

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY

RACHEL ANDERSON

PLAINTIFF

VS.

CASE NO. 16 JCV-23-2110

RICK ELLIOTT, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS POLICE
CHIEF OF THE CITY OF JONESBORO,
HAROLD COPENHAVER, INDIVIDUALLY,
AND IN HIS OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF JONESBORO

DEFENDANTS

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Come the Plaintiff, RACHEL ANDERSON, by and through counsel, SUTTER & GILLHAM, P.L.L.C.; and, for the Brief in Support of Her Motion for a Preliminary Injunction, she states:

I. Preliminary Injunction

A circuit court is required to consider at least two (2) things in determining whether to issue a preliminary injunction under Ark. R. Civ. P. 65:

(1) whether irreparable harm will result in the absence of an injunction or restraining order; and,

(2) whether the moving party has demonstrated a likelihood of success on the merits. *See Baptist Health v. Murphy*, 365 Ark. 115, 226 S.W.3d 800 (2006).

A. Threat of Harm

In this case, media articles concerning Plaintiff and her termination have harmed her reputation, at the very least affecting her ability to secure employment in her home state and jeopardizing community good-will towards her. In other words, she has been stigmatized. She has suffered resultant mental and emotion distress. This factor weighs in favor of the Plaintiff.

B. Balance of Equities

A name-clearing hearing will not harm Defendants, and the cost to provide the hearing is far outweighed by the threat of permanent harm to Plaintiff's reputation and the public interest in promoting civil rights and government accountability. On balance, Plaintiff believes this factor weighs in his favor. Other courts have granted preliminary injunctions. *Estiverne v. Esernio-Jenssen*, 581 F.Supp.2d 335 (E.D. N.Y. 2008).

C. Probability of Success

Plaintiff has set meritorious claims before the Court, and, in light of the balance of equities, this sufficiently demonstrates the probability of success of her claims to justify a preliminary injunction. *See Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981) (noting that the requisite showing of the probability of success on the merits is flexible and changes in response to the apparent balance of equities).

The Supreme Court has recognized in situations such as this that the Constitution's procedural due process protections require the employer to provide the employee with an opportunity to dispute the defamatory allegations in what is commonly referred to as a name-clearing hearing. *Codd v. Velger*, 429 U.S. 624, 627-28, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977); *Singleton v. Cecil*, 176 F.3d 419, 427 (8th Cir.1999) (en bane), *cert. denied*, 528 U.S. 966, 120 S.Ct. 402, 145 L.Ed.2d 313 (1999). The right to a name-clearing hearing protects the employee's liberty interest in his or her good name and reputation, and it prevents a public employer from depriving an employee of that interest without due process. *See Merritt v. Reed*, 120 F.3d 124, 126 (8th Cir.1997).

“To establish a procedural due process claim against a state employer for deprivation of a protected liberty interest in a public employee's reputation, the plaintiff must demonstrate (1) an official made a defamatory statement that resulted in a stigma; (2) the defamatory statement

occurred during the course of terminating the employee; (3) the defamatory statement was made public; and (4) the legal status of the plaintiff was altered or extinguished.” *Singer v. Harris*, (E.D.Ark. 2015) (citing *Crooks v. Lynch*, 557 F.3d 846, 849 (8th Cir. 2009). "In addition, he must prove he requested and was denied a name-clearing hearing." *Crooks* (citing *Winskowski v. City of Stephen*, 442 F.3d 1107, 1112 (8th Cir. 2006)).

Plaintiff has filed a Verified Complaint. As to the first element, Defendants have publicly accused her of “policy violations”, that Defendants stated she has “violated the City of Jonesboro handbook and JPD policy and the Civilian Code of Ethics”, failing to follow the chain of command, and that “In addition there have been several complaints on your misuse of your take home unit. Those actions also constitute violations of JPD policy.” Ex. B; Cplt., para. 8, 44. Elliott stated that her actions were “arrogant and insubordinate.” Ex. C. The letter, which has been reported, stated that her actions had “eroded the city’s trust and confidence in her role, leading to her immediate dismissal. See Ex. D, p. 2 of 5; Ex. B, p. 2.

As to the second element, there is no disputing that Anderson was fired, and these statements were made in connection with her termination. (Ex. B; Cplt., para. 2, 6, 8); Ex. A-D.

