

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER WELSH,

Plaintiff,

v.

DEFENDER ASSOCIATION OF  
PHILADELPHIA,

Defendant.

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Case No. 2:17-CV-04113-JCJ

**FILED VIA ECF**

**DEFENDANT’S AMENDED ANSWER TO THE COMPLAINT**

Defendant, Defender Association of Philadelphia (“Defendant” or “the Association”), by and through its undersigned counsel, hereby answers the consecutively numbered paragraphs of the Complaint of Plaintiff, Christopher Welsh (“Plaintiff” or “Mr. Welsh”), as follows:

**I. INTRODUCTION**

The Association is an independent, non-profit corporation that was created in 1934 by a group of Philadelphia lawyers who were dedicated to the ideal of providing high quality legal services to indigent criminal defendants. That ideal continues today, as over 240 full-time Assistant Defenders represent indigent clients in adult and juvenile state courts, at civil and criminal mental health hearings, and as child advocates for dependent and neglected children. The Association represents approximately seventy percent of all persons arrested in Philadelphia.

With respect to its own employees, the Association is committed to resolving workplace conflicts with fairness and compassion and fostering an environment for its employees that prioritizes collegiality, professionalism, and transparency. This culture is central to fulfilling the Association's vital mission on behalf of the clients it serves and the Philadelphia community. The Association denies all characterizations contained in Plaintiff’s introductory paragraph, and

specifically denies that it engaged in any unlawful conduct in violation of the Family Medical Leave Act (“FMLA”) or the Pennsylvania Whistleblower Law (“PAWBL”). Defendant further avers as follows:

Plaintiff was employed as the Deputy Defender Chief of Practice Operations and Systems Development, and his duties included compliance oversight. After three months in this role, in February 2017, Plaintiff discovered that an Association attorney had appeared in court while his license to practice law had been suspended. On February 17, 2017, Plaintiff, in an agitated state, reported this to James McHugh, First Assistant Defender, and insisted that it was a criminal matter that should be reported to the District Attorney’s Office. Mr. McHugh told Plaintiff that he disagreed with Plaintiff’s assessment, which Plaintiff had made before the Association had any opportunity to investigate the matter. On February 21, 2017, Plaintiff, again in a clearly agitated state, met with Mr. McHugh and Keir Bradford-Grey, Chief Defender, to discuss the issue, and again he insisted that this was a criminal matter that should be reported to the District Attorney’s Office. Plaintiff would not listen to the contrary views voiced by Ms. Bradford-Grey and Mr. McHugh.

A full investigation by Mr. Bradford-Grey and Mr. McHugh showed that (1) the attorney in question had been administratively suspended *solely* because he had failed to pay his annual registration fee to the Pennsylvania Bar; (2) the attorney had represented clients on approximately seventeen court dates during his suspension period; (3) the attorney was on an extended medical leave of absence from late December 2015 to early March 2016; and (4) shortly after returning from leave, without knowledge of his administrative suspension, the attorney transitioned into a new position with the Association that does not involve direct representation of the Association’s clients. The attorney was in that position when his

administrative suspension was discovered, and he remains in that position today.

The Association immediately took the following affirmative steps to address the situation:

1. Ms. Bradford-Grey instructed the administratively-suspended attorney to self-report to the Disciplinary Board of the Supreme Court of Pennsylvania, which he did, and to copy her on all correspondence with the board, which he also did;
2. The Association consulted with an ethics expert to evaluate the appropriate response;
3. The Association sent letters to the clients who had been represented by the administratively-suspended attorney and may have a basis for relief, advising them of their rights to seek review of any judicial actions in these cases;
4. The Association conducted an immediate review to ensure that all attorney licenses were valid and active;
5. The Association created a new mandatory policy where all attorneys would be prohibited from going to court unless they provided copies of their bar licenses to Ms. Bradford-Grey by September 1, 2017, and on an ongoing annual basis;
6. The Association notified its professional liability insurance carrier to put them on notice of any potential claims arising out of the matter; and
7. The Association determined that all of its attorneys were properly licensed and that no other attorney had been representing clients without a license during this period of time.

Ms. Bradford-Grey did not inform Plaintiff of the actions taken as a result of his report due to the highly personal circumstances surrounding the administrative suspension in connection with the suspended attorney's extended medical leave.

