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JUDGE JASON WITCHER,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, MERCER COUNTY
Plaintiff,	:	
	:	DOCKET NO: MER-L-
v.	:	
	:	Civil Action
STATE OF NEW JERSEY, THE	:	
ADMINISTRATIVE OFFICE OF THE	:	COMPLAINT WITH JURY DEMAND
COURTS and JOHN DOES (1-5) and	:	
(6-10)	:	
	::	
Defendant(s)		

Plaintiff, Judge Jason Witcher, residing in the State of New Jersey, by Complaint against Defendant, says:

INTRODUCTION

Plaintiff brings this suit against the State of New Jersey, Administrative Office of the Court (hereinafter referred to as the “AOC”) alleging that Defendant retaliated against him for engaging in protected conduct and failed to provide him with a medical accommodation all in violation of the New Jersey Law Against Discrimination (“LAD”). Plaintiff further brings a claim that he was constructively discharged from his employment because of Defendant’s conduct.

PARTIES

1. Plaintiff Judge Jason Witcher was, at all times relevant herein, an individual

residing in the State of New Jersey and a Municipal Court Judge in the State of New Jersey.

2. Defendant was, at all times relevant herein, a State created entity, operating in the State of New Jersey with its offices at the Richard J. Hughes Justice Complex, 25 Market Street, Trenton, NJ.

3. Defendant John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their acts, are answerable to the Plaintiff for the acts set forth herein.

Factual Allegations

A. Background of Plaintiff's Judicial Career

4. Plaintiff has been working as a Municipal Court Judge since 2010.

5. Plaintiff currently works as a Judge in Bridgeton Joint Municipal Court, Millville Municipal Court, Penns Grove Municipal Court, and Carneys Point-Pennsville Municipal Court. In 2017, he was appointed as a Judge in Millville Municipal Court ("MMC").

6. Defendant is a joint-employer of Plaintiff, as defined pursuant to the LAD, because Defendant had the authority to control and make decisions regarding Plaintiff's employment at the municipalities.

7. In particular, Defendant had the authority to supervise Plaintiff, discipline Plaintiff, cancel Plaintiff's court sessions, grant or deny Plaintiff an accommodation, suspend Plaintiff from serving as a Judge, change Plaintiff's schedule and make other decisions pertaining to Plaintiff's employment as a Judge.

8. Plaintiff was the first Black Municipal Court Judge in both Cumberland and Salem Counties and is currently the only minority judge in the Vicinage XV municipal courts.

9. During his entire career as a Judge, Plaintiff has been recognized as one of the most respected and honorable Municipal Court Judges in the State.

10. This high opinion of Plaintiff was shared by his colleagues on the bench and in the bar, by members of the community and by litigants for his impact in the court and community.

11. Plaintiff spent his entire life dedicated to uplifting people, his entire career built on a reputation of courtesy, fairness, compassion and justice.

12. Plaintiff has sacrificed and worked diligently to deserve his well-earned reputation.

13. As a result of the conduct engaged in by Defendant, Plaintiff was constructively discharged and will leave his judicial assignments as of August 1, 2023.

B. Operations of the Court After Covid

14. At all times relevant herein, MMC held court sessions twice per week.

15. Of those dates, one session was in-person and one session was virtual.

16. The in-person sessions for MMC were held on Mondays and the virtual sessions were held on Wednesdays.

17. Of the two in-person sessions, one session had a live interpreter.

18. No interpreter was scheduled for the virtual sessions.

19. Language line interpreter services were supposed to be available for virtual sessions.

20. The New Jersey Supreme Court entered an Order on November 18, 2021, which it updated on October 27, 2022, regarding “Future of Court Operations.”

21. MMC cases for the periods in question were scheduled prior to the October 27, 2022, Supreme Court Order.

22. Paragraph 2 of the October 2022 Order stated that, “Cases involving DWI, refusal to submit to a breathalyzer test, disorderly persons, domestic violence, and other matters that involve a reasonable likelihood of a jail sentence or loss or suspension of license,” generally proceed in-person unless all the parties consent to a virtual hearing.

23. Paragraph 3(b) stated that, “in person may proceed at the discretion of the court” for “matters that require on-site interpreting services; matters in which a party has failed to appear for, been unable to participate in, or neglected to respect the solemnity of a prior virtual proceeding.”

24. All other matters are generally to proceed virtually.

25. Of note, Paragraph 3(b) stated the Judge has the discretion to determine if a litigant must appear in-person when that person has failed to appear at previous proceedings.

26. A litigant should not be automatically scheduled for an in-person hearing because that person failed to appear for previous hearings unless the Judge stated so.

