," Hebrew for friend. He affectionately recalled Rabin's lack of pretense and formality. Rabin, who always preferred the company of gruff soldiers to that of diplomats, had come to a black-tie dinner in Washington in September without the black tie.

"So he borrowed one, and I was privileged to straighten it for him," said Clinton, wearing a black skullcap. "To him, ceremonies and words were less important than deeds."

Rabin's widow, Leah, who had wept through most of the speeches, smiled at hearing Clinton's recollection.

The most touching eulogy came from Rabin's granddaughter, Nea Ben Artzi, who said she wanted to speak of the man, not the peacemaker.

"You are our hero, lone wolf," the red-haired, freckled young woman said, weeping as she spoke of the gruff, intensely private man.

"You were so wonderful," she said. "Ones greater than I have eulogized you, but none knew the softness of your caress as I. For that half-smile of yours that always said everything, the smile that is no longer there. There is no feeling of revenge in me for the pain does not allow the space."

Leaving the podium in tears,

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CORRECTIONS

The Kalamazoo Gazette corrects errors of fact appearing in its editions. If you know of an error, please call 388-2735 or the department editor.

Some editions of Friday's Gazette incorrectly listed an age for Maria Munguia, who was pictured on Page C1 eating lunch on the Kalamazoo Mall with her 5-year-old relative, Bradley Munguia.

An election guide on Page B6 in Sunday's Gazette incorrectly listed the occupation of John Zull, a candidate for Portage City

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

File No. 4: 98-CV-125

v.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and her
capacity as a member of the Kalamazoo City
Commission, and the CITY OF
KALAMAZOO, jointly and severally,

Defendants,
_____ /

AFFIDAVIT OF DAVID ANDERSON

I, David Anderson, being under oath says:


1. That I reside at 1357 N. Rose Street, in the City of Kalamazoo, MI, 49007.
2. That I am a former student at Nazareth College in Kalamazoo, MI, prior to it closing.
3. That I had negative encounters with Zadie Jackson while she was employed there performing duties in the Registrar's Office which caused me to believe that she did not like black people, especially black men and that she had a negative attitude toward blacks.
4. That on one occasion she questioned me as to why I was interested in Nazareth College because in her words "there was nothing but young white women here."
5. That I also had her accuse me of being a "trouble-maker" because I was not pleased that she failed to provide in a timely fashion certain of my Nazareth College records that I needed for other purposes.
6. That these encounters with Ms. Jackson occurred during the early 1990's.

7. That this affidavit is based upon my personal knowledge and I am competent to testify to the same and will so testify if called as a witness.

Further, I sayeth not.


David Anderson

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

Subscribed and affirmed to before me 
Notary Public, Ingham County Michigan and acting in
Kalamazoo County Michigan, by David Anderson
this 25th day of March, 1999. My commission expires: 3/24/00

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,
Plaintiff,

vs

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in
her capacity as a member of the
Kalamazoo City Commission, the KALAMAZOO
CITY COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,
Defendants.

----- /

DEPOSITION OF GARY HETRICK

Taken by the Plaintiff on the 10th day of March, 1999, at
the offices of Michael S. Bogren, 535 South Burdick,
Suite 256, Kalamazoo, Michigan, at 12:10 p.m.

APPEARANCES:

For the Plaintiff: Mr. Melvin S. McWilliams
Melvin S. McWilliams & Associates
417 Seymour, Suite 9
Lansing, MI 48933

For the Defendant: Mr. Michael S. Bogren
Plunkett & Cooney
535 S. Burdick, Suite 256
Kalamazoo, MI 49007

Reported for
KAL-REPORTING
By
Michele A. Toth
CSR-2702 CP-RPR

received
3-15-99

1 she wasn't there.

2 A Yes, I did.

3 Q Okay. And presumably you knew that there was
4 nothing in the statement from Dr. Chandler that
5 indicated he had seen a gun.

6 A That's correct.

7 Q Even if you believe her version of that statement,
8 correct?

9 A That's correct.

10 Q Okay. In your 26 years of experience have you seen
11 any instance in which someone was charged with
12 carrying a concealed weapon in which no one saw them
13 with a concealed weapon?

14 A No.

15 Q Okay. When you passed that information along to the
16 State Police, just based upon your knowledge and
17 experience, did you expect Mr. Ott to be charged
18 with carrying a concealed weapon at this reception?

19 A I didn't have an expectation one way or the other.

20 Q Okay. Was there a reason why you would pass that
21 information along?

22 A Yes.

23 Q Okay. Why would you pass that information along?

24 A The information that was being relayed to me would
25 give indication, based on what was said, that Mr.

9 Q I take it in April of '97 you knew that that had
10 been cured by him registering the handgun.
11 A I don't recall if I did or not.
12 Q Okay. Let me just hand you Deposition Exhibit 3 and
13 that was an article that appeared in the Gazette.
14 The indication is March 27th and I'm not asking you
15 to assume that that date is right but -- actually I
16 am, assuming that that date is right, do you recall
17 reading that article in the paper? Would that be
18 something you would have paid attention to?
19 A I don't recall if I read this article or not.
20 Q Okay. So you don't know if, in fact, you were aware
21 at the time of your April 28th letter that Marc Ott
22 had registered the handgun.
23 A I don't recall if I was aware of that information or
24 not, no.
25 Q Okay. Now, did Miss Jackson ask you to forward this

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

File No 4:98-CV-125

v

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and her
capacity as a member of the Kalamazoo City
Commission, and the CITY OF
KALAMAZOO, jointly and severally,

Defendants,

AFFIDAVIT OF DR. RALPH CHANDLER

I, Ralph Clark Chandler being first sworn deposes and says as follows:

1. That I reside at 1553 Grand Avenue, Kalamazoo, Michigan.
2. That I know both Zadie Jackson and Marc Ott.
3. That I am employed at Western Michigan University at the School of Public Affairs
and Administration and ~~both Zadie Jackson and Marc Ott~~ ^{in c} are former students of mine
4. That I have reviewed the excerpt of the State Police Incident Report pertaining to
Incident 05-0000850-97 which contains my interview as conducted by D/Sgt James Martemucci
of the State Police.
5. That the report accurately depicts substantially what I related to D/Sgt James
^{as corrected,}
Martemucci concerning my discussion with Zadie Jackson and what she said to me.

6. That during the conversation Zadie Jackson stated to me that her contact with Marc Ott has not been favorable; that Ott was quite abrasive; that when she requested something from Ott while she was Commissioner and he was City Manager that he told her it wasn't any of her business; and that she did not like him very well, among other things.

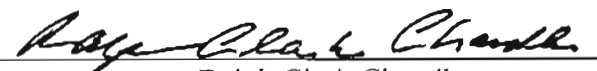
7. That I related to her that although I was a friend and supporter of Marc Ott, I had allowed some of the newspaper coverage to get to me, specifically when I embraced Ott at a reception for Detroit Mayor Dennis Archer I had felt something on his person and immediately thought of it as being possibly a handgun.

8. That the object was not in fact a handgun but a pager.

9. That I did not tell Zadie Jackson that it was a handgun, nor did I see a handgun and that I indicated to Zadie Jackson that it was "a shame that even a friend of Marc Ott would allow all of the information that was being made public to make him think that this pager may have in fact been a weapon, when in fact it was not".

10. This Affidavit is based upon my personal knowledge and I am competent to testify to the same and will do so if called as a witness.

Further, I saith not.


Ralph Clark Chandler

Subscribed and sworn to before me, June E. Clemence, Notary Public,
ACTING IN Van Buren Co.
Kalamazoo County, Michigan, this 12th day of May, 1999. My commission expires. 4/23/2003

JUNE E. CLEMENCE
Notary Public, Van Buren County, MI
ACTING IN KALAMAZOO CO.
My Commission Expires 04/23/2003

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

File No. 4: 98-CV-125

v.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and her
capacity as a member of the Kalamazoo City
Commission, and the CITY OF
KALAMAZOO, jointly and severally,

Defendants,

AFFIDAVIT OF DAVID ANDERSON

I, David Anderson, being under oath says:

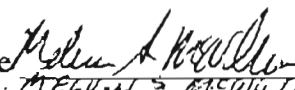
1. That I reside at 1357 N. Rose Street, in the City of Kalamazoo, MI, 49007.
2. That I am a former student at Nazareth College in Kalamazoo, MI, prior to it closing.
3. That I had negative encounters with Zadie Jackson while she was employed there performing duties in the Registrar's Office which caused me to believe that she did not like black people, especially black men and that she had a negative attitude toward blacks.
4. That on one occasion she questioned me as to why I was interested in Nazareth College because in her words "there was nothing but young white women here."
5. That I also had her accuse me of being a "trouble-maker" because I was not pleased that she failed to provide in a timely fashion certain of my Nazareth College records that I needed for other purposes.
6. That these encounters with Ms. Jackson occurred during the early 1990's.

7. That this affidavit is based upon my personal knowledge and I am competent to testify to the same and will so testify if called as a witness.

Further, I sayeth not.


David Anderson

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

Subscribed and affirmed to before me 
Notary Public, Ingham County Michigan and acting in
Kalamazoo County Michigan, by David Anderson
this 25th day of March, 1999. My commission expires: 3/24/03

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

-vs-

CASE NO. 4:98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of
the Kalamazoo City Commission,
the KALAMAZOO CITY COMMISSION,
and THE CITY OF KALAMAZOO,
jointly and severally,

HON. ROBERT HOLMES BELL
VOLUME 2

. Defendants

D E P O S I T I O N

of MARC A. OTT, a witness called by Defendant,
taken before Yvonne E. Lantz, Certified Shorthand
Reporter and Notary Public, at 417 Seymour, Suite 9,
Lansing, Michigan, on Tuesday, March 23, 1999, noticed
for the hour of 9:00 a.m.

COPY

O'BRIEN & BAILS
Certified Shorthand Reporters
Grand Rapids - Kalamazoo - Battle Creek
Bloomfield Hills - Jackson - Lansing
Toll Free (800) 878-8750

1 Q. Okay. Some of the positions you applied for appear to
2 be deputy jobs?

3 A. Deputy and assistant manager, yeah, sure.

4 Q. Okay. Is there a reason why you started looking at
5 deputy jobs?

6 A. Yes.

7 Q. Or assistant jobs?

8 A. Yes.

9 Q. Why is that?

10 A. Well, after a while, I mean, it became clear to me that,
11 you know, given the nature of the selection process for
12 a city manager, that is to say that that process
13 ultimately is very public which involves elected
14 officials, makes it difficult ultimately for the
15 prospective employer and/or elected officials to accept
16 and appoint what may be perceived as a controversial
17 candidate, you know, and I think that my attempts to
18 obtain city manager positions were being impacted by
19 that reality, and so after so many negative responses to
20 my attempts to obtain another city manager's position,
21 to kind of remove myself from that, the public process
22 that's associated with the hiring of a city manager, I
23 knew that, you know, that positions like deputy city
24 manager and assistant city manager were not as public
25 and the hiring decision, you know, was typically just

1 the city manager's and so it wasn't subject to the kind
2 of public scrutiny that a manager's job was and so any
3 negative information about me or controversy surrounding
4 me would not be as much of an issue for that reason, and
5 because city managers generally understand what happens
6 to city managers.

7 Q. Okay.

8 A. And it's not as much of an issue for them.

9 Q. Okay. Now, the City of Rochester Hills where you're
10 working now has perhaps a unique form of government?

11 A. It's not unique, it's just a strong mayor form of
12 government.

13 Q. Strong mayor form, okay.

14 A. The hybrid is the fact that this particular mayor has
15 decided to make the position that I hold that
16 traditionally was known as assistant to the mayor to
17 function as the city administrator, and so I function in
18 that capacity much as I -- much like I did as a city
19 manager in Kalamazoo. There are some significant
20 differences but in terms of, you know, by and large
21 being responsible for day to day operations, that's what
22 I'm responsible for.

23 Q. But he's also your boss and you have to please him?

24 A. He's my direct supervisor, that's right.

25 Q. Okay. And let me just ask you, is his status as mayor,

1 his title as mayor, subject to just the vote of the
2 people or does he owe his title as mayor to a vote of
3 the Rochester Hills City Commission?

4 A. To the people, he's elected at large.

5 Q. Okay, all right.

6 A. He's up for re-election, I might add, in November, which
7 is stressful.

8 Q. Do you know what would happen if he did not get
9 reelected?

10 A. I'd be out of --

11 MR. CALLAHAN: Objection, calls for
12 speculation.

13 THE WITNESS: No speculation.

14 MR. McWILLIAMS: Okay.

15 MR. CALLAHAN: I have got the objection, you
16 can answer.

17 THE WITNESS: Okay.

18 BY MR. McWILLIAMS:

19 Q. Has, in your discussions with the mayor, has he made it
20 clear what would happen if he is not reelected?

21 A. I would be out of a job.

22 Q. Okay.

23 A. In fact, my letter of understanding, you probably don't
24 have it because page two is missing, tries to deal with
25 that in terms of my -- the way my compensation package

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,
Plaintiff,

vs

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in
her capacity as a member of the Kalamazoo
City Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,
Defendants.

----- /

DEPOSITION OF RAY AMPEY

Taken by the Plaintiff on the 10th day of March, 1999, at
the offices of Michael S. Bogren, 535 South Burdick,
Suite 256, Kalamazoo, Michigan, at 3:40 p.m.

APPEARANCES:

For the Plaintiff: Mr. Melvin S. McWilliams
Melvin S. McWilliams & Associates
417 Seymour, Suite 9
Lansing, MI 48933

For the Defendant: Mr. Michael S. Bogren
Plunkett & Cooney
535 S. Burdick, Suite 256
Kalamazoo, MI 49007

Reported for
KAL-REPORTING
By
Michele A. Toth
CSR-2702 CP-RPR

1 Mr. Ott's resignation occurred at the City
2 Commission meeting on January 27th, 1997.

3 A The reason why I say this is because myself and
4 Chief Hetrick were assigned to go across the street
5 to guard the Commissioners in a closed-door session.

6 Q Okay.

7 A It was brought to my attention that they were
8 concerned Marc was going to come in there with the
9 weapon and shoot them or do something to this effect
10 but I wound up being the guard outside the door.

11 Q Okay. You say it came to your attention that that
12 was their concern. Now, you were not in the closed
13 session, correct?

14 A That is correct.

15 Q Okay. But you clearly understood that you were to
16 guard that Commission meeting.

17 A That is correct.

18 Q Okay. And I take it you probably had your service
19 revolver, correct?

20 A That is correct.

21 Q All right. Do you know who would have brought that
22 information to your attention?

23 A To what, guard the door?

24 Q The concern about Marc Ott coming in and --

25 A That came to my attention by Chief Hetrick. As to

1 where he got it, I don't have any knowledge of that.

2 Q Okay. And I take it nothing happened at that
3 special meeting of the City Commission.

4 A That is correct.

5 Q Okay. Did you also perform -- Did you stick around
6 until the evening meeting, the 7 o'clock meeting
7 also?

8 A That is correct.

9 Q Okay. Now, do you recall if there was a closed
10 session in conjunction with that meeting?

11 A I don't recall, I just remember the open meeting.

12 Q Okay. And there was no trouble of any kind at that
13 meeting?

14 A No.

15 Q Okay. Now Mr. Ampey, I know you're retired from the
16 Department of Public Safety. When did your
17 retirement become effective?

18 A February 1998.

19 Q Now Mr. Ampey, let me ask you if you were
20 involved -- Strike that. You are aware that Chief
21 Hetrick did request that the State Police
22 investigate allegations concerning Marc Ott having
23 an unregistered handgun.

24 A Yes.

25 Q Okay. Were you involved in that decision?

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935


PROOF OF SERVICE

Melvin S. McWilliams does hereby state on the 13th day of May, 1999, he did serve via
United States First Class Mail **PLAINTIFF'S ANSWER TO MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT:**

Michael S. Bogren, Esq.
Plunket & Cooney, P.C.
535 South Burdick, Suite 256
Kalamazoo, MI 49007

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United
States Mail.

Dated: May 13, 1999


Melvin S. McWilliams

Melvin S. McWilliams, P.C.

Attorney at Law

417 Seymour, Suite 9

Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517)-482-4928

Fax: (517) 372-9760

May 13, 1999

To: Resident Deputy Clerk
U.S. District Court for Western District
of Michigan
315 West Allegan
Lansing, MI 48933

RE: OTT v. JACKSON, et al.

Case # 4-98-CV-125

Hon. Robert Holmes Bell

ENCLOSED PLEASE FIND THE FOLLOWING:

☐ Affidavit
☐ Answer & Affirmative Defenses
☐ Amended Notice
☐ Answer to Complaint
☐ Answer to Interrogatories
☐ Appearance
☐ Appearance & Demands
☒ Brief
☐ Certificate of Service
☐ Complaint/Counterclaim
☐ Fee
☐ Interrogatories
☐ Judgment of Divorce
☐ Jury Demand
☐ Motion
☐ Motion to Compel Discovery, Etc.

☐ Notice of taking deposition
☐ Notice of Hearing
☐ Order
☐ Petition
☐ Pretrial Statement
☒ Proof of Service
☐ Stipulation & Order
☐ Subpoena
☐ Summons
☐ Witness & Exhibit List
☒ Other:

Answer to Motion
In Summary Judgment

WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

☒ File
☐ File & Return True Copies
☐ For you information
☐ No action required
☐ Return with Proof of Payment
☐ Have Judge sign & return
true copies
☐ Please contact me upon your review
of the enclosure

☐ Sign before a Notary and
witness as requested
☐ Hold for 7 days and enter
if no objections
☐ Execute and return to office

☐ Other: _____

Sincerely,

Melvin S. McWilliams

Melvin S. McWilliams

Attorney at Law

MSM:kg
cc: Michael Bogren
Enclosures

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Ott,

Plaintiff(s),

v.

Case No. 4:98-cv-125

Jackson, et al,

Judge Robert Holmes Bell

Defendant(s).

_____ /

DOCKET ENTRY NO. **30** (Defts' motion for summary judgment) IS FILED IN AN
EXPANSION FOLDER

30

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APR 20 AM 9:57

MARC A. OTT,

Plaintiff,

v.

ZADIE JACKSON, individually and
in her capacity as a member of
the Kalamazoo City Commission,
et al.,

Defendants.


File No: 4:98-CV-125

HON. ROBERT HOLMES BELL

ORDER GRANTING MOTION FOR ENLARGEMENT OF PAGE LIMITATION

Defendants have moved to file a brief in support of their motion for summary judgment in excess of the twenty-five page limit. For good cause shown, the defendants' motion is hereby **GRANTED**. The Clerk of the Court is ordered to accept defendants' brief for filing as of the date of this Order.

Dated: April 20, 1999


ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

19

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (gjf)

April 20, 1999

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

CASE NO: 4:98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in
her capacity as a member of the Kalamazoo
City Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF KALAMAZOO,
jointly and severally,

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

STATEMENT OF GOOD CAUSE AND REQUEST
ALLOWING FILING OF BRIEF IN EXCESS
OF 25 PAGES

Pursuant to local Rule 30(c), Defendants request that this Court allow them to
file a brief in excess of the 25 page limit set forth in local rule 30(c) for the following
reasons, which Defendants submit constitute good cause:

mrs. [signature]

28-

1 . Plaintiff has filed a five count Complaint alleging breach of contract, intentional torts, racial discrimination and substantive due process violations.

2 . Defendants have filed a Motion for Summary Judgment, seeking dismissal of all of Plaintiff's claims.

3 . In order to properly frame the issues, and cite the appropriate case law, Defendants had no choice but to exceed the 25 page requirement of the local rule.

4 . Defendants submit that in order for the Court to be fully informed of the issues, and the appropriate legal authority, a brief of the length submitted by Defendants is appropriate.

5 . Defendants feel that they have not included irrelevant fact, authority or argument in their brief, nor have they been verbose in presenting the issues and arguments to the Court.

WHEREFORE, for the above-reasons, Defendants request that the Court allow the filing of a brief in excess of 25 pages.

RESPECTFULLY SUBMITTED,

PLUNKETT & COONEY, P.C.

DATED: April 15, 1999

BY:



Michael S. Bogren (P34835)
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Direct Dial: 616/226-8822

00590 81289.32255

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

mrs

Plaintiff,

vs.

U.S.D.C. Case No. 4:98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally,

HON: ROBERT HOLMES BELL

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PROOF OF SERVICE

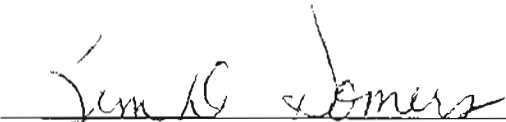
STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

Kim D. Somers, being first duly sworn, deposes and says that she is employed by PLUNKETT & COONEY, P.C., and that on the 15th day of April, 1999, she served a copy of the **Statement of Good Cause and Request Allowing Filing of Brief in Excess of 25 Pages; Defendant's Motion for Summary Judgment and**

Brief in Support of Motion for Summary Judgment, and Proof of Service upon the following:

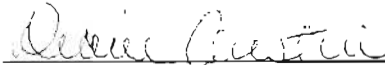
MELVIN S. McWILLIAMS, ESQ.
417 Seymour, Suite 9
Lansing, Michigan 48933

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United States Mail.



Kim D. Somers

Subscribed and sworn to before
me this 15th day of April, 1999.



00590 81289.26643

DIANNE AUSTIN
Notary Public, Kalamazoo County, MI
My Commission Expires Nov. 23, 2000



Skyrise Business Center
Suite 256
535 South Burdick Street
Kalamazoo, MI 49007-6112

(616) 382-5935
Fax (616) 382-2506
www.plunkettlaw.com

April 15, 1999

HAND DELIVERED

District Court Clerk
UNITED STATES DISTRICT COURT
B-35 Federal Building
410 Michigan Avenue
Kalamazoo, Michigan 49007

RE: Ott vs City of Kalamazoo, et al
File No. 4:98-CV-125
Our File No. 00590/81289

Dear Clerk:


Enclosed for filing please find one original and one copy of the following:

1. Statement of Good Cause and Request Allowing Filing of Brief in Excess of 25 Pages.
2. Defendant's Motion for Summary Disposition;
3. Brief in Support of Motion for Summary Disposition; and
4. Proof of Service.

