

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

BEAVER

County

For Prothonotary Use Only:

Docket No:

12010-2012

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name:

Kenneth McCoy

Lead Defendant's Name:

Borough of Beaver

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
 outside arbitration limits
(check one)

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: Myron R. Sainovich

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other
- Employment Dispute: Discrimination
- Employment Dispute: Other
- Other:

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other
- Zoning Board
- Other:

FILED OR ISSUED
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NANCY WERME
PROTHONOTARY
BEAVER COUNTY, PA

MASS TORT

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other:

REAL PROPERTY

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations Restraining Order
- Quo Warranto
- Replevin
- Other:

PROFESSIONAL LIABILITY

- Dental
- Legal
- Medical
- Other Professional:

SECTION B

Common Pleas of Beaver County
Civil Division

For Prothonotary Use Only (Docket Number)

Civil Cover Sheet

PLAINTIFF'S NAME Kenneth McCoy	DEFENDANT'S NAME Beaver Borough
PLAINTIFF'S ADDRESS 137 Crandon Circle Beaver, Pa 15009	DEFENDANT'S ADDRESS 469 Third St. Beaver, Pa 15009
PLAINTIFF'S NAME	DEFENDANT'S NAME Thomas T. Hamilton
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS 469 Third St. Beaver PA 15009

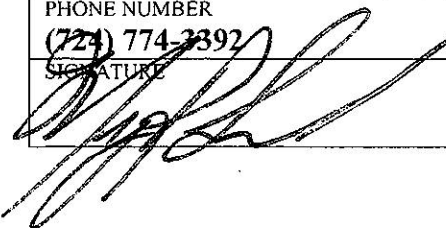
TOTAL NO. OF PLAINTIFFS 1	TOTAL NO. OF DEFENDANTS 2	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer from other Jurisdictions
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AMOUNT IN CONTROVERSY <input type="checkbox"/> \$25,000 or Less <input type="checkbox"/> Over \$25,000	CASE TYPE
	<input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Mortgage Foreclosure <input type="checkbox"/> Partition <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Ejectment <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Other Professional Liability <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Replevin <input type="checkbox"/> Product Liability <input type="checkbox"/> Quiet Title <input type="checkbox"/> Asbestos <input checked="" type="checkbox"/> Other Mandamus <input type="checkbox"/> Domestic Relations <input type="checkbox"/> Divorce <input type="checkbox"/> Custody

TO THE PROTHONOTARY

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant (or Pro Se Litigant)

Papers may be served at the address set forth below

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLAT'S ATTORNEY (OR PRO SE LITIGANT) Myron R. Sainovich		ADDRESS (SEE INSTRUCTIONS) 722 Turnpike Street Beaver, PA 15009	
PHONE NUMBER (724) 774-3392	FAX NUMBER (724) 775-3425	EMAIL ADDRESS myron@ssslawyer.com	
SIGNATURE 		SUPREME COURT IDENTIFICATION NUMBER 40770	DATE Nov. 21, 2012

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA

KENNETH MCCOY,

Plaintiff

vs.

No.

THE BOROUGH OF BEAVER,
a municipal corporation, and
THOMAS T. HAMILTON, mayor,

Defendants.

Complaint in Mandamus Seeking to Compel
the Borough of Beaver to Reinstate Sergeant
Kenneth McCoy

Filed on behalf of:
Kenneth McCoy, Plaintiff

Attorney of Record:
Myron R. Sainovich
PA ID# 40770

Sainovich, Santicola & Steele, P.C.
722 Turnpike St
Beaver, PA 15009
724-775-3392
724-775-3425 (fax)

BEAVER COUNTY, PA
PROTHONOTARY
NANCY WERME

2012 NOV 21 PM 2:16

FILED OR ISSUED

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA

KENNETH MCCOY,

Plaintiff

vs.

No.

THE BOROUGH OF BEAVER,
a municipal corporation, and
THOMAS T. HAMILTON, mayor,

Complaint in Mandamus Seeking to Compel
the Borough of Beaver to Reinstate Sergeant
Kenneth McCoy

Defendants.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice of any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service
788 Turnpike Street
Beaver, PA 15009
724-728-4888

**IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA**

KENNETH MCCOY,

Plaintiff

vs.