As to the third element, the facts have been made public. Her termination letter was released to the public, and several articles have been published concerning the issues. See Ex. A-D; Cplt., para. 15.

As to the fourth element, her legal status as an employee was altered and extinguished by virtue of being fired. Cplt., para. 2, 6, 8; Ex. B.

Finally, she requested a name clearing hearing without result. Cplt., para. 15, 17, 18.

D. Public Interest

The public interest is served by preventing irreparable harm to those citizens and government employees who raise substantial issues of civil rights abuse; citizens should not be discouraged to

vindicate and protect rights which ensure to all citizens. It is surely in the public interest to grant this Motion.

II. Relief Sought

When an individual's reputation or honor are at stake because of the government's actions, due process requires that the individual be given notice and a hearing so as to have an opportunity to clear his name. *Bd. of Regents v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701 (1972) (citation omitted). See *Winskowski v. City of Stephen*, 442 F.3d 1107 (8th Cir. 2006); *Schleck v. Ramsey County*, 939 F.2d 638 (8th Cir. 2001). In this case, Plaintiff's reputation is at stake because of public statements made by Defendant, a government entity, widely circulated in local news publications. Thus, Plaintiff should be afforded notice of the former employer's accusations and evidence against him and a meaningful opportunity to respond. To assure sufficient fairness and opportunity to clear his name, the hearing should be public record, the Council should permit cross-examination, allow media coverage, and the Plaintiff should be allowed to present witnesses.

District courts and courts of appeals in other circuits have taken varied approaches in establishing name-clearing hearing requirements. Courts generally agree that the purpose of a name-clearing hearing is not to challenge the decision to discharge or otherwise to discipline the employee, but rather to provide the employee with a public opportunity to clear his or her name. See, e.g., *Rosenstein v. City of Dallas*, 876 F.2d 392, 395 (5th Cir.1989); *Boston v. Webb*, 783 F.2d 1163, 1165- 66 (4th Cir.1986); *Campbell v. Pierce County*, 741 F.2d 1342, 1345 (11th Cir.1984). Beyond that general agreement, however, courts have reached different conclusions regarding specific procedural requirements for name-clearing hearings.

For example, circuit courts are split regarding whether the entitlement to a name-clearing hearing includes the right to cross-examine adverse witnesses, but there appears to be clear right to present witnesses. The Fourth Circuit, upon balancing the three *Mathews v. Eldridge* factors,

determined that a police officer who was discharged based upon allegations of bribery was not entitled to cross-examination at his name-clearing hearing. *Boston*, 783 F.2d at 1167 ("Our inquiry is limited to whether in the balance of interests, cross-examination was essential to avoid an impermissible risk of an incorrect decision that Boston had not satisfactorily refuted the reasons for his termination. We agree with the district court that cross-examination was not required here in view of the opportunity given and the nature of the interests involved."). Similarly, The Seventh Circuit held that a county assessment supervisor who was not reappointed to his position was not entitled to cross-examination at his name-clearing hearing. *Endicott v. Huddleston*, 644 F.2d 1208, 1216 (7th Cir.1980) ("The Board's failure to call witnesses whom plaintiff's counsel could cross-examine did not seriously impede plaintiff's opportunity to argue that the Board's charges were groundless and to support his contentions by calling his own witnesses and presenting his own evidence.").

In contrast, the Tenth Circuit held that a non-tenured teacher who was fired amid rumors of immorality was entitled to cross-examine her accusers at her name-clearing hearing. *McGhee v. Draper*, 564 F.2d 902, 911 (10th Cir.1977) ("[W]e agree that in the circumstances of this case due process required that the accusers of plaintiff, who were attacking her morality and fitness as a teacher, be heard only where plaintiff could confront and cross-examine them."). The Eleventh Circuit has also approved of a district court's decision to allow cross-examination at a name-clearing hearing. *Campbell*, 741 F.2d at 1346 (holding that due process requirements were satisfied where the plaintiff had "opportunity to hear and cross-examine all adverse witnesses and to attempt to rebut their claims of insubordination and mishandling of funds"); See. e.g., Tracy M. Loos. *Name-Clearing Hearings, Gratuitous Remedies. and Common Law Writs of Certiorari-Are They Worth Their Weight in Gold?*, 22 S. Ill. U. L.J. 201, 209-11 (1997) (collecting cases); Harvey

Brown & Sarah V. Kerrigan, 42 U.S.C.S. § 1983: *The Vehicle for Protecting Public Employees' Constitutional Rights*, 47 Baylor L.Rev. 619, 641-44 (1995) (same).