Should you have any questions or concerns regarding these documents, please to not hesitate to contact us.

Very truly yours,

PLUNKETT & COONEY, P.C.


Michael S. Bogren
Direct Dial: 616/226-8822

MSB:kds

Enclosures

cc: Melvin S. McWilliams, Esq.
00590.81289.26644

Detroit

Flint

Gaylord

Grand Rapids

Kalamazoo

Lansing

Marquette

Bloomfield
Hills

Mt Clemens

Petoskey

Pittsburgh

**United States District Court
Western District of Michigan
Southern Division**

1999 JUN 14 10:07

MARC A. OTT,

v.

ZADIE JACKSON, et al.

NOTICE

CASE NO. 4:98-CV-125

TYPE OF CASE:

☒ CIVIL

☐ CRIMINAL



TAKE NOTICE that a proceeding in this case has been set for the place, date and time set forth below:

PLACE

Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

ROOM NO.

Courtroom 401

DATE AND TIME

June 1, 1999 at 10:00 a.m.

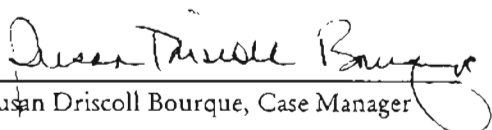
TYPE OF PROCEEDING

Final pretrial conference rescheduled from May 27, 1999 to June 1, 1999
at 10:00 a.m.

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

DATE: April 16, 1999

By:


Susan Driscoll Bourque, Case Manager

TO: All counsel of record

41/ Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

2015 APR 14 1:02

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally

Defendants

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now Plaintiff Marc A. Ott, by and through his attorney, Melvin McWilliams, and
amends the original complaint filed herein amending Count IV and Count V as follows:

COUNT IV

Racial Discrimination

37. Plaintiff incorporates by reference and realleges herein as though fully set forth
the allegations in paragraphs 1 through 37.

38. That the defendants' conduct, by and through their agent and fellow City Commissioner, Zadie Jackson, was motivated by her dislike and racial animus toward Plaintiff Ott who is an African American.

39. That the Defendant City Commissioners were aware or should have been aware of Jackson's dislike for Ott and her racial animus toward him, but failed to censure or take any action to control her actions as an officer and agent of the City of Kalamazoo and the City Commission.

40. That because of their knowledge of Defendant Zadie Jackson's racial animus toward Ott, their failure to take action to control her actions or censure her as an officer and agent of the City of Kalamazoo and the City Commission, renders them liable for her actions.

41. That at all times Defendant Zadie Jackson and Defendant City Commissioners were acting under the color of State law as City Commissioners for the City of Kalamazoo, Michigan.

42. That defendants are liable to Plaintiff Ott both under provisions of Michigan's Elliot-Larsen Civil Rights Act, M.C.L. 37.2101, et sequentia, and Title 42 United States Code, § 1983.

43. That as a result of defendants' actions, Plaintiff Ott has suffered the damages set forth in ¶¶ 23, 24 and 29 above.

WHEREFORE, Plaintiff Ott prays for:

- a. A judgment against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.

- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

COUNT V

Deprivation of Property Rights in Severance Agreement

44. Plaintiff incorporates by reference and realleges herein as though fully set forth the allegations in paragraphs 1 through 43.

45. That Plaintiff possesses a property right in the provisions and benefits of the Separation Agreement he entered into with Defendants.

46. That said Separation Agreement included a inter alia, Article 10, a non-disparagement clause, which states in relevant part:

“In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services, in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree **not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.**”

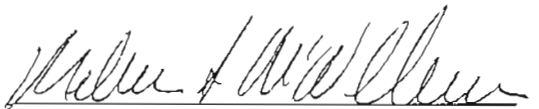
47. That the actions of Defendants, and their agents, previously alleged and incorporated herein by reference, infringed Plaintiff Marc Ott’s property interest in the Separation Agreement in general and the non-disparagement clause in particular.

deems sufficient to redress his wrongs.

- b. Exemplary damages where applicable.
- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff

Dated: December 1, 1998

By: 
MELVIN S. MCWILLIAMS (P26792)

Business Address:
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: (517) 482-4928

Melvin S. McWilliams, P.C.

Attorney at Law

417 Seymour, Suite 9

Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517) 482-4928

Fax: (517) 372-9760

April 13, 1999

To: Ms. Mary Jo Schumacher, ADR Clerk
U.S. District Court for Western District
of Michigan
452 Federal Building
110 Michigan N.W.
Grand Rapids, MI 49503

RE: OTT v JACKSON, et al.

Case # 4-98-CV-125

Hon. Robert Holmes Bell

ENCLOSED PLEASE FIND THE FOLLOWING:

☐ Affidavit
☐ Answer & Affirmative Defenses
☐ Amended Notice
☐ Answer to Complaint
☐ Answer to Interrogatories
☐ Appearance
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☐ Jury Demand
☐ Motion
☐ Motion to Compel Discovery, Etc.

☐ Notice of taking deposition
☐ Notice of Hearing
☐ Order
☐ Petition
☐ Pretrial Statement
☐ Proof of Service
☐ Stipulation & Order
☐ Subpoena
☐ Summons
☐ Witness & Exhibit List

☒ Other: Plaintiff's First
Amended Complaint

WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

☒ File
☐ File & Return True Copies
☐ For you information
☐ No action required
☐ Return with Proof of Payment
☐ Have Judge sign & return
true copies
☐ Please contact me upon your review
of the enclosure

☐ Sign before a Notary and
witness as requested
☐ Hold for 7 days and enter
If no objections
☐ Execute and return to office

☐ Other: _____

Sincerely,

Melvin S. McWilliams

Melvin S. McWilliams
Attorney at Law

MSM:kg
Enclosures

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

NOTICE OF TAKING DEPOSITION
DUCES TECUM OF ZADIE JACKSON

Please take notice that the deposition of Zadie Jackson will be taken at 10:30 a.m. on the
10th day of March, 1999, at the office of Michael S. Bogren, 535 South Burdick, Suite 256,
Kalamazoo, Michigan. Deponent is to bring with her the following documents:

1. Copies of your home telephone bills from September 1, 1996 to
September 1, 1997;
2. Any and all documents in your possession, including but not limited
to, newspaper articles, memos, correspondence, or other tangible things
concerning Plaintiff Marc Ott.

Dated: March 3, 1999



Melvin S. McWilliams (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

- 24 -

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants
/

NOTICE OF TAKING DEPOSITION OF GARY HETRICK

Please take notice that the deposition of Gary Hetrick will be taken at 1:30 p.m. on the
10th day of March, 1999, at the office of Michael S. Bogren, 535 South Burdick, Suite 256,
Kalamazoo, Michigan.

Dated: March 3, 1999



Melvin S. McWilliams (P26792)

Attorney for Plaintiff

417 Seymour, Suite 9

Lansing, Michigan 48933

Telephone: 517/482-4928

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED - 3
MAR 10 1999
FBI
WEST

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

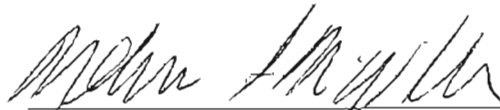
HON. ROBERT HOLMES BELL

Defendants

NOTICE OF TAKING DEPOSITION OF RAY AMPEY

Please take notice that the deposition of Ray Ampey will be taken at 2:30 p.m. on the 10th
day of March, 1999, at the office of Michael S. Bogren, 535 South Burdick, Suite 256,
Kalamazoo, Michigan.

Dated. March 3, 1999



Melvin S. McWilliams (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants
/

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928


Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PROOF OF SERVICE

Katherine Gancio does hereby state on the 3rd day of March, 1999, she did serve via
Telefax (616) 382-2506 and United States First Class Mail a **NOTICE OF TAKING
DEPOSITION DUCES TECUM OF ZADIE JACKSON, a NOTICE OF TAKING
DEPOSITION OF GARY HETRICK, and a NOTICE OF TAKING DEPOSITION OF RAY
AMPEY** to:

Michael S. Bogren, Esq.
535 S. Burdick, Ste 256
Kalamazoo, MI 49007

Dated: March 3, 1999


Katherine R. Gancio

Melvin S. McWilliams, P.C.

Attorney at Law

417 Seymour, Suite 9
Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517) 482-4928
Fax: (517) 372-9760

March 3, 1999

To: Ms. Mary Jo Schumacher, ADR Clerk
U.S. District Court for Western District
of Michigan
452 Federal Building
110 Michigan N.W.
Grand Rapids, MI 49503

RE: OTT v. JACKSON, et al.

Case # 4.98-CV-125

Hon. Robert Holmes Bell

ENCLOSED PLEASE FIND THE FOLLOWING:

☐ Affidavit
☐ Answer & Affirmative Defenses
☐ Amended Notice
☐ Answer to Complaint
☐ Answer to Interrogatories
☐ Appearance
☐ Appearance & Demands
☐ Brief
☐ Certificate of Service
☐ Complaint/Counterclaim
☐ Fee
☐ Interrogatories
☐ Judgment of Divorce
☐ Jury Demand
☐ Motion
☐ Motion to Compel Discovery, Etc.

☒ Notice of taking depositions
☐ Notice of Hearing
☐ Order
☐ Petition
☐ Pretrial Statement
☒ Proof of Service
☐ Stipulation & Order
☐ Subpoena
☐ Summons
☐ Witness & Exhibit List
☐ Other: _____

WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

☒ File
☐ File & Return True Copies
☐ For you information
☐ No action required
☐ Return with Proof of Payment
☐ Have Judge sign & return
true copies
☐ Please contact me upon your review
of the enclosure

☐ Sign before a Notary and
witness as requested
☐ Hold for 7 days and enter
If no objections
☐ Execute and return to office

☐ Other: _____

Sincerely,

Melvin S. McWilliams
(K.H.)

Melvin S. McWilliams
Attorney at Law

MSM:kg

Enclosures

CC: Michael S. Bogren, Esq.
Marc Ott

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
USDC DROP BOX - KZ
JAN 28 PM 3:34
DONALD A. STONE, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MARC A. OTT,

Plaintiff,

CASE NO: 4:98-CV-125

vs.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in
her capacity as a member of the Kalamazoo
City Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF KALAMAZOO,
jointly and severally,

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND JURY DEMAND

NOW COME the Defendants, by and through their attorneys, PLUNKETT &
COONEY, P.C., and in answer to the Plaintiff's First Amended Complaint state:

GENERAL ALLEGATIONS

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. Admitted.
3. Admitted.
4. There is no paragraph 4 contained in the Plaintiff's Complaint.
5. It is admitted that the City of Kalamazoo, through the action of the City Commission, approved and entered into the separation agreement and general release dated January 27, 1997, with Marc Ott. However, it is denied as untrue that the Kalamazoo City Commission is a proper Defendant in this case, or is an entity subject to suit.
6. Admitted.
7. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.
8. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.
9. Admitted.
10. The separation agreement and general release speaks for itself. The Defendants admit that the Plaintiff has accurately recited a portion of the language contained in the settlement agreement and general release. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the quoted language is the "relevant" part of the separation agreement and general release.
11. The separation agreement and general release speaks for itself. The Defendants admit that the Plaintiff has accurately recited a portion of the language contained in

the settlement agreement and general release. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the quoted language is the "relevant" part of the separation agreement and general release.

12. It is admitted that Plaintiff's counsel forwarded a letter to the City of Kalamazoo dated April 9, 1998, demanding arbitration. It is denied as untrue that paragraph 18 of the separation agreement and general release, or any other provision of that document, provides for arbitration.
13. It is admitted that the Defendants deny that this matter is subject to arbitration.
14. Paragraph 14 does not contain allegations of fact to which a response is required, or can be given.

COUNT I: BREACH OF SEPARATION AGREEMENT

15. The Defendants incorporate by reference paragraphs 1 through 14 of their answer as if set forth fully herein.
16. The allegations contained in paragraph 16 are denied as untrue.
17. The allegations contained in paragraph 17 are denied as untrue.
18. The Allegations contained in paragraph 18 are denied as untrue.
19. The allegations contained in paragraph 19 are denied as untrue.
20. The allegations contained in paragraph 20 are denied as untrue.
21. The allegations contained in paragraph 21 are denied as untrue.
22. The allegations contained in paragraph 22 are denied as untrue.
23. The allegations contained in paragraph 23 are denied as untrue.

24. The allegations contained in paragraph 24 are denied as untrue.

COUNT II: DEFAMATION

25. The Defendants incorporate by reference paragraphs 1 through 24 of their answer as if set forth fully herein.

26. The allegations contained in paragraph 26 are denied as untrue.

27. The allegations contained in paragraph 27 are denied as untrue.

28. It is denied as untrue that the Defendant, Zadie Jackson, published any defamatory statements to any person. In further answer, the Defendants state that any discussions that Zadie Jackson had with law enforcement officials were privileged.

29. The allegations contained in paragraph 29 are denied as untrue.

30. The allegations contained in paragraph 30 are denied as untrue.

COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

31. The Defendants incorporate by reference paragraphs 1 through 30 of their answer as if set forth fully herein.

32. The allegations contained in paragraph 32 are denied as untrue.

33. The allegations contained in paragraph 33 are denied as untrue.

34. The allegations contained in paragraph 34 are denied as untrue.

35. The allegations contained in paragraph 35 are denied as untrue.

36. The allegations contained in paragraph 36 are denied as untrue.

COUNT IV
RACIAL DISCRIMINATION

37. The Defendants incorporate by reference paragraphs 1 through 36 of their answer as if set forth fully herein.

38. The allegations contained in paragraph 38 are denied as untrue.

39. It is denied as untrue that Defendant Zadie Jackson had any racial animus toward Plaintiff Ott, or any other African-American. It is admitted that Defendant Jackson was not censured by the City Commission, but it is denied that Defendant Jackson participated in any conduct which would justify or allow her to be censured or for any action to be taken against her by the City Commission.

40. The allegations contained in paragraph 40 are denied as untrue.

41. The allegations contained in paragraph 41 are denied as untrue in the form and manner alleged.

42. The allegations contained in paragraph 42 are denied as untrue.

43. The allegations contained in paragraph 43 are denied as untrue.

COUNT V
DEPRIVATION OF PROPERTY RIGHTS IN SEVERANCE AGREEMENT

44. The Defendants incorporate by reference paragraphs 1 through 43 of their answer as if set forth fully herein.

45. The allegations contained in paragraph 45 are denied as untrue.

46. The separation agreement speaks for itself and no response is required to paragraph

46. To the extent that a response is required, the Defendants admit that the

Plaintiff has accurately recited a portion of the language contained in the separation agreement and general release. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the quoted language is the "relevant" part of the separation agreement and general release.

47. The allegations contained in paragraph 47 are denied as untrue.

48. The allegations contained in paragraph 48 are denied as untrue.

49. The allegations contained in paragraph 49 are denied as untrue in the form and manner alleged.

WHEREFORE, for the foregoing reasons, the Defendants respectfully request this Honorable Court enter judgment of no cause of action in their favor and award them their actual, reasonable attorney fees and costs incurred in defending against this action.

AFFIRMATIVE DEFENSES

NOW COME the Defendants, by and through their attorneys, PLUNKETT & COONEY, P.C., and raise the following Affirmative Defenses to the Plaintiff's First Amended Complaint:

1. Count I of the Plaintiff's Complaint fails to state a claim upon which relief can be granted in that the terms of the separation agreement do not provide for a separate cause of action for an alleged breach of the agreement.

2. The Plaintiff has failed to tender back the consideration he received as part of the separation agreement and general release, a condition precedent to file this lawsuit, and therefore his claims are barred.
3. The Plaintiff has entered into a separation agreement and general release and therefore, his claims are barred.
4. To the extent that Defendant Zadio Jackson had any communication with law enforcement officials, such communications are privileged and will not give rise to a claim for defamation.
5. The Plaintiff's claim for defamation is barred by the statute of limitations.
6. The Plaintiff's claims are barred by the Plaintiff's failure to comply with the notice requirements contained in the separation agreement and general release.
7. Defendant Zadio Jackson is entitled to dismissal on the basis of qualified immunity with respect to the federal law claims asserted against her.
8. The Plaintiff's complaint fails to adequately allege a factual basis for imposing liability on the City of Kalamazoo for claims arising under federal law.
9. Defendant Zadio Jackson is entitled to absolute immunity from the state law claims asserted against her, as she was the highest level elected official for the City of Kalamazoo at all times pertinent hereto.
10. The City of Kalamazoo is entitled to dismissal of the Plaintiff's state law claims by virtue of the Governmental Immunity Act.
11. The Defendants will move to amend their affirmative defenses as additional defenses are disclosed during the pendency of this litigation.

RESPECTFULLY SUBMITTED,

PLUNKETT & COONEY, P.C.

DATED: January 28, 1999

BY: Michael S. Bogren
Michael S. Bogren (P34835)
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256

Kalamazoo, Michigan 49007

Direct Dial: 616/226-8822

JURY DEMAND

NOW COME Defendants, by and through undersigned counsel, and
demand trial by jury on all issues in the above-captioned matter.

RESPECTFULLY SUBMITTED,

PLUNKETT & COONEY, P.C.

DATED: January 28, 1999

BY: Michael S. Bogren
Michael S. Bogren (P34835)
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256

Kalamazoo, Michigan 49007

Direct Dial: 616/226-8822

00590.81289.30314

FILED
UNITED STATES DISTRICT COURT - KZ
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
JAN 28 PM 3:34

RONALD L. ESTER, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICH

MARC A. OTT,

Plaintiff,

vs.

U.S.D.C. Case No. 4:98-CV-125

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally,

HON: ROBERT HOLMES BELL

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KALAMAZOO)

Kim D. Somers, being first duly sworn, deposes and says that she is
employed by PLUNKETT & COONEY, P.C., and that on the 28th day of January, 1999,
she served a copy of DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST

AMENDED COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND,

and Proof of Service upon the following:


MELVIN S. McWILLIAMS, ESQ.
417 Seymour, Suite 9
Lansing, Michigan 48933

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the
United States Mail.



Kim D. Somers

Subscribed and sworn to before
me this 28th day of January, 1999.



DIANE AUSTIN
Notary Public, Kalamazoo County, MI
My Commission Expires Nov. 29, 2000
00590.81289.26643



Skyrise Business Center

535 South Burdick Street

Kalamazoo, MI 49007

99 JAN 28 PM 3:34

(616) 382-5935

Fax (616) 382-2506

www.plunkettlaw.com

January 28, 1999

RONALD W. BOSTON, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

HAND DELIVERED

District Court Clerk
UNITED STATES DISTRICT COURT
B-35 Federal Building
410 West Michigan Avenue
Kalamazoo, Michigan 49007

RE: Ott vs City of Kalamazoo, et al
File No. 4:98-CV-125
Our File No. 00590.81289

Dear Clerk:

Enclosed please find one original and one copy of Defendants' Answer to Plaintiff's First Amended Complaint, Affirmative Defenses and Jury Demand, for filing in the above entitled matter.

Should you have any questions, please feel free to contact me.

Very truly yours,

PLUNKETT & COONEY, P.C.

Michael S. Bogren

Direct Dial: 616/226-8822

MSB:kds

Enclosures

cc: Melvin S. McWilliams, Esq.
00590.81289.28934

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED 4-15 PM 3:15

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY COMMISSION,
and the CITY OF KALAMAZOO,
jointly and severally

Defendants

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now Plaintiff Marc A. Ott, by and through his attorney, Melvin McWilliams, and
amends the original complaint filed herein amending Count IV and Count V as follows:

COUNT IV

Racial Discrimination

37. Plaintiff incorporates by reference and realleges herein as though fully set forth
the allegations in paragraphs 1 through 37.

38. That the defendants' conduct, by and through their agent and fellow City Commissioner, Zadie Jackson, was motivated by her dislike and racial animus toward Plaintiff Ott who is an African American.

39. That the Defendant City Commissioners were aware or should have been aware of Jackson's dislike for Ott and her racial animus toward him, but failed to censure or take any action to control her actions as an officer and agent of the City of Kalamazoo and the City Commission.

40. That because of their knowledge of Defendant Zadie Jackson's racial animus toward Ott, their failure to take action to control her actions or censure her as an officer and agent of the City of Kalamazoo and the City Commission, renders them liable for her actions.

41. That at all times Defendant Zadie Jackson and Defendant City Commissioners were acting under the color of State law as City Commissioners for the City of Kalamazoo, Michigan.

42. That defendants are liable to Plaintiff Ott both under provisions of Michigan's Elliot-Larsen Civil Rights Act, M.C.L. 37.2101, et sequentia, and Title 42 United States Code, § 1983.

43. That as a result of defendants' actions, Plaintiff Ott has suffered the damages set forth in ¶¶ 23, 24 and 29 above.

WHEREFORE, Plaintiff Ott prays for:

- a. A judgment against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.

- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

COUNT V

Deprivation of Property Rights in Severance Agreement

44. Plaintiff incorporates by reference and realleges herein as though fully set forth the allegations in paragraphs 1 through 43.

45. That Plaintiff possesses a property right in the provisions and benefits of the Separation Agreement he entered into with Defendants.

46. That said Separation Agreement included a inter alia, Article 10, a non-disparagement clause, which states in relevant part:

“In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services, in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree **not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.**”

47. That the actions of Defendants, and their agents, previously alleged and incorporated herein by reference, infringed Plaintiff Marc Ott’s property interest in the Separation Agreement in general and the non-disparagement clause in particular.

48. That the actions of Defendants and their agents caused Plaintiff to suffer the damages set forth in ¶¶23, 24, and 29, incorporated herein.

49. That at all times Defendant Zadie Jackson and Defendant City Commissioners were acting under the color of State law as City Commissioners for the City of Kalamazoo, Michigan.

WHEREFORE, Plaintiff Ott prays for:

- a. A judgment against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.
- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff

Dated: December 1, 1998

By: 
MELVIN S. MCWILLIAMS (P26792)

Business Address:
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: (517) 482-4928

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

STIPULATION TO AMEND COMPLAINT

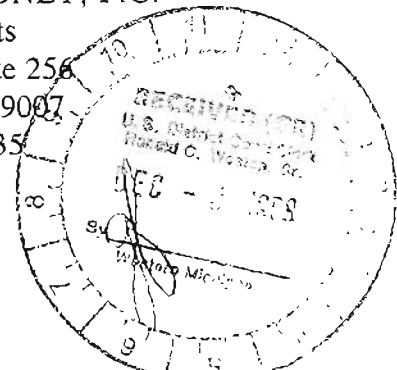
NOW COME the parties, by and through their respective attorneys, and hereby stipulate to
allow Plaintiff to amend his Complaint.