C. Plaintiff Informed of Discriminatory Conduct Against Litigants

27. In the spring of 2022, the Bridgeton Certified Municipal Court Administrator, Marie Keith, believed MMC was scheduling in-person court appearances based on litigants’ Hispanic¹ last names.

28. Keith temporarily assisted MMC and noticed Hispanic litigants were being scheduled for in-person court appearances based on their last names.

29. In or around the Fall of 2022, Plaintiff noticed there was not a Spanish-speaking interpreter for litigants who appeared virtually at MMC.

¹ Throughout this Complaint, Plaintiff will use the term “Hispanic” to refer to Hispanic, Latino or LantinX individuals.

30. Plaintiff noticed that virtually all of the Spanish-speaking litigants were scheduled for the in-person days when an interpreter was present, which occurred two-times per month.

31. Plaintiff presided over virtual court sessions and did not see interpreters or interpreting services used and did not encounter Spanish-speaking litigants during those sessions.

32. This was a problem because all Spanish-speaking litigants were then required to appear on these two in-person days for an interpreter, while non-Spanish-speaking litigants had the option to appear virtually.

33. Therefore, Plaintiff believed this policy of only scheduling interpreters on the two in-person days had a disparate impact on Hispanic litigants, because they were required to appear in-person, which could be a significant inconvenience, while non-Hispanic litigants had the option of appearing virtually, from their homes.

34. Plaintiff sought an explanation for the discrepancy from the Certified Municipal Court Administrator at MMC, Kimberly Hamlyn, but she did not provide an explanation.

35. As a result of this discrepancy, Plaintiff instructed Hamlyn to reschedule cases to ensure fairness and equal access was available to all litigants.

36. To his knowledge, Hamlyn did not do anything to comply with Plaintiff's instruction.

37. Because Hamlyn ignored Plaintiff's request, on December 3, 2022, he told the City of Millville for the second time, about the disparity.

38. Plaintiff also noticed that Hispanic litigants appeared disproportionately in-person compared with non-Hispanic litigants.

39. Plaintiff brought this to the attention of Hamlyn.

40. She responded that she was not doing anything to filter Hispanic litigants to in-person court dates, which, according to Keith, was not true.

41. After Plaintiff's discussion with Hamlyn, he noticed that Hispanic litigants continued to appear disproportionately at the two in-person sessions with Spanish-speaking interpreters compared with non-Hispanic litigants.

42. Immediately following a November court session, Plaintiff called a meeting with Hamlyn, and the MMC Deputy Court Administrator, Amber Oliver.

43. The purpose of the meeting was to determine and evaluate scheduling procedures.

44. Hamlyn invited the Millville Business Administrator, Ray Compari, to join the meeting.

45. Hamlyn told Plaintiff cases were not being scheduled based on Hispanic surnames, but she could not explain why almost all Spanish-speaking cases were being filtered into the two in-person sessions with interpreters.

46. Hamlyn stated she did not handle the scheduling, nor set the policy or instruct the staff on how to schedule.

47. Based on Keith's representation and statement to Defendant, neither of these statements by Hamlyn appear to be true.

48. Compari requested a follow-up because he was concerned the issue could subject the City to civil rights litigation.

49. Plaintiff met with Business Administrator Compari, Councilman Kirk Weber and Human Resources representative Kim Shapiro at 9:00 a.m. on Saturday morning, December 3, 2022.

50. Plaintiff reiterated his concern because the dockets continued to have a disproportionate amount of Hispanic litigants scheduled for in-person sessions versus virtual sessions.

51. The MMC had Language Line interpreter services available for virtual court sessions for litigants who did not speak English or spoke English as a second language.

52. However, Language Line was never needed because there were no Spanish-speaking litigants that needed the services during video court sessions.

53. Keith corroborated this in her statement to Defendant.

54. Keith said, “I am unaware of interpreting services available in Millville other than the in-person interpreting two days per month. I was not advised of the availability of Language Line during my time providing assistance to the Millville Municipal Court.”

55. In preparation for his meeting with Hamlyn, Presiding Judge North and Division Manager Ashley Wolk regarding the discriminatory impact of the scheduling, Plaintiff requested the Language Line records from Hamlyn.

56. Plaintiff wanted to determine if Language Line was being used or offered to Spanish-speaking litigants at virtual court sessions.

57. Plaintiff copied Presiding Judge Tom North and Division Manager Ashley Wolk on the request.

58. Hamlyn refused to provide the complete itemized statements and instead provided a partial portion of the statements and would not provide the itemized portion.

