

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MATTHEW NICHOLS,

Plaintiff

Case No. 2:18-cv-14041-MAG-
Hon. Mark A. Goldsmith

Vs

WILLIAM DWYER, ET AL,
Jointly and severally,

Defendants

JAMIL AKHTAR, P.C.

Attorney for Plaintiff
Jamil Akhtar, P38597
7577 US Hwy 12
Onsted, MI 49265
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jimakhtar@att.net

**KIRK, HUTH, LANGE &
BADALAMENTI, PLC,**
Attorney for Defendants
Robert S. Huth, Jr. P42531 and
Rachel M. Badalamenti P64361
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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 5.1(a)

Counsel for Plaintiff hereby states that he has read the Court's Order regarding certification requirements (ECF No.6).

I, Jamil Akhtar, certify that this document complies with L.R. 5. (1)(a) including: -- (except for L.R. 7.1 materials and footnotes); at

least 1" margins on the top, side and bottom; consecutive page numbering and type size of all text and footnotes that is no smaller than 10-1/2/ characters per inch (for non/promotional fonts) or 14 pt. (for promotional fonts). I also certify that it is the appropriate length. L.R. 7.1(d)(3).

PLAINTIFF'S MOTION TO BE REINSTATED TO HIS LIEUTENANT POSITION AND FOR HIS EXPEDITED DECISION BY THIS HONORABLE COURT.

ORAL ARGUMENT REQUESTED

Now comes Plaintiff, Mathew Nichols, pursuant to local Court rule 5.1 and 7.1 brings this motion for immediate reinstatement to the classification of lieutenant and Plaintiff is further that this honorable Court to expedite its decision in this matter. On June 2, 2021. Plaintiff council requested concurrence from council for defendant and said request was denied (copy attached)

For his motion Plaintiff states as follows:

1. Plaintiff was unlawfully terminated by Defendant Dwyer and Defendant City of Warren on June 14th, 2019. (Exhibit #1)

2. The United States Court of Appeals for the 6th Circuit did on May 19th, 2021, enter its decision and order; at page 16. Paragraph three of the 6th Circuit opinion stated as follows.

“Taking the provision of Nichol’s Employment Agreement and the CBA together, the Defendants were obligated to return Nichols to his prior post in the bargaining unit, making him eligible to initiate the grievance procedure. But Defendants asserted at argument that they were not required to return Nichols to the bargaining unit and could not do so as a practical matter. Instead, they argue Article 36 of the CBA and Section 5 of the Employment Agreement give a removed deputy commissioner the right to directly invoke the grievance procedure. This interpretation is at odds with Defendant’s position during the alleged events and fails on his own terms. Neither Section 5 of the Employment agreement nor Article 36 of the CBA refer to grievance procedure. Section 5 refers generally to “the rights provided in the WPCOA collective bargaining agreement”, and Article 36 provides that a deputy commissioner has the same right to be returned to the bargaining unit as that granted a Captain. (A captain has the right to return to his former rank if removed from his position.) Defendant’s arguments are unavailing because they granted these rights to Nichols by entering into the relevant agreements.”

3. The State of Michigan, by statute, regulates the training requirements and certification requirements for which Law Enforcement officer must meet in order to be employed as a police officer in the State of Michigan; pursuant to the “Michigan

Commission On Law Enforcement Standards Act, (203 of 1965, MCL 28.601 et sec). (Here in after MCOLES)

Pursuant to Section (9) of said Act, a person who had been certified, and has not been employed as a law enforcement officer for over two years and after two years of not being employed as a Law Enforcement, automatically loses his certification (Exhibit 2).

3. Plaintiff was unlawfully terminated on June 14th, 2019, by Defendant Dwyer (Exhibit 2). Plaintiff, therefore, must be reemployed on or before June 13th, 2021, or else he will lose his law enforcement certification.

If Nichols is not returned to employment with the City of Warren Police Department as a lieutenant, by June 13, 2021, he will then have to undergo retraining in order to be certified as a law enforcement officer.

MCOLES has promulgated rules which provide for any law enforcement officer who, because of inactive employment status, shall have the right to reactivate his license by completing an eighty-hour training program authorized by MCOLS.

