

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
THIRD DIVISION CIVIL BRANCH
CIVIL ACTION NO. 09-CI-0219

DORIS ZIRBES

PLAINTIFF

VS.

LEXINGTON- FAYETTE URBAN
COUNTY GOVERNMENT

DEFENDANT

AMENDED COMPLAINT

JURISDICTION

1. The Plaintiff, Doris Zirbes, is a resident of Scott County, Kentucky, and brings this action against the Defendant pursuant to KRS 61.103 (2).

FACTS

2. Officer Zirbes was, at all times mentioned herein, a sworn law enforcement officer with the Lexington-Fayette Urban County Government (herein "LFUCG"). Officer Zirbes has been employed with the LFUCG Division of Community Corrections (also referred to as Fayette County Detention Center) since May, 1998.

3. Officer Zirbes, who is sworn to protect the public, primarily handles prisoner intake and processing after individuals are brought to the LFUCG Division of Community Corrections.

4. The LFUCG Division of Community Corrections is a governmental division of LFUCG that operates under the authority and supervision of LFUCG.

5. Officer Zirbes had a “satisfactory” to “above average” annual performance review rating on her annual ratings during her employment with LFUCG with little disciplinary action on her record until August, 2007.

6. On August 16, 2007, Officer Zirbes was notified in writing that she was receiving counseling for having contact with an outside government agency and she was instructed in writing not “*to contact any outside agency, or any public entities for the purpose of providing information.*”

7. Officer Zirbes was also verbally instructed and was put on notice at this time in a meeting that she was not to cooperate in the future with any Outside Government Agencies on investigations into misconduct occurring at the Fayette County Detention Center.

8. In August, 2008, Officer Zirbes recognized a State Pre-Trial Officer, F. B., working at Division of Community Corrections, was inappropriately given complete access to LFUCG detention records and the State criminal record system database while working in the Jail.

9. Officer Zirbes determined that Pre-Trial Officer, F.B., was a multiple convicted felon, with an extensive felony criminal conviction record which included: Possession and Trafficking of Controlled Substances; Forgery; Receiving Stolen Property, Burglary, and Persistent Felon Status. F.B. also had an extensive Misdemeanor conviction list and several parole violations.

10. Officer Zirbes determined that F.B. was being complete unsupervised access to confidential and secure N.C.I.C. and LINK police databases, which is

against State and public policy as F.B. is not entitled to access those databases as he is a convicted felon and was still on parole through August 12, 2008.

11. Officer Zirbes determined that F.B. was given responsibilities as a Pre-Trial officer that included meeting with new inmates, reviewing the facts regarding their arrests and their criminal history, and then making bail recommendations to Fayette County Judges.

12. Officer Zirbes believed that allowing F.B., a multiple convicted Felon, who was still on parole supervision, access to confidential law enforcement records was a violation of State policy, regulations and laws, and reported such information to representatives of the LFUCG Police Department.

13. Officer Zirbes met with two LFUCG Police Detectives to discuss the issues that she believed to be violations of policy, procedure, and law in August, 2008.

14. Officer Zirbes specifically reported the following policy/security violations during that meeting: that F.B. was given Fayette County Judges' private home and cell phone information and that the Fayette County Judges were not informed a convicted Felon on parole had access to their private personal information, which is a security violation; Officer Zirbes reported that F.B. was misusing law enforcement databases, LINK and NCIC, to access information on admitted Female Inmates and then meeting with them in private for personal reasons at the Fayette County Detention Center; That F.B. was given security clearance at the Fayette County Detention Center to move around freely without any supervision; and she reported all the violations of improper access to confidential police databases, LINK and NCIC by a convicted Felon.

15. The division of LFUCG police was not aware a convicted felon had such access to confidential information and immediately began investigating F.B.

16. The State Police became involved and ordered that F.B. be suspended all access to the LINK and NCIC system immediately due to security violations.

17. F.B. complained to LFUCG Community Corrections Directors that Officer Zirbes complaints started a police investigation into him that was interfering with his access to inmates, the secure law enforcement database, and his access to Fayette County Judges' personal information.

