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Clerk of the Trial Courts

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6 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

7 THIRD JUDICIAL DISTRICT AT ANCHORAGE

8  
9 RANDALL MCLELLAN, )  
 )  
10 Plaintiff )

11 -vs- )

Case No. 3AN-14- 04695 CI

12 JOSEPH SCHMIDT and BRYAN )  
13 BRANDENBURG, )  
14 Defendants. )

15  
16 COMPLAINT FOR VIOLATION OF CIVIL RIGHTS  
17 (42 U.S.C. § 1983)

18 General Allegations

- 19 1) Plaintiff Randall McLellan is a resident of the State of Alaska.  
20 2) Defendant Joseph Schmidt is a resident of the State of Alaska.  
21 3) Defendant Bryan Brandenburg is a resident of State of Alaska.  
22 4) This Court has jurisdiction of this case pursuant to AS 22.10.020.  
23  
24 5) McLellan has been employed by the State of Alaska, Department of  
25 Corrections, as a correctional officer since 1997. He is an outstanding officer and has  
26 always received excellent evaluations. He was promoted to sergeant in 2005 and

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1 currently works at the Mat-Su Pretrial Facility.

2 6) In 2004, he helped form the Alaska Correctional Officers Association ("ACOA")  
3 and was elected to the Board of Directors. In 2010, he was elected President of the  
4 Association. He was re-elected in 2012 and currently holds that position.  
5

6 7) The ACOA represents the interests of over 900 correctional officers working  
7 in thirteen correctional facilities statewide, and McLellan has been an active and  
8 outspoken advocate for the interests of the ACOA and its members. Among other  
9 things, he has served as a member of the ACOA's contract negotiating team and has  
10 represented the ACOA in arbitrations.  
11

12 8) Defendant Schmidt was appointed Commissioner of the Department of  
13 Corrections by Governor Sarah Palin in December 2006 and confirmed by the  
14 Legislature in 2007, and he currently holds that position. Schmidt is named as a  
15 defendant in this lawsuit in his personal and individual capacity.  
16

17 9) Defendant Brandenburg is employed by the Department of Corrections and  
18 serves as the Director of Institutions. Brandenburg is named as a defendant in this  
19 lawsuit in his personal and individual capacity.  
20

21 10) For more than five years, defendants have orchestrated a systematic course  
22 of harassment and persecution of McLellan in retaliation for his advocacy on behalf of  
23 the ACOA and its membership, as well as the interests of the inmate population.

24 11) Following his appointment as Commissioner of the Department of  
25 Corrections, Schmidt embarked upon a course of conduct hostile to the ACOA and its  
26 membership and detrimental to their working conditions and the safety of the prisons

1 and jails. Among numerous other actions, he reduced the number of correctional staff  
2 on shifts despite a significant increase in the number of inmates, thereby endangering  
3 the safety of both staff and inmates. In March 2008, in response to Schmidt's continuing  
4 course of conduct, the ACOA membership passed a vote of no confidence in Schmidt  
5 by an overwhelming margin of 514 to 19. McLellan was a spokesman in favor of the no-  
6 confidence vote.  
7

8 12) Shortly after the vote, and despite the express contractual prohibition in the  
9 governing collective bargaining agreement against the maintenance of secret personnel  
10 files, the department started a secret monitoring file documenting alleged rule and policy  
11 violations by McLellan. The file included reports of such trivial matters as a failure to say  
12 good morning, a failure to verbally respond to a comment, and a failure to wear his  
13 name tag. The file was created in an apparent effort to find grounds for subjecting  
14 McLellan to discipline.  
15

16 13) In April 2008, Brandenburg directed McLellan to meet with an Anchorage  
17 Daily News reporter who was doing a story on MRSA (Methicillin-resistant  
18 Staphylococcus Aureus), a difficult to treat bacterial infection that had been a subject  
19 of recent concern within the Department of Corrections. During the course of the  
20 interview, McLellan was asked about possible means of prevention, and he expressed  
21 valid and true concerns about the lack of clean linens and prisoner clothing at the Mat-  
22 Su Pretrial Facility.  
23

24 14) After McLellan's comments were printed in the paper, Schmidt appeared on  
25 the Eddie Burke radio show and made slanderous comments about McLellan. Ignoring  
26