59. Neither Judge North nor Wolk intervened to assist in securing the documents.

60. Plaintiff eventually sent an Open Public Records Act (“OPRA”) request for the Language Line records and received them.

61. The Language Line records demonstrated Language Line was rarely if ever used during virtual sessions at the relevant periods of time.

62. The records proved the Plaintiff's observations were accurate.

D. Plaintiff Documented Discrimination on the Record

63. On Monday, December 5, 2022, Plaintiff conducted an in-person session at the MMC.

64. Plaintiff noticed immediately that a disproportionate number of litigants were Hispanic.

65. In an effort to understand what was going on and ensure fairness, Plaintiff asked litigants whether they were informed they could appear virtually.

66. Almost all litigants with a traditional Hispanic surname, whether they spoke Spanish or not, stated they were not advised they could participate virtually and instead had their cases immediately scheduled in-person.

67. Plaintiff asked litigants in open court on the record if they would prefer to have their cases heard virtually or in-person.

68. A large majority of litigants said they preferred virtual if given an option.

69. Several litigants, of all racial and ethnic backgrounds, were in tears.

70. Plaintiff apologized to each litigant who was not given the option to appear virtually like litigants who did not have Hispanic surnames.

71. Plaintiff stated on the record that what occurred in court that day was the most discriminatory thing he had ever been part of in his entire life.

72. After what Plaintiff witnessed on December 5, 2022, he immediately instructed Hamlyn to cancel the two January in-person sessions where the interpreter was scheduled.

73. Plaintiff did this to allow Hamlyn to correct the discriminatory scheduling.

74. According to Defendant's Report and statistics, on December 5, 2022, 42 percent of the litigants scheduled for that day were Hispanic.

75. For comparison, according to Defendant's Report, 17 percent of the virtual litigants scheduled from October 5, 2022, to December 14, 2022, were Hispanic.

76. That means on December 5, 2022, the percentage of Hispanic litigants scheduled was two-and-a-half times more than the average for virtual court dates during that same period of time.

77. Therefore, Plaintiff's statement that there were a disproportionate amount of Hispanic litigants on that date was accurate and his concern warranted.

E. Defendant Retaliated Against Plaintiff Because of his Discrimination Complaint

78. The publication NJ.com published an article about the December 5, 2022 court session, wherein Defendant's employees indicated they became aware of the allegations at the December 5, 2022 court session on December 6, 2022.

79. On December 7, 2022, Municipal Court Assignment Judge Benjamin Telsey sent an email to Plaintiff.

80. Judge Telsey stated first that he was told Plaintiff had "regularly been appearing in your Court's [sic] virtually."

81. Judge Telsey stated, "You must advise me, in writing, no later than tomorrow at 4:00 that you will start to handle all matters in-person going forward. Your failure to do so, will result in my assuming control of your Courts pursuant to my authority as Assignment Judge."

82. Judge Telsey also stated, "Secondly, I have been advised by others (as you have never contacted me), that you have missed a substantial amount of Court time lately."

83. Judge Telsey stated, “I was advised that you contacted Millville today and indicated that you are regressing quickly.”

84. Judge Telsey then stated Plaintiff, “must provide me proof, in writing, no later than 4:00 tomorrow, that you are fit to handle your duties.”

85. Judge Telsey then stated he was advised Plaintiff, “may have been handling the scheduling of Spanish speaking people differently than other litigants.”

86. Judge Telsey told Plaintiff that “You must ensure that if the allegations are true, that it will cease immediately and corrective action will be taken.”

87. Plaintiff responded to Judge Telsey’s email the same day, December 7, 2022.

88. Plaintiff explained that due to his medical condition, some days he would conduct court virtually.

89. Plaintiff stated, “I was under the impression that the issue was to be addressed between my employer and me, in 2021. Since no employer had any issue with my mode of court operations, I didn't see any need to request an ADA accommodation.”

90. The same day, Plaintiff sent a formal accommodation request to the Human Resources representative at MMC, per Judge Telsey’s instruction.

91. Plaintiff also explained to Judge Telsey that he repeatedly attempted to address the problem of discriminatory court scheduling with Hamlyn.

92. Plaintiff explained what steps he was continuing to take to fix the problem.

93. Plaintiff explained that Hamlyn was not following his instructions on how to fix the problem.

94. Despite this, Defendant continued to retaliate against Plaintiff.

95. On December 8, 2022, Ashley Wolk sent out an email stating the following:

Moving forward, Judge Witcher will be presiding over court sessions from the courtroom, whether cases are scheduled for in-person or virtual hearings, consistent with the Administrative Director's March 7th Memo. Any diversion or requests to do so must be reported to the Municipal Division immediately.