No.

THE BOROUGH OF BEAVER,
a municipal corporation, and
THOMAS T. HAMILTON, mayor,

Defendants.

Complaint in Mandamus Seeking to Compel
the Borough of Beaver to Reinstate Sergeant
Kenneth McCoy

**COMPLAINT IN MANDAMUS SEEKING TO COMPEL THE
BOROUGH OF BEAVER TO REINSTATE SERGEANT KENNETH
MCCOY**

NOW COMES, the Plaintiff, KENNETH MCCOY through the law firm Sainovich, Santicola, & Steele, P.C., by Myron R. Sainovich, Esquire and files the following Complaint pursuant to Pa. R.C.P. 1095, whereof the following are statements:

I. Name and Description of Parties

- 1) Plaintiff, Kenneth McCoy, is an adult individual residing herein at 137 Crandon Circle, Beaver, Pennsylvania, 15009.
- 2) Defendant, the Borough of Beaver, hereinafter referred to as "Borough," is a municipal corporation created under the laws of the Commonwealth of Pennsylvania and having its principal place of business located at 469 Third St., Beaver, Pennsylvania, 15009.

3) Defendant, Thomas T. Hamilton, is the mayor and chief executive officer of the Borough of Beaver Police Department, hereinafter referred to as "Mayor," with his office located at 469 Third Street, Beaver, Pennsylvania 15009.

4) Venue of this Court is proper under Pennsylvania Rules of Civil Procedure 1092(c)(2) and 2103 (b). The Court's jurisdiction to hear this action is grounded in the doctrine of equity.

II. Facts upon which Plaintiff Relies for Relief Sought

5) Plaintiff hereby incorporates by reference Paragraphs One (1) through Four (4) as if set forth herein.

6) Plaintiff is employed as a member of the Borough's Police Department as a full time police officer since June 15, 2000.

7) Plaintiff attained the rank of sergeant on August 1, 2008.

8) Plaintiff received a "Notice of Informal Hearing" from the Mayor dated October 23, 2012. A copy of this Notice is attached and labeled Exhibit "A."

9) On October 26, 2012, Plaintiff attended the Informal Hearing. Present for the Informal Hearing were the Mayor, Borough Solicitor John J. Petrush, Esq., Plaintiff, and Plaintiff's counsel, Myron R. Sainovich, Esq.

10) At the Informal Hearing, Plaintiff, through his counsel, stipulated that he engaged in an extramarital affair and had transported a civilian in a police department vehicle while on duty. No additional evidence or information was received by the Plaintiff at the Informal Hearing.

11) Following the Informal Hearing, the Mayor suspended the Plaintiff for ten (10) working days without pay from October 31, 2012, through November 13, 2012. A copy of the "Notice of Dicipinary(sic) Action" is attached and labeled Exhibit "B".

12) On November 13, 2012, the Borough, at their regular monthly business meeting, orally suspended Plaintiff twenty (20) days in addition to the previous ten (10) day suspension imposed by the Mayor.

13) At said meeting, one of the Borough's council members, J. Lauson Cashdollar, recused himself from participating in the executive session of the meeting based upon an admission that he privately investigated Plaintiff and "turned over his information to Council."

14) On November 15, 2012, Plaintiff, through his counsel, received from the Solicitor of the Borough a "Notice of Hearing" scheduling a hearing for November 28, 2012. A copy of this Notice is attached and labeled Exhibit "C".

III. Acts or Duty that Defendant is Required to Perform

15) Plaintiff hereby incorporates by reference Paragraphs One (1) through Fourteen (14) as if set forth herein.

16) The Mayor, by imposing the initial suspension on October 26, 2012, failed to promulgate the standards of conduct Plaintiff violated through a borough ordinance, state law or police department rules and regulations.

17) At said meeting on November 13, 2012, the Borough failed to ratify the actions taken by the Mayor in his "Notice of Dicipinary(sic) Action", in that no motion was approved or presented to the Borough for their ratification.