1 a long history of complaints and requests made by correctional staff to department  
2 management to address the clean clothing shortage, Schmidt faulted McLellan as the  
3 one responsible for the problem and he characterized him as a union member who was  
4 spreading hate and fear through false statements about a clothing shortage that did not  
5 exist. He further faulted McLellan for speaking to the press rather than his supervisor  
6 about the issue even though he had been expressly directed to do so by Brandenburg  
7 and even though staff's many complaints about the issue were clearly documented and  
8 had been consistently ignored.  
9

10  
11 15) The day after Schmidt's radio comments, defendant Brandenburg  
12 commanded McLellan's presence at a confidential "interview." McLellan and his shift  
13 were then ordered to conduct an intense and thorough sanitation of the Mat-Su Pretrial  
14 Facility and to complete a detailed report on the cleaning. Though it was claimed that  
15 this cleaning would be a new routine that would be rotated through the shifts, the task  
16 fell almost exclusively on McLellan's shift. The cleaning was ordered as punishment and  
17 retaliation for McLellan's exercise of his First Amendment rights of free speech and  
18 association.  
19

20  
21 16) McLellan's public comments resulted in Schmidt being called to answer  
22 questions in "out of session" legislative committee hearings. The hearings did not go  
23 well for Schmidt. He was publicly chastised by a state legislator for his personal attacks  
24 on his own officers, and the legislature called for an audit of his department.

25  
26 17) In the years subsequent, McLellan has been subject to a pattern of unfair and  
disparate treatment. Among other things:

1 18) McLellan has been targeted for discipline and subjected to special  
2 monitoring. Other officers have been instructed to "watch" McLellan. In addition to  
3 continuing to maintain the secret monitoring file, management has reviewed video  
4 recordings of entire shifts in an effort to catch McLellan in minor rule infractions.  
5

6 19) McLellan has been subjected to unfounded investigations and disciplinary  
7 actions. For example, he was accused of wrongfully denying admittance of an arrestee  
8 to the Mat-Su Pretrial Facility. The arrestee had been found asleep on the street in the  
9 middle of the night de-toxing from excessive alcohol consumption in sub-zero weather,  
10 so consistent with policy designed to protect inmate safety, McLellan required that the  
11 arrestee be taken to the hospital for evaluation before admittance into the jail. Despite  
12 his compliance with policy, McLellan was given a non-grievable Letter of Instruction.  
13

14 20) McLellan has been subjected to disciplinary sanctions out of proportion to the  
15 conduct alleged. For example, he was suspended seven days for allegedly failing to pick  
16 up outgoing inmate mail. Such discipline is ordinarily reserved for serious rule violations  
17 affecting jail security.  
18

19 21) McLellan has been subject to character assassination. For example, it was  
20 falsely stated that he was the reason why members of his shift applied for transfer to  
21 another institution.  
22

23 22) McLellan has been denied business leave, thereby interfering with his ability  
24 to fulfill his duties as ACOA President and a member of its negotiating team. He has  
25 been prevented from attending contract negotiation sessions and interest arbitrations.  
26

1           23) McLellan was been denied assignment to positions in favor of other officers  
2 with less seniority and who had not received the proper training for the positions.

3           24) Contrary to policy and past practice, McLellan has been denied the  
4 opportunity to work overtime.

5           25) McLellan has been cut out of communications and decisions regarding  
6 operational matters and issues involving his shift and shift officers, finding out about  
7 them only after the fact.

8           26) Members of McLellan's shift have suffered the consequences of his  
9 harassment as well. For example, in an effort to make his work more difficult, members  
10 of his shift who were supporters of McLellan have been force-transferred to other shifts  
11 contrary to their wishes and without regard to the disruption in the lives of those  
12 transferred. It is a repeated joke among staff at the Mat-Su Pretrial Facility that you  
13 should not stand too close to McLellan because he has a target on his back and they  
14 might miss and hit you.  
15  
16  
17

18           27) Repeated requests by union officials to halt the harassment and defamation  
19 of McLellan have been ignored.

20           28) Matters finally came to a head following an incident in the jail during the early  
21 morning hours of March 2, 2013. Alaska State Troopers brought a violent offender to  
22 the Mat-Su Pretrial Facility for booking. The arrestee had an extensive history of assault  
23 charges and convictions, including assaults on police officers, as well as unreported  
24 assaults according to family members. On the night in question, he was arrested for  
25 viciously and severely beating his own father. The trooper had to taser the arrestee  
26

1 multiple times as he attempted to punch the trooper and fought all the way to the jail.