Please review your records from March 7th to today's date and for each court session advise if Judge Witcher presided over the session from the courtroom or if he participated virtually. Response requested by the end of day tomorrow.

96. To Plaintiff's knowledge, no other Judge has been subject to this type of monitoring.

97. On December 20, 2022, Jennifer Amos sent out a correspondence on behalf of the Administrative Director for the AOC, Judge Glenn Grant.

98. In that email, Judge Grant stated the following:

In light of unsubstantiated allegations of disparate scheduling practices in one Municipal Court, I am asking each of you to continue to ensure that Municipal Court Judges and Court Administrators are adhering to the framework established by the Supreme Court.

99. This was clearly a reference to Plaintiff's complaint about disparate scheduling practices that were reported to him.

100. This email, which was sent to the entire judiciary, significantly impacted Plaintiff's credibility within the judiciary, and caused humiliation and embarrassment to Plaintiff.

F. Plaintiff Continued to try to Fix the Problem of Discrimination

101. On December 14, 2022, Plaintiff sent another correspondence to Hamlyn and asked her to cancel the two January in-person sessions with the Spanish-speaking interpreter so that litigants will have the choice to appear in-person or virtually.

102. This was an effort by Plaintiff to stop the scheduling practices at MMC that were disparately impacting Hispanic litigants.

103. On December 21, 2022, Plaintiff spoke with Cumberland/Gloucester/Salem Municipal Presiding Judge, Thomas North, about discriminatory scheduling.

104. There was an ongoing disagreement between Plaintiff and Judge North about the nature of the discrimination.

105. Plaintiff stated there was a scheduling issue at MMC that was disparately impacting Hispanic litigants.

106. Judge North disagreed and stated the cases were properly scheduled despite there being virtually no Spanish-speaking litigants appearing virtually.

107. Plaintiff stated the in-person January dates with a Spanish-speaking interpreter should all be canceled and rescheduled. Judge North disagreed.

108. They agreed that instead of canceling the January in-person court dates, Plaintiff would instruct Court staff to send letters to all of the litigants notifying them they could appear virtually or in-person.

109. Subsequently, on December 21, 2022, Plaintiff specifically sent an email to Hamlyn stating the following:

Please begin contacting litigants currently scheduled for in-person sessions on both scheduled interpreter days in January. To ensure absolutely no taint of disparate treatment, all litigants, with the exception of mandatory in-person listings, should be contacted and given the option to appear virtually. All discretionary in-court matters, for all litigants regardless of race or ethnicity, for purposes of these two dates only, are to be contacted and given the option of having their case rescheduled and given the virtual option.

110. Judge North then sent an email on December 21, 2022, confirming his conversation with Plaintiff.

111. He confirmed they reviewed the docket as to which cases were appropriately scheduled for the in-person date.

112. Judge North then stated, “We spoke a moment ago again. You mentioned you wanted to review the virtual Wednesday sessions in January. I will review them as well. Feel free to give me a call to go over them.”

113. Judge North also stated “it would be a good idea to have a conference call with you, your administrator and myself” and offered the next day or Friday for the meeting.

114. Plaintiff held virtual court on January 4, 2023.

115. Judge North did not contact Plaintiff again prior to that session.

116. Judge North did not say anything to Plaintiff about not discussing the January dockets or not scheduling a meeting with the administrator.

117. During the January 4, 2023 virtual hearing, Plaintiff noticed there was no interpreter available despite his repeated requests to Hamlyn for a virtual interpreter.

118. Plaintiff also noticed there were no Spanish-speaking litigants present for that session.

119. On January 5, 2023, the website NJ.com published an article about the January 4, 2023, Court proceeding.

120. In the article, Plaintiff stated he continued to see discrimination in the way individuals were allowed to appear virtually versus in-person.

G. Defendant Retaliated Against Plaintiff Again After the Article

121. After the January 5, 2023 article, on January 10, 2023, Judge North sent a follow-up to his December 21, 2022 email.

122. This was the first correspondence since that email more than three weeks prior.

123. In the email, Judge North said Plaintiff did not call him to schedule a meeting.

124. Later that evening on January 10, 2023, Plaintiff spoke with Judge North over the phone about the upcoming January 11, 2023 virtual court session.

125. Judge North asked Plaintiff if he reviewed the docket for that session.

126. During his over a decade-long career as a Judge, Plaintiff was never asked, let alone required, to review dockets before a court session.

127. Furthermore, reviewing the court docket before the virtual court session would not have done anything to establish whether MMC staff were still scheduling in a manner that caused a disparate impact on Hispanic litigants.