Dated: 12/2/98

Dated: 12/2/98

Melvin S. McWilliams
Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren with consent
Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935




ORDER

At a session of said Court held on the 3
day of December, 1998, in the Federal Building,
110 West Michigan NW, Grand Rapids, Michigan.

HON ROBERT HOLMES BELL, United States District Court Judge

Upon reading and filing the stipulation of the parties and the Court be fully advised in the
premises:

IT IS ORDERED that the Plaintiff be allowed to amend the Complaint.



Robert Holmes Bell
U.S. District Court Judge

Melvin S. McWilliams, P.C.

Attorney at Law

417 Seymour, Suite 9

Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517)-482-4928

Fax: (517) 372-9760

December 2, 1998

To: Clerk of the Court
U.S. District Court for Western District
Of Michigan
Federal Bldg., 110 Michigan NW
Grand Rapids, Michigan 49503

RE: OTT v. JACKSON, et al.

Case # 4:98-CV-125

Hon. Robert Holmes Bell

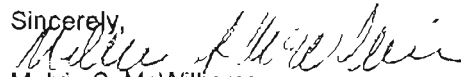
ENCLOSED PLEASE FIND ORIGINAL PLUS ONE COPY OF THE FOLLOWING:

<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of taking deposition
<input type="checkbox"/> Answer & Affirmative Defenses	<input type="checkbox"/> Notice of Hearing
<input type="checkbox"/> Amended Notice	<input type="checkbox"/> Order
<input type="checkbox"/> Answer to Complaint	<input type="checkbox"/> Petition
<input type="checkbox"/> Answer to Interrogatories	<input type="checkbox"/> Pretrial Statement
<input type="checkbox"/> Appearance	<input type="checkbox"/> Proof of Service
<input type="checkbox"/> Appearance & Demands	<input checked="" type="checkbox"/> Stipulation & Order to Amend Complaint
<input type="checkbox"/> Brief in Support of Motion to Amend Complaint	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Certificate of Service	<input type="checkbox"/> Summons
<input type="checkbox"/> Complaint/Counterclaim	<input type="checkbox"/> Witness & Exhibit List
<input type="checkbox"/> Fee	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Interrogatories	_____
<input type="checkbox"/> Judgment of Divorce	_____
<input type="checkbox"/> Jury Demand	_____
<input type="checkbox"/> Motion to Amend Complaint	_____
<input type="checkbox"/> Motion to Compel Discovery, Etc.	_____

WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

<input type="checkbox"/> File	<input type="checkbox"/> Sign before a Notary and witness as requested
<input type="checkbox"/> File & Return True Copies	<input type="checkbox"/> Hold for 7 days and enter If no objections
<input type="checkbox"/> For you information	<input type="checkbox"/> Execute and return to office
<input type="checkbox"/> No action required	
<input type="checkbox"/> Return with Proof of Payment	
<input checked="" type="checkbox"/> Have Judge sign & return true copies	
<input type="checkbox"/> Please contact me upon your review of the enclosure	<input type="checkbox"/> Other: _____

Sincerely,


Melvin S. McWilliams
Attorney at Law

MSM:csf

Enclosures

CC: Michael S. Bogren, Esq. (w/enc.)
Marc A. Ott (w/enc.)

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (gjf)

December 03, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants
_____ /

Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

Michael S. Bogren (P34835)
PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PLAINTIFF'S MOTION TO AMEND COMPLAINT


NOW COMES Plaintiff, Marc Ott, by and through his attorney, Melvin S. McWilliams, and moves for leave to file Plaintiff's First Amended Complaint herein. In support of this Motion, Plaintiff shows unto the Court that this Motion is being submitted in accordance with the time parameters set by the Court in its Case Management Order dated October 5, 1998. A copy of the proposed Amended Complaint is attached hereto. Plaintiff has sought the consent of Defendants' attorney to the filing of same without opposition by Defendants, however, as of the time of filing, no

consent has been obtained. The consent of Defendants' attorney was sought in a telephone call to Mr. Bogren's office on December 1, 1998.

Respectfully submitted,

MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff

Dated: December 1, 1998

By: 
Melvin S. McWilliams (P26792)

Business Address:

417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: (517) 482-4928

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

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MELVIN S. MCWILLIAMS, P.C.
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PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO AMEND COMPLAINT

Plaintiff Marc Ott seeks the permission of the Court to file his First Amended Complaint. This Motion is timely, having been filed in accordance with the time parameters of the Court's Case Management Order dated 5, 1998.

This is a discretionary Motion with the Court. The District Court has broad discretion to permit or deny a Motion to Amend. See Freeman v Davis, 371 US 178, 182 (1962). "Leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). In this case, it should be granted for a variety of reasons. First, it is timely and within the time parameters set by the Court in its Case

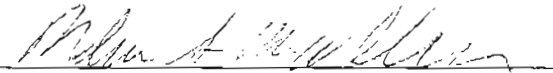
Management Order dated October 5, 1998. Secondly, we have just entered discovery and there is no prejudice to the Defendants position by having to respond to this Amended Complaint. Thirdly, both the interest of justice and the joinder rules requires that all claims be brought and heard in the same proceeding. See Fed.R.Civ.P. 15(a) and 18(a).

Thus, the Motion to Amend should be granted.

Respectfully submitted,

MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff

Dated: 12/01/98

By: 
Melvin S. McWilliams (P26792)

Business Address:

417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: (517) 482-4928

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
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HON. ROBERT HOLMES BELL

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535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on the Plaintiff's Motion to Amend Complaint with regard to the above referenced matter will be heard in the United States District Court for the Western District of Michigan, Federal Building, 110 Michigan N.W., Grand Rapids, Michigan, before the Honorable Robert Holmes Bell, at a date and time to be set by the Court.

Date: 12/1/98

By: Melvin S. McWilliams
Melvin S. McWilliams (P26792)
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff

v.

File No: 4: 98-CV-125

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the KALAMAZOO CITY
COMMISSION, and the CITY OF
KALAMAZOO, jointly and severally,

HON. ROBERT HOLMES BELL

Defendants

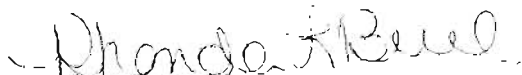
Melvin S. McWilliams (P26792)
MELVIN S. MCWILLIAMS, P.C.
Attorney for Plaintiff
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Lansing, Michigan 48933
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PLUNKETT AND COONEY, P.C.
Attorneys for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

PROOF OF SERVICE

Rhonda L. Burl does hereby state on the 1st day of December, 1998, she did serve by fax
to (616) 382-2506 and United States First Class Mail a copy of **Notice of Hearing, Plaintiff's
Motion to Amend Complaint (with attached proposed Amended Complaint), Brief in
Support of Motion to Amend Complaint, and Proof of Service** on the following:

Michael S. Bogren, Esq.
Plunkett & Cooney, P.C.
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007


Rhonda L. Burl

Melvin S. McWilliams, P.C.

Attorney at Law

417 Seymour, Suite 9

Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517) 482-4928

Fax: (517) 372-9760

December 1, 1998

To: Clerk of the Court
U S. District Court for Western District
Of Michigan
Federal Bldg , 110 Michigan NW
Grand Rapids, Michigan 49503

RE: OTT v. JACKSON, et al.

Case # 4-98-CV-125

Hon. Robert Holmes Bell


ENCLOSED PLEASE FIND ORIGINAL PLUS ONE COPY OF THE FOLLOWING:

<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of taking deposition
<input type="checkbox"/> Answer & Affirmative Defenses	<input checked="" type="checkbox"/> Notice of Hearing
<input type="checkbox"/> Amended Notice	<input type="checkbox"/> Order
<input type="checkbox"/> Answer to Complaint	<input type="checkbox"/> Petition
<input type="checkbox"/> Answer to Interrogatories	<input type="checkbox"/> Pretrial Statement
<input type="checkbox"/> Appearance	<input checked="" type="checkbox"/> Proof of Service
<input type="checkbox"/> Appearance & Demands	<input type="checkbox"/> Stipulation & Order
<input checked="" type="checkbox"/> Brief in Support of Motion to Amend Complaint	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Certificate of Service	<input type="checkbox"/> Summons
<input type="checkbox"/> Complaint/Counterclaim	<input type="checkbox"/> Witness & Exhibit List
<input type="checkbox"/> Fee	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Interrogatories	_____
<input type="checkbox"/> Judgment of Divorce	_____
<input type="checkbox"/> Jury Demand	_____
<input checked="" type="checkbox"/> Motion to Amend Complaint	_____
_____	_____
<input type="checkbox"/> Motion to Compel Discovery, Etc.	_____

WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

<input checked="" type="checkbox"/> File	<input type="checkbox"/> Sign before a Notary and witness as requested
<input type="checkbox"/> File & Return True Copies	<input type="checkbox"/> Hold for 7 days and enter If no objections
<input type="checkbox"/> For you information	<input type="checkbox"/> Execute and return to office
<input type="checkbox"/> No action required	_____
<input type="checkbox"/> Return with Proof of Payment	_____
<input type="checkbox"/> Have Judge sign & return true copies	_____
<input type="checkbox"/> Please contact me upon your review of the enclosure	_____

Sincerely,


Melvin S. McWilliams
Attorney at Law

MSM:csf

Enclosures

CC: Michael S. Bogren, Esq. (w/enc.)
Marc A. Ott (w/enc.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

2007-5 11 9:16

MARC A. OTT,

Plaintiff,

Case No. 4:98-CV-125

v.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, et al.,

Defendants.

MICHIGAN MEDIATION ORDER

Pursuant to W.D. Mich. LCivR 16.5, this matter is hereby
submitted to Michigan mediation.

IT IS ORDERED THAT:

1. The mediation panel shall be selected as set forth
in W.D. Mich. LCivR 16.5(b)(ii). Counsel for plaintiff shall
notify the ADR Clerk of the names of plaintiff's mediator and the
neutral mediator no later than **February 1, 1999**. Counsel for
defendant shall notify the ADR Clerk of the name of defendant's
mediator no later than **February 1, 1999**. If a party fails to
notify the ADR Clerk in writing of the selection of a mediator by
the deadline stated above, the ADR Clerk will designate that
party's mediator and provide written notice to the parties.
Enclosed is a list of attorneys from which you may make your
selection of mediators.

2. No later than **February 1, 1999**, the parties shall inform

the ADR Clerk of the date, time, and place for the mediation. The date set shall be no later than **April 12, 1999**. If the parties cannot reach an agreement, counsel for plaintiff shall, within the same time period, notify the ADR Clerk, who shall set the time and place for the hearing and send notice to the mediators and to counsel as soon as practicable upon receipt of the information. W.D. Mich. LCivR 16.5(c)(i).

3. Within ten (10) days after the mailing of the notice of the date of the mediation hearing, each plaintiff and each defendant shall pay each mediator the sum of fifty (\$50.00) dollars as set forth in W.D. Mich. LCivR 16.5(b)(iv).

4. Within seven (7) calendar days prior to the date of the mediation hearing, all documents on questions of liability and damages shall be submitted to each mediator and to opposing counsel, with proof of service to the ADR Clerk. W.D. Mich. LCivR 16.5(c)(ii). Failure to submit the documents or the proof of service within the time designated shall result in costs of one hundred fifty (\$150.00) dollars being assessed, payable by separate checks in the amount of fifty (\$50.00) dollars to each of the attorneys on the mediation panel. The proof of service shall include a statement that costs of fifty (\$50.00) dollars per mediator were delivered to each mediator with the brief. W.D. Mich. LCivR. 16.5(iii).

5. The mediation panel's findings, which shall include all fees, costs and interest, shall be submitted in writing to counsel for each party within ten (10) calendar days following the hearing. The original evaluation shall be forwarded to the ADR Clerk. W.D.

Mich. LCivR 16.5(e).

6. Written acceptance or rejection of the mediation panel's evaluation shall be submitted to the ADR Clerk within twenty-eight (28) days after service of the panel's evaluation. There shall be no disclosure of a party's acceptance or rejection until expiration of the twenty-eight (28) days or until all parties have responded with an acceptance or rejection. Upon receipt of responses from all parties, the ADR Clerk shall send a notice indicating each counsel's acceptance or rejection of the evaluation. The failure of a party to file a written acceptance or rejection within twenty-eight (28) days constitutes a rejection. W.D. Mich. LCivR 16.5(f). If the mediation evaluation is rejected, it shall be sealed and exempt from W.D. Mich. LCivR 10.6(c).

7. If the mediation panel's award is accepted in writing by all parties, plaintiff shall prepare a judgment, approved as to form by opposing counsel, for entry by the court. W.D. Mich. LCivR 16.5(g)(i).

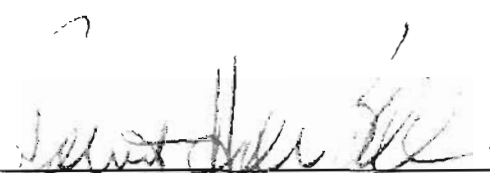
8. If any party rejects the mediation panel's evaluation, this case shall be ready to proceed to trial on ~~June~~ 14, 1999. W.D. Mich. LCivR 16.5(h)(i).

All parties to this action are hereby notified that all phases of mediation will proceed in accordance with W.D. Mich. LCivR 16.5 unless those procedures are modified by order of the court on motion of a party for good cause shown, or by motion of this court. If any such modification is ordered, all parties shall receive notice of that modification.

Adjournment of a mediation hearing may be had only for good cause shown upon motion to the court. W.D. Mich. LCivR 16.5(c)(i)(B).

Dated:

October 5, 1995



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (dsc)

October 06, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

+

Mediation Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

Case No. 4:98-CV-125

v.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, et al.,

Defendants.

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED:

1. TRACK ASSIGNMENT: This case is assigned to Track III (Standard Track).
2. TRIAL DATE AND SETTING: This case is scheduled for jury trial in the trial session commencing June 14, 1999 at 9:00 a.m. before the Honorable Robert Holmes Bell, 401 Ford Federal Building, 110 Michigan, NW, Grand Rapids, MI 49503.
3. JOINDER OF PARTIES AND AMENDMENTS OF PLEADINGS: All motions for joinder of parties and all motions to amend the pleadings must be filed no later than December 1, 1998.
4. DISCLOSURES AND EXCHANGES: The plaintiff shall voluntarily exchange agreed upon documents by November 1, 1998; defendant shall do so by December 1, 1998.

The names of plaintiff's known witnesses, including experts, must be furnished to the defendant by November 1, 1998. The names of defendant's known witnesses, including experts, must be furnished to the plaintiff by December 1, 1998.

* Note to Counsel: The form of this order has been revised. Please note the citations to the revised local rules and reference to standard jury instructions adopted by the court for civil cases. Please review all paragraphs carefully.

6/1/98

5. COMPLETION OF DISCOVERY: All discovery proceedings shall be completed by April 1, 1999. All interrogatories, requests for admissions, and other written discovery requests must be served no later than thirty days before the close of discovery. All depositions must be completed before the close of discovery. In accordance with this Court's Differentiated Case Management plan after consultation with counsel, interrogatories will be limited to 30 single-part questions and depositions will be limited to 8 fact witnesses per party.
6. MOTIONS:
 - a. Non-dispositive motions shall be filed in accordance with W.D. Mich. LCivR 7.3. They will be referred to Magistrate Judge Joseph G. Scoville in Grand Rapids, Michigan, pursuant to 28 U.S.C. Section 636 (b)(1)(A). In accordance with 28 U.S.C. Section 471 et seq., it is the policy of this Court to prohibit the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.
 - b. Dispositive motions shall be filed in accordance with W.D. Mich. LCivR 7.2 by April 15, 1999. If dispositive motions are based on supporting documents such as depositions or answers to interrogatories, only those excerpts which are relevant to the motion shall be filed. The case manager will notify counsel of the date for oral argument.
 - c. Motions in limine shall be filed on or before the date for filing the proposed Final Pretrial Order.
7. ALTERNATIVE DISPUTE RESOLUTION: This matter shall be submitted to Mediation for consideration in the month of April, 1999. A separate Order will issue regarding the method and schedule for alternative dispute resolution.
8. FINAL PRETRIAL CONFERENCE: A final pretrial conference is hereby scheduled for May 27, 1999 at 1:00 p.m. Unless excused upon a showing of good cause, the attorney who is to conduct the trial shall attend the final pretrial conference. Clients or representatives of parties with full settlement authority are required to be present.
9. PREPARATION OF PROPOSED FINAL PRETRIAL ORDER: A proposed pretrial order, entitled "Final Pretrial Order" shall be prepared jointly by counsel and submitted three (3) days prior to the final pretrial conference in the following form:

A final pretrial conference was held on the ** day of **. Appearing for the parties as counsel were:

(List the counsel who will attend the pretrial conference.)

1. Exhibits: The following exhibits will be offered by the plaintiff and the defendant:

(List separately for each party all exhibits. Plaintiff shall use numbers; defendant shall use letters. Indicate with respect to each exhibit whether and for what reason its admissibility is challenged. Exhibits expected to be used solely for impeachment purposes need not be numbered or listed until identified at trial. Failure to list an exhibit required to be listed by this order will result, except upon a showing of good cause, in a determination of non-admissibility at trial.)

2. Uncontroverted Facts: The parties have agreed that the following may be accepted as established facts:

(State in detail all uncontroverted facts.)

3. Controverted Facts and Unresolved Issues: The factual issues remaining to be determined and issues of law for the Court's determination are:
(Set out each issue which is genuinely controverted, including issues on the merits and other matters which should be drawn to the Court's attention.)

4. Witnesses:

- a. Non-expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names and addresses of all non-experts who will testify. Indicate whether they are expected to testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the anticipated testimony of each non-expert witness.)

- b. Expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

(List names and addresses of all experts who will testify, providing a brief summary of their qualifications and a statement of the scientific or medical field(s) in which they

are offered as experts. Indicate whether they will testify in person, by deposition videotape, or by reading of their deposition transcript. Indicate all objections to the qualifications or anticipated testimony of each expert witness.)

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (a) and (b) will be permitted to testify for any purpose, except impeachment, if the opposing party objects.

5. Depositions and Other Discovery Documents:

All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

(Designate portions of depositions by page and line number. Designate answers to interrogatories and requests for admissions by answer or request number. Designation need not be made of portions that may be used, if at all, as impeachment of an adverse party. Indicate any objections to proposed deposition testimony, answers to interrogatories, and admissions.)

6. Length of Trial: Counsel estimate the trial will last approximately _____ full days.

7. Prospects of Settlement: The status of settlement negotiations is:

(Indicate persons present during negotiations, progress toward settlement, and issues that are obstacles to settlement.)

The proposed Final Pretrial Order will be signed by all counsel, signifying acceptance, and upon approval by the Court, with such additions as are necessary, will be signed by the Court as an order reflecting the final pretrial conference.

10. MATTERS TO BE CONSIDERED AT THE FINAL PRETRIAL CONFERENCE: At the final pretrial conference, the parties and the Court will formulate a plan for trial, including a program for facilitating the admission of evidence, consider the prospects of settlement, and consider such other matters as may aid in the trial or other disposition of the action.

11. PREPARATION FOR THE TRIAL:

- a. Each party shall file the following not later than three (3) days prior to the commencement of the trial:
 - i. Proposed voir dire questions. The Court will ask basic voir dire questions. Counsel for the parties will be permitted to question prospective jurors. Questioning by counsel shall not be repetitive of questions asked by the Court or of questions asked in the juror questionnaire.
 - ii. Trial briefs.
- b. The parties shall jointly file the following not later than three (3) days prior to trial:
 - i. Proposed jury instructions. This Court uses the Western District of Michigan's Standardized Jury Instructions for the preliminary and final instructions. A copy of these instructions is available in the Clerk's office. The Court generally uses Devitt and Blackmar's Federal Jury Practice and Instructions for those not covered in the standard set. Standard instructions may be submitted by number. Other "non-standard" instructions shall be submitted in full text, one per page, and include reference to the source of each requested instruction. Indicate objections, if any, to opposing counsel's proposed instructions, with a summary of the reasons for each objection.
 - ii. A joint statement of the case and statement of the elements that must be proven by each party. The statement(s) of the case will be read to the prospective jurors during jury selection. The elements that must be proven by each party will be included in the preliminary jury instructions.

Dated: _____

(October 5, 1998)



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (dsc)

October 06, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

7
Mediation 11/2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

U.S.D.C. Case No. 4:98-CV-125

ZADIE JACKSON, individually and in
her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION and
the CITY OF KALAMAZOO, jointly and
severally

HON. ROBERT HOLMES BELL

Defendants.

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Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for the 30th day of September, 1998.

Appearing for the parties as counsel will be Melvin S. McWilliams for Plaintiff and Michael S. Bogren for Defendants.

1. Jurisdiction: The basis for the Court's jurisdiction is 28 U.S.C. § 1331.
2. Jury or Non-Jury: This case is to be tried before a jury.

3. Statement of the Case:

Plaintiff's Statement:

Plaintiff contends that:

(1) Defendants have violated and breached the terms of a Separation Agreement they entered with him which provides for the Non-Disparagement of Plaintiff. Plaintiff contends that this agreement was breached by actions of Defendant Zadie Jackson on her behalf and as an agent and member of the Kalamazoo City Commission and by other agents which included the dissemination of false, misleading and incomplete and defamatory information. Moreover, the City's refusal to arbitrate Plaintiff's claim pursuant to ¶18 of the Separation Agreement also constitutes a breach of the agreement;

(2) the actions of the Defendants, in addition to constituting a breach of contract, also constituted defamation of the Plaintiff;

(3) the actions of Defendants also constituted the intentional infliction of emotional distress; and

(4) that the actions of Defendant Zadie Jackson were motivated by a racial animus toward the Plaintiff, of which the other Defendants were aware, but who took no action to control her or censure her as an officer and agent of the Kalamazoo City Commission, and the City of Kalamazoo, in violation of the Elliot Larson Civil Rights Act, M.C.L. 37.2101, et sequentia and Title 42 United States Code, §1983. Plaintiff is an African-American.