2 29) After the arrestee was placed in a cell, the trooper asked for assistance in  
3 photographing the arrestee's hands as evidence of the assault. The arrestee was drunk,  
4 possibly under the influence of drugs, aggressively threatening, and uncooperative, so  
5 it took three correctional officers and the arresting trooper to hold him down while  
6 McLellan photographed his hands.  
7

8 30) When the photographing was completed, McLellan instructed the arrestee  
9 to remain on the floor and told him he would be pepper sprayed if he did not remain  
10 compliant. As the officers were exiting the cell, the arrestee became combative and  
11 kicked the cell door so that it could not be closed.  
12

13 31) To avoid further physical confrontation with a violent individual, to ensure the  
14 safety of the officers and of the arrestee himself, and to permit the closing and locking  
15 of the cell door, McLellan deployed the pepper spray. The arrestee then retreated from  
16 the cell door and the officers were able to close and lock it.  
17

18 32) As typically happened when pepper spray was deployed in the Mat-Su  
19 Pretrial Facility, the officers were also exposed to and affected by the spray – one to the  
20 point of vomiting – and they had to take the time to decontaminate themselves so they  
21 could continue to perform their duties. The arrestee was then escorted from the cell and  
22 taken to the shower.  
23

24 33) Given the combative conduct of the arrestee, McLellan's conduct in  
25 responding to his actions and deploying the pepper spray was appropriate, justified, and  
26 fully compliant with department policies and procedures. In a written statement, the

1 arresting trooper confirmed the propriety of McLellan's actions.

2 34) The arrestee made no complaint as a result of the incident and he later  
3 apologized for his actions.

4 35) On April 20, 2013, labor arbitrator Janet Gaunt ruled in favor of the ACOA  
5 and against the Department of Corrections, finding that the department had violated the  
6 governing collective bargaining agreement by unilaterally imposing a five-days on/two-  
7 days off schedule on certain correctional officers in lieu of the week on/week off  
8 schedule that had been in place for over thirty years. The issue was of great concern  
9 to the ACOA's membership, and McLellan served as the ACOA's representative during  
10 the arbitration.  
11

12 36) Four days after the arbitration ruling, on April 24, 2013, McLellan was given  
13 an order requiring him to appear for an investigatory interview regarding the events of  
14 March 2, 2013.  
15

16 37) When a correctional officer engages in questionable conduct, the Department  
17 of Corrections undertakes a prompt investigation, but McLellan was not notified of any  
18 investigation into the March 2, 2013, incident until after the department's receipt of the  
19 adverse arbitration ruling on April 20, 2013. The actions taken against McLellan in  
20 response to the March 2 incident were motivated by defendants' dissatisfaction with the  
21 adverse arbitration ruling and undertaken in retaliation against McLellan for his exercise  
22 of his First Amendment rights of free speech and association.  
23

24 38) At the interview, Department of Corrections officials refused to provide any  
25 explanation as to why McLellan was not notified of the investigation sooner, nor did they  
26

1 explain why the video recording of the incident was cut off and failed to depict the entire  
2 incident.

3           39) McLellan and the other involved officers that were interviewed with regard to  
4 the March 2 incident all attested to the propriety of their actions. However, from the  
5 tenor of the interviews and the questions asked, it was apparent that conclusions  
6 respecting the matter had already been reached.

7  
8           40) As a result of the incident, McLellan was placed on administrative leave on  
9 May 10, 2013, and to his humiliation, he was escorted out of the Mat-Su Pretrial Facility  
10 in unprecedented fashion in front of his fellow officers and inmates.

11  
12           41) On June 12, 2013, McLellan was then wrongfully demoted from sergeant  
13 (correctional officer III) to correctional officer II. The letter of demotion falsely accused  
14 him of repeated disregard for policies, procedures, and management directives, though  
15 no evidence of such alleged misconduct had been presented at the disciplinary hearing.

16  
17           42) The demotion was grossly excessive and disproportionate to the discipline  
18 imposed in other cases.