128. Judge North indicated that he would have to call someone to see what should be done about the January 11, 2023 session.

129. Plaintiff sent a text message to Judge North after not getting a callback, stating he was going to bed, because he did not feel well.

130. Judge North sent a text message response after Plaintiff had gone to sleep stating the next day the virtual court session was canceled.

131. It is unclear why Judge North would cancel a virtual court session when Plaintiff's concern was that Hispanic litigants were discriminatorily being required to appear in-person.

132. Judge North sent an email to Plaintiff at 8:45 p.m., after Plaintiff already told him he was going to bed.

133. In that email, Judge North stated he had to cancel the January 11, 2023, virtual session because Plaintiff did not review the list.

134. The email stated, “You continue to publicly allege issues with scheduling in the Millville Municipal Court. I have yet to see any issues, and every time I invite you to identify an issue, you are unable to do so or simply ignore my requests.”

135. Judge North made several accusations about Plaintiff in his email. Most notably, Judge North stated: “This evening you let me know you did not look at the dockets attached to my December 21 email. You also let me know that you will not be able to look at your docket for tomorrow before the court session begins. I am troubled that you refuse to perform your job.”

136. This email string was sent to the New Jersey Law Journal, between 9 p.m. January 10, 2023, and 8 a.m. January 11, 2023, because the Law Journal published an article the very next morning.

137. The article was titled: *“You Refuse to Perform Your Job”*: Court Leadership Rebukes Judge Who Alleged Discrimination Against Litigants.

138. After this article was published, a number of Plaintiff’s friends and colleagues contacted him about the article, which caused significant humiliation and embarrassment to Plaintiff.

139. Plaintiff was, in fact, performing his job.

140. Plaintiff conducted the January 4, 2023 virtual court proceeding.

141. He was also prepared to conduct the January 11, 2023 virtual court proceeding, but Judge North canceled the proceeding for reasons Plaintiff does not understand.

142. Canceling a virtual court proceeding would not correct the problem of Hispanic litigants being required to disproportionately appear in-person on days where interpreters were present.

143. During the month of December and the entire month of January to the present time, Defendant closely monitored Plaintiff in a manner he was never monitored before his protected conduct on December 5, 2022.

144. Defendant contacted staff members at the municipalities during court sessions Plaintiff presided over to check on his appearances and status.

145. This was a constant source of stress, anxiety, humiliation and embarrassment for Plaintiff.

H. Defendant Took Away Plaintiff's Accommodation

146. At all times relevant to these claims, Plaintiff has been diagnosed with Crohn's disease.

147. Plaintiff informed both Defendant and the municipalities for which he is a Judge of his diagnosis in 2021.

148. As a result of his disability, there were instances when Plaintiff presided over court virtually.

149. This was an understanding Plaintiff had with the municipalities where he sat as Judge, and there was never an issue with the municipalities.

150. Since Plaintiff already had a court-issued laptop, there were no additional accommodations needed to be provided by the municipalities.

151. After Plaintiff complained about discrimination on December 5, 2022, starting December 7, 2022, Defendant, not the municipalities, required Plaintiff to appear in-person for all court sessions notwithstanding his accommodations.

152. On February 1 and 2, 2023, Defendant removed Plaintiff from the bench in MMC and Bridgeton City mid-session, because Plaintiff was conducting court virtually.

153. Therefore, Defendant took away Plaintiff's accommodation that he be permitted to attend court sessions virtually in the event his Crohn's disease flared up.

154. On February 7, 2023, after again advising Defendant of his need for an accommodation, Plaintiff appeared in-person to an empty courtroom for a virtual court session in Bridgeton Joint Municipal Court.

155. Defendant was monitoring the session, recognized by the name "AOC" appearing on the Zoom virtual court screen.

156. Plaintiff advised Defendant he was in a Crohn's flare and wanted a medical accommodation to appear virtually.

157. Plaintiff was not provided this accommodation.

158. Therefore, Plaintiff appeared in-person to avoid further sanctions, or loss of employment based on Defendant's previous threats and public statements in the Law Journal article.

159. Plaintiff was required to attend virtual court at the MMC in-person on February 8, 2023.

160. As he began to turn on the video for court, prior to turning on the court camera, he began to sweat, became faint and instructed the clerk to call 911.

161. Plaintiff fell from his chair and had three seizure-like responses on the ground beneath the bench witnessed by staff and responding police officers.

162. Emergency personnel arrived and Plaintiff continued to have the seizure-like activity on the ground and his blood pressure and heart rate were extremely elevated.

163. The combination of stress from the retaliation and monitoring combined with the Crohn's flare up caused what appeared to be seizure-like activity.