Plaintiff's claim that he was retaliated against for reporting the attorney suspension up the chain of command is false. The report was made in February 2017 and was immediately investigated by the Association. It played no role in any actions taken by the Association regarding Plaintiff's work. To the contrary, Plaintiff was placed on a performance improvement plan ("PIP") three months later because of his demonstrated inability to adequately perform his job.

Ms. Bradford-Grey had promoted Plaintiff to the executive position of Deputy Defender – Practice Operations and Systems Development in October 2016. Early on, it became clear to the Association leadership that Plaintiff was having problems in carrying out his responsibilities. As observed by his supervisors, Ms. Bradford-Grey and Mr. McHugh, Plaintiff exhibited poor managerial judgment, failed to achieve operational goals, and struggled to prioritize projects for which he had direct responsibility. For eight months, Ms. Bradford-Grey counseled Plaintiff regarding his performance issues, to no avail. As a result, Ms. Bradford-Grey placed Plaintiff on a PIP on May 4, 2017. The PIP identified five specific concerns regarding Plaintiff's performance. *First*, in April 2017, Plaintiff learned that a department head who occupied a critical position within the organization was considering resignation. Notwithstanding the fact that Plaintiff was aware that the individual's departure from the organization could have profound negative consequences, Plaintiff deliberately decided not to share the news with Ms. Bradford-Grey. In the PIP, Ms. Bradford-Grey noted that Plaintiff's handling of this matter represented poor managerial judgment. *Second*, despite extensive prior discussions between Plaintiff, Ms. Bradford-Grey, and other key individuals in the IT department, Plaintiff put forth an ill-conceived proposal for IT department staffing recommendations that was contrary to what had been previously discussed. *Third*, Plaintiff was noted to have repeatedly involved himself in

issues and activities that fell far outside of his purview as Deputy Defender – Practice Operations and Systems Development, to the point that Plaintiff was failing to prioritize matters for which he had direct responsibility. *Fourth*, despite numerous discussions with Plaintiff about maintaining the confidentiality of the Association’s Executive Committee Meetings, Ms. Bradford-Grey expressed concern in the PIP that Plaintiff was sharing sensitive information from those meetings to non-authorized individuals. *Finally*, Ms. Bradford-Grey cited Plaintiff for the slow rate of progress that he was achieving on projects that fell under his direct responsibility.

Upon his receipt of the PIP, Plaintiff acknowledged the seriousness of his performance issues, accepted responsibility for them, and signed the PIP. He did not mention anything about retaliation until one week later, when he went out on FMLA leave.

Plaintiff returned from FMLA leave on August 23, 2017. Since his return, Plaintiff holds the same job title, earns a higher salary, is no longer on a PIP, and is working on the same IT implementation project that he began before taking FMLA leave. This project, which dates back to November 2016 and was expressly made one of Plaintiff’s top priorities, involves assessing the organization’s IT infrastructure and digitizing the Association’s antiquated “hard files.” This is a critical, enterprise-wide initiative designed to enable attorneys and staff to work remotely, be more efficient, and share information, which ultimately will lead to better outcomes for the Association’s clients. Indeed, the Association’s professional liability insurance broker has explained that digitizing the Association’s records should be considered *the top priority* because it will reduce exposure to liability. The fact that Plaintiff fails to understand the importance of this project underscores how mismatched he truly is for a role in Operations leadership.

To the extent Plaintiff claims that his assignments since his return somehow constitutes a demotion, Plaintiff could not be more misguided. The Association’s critical mission is to defend

the most compromised and vulnerable individuals in the criminal justice system. As such, the Association had no choice but to reorganize its reporting structure during Plaintiff's 4-month leave of absence so that it could ensure his assignments would be attended to while he was out of office. Mr. McHugh explained to Plaintiff upon his return that the reassigning of his direct reports was necessary to complete critical projects that were currently underway. As Mr. McHugh told Plaintiff: "[w]e must continue, for you and anyone else who is out on leave, to discharge our duties effectively – *lives depend on it.*" One would think that Plaintiff, who has asserted that he has "dedicated his entire working life to public service," would understand this concept. (*See* Complaint, ¶ 18.) Further, the IT infrastructure and digitizing project entrusted to him continues to be of utmost importance and a top priority of the Association.