Defendants' Statement:

The Defendants' position is that the Plaintiff's claim is barred

by a release which the Plaintiff executed at the time that he left the employ of the City of Kalamazoo. Additionally, the Plaintiff has failed to tender back the consideration he received as consideration for the separation agreement and release. Tendering back the consideration is a condition precedent to filing this lawsuit under both state and federal law.

It is the Defendants' position that the Plaintiff has not been defamed in any fashion. Moreover, any statements made by Defendant Jackson to law enforcement officials enjoy at least a qualified privilege. Defendant Jackson is entitled to absolute immunity with respect to the state law claims asserted against her under the terms of the Michigan Governmental Immunity Act.

With respect to the federal claims asserted, the Plaintiff has failed to allege a valid claim against the City of Kalamazoo for any claim arising under federal law. The Plaintiff has also failed to allege a single fact, and cannot produce any facts, which would demonstrate that any action taken by any of the Defendants was racially motivated. Finally, the Defendant, Zadie Jackson is entitled to qualified immunity with respect to the federal claims asserted against her, as a reasonable official in her position could have believed the actions she was taking were lawful in light of established law.

4. Pendent State Claims: This case does include pendent state claims including breach of contract, defamation, the intentional infliction of emotional distress and racial discrimination under the Elliot Larson Civil Rights Act.

5. Joinder of Parties and Amendment of Pleadings: The parties expect to file all motions for joinder of parties to this action and to file all motions to amend the pleadings by **December 1, 1998**.

6. Disclosures and Exchanges:

i. The following disclosure under Rule 26(a)(1) is desirable in this matter:

A. Any insurance agreement under which a carrier may be liable for some or part of any judgement entered or for indemnification.

ii. The Plaintiff expects to be able to furnish the name of the Plaintiff's known witnesses, including all experts, to the Defendants by December 1, 1998. The Defendants expect to be able to furnish the names of the Defendants' known witnesses, including all experts, to the Plaintiff 30 days after the Plaintiff's disclosure.

iii. In this case, it would not be advisable to exchange expert witness reports as contemplated by Rule 26(a)(2).

The parties are unable to agree on voluntary production at this time.

7 Completion of Discovery: The parties believe that all discovery proceedings can be completed by **April 1, 1999**. The parties recommend that the limitations of 8 depositions and 30 interrogatories be per-party as set forth in the D.C.M. Standard Track criteria be applied.

8. Motions: The parties anticipate that all dispositive motions will be filed by **May 1, 1999**. The parties acknowledge that it is the policy of the Court to prohibit the consideration of non-dispositive discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

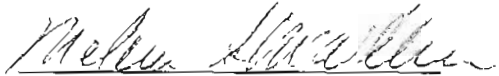
9 Alternative Dispute Resolution: Plaintiff recommends that this case be submitted to Michigan Mediation under Local Rule 16.5. The Defendants recommend that this case be submitted to arbitration under Local Rule 16.6.

10. Length of Trial: Counsel estimate the trial will last approximately four full days.

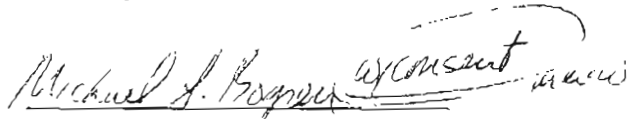
11. Prospects of Settlement: There were no settlement discussions before the filing of this litigation. The prospect of settlement appears poor.

12. Track Assignment: The parties recommend that this matter be assigned to the Standard (III) Track.

Date: 9/25, 1998


Melvin S. McWilliams
Attorney for Plaintiff

Date: 9/25, 1998


Michael S. Bogren
Attorney for Defendants

Melvin S. McWilliams, P.C.

Attorney at Law
417 Seymour, Suite 9
Lansing, MI 48933

Melvin S. McWilliams

Telephone: (517)-482-4928
Fax: (517) 372-9760

September 25, 1998

To: Clerk of the Court
Room 452, Ford Federal Building
110 Michigan, NW
Grand Rapids, MI 49503

RE Marc Ott v. Zadie Jackson et al
Case No. 4:98-CV-125

Hon. Robert Holmes Bell

ENCLOSED PLEASE FIND THE FOLLOWING:

☐ Affidavit
☐ Answer & Affirmative Defenses
☐ Amended Notice
☐ Answer to Complaint
☐ Answer to Interrogatories
☐ Appearance
☐ Appearance & Demands
☐ Brief
☐ Certificate of Service
☐ Complaint/Counterclaim
☐ Fee
☐ Interrogatories
☐ Judgment of Divorce
☐ Jury Demand
☐ Motion
☐ Motion to Compel Discovery, Etc.

☐ Notice of taking deposition
☐ Notice of Hearing
☐ Order
☐ Petition
☐ Pretrial Statement
☐ Proof of Service
☐ Stipulation & Order
☐ Subpoena
☐ Summons
☐ Witness & Exhibit List
☒ Other: _____

Joint Status Report

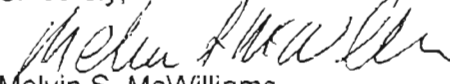
WE ASK THAT YOU TAKE THE FOLLOWING ACTION TO THE ABOVE DOCUMENTS:

☒ File
☐ File & Return True Copies
☐ For you information
☐ No action required
☐ Return with Proof of Payment
☐ Have Judge sign & return true copies
☐ Please contact me upon your review of the enclosure

☐ Sign before a Notary and witness as requested
☐ Hold for 7 days and enter If no objections
☐ Execute and return to office

☐ Other: _____

Sincerely,


Melvin S. McWilliams
Attorney at Law

MSM:jec

Enclosures

cc: Hon. Robert Holmes Bell
Michael Bogren
Mark Ott

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SEP - 1 PM 2:09

MARC A. OTT,

Plaintiff,

Case No: 4:98-CV-125

v.

HON. ROBERT HOLMES BELL

ZADIE JACKSON, individually and
in her capacity as a member of the
Kalamazoo City Commission, jointly
and severally; KALAMAZOO CITY
COMMISSION, jointly and severally;
and CITY OF KALAMAZOO, jointly and
severally,

Defendants.

ORDER SETTING RULE 16 SCHEDULING CONFERENCE

IT IS HEREBY ORDERED:

1. Rule 16 Scheduling Conference: A scheduling conference pursuant to Fed. R. Civ. P. 16 is hereby scheduled for September 30, 1998 at 9:00 a.m., before the Honorable Robert Holmes Bell, 401 Ford Federal Building, 110 Michigan, NW, Grand Rapids, MI 49503.

2. Matters to be Considered at the Scheduling Conference: The purpose of the scheduling conference is to review the joint status report and to explore methods of expediting the disposition of the action by: establishing a plan of case management; discouraging wasteful pretrial activities; facilitating the settlement of a case; establishing an early, firm trial date; and improving the quality of the trial through thorough preparation.

3. Differentiated Case Management: This case will be

managed by the Court pursuant to the Differentiated Case Management Plan adopted by the Western District. The purpose of the plan is to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes. At the Rule 16 Conference, this case will be assigned to an appropriate scheduling track. Dates recommended by the parties in the joint status report shall correspond to the deadlines established for the track proposed by the parties.

4. Preparation of Joint Status Report: A joint status report shall be prepared jointly by counsel and filed, with a copy sent to Judge Bell's chambers, three (3) business days prior to the conference in the following form:

A Rule 16 Scheduling Conference is scheduled for the ** day of **, 1998. Appearing for the parties as counsel will be:

(List the counsel who will attend the scheduling conference. Counsel for all parties must attend. Parties not represented by counsel must appear in person. Parties who are represented are encouraged, but not required, to attend).

1. Jurisdiction: The basis for the Court's jurisdiction is:

(Set forth a statement of the basis for the Court's jurisdiction. Indicate all objections.)

2. Jury or Non-Jury: This case is to be tried [before a jury] [by the Court as trier of law and fact].

3. Statement of the Case: This case involves:

(Set forth a brief description of the claims and defenses, sufficient to acquaint the Court with the

general nature of the case, as well as the factual and legal issues requiring judicial resolution.)

4. Pendent State Claims: This case [does] [does not] include pendent state claims.

(If pendent state claims are presented, include a statement describing such claims, and all objections to the Court retaining the pendent claims.)

5. Joinder of Parties and Amendment of Pleadings: The parties expect to file all motions for joinder of parties to this action and to file all motions to amend the pleadings by _____.

6. Disclosures and Exchanges:

(i) Whether Fed.R.Civ.P. 26(a)(1) disclosures are desirable and, if so, the date(s) by which the parties expect to be able to furnish these initial disclosures.

(ii) The plaintiff expects to be able to furnish the names of the plaintiff's known witnesses, including all experts, to the defendant by _____. The defendant expects to be able to furnish the names of the defendant's known witnesses, including all experts, to the plaintiff by _____.

(iii) In this case, it would (would not) be advisable to exchange written expert witness reports as contemplated by Fed.R.Civ.P. 26(a)(2). Reports, if required, should be exchanged according to the following schedule:

(iv) The parties have agreed to make available the following documents without the need of a formal request for production:

From plaintiff to defendant by _____:
(Describe documents)
From defendant to plaintiff by _____:
(Describe documents)

-OR-

The parties are unable to agree on voluntary production at this time.

7. Completion of Discovery: The parties believe

that all discovery proceedings can be completed by _____. The parties recommend the following discovery plan:

(As required by Fed.R.Civ.P. 26(f), set forth proposed plan of discovery, including subjects on which discovery may be needed and whether discovery should be conducted in phases or be limited to or focused on certain issues. Also set forth any recommendations as to limitations on discovery. Limitations may include the number of depositions and interrogatories, time limits on depositions, or limitations on the scope of discovery pending resolution of dispositive motions or alternative dispute resolution proceedings.)

8. Motions: The parties anticipate that all dispositive motions will be filed by _____. The parties acknowledge that it is the policy of this Court to prohibit the consideration of non-dispositive discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

9. Alternative Dispute Resolution: The parties recommend that this case be submitted to the following method(s) of alternative dispute resolution:

(Set forth each party's position with respect to the preferred method, if any, of alternative dispute resolution. Methods used in this district include, but are not limited to, voluntary facilitative mediation (W.D.Mich.LCivR 16.3) (see attachments), early neutral evaluation (W.D.Mich.LCivR 16.4), Michigan mediation (W.D.Mich.LCivR 16.5), arbitration (W.D.Mich.LCivR 16.6), summary jury trial, summary bench trial (W.D.Mich.LCivR 16.7), and appointment of a special master.)

10. Length of Trial: Counsel estimate the trial will last approximately _____ full days.

11. Prospects of Settlement: The status of settlement negotiations is:

(Indicate progress toward settlement and issues that are obstacles to settlement.)


12. Track Assignment: The parties recommend that this matter be assigned to the _____ track. (Track(s) are delineated in the Differentiated Case Management Plan used in this district.)

The joint status report shall be approved and signed by all counsel of record and by any party who represents him or herself. The report shall be filed with the Clerk of the Court, Ronald C. Weston, Sr., Room 452 Ford Federal Building, Grand Rapids, Michigan 40503.

5. Order of Referral: United States Magistrate Judge Joseph G. Scoville, of Grand Rapids, Michigan, telephone number (616)456-2309, is designated to assist in the judicial management of this case, and is invested by the powers conferred under 28 U.S.C. Section 636(b)(1)(A).

6. Case Manager: Any question concerning this Order or the scheduling conference should be directed to Susan Driscoll Bourque, Case Manager, at (616)456-2029.

Dated: September 1, 1998



ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

IMPORTANT DIFFERENTIATED CASE MANAGEMENT INFORMATION
PLEASE READ BOTH SIDES - DO NOT DISCARD

Notice Re: Amendments to Federal Rules of Civil Procedure
Effective December 1, 1993

On December 1, 1993, amendments to the Federal Rules of Civil Procedure became effective. The court has determined that the automatic operation of certain of these rules could be inconsistent with the court's Civil Justice Expense and Delay Reduction Plan. The court has therefore suspended or modified by order (Administrative Order 93-125), as expressly allowed by the amendments, the following:

- A. The planning meeting required by Fed. R. Civ. P. 26(f) shall take place in the manner and at the time directed by the order setting the Rule 16 conference. The report filed with the court as a result of the planning meeting shall contain the information required by that order. Cases assigned to the non-DCM track are exempted from the meeting requirement of Fed. R. Civ. P. 26(f), unless otherwise ordered by the court.
- B. The Rule 16 scheduling conference shall be conducted within the time prescribed by the court's Civil Justice Plan, as modified, notwithstanding the provisions of Fed. R. Civ. P. 16(b).
- C. No civil case pending in this district shall be subject to the automatic stay of the commencement of discovery imposed by Fed. R. Civ. P. 26(d).
- D. The provisions of Fed. R. Civ. P. 26(a)(1) concerning initial disclosures shall not apply to any case brought in this district, except that the disclosures required therein may be directed by the court by order entered in a particular case.
- E. In cases assigned to a track, the provisions of Fed. R. Civ. P. 26(a)(2) concerning the disclosure of expert testimony are modified as follows. The names, addresses, and qualifications of expert witnesses expected to testify at trial shall be disclosed as provided in the case management order. The expert's written report contemplated by Fed. R. Civ. P. 26(a)(2), if required by the court, shall be disclosed at the time provided in the case management order. In cases assigned to the non-DCM track, the exchange of written experts' reports contemplated by Fed. R. Civ. P. 26(a)(2) shall not be made, unless specified by the court.
- F. The pretrial disclosures required by Fed. R. Civ. P. 26(a)(3) shall be made in the final pretrial order. The time for making objections shall be as established by the case management order. All other provisions of Fed. R. Civ. P. 26(a)(3) concerning objections and waiver of objections are hereby preserved.
- G. The limitations on the number of permissible interrogatories established in Fed. R. Civ. P. 33(a) and the number of permissible depositions established in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A) are hereby suspended for all cases assigned to a track. In such cases, discovery limitations will be established by the court at the case management conference and set forth in a case management order. The discovery limitations contained in the Federal Rules of Civil Procedure shall not apply to cases assigned to the non-DCM track.

Administrative Order 93-125 shall remain in effect until rescinded, modified or superseded by local rule or further order. The full text of Administrative Order 93-125 is available in the Clerk's office.

IMPORTANT DIFFERENTIATED CASE MANAGEMENT INFORMATION
DO NOT DISCARD

Pursuant to 28 U.S.C. 471 et seq., the United States District Court for the Western District of Michigan has developed a system of differentiated case management (DCM) which provides for the assignment of all civil cases to an appropriate processing track. Litigants are permitted to indicate their preference of track selection at the Rule 16 Scheduling Conference, although the judicial officer assigned to the case will make the final determination. Discovery limitations listed below are suggested guidelines. The amount of discovery will be determined at the Rule 16 Scheduling Conference and cannot be amended without prior approval of the court.

The following criteria are factors you may wish to consider prior to indicating your track preference.

- I Voluntary Expedited** - disposition will occur in less than 9 months from the date the complaint is filed.
- assignment is voluntary, parties must waive their right to trial by an Article III judge
 - few parties, few disputed issues, relatively low monetary sums
 - mutual prediscovery disclosure of relevant information will be required
 - discovery deadline 90 days after Rule 16 scheduling conference, 2 depositions, 15 interrogatories per party
- II Expedited** - disposition will occur no later than 9 - 12 months from the date the complaint is filed.
- few parties, few disputed factual or legal issues
 - parties encouraged to waive their right to trial by an Article III judge
 - mutual prediscovery disclosure of relevant information is encouraged
 - selective use of alternative dispute resolution methods
 - discovery deadline 120 days after Rule 16 scheduling conference, 4 depositions, 20 interrogatories per party
- III Standard** - disposition will occur no later than 12 - 15 months from the date the complaint is filed.
- multiple parties, third party claims, a number of disputed factual or legal issues
 - mutual prediscovery disclosure of relevant information is encouraged
 - order phasing discovery may be directed if dispositive issues are raised
 - alternative dispute resolution methods will be utilized regularly
 - discovery deadline 180 days after Rule 16 scheduling conference, 8 depositions, 30 interrogatories per party
- IV Complex** - disposition will occur no later than 15 - 24 months from the date the complaint is filed.
- numerous parties, complicated factual or legal issues
 - periodic Rule 16 scheduling conferences may be necessary
 - cases scheduled for trial beyond eighteen months must be certified by a judicial officer
 - alternative dispute resolution methods will be utilized regularly
 - discovery deadline 270 days after Rule 16 scheduling conference, 15 depositions, 50 interrogatories per party
- V Highly Complex** - disposition likely will occur over 24 months from the date the complaint is filed.
- numerous parties or class action lawsuits, periodic Rule 16 scheduling conferences
 - no case will be assigned to this track without certification by a judicial officer
 - alternative dispute resolution methods very often utilized
 - discovery guidelines and limitations are at the discretion of the court
- VI Administrative**
- assignment to this track will be made by the clerk's office upon review of the initial pleadings
 - social security, habeas corpus, bankruptcy appeals, administrative appeals, and 42 U.S.C. 1983 actions by prisoners, generally will be included on this track
 - civil rights actions assigned to this track are limited to 15 interrogatories and requests for production of 5 categories of documents per party unless modified by the court upon filing a motion for good cause shown
- VII Non-DCM**
- 10% of all civil cases, except Administrative Track cases, will be selected randomly for this track
 - judicial involvement will be minimal
 - requests for additional case management must be made by motion
 - parties may be placed on another track upon filing a motion and approval by the court

**IMPORTANT INFORMATION REGARDING VOLUNTARY FACILITATIVE
MEDIATION - DO NOT DISCARD**

GENERAL

Local Rule 16.3 authorizes use of Voluntary Facilitative Mediation as a method of resolving civil actions in this court. As distinguished from Michigan mediation (W.D.Mich.LCivR 16.5), facilitative mediation is a flexible, non-binding process in which an impartial third party facilitates negotiations among the parties to help them reach settlement. The mediator, who may meet jointly or separately with the parties, serves as a facilitator only and does not attempt to evaluate or place a monetary value on the dispute, nor decide issues or make findings of fact. The mediator will act as a catalyst for dispute resolution by asking questions, defining issues, opening channels of communication and assisting in the generation of alternative settlement proposals and solutions. All civil cases except prisoner civil rights complaints, habeas corpus, social security and §2255 motions are eligible for facilitative mediation.

A list of mediators who have been certified by the court is attached. All mediators are required to successfully complete an extensive training program either sponsored or approved by the court and to co-mediate at least one case. If the district or magistrate judge is satisfied that all parties voluntarily selected facilitative mediation, he will incorporate their selection in the case management order, instructing the parties to notify the ADR clerk within 10 calendar days of the name of the jointly selected mediator. Any case referred to facilitative mediation continues to be subject to management by the judge to whom it is assigned. Unless otherwise ordered, parties are not precluded from filing pretrial motions or pursuing discovery.

PROCEDURES

Within ten calendar days of the case management order, the parties jointly choose one mediator from the list of court certified mediators. Plaintiff is responsible for notifying the ADR clerk of the name of the selected mediator. If the parties are unable to reach agreement, they notify the ADR clerk who selects a mediator for them. The ADR clerk notifies the mediator of his or her selection, and requests a check for potential conflicts of interest. If a conflict is found to exist, the mediator notifies the ADR clerk, who either selects an alternate mediator or requests the parties make a new selection. Once a mediator's selection is finalized, the ADR clerk notifies the judge assigned to the case, who issues an order of referral for facilitative mediation.

Within 14 days after the issuance of the order of referral for facilitative mediation, the mediator consults with the parties and sets a time and place for the mediation session. The session should be held within 60 days after the mediator is selected. The mediator will send a notice of hearing as soon as practicable. Parties or individuals with settlement authority are required to attend the session.

Not less than seven calendar days prior to the scheduled mediation session, each party provides the mediator with a concise memorandum, no more than ten double-spaced pages in length, setting forth the party's position concerning the issues to be resolved through mediation, including issues relative to both liability and damages. The mediator may circulate the parties' memoranda. The format for the session is developed by the parties and the mediator. It may involve one or more sessions and may continue for as long as the parties agree it is productive.

At the close of the mediation session, if settlement is reached, the mediator helps the parties draft a settlement agreement along with a stipulation and proposed order to dismiss, which is then filed with the court. If settlement is not reached, the parties have seven calendar days to inform the mediator whether they desire to continue the mediation process. Within ten calendar days of the session, the mediator files a brief report with the ADR clerk and provides copies to all parties. The report indicates only who participated in the mediation session and whether settlement was reached.

KEY PROGRAM FEATURES

Information disclosed during any mediation session may not be disclosed to any other party without consent of the disclosing party. All mediation proceedings are considered to be compromise negotiations within the meaning of Federal Rule of Evidence 408. The court assesses a fee of \$50.00 (fifty dollars) per referral, of which \$25.00 is paid by the plaintiff(s) and \$25.00 is paid by the defendant(s). The monies are deposited into the Voluntary Facilitative Mediation Training Fund. In the instance of a *pro bono* mediation, the assessment is waived. Mediators are paid their normal hourly rate, which shall be divided equally among the parties unless the parties otherwise agree. The mediator is responsible for billing the parties. In the event of a noncompliance, the mediator may petition the district or magistrate judge for an order directing payment of his or her fees.

The facilitative mediation program is administered by the clerk's office. In an effort to gather information about the efficacy of the program, the clerk's office may develop questionnaires for participants, counsel and mediators to be completed and returned at the close of the mediation process. Responses will be kept confidential and not divulged to the court, attorneys or parties. Only aggregate information will be reported.

SUMMARY

The facilitative mediation program is completely voluntary. No one will compel the parties to use this process. Litigants are encouraged however, to participate in facilitative mediation early in litigation, soon after the initial scheduling conference, in order to help reduce the expense and delay of traditional litigation. Other federal courts that have used this type of program report as much as an 80 percent success rate in settling cases.

If you have questions about Voluntary Facilitative Mediation or any other method of alternative dispute resolution, you may contact the ADR clerk in the clerk's office.