164. Plaintiff had no history of this type of stress response.

165. Plaintiff was required to leave the courtroom in an ambulance and was admitted to the hospital.

166. Following the event on February 8, 2023, upon release from the hospital, Plaintiff took a few weeks to deal with the mounting stress and accompanying health impact.

167. Plaintiff immediately notified the municipalities he would be returning on March 1, 2023.

168. On March 2, 2023, while Plaintiff was traveling to his first court session, he received a phone call that Defendant suspended his judicial duties at all municipalities until he provided medical proof that he was fit to perform his job.

169. Plaintiff was suspended for approximately one month.

170. Plaintiff was permitted to return as of April 3, 2023, without providing medical fitness for duty documentation.

I. Defendant Conducted an “Investigation” Report

171. On January 14, 2023, Plaintiff received an email from attorney William Cook from the law firm of Brown & Connery.

172. Cook told Plaintiff he “was recently requested by the Administrative Office of the Courts to conduct an outside review of Your Honor’s recent allegations concerning scheduling practices in Millville Municipal Court.”

173. Defendant advised the public of this outside independent investigation through an NJ.com article following the first internal investigation.

174. Cook stated in his correspondence to Plaintiff, “I want to assure you that my review will be conducted objectively, impartially, and fairly. My intent and objective is simple: to determine the facts, wherever they lead.”

175. Cook also asked Plaintiff not to make any “public comment” until the investigation was completed.

176. Plaintiff, already under scrutiny by the Defendant, based on the Defendant’s public statements and Cook’s statements, cooperated with Cook under the assumption he was an independent investigator and was not a representative of Defendant.

177. Cook stated, “The important public debate on these matters depends on an accurate, complete, and reliable record. It is my objective to create that record. Piecemeal facts, or only part of the picture, do justice to none.”

178. Defendant issued its report (hereinafter referred to as the “Report”) on February 16, 2023.

179. Overall, the Report corroborated Plaintiff’s claims that MMC staff implemented a policy that resulted in a disparate impact on Hispanic litigants.

180. The Report also stated the Judiciary requested reforms be made in Millville and statewide.

181. Many of those reforms were the same changes Plaintiff repeatedly asked MMC staff to make, to no avail.

182. The Report also stated, “The Judiciary’s investigation into the allegations raised by Plaintiff revealed that a higher percentage of Defendants with Hispanic/Latino-sounding surnames are scheduled for in-person sessions when an interpreter is available on-site.”

183. This is precisely the argument Plaintiff was making, that MMC's scheduling process resulted in a disparate impact on Hispanic litigants.

184. The Report also stated the following:

The investigation found no direct evidence that Millville Municipal Court officials were denying individual defendants the opportunity to appear for court virtually because they had a Hispanic/Latino-sounding surname or a need for interpreting. All Millville employees involved with scheduling stated that party surname is not considered. The only contrary information was the statement of the Bridgeton administrator, Keith, who indicated that "it seems like cases are being scheduled for in-person based on their last name" and "it is possible that the cases could have been scheduled by surname," though she conceded she did not have any "personal knowledge about anyone scheduling calendars by surname."

185. This "conclusion" in the Report does not accurately reflect Keith's actual statement.

186. Here is the actual statement of Keith regarding MMC using last names to determine scheduling of litigants:

The instruction available for handling requests of litigants who called the Millville court seeking the assistance of an interpreter was to schedule them on a date when the interpreter was available in the building. I am not aware of whether the Millville Municipal Court has materials or handouts available to court users in Spanish. I am unaware of interpreting services available in Millville other than the in-person interpreting two days per month. I was not advised of the availability of Language Line during my time providing assistance to Millville Municipal Court. **It was my observation that cases in Millville were scheduled as a result of the last name.** Cases involving **Spanish names** had notes to be scheduled for a Monday when the interpreter was available. It also seemed to me like cases that needed an interpreter and were originally **scheduled for virtual court, were then rescheduled for in-person court.** The tickets I saw in the bin coming out of court supports this. For example, if I am looking at a traffic ticket and there is only one notice coming from court that means that it was the first time appearing in court, and then I see it has a note for Spanish, **a Spanish looking name, and the date rescheduled is with the interpreter,** the only date that the interpreter is there in-person. **Based on my observations, it seems like cases are being scheduled for in-person based on their last name.** No one outside of Kim communicated this procedure to me. I worked nights when I was there. Most of the time though I did see a sticky note on the case saying it needs a Spanish interpreter.

(emphasis added).

187. Keith also stated she told Plaintiff, “I thought there was a possibility that the staff were scheduling cases by surname. I also advised him of the Millville’s practice to schedule the Spanish interpreting cases only on the day the Spanish interpreter was available.”