19           43) The demotion was compounded by defendants' decision to subject McLellan  
20 and some of the other officers on his shift to "retraining" which included spraying them  
21 in the face with pepper spray. McLellan had already been sprayed as part of his prior  
22 training and it is unprecedented to subject an officer to a second spraying as part of any  
23 refresher training. Once an officer has been sprayed as part of training, the officer  
24 should not be sprayed again as part of retraining. There was no justification for  
25 subjecting McLellan to pepper spraying after he had already been sprayed before.  
26

1 44) McLellan would have been terminated from his employment if he had not  
2 submitted to the pepper spraying.

3 45) In an attempt to alienate McLellan from the fellow members of his shift, some  
4 members of his shift were also subjected to respraying along with him. That included  
5 one recently hired correctional officer who had been pepper sprayed less than a year  
6 before as part of her academy training and who was not part of McLellan's shift at the  
7 time of the March 2 incident. Another member of McLellan's shift at the time of the  
8 March 2 incident had been transferred from his shift and was not subjected to the  
9 retraining and respraying.  
10

11 46) The "retraining" provided to McLellan and his shift members was a sham.  
12 Though training includes a classroom session and a written test, they were initially  
13 slated to participate only in the part of the training where the participants are sprayed.  
14 Apparently recognizing that would reveal the punitive and retaliatory intent of the  
15 exercise, McLellan and his shift members were told to attend the class, but unlike the  
16 other participants, they were not given pencils, were not permitted to take notes, and  
17 were not given the written test.  
18

19 47) Though Department of Corrections management does not typically attend the  
20 training, Brandenburg attended to view the spraying and laughed and joked throughout.  
21

22 48) In causing McLellan to be pepper sprayed, defendants humiliated him in front  
23 of the other class members and in the eyes of the ACOA membership.  
24

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**Civil Rights Violation: 42 U.S.C. § 1983**

49) Plaintiff restates paragraphs 1 through 48, above.

50) Through his union activity and his advocacy of the interests of the members of the ACOA and inmates, McLellan engaged in speech, associational activities, and petition rights protected by the First and Fourteenth Amendments to the United States Constitution. McLellan's speech and activities involved matters of public concern, including matters relevant to the work conditions and safety of correctional officers as well as to the safety and well-being of inmates in the custody of the Department of Corrections.

51) Defendants, in their personal and individual capacities and acting under color of state law, intentionally deprived McLellan of those federal constitutional rights by ordering and approving that he be pepper sprayed in retaliation for his exercise of those rights and in an attempt to intimidate him from exercising his rights as a member and President of the ACOA. It is clearly established that a person may not subject another to retaliation and assault for exercising their First Amendment rights and a reasonable person would have known that. Defendants used retraining as a pretext for penalizing McLellan for his constitutionally protected speech, associational conduct, and assertion of his right to petition the government for redress of grievances.

52) In subjecting McLellan to an assaultive pepper spraying, defendants also deprived him of a clearly established liberty interest protected under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendants intended to cause harm to McLellan and their conduct was objectively unreasonable and

1 shocking to the conscience.

2 53) As a direct and proximate result of defendants' violation of his constitutional  
3 rights, McLellan sustained damages, including pain and suffering, humiliation, and  
4 emotional distress. McLellan is entitled to an award of compensatory damages in excess  
5 of \$100,000, the exact amount to be proved at trial.  
6

7 54) At a minimum, McLellan is entitled to an award of nominal damages to reflect  
8 the unconstitutionality of defendants' conduct.

9 55) Defendants' conduct was malicious and outrageous. They acted with reckless  
10 and callous disregard for McLellan's constitutional rights. McLellan is entitled to an  
11 award of punitive damages.  
12

13 56) Plaintiff is also entitled to an award of attorney's fees under 42 U.S.C. § 1988.

14 **Prayer for Relief**

15 Plaintiff prays for the following relief:

16 1) Judgment in his favor against defendants.

17 2) An award of damages, including compensatory, nominal, and punitive  
18 damages, in an amount exceeding \$100,000, the exact amount to be proved at trial.  
19

20 3) An award of prejudgment interest, attorney's fees, and costs.

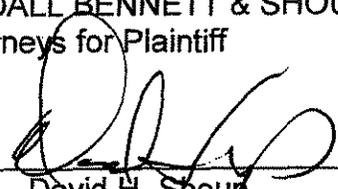
21 4) Such other relief as the court may deem just and equitable.  
22  
23  
24  
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DATED at Anchorage, Alaska, this 28<sup>th</sup> day of January, 2014.

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