4. Time is of the essence:

a. Unless this honorable Court takes immediate action to reinstate Plaintiff, before June 13th, 2021, Plaintiff will lose his law enforcement certification.

b. Absent reinstatement of his employment, Plaintiff argues that the Defendants will have retaliated against him, where they refuse to reinstate him by June 13th, 2021.

c. Pursuant to the holding of the 6th Circuit, holding that the Defendants were “obligated to return Nichols to his prior post in the bargaining unit...”, reinstatement to the bargaining unit Lieutenant position is mandated by the 6th Circuit decision.

CONCLUSION

Wherefore, Plaintiff respectfully request that this honorable Court enter an order requiring Defendant to forthwith reemploy Plaintiff to the Lieutenant position as mandated by 6th Circuit's decision.

Respectfully submitted,

s/ Jamil Akhtar
Jamil Akhtar
Attorney for Plaintiff
7577 US Hwy 12
Onsted, MI 49265
Tx. 517-467-7373

Brief and Support

Plaintiff's brief and support of his Motion for Reinstatement and for immediate consideration is brought under the applicable provision of local rule 5.1 and 7.1.

Plaintiff further incorporates the holding of the 6th Circuit Court of Appeals specifically as stated at page 17 of its decision and its certification requirements set forth in MCOLS Section 9.

Dated June 1, 2021,

respectfully submitted,

s/ Jamil Akhtar
Jamil Akhtar
Attorney for Plaintiff
7577 US Hwy 12
Onsted, MI 49265
Tx. 517-467-7373

CERTIFICATE OF ELECTRONIC FILING OF PROOF OF SERVICE

I hereby certify that on June 3, 2020, I electronically filed the above Motion for Partial Summary Judgment and this Certificate of Service, with the Clerk of the Court using the True-Filing electronic filing system which will send notification of such filing to all parties of record.

s/Jamil Akhtar
Jamil Akhtar, Attorney for Plaintiff
7577 US Hwy. 12
Onsted, MI 49265
Tx. 517-467-7373/Fax 517-200-9639
Email: jimakhtar@att.net

jimakhtar@att.net

From: Raechel Badalamenti <rbadalamenti@kirkhuthlaw.com>
Sent: Tuesday, June 1, 2021 6:47 PM
To: jimakhtar@att.net
Cc: Robert Carollo
Subject: RE: Plaintiff's motion for reinstatement

Mr. Akhtar:

The Appeals Court did not summarily grant reinstatement to Nichols or even suggest reinstatement was a remedy available. Further, the Opinion is very clear that it is 'based on the pleadings' alone. Your client merely gets to go back on 1 claim and do discovery. There is no reasonable reading of the Opinion that could justify a Motion "for Reinstatement."

So, no, you do not have concurrence. Further, we will be serving a Rule 11 sanctions Motion together with our Response in Opposition if you actually pursue such a frivolous pleading. You will recall that the Court already granted sanctions once in this case with the amount yet to be determined.

Raechel M. Badalamenti
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Phone: 586-412-4900 ext. 110
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From: jimakhtar@att.net <jimakhtar@att.net>
Sent: Tuesday, June 1, 2021 4:20 PM
To: Robert Carollo <rcarollo@kirkhuthlaw.com>; Raechel Badalamenti <rbadalamenti@kirkhuthlaw.com>
Subject: Plaintiff's motion for reinstatement

Raechel / Robert:

If I don't receive your concurrence by 9:00 a.m. tomorrow, I will e-file the attached motion.

Jim Akhtar

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Exhibit #1



WARREN POLICE DEPARTMENT

29900 CIVIC CENTER BLVD.
WARREN, MI 48093
(586) 574-4700
FAX (586) 574-4862
www.cityofwarren.org

June 14, 2019

Mr. Matthew Nichols
c/o Jamil Akhtar, Esq.
7577 U.S. Highway 12
Onsted, Michigan 49265
(517) 467-7373
jimakhtar@att.net

RE: TERMINATION OF YOUR EMPLOYMENT

On Tuesday, June 11, 2019, a Loudermill hearing was held in regards to Warren Police Department I.A. case #18-29.

At that time, you and your retained counsel were given the full opportunity to provide reasons as to why the charges against you should not be sustained. You were presented with charges and specifications concerning this matter on May 30, 2019 by the Warren Police Department. The hearing was originally set for June 3, 2019, but was adjourned at your counsel's request. The record was also kept open through 5:00 p.m. on Thursday, June 13, 2019 for any supplemental information you or your counsel desired the Department to consider.