188. Keith was the only objective witness interviewed by Defendant about the process at MMC.

189. The MMC employees had an interest in stating they were not scheduling cases based on Hispanic last names, because if they were, that is discrimination.

190. Furthermore, Keith not only said she observed cases being scheduled based on last names, she described in detail how it was being done.

191. Cases with Hispanic last names received a note stating “Spanish” and they were then scheduled for the only two in-person sessions when a Spanish-speaking interpreter was available.

192. The Report does not suggest that Keith’s statement was unreliable, or that she lacked credibility in any way.

193. If Keith’s statement was true, MMC staff were discriminating against Hispanic litigants by purposefully scheduling them for the two in-person sessions with Spanish-speaking interpreters, based on their last names.

194. However, Defendant’s Report found MMC was not scheduling based on names relying instead on the statements of the MMC staff.

195. On February 6, 2023, following the introduction of a letter from the Judiciary counsel, Cook contacted Bridgeton City on behalf of Defendant regarding the dispute over the Plaintiff’s accommodation request.

196. At that time, Plaintiff became aware of Cook's representation of Defendant, from the Bridgeton business administrator and city labor counsel, for the first time.

197. Upon learning this, Plaintiff's emotional and mental stress further increased, because he provided private, personal and confidential information to Cook during the investigation.

J. Plaintiff Constructively Discharged From His Judgeships

198. After Defendant suspended Plaintiff for a month, then allowed Plaintiff to return to work without a letter from his doctor, Plaintiff in fact returned to work.

199. However, Plaintiff quickly realized, as the retaliation escalated to a suspension, it would be impossible for him to continue to work in the municipalities as a judge because of what occurred.

200. Plaintiff was concerned the retaliation from Defendant would increase if he continued to work as a judge.

201. In particular, Defendant refused to allow the municipalities to provide the accommodation that Plaintiff previously received for a long period of time that Plaintiff be permitted to conduct court virtually on days his medical condition flared up.

202. Other judges in New Jersey are routinely permitted to attend court virtually as a medical or other accommodation.

203. Because Defendant refused to provide Plaintiff with this accommodation, and Defendant's other retaliatory acts outlined at length in this Complaint, Plaintiff was fearful the stress would trigger another medical episode.

204. Due to the constant monitoring by staff, as directed by the Defendant, and direct monitoring by the Defendant, Plaintiff was subject to constant emotional and mental distress.

205. Plaintiff also suffered severe embarrassment and humiliation due to the public retaliation he received on behalf of Defendant, which included, but was not limited to a Presiding Municipal Judge making public emails between judges regarding court operations and personnel issues, to the New Jersey Law Journal and accusing Plaintiff of refusing to do his job.

206. Plaintiff was purposely humiliated publicly in a manner that tarnished his reputation with other judges, attorneys in his courtroom, employees of the municipalities, members of the community and litigants in his courtroom.

207. This humiliation and embarrassment and refusal to allow Plaintiff to receive the same accommodations, publishing an article in the Law Journal, targeted memos, selective monitoring regarding his disability, threats to his employment, and Plaintiff unknowingly providing private and confidential information to a representative of the Defendant, collectively caused Plaintiff to suffer harm physically and emotionally.

208. Plaintiff made the only decision he could to protect his health and prevent further damage to his reputation and tendered his resignation from all of the municipalities for which he served as a judge effective August 1, 2023, ending a 13-year judicial career.

Legal Allegations

209. At all times relevant herein, Plaintiff was performing his job at a high level.

210. Plaintiff was disabled in accordance with the LAD.

211. As a result of his disability, Plaintiff requested the accommodation that he be permitted to attend court sessions virtually when he experienced a medical episode.

212. Defendant and the municipalities initially permitted Plaintiff this accommodation.

213. However, after Plaintiff reported discrimination at MMC, Defendant instructed Plaintiff he was no longer permitted this accommodation.

214. Providing this accommodation would not have provided a hardship to any of the municipalities, nor to Defendant.

215. Plaintiff was a member of a protected class as an individual who advanced his rights pursuant to the LAD in complaining about: (1) discrimination against Hispanic litigants in the courtroom; (2) disability discrimination against Plaintiff; (3) retaliation against Plaintiff; and (4) failure to accommodate Plaintiff's disability.

216. Plaintiff was subjected to adverse employment actions as a result of engaging in this protected conduct as outlined at length above in the Complaint.

217. Plaintiff's complaints outlined above were a determinative or motivating factor in the adverse employment actions taken against him.