18. On October 30, 2008, Officer Zirbes was notified Fayette County Detention Director, Ronald Bishop, that an Internal Affairs Investigation had been opened against Officer Zirbes for disclosing information to outside agencies about F.B.

19. Specifically, Officer Zirbes was notified that she being investigating for misconduct for reporting to the Police Department information that a multiple convicted felon was improperly given access to confidential law enforcement records.

20. On December 9th, 2008, Officer Zirbes was given an Oral Warning for disclosing "personal background information concerning an employee of Pre-Trial Services to others resulting in a disruption of the employees work".

21. Said disciplinary action was placed in her personnel file and was given to her despite her duty as a sworn law enforcement office to protect the public from harm.

22. On December 9, 2008, Officer Zirbes was also notified that she was being transferred in violation of the collective bargaining agreement to another work shift for “going outside of your chain of command to deliver personal information pertaining to a Pre-Trial employee.”

23. Officer Zirbes was informed in writing that she was losing her tenure and being transferred to another shift because F.B. did not want her interfering in his work.

24. The transfer in violation of the collective bargaining agreement and was known by her Superiors to impact Officer Zirbes ability to maintain her employment because she is a Parent that relied on her tenured schedule.

25. On December 9, 2008, convicted felon, F.B., approached Officer Zirbes and began yelling at her in front of room full of people.

26. During this time period, F.B. also began interfering in Officer Zirbes work in prisoner intake by continuing to come around her work area to harass and annoy her. Department of Corrections took no action to discipline F.B and continue to allow him unsupervised access throughout the jail facility.

27. On December 18, 2008, Officer Zirbes was given a written reprimand for unprofessional behavior after she reacted in tears to F.B.’s continued workplace harassment of her.

28. There has been no disciplinary action taken against F.B. for his malicious behavior to Officer Zirbes or for his improper access to confidential State Police databases.

29. On December 23, 2008, Officer Zirbes was notified that she was being demoted and stripped of her rank as Corporal for reporting information to outside agencies about F.B.

30. During this time period, Officer Zirbes began communicating with Commonwealth Attorney, Ray Lawson, at his request, about the continued security violations and policy violations being committed by F.B. At this time and as of today, F.B. was still permitted access to the law enforcement database despite the Order from State Police to cut his access off to those databases

31. Officer Zirbes disclosed to Commonwealth Attorney Lawson, that F.B. calls into the LFUCG Division of Community Corrections on his off days to get information on Female inmates and that he continues to improperly have unsupervised access to the Jail computer where he can change charges, bonds, and biographical information on inmates in the system on current or past inmates, including himself.

32. Officer Zirbes also reported to Attorney Lawson's office that F.B. was taking female inmates into secluded locations in the jail for private meetings that sometimes lasted up to three hours, and that there were concerns among the jail staff that F.B. was misusing his position of authority to improperly access female inmates.

33. Officer Zirbes also informed Attorney Lawson's office that F.B. was placing female inmates on drug testing without Court required permission. Said decision by F.B. to have female inmates go on drug screening allows their release from Jail without Court approval.

34. On January 9, 2008, Officer Zirbes notified Commonwealth Attorney Larson via e-mail of the continued policy and security violations that F.B. was engaged in the Fayette County Detention Center.

35. Said continued improper access permitted to F.B. can compromise all the pending and past criminal cases in the Fayette County Commonwealth's Attorney's office and could placed the public at risk.

36. On January 13, 2009, Officer was removed from work shift and placed on Administrative Leave by Director Bishop.

37. On January 14, 2009, Officer Zirbes was informed by letter that she was being investigated by Internal Affairs for disclosing information about security violations and improper record access to the Commonwealth Attorney.

38. On January 14, 2009, Officer Zirbes talked to LFUCG Internal Affairs Captain Carter who informed her that Director Bishop wanted Officer Zirbes disciplined for her disclosing policy and safety violations to outside agencies.