U.S. District Court for the Western District of Michigan
Voluntary Facilitative Mediation - Certified Mediators

Charles F. Ammeson, Troff Petzke & Ammeson, 811 Ship Street, P.O. Box 67, St. Joseph, MI 49085, (616) 983-0161, Fax: (616) 983-0166. Areas of Practice: Personal injury/tort, insurance, employment, and real estate. Hourly rate: \$130/hr.

Linda Miller Atkinson, Philo, Atkinson, White, Stephens, Wright & Whitaker, 805 Railroad Ave., P.O. Box 241, Channing, MI 49815, (906) 542-6801, Fax: (906) 542-7117; E-mail: lmatkinson@uplogon.com. Areas of Practice: Products liability, professional negligence, insurance, township and municipal government issues, estates, and personal injury general. Hourly rate: \$125/hr.

Steven L. Barney, Plunkett & Cooney, PC, 303 Howard St., Petoskey, MI 49770, (616) 347-1200, Fax: (616) 347-2949; E-mail: barneyst@plunkettlaw.com; website: www.plunkettlaw.com. Areas of Practice: General liability and business torts, products liability, professional liability (architects, engineers, attorneys and accountants), complex commercial, property and construction liability. Hourly rate: \$180/hr.

George Frederick Bearup, Smith, Haughey, Rice & Roegge, PC, 241 E. State St., Traverse City, MI 49684, (616) 929-4878, Fax: (616) 929-4182. Areas of Practice: Domestic relations, estate planning (wills, trusts, financial planning), general corporate law, employee welfare and benefit plans. Hourly rate: \$150/hr.

Michael W. Betz, Roberts Betz & Bloss, PC, 5005 Cascade Road, SE, Grand Rapids, MI 49546, (616) 285-8899, Fax: (616) 285-0045. Areas of Practice: Administrative law, agricultural law, civil rights, commercial litigation, employment relations, governmental liability, insurance coverage disputes, insurance law, personal injury, product liability, professional malpractice, real property litigation and Superfund litigation. Hourly rate: \$150/hr.

Stephen C. Bransdorfer, Bransdorfer & Bransdorfer, PC, Suite 305, Ledyard Bldg., 125 Ottawa Ave., NW, Grand Rapids, MI 49503-2898, (616) 458-4004, Fax: (616) 458-4422. Areas of Practice: Personal injury and other tort actions, products liability, contract and other commercial transactions, insurance actions, environmental litigation, and condemnation proceedings. Hourly rate: \$190/hr.

Charles E. Burpee, Warner, Norcross & Judd, LLP, 111 Lyon St., NW, 900 Old Kent Building, Grand Rapids, MI 49503, (616) 752-2141, Fax: (616) 752-2500. Areas of Practice: Intellectual property including patent, trademark, copyright, trade secrets, computer and licensing. Hourly rate: \$200/hr.

Allen S. Bush, Butch, Quinn, Rosemurgy, Jardis, Bush, Burkhardt & Parks, PC, 816 Ludington St., Escanaba, MI 49829, (906) 786-4422, Fax: (906) 786-5128. Areas of Practice: All forms of civil litigation: personal injury, professional negligence (medical, legal and architectural), construction law (litigation and arbitration), labor and employment law (negotiator, litigator and arbitrator). Hourly rate: \$125/hr.

Richard J. Celello, Mouw & Celello, PC, 100 East "C" St., P.O. Box 747, Iron Mountain, MI 49801, (906) 774-2480, Fax: (906) 774-2662. Areas of Practice: General personal injury (plaintiff & defendant); medical negligence (plaintiff & defendant); products liability (plaintiff & defendant); commercial litigation (plaintiff & defendant); municipal law, hospital law. Hourly rate: \$120/hr.

Roger M. Clark, Warner Norcross & Judd, LLP, 111 Lyon St., NW, 900 Old Kent Building, Grand Rapids, MI 49503, (616) 752-2109, Fax: (616) 752-2500. Areas of Practice: Commercial, insurance, product liability and professional liability litigation, and corporate. Hourly rate: \$175/hr.

John L. Coté, 2541 Lakeshore Dr., Holland, MI 49424; (616) 399-4259, Fax: (616) 786-0061. Additional addresses & affiliations: Siebers Mohny Associates, PLC, Suite 240, 100 E. 8th St., Holland, MI 49423, (616) 394-9881, Fax: (616) 394-9845; and, Of Counsel to Willingham & Coté, Suite 500 University Place, 333 Albert Ave., P.O. Box 1070, East Lansing, MI 48826, (517) 351-6200, Fax: (517) 351-1195; E-mail: willingham.cote@acd.net. Areas of Practice: Commercial litigation, products liability, personal injury, admiralty law, malpractice. A significant portion of my practice has involved the representation of attorneys and judges charged with misconduct. Hourly rate: \$190/hr.

Mary E. Delehanty, Gemrich, Moser, Bowser & Lohrmann, 222 S. Westnedge Ave., Kalamazoo, MI 49007, (616) 382-1030, Fax: (616) 382-0703. Areas of Practice: Employment law, civil rights, Equal Pay Act, ADA, etc.; Labor - labor/management issues, failure to represent; domestic relations/family law issues; and, school and educational law. Hourly rate: \$150/hr.

Stephen M. Denenfeld, Lewis & Allen, PC, Suite 800, 136 E. Michigan Ave., Kalamazoo, MI 49007, (616) 388-7600, Fax: (616) 349-3831. Areas of Practice: Business and commercial law, civil litigation, employment relations and real estate. Hourly rate: \$175/hr.

Frederick D. Dilley, Boyden, Walcott, Timmons & Dilley, 5000 Riverfront Plaza Bldg., 55 Campau, NW, Grand Rapids, MI 49503, (616) 235-2366, Fax: (616) 459-0137. Areas of Practice: Commercial litigation, environmental, medical malpractice, and personal injury. Hourly rate: \$200/hr.

W. Peter Doren, Sondee, Racine & Doren, PLC, 229 Lake Ave., Traverse City, MI 49684, (616) 947-0400, Fax: (616) 947-0748. Areas of Practice: Municipal law, real estate law, construction and contract law, civil rights and labor law. Hourly rate: \$150/hr.

Stephen R. Drew, Drew Cooper & Anding, Suite 300, 125 Ottawa, NW, Grand Rapids, MI 49503, (616) 454-8300, Fax: (616) 454-0036. Areas of Practice: General civil litigation, with special emphasis on employment law, civil rights, police misconduct, personal injury, tort, and nursing home litigation. Hourly rate: \$185/hr.

Stuart J. Dunning, Jr., Dunning & Frawley, P.C., 530 S. Pine, Lansing, MI 48933-2299, (517) 487-8222, Fax: (517) 487-2026. Areas of Practice: Personal injury and torts, civil rights, employment law, contract and social security. Hourly rate: \$190/hr.

Pamela Chapman Enslen, Miller, Canfield, Paddock & Stone, PLC, 444 W. Michigan Ave., Kalamazoo, MI 49007, (616) 383-5824, Fax: (616) 383-5858. Areas of Practice: Alternative dispute resolution, employment, civil rights, and commercial litigation. Hourly rate: \$175/hr.

James H. Geary, Howard & Howard, Suite 200, 100 Portage St., Kalamazoo, MI 49007, (616) 382-9707, Fax: (616) 382-1568. Areas of Practice: Commercial litigation including lender liability, employment discrimination, contract litigation, UCC litigation, real estate litigation and insurance policy interpretation; appeals. Hourly rate: \$195/hr.

Richard A. Glaser, Dickinson, Wright, PLLC, Suite 900, 200 Ottawa Ave., NW, Grand Rapids, MI 49503, (616) 458-1300, Fax: (616) 458-6753. Areas of Practice: General civil and commercial litigation; accountant and consultant liability; business tort litigation; construction litigation; products liability law; professional liability; securities litigation; environmental litigation. Hourly rate: \$195/hr.

Amy J. Glass, Michigan Mediation & Arbitration Services, Suite 445, 229 E. Michigan Ave., Kalamazoo, MI 49007, (616) 342-9046, Fax: (616) 349-1417. Areas of Practice: Personal injury and wrongful death; auto, products and premises liability; construction disputes; design defects, breach of contract; employment; patent infringement; environmental; general civil. Hourly rate: \$170/hr.

Richard D. Grauer, Rader, Fishman & Grauer, PLLC, Suite 140, 1533 N. Woodward Ave., Bloomfield Hills, MI 48304, (248) 594-0640, Fax: (248) 594-0610. Additional addresses: Rader, Fishman, Grauer & McGarry, Suite 600, 171 Monroe Ave., NW, Grand Rapids, MI 49503, (616) 742-3500, Fax: (616) 742-1010; Suite 501, 1233 20th St., Washington, DC 20036, (202) 955-3750, Fax: (202) 955-3751. Areas of Practice: Intellectual property, primarily patent and trade secret law. Hourly rate: \$200/hr.

Peter L. Gustafson, Warner, Norcross & Judd, LLP, 900 Old Kent Bldg., 111 Lyon St., NW, Grand Rapids, MI 49503, (616) 752-2121, Fax: (616) 752-2500/2501. Areas of Practice: Business, commercial, construction, professional liability, environmental, product liability and real estate litigation, with related work as a neutral arbitrator and in zoning, contracts, insurance, partnership and UCC law. Hourly rate: \$175/hr.

Henry L. Guikema, Guikema & Hulbert, PC, Suite 410, 125 Ottawa, NW, Grand Rapids, MI 49503, (616) 235-2601, Fax: (616) 458-7548. Areas of Practice: Contracts - commercial, construction and insurance, civil rights, labor, ERISA and torts - commercial, personal. Hourly rate: \$165/hr.

Elizabeth S. Holmes, Law Office of Elizabeth S. Holmes, 145 Federal Square Bldg., 29 Pearl St., NW, Grand Rapids, MI 49503, (616) 454-5099, Fax: (616) 454-6572. Areas of Practice: Civil rights, employment, and trademark. Hourly rate: \$175/hr.

Oskar M. Hornbach, Oskar M. Hornbach, PC, 222 W. Genesee St., Lansing, MI 48933, (517) 371-4224, Fax: (517) 371-5153. Areas of Practice: Commercial litigation, contract disputes, employer-employee relations, personal injury, probate and estate planning. Hourly rate: \$170/hr.

Dale Ann Iverson, Smith, Haughey, Rice & Roegge, 200 Calder Plaza Bldg., 250 Monroe Ave., Grand Rapids, MI 49503, (616) 458-3232, Fax: (616) 774-2461. Areas of Practice: Facilitative mediation, civil litigation, with emphasis on products liability and employment, non-profit organizations. Hourly rate: \$150/hr.

William W. Jack, Jr., Smith, Haughey, Rice & Roegge, 200 Calder Plaza Bldg., 250 Monroe Ave., Grand Rapids, MI 49503, (616) 774-800, Fax: (616) 774-2461. Areas of Practice: Medical malpractice, legal malpractice and commercial litigation. Hourly rate: \$175/hr.

Paul E. Jensen, Jensen & Stuart, Suite 300, 20 N. Monroe Center, Grand Rapids, MI 49503, (616) 454-7444, Fax: (616) 454-7873. Areas of Practice: General civil litigation, tort litigation, employment litigation, professional liability, contract disputes. Hourly rate: \$175/hr.

Thomas F. Koernke, Boyden, Waddell, Timmons & Dilley, 5000 Riverfront Plaza Bldg., 55 Campau, NW, Grand Rapids, MI 49503, (616) 235-2300, Fax: (616) 459-0137. Areas of Practice: General civil litigation, with emphasis on corporate, construction and investment disputes. Hourly rate: \$190/hr.

Richard C. Kraus, Smith, Haughey, Rice & Roegge, PC, Suite 410, 1400 Abbott Rd., East Lansing, MI 48823-2320, (517) 332-3030, Fax: (517) 332-3468. Areas of Practice: Health care, commercial litigation, and civil rights. Hourly rate: \$175/hr.

Jon G. March, Miller, Johnson, Snell & Cumiskey, PLC, Suite 800, 250 Monroe Ave., NW, P.O. Box 306, Grand Rapids, MI 49501-0306, (616) 831-1729, Fax: (616) 831-1701. Areas of Practice: General commercial litigation (including securities and antitrust); employment litigation (including civil rights); professional negligence defense; education law. Hourly rate: \$200/hr.

E. Thomas McCarthy, Jr., Smith, Haughey, Rice & Roegge, 200 Calder Plaza Bldg., 250 Monroe, NW, Grand Rapids, MI 49503, (616) 458-0260, Fax: (616) 774-2461. Areas of Practice: Employment law; civil rights; product liability; professional liability/malpractice; commercial litigation. Hourly rate: \$180/hr.

John E. McGarry, Rader, Fishman, Grauer & McGarry, Suite 600, 171 Monroe Ave., NW, Grand Rapids, MI 49503, (616) 742-3500/3511, Fax: (616) 742-1010. Areas of Practice: Intellectual property, principally patent law (prosecution and litigation), and intellectual property licensing. Hourly rate: \$200/hr.

David R. Mechlin, Vairo, Mechlin, Tomasi, Johnson & Manchester, 400 E. Houghton Ave., Houghton, MI 49931, (906) 482-0770, Fax: (906) 482-2938. Areas of Practice: Employment litigation, including civil rights; contract litigation; governmental liability; products liability; personal injury. Hourly rate: \$125/hr.

Lawrence J. Murphy, Varnum, Riddering, Schmidt & Howlett, LLP, 350 E. Michigan Ave., Kalamazoo, MI 49007-3848, (616) 382-2300, Fax: (616) 382-2382. Areas of Practice: Labor and employment litigation, training. Hourly rate: \$195/hr.

Jon R. Muth, Miller, Johnson, Snell & Cumiskey, PLC, 800 Calder Plaza Bldg., 250 Monroe, NW, P.O. Box 306, Grand Rapids, MI 49501-0306, (616) 831-1736, Fax: (616) 831-1701. Areas of Practice: General civil/commercial, environmental, and product liability. Hourly rate: \$200/hr.

Bruce W. Neckers, Rhoades, McKee, Boer, Goodrich & Titta, Suite 600, 161 Ottawa Ave., NW, Grand Rapids, MI 49503, (616) 235-3500, Fax: (616) 235-1639. Areas of Practice: Personal injury, business litigation, employment litigation and products liability. Hourly rate: \$195/hr.

Dustin P. Ordway, Dickinson, Wright, PLLC, Suite 900, 200 Ottawa Ave., NW, Grand Rapids, MI 49503, (616) 458-1300, Fax: (616) 458-6753; E-mail: dordway@dickinson-wright.com. Areas of Practice: Environmental law (all types), litigation, administrative law, real estate transactions and commercial transactions. Hourly rate: \$180/hr.

H. Rhett Pinsky, Pinsky, Smith, Payette & Hulswit, 1515 McKay Tower, Grand Rapids, MI 49503, (616) 451-8496, Fax: (616) 451-9850. Areas of Practice: Employment litigation. Hourly rate: \$175/hr.

Perrin Rynders, Varnum, Riddering, Schmidt & Howlett, P.O. Box 352, Grand Rapids, MI 49501-0352, (616) 336-6734, Fax: (616) 336-7000. Areas of Practice: Product liability, personal injury, and commercial (business torts, tax) litigation. Hourly rate: \$195/hr.

C. Joseph Schwedler, C. Joseph Schwedler, PC, 410 Superior Ave., Crystal Falls, MI 49920, (906) 875-6666, Fax: (906) 875-6401. Areas of Practice: General civil practice, real estate, probate, estate planning, corporate, municipal, banking, business litigation and negligence. Hourly rate: \$110/hr.

Webb A. Smith, Foster, Swift, Collins & Smith, PC, 313 S. Washington Square, Lansing, MI 48933, (517) 371-8157, Fax: (517) 371-8200. Areas of Practice: Personal injury, civil litigation, commercial litigation, oil & gas, and media law. Hourly rate: \$190/hr.

Stephen D. Turner, Law Weathers & Richardson, P.C., Suite 800, 333 Bridge Street, NW, Grand Rapids, MI 49504, (616) 459-1171, Fax: (616) 732-1740. Areas of Practice: Business and commercial litigation, employment litigation, and environmental litigation. Hourly rate: \$185/hr.

Robert D. VanderLaan, VanderLaan & Associates, P.C., Suite 1245, 333 Bridge Street, NW, Grand Rapids, MI 49504, (616) 454-0900; (616) 454-0986. Areas of Practice: Trial practice with an emphasis on business tort litigation; products litigation; personal injury; antitrust; commercial-rights litigation. Hourly rate: \$175/hr.

Robert J. Van Leuven, Libner, Leuven, Kortering, Evans & Portenga, P.C., P Comerica Bank - Muskegon Mall, P.O. Box 450, Muskegon, MI 49443-0450, (616) 722-6546 or (800) 225-5000 Fax: (616) 725-8185. Areas of Practice: Auto negligence, products liability, premises liability, construction liability, admiralty, insurance (including no-fault PIP claims), employment termination and discrimination. Hourly rate: \$175/hr.

Michael D. Wade, Garan, Lucow, Miller, Seward & Becker, P.C., Suite 950, 171 Monroe, NW, Grand Rapids, MI 49503, (616) 742-5500, Fax: (616) 742-5566. Areas of Practice: Medical malpractice, legal malpractice, employment discrimination, torts and contracts. Hourly rate: \$175/hr.

Douglas E. Wagner, Warner Norcross & Judd, LLP, Suite 900, 111 Lyon St., NW, Grand Rapids, MI 49503, (616) 752-2130, Fax: (616) 752-2500. Areas of Practice: Products liability, commercial/contract, employment. Hourly rate: \$175/hr.

Please note: The hourly rates indicated, effective 1/1/98 through 12/31/98, are for facilitative mediation services only, and may reflect a partial *pro bono* service to the program.

(5/98)

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (gjf)

September 01, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

L.C. No. E98-2119 CK

vs.

U.S.D.C. Case No. 4:98cv135

ZADIE JACKSON, individually and in
her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION, and
the CITY OF KALAMAZOO, jointly and
severally

HONORABLE: Robert Holmes Bell
U.S. District Judge

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

**ANSWER TO COMPLAINT, AFFIRMATIVE
DEFENSES AND JURY DEMAND**

NOW COME the Defendants, by and through their attorneys, PLUNKETT &
COONEY, P.C., and in answer to the Plaintiff's complaint state:

GENERAL ALLEGATIONS

1. The Defendants are without knowledge or information sufficient to form a
belief as to the truth of the allegations contained in paragraph 1.
2. Admitted.

3. Admitted.

4. There is no paragraph 4 contained in the Plaintiff's Complaint.

5. It is admitted that the City of Kalamazoo, through the action of the City Commission, approved and entered into the separation agreement and general release dated January 27, 1997, with Marc Ott. However, it is denied as untrue that the Kalamazoo City Commission is a proper Defendant in this case, or is an entity subject to suit.

6. Admitted.

7. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Admitted.

10. The separation agreement and general release speaks for itself. The Defendants admit that the Plaintiff has accurately recited a portion of the language contained in the settlement agreement and general release. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the quoted language is the "relevant" part of the separation agreement and general release.

11. The separation agreement and general release speaks for itself. The Defendants admit that the Plaintiff has accurately recited a portion of the language contained in the settlement agreement and general release. The Defendants are

without knowledge or information sufficient to form a belief as to the truth of the allegation that the quoted language is the "relevant" part of the separation agreement and general release.

12. It is admitted that Plaintiffs counsel forwarded a letter to the City of Kalamazoo dated April 9, 1998, demanding arbitration. It is denied as untrue that paragraph 18 of the separation agreement and general release, or any other provision of that document, provides for arbitration.

13. It is admitted that the Defendants deny that this matter is subject to arbitration.

14. Paragraph 14 does not contain allegations of fact to which a response is required, or can be given.

COUNT I: BREACH OF SEPARATION AGREEMENT

15. The Defendants incorporate by reference paragraphs 1 through 14 of their answer as if set forth fully herein.

16. The allegations contained in paragraph 16 are denied as untrue.

17. The allegations contained in paragraph 17 are denied as untrue.

18. The Allegations contained in paragraph 18 are denied as untrue.

19. The allegations contained in paragraph 19 are denied as untrue.

20. The allegations contained in paragraph 20 are denied as untrue.

21. The allegations contained in paragraph 21 are denied as untrue.

22. The allegations contained in paragraph 22 are denied as untrue.

23. The allegations contained in paragraph 23 are denied as untrue.

24. The allegations contained in paragraph 24 are denied as untrue.

COUNT II: DEFAMATION

25. The Defendants incorporate by reference paragraphs 1 through 24 of their answer as if set forth fully herein.

26. The allegations contained in paragraph 26 are denied as untrue.

27. The allegations contained in paragraph 27 are denied as untrue.

28. It is denied as untrue that the Defendant, Zadie Jackson, published any defamatory statements to any person. In further answer, the Defendants state that any discussions that Zadie Jackson had with law enforcement officials were privileged.

29. The allegations contained in paragraph 29 are denied as untrue.

30. The allegations contained in paragraph 30 are denied as untrue.

**COUNT III: INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

31. The Defendants incorporate by reference paragraphs 1 through 30 of their answer as if set forth fully herein.

32. The allegations contained in paragraph 32 are denied as untrue.

33. The allegations contained in paragraph 33 are denied as untrue.

34. The allegations contained in paragraph 34 are denied as untrue.

35. The allegations contained in paragraph 35 are denied as untrue.

36. The allegations contained in paragraph 36 are denied as untrue.

COUNT IV: RACIAL DISCRIMINATION

37. The Defendants incorporate by reference paragraphs 1 through 36 of their answer as if set forth fully herein.

38. The allegations contained in paragraph 38 are denied as untrue.

39. It is denied as untrue that Defendant Zadio Jackson had any racial animus toward Plaintiff Ott, or any other African-American. It is admitted that Defendant Jackson was not censured by the City Commissioners, but it is denied that Defendant Jackson participated in any conduct which would justify or allow her to be censured or for any action to be taken against her.

40. The allegations contained in paragraph 40 are denied as untrue.

41. The allegations contained in paragraph 41 are denied as untrue.

42. The allegations contained in paragraph 42 are denied as untrue.

WHEREFORE, for the foregoing reasons, the Defendants respectfully request this Honorable Court enter judgment of no cause of action in their favor and award them their actual, reasonable attorney fees and costs incurred in defending against this action.