At the hearing, you chose not to make a statement, but your counsel submitted several exhibits, including a written statement from you regarding the charges. Supplemental documents were received from your counsel on June 12, 2019. All exhibits and documents you submitted were reviewed and taken into account in making my decision.

The sum and substance of your defense is you did nothing wrong. That is disappointing and inaccurate.

It troubled me that you did not express concern about the seriousness of the charges or take ownership of any of the serious misconduct. The written statement you submitted did not do so either.

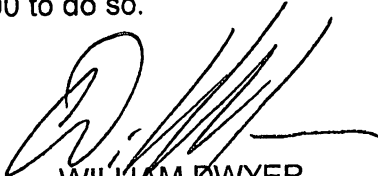
Rather than exhibit these characteristics or explain the alleged conduct, your statement was argumentative and employed substantial use of semantics to try to minimize the charged misconduct. The supplemental documents were social media posts by a police officer's wife that have no relationship to the charges, but which you submitted in hopes of painting this officer in a bad light to the department, as he is one of the several

officers who made statements consistent with the dashcam video and arrestee's statements.

Careful consideration has been given to your statements and arguments. The charges have been sustained. The severity of these charges and the underlying factual circumstances clearly warrant termination of your employment. This police department simply cannot tolerate the type of actions which you have engaged in, especially given that at the time of the offenses, you held the second-highest position in the Warren Police Department. Your actions were disturbing. Your response to questions about your actions and regarding statements made during your first interview were equally disturbing. The position you took regarding the sworn statements by lower-ranking officers, which are consistent with all the other evidence gathered, is also very troubling.

I would point out to you that it is not necessary to prove all of the allegations against you—though I believe them to be sustained—because any one of them, whether taken together or separately, would require your discharge as a high-ranking command officer of this Department. Your employment is terminated effective immediately.

If you have not turned in any Departmental equipment, records, etc., they must be turned in immediately. Please have your attorney make arrangements through Raechel Badalamenti at (586) 412-4900 to do so.



WILLIAM DWYER
Police Commissioner

cc: George Dimas, Human Resources
Ethan Vinson, City Attorney
Raechel Badalamenti, Litigation Counsel

Exhibit #2

MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS ACT

Act 203 of 1965

AN ACT to provide for the creation of the commission on law enforcement standards; to prescribe its membership, powers, and duties; to prescribe the reporting responsibilities of certain state and local agencies; to provide for additional costs in criminal cases; to provide for the establishment of the law enforcement officers training fund; and to provide for disbursement of allocations from the law enforcement officers training fund to local agencies of government participating in a police training program.

History: 1965, Act 203, Eff. Jan. 1, 1966 ;-- Am. 1998, Act 237, Imd. Eff. July 3, 1998

28.609 Employment of law enforcement officers; licensing requirements and procedures; fingerprinting; rules; licensure process; granting or denying license; duties of law enforcement agency upon administering oath of office; license rendered inactive; reactivation; lapsed or revoked license; prohibited authority.

Sec. 9.

(1) This section applies to all law enforcement officers except individuals to whom sections 9a, 9b, 9c, and 9d apply. Employment of law enforcement officers to whom this section applies is subject to the licensing requirements and procedures of this section and section 9e. An individual who seeks admission to a preservice college basic law enforcement training academy or a regional basic law enforcement training academy or the recognition of prior basic law enforcement training and experience program for purposes of licensure under this section shall submit to fingerprinting as provided in section 11(3).

(2) The commission shall promulgate rules governing licensing standards and procedures for individuals licensed under this section. In promulgating the rules, the commission shall give consideration to the varying factors and special requirements of law enforcement agencies. Rules promulgated under this subsection must pertain to the following:

(a) Subject to section 9e, training requirements that may be met by completing either of the following:

(i) Preenrollment requirements, courses of study, attendance requirements, and instructional hours at an agency basic law enforcement training academy, a preservice college basic law enforcement training academy, or a regional basic law enforcement training academy.

(ii) The recognition of prior basic law enforcement training and experience program for granting a waiver from the licensing standard specified in subparagraph (i).

(b) Proficiency on a licensing examination administered after compliance with the licensing standard specified in subdivision (a).

(c) Physical ability.

(d) Psychological fitness.

(e) Education.

(f) Reading and writing proficiency.

(g) Minimum age.

(h) Whether or not a valid operator's or chauffeur's license is required for licensure.

(i) Character fitness, as determined by a background investigation supported by a written authorization and release executed by the individual for whom licensure is sought.