COUNT I
(Whistleblower Statute)

39. Plaintiff incorporates as if fully restated all of the allegations previously written.

40. That Plaintiff, Doris Zirbe, at all times mentioned herein, was employed by LFUCG as a sworn law enforcement with a duty under the law to protect the public, and as such, was an employee protected under the Kentucky Whistleblower Act.

41. That Officer Zirbes reported to the LFUCG Police Department information concerning law enforcement safety and policy violations indentified in paragraph 14.

42. As a result of disclosing information to the LFUCG Law Enforcement Agency, Director Bishop retaliated against Officer Zirbes by placing Officer Zirbes under an Internal Affairs investigation for malicious conduct which resulted in a strip of rank, a transfer of her tenured work shift, and disciplinary findings placed in her employment file.

43. As a result of such disclosures and subsequent retaliation, Officer was disciplined in violation of K.R.S. 61.102, which is more commonly known as the “Whistle Blower” statute.

COUNT II
(Whistleblower Statute)

44. Plaintiff incorporates as if fully restated all of the allegations previously written.

45. That Officer Zirbes reported and made good faith disclosures regarding jail security and criminal case integrity violations to the Commonwealth Attorney Ray Lawson, Fayette County’s Chief Law enforcement official, as identified in paragraphs 30-33.

46. As a result of disclosing information to the Attorney Lawson, Director Bishop retaliated against Officer Zirbes by placing her on indefinite leave and started an internal affairs investigation against her for misconduct for disclosing violations of law/policy/ethics to outside agencies.

47. As a result of such disclosures and subsequent retaliation, Officer was disciplined in violation of K.R.S. 61.102, which is more commonly known as the “Whistle Blower” statute.

COUNT III
Retaliation (KRS 61.102/61.103(4))

48. Plaintiff incorporates as if fully restated all of the allegations previously written.

49. In early 2009, between the months of January and May, Plaintiff was approached by a female inmate who had informed her and two other Correctional Officers that a Male Correctional Officer was making inappropriate comments to her and writing personnel letters to the inmate.

50. Plaintiff advised the inmate that the best course of action was to take her harassment complaint to Inmate Services and that she could not investigate that matter.

51. Several months later, in early September of 2009, Plaintiff was notified that she was being investigated for failing to report the allegations of the inmate referenced above to her chain of command.

52. Plaintiff testified about her whistleblower complaint allegations in a deposition on September 8, 2009.

53. On September 10, 2009, Major Michael Korb sent a recommendation to Ron Bishop that Plaintiff be charged with her second count violation of inefficiency and called for either a “suspension of 128-160 hours or dismissal depending on the circumstances”, despite her commanding officer’s (Capt. Hall) recommendation of only an Oral Warning.

54. On September 15, 2009, Ron Bishop issued Plaintiff a Suspension of 8 hours (discipline attached as Exhibit 1).

55. Plaintiff's level of discipline was enhanced to that of a suspension from an Oral warning due to the earlier discipline Plaintiff received for reporting Felon Baker's misconduct in accessing LFUCG jail databases as referenced in Count I of the Complaint.

56. Suspending Plaintiff for failing to report her whistleblower disclosures to her chain of command before reporting them to an appropriate agency is in violation of the 'Whistleblower Statute' since "No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence."

57. The two other Correctional Officers who the inmate referenced in paragraph 49 were only given "Coaching and Counseling" for the same alleged offense as that of Plaintiff.

58. Plaintiff has received continued retaliation for filing a Whistleblower action and given her deposition in an official proceeding.

WHEREFORE, the Plaintiff respectfully prays and demands on all Counts as follows:

- A. For trial by jury;
- B. For reinstatement of all tenured employment benefits with the LFUCG Division of Community Corrections and any negative evaluations be stricken from her personnel file;
- C. For compensatory and punitive damages;
- D. For reasonable attorney fees and costs pursuant to KRS 61.990(4);

E. For any and all other relief to which the Plaintiff may appear entitled.

WOLNITZEK & ROWEKAMP, P.S.C.

BY: _____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the following this 7th day of October 7, 2009 by U.S. Mail, postage prepaid:

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