18) Plaintiff's due process and property rights were violated based upon the Mayor's failure to promulgate the standards of conduct Plaintiff violated and the failure of the Borough to take formal action on the Mayor's "Notice of Dicipinary(sic) Action."

19) Plaintiff's due process and property rights were further violated based upon the failure of the Borough to notify Plaintiff of his appellate rights pursuant to Beaver Borough's Civil Service Commission Rules and Regulations, specifically Section 7 et.seq.

20) In the "Notice of Hearing", Exhibit C, the Borough includes additional charges, which were not part and parcel of the initial charges brought by the Mayor.

21) This action by the Borough further violates Plaintiff's due process and property rights by failing to provide him with notice and hearing prior to their decision to impose the twenty (20) day suspension.

22) The Borough's action to impose the additional twenty (20) day suspension was based upon council member J. Lauson Cashdollar's information and salacious media coverage provided by John Paul Vranesevich, which was prejudicial and inflammatory and was essentially unfair in that Plaintiff was denied the opportunity to contest its accuracy.

IV. Interest of Plaintiff and Damages

23) Plaintiff hereby incorporates by reference Paragraphs One (1) through Twenty-Two (22) as if set forth herein.

23) Plaintiff is deprived of his contractual and constitutional right to his employment at the present time and, therefore, is irreparably harmed by his suspension and the improper conduct of the Defendants.

24) Plaintiff was not afforded a hearing with regard to the twenty (20) day suspension imposed by the Borough, thereby further violating his due process rights.

25) Plaintiff has been suspended without pay since October 31, 2012, and has been denied his property right in his employment for the Borough.

26) Plaintiff has not been advised of his appeal rights pursuant to Beaver Borough's Civil Service Commission Rules and Regulations, thereby violating his due process and property rights to his employment.

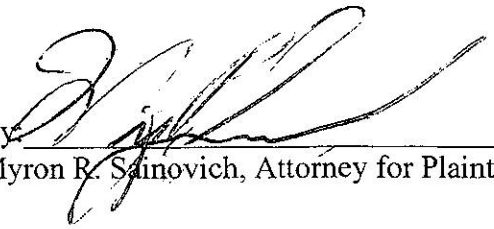
V. Relief Requested

26) Plaintiff hereby incorporates by reference Paragraphs One (1) through Twenty-Five (25) as if set forth herein.

27) As a result of the foregoing, Plaintiff respectfully requests the following relief:

- a. An order compelling Defendants to reinstate Plaintiff to his position as Sergeant immediately with all of the rights, privileges and authority previously enjoyed and required by his contract;
- b. An order restraining Defendants from taking any further action against the Plaintiff;
- c. An order awarding full back pay for the days Plaintiff was suspended without pay;
- d. Grant an award of attorney's fees and costs for Defendants' obdurate and vexatious conduct as well as such other relief as the Court deems appropriate.

Respectfully Submitted,

By 
Myron R. Sainovich, Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA

KENNETH MCCOY,

Plaintiff

vs.

No.

THE BOROUGH OF BEAVER,
a municipal corporation, and
THOMAS T. HAMILTON, mayor,

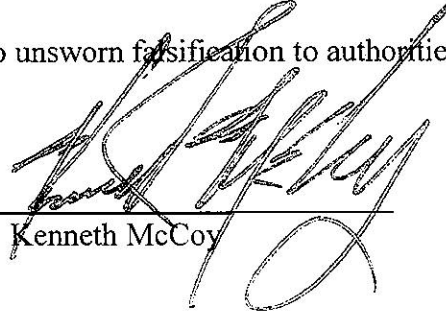
Defendants.

Complaint in Mandamus Seeking to Compel
the Borough of Beaver to Reinstate Sergeant
Kenneth McCoy

VERIFICATION

I, Kenneth McCoy, hereby verify that the statements made in the within COMPLAINT are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By: _____


Kenneth McCoy

Date: November 21 2012

BOROUGH OF BEAVER

469 THIRD STREET
BEAVER, PENNSYLVANIA 15009
724/773-6700 * 724/773-6711 FAX
www.beaverpa.us

NOTICE OF INFORMAL HEARING

TO: KENNETH McCOY

You are hereby notified that an informal hearing will be held before Mayor Thomas T. Hamilton at 7:30 a.m. on Friday, October 26, 2012 in the second floor Meeting Room in the Municipal Building at 469 Third Street in Beaver.