AFFIRMATIVE DEFENSES

NOW COME the Defendants, by and through their attorneys, PLUNKETT & COONEY, P.C., and raise the following Affirmative Defenses to the Plaintiffs Complaint:

1. Count I of the Plaintiffs Complaint fails to state a claim upon which relief can be granted in that the terms of the separation agreement do not provide for a separate cause of action for an alleged breach of the agreement.

2. The Plaintiff has failed to tender back the consideration he received as part of the separation agreement and general release, a condition precedent to file this lawsuit, and therefore his claims are barred.

3. The Plaintiff has entered into a separation agreement and general release and therefore, his claims are barred.

4. To the extent that Defendant Zadio Jackson had any communication with law enforcement officials, such communications are privileged and will not give rise to a claim for defamation.

5. The Plaintiff's claim for defamation is barred by the statute of limitations.

6. The Plaintiff's claims are barred by the Plaintiff's failure to comply with the notice requirements contained in the separation agreement and general release.

7. Defendant Zadio Jackson is entitled to dismissal on the basis of qualified immunity with respect to the federal law claims asserted against her.

8. The Plaintiff's complaint fails to adequately allege a factual basis for imposing liability on the City of Kalamazoo for claims arising under federal law.

9. Defendant Zadio Jackson is entitled to absolute immunity from the state law claims asserted against her, as she was the highest level elected official for the City of Kalamazoo at all times pertinent hereto.

10. The City of Kalamazoo is entitled to dismissal of the Plaintiff's state law claims by virtue of the Governmental Immunity Act.

11. The Defendants will move to amend their affirmative defenses as additional defenses are disclosed during the pendency of this litigation.

JURY DEMAND

NOW COME Defendants, by and through undersigned counsel, and
demand trial by jury on all issues in the above-captioned matter.

RESPECTFULLY SUBMITTED,

PLUNKETT & COONEY, P.C.

DATED: August 27, 1998

BY: Michael S. Bogren

Michael S. Bogren
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Direct Dial: 616/226-8822

00590.81289.26639

August 31, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 4907


RE: Ott v. Jackson et al.
Case No. 4:98-cv-125

Dear Counsel:

Your case has been received and filed in this court on August 27, 1998. It was assigned to Judge Robert Holmes Bell under the number shown above.

Sincerely,

Ronald C. Weston, Sr., Clerk



By: Deputy Clerk

cc: File

MAILING RECIPIENT LIST FOR 4:98-cv-00125 (dk)

August 31, 1998

Melvin S. McWilliams, Esq.
Melvin S. McWilliams, PC
Capitol View Building
417 Seymour Ave., Ste. 9
Lansing, MI 48933

Michael S. Bogren, Esq.
Plunkett & Cooney, PC
535 S Burdick St., Ste. 256
Kalamazoo, MI 49007
Kalamazoo

CIVIL COVER SHEET

Robert Holmes Bell
U.S. District Judge

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Marc A. Ott

DEFENDANTS

Zadie Jackson, Kalamazoo City
Commission and City of Kalamazoo

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Oakland
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Kalamazoo
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Melvin S. McWilliams
417 Seymour, Suite 9
Lansing, MI 48933
517/482-4928

ATTORNEYS (IF KNOWN)

Michael S. Bogren
535 South Burdick, Suite 256
Kalamazoo, MI 49007
616/382-5935

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY: The Plaintiff alleges racial discrimination in violation of his federally protected rights, and seeks recovery under 42 U.S.C. § 1983.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Theft in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates, etc. <input type="checkbox"/> 460 Deception <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER FRCP 23

DEMAND \$
\$25,000.00

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

None

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 27, 1998

Michael S. Bogren

UNITED STATES DISTRICT COURT



Skynse Business Center
Suite 256
535 South Burdick Street
Kalamazoo, MI 49007-6112

(616) 382-5935
Fax (616) 382-2506
www.plunkettlaw.com

August 27, 1998

HAND DELIVERED

District Court Clerk
UNITED STATES DISTRICT COURT
B-35 Federal Building
110 Michigan Avenue
Kalamazoo, Michigan 49503

RE: Ott vs City of Kalamazoo, et al
File No.
Our File No. 00590/81289

Dear Clerk:

Enclosed please find one original and one copy of the following:

- Notice of Filing Removal
- Notice of Removal
- Answer to Complaint, Affirmative Defenses and Jury Demand
- Proof of Service
- \$150.00 Check for Filing Fee.

Please file same with your Court. Thank you for your attention in this matter.

Very truly yours,

PLUNKETT & COONEY, P.C.

Michael S. Bogren
Direct Dial: 616/226-8822

MSB/ee

Enclosures

cc: Melvin S. McWilliams, Esq.
Ninth Circuit Court Clerk
00590.81289.26644

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

vs.

L.C. No. E98-2119 CK

U.S.D.C. Case No. 4:97cv125

ZADIE JACKSON, individually and in
her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION, and
the CITY OF KALAMAZOO, jointly and
severally

HONORABLE: Robert Holmes Bell
U.S. District Judge

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

NOTICE OF FILING REMOVAL

TO: Clerk of the Court
Kalamazoo County Circuit Court
227 West Michigan Avenue
Kalamazoo, Michigan 49007

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933

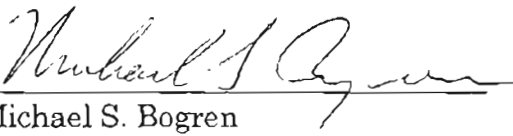
2-

PLEASE TAKE NOTICE THAT Defendants , have this day, filed their
Notice of Removal, copies of which are attached hereto, in the offices of the Clerk of the
United States District Court, Western District of Michigan, Southern Division.

RESPECTFULLY SUBMITTED.

PLUNKETT & COONEY, P.C.

DATED: August 27, 1998

BY: 

Michael S. Bogren
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Direct Dial: 616/226-8822

00590.81289 26315

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC A. OTT,

Plaintiff,

OTT delk

vs.

L.C. No. E98-2119 CK

U.S.D.C. Case No. 4:98cv125

ZADIE JACKSON, individually and in
her capacity as a member of the
Kalamazoo City Commission, the
KALAMAZOO CITY COMMISSION, and
the CITY OF KALAMAZOO, jointly and
severally

HONORABLE: Robert Holmes Bell
U.S. District Judge

Defendants.

MELVIN S. McWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
Telephone: 517/482-4928

MICHAEL S. BOGREN (P34835)
PLUNKETT & COONEY, P.C.
Attorney for Defendants
535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Telephone: 616/382-5935

NOTICE OF REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

TO: The United States District Court
Judges of the Above Court

NOW COME the Defendants, ZADIE JACKSON, THE KALAMAZOO CITY
COMMISSION AND THE CITY OF KALAMAZOO, by and through their attorneys,

PLUNKETT & COONEY, P.C., and pursuant to 28 U.S.C. 1441(b) and 1446 file this Notice of Removal pursuant to those statutes for the following reasons:

1. On or about July 28, 1998, there was commenced and is now pending in the Ninth Circuit Court for the County of Kalamazoo, State of Michigan, a certain civil action bearing docket no. E 98-2119 CK in which Marc A. Ott is the Plaintiff and the Kalamazoo City Commission, the City of Kalamazoo and Zadie Jackson are Defendants.

2. The action, as alleged in the complaint, is a suit brought under the common law and statutes of the State of Michigan, and under the statutes of the United States of America, specifically 42 U.S.C. § 1983.

3. The action filed by the Plaintiff is one which District Courts of the United States would have original jurisdiction under 28 U.S.C. § 1331 as a civil action arising under the constitution and laws of the United States of America. Specifically, Plaintiff alleges a violation of his federal rights and seeks damages under 42 U.S.C. § 1983.

4. This notice of removal is timely filed within 30 days after the Defendants received notice of this action, by way of the Kalamazoo City Attorney accepting service of the summons and complaint on behalf of the Defendants on or about August 7, 1998. This case is timely removed and is otherwise removal pursuant to the statutes of the United States of America.

5. Attached hereto and made a part hereof is a copy of the summons and complaint setting forth a claim for relief upon which the action is based by the Plaintiff against the Defendants.

6. Written notice of the filing of this notice of removal has been given to all parties as required by law, and a proof of service is attached hereto.

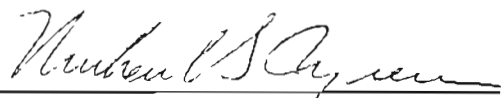
7. A copy of this notice of removal has been filed with the Clerk of the Court for the Ninth Circuit Court for the County of Kalamazoo, State of Michigan, as provided by law.

WHEREFORE, the Defendants, ZADIE JACKSON, THE KALAMAZOO CITY COMMISSION AND THE CITY OF KALAMAZOO, respectfully request that they be allowed to effect removal of the within action from the Ninth Circuit Court for the County of Kalamazoo, State of Michigan, to the United States District Court for the Western District of Michigan, Southern Division.

RESPECTFULLY SUBMITTED,

PLUNKETT & COONEY, P.C.

DATED: August 27, 1998

BY: 

Michael S. Bogren
Attorney for Defendants

BUSINESS ADDRESS:

535 South Burdick, Suite 256
Kalamazoo, Michigan 49007
Direct Dial: 616/226-8822

00590.81289.26313

Approved, SCAO

Original - Court
1st copy - Defendant
2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 9th JUDICIAL CIRCUIT	SUMMONS AND COMPLAINT	CASE NO. 98-2117 CK
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Court address 227 West Michigan Ave., Kalamazoo, MI 49007-3757 Court telephone no. (616) 383-8837

Plaintiff name(s), address(es), and telephone no(s). Marc A. Ott	Defendant name(s), address(es), and telephone no(s). Zadie Jackson 1226 Banbury Rd. Kalamazoo, MI 49001-4911 616 345-8768 Kalamazoo City Commission & City of Kalamazoo 241 W. South Street Kalamazoo, MI 49007-4976 616 337-8792
Plaintiff attorney, bar no., address, and telephone no. Melvin S. McWilliams (P26792) 417 Seymour, Suite 9 Lansing, MI 48933 517 482-4928	

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 7-28-98	This summons expires 10-27-98	Court clerk Lisa Marschke
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*This summons is invalid unless served on or before its expiration date.

- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ . The docket number and assigned judge are:

Docket no.	Name of court	Judge	Bar no
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The action ☐ remains ☐ is no longer pending.

VENUE	
Plaintiff(s) residence (include city, township, or village) Rochester Hills, MI	Defendant(s) residence (include city, township, or village) Kalamazoo, MI
Place where action arose or business conducted Kalamazoo, MI	

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

Date 7/25/98 Signature of attorney/plaintiff Melvin S. McWilliams

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

MARC A. OTT,

Plaintiff

v.

File No: 98- 21164 -CK

HON:

ZADIE JACKSON, individually and in her
capacity as a member of the Kalamazoo City
Commission, the Kalamazoo City Commission,
and the City of Kalamazoo,
jointly and severally

Defendants

MELVIN S. MCWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
(517) 482-4928

COMPLAINT AND DEMAND FOR JURY TRIAL

Comes now Plaintiff Marc A. Ott, by and through his attorney, Melvin McWilliams, and he says:

General Allegations

1. Plaintiff is a citizen and resident of Rochester Hills, Oakland County, Michigan.
2. Plaintiff was the former City Manager of Defendant municipality.
3. Defendant Zadie Jackson is a resident of the City of Kalamazoo, Kalamazoo County,

Michigan, and at all times pertinent hereto was an elected member of the City Commission for the City of Kalamazoo.

5. Defendant Kalamazoo City Commission is the elected City Commission for the City of Kalamazoo that authorized, approved and entered the Separation Agreement and General Release dated January 27, 1997 (the Separation Agreement) with Plaintiff Ott.
6. Defendant City of Kalamazoo is a Michigan municipality, organized and existing under the laws of the State of Michigan.
7. The incidents complained of arose in Kalamazoo County, Michigan.
8. The amount in controversy exceeds \$25,000, exclusive of interest and costs.
9. On January 27, 1997, Plaintiff Ott entered into the Separation Agreement with Defendants that terminated Plaintiff's employment with the city. See Exhibit A attached hereto and made a part hereof.
10. The agreement included, inter alia, Article 10, a non-disparagement clause, which states in relevant part: "In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services, in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light."
11. Article 13 of the Separation Agreement further states: "The City agrees and understands that if it breaches any of its commitments under this Agreement, then Marc A. Ott has the right to pursue any and all claims which he might have under law, this agreement,

or in equity."

12. That on or about April 9, 1998, Plaintiff by his attorney forwarded to the City of Kalamazoo a Demand for Arbitration pursuant to ¶ 18 of the Separation Agreement.
13. That notwithstanding said Demand for Arbitration, Defendants have refused to Arbitrate the allegations herein and deny that the same are arbitrable.
14. The Plaintiff demands Jury Trial of the allegations herein.

Count I: Breach of Separation Agreement

15. Plaintiff incorporates by reference and realleges herein as though fully set forth the allegations in paragraphs 1 through 14.
16. Notwithstanding the entry of the Separation Agreement on January 27, 1997, upon plaintiff's information and belief, the Defendants, by and through its agent and member Defendant Zadie Jackson and other agents, breached Article 10 of the said Separation Agreement by disseminating false, misleading, incomplete and defamatory information about Plaintiff Marc Ott and engaged in acts designed to cause humiliation and embarrassment to Plaintiff Ott, including his possible arrest and prosecution.
17. That this false, misleading, incomplete and defamatory information included allegations that Plaintiff Ott was a threat to the City Commissioners in that he was carrying a handgun and that the City Commissioners needed protection from him, and claims that Plaintiff Ott carried on his possession a handgun to a reception, which he allegedly acknowledged to a Western Michigan University Professor who allegedly felt the handgun on Plaintiff Ott's person.

18. That upon Plaintiff's information and belief, Defendant Jackson published some or all of this defamatory information to members of the Kalamazoo Department of Public Safety, the Chief of the Department of Public Safety, and others.
19. Defendant Zadi Jackson knew, or had reason to know, that the information being disseminated was false when made.
20. Defendant Jackson wilfully and intentionally made these statements to lower the esteem of Plaintiff Marc Ott in the eyes of the community by the implication that Ott is dangerous and unpredictable.
21. That the acts and conduct referenced in ¶16 includes but are not necessarily limited to initiating and continuing an unauthorized police investigation spanning several West Michigan Police Departments concerning whether Ott owned an unregistered handgun; then pushing an official investigation of this claim and leaking the same to the media in an effort to lower the esteem of Plaintiff Marc Ott in the eyes of the community, including by possibly causing him to be arrested to support the implication that Ott is dangerous, unpredictable, and a law violator; and includes her actions to extend the police investigation of Ott by falsely alleging that Plaintiff Ott carried on his person a handgun to a reception, by falsely alleging he [Ott] acknowledged to a Western Michigan University Professor that he was carrying a handgun, and by falsely alleging that the the Professor stated that he felt the handgun on Plaintiff Ott's person.
22. That as a result of the foregoing breaches of the Separation Agreement, Plaintiff Ott's job search was made exceedingly difficult by the ongoing negative publicity and prolonged investigation, in that once prospective employers having available

comparable City Manager positions became aware of the ongoing investigation of Plaintiff Ott, he was not given serious consideration.

23. That as a result of the breaches of the Separation Agreement by Defendants, Plaintiff Ott has been forced to accept a position earning considerably less than he was earning before, resulting in the following economic losses:

- a. Loss of back pay and compensation;
- b. Loss of future pay and compensation; and
- c. Interest on the lost back pay and compensation.

24. That as a result of the forgoing breaches of the Separation Agreement and the ensuing police investigation and negative publicity, Plaintiff Ott has suffered the following economic damages as well:

- a. Attorney fees to defend himself from the police investigation;
- b. Attorney fees to offset the negative media publicity.
- c. The expenses associated with trying to obtain a comparable City manager position such as travel and hotel accommodations.

WHEREFORE, Plaintiff Ott prays for:

- a. A judgement against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Costs, interest and attorney fees.
- c. Such other and further relief that the court deems proper.

Count II: Defamation

25. Plaintiffs incorporate by reference paragraphs 1 through 24.

26. The accusations that Plaintiff Ott was a threat to the City Commissioners in that he was carrying a handgun and that the City Commissioners needed protection from him, and claims that Plaintiff Ott carried on his possession a handgun to a reception, which he allegedly acknowledged to a Western Michigan University Professor, who allegedly felt the handgun on Plaintiff Ott's person, were all false allegations.
27. Defendants by and through their agent Defendant Zadie Jackson, published the remarks to third parties with knowledge of the falsity of the statements or in reckless disregard of their truth or falsity.
28. The publication was not privileged.
29. The publication of these remarks has resulted in damage to Plaintiffs' reputation in the City Managers' community and in the Kalamazoo Community and economic loss, including, but not limited to, the following:
- a. loss of comparable employment opportunities with other comparable similar municipalities;
 - b. emotional distress;
 - c. humiliation, mortification, and embarrassment;
 - d. sleeplessness and anxiety;
 - e. other damages that may arise during the course of discovery and the course of this trial;
 - f. The expenditure of significant sums on attorney fees to defend against the criminal investigation and protect his reputation in the community;
 - g. The economic losses in ¶¶ 23 and 24.

30. Defendants' statements were defamation per se, since they involved imputations of criminality to the plaintiff.

WHEREFORE, Plaintiff Ott prays for:

- a. a judgement against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.
- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

Count III: Intentional Infliction of Emotional Distress

- 31. Plaintiff incorporate by reference paragraphs 1 through 30.
- 32. Defendants' conduct as outlined above was intentional.
- 33. Defendants' conduct as outlined above was extreme, outrageous, and of such character as not to be tolerated by a civilized society.
- 34. Defendants' conduct as outlined above was for an ulterior motive or purpose, ie to cause humiliation and embarrassment to Plaintiff Ott, including his possible arrest.
- 35. Defendants' conduct resulted in severe and serious emotional distress.
- 36. As a direct and proximate result of Defendant's conduct, Plaintiff has been damaged in the manner outlined above.

WHEREFORE, Plaintiff Ott prays for:

- a. a judgement against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.

- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

IV. Racial Discrimination

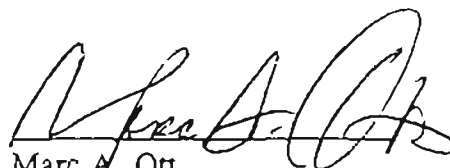
- 37. Plaintiff incorporates by reference and realleges herein as though fully set forth the allegations in paragraphs 1 through 37.
- 38. That the defendants' conduct, by and through their agent and fellow City Commissioner, Zadie Jackson, was motivated by her dislike and racial animus toward Plaintiff Ott who is an African American.
- 39. That the Defendant City Commissioners were aware or should have been aware of Jackson's dislike for Ott and her racial animus toward him, but failed to censure or take any action to control her actions as an officer and agent of the City of Kalamazoo and the City Commission.
- 40. That because of their knowledge of Defendant Zadie Jackson's racial animus toward Ott, their failure to take action to control her actions or censure her as an officer and agent of the City of Kalamazoo and the City Commission, renders them liable for her actions.
- 41. That defendants are liable to Plaintiff Ott both under provisions of Michigan's Elliot-Larsen Civil Rights Act, M.C.L. 37.2101, et sequentia, and Title 42 United States Code, § 1983.
- 42. That as a result of defendants' actions, Plaintiff Ott has suffered the damages set forth in ¶¶ 23, 24 and 29 above.

WHEREFORE, Plaintiff Ott prays for:

- a. a judgement against Defendants jointly and severally, in whatever amount the Court deems sufficient to redress his wrongs.
- b. Exemplary damages where applicable.
- c. Costs, interest and attorney fees.
- d. Such other and further relief that the court deems proper.

I, Marc A. Ott do hereby certify that I have read the foregoing and that the same is true to the best of my information, knowledge and belief.

Date: 7/22, 1998


Marc A. Ott

Date: 7/23, 1998

Melvin S. McWilliams, PC


by: 
MELVIN S. MCWILLIAMS (P26792)
Attorney for Plaintiff
417 Seymour, Suite 9
Lansing, Michigan 48933
(517) 482-4928

EXHIBIT "A"

SEPARATION AGREEMENT AND GENERAL RELEASE

The following is a Separation Agreement and General Release (the "Agreement") by and between MARC A. OTT ("Ott") and THE CITY OF KALAMAZOO, a Michigan municipal corporation (hereafter "City") regarding any and all past and present known and unknown claims and disputes (and their future effects) that have directly or indirectly arisen or could arise out of Marc A. Ott's relationship with the City and/or his separation. It is entered into this 27th day of January, 1997, by and between Marc A. Ott and the City and will be binding upon and inure to the benefit of not only the parties hereto but also their respective heirs, successors, assigns, commissioners, executives, administrators, directors, officers, agents and employees.

In consideration of the mutual promises contained in this Agreement, it is agreed as follows:

TERMS AND CONDITIONS

1. Marc A. Ott voluntarily resigns as City Manager and his employment relationship with the City will terminate effective January 27, 1997.

2. Separation Amount. The parties mutually agree that promptly following execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall pay to Marc A. Ott the total sum of Forty Seven Thousand Nine Hundred Seventy Six Dollars (\$47,976.00), minus applicable deductions, which represents six months of his current base pay as severance pay, plus a sick leave cash payout of one-half of his accumulated sick leave hours (253.5 hours), and a cash payout of his unused accrued vacation pay (444 hours).

3. Deferred Compensation. The parties mutually agree that promptly following the execution of this Agreement and the completion of the seven (7) day waiting period subsequent to execution, the City shall also deposit on behalf of Marc A. Ott into his deferred compensation account administered by the International City Managers Association 1/2 of the sum of \$4,000.00 plus 3.09% of his current salary, which represents the equivalent of one-half of Marc A. Ott's deferred compensation under his current Employment Agreement. The remaining 1/2 will be deposited on January 27, 1998 provided however if Marc A. Ott obtains comparable employment as of July 27, 1997 or thereafter, this second payment shall be reduced pro-rata for any period he is so employed after July 27, 1997. In the event Marc A. Ott obtains comparable employment after July 27, 1997 but prior to January 27, 1998, at Marc A. Ott's written request, the additional amount due will be deposited upon commencement of his new employment.