Plaintiff should be given a name clearing hearing, with the following components: (1) at a city council meeting; (2) she has the right to testify and may be cross-examined; (3) she may call witnesses to testify who may be cross-examined; (4) she shall have the right to call Chief Elliott, the Mayor, and Bill Campbell as witnesses and cross examine them.

The Mayor and Chief have chosen to make a public attack on the plaintiff for exercising her rights by attacking her trustworthiness, loyalty, ability as an employee, and her honesty. If they are willing to say it to the public, they should be willing to stand by it during cross-examination. Ms. Anderson will testify at this hearing and fears no cross-examination or lawyer. Surely the Mayor and Chief are not afraid to do so?

WHEREFORE, Plaintiff, **RACHEL ANDERSON**, prays for an Order granting her Motion for a Preliminary Injunction and requiring Defendants to provide her with a name-clearing hearing before the City Council, with the right to testify and to call and cross-examine witnesses, including the Mayor, the Chief, and Bill Campbell; and, for all other proper relief.

Respectfully submitted,

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https://www.jonesborosun.com/news/officer-fired-following-public-statements/article_52bb9a02-4870-5c28-a438-e2266b874178.html

Officer fired following public statements

By Keith Inman Sun Staff Writer

Nov 17, 2023

JONESBORO — A city council member criticized Mayor Harold Copenhaver's administration Thursday after a police officer was fired for speaking at a public hearing.

"Your actions have undermined the trust and confidence that the City has in your current position," Police Chief Rick Elliott said in a termination letter to Rachel Anderson, dated Tuesday. *The Sun* obtained the letter under a Freedom of Information Act request.



Jonesboro Police Department

Notice of Disciplinary Action

Instructions: This notice must be served on an employee when any of the following types of disciplinary actions are taken:

- (a) suspension of any number of days;
- (b) suspension more than three times or for an aggregate of more than fifteen days in one calendar year;
- (c) disciplinary demotion;
- (d) termination;
- (e) resignation not in good standing.

Subject Employee: Rachel Anderson Civ. / RTCC
Chief of Police: Rick Elliott
(or Designee)

On Nov. 7th you were named as the subject employee in the complaint or charge lodged on _____ by _____ Which contained the following allegations:

Policy Violations

The charge made against you has been sustained. The following disciplinary action is being taken against you:

Suspension, of _____ days beginning on _____ and ending _____
Date

Termination, effective 11-14-23
Date

Demotion to position of _____ effective _____
Date

Resignation not in good standing, effective _____
Date

Other disciplinary action : _____

Signature: Rick Elliott Title Chief Date 11-14-23
(Chief of Police or Designee)

Appeal Procedure to the employee: You have a right to appeal this disciplinary action. You may file a written appeal to the Human Resource Officer or to the Mayor of the City of Jonesboro within five days of receiving this notice. The Mayor will make a final Management decision and respond in writing to all concerned parties within ten working days.

Questions regarding LOFPI and/or retirement benefits must be addressed with Human Resources.



DISCIPLINARY ACTION

Employee: Rachel Anderson

Department: JPD

Date: November 14, 2023

On the evening of November 7, 2023 there was a public hearing on the Bond Issue that the city was proposing. You came to this meeting and began your comments by identifying yourself and that you are the senior video analyst of the Real Time Crime Center, therefore the comments you made from that point on were considered to be from a city employee standpoint and speaking on behalf of your division of the department. Upon review, your actions / comments have been determined to have violated City of Jonesboro handbook and JPD policy and the Civilian Code of Ethics.

In addition there have been several complaints on your misuse of your take home unit. Those actions also constitute violations of JPD policy.

Your actions have undermined the trust and confidence that the City has in your current position. As a result effective immediately you are terminated from the City of Jonesboro.



Chief Rick Elliott

Jonesboro community decries police video analyst's termination after opposing mayor's \$17.5M bond issue

by Chris Carter, Andrew Mobley
Wed, November 22nd 2023, 6:46 AM CST



Jonesboro community members are voicing their anger over the recent firing of the Jonesboro Police Department's senior video analyst, Rachel Anderson. (Photo Jonesboro Police Department)

LITTLE ROCK (KATV) — Jonesboro community members are voicing their anger over the recent firing of the Jonesboro Police Department's senior video analyst, Rachel Anderson, our content partner [K8 News reported](#).