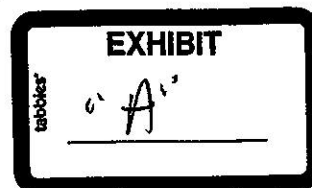
The purposes of this hearing are to:

(1) consider whether cause exists for disciplinary action relating to your employment as a police officer of the Borough of Beaver; and

(2) afford you the opportunity to respond to any information adverse to you, and to present your side of the story, and/or

(3) afford you an opportunity to offer reasons why a particular disciplinary action (or any disciplinary action whatsoever) would not be appropriate.

This hearing is being scheduled because information has been received by representatives of the Borough which indicates that you, since becoming a regular, full-time member of the Beaver Police Department, have had one or more adulterous, extramarital affairs with female residents of Beaver, and that some of the meetings between you and a paramour occurred while you were on active duty as a Borough police officer.



This proceeding is civil, rather than criminal, in nature. Therefore, you do not enjoy an absolute Privilege Against Self-Incrimination under either the United States Constitution or the Pennsylvania Constitution.

You are expected to appear at this hearing, and to answer, truthfully and completely, all questions concerning your ~~conduct which may be asked by Borough representatives.~~

The Borough has no reason to believe that the conduct attributed to you is criminal in nature, or may lead to criminal proceedings against you. Nevertheless, the Borough agrees that any statements made by you concerning the subjects of inquiry at this hearing cannot be used as evidence in any criminal proceeding, and shall not be disclosed to any criminal law enforcement or prosecutorial agency.

You may also, if you so choose, submit a written statement of your position concerning the subjects of inquiry at this hearing.

You do not have the right to representation by an attorney at law at this hearing.

You may also, if you so choose, have a fellow member of the Beaver Police Association present at this hearing for union representation.

The Borough Solicitor will be present to advise the Mayor on any legal issues which may arise, but will not act in an adversarial capacity.

Subject to permission by you, an audio tape recording of the hearing will be made. Such a recording will be available to all persons concerned.

~~Following the hearing, a written notice of the mayor's~~
decision will be sent to you by mail.

Dated: October 23, 2012



Thomas T. Hamilton
Mayor

BOROUGH OF BEAVER

469 THIRD STREET
BEAVER, PENNSYLVANIA 15009
724/773-6700 * 724/773-6711 FAX
www.beaverpa.us

NOTICE OF DISCIPLINARY ACTION

TO: KENNETH McCOY

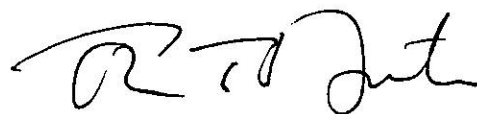
Pursuant to Section 1124 of the Borough Code, you are hereby suspended from your employment as a police officer of the Borough of Beaver, without pay for a period of ten (10) working days, commencing on October 31, and continuing through November 13, 2012.

This suspension is imposed for cause shown at an informal hearing held today. You were given advance notice of that hearing and were afforded an opportunity to submit information on your own behalf.

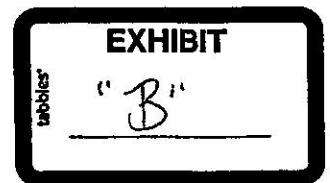
From the information presented at that hearing it appears that you have engaged in conduct which constitutes one or more of the following grounds for disciplinary action under Section 1190 of the Borough Code:

neglect of official duty; and/or
inefficiency; and/or intemperance; and/or
immorality; and/or conduct unbecoming an
officer.