4. Conditional Additional Severance Payment. In the event that as of July 27, 1997, Marc A. Ott has not found a position comparable to his current position at a comparable salary level, the City shall at the beginning of each month that this situation continues, starting with August 1, 1997, and continuing for a period ending with a final January 1, 1998 payment, pay 1/12th of Marc A. Ott's annual base pay,

minus applicable deductions, at the beginning of each month that this situation continues, minus any income which he earns from regular employment during this period which will be set off against this monthly obligation. As soon as Marc A. Ott after July 27, 1997 obtains comparable employment, any further severance payment obligations under this paragraph shall cease. Marc A. Ott will immediately notify the City Attorney (in writing) of any employment in which he engages on or after July 27, 1997.

5. Benefit Continuance. For a period of 12 months beginning with January 27, 1997 the City shall continue coverage of Marc A. Ott on its group Health, Dental, Life, and Long Term Disability Insurance programs. These benefits shall be provided as set forth under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), with the City paying the necessary COBRA premium payments for the agreed upon period of time. In the event that Marc A. Ott obtains employer paid insurance with respect to any of these insurance coverages from another source during this period, the City obligations under this paragraph regarding any such insurance coverage shall terminate as set forth in COBRA.

6. ICMA Dues. The City will pay Marc A. Ott's International City Managers Association membership dues upon submission of the dues notice.

7. Release of Claims. In consideration of the provisions described in this Agreement, Marc A. Ott, on behalf of himself, his relatives and heirs, executors and administrators, irrevocably and unconditionally releases, waives and forever discharges the City, its commissioners, administrators, agents, directors, officers, employees, representatives, insurance carriers, attorneys, divisions, affiliates and all related parties, and their predecessors, successors, heirs, executors, administrators and assigns, and all persons acting by, through, under or in concert with any of them (collectively "Releasees"), of and from any and all claims, actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorney's fees and costs actually incurred), of any nature whatsoever, known or unknown, in law or equity, arising out of his relationship with the City and/or his separation, including, without limitation of the foregoing general terms, any claims against the City and Releasees arising from or related to his employment with the City or his separation, and any claims arising from any alleged violation by the City of any federal, state or local statutes, ordinances or common laws, including, but not limited to, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Equal Pay Act, the Retirement Income Security Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, the Elliott-Larsen Civil Rights Act, and any other employment discrimination laws, as well as any other claims based on Constitutional, Statutory, common law or regulatory grounds. The City and Commissioners provide the same "Release of Claims" to Marc A. Ott.

8. Future Suits and Proceedings. Marc A. Ott promises not to institute any future suits or proceedings at law or in equity or any administrative proceedings against the City or any of the Releasees for or on account of any claim or cause of

action arising out of his relationship with the City and/or his separation, including but not limited to any claim or cause of action described in paragraph 7, above. The City and Commissioners provide the same promise to Marc A. Ott.

9. Confidentiality. Marc A. Ott agrees that the terms and amount of settlement shall be kept strictly confidential and promises that he shall not disclose, either directly or indirectly, any information concerning this settlement to anyone, including but not limited to past, present, or future employees of the City.

10. Property, Non-disparagement, and Confidential Information. Upon the effective date of this Agreement (January 27, 1997), Marc A. Ott shall leave with or return to the City (no later than 9:00 a.m., January 28, 1997) all property, of any nature whatsoever, belonging to the City, including but not limited to originals and all copies of any keys to City buildings or offices, identification cards, badges, insurance cards (when his COBRA continuation coverage expires), documents, records, notebooks, files, correspondence, memoranda, tapes, disks and similar materials. In addition to whatever non-disclosure agreements and common law obligations Marc A. Ott has, he also agrees not to say or do anything that portrays the City, its commissioners, administrators, attorneys, employees, or services in a negative light and further agrees not to disclose confidential or sensitive information to anyone. The Commissioners similarly agree not to say or do anything that disparages Marc A. Ott, or portrays Marc A. Ott in a negative light.

11. References. The City agrees to work with Marc A. Ott and his counsel to prepare mutually acceptable references for Marc A. Ott's use in his endeavors to secure future employment.

12. Complete Defense and Indemnification. Marc A. Ott understands and agrees that this Agreement may be used by the City as a complete defense to any claim or entitlement which he or anyone else may subsequently assert against it or the Releasees for or on account of any matter or thing whatsoever arising out of his relationship with the City. The City similarly understands that this Agreement may be used by Marc A. Ott as a complete defense. Marc A. Ott agrees that he will never institute a claim or charge of employment discrimination with any agency or sue the City, or those associated with the City, concerning any claim he may have relating to his employment with the City or his separation therefrom. The City provides the same assurance to Marc A. Ott. If Marc A. Ott violates this release and sues the City or those associated with the City, he agrees that he shall pay all costs and expenses of defending against the suit incurred by the City or those associated with the City, including reasonable attorneys' fees. The City agrees that it will be similarly obligated if it sues Marc A. Ott in violation of this Agreement.

13. Recovery of Separation Payment. Marc A. Ott agrees and understands that if he breaches any of his commitments under this Agreement, then the City will be entitled to recover any money Marc A. Ott receives as part of this Agreement, as well as the right to pursue any and all claims it might have under the law, this Agreement, or in equity. The City agrees and understands that if it breaches any of

its commitments under this Agreement, then Marc A. Ott has the right to pursue any and all claims which he might have under the law, this Agreement, or in equity.

14. Materiality of all Conditions and Obligations. Marc A. Ott and the City understand and acknowledge that all of the conditions and obligations in this Agreement are material and that the non-occurrence or breach of any such condition or obligation by either of them is not allowed and shall result in the non-offending party being entitled to assert any and all rights it may have in law, equity, and/or this Agreement.

15. Complete Agreement. This Separation Agreement and General Release contains the entire agreement between the City and Marc A. Ott and there is no agreement on the part of either party to do any act or thing other than as expressly stated in this Agreement. There shall also be no modifications or amendments to this Agreement unless they are in writing, signed by all of the parties.

16. Full Knowledge and Volition. Marc A. Ott acknowledges that he has read this Agreement, that he understands its meaning and intent, and has executed the Agreement of his own free act and volition with consultation from counsel. He also acknowledges and confirms that the only consideration for his signing this Agreement are the terms and conditions stated in this Agreement, that no other promise or agreement of any kind, except those set forth in this Agreement, has been made to him by any person to cause him to sign this document and that he fully understands its meaning and intent. Marc A. Ott also acknowledges he has been advised to discuss this Agreement with his lawyer and told that in any event he should thoroughly review and understand the Agreement before acting on it. He also acknowledges that he has 21 days to execute and return the Agreement and, after he has executed this Agreement, he has an additional seven days to reconsider and revoke the Agreement, recognizing that he will not be provided anything under this Agreement until at least that seven day revocation period has expired.

17. Review and Revocation Period. Marc A. Ott is hereby offered the opportunity to have twenty-one (21) days to review and consider this Agreement. He shall have seven (7) days following the execution of this Agreement to revoke it. If Marc A. Ott wishes to revoke this Agreement, he must do so by contacting Thomas P. Hustoles, the City's Labor Counsel, Miller, Canfield, Paddock and Stone, P.L.C., 444 West Michigan Avenue, Kalamazoo, Michigan 49007, in writing within this seven-day period, which begins the day after he executes this Agreement. This Agreement shall not become enforceable until the seven-day revocation period has expired.

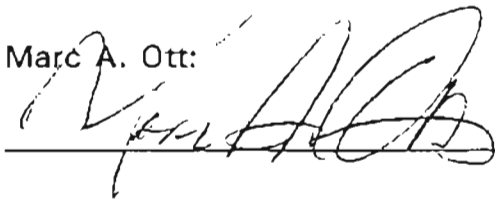
18. Action for Breach. Should Marc A. Ott or the City start any legal action or administrative proceeding, other than described below, against the other with respect to any claim waived by this Agreement, or pursue any method of resolution of a dispute other than mutual agreement of the parties or arbitration, then all damages, costs, expenses and attorneys' fees incurred by the other party as a result shall be the responsibility of the one bringing the suit or starting the proceeding. Any

claimed breach must be brought to the attention of the other party within sixty (60) days of the date the party making the claim knew or reasonably should have known of the breach, and any breach not so reported shall be untimely and waived. Notwithstanding the foregoing, the City may go directly to court to obtain injunctive relief when it believes that Marc A. Ott has breached his nondisclosure obligations and/or disclosed to third parties confidential and/or sensitive information pertaining to the City's operations or in any way breached his obligations in ¶9 or ¶10, above.

19. Acknowledgement. Marc A. Ott acknowledges that he has carefully read this Separation Agreement and General Release and understands its contents and consequences, that he has been given the opportunity to consult with an attorney of his choice, that the only promises made to him to sign this Agreement are those stated in the Agreement, that he has had sufficient time to review this Agreement, and that he is signing this Agreement knowingly and voluntarily, without any coercion, or duress and with the full intent of releasing the City, the Releasees, their successors, agents and representatives from any and all claims (and their future effects) arising from his relationship with the City and/or his separation therefrom. Marc A. Ott also acknowledges he has not relied on any representations, promises, or agreement of any kind made to him in connection with his decision to accept the separation except those set forth in this document.

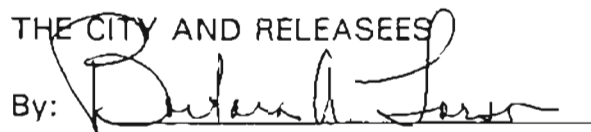
20. General Conditions. This Agreement can be executed non-simultaneously by the parties. This Agreement shall be construed in accordance with the laws of the State of Michigan. If any part of this Agreement is found to be invalid, the remainder shall still be binding, in effect, and enforceable.

Marc A. Ott:



Dated: 1/27, 1997

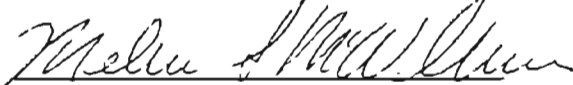
THE CITY AND RELEASEES

By: 

Its: Mayor

Dated: 1/27, 1997

EXPLAINED AND APPROVED BY:



COUNSEL FOR Marc A. Ott

Dated: 1/27, 1997

Ott failed to register handgun

3/2/97

Former city manager
apparently violated state
law after gun purchase

BY MIKE TYREE
KALAMAZOO GAZETTE

Former City Manager Marc Ott failed to register a semiautomatic handgun he purchased in 1994, an apparent violation of state law.

Ott, who as manager carried a city-issued gold badge and often referred to himself as Kalamazoo's public safety director, never completed gun safety and registration paperwork as required by law for a pistol he bought, according to state and local officials.

Failure to register a handgun is a misdemeanor crime, punishable by up to 90 days in jail and \$100 fine. The Kalamazoo Gazette was unable to reach Ott for comment last week.

City commissioners learned of Ott's failure to register the weapon in the waning hours of his nearly four-year tenure as Kalamazoo's city manager.

On Jan. 27, the day Ott's resignation was announced, Kalamazoo officials approached state police in Paw Paw and learned Ott's pistol was not registered with the state.

No record on file

"There was no record on file," said Inspector Michael MacDonald of the Michigan State Police Fifth District Headquarters in Paw Paw. "The weapon reported to me as Marc Ott's was not registered with the state."

MacDonald said city officials asked him if Ott was in violation of state law, and he advised that city attorneys contact the Michigan Attorney General's office for a ruling on Ott's authority to carry an unregistered weapon under city charter.

Kalamazoo Vice Mayor Alfred Heilman said "it was an extreme concern" when commissioners learned of the problem. The commission did not pursue it further because Ott resigned, he said.

City attorneys would not comment directly on Ott's failure to register the gun, but Deputy City Attorney A. Lee Kirk said the city charter does not supersede state law, which would require Ott to register the weapon.

Kirk would not say if the city planned to initiate

County chief assistant prosecutor, said the matter should be investigated "if there is an appearance of a violation."

"If a police agency walks through the door and submits (a case), we're going to look at it," Pangle said.

Ott bought a Beretta .380-caliber handgun with a 10-round clip from Bill Thompson, a Battle Creek police officer and federally licensed gun dealer.

"He bought a firearm from me in 1994," Thompson said. "He had a purchase permit."

Thompson said public safety Assistant Chief Raymond Ampey initiated contact with him for the Ott gun deal. He said Ampey bought an identical gun, although since Ampey was a police officer, he was allowed to buy a weapon that could hold a larger clip and more ammunition.

Ampey did not respond to a Kalamazoo Gazette reporter's telephone messages.

Thompson said then-public safety Chief Edward Edwardson signed a purchase permit which allowed Ott to buy a weapon. The purchase form contains a statement informing buyers that they are required to register the gun within 10 days, Thompson said.

"That would be his responsibility," Thompson said.

By law, Ott had to register the gun and have a safety inspection completed by either the Kalamazoo County Sheriff's Department or Kalamazoo public safety department.

Sheriff's officials said they had no record of a gun registration for Ott.

The Gazette this week sought Ott's gun registration records from the public safety department under the state Freedom of Information Act. The city found no such records for Ott.

Edwardson, now chief of the Wyoming Police Department, said Ott asked him to sign a gun purchase permit.

"My recollection is that he requested a permit to purchase and I supplied him with one," Edwardson said.

Ott also obtained a limited concealed weapons permit from the county gun board in February 1994 that allowed him to carry a weapon "to, from and during all activities associated with the position of Kalamazoo city manager."

A concealed weapons permit and gun registration are two separate issues, Pangle said. To obtain the concealed weapons permit, Ott did not have to provide information about the handgun he was



He also faces additional fourth-degree criminal sexual conduct charges as a result of the allegations of a Kalamazoo woman who was housed in the county jail during August and September 1995.

Sexual contact between inmates and jailers is prohibited by state law. Wednesday's testimony continued to expose a rift that has developed in the Kalamazoo County Sheriff's department over the case. Supporters of the former deputy say that department politics are

Please see LSK, C2



Postal employee Kenneth Moore delivers mail on Eggleston Avenue with a law enforcement escort Wednesday as local police and federal agents raid a house on that street.

until warmer weather before attacking government installations. Semear stated in the affidavit.

mant around his heavily fortified house and showed a five-gallon container of homemade Napalm he was storing in his basement, the affidavit stated.

At another meeting in early December, Blasiz mixed together chemicals and created C-4 explosive material for pipe bombs. He allegedly placed some of the mixture in a PVC pipe and capped the ends.

A week later on Dec. 11, Blasiz took the informant to the IRS building on Lovers Lane, where they allegedly discussed how to destroy the building.

"Later Blasiz was talked out of this plan by other militia who wanted to wait

in federal court. Blasiz told the informant he was a former Navy Seal and claimed membership in a paramilitary organization, according to an affidavit signed by ATF Agent Mark Semear and filed in federal court in Grand Rapids.

In late November, Blasiz took the informant to a house at 903 James in Kalamazoo, where he displayed a "stockpile of chemicals which included aluminum powder, magnesium, ammonium nitrate and gunpowder. The mixture of these chemicals can produce a high explosive," Semear reported in the affidavit.

Kalamazoo public safety officers and agents from the Bureau of Alcohol, Tobacco and Firearms raided a house at 441 Eggleston in Kalamazoo on Wednesday, an alleged "safe house" for bomb-making operated by Brendon T. "Brent" Blasiz.

Officers removed some items from the house, but would not comment on what was seized. Blasiz, 32, allegedly told a government informant that he planned to blow up several targets in the Kalamazoo area, including the Internal Revenue Service building at 5200 Lovers Lane in Portage, the federal building in Barlett Creek, var-

State police investigating Ott's failure to register handgun in 1994

By MIKE TYREE
KALAMAZOO GAZETTE

State police are investigating Marc Ott's failure to register a semiautomatic handgun the former Kalamazoo city manager purchased in 1994.

Ott bought a 380 Beretta semiautomatic handgun with a 10-round clip from a Vicksburg gun dealer and failed to register the weapon within 10 days of purchase, as required by state law.

Deputy City Attorney A. Lee Kirk said Wednesday that Ott registered the gun on March 4, two days after the Kalamazoo Gazette published an article detailing the registration problem.

Detective Sgt. James Martemucci of the Michigan State Police in Paw Paw said Wednesday he has com-

pleted interviews with some witnesses and needs to speak with others, including Ott, before wrapping up the investigation. Ott said he would need an attorney present to submit to an interview, Martemucci said.

"Once I interview Ott, I'll go down to the (Kalamazoo County) prosecutor's office and submit it," Martemucci said. He did not know when the investigation might be finalized.

Failure to register a handgun is a misdemeanor crime in Michigan and is punishable by up to 90 days in jail and a \$100 fine.

"To have a firearm, he has to register it like anyone else," Martemucci said.

One of those on Martemucci's interview list is former public safety Chief Edward Edwardson, now

chief of the Wyoming Police Department. Edwardson recently told the Gazette he signed a purchase permit for Ott in 1994 and advised him to have the gun registered and safety inspected after its purchase.

Public safety officials approached the state police on Feb. 27, one month after city officials, including public safety Chief Gary Heitrick, learned Ott may have violated state law by failing to register the weapon within the 10-day window in 1994.

The public safety request for a state police review came two days after the Kalamazoo Gazette sought Ott's gun registration records from the city under the state Freedom of Information Act.

Ott bought the weapon after he was introduced to Vicksburg gun dealer Bill Thompson by public safety

QUICK READ



Timely reading

If you're looking for something new at the library to read Sunday afternoon, don't wait until then to check it out. The Kalamazoo Public Library, 121 W. South, will be closed on Sunday, which is Easter. The library will resume regular hours on Monday. Regular hours for the central library are: Monday-Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m. and Sunday 1 to 5 p.m.

Medicaid monies

While hospitals may be the biggest over-all recipients of Medicaid dollars, their per-beneficiary costs pale when compared to services provided to developmentally disabled clients at intensive-care facilities. The average per-person spending for such clients was \$56,166 in 1995. "Medicaid is being billed for everything for people with development, disabilities," said Elizabeth Bauer, director of Michigan Protection & Advocacy. "They bill for living supports, but then they also bill for case management and the cost of the disabled person's employment too."

Getting his two cents in

This week's react, the magazine for young people that is delivered on Thursdays with the Kalamazoo Gazette, includes a letter from a Plainwell teen reacting to an earlier article on hunting. Defending hunting as a sport, John C. Keith, 17, wrote that it is a great heritage of Americans and of mankind in general. "I didn't climb to the top of the food chain to eat vegetables," his letter says in part.



Warrant sought against former city manager

BY MIKE TYREE
KALAMAZOO GAZETTE

State police have wrapped up an investigation of Marc Ott amid allegations the former Kalamazoo city manager failed to register a handgun he purchased in 1995.

A warrant request forwarded this week to the Kalamazoo County Prosecutor's Office seeks charges against Ott for possessing an unregistered firearm, said Detective Sgt. James Martenucci of the Michigan State Police Paw Paw post.

Possessing an unregistered firearm is a misdemeanor, punishable by a fine and up to 90 days in jail.

Ott took possession of a 10-round Baretta .380-caliber handgun in May 1995, but did not have the weapon inspected for safety and registered by a police agency, as state law requires, according to public documents obtained by the Kalamazoo Gazette.

Ott registered the gun in early March, days after the Gazette reported he'd failed to register the weapon.

The case will be sent to another prosecutor's jurisdiction for review, due to Ott's former ties to the community, said Robert Pangle, Kalamazoo County chief assistant prosecutor.

Seven people, including Ott, were interviewed during the investigation, said Martenucci, who said Ott was cooperative in an interview with police.

Ott has hired former Ingham County Prosecutor Donald Martin to represent him in the case.

Martin, now in private practice in Lansing, said he was aware the state police report had been passed on to the prosecutor's office, but said he knew few details and would not comment on the case.

Kalamazoo Department of Public Safety Chief Gary Hetrick asked the state police to review the Ott handgun registration situation on Feb. 28, days after the Gazette sought gun registration records from the public safety department under the state's Freedom of Information Act.

Public safety officials confirmed then that Ott had not registered his weapon with the city.

Hetrick knew about the unregistered gun a month earlier, however. Allegations that Ott hadn't properly registered the weapon surfaced on Jan. 27, when Kalamazoo city commissioners met and voted to pay Ott up to \$141,000 to resign.

City commissioners discussed the situation at the meeting, which also was attended by Hetrick and city attorneys.

July 1997

City still paying ex-city manager

He resigned six months ago and is continuing his search for a similar post.

BY MICKEY CIOKALLO
KALAMAZOO GAZETTE

The city of Kalamazoo will write Marc Ott a check for \$7,996 later this week because the former city manager has not yet landed another job.

"He's out there on the market," said City Commissioner Lance

Ferraro, who keeps in touch with Ott. "He's not goofing off, he's trying. Just like anybody else, he'd like to better himself."



Marc Ott

The Kalamazoo Gazette was unable to reach Ott for comment.

Ferraro said the former city manager would like to stay in that profession but also has considered

going to law school. "He's not going to give up. He's not that type of guy," Ferraro said.

Ott resigned Jan. 27, hours before what was expected to be a contentious job-performance review by the City Commission. Unions had accused Ott of ruling by fear and intimidation and commissioners said they were increasingly frustrated by a lack of communication from the city manager.

As part of the separation agree-

Please see **OTT, A2**

OTT

From Page A1

ment, Ott was given a compensation package ranging from \$84,983 to \$141,191, depending on whether he found another job after six months.

Sunday was the six-month mark. The city on Friday received letters from Ott and his attorney, Melvin McWilliams of Lansing, verifying that Ott has not found another job.

"As requested, this letter is

intended to serve as written verification that I have not found a position comparable to my former position at a comparable salary level."

Ott wrote to his attorney. The letter, which was copied to the city, was obtained by the Gazette under the Michigan Freedom of Information Act. "In addition, please advise

(City Attorney) Mr. (Robert) Cinabro that I have not obtained any regular employment whatsoever since my resignation as city manager. This situation is likely to continue for an unknown period of time."

The city will pay Ott \$7,996 - the rate he was earning when he left - on the first day of each month from August to January.