The Association, Ms. Bradford-Grey, and Mr. McHugh have always treated Plaintiff with dignity and respect. They have given him every opportunity to succeed within the organization, and have put him in a position to make a lasting impact on the community by placing him in an executive leadership role. The Association unequivocally denies his allegations that it violated the FMLA or the PAWBL, and it further denies that Plaintiff is entitled to any of the relief he requests.

## **II. PARTIES**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Defendant admits that it is governed by a Board of Directors. Defendant denies the remaining allegations set forth in paragraph 6.

7. Admitted.

8. The allegations contained in this paragraph state conclusions of law to which no answer is required. To the extent an answer were required, Defendant denies the same.

9. Admitted.

10. The allegations set forth in paragraph 10 are too vague to be admitted or denied, and so Defendant denies the same.

11. The allegations contained in this paragraph state conclusions of law to which no answer is required. To the extent an answer were required, Defendant denies the same.

### **III. JURISDICTION AND VENUE**

12. Defendant admits that Plaintiff purports to bring causes of action that arise under the FMLA and PAWBL, but denies that it violated these statutes or that Plaintiff is entitled to any relief under them.

13. The allegations contained in this paragraph state conclusions of law to which no answer is required. To the extent an answer were required, Defendant denies the same.

14. The allegations contained in this paragraph state conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

15. The allegations contained in this paragraph state conclusions of law to which no answer is required. To the extent an answer were required, Defendant denies the same.

### **IV. FACTUAL ALLEGATIONS**

16. Admitted upon information and belief.

17. Admitted upon information and belief.

18. Admitted, upon information and belief, that Plaintiff was a Legal Intern at Community Legal Services in Philadelphia while in law school, and that Plaintiff worked at the Northwest Bronx Community and Clergy Coalition in New York prior to law school. Defendant

is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph; as such they are denied.

19. Admitted.

20. Admitted.

21. Denied. By way of further answer, Defendant avers that it offered Plaintiff a promotion to Deputy Defender – Practice Operations and Systems Development in October 2016. Plaintiff began that position full-time in November 2016.

22. Defendant admits that Plaintiff reported directly to Ms. Bradford-Grey and Mr. McHugh and admits that the job responsibility set forth in paragraph 22 is one of Plaintiff's duties as Deputy Defender – Practice Operations and Systems Development.

23. Denied.

24. Admitted upon information and belief.

25. Admitted, upon information and belief, that on Thursday, February 16, 2017, Plaintiff advised "Unauthorized Attorney John Doe" that his license to practice law was administratively suspended. Defendant further admits, upon information and belief, that Plaintiff conveyed this information to McHugh on late on Friday, February 17, 2017, as McHugh was wrapping up work before the President's Day holiday weekend. Defendant denies the remaining allegations set forth in paragraph 25.

26. Defendant admits that Plaintiff gave it the quoted memorandum after the holiday weekend, on Tuesday, February 21, 2017.

27. Defendant admits that Plaintiff attached the materials described to the memorandum, but denies that the attachments demonstrated that an attorney suspension for failure to pay the Bar fee amounted to a criminal offense.



28. The allegations contained in this paragraph state conclusions of law to which no answer is required. To the extent an answer were required, Defendant denies the same.

29. The document referred to in Paragraph 29 of the Complaint speaks for itself and all characterizations are denied.

30. Defendant admits that Plaintiff met with Ms. Bradford-Grey and Mr. McHugh on February 21, 2017 regarding the attorney suspension and Plaintiff's memorandum. Defendant avers that Plaintiff, in an agitated state, insisted that this was a criminal matter that should be referred to the District Attorney's Office for investigation, an assessment with which his superiors disagreed. The remaining allegations of this paragraph are denied.

31. Admitted.

32. Defendant admits that it issued Plaintiff a PIP on May 4, 2014, identifying five areas in which improvement was needed: (1) failure to notify Ms. Bradford-Grey of possible resignation of key department head/director; (2) ill-conceived IT Department staffing recommendations; (3) failure to respect operational boundaries; (4) concerns regarding confidentiality; and (5) slow rate of progress toward achieving operational objectives. The remaining allegations of this paragraph are denied.