Dated: October 26, 2012



Thomas T. Hamilton
Mayor



BOROUGH OF BEAVER

469 THIRD STREET
BEAVER, PENNSYLVANIA 15009
724/773-6700 * 724/773-6711 FAX
www.beaverpa.us

NOTICE OF DISCIPLINARY ACTION

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Dated: October 26, 2012



Thomas T. Hamilton
Mayor

BOROUGH OF BEAVER

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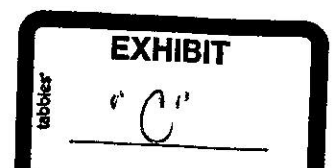
NOTICE OF HEARING

TO: KENNETH MccOY

You are hereby notified that a hearing will be held before the Council of the Borough of Beaver at 6:00 p.m. on Wednesday, November 28, 2012 in the Municipal Building at 469 Third Street in Beaver.

The purposes of this hearing are to:

- (1) receive pertinent information and consider the matters described in the attached Statement of Charges; and
- (2) consider whether cause exists for disciplinary action relating to your employment as a police officer of the Borough of Beaver; and
- (3) afford you the opportunity to respond to any information adverse to you, and to present your side of the story, and/or
- (4) afford you an opportunity to offer reasons why a particular disciplinary action (or any disciplinary action whatsoever) would not be appropriate.



Under Section 708(a)(1) of the Sunshine Act [65 Pa.C.S. § 708(a)(1)], you may request, in writing, that this hearing be a meeting open to the public, rather than an executive session from which the public is excluded.

If you desire that the hearing be open to the public, your written request for an open meeting should be delivered to the Borough Solicitor at 348 College Avenue in Beaver by no later than 5:00 p.m. on Friday November 23, 2012.

This proceeding is civil, rather than criminal, in nature. Therefore, you do not enjoy an absolute Privilege Against Self-Incrimination under either the United States Constitution or the Pennsylvania Constitution.

You are expected to appear at this hearing, and to answer, truthfully and completely, all questions concerning your conduct which may be asked by Borough representatives.

The Borough has no reason to believe that the conduct attributed to you is criminal in nature, or may lead to criminal proceedings against you. Nevertheless, the Borough agrees that any statements made by you concerning the subjects of inquiry at this hearing cannot be used as evidence in any criminal proceeding, and shall not be disclosed to any criminal law enforcement or prosecutorial agency.

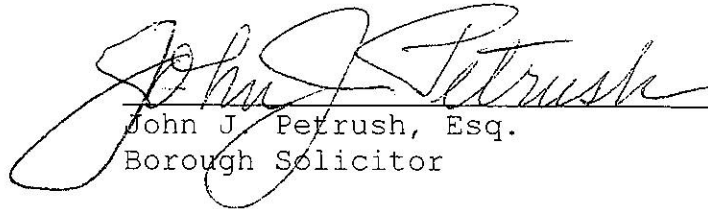
You may also, if you so choose, submit a written statement of your position concerning the subjects of inquiry at this hearing.

You may also, if you so choose, have a fellow member of the Beaver Police Association present at this hearing for union representation.

Following the hearing, a written notice of the Council's decision will be sent to you by mail.

Dated: November 15, 2012

FOR THE COUNCIL:



John J. Petrush, Esq.
Borough Solicitor

Copy delivered to Myron Sainovich, Esq.

STATEMENT OF CHARGES

IT IS HEREBY CHARGED that legal cause exists for the discharge or suspension or reduction in rank of Kenneth McCoy from employment by the Borough of Beaver in its police force, as follows:

1. Since becoming a regular, full-time member of the Beaver Police Department Kenneth McCoy has had one or more extramarital affairs, including sexual relations, with female residents of Beaver.

2. Since becoming a regular, full-time member of the Beaver Police Department, Kenneth McCoy has had one or more extramarital affairs, including sexual relations, with female residents of Beaver, and some meetings between McCoy and a paramour occurred while McCoy was on active duty as a Borough police officer.

3. Kenneth McCoy used vehicles owned and maintained by the Borough in an improper and unauthorized manner, to travel to and from meetings with a paramour.

4. Kenneth McCoy used time for which he was being paid by the Borough to perform police services in an improper and unauthorized manner, to engage in meetings with a paramour while he was on duty.

CONTINUED

IT IS FURTHER CHARGED that such actions by Kenneth McCoy constitute grounds for discipline for one or more of the following reasons stated in Section 1190 of the Borough Code:

- neglect of official duty
- inefficiency
- intemperance
- immorality
- conduct unbecoming an officer