If he lands a job that pays more than his previous \$85,952 salary, the checks will stop. If he gets a job that pays less, the city will make up the difference until Jan. 1.

It is Ott's obligation to notify the city if he obtains employment between now and January, according to a letter Cinabro wrote to Ott's attorney.

The city's monthly payments to Ott will actually amount to

\$2,971.41 - accounting for \$386 in dental, medical, life and disability insurance and \$390.41 in deferred compensation.

The city has already paid \$87,983 in Ott's name, \$80,028.92 of which accounted for six months of salary and unused vacation and sick pay. The balance paid for six months of insurance and deferred compensation as well as Ott's 1997 membership dues to the International City Managers Association, which cost \$1,482.96.

Ott, who still lives in Kalamazoo, has been a finalist for city manager

positions in at least two cities since he resigned. He made the final 10 in Aurora, Colo., in February and the top seven in Durham, N.C., in May. Ferraro questioned whether heavy press coverage of Ott has hindered his job opportunities.

"Maybe this is one of the things that is holding him back," Ferraro said. "I don't know."

Ott is under investigation for failing to properly register a handgun that he owned while he was city manager.

The Michigan State Police last month requested a misdemeanor

warrant from the Kalamazoo County Prosecutor's office, which sought review of the case from the Allegan County Prosecutor's office, where it remains under review.

CORRECTIONS

The Kalamazoo Gazette corrects errors of fact appearing in its editions. If you know of an error, please call 388-2735 or the department editor.

No charge against former city manager Ott

8/12/97

Prosecutor says former city manager's failure to register his handgun was an oversight.

BY MIKE TYREE
KALAMAZOO GAZETTE

Former Kalamazoo City Manager Marc Ott won't be criminally charged for failing to register a semiautomatic handgun he purchased in 1995.

An Allegan County prosecutor who reviewed a state police investigative report said Ott did not act criminally when he neglected to have his .380 Baretta safety inspected as required by state law.

"... It appears that Mr. Ott had every intention of complying with the law," wrote Douglas Ketchum, Allegan County

chief assistant prosecutor, in a letter to the Kalamazoo County Prosecutor's office. "He went to great lengths to obtain all the necessary permits and forms. This was an oversight, not an intentional criminal act.

"When this oversight was brought to his attention, he corrected it promptly."

Ott registered the weapon in March, two days after the Kalamazoo Gazette reported that he had failed to complete the proper safety inspection and paperwork. The Gazette was unable to reach Ott for comment Monday.

Ketchum said Ott received a purchase permit and a concealed weapons permit prior to buying the gun, but committed a technical legal violation by not completing necessary forms after taking possession of the weapon.

"My recollection is he probably didn't fill anything out after that," he said.

Ott had sought advice on gun ownership and registration from former public safety Chief Edward Edwardson and then-Assistant Chief Gary Hetrick, Ketchum said. The city manager simply did not realize he had to complete additional paperwork, he said.

"I think it's easy for people to get confused (with the paperwork)," he said.

Kalamazoo city commissioners learned of the possible violation on Jan. 27, the day they accepted Ott's resignation.

Hetrick attended the commission's closed meeting and was informed of the gun registration problem, but did not immediately seek an investigation, waiting a month to contact state police in Paw

Paw. Hetrick did not respond to several messages from the Gazette on his voice mail seeking comment.

A state police detective interviewed Ott, as well as several other witnesses before submitting a warrant request to Kalamazoo County prosecutors.

Kalamazoo County prosecutors asked Allegan County officials to review the matter because of Ott's former standing as the city's manager.

Robert Pangle, Kalamazoo County chief assistant prosecutor, said his office "will adopt (Allegan's) decision on this."

Failing to register a handgun is a misdemeanor crime in Michigan, but Pangle said the law offers no time frame for registering weapons, making enforcement of the statute difficult.

Grace: Okay.

Grace: Okay.

hints of criminal, whoever that officer is should leave it and we'll take it from there. And that's where it ended late January until today.

Martin: Um huh.

more facts on this, were you considering that an investigation and if not, what's the fine line that you draw as to whether this was an investigation?

Martin: Two, two things. She didn't ask me specifically to go on any mission. Jackson did not. Jackson asked me some questions and I said, I can get answers to those and I can get 'um short order. Okay I felt quite frankly, two things integrity and a little bit of guts came into play here because I anticipated that maybe I'd hear from somebody here so I watched what I did very carefully to make sure that I was not violating policies.

Grace: At any time, at any time were you asked to provide any reports to anybody in reference to this?

Martin: No.

Grace: At any time did you receive any payment for this?

Martin: No.

Grace: Any and all contact and information you received or questions or conversation was all on an off duty status. Correct?

Martin: Absolutely.

Grace: At any time did you run any information through LEIN to see if the gun was registered?

Martin: Never.

Grace: Were you told whether the gun was registered or not?

Martin: Yes.

Grace: By whom?

Martin: Chief Jenkins.

Grace: Okay, that was the day you went over to interview Bill?

the ordering of the weapon for Marc Ott; and that Marc Ott did not display a badge at any time during this process.

- J. On March 13, 1997 at 9:11 a.m. I talked with Chief Jim Jenkins of the Springfield Public Safety Department. Chief Jenkins said he was contacted by a city official, whose name he would not give, and they asked him questions about gun registrations and there was discussion about a rumor that the City Manager had presented himself as a police officer in order to purchase a weapon. Chief Jenkins stated the reason he was contacted was the officer's name was supposedly Thompson. Chief Jenkins had a Thompson working for him but he knew that it was the Bill Thompson from Battle Creek. Therefore, Chief Jenkins made arrangements to obtain the information from Bill Thompson of the Battle Creek Police Department.

This city official implied that an officer, whom she trusted, would be over to talk with him. The next day Chief Jenkins got a call and a visit by an officer he would not identify. Chief Jenkins said he did not introduce the officer as a detective or as a person there in an official capacity but as an old pard from Kalamazoo who was trying to find out whether or not Marc Ott had presented himself as a police officer when he purchased a weapon. Chief Jenkins said he told Bill Thompson that this was a strictly off the record type contact and that the department was not aware of it. Chief Jenkins was referring to the Kalamazoo Department of Public Safety.

I asked Chief Jenkins if he was asked to initiate a criminal complaint if in fact they found out that Marc Ott had an unregistered gun and he stated, no. Chief Jenkins stated he was asked to run a gun registration. He did but at the same time he found that the State Police had run it so he assumed there was dual track investigation going on.

Chief Jenkins could not remember if he told the person from the City that the gun was registered or not but he said he did tell the officer that it was not registered. Chief Jenkins stated that questions had to do with the gun sold to Marc Ott and the response from Officer Thompson was that he purchased one and it

Law Offices

MELVIN S. McWILLIAMS, P.C.

Capitol View Building
417 Seymour, Suite 9
Lansing, MI 48933

Phone (517) 482-4928
Fax (517) 372-9760

May 14, 1997

Mr. Robert H. Cinabro
City Attorney
City of Kalamazoo
234 W. Cedar Street
Kalamazoo, MI 49007-5162

**RE: Commissioner Zadie Jackson
Violations of the Separation Agreement and General Release.**

Dear Mr. Cinabro,

It has come to this office's attention that Zadie Jackson has engaged in violations of the Separation Agreement and General Release between the City of Kalamazoo and Marc Ott. The full extent of the violations is unknown. However, it is known that she is the source of a claim that Marc Ott allegedly carried a gun inside of his suit jacket to a recent event in Kalamazoo at which Detroit Mayor Archer was being recognized. Commissioner Jackson has apparently claimed that Dr. Chandler, who works for Western Michigan University, told her that he felt what he thought was a gun when he hugged Marc Ott at the reception. Zadie Jackson also has claimed that Mr. Ott told Dr. Chandler that he was carrying a gun, which is utterly false. Mrs. Jackson has passed this information along to others, including the Chief of Police, and has directed that the Chief communicate the same to the State Police for inclusion in the investigation being conducted by the State Police of Marc Ott. Perhaps your office has received this information from Mrs. Jackson as well. It is to my understanding that Dr. Chandler is abhorred by the statements that Mrs. Jackson has attributed to him and has indicated that the statements are a total fabrication on her part.

If this information is true, not only is Mrs. Jackson's conduct a clear violation of paragraph 10 of the Separation Agreement and General Release, it is even more importantly an entirely new cause of action against her for defamation. If the information is true, her conduct also violates statutory and ordinance provisions prohibiting false reporting as it is totally a fabrication on her part and has no substance to it whatsoever. If the information is true, giving direct orders to the Chief of Police and other employees violates your Charter as well. Even if you believe that Dr. Chandler did say these things, Mrs. Jackson clearly intended to disparage Marc Ott by passing along something negative and having it be the subject of additional investigation and negative news reports.

If this information is true, it becomes plain that Mrs. Jackson is willing to do anything within her power to ruin Marc Ott in every way that she can, and she is willing to use others to do it. If this information is true, she is out of control and not fit to serve on the City Commission.

This letter constitutes notice pursuant to paragraph 18 of the breach of the non-disparagement provisions of paragraph 10 by Mrs. Jackson. Additionally, as indicated above, the allegations she is making are defamatory and totally fabricated and therefore constitutes a separate cause of action against her, the redress of which is not restricted by the Separation Agreement and General Release. If this information is true, given Mrs. Jackson's malicious and outrageous conduct, it is our intent to pursue Mr. Ott's legal remedies in this matter to the full extent allowed. Obviously the Commission needs to address this matter as well, because by her conduct, if this information is true, she has fundamentally undermined and violated the letter and spirit of the agreement that we worked hard to reach. If you determine that any of this information is not true, I request that you advise this office right away.

Please advise if you have any questions.

Sincerely,



Melvin S. McWilliams

Attorney at Law

MSM/jlb

cc: Marc Ott



DEPARTMENT OF PUBLIC SAFETY
215 W. Lovell Street
Kalamazoo, Michigan 49007-5273
(616) 337-8120

April 28, 1997

Captain Richard Dragomer
Michigan State Police District #5 Post
43225 60th Ave.
Paw Paw MI 49079

Dear Capt. Dragomer:

On February 28, 1997, I forwarded a letter to you in which I requested that the Michigan State Police investigate an alleged violation concerning the possession of an unregistered firearm by former Kalamazoo City Manager Marc Ott. I want you to know that I sincerely appreciate your assistance with this matter.

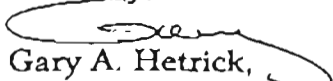
I have received additional information concerning Mr. Ott and this firearm that I would like to bring to your attention. I have been informed by Kalamazoo City Commissioner Zadie Jackson of a conversation that she had with Ralph Clark Chandler Ph.D. Professor of Public Administration at W.M.U. Dr. Chandler relayed to Ms. Jackson information regarding a contact he had with Mr. Ott. Dr. Chandler is an acquaintance of Mr. Ott.

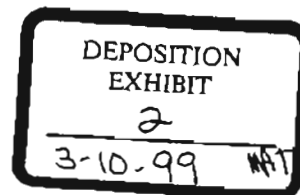
Dr. Chandler advised Ms. Jackson that he saw Mr. Ott at a reception sponsored by the local Democratic Party that was held to honor Detroit Mayor Dennis Archer who was speaking at W.M.U. At the reception they embraced and Dr. Chandler felt what he is confident was a gun being carried by Mr. Ott. I am advised that Dr. Chandler questioned the carrying of a gun by Mr. Ott to which Mr. Ott replied something to the effect that he had a lot of enemies.

In light of the fact that MSP has conducted an investigation into the unregistered gun claim, I would request that you include this new information as part of the investigation.

I appreciate your assistance with this matter.

Sincerely,


Gary A. Hetrick,
Chief of Public Safety



Law Offices

MELVIN S. McWILLIAMS, P.C.

Business and Law Center
121 East Allegan
Lansing, MI 48933

Phone (517) 482-4928

Fax (517) 372-9760

March 6, 1997

Via Federal Express Overnight Mail

Mr. George Arwady,
Publisher
Kalamazoo Gazette
401 South Burdick St.
Kalamazoo, MI 49007

James R. Mosby, Jr.,
Editor
Kalamazoo Gazette
401 South Burdick St.
Kalamazoo, MI 49007

Mike Tyree,
Reporter
Kalamazoo Gazette
401 South Burdick St.
Kalamazoo, MI 49007

Gentlemen:

I represent Marc Ott who, as you know, recently ended his tenure as City Manager for the City of Kalamazoo. Please be advised that your article "Ott failed to register handgun" appearing in the Sunday edition of March 2, 1997, authored by Mike Tyree, is libelous and defamatory toward Mr. Ott. This article, paints my client, without justification, as an apparent criminal, and has caused him considerable embarrassment, mental anguish, and severely injured his reputation. It is tragic for Mr. Ott, who was out of town all of last week, to have to come back to Kalamazoo and be faced with such an article. Please be advised that we intend to hold the Kalamazoo Gazette and Newhouse (Booth) Newspapers liable for this defamation of Mr. Ott. This should be a non-issue, and had you done your homework, you would have not taken such a non-issue and presented it as a newsworthy story and with a smugness as to its veracity.

Had you done your homework on this item prior to your publication, you would also have known that the state gun registration provision does not apply to members of police agencies. You would also have known and reported that the Kalamazoo Charter designates the City Manager as the Director of the Department of Public Safety. Perhaps you knew this but simply chose to not report that this Charter provision may have exempted Mr. Ott from the registration requirement.

Likewise, had you done your homework prior to publishing your article, or discussed the matter with Kalamazoo County Sheriff Tom Edmonds, you would have known and reported that Sheriff Edmonds deputized Mr. Ott as a Special Kalamazoo County Deputy Sheriff prior to his gun purchase in 1994, which also may have exempted him from the registration requirement of state law. Under these circumstances, your leap to conclude that he purchased the handgun in violation of state law is misplaced. There are enough quirks in the gun registration law that any law abiding citizen can be confused and mislead as to whether they are in compliance with the law. If there was ever an issue about Mr. Ott's compliance with the requirements of state law, it would have been extremely easy for the sources that brought this to your attention, to have

Kalamazoo Gazette


Page 2

March 6, 1997

brought it to Mr. Ott's attention. Given the exemptions in the law and Mr. Ott's then status as Director of the Kalamazoo Department of Public Safety, a duly authorized police agency, and his then status as a Special Kalamazoo County Deputy Sheriff, for another duly authorized police agency, Mr. Ott's purchase was not in violation of the law, contrary to your article, and his purchase was not the "apparent violation of state law" as insisted in the Tyree article.

On behalf of Mr. Ott, I do hereby demand a public retraction and correction of this article and any follow-up articles, if any, appearing subsequent to the original. The retraction and correction must be given the same or greater prominence and frequency of publication as the original article, and any follow-up articles. We request such retractions begin not later than Sunday, March 9, 1997. Mr. Ott reserves his right to pursue his legal remedies.

Sincerely,


Melvin S. McWilliams
Attorney at Law

MSM/rlb

cc: Marc Ott

Kalamazoo Gazette

401 S. Burdick St., Kalamazoo, MI 49007 (616) 345-3511

Feb. 25, 1997

Capt. Daniel Weston
Services Division
Kalamazoo Department of Public Safety

Capt. Weston:

Under provisions of the Michigan Freedom of Information Act, Public Act No. 442 of 1976, I am requesting copies of the following:

Any and all documents detailing handgun registration, purchase permit requests, and/or handgun inspections involving Marc A. Ott and the Kalamazoo Department of Public Safety.

Specifically, I am requesting documents which would indicate Marc A. Ott as a handgun purchaser and the Kalamazoo Department of Public Safety as the registration/inspection agency.

I also request any documents which would indicate departmental registration/inspection of handguns purchased by Raymond Arpey.

I am prepared to pay reasonable search and duplication fees in connection with this request. However, the FOI Act provides for waiver or reduction of fees if disclosure could be considered as "primarily benefiting the general public."


As a reporter for the Kalamazoo Gazette, I plan to use the information I am requesting as the basis for a planned article. Therefore, I ask that you waive all search and duplication fees.

If you choose not to waive any fees, please contact me before incurring any charges.

If you have any questions regarding this request, you may call me at 380-8413.

Thank you for your assistance, and I will look forward to receiving your reply.

Sincerely,


Mike Tyree
Staff Writer
Kalamazoo Gazette
401 South Burdick
Kalamazoo, Michigan 49007

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(END)

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Kalamazo

Monday, November 6, 1995

Kalamazoo

New leaders may signal a fresh start with Ott

BY ED FINNERTY
KALAMAZOO GAZETTE

The election of a new Kalamazoo City Commission Tuesday may improve its uneasy relationship with City Manager Marc Ott, whose actions one commissioner says are tolerated because Ott is black.

Problems between Ott and some current commissioners were aired in January when Ott called for the commission to publicly assess his performance.

Commissioners Sally Appleyard, Curtis Haan, Zadie Jackson and Barbara Larson all complained about communications with the manager, saying Ott had cut off their contact with other employees and didn't brief them on issues until days or even hours before commission meetings.

Jackson said she has been frustrated enough with Ott to want to fire him.

"If my administrative assistant did that to me, I'd fire him. But I have to have three other people and, like it or not, we still live in a society that's afraid to do it because he's black. There's not the guts to do it," said Jackson.

"It has nothing to do with the color of his skin. It's the quality of what he does. I think others have backed off because he is black."

Other commissioners deny that Ott's race has dictated how they treat him.

But several have said privately that Ott "played the race card" when he called for public talks with commissioners over his performance in January. The audience had a far greater number of blacks than usually attend meetings and some, such as former mayor Beverly Moore, spoke in Ott's defense.

Ott said he did not orchestrate the turnout at the meeting or play a "race card."

At least five new commissioners will be elected Tuesday as only Jackson and Larson, both completing their first terms, are seeking re-election.

Appleyard, Jackson and Haan each gave Ott poor

the
VOTE
NOV. 7, 1995

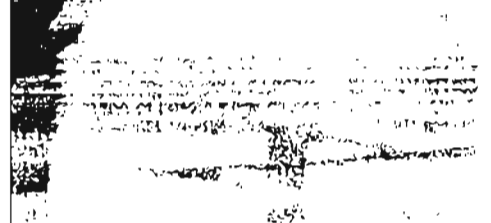


Mark
Ott



Zadie
Jackson

Israe



Leah Rabin, center, widow of Israeli Prime Minister, surrounded by people at the Knesset in Jerusalem on Sunday.

Country thrust i

BY ETHAN BRONNER
THE BOSTON GLOBE

ELECTION

From Page A1

Ott also said he doesn't "know how to respond" to Jackson's remarks about his race.

"I am the city manager of Kalamazoo and I really don't know what my race has to do with that," he said.

"As city manager I am either performing my job well or I'm not," he said.

"I think that anyone who would raise the race issue ... is out of touch with what I think are the sentiments of the kind of people we have here in Kalamazoo."

Vice Mayor Alexander Lipsey, who with Commissioner Robert Straits has been a strong supporter of Ott, said a commissioner "couching this as a racial thing" is unfair.

"If Bob (Straits) or I felt there was a need to change managers," Lipsey said, "we would have enough fortitude to be able to do it."

Ott got high marks for his performance in February from Straits, Lipsey, Larson and Mayor Edward Annen Jr., earning a "satisfactory" overall score of 7.2 and a \$5,266 raise.

"He's a very intelligent man. I think he's got a lot of great ideas," Larson said. "I think it's just how he communicates ... I think he will see the light and change."

Said Ott: "I plan on continuing what I have always done."

"Communications is a two-way street ... I have always, I remain now, and I will in the future be open to doing all that I can to assure that there are good communications between the mayor, commission and the city manager."

The next commission won't include any of the seven members who were serving when Ott was named city manager in February 1993.

Ott's tenure began on a controversial note when the commission scuttled a national search and promoted Ott from deputy manager. He was named successor to James Holgersson in a 5-2 vote.

Annen, who was then vice mayor, and Haan opposed the appointment, calling it a power play engineered by Moore, who was then mayor, and other commissioners.

"It's probably a good opportunity for Marc to have a new commission come on and let them make their own judgement on him," Straits said.

Candidates have talked about relations between the commission and city manager during the campaign. Most have said the new commission should try to bury the hatchet with Ott and concentrate on working as a team.

"I see it as an opportunity to work with at least five new city commissioners who I'm sure will come ... with a great deal of energy and enthusiasm," Ott said.

*I plan on
continuing what
I have always
done.'*

Mark Ott
City manager



President Clinton and Israeli Ambassador Yonatan Netanyahu place a wreath on a memorial for slain Israeli Prime Minister Yitzhak Rabin in Washington. First lady Hillary Rodham

RABIN

From Page A1

under a bright Jerusalem sun: "Now it falls to all of us who love peace and all of us who loved him to carry on the struggle for which he gave life and for which he gave his life."

Clinton's tribute took a personal tone for the man he called a "chaver," Hebrew for friend. He affectionately recalled Rabin's lack of pretense and formality. Rabin, who always preferred the company of gruff soldiers to that of diplomats, had come to a black-tie dinner in Washington in September without the black tie.

"So he borrowed one, and I was privileged to straighten it for him," said Clinton, wearing a black skullcap. "To him, ceremonies and words were less important than deeds."

Rabin's widow, Leah, who had wept through most of the speeches, smiled at hearing Clinton's recollection.

The most touching eulogy came from Rabin's granddaughter, Noa Ben Artzi, who said she wanted to speak of the man, not the peace-maker.

"You are our hero, lone wolf," the red-haired, freckled young woman said, weeping as she spoke of the gruff, intensely private man.

"You were so wonderful," she said. "Ones greater than I have eulogized you, but none knew the softness of your caress as I. For that half-smile of yours that always said everything, the smile that is no longer there. There is no feeling of revenge in me for the pain does not allow the space."

Leaving the podium in tears,

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CORRECTIONS

The Kalamazoo Gazette corrects errors of fact appearing in its editions. If you know of an error, please call 388-2735 or the department editor.

Some editions of Friday's Gazette incorrectly listed an age for Maria Mungula, who was pictured on Page C1 eating lunch on the Kalamazoo Mall with her 5-year-old relative, Bradley Maungula.

An election guide on Page B8 in Sunday's Gazette incorrectly listed the occupation of John Zull, a candidate for Portage City