33. Defendant admits that Plaintiff sent the quoted memorandum on May 11, 2017. Defendant denies that Plaintiff was retaliated against. Defendant also denies that it had taken no action on the attorney suspension issue Plaintiff reported up through his chain of command, and denies the remaining allegations set forth in paragraph 33.

34. Denied.

35. Admitted that Plaintiff took approved FMLA leave. The remaining allegations of this paragraph are denied.

36. Defendant admits that it retained an independent attorney to investigate Plaintiff's complaints of retaliation. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph; as such they are denied.

37. Defendant admits that Plaintiff met with Defendant's investigator on July 12, 2017, while he was still on leave. Defendant denies that the PIP on which Plaintiff had been placed was retaliatory. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of this paragraph; as such they are denied.

38. Denied.

39. Admitted.

40. Admitted.

41. Denied. By way of further answer, the Association reorganized its reporting structure during Plaintiff's absence so that it could ensure the seamless discharge of its administrative responsibilities. Additionally, upon his return from FMLA leave, Plaintiff continued overseeing the same project that he began before taking leave: the scanning and digitalizing of the Association's "hard files."

42. Admitted.

43. Denied. By way of further answer, Ms. Bradford-Grey has never yelled at or treated Plaintiff in a hostile manner. On the contrary, it is Plaintiff who has been contentious and antagonizing in nearly every interaction with Ms. Bradford-Grey since his return from FMLA leave.

44. Denied.

45. Denied. By way of further answer, Defendant avers that it took appropriate action to address the suspended attorney situation and once it was escalated to his superiors for handling, Defendant was not obligated to report back to Plaintiff on it.

46. Denied. By way of further answer, Plaintiff was advised on May 4, 2017 that he was being placed on a PIP due of the following concerns about his performance: (1) failure to notify Ms. Braford-Grey of possible resignation of key department head/director; (2) ill-conceived IT Department staffing recommendations; (3) failure to respect operational boundaries; (4) concerns regarding confidentiality; and (5) slow rate of progress toward achieving operational objectives.

47. Defendant denies that Plaintiff was demoted and denies the remaining allegations set forth in paragraph 47.

48. Denied. By way of further answer, Plaintiff's title is still Deputy Defender – Practice Operations and Systems Development, his pay was raised, and he is assigned to work on a major project that he was working on before his leave.

49. Denied.

50. Denied.

51. Denied.

#### **COUNT I – FMLA**

52. No answer is necessary to Plaintiff's incorporation paragraph.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph; as such they are denied.

**COUNT II - PAWBL**

58. No answer is necessary to Plaintiff's incorporation paragraph.

59. The allegations contained in this paragraph state conclusions of law to which no response is required. To the extent a response is required, these allegations are denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

**RELIEF**

WHEREFORE, Defendant respectfully requests that this Court deny all relief sought by Plaintiff and dismiss his Complaint with prejudice.

**AFFIRMATIVE AND OTHER DEFENSES**

1. The Complaint fails to state a claim upon which relief may be granted.

2. The Complaint fails to set forth any basis upon which monetary damages, compensatory damages, punitive damages, any other type of damages, equitable relief or any other relief, including attorneys' fees and costs, may be granted.

3. To the extent Plaintiff seeks an equitable remedy, it is barred by the defenses of waiver, laches, unclean hands, and estoppel.

4. Defendant at all times acted reasonably and in good faith. Specifically, all actions taken with respect to Plaintiff were legitimate and taken without retaliatory motive.

5. To the extent Plaintiff is able to establish a violation of the FMLA, no violation was willful.

6. Plaintiff's claims are barred, in whole or in part, because he failed to make a good faith report of wrongdoing or waste to Defendant or an appropriate authority.

7. Plaintiff's claims are barred because his report of the attorney suspension was made in his role as Deputy Defender – Practice Operations and Systems Development, and not as a whistleblower.

8. Plaintiff's claims are barred, in whole or in part, because the actions he complained of do not constitute a violation of state or federal law.

9. Plaintiff's claims fail to the extent they are barred or reduced by the doctrine of after-acquired evidence.

10. Any damages suffered by Plaintiff were proximately caused by his own improper conduct and not the conduct of Defendant.

Dated: September 26, 2017

*/s/ Marc D. Esterow*

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