(j) Whether or not United States citizenship is required for licensure.

(k) Employment as a law enforcement officer.

(l) The form and manner for execution of a written oath of office by a law enforcement agency with whom the individual is employed, and the content of the written oath conferring authority to act with all of the law enforcement authority described in the laws of this state under which the individual is employed.

(m) The ability to be licensed and employed as a law enforcement officer under this section, without a restriction otherwise imposed by law.

(3) The licensure process under this section must follow the following procedures:

(a) Before executing the oath of office, an employing law enforcement agency verifies that the individual to whom the oath is to be administered complies with licensing standards.

(b) A law enforcement agency employing an individual licensed under this section authorizes the individual to exercise the law enforcement authority described in the laws of this state under which the individual is employed, by executing a written oath of office.

(c) Not more than 10 calendar days after executing the oath of office, the employing law enforcement agency shall attest in writing to the commission that the individual to whom the oath was administered satisfies the licensing standards by submitting an executed affidavit and a copy of the executed oath of office.

(4) If, upon reviewing the executed affidavit and executed oath of office, the commission determines that the individual complies with the licensing standards, the commission shall grant the individual a license.

(5) If, upon reviewing the executed affidavit and executed oath of office, the commission determines that the individual does not comply with the licensing standards, the commission may do any of the following:

(a) Supervise the remediation of errors or omissions in the affidavit and oath of office.

(b) Supervise the remediation of errors or omissions in the screening, procedures, examinations, testing, and other means used to verify compliance with the licensing standards.

(c) Supervise additional screening, procedures, examinations, testing, and other means used to determine compliance with the licensing standards.

(d) Deny the issuance of a license and inform the employing law enforcement agency.

(6) Upon being informed that the commission has denied issuance of a license, the employing law enforcement agency shall promptly inform the individual whose licensure was denied.

(7) An individual denied a license under this section shall not exercise the law enforcement authority described in the laws of this state under which the individual is employed. This subsection does not divest the individual of that authority until the individual has been informed that his or her licensure was denied.

(8) A law enforcement agency that has administered an oath of office to an individual under this section shall do all of the following, with respect to that individual:

(a) Report to the commission all personnel transactions affecting employment status in a manner prescribed in rules promulgated by the commission.

(b) Report to the commission concerning any action taken by the employing agency that removes the authority conferred by the oath of office, or that restores the individual's authority to that conferred by the oath of office, in a manner prescribed in rules promulgated by the commission.

(c) Maintain an employment history record.

(d) Collect, verify, and maintain documentation establishing that the individual complies with the licensing standards.

(9) An individual licensed under this section shall report all of the following to the commission:

(a) Criminal charges for offenses for which that individual's license may be revoked as described in this section, upon being informed of such charges, in a manner prescribed in rules promulgated by the commission.

(b) The imposition of a personal protection order against that individual after a judicial hearing under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or under the laws of any other jurisdiction, upon being informed of the imposition of such an order, in a manner prescribed in rules promulgated by the commission.

(10) A license issued under this section is rendered inactive, and may be reactivated, as follows:

(a) A license is rendered inactive if 1 or more of the following occur:

(i) An individual, having been employed as a law enforcement officer for fewer than 2,080 hours in aggregate, is thereafter continuously not employed as a law enforcement officer for less than 1 year.

(ii) An individual, having been employed as a law enforcement officer for fewer than 2,080 hours in aggregate, is thereafter continuously subjected to a removal of the authority conferred by the oath of office for less than 1 year.

(iii) An individual, having been employed as a law enforcement officer for 2,080 hours or longer in aggregate, is thereafter continuously not employed as a law enforcement officer for less than 2 years.

(iv) An individual, having been employed as a law enforcement officer for 2,080 hours or longer in aggregate, is continuously subjected to a removal of the authority conferred by the oath of office for less than 2 years.

(b) An employing law enforcement agency may reactivate a license rendered inactive by complying with the licensure procedures described in subsection (3), excluding verification of and attestation to compliance with the licensing standards described in subsection (2)(a) to (g).

(c) A license that has been reactivated under this section is valid for all purposes described in this act.

(11) A license issued under this section is rendered lapsed, without barring further licensure under this act, if 1 or more of the following occur:

(a) An individual, having been employed as a law enforcement officer for fewer than 2,080 hours in aggregate, is thereafter continuously not employed as a law enforcement officer for 1 year.