Anderson was fired after she publicly opposed the purpose of a \$17.5 million bond issue supported by Jonesboro Mayor Harold Copenhagen. Her termination has spurred demands for an investigation into the circumstances surrounding her dismissal.

Tuesday night, the Jonesboro City Council chambers were filled to capacity as Anderson's supporters gathered to express their



disapproval of her termination.

"It is truly humbling to have this type of support. People taking time out of their day, tonight, to speak on my behalf. I didn't know more than half of the people who were here tonight," Anderson said.

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The controversy arose on November 7, when Anderson addressed the city council during a public hearing on the proposed bond issue. Anderson opposed the proposal—advocated by the mayor—to merge the police department's E911 Dispatch and Real-Time Crime Center (RTCC) in one building.

Anderson advocated for strategic placement of RTCC video analysts near detectives instead of dispatch.

According to K8 News, despite Copenhaver acknowledgment of Anderson's comments with a brief "duly noted," her opposition led to her termination by Police Chief Rick Elliott. In a statement, Elliott cited concerns that Anderson's words "could jeopardize a critical funding stream" and labeled her statements and actions as "arrogant and insubordinate."

LRPD wants businesses to integrate camera systems with real time crime center

Reducing crime in the community with help from the community.



Anderson's aunt, Tracey Snell, spoke in support of her niece during Tuesday's council meeting, urging an explanation for her termination.

"I would implore you to consider and let us know, let Rachel know why was she fired," urged Snell.

Councilmember L.J. Bryant commended Anderson in a letter last week for her conduct during the public hearing on November 7, highlighting her factual presentation and absence of personal jabs.

Bryant expressed disappointment at the decision to fire Anderson and called for an impartial inquiry into her termination, emphasizing the need to protect city employees in the public sector.

"There were hundreds of messages on social media, and I think we are reminded it's a sin to kill a mockingbird, and I will have future comments on how to protect city employees," Bryant said at Tuesday's council meeting.

Anderson has appealed her termination, expressing uncertainty about the outcome, but said she has received several job offers.

The city's communication director told K8 News that the mayor could not provide an interview due to the ongoing appeal process.

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Termination of Jonesboro police department employee sparks outrage, calls for investigation

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Rachel Anderson, a former JPD employee, was fired for speaking out at a city council meeting. (Jonesboro Police Dept.)

By [Chris Carter](#)

Published: Nov. 20, 2023 at 3:47 PM CST



JONESBORO, Ark. (KAIT8) - The recent termination of a Jonesboro Police Department employee has sparked outrage and a call for an investigation into her termination.

Senior Video Analyst Rachel Anderson was fired following her public opposition to a \$17.5 million bond issue supported by Mayor Harold Copenhaver during a city meeting. Jonesboro City Councilman L.J. Bryant urges an impartial inquiry into Anderson's termination.

The incident happened on November 7, when Anderson, who worked for the Jonesboro Police Department for five years, addressed the council at a public hearing on the proposed bond issue. Mayor Copenhaver, advocating for funding various projects, including a new E911 Dispatch and Real-Time Crime Center (RTCC), faced Anderson's vocal disagreement.



Anderson advocated for strategically placing video analysts like herself near detectives rather than dispatch. She opposed the creation of the RTCC building, saying, "We do not want this new building." Mayor Copenhaver acknowledged her comments with a brief "Duly noted."

Councilman Bryant commended Anderson's conduct during the meeting, highlighting her factual presentation and absence of personal attacks. However, a subsequent disciplinary letter cited violations of city handbook policies and JPD regulations as grounds for her termination.

The termination letter, signed by Police Chief Rick Elliott, emphasized Anderson's actions had eroded the city's trust and confidence in her role, leading to her immediate dismissal.

Councilman Bryant expressed disappointment at the decision, characterizing Anderson as an outstanding employee and cautioning against punitive measures based on political beliefs.

However, city officials, including communication director Bill Campbell, maintained that the city attorney's office had thoroughly reviewed and deemed the decision appropriate.

In response to Bryant's call for an independent investigation, Campbell dismissed it as "performative," stating that the city attorney's office, being elected and independent, had already conducted a comprehensive review.

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