

Employment – Whistleblower – Civil Rights

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Employment Litigation

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In this matter, we represented former Suffolk County District Attorney Daniel Conley, his chief-of-staff, John Towle, and civilian investigator, Michael Roberts, in this case involving claims of retaliation, tortious interference with contractual relations, and violations of the Massachusetts Civil Rights Act. The firm also represented the Suffolk County District Attorney's Office against Plaintiff's claims for alleged violations of the Massachusetts Whistleblower Protection Act, the Massachusetts Wage Act, and wrongful termination claims which were bifurcated on the eve of trial, but the court included as a special question for the jury.

The Plaintiff, a former Assistant District Attorney and supervisor at the Suffolk County District Attorney's Office, claimed that he was wrongfully terminated for refusing to participate on D.A. Conley's 2013 campaign for mayor of the City of Boston. After a three and a half week trial in the Suffolk Superior Court, which included testimony from twenty-six (26) witnesses, including multiple attorneys and current public officials, a jury of fourteen returned a verdict in favor of the Defendants on all counts.

The Plaintiff, a career prosecutor who spent ten years as an Assistant District Attorney under Daniel Conley, supervised the Suffolk County District Attorney's Office at the West Roxbury District Court. He claimed that he was wrongfully terminated in November 2013 because he refused to participate on Daniel Conley's 2013 mayoral campaign. Plaintiff alleged that in terminating him, Mr. Conley and Mr. Towle violated his civil rights through threats, intimidation and coercion, and that Mr. Towle tortiously interfered with his contract with the office. At trial, the Plaintiff attempted to establish that Mr. Conley and/or Mr. Towle directed numerous associates to pressure the Plaintiff to volunteer on Mr. Conley's mayoral campaign. Attorneys White and Johnson demonstrated to the jury that at the time the office's executive team made the decision to terminate the Plaintiff, they had no knowledge of any conversation regarding his refusal to volunteer for the campaign.

The jury rejected the Plaintiff's claims that Mr. Towle and Mr. Conley violated his civil rights. Prior to the jury verdict the Plaintiff dismissed all claims against Mr. Roberts. The evidence presented on behalf of Mr. Conley and Mr. Towle demonstrated that Plaintiff had no prospects of advancement within the office after ten years and the office's executive team had serious concerns regarding the Plaintiff's stability, judgment, and leadership. Specifically, the evidence demonstrated that in April 2013 the Plaintiff's reaction to a perceived gang related security threat was insubordinate, disproportionate, and raised concerns among the executive team. Just days later, in the immediate wake of the 2013 Boston Marathon Bombing, the evidence

indicated that Plaintiff launched an unauthorized investigation into the bombing, an inquiry which was repeatedly communicated to the executive team and which continued even after the actual perpetrators of the bombing were identified, and killed or apprehended by law enforcement. The Plaintiff focused his unauthorized investigation on several alleged conspirators, including the Occupy movement, anti-war protesters, and one individual who became a national hero due to his efforts to save multiple lives following the bombing.

Further, the jury rejected the Plaintiff's claims that Mr. Towle had tortiously interfered with the Plaintiffs contract with the office. The Defendants presented overwhelming evidence to support that the Plaintiff was an at-will employee, with no expectation of continued employment, and demonstrated the lack of evidence that Mr. Towle had any knowledge of the Plaintiff's position regarding the campaign.

Key electronic communications were secured during the course of discovery, including emails and text messages within which the Plaintiff had recorded the details of investigation, his concerns and conspiracy theories. A timeline of the Plaintiff's actions were pieced together, which when they became known to executive staff, raised serious concerns about Plaintiff's ability to serve as an assistant district attorney and his personal well-being at the time.

The Plaintiff alleged that he suffered substantial economic losses as well as ongoing emotional distress as a result of the alleged retaliation and sought to recover damages exceeding \$2 million, including attorney fees. Plaintiff's credibility was undermined by eliciting testimony from the Plaintiff's wife, as well as the Plaintiff himself, which supported that following termination the plaintiff did not seek or obtain comparable full-time employment, and that his emotional distress was either litigation induced or caused by third-parties, and not recoverable.

In the end, the jury determined that the Defendants had legitimate and compelling reasons for terminating the Plaintiff. The jury's decision also affirmed the office's position that the Plaintiff was not terminated because he refused to participate in Mr. Conley's mayoral campaign. Because of the special question answered by the jury in favor of the Defendants on the issue of retaliation, the Suffolk County District Attorney's Office has filed a motion for entry of final judgment on the claims against it based on principles of issue preclusion.