(b) An individual, having been employed as a law enforcement officer for fewer than 2,080 hours in aggregate, is thereafter continuously subjected to a removal of the authority conferred by the oath of office for 1 year.

(c) An individual, having been employed as a law enforcement officer for 2,080 hours or longer in aggregate, is thereafter continuously not employed as a law enforcement officer for 2 years.

(d) An individual, having been employed as a law enforcement officer for 2,080 hours or longer in aggregate, is continuously subjected to a removal of the authority conferred by the oath of office for 2 years.

(12) The commission shall revoke a license granted under this section for any of the following circumstances and shall promulgate rules governing revocations under this subsection:

(a) The individual obtained the license by making a materially false oral or written statement or committing fraud in an affidavit, disclosure, or application to a law enforcement training academy, the commission, or a law enforcement agency at any stage of recruitment, selection, appointment, enrollment, training, or licensure application.

(b) The individual obtained the license because another individual made a materially false oral or written statement or committed fraud in an affidavit, disclosure, or application to a law enforcement training academy, the commission, or a law enforcement agency at any stage of recruitment, selection, appointment, enrollment, training, or licensure application.

(c) The individual has been subjected to an adjudication of guilt for a violation or attempted violation of a penal law of this state or another jurisdiction that is punishable by imprisonment for more than 1 year.

(d) The individual has been subjected to an adjudication of guilt for violation or attempted violation of 1 or more of the following penal laws of this state or laws of another jurisdiction substantially corresponding to the penal laws of this state:

(i) Section 625(1) or (8) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, if the individual has a prior conviction, as that term is defined in section 625(25)(b) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, that occurred within 7 years of the adjudication as described in section 625(9)(b) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(ii) Section 7403(2)(c) or 7404(2)(a), (b), or (c) of the public health code, 1978 PA 368, MCL 333.7403 and 333.7404.

(iii) Section 81(4) or 81a or a misdemeanor violation of section 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.411h.

(13) The following procedures and requirements apply to license revocation under this section:

(a) The commission shall initiate license revocation proceedings, including, but not limited to, the issuance of an order of summary suspension and notice of intent to revoke, upon obtaining notice of facts warranting license revocation.

(b) A hearing for license revocation must be conducted as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(c) In lieu of participating in a contested case, an individual may voluntarily and permanently relinquish his or her law enforcement officer license by executing before a notary public an affidavit of license relinquishment prescribed by the commission.

(d) The commission need not delay or abate license revocation proceedings based on an adjudication of guilt if an appeal is taken from the adjudication of guilt.

(e) If the commission issues a final decision or order to revoke a license, that decision or order is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A summary suspension described in this section is not a final decision or order for purposes of judicial review.

(14) An individual licensed under this section shall not exercise the law enforcement authority described in the laws of this state under which the individual is employed if any of the following occur:

(a) The individual's license is rendered void by a court order or other operation of law.

- (b) The individual's license is revoked.
- (c) The individual's license is rendered inactive.
- (d) The individual's license is rendered lapsed.

History: 1965, Act 203, Eff. Jan. 1, 1966 ;-- Am. 1970, Act 187, Imd. Eff. Jan. 1, 1971 ;-- Am. 1971, Act 31, Imd. Eff. May 26, 1971 ;-- Am. 1976, Act 422, Imd. Eff. Jan. 11, 1977 ;-- Am. 1985, Act 15, Imd. Eff. May 15, 1985 ;-- Am. 1994, Act 155, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 237, Imd. Eff. July 3, 1998 ;-- Am. 2004, Act 379, Imd. Eff. Oct. 12, 2004 ;-- Am. 2005, Act 239, Imd. Eff. Nov. 22, 2005 ;-- Am. 2016, Act 289, Eff. Jan. 2, 2017 ;-- Am. 2017, Act 198, Imd. Eff. Dec. 15, 2017 ;-- Am. 2018, Act 552, Eff. Mar. 28, 2019

Compiler's Notes: For transfer of statutory authority, powers, duties, functions, and responsibilities of the Michigan justice training commission, the Michigan justice training fund, the commission on law enforcement standards, and the law enforcement officers training fund to the new Michigan commission on law enforcement standards by type III transfer, see E.R.O. No. 2001-2, compiled at MCL 28.621 of the Michigan Compiled Laws.

Admin Rule: R 28.4101 et seq.; R 28.4201 et seq.; and R 28.4351 et seq. of the Michigan Administrative Code.