218. Because the retaliation and failure to accommodate was knowing, intentional and purposeful, punitive damages are warranted because the conduct was either undertaken by members of upper management, or members of upper management were willfully indifferent to the conduct.

219. As a result of the unlawful conduct outlined above, Plaintiff has been forced to suffer economic and non-economic harm.

220. Defendant's conduct was so intolerable that a reasonable person in the same situation as Plaintiff would be forced to resign rather than continue to endure it.

COUNT I
RETALIATION UNDER THE LAD

221. Plaintiff hereby repeats and realleges the preceding paragraphs as though fully set forth herein.

222. Plaintiff engaged in protected activity as outlined at length above.

223. Subsequent to Plaintiff engaging in the protected activity outlined above, Defendant subjected him to retaliation as outlined above which ultimately resulted in Plaintiff's constructive discharge.

WHEREFORE, Plaintiff demands judgment against the Defendants jointly, severally and in the alternative, together with compensatory damages, including emotional pain and suffering, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, the value of any lost benefits, equitable reinstatement, equitable instatement or promotion, and any other relief the Court deems equitable and just.

COUNT II
FAILURE TO ACCOMODATE UNDER THE LAD

224. Plaintiff hereby repeats and realleges the preceding paragraphs as though fully set forth herein.

225. Plaintiff requested a medical accommodation as outlined above in Plaintiff's complaint.

226. Defendant refused to provide Plaintiff with the accommodation and the denial of Plaintiff's accommodation resulted in Plaintiff's ultimate constructive discharge.

WHEREFORE, Plaintiff demands judgment against the Defendants jointly, severally and in the alternative, together with compensatory damages, including emotional pain and suffering, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, the value of any lost benefits, equitable reinstatement, equitable instatement or promotion, and any other relief the Court deems equitable and just.

COUNT III
CONSTRUCTIVE DISCHARGE

227. Plaintiff hereby repeats and realleges the preceding paragraphs as though fully set

forth herein.

228. Plaintiff was constructively discharged when he was subjected to discriminatory and retaliatory conduct that was so intolerable that a reasonable person in the same situation as Plaintiff would be forced to resign rather than continue to endure it.

WHEREFORE, Plaintiff demands judgment against the Defendants jointly, severally and in the alternative, together with compensatory damages, including emotional pain and suffering, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, the value of any lost benefits, equitable reinstatement, equitable instatement or promotion, and any other relief the Court deems equitable and just.

229. Plaintiff requests the following equitable remedies and relief in this matter:

- a. Plaintiff requests a declaration by this Court that the practices contested herein violate New Jersey law as set forth herein.
- b. Plaintiff requests that this Court order the Defendant to cease and desist all conduct inconsistent with the claims made herein going forward, both as to the specific Plaintiff and as to all other individuals similarly situated.
- c. Plaintiff requests, that in the event that equitable reinstatement and/or equitable back pay and equitable front pay is ordered to the Plaintiff, that all lost wages, benefits, fringe benefits and other remuneration is also equitably restored to the Plaintiff.
- d. Plaintiff requests that the Court order the Defendant to alter their files so as to expunge any reference to which the Court finds violates the statutes implicated herein.

- e. Plaintiff requests that the Court do such other equity as is reasonable,
appropriate and just.

**JAVERBAUM WURGAFT HICKS KAHN
WIKSTROM & SININS, PC**

/s/ Drake P. Bearden, Jr.
By: Drake P. Bearden, Jr.

Dated: June 23, 2023

DEMAND TO PRESERVE EVIDENCE

1. All Defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to Plaintiff's employment, to Plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

**JAVERBAUM WURGAFT HICKS KAHN
WIKSTROM & SININS, P.C.**

s/ Drake P. Bearden, Jr.
Drake P. Bearden Jr.
Attorney for Plaintiff

Dated: June 23, 2023

JURY DEMAND

Plaintiff hereby demands a trial by jury.

**JAVERBAUM WURGAFT HICKS
KAHN WIKSTROM & SININS, P.C.**

s/ Drake P. Bearden, Jr.
Drake P. Bearden Jr.

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

**JAVERBAUM WURGAFT HICKS
KAHN WIKSTROM & SININS, P.C.**

s/ Drake P. Bearden, Jr.
Drake P. Bearden Jr.

DESIGNATION OF TRIAL COUNSEL

Drake P. Bearden, Jr., Esquire, of the law firm of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. is hereby designated trial counsel.

**JAVERBAUM WURGAFT HICKS
KAHN WIKSTROM & SININS, P.C.**

s/ Drake P. Bearden, Jr.
Drake P. Bearden Jr.

Dated: June 23, 2023