

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JERRY HUDLOW

PLAINTIFF

V.

NO. 12-5168

CITY OF ROGERS, ARKANSAS;  
C. GREG HINES, INDIVIDUALLY AND  
IN HIS OFFICIAL CAPACITY AS  
MAYOR

DEFENDANTS

**AMENDED COMPLAINT**

Plaintiff states for his Amended Complaint made pursuant to F.R.Civ.P. 15(a)(1)(A):

**I. Nature of Action.**

1. This action is brought to redress violations of 42 U.S.C. 1983, Ark. Code Ann. 16-23-105 (Supp. 2011), and Ark. Code Ann. 21-1-601, *et seq.*

**II. Parties, Jurisdiction, and Venue.**

2. Plaintiff is a resident of Benton County, Arkansas.

3. Defendant City of Rogers, Arkansas (“Rogers”), is a city of the first-class organized and existing by virtue of the laws of the State of Arkansas, and located in Benton County, Arkansas.

4. Defendant C. Greg Hines (“Hines”) is a resident of Benton County, Arkansas, and is the Mayor of Defendant Rogers. In all of his actions related in this Complaint, Defendant Hines acted for himself and as an agent for and on behalf of Defendant Rogers.

5. All events related in this Complaint occurred in Benton County, Arkansas.

6. This Court has jurisdiction over the issues of and the parties to this action pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1367.

7. Venue for this action is properly laid in this Court pursuant to 28 U.S.C. 1391.

**III. General Allegations.**

8. Defendant Rogers is a city of the “first-class” under Arkansas law. Ark. Code Ann. 14-37-104 (Supp. 2011).

9. Defendant Rogers has a mayor-council form of government.

10. Arkansas law allows all cities of the first-class having a mayor-council form of government to provide, by ordinance, for the election or appointment of their city treasurer. Ark. Code Ann. 14-43-405 (Supp. 2011).

11. Defendant Rogers enacted ordinances in 1982 and 1997 that provide for the appointment of a city treasurer by the mayor and confirmation of the appointment by a two-thirds vote of the elected and qualified members of the City Council. These ordinances are codified at Rogers Code, § 2-227 a copy of which Code section is attached to and incorporated into this Amended Complaint as Exhibit A.

12. Arkansas law provides that the city treasurer has a four-year term of office. Ark. Code Ann. 14-43-405 (Supp. 2011).

13. Arkansas law provides that officials who are serving four-year terms of cities that attain a population of 50,000 as shown in a decennial federal census completed after 01 January 1997 shall have their terms of office extended by two years so that their terms of office will coincide with the next quadrennial election year. Ark. Code Ann. 14-43-303 (d) (Supp. 2011).

14. Defendant Rogers attained a population of 50,000 according to the federal census

completed for 2010.

15. Plaintiff was appointed City Treasurer for Defendant Rogers by its then Mayor on 27 August 2002. Plaintiff's appointment was confirmed on the same date by a 7-1 vote of Defendant's City Council. Defendant Hines, then a member of Defendant's City Council, cast the one vote against Plaintiff's appointment. Plaintiff's appointment was effective 01 October 2002. A copy of the minutes of the City Council meeting is attached to and incorporated into this Amended Complaint as Exhibit B.

16. Plaintiff took his first oath of office as City Treasurer in January 2003.

17. Plaintiff was re-appointed to the office of City Treasurer and took oaths of office in January 2007 and January 2011. A copy of his Official Oath of Office taken on 01 January 2011 is attached to and incorporated into this Amended Complaint as Exhibit C.

18. On 08 November 2011, Defendant Hines sent an e-mail to Plaintiff and Defendant Rogers' City Attorney, Ben Lipscomb, announcing his policy that "if the Rogers City Council appropriates dollars in the line item for travel and training of an elected official's budget that official has the authority to spend said dollars at their discretion." A copy of this e-mail is attached to and incorporated into this Amended Complaint as Exhibit C-1. This e-mail was sent to settle a disagreement between Plaintiff and Lipscomb as to whether Lipscomb needed to justify and document travel and training expenses. Plaintiff's position was that officials and employees of Defendant Rogers, such as Lipscomb, needed to justify and document their travel and training expenses.

19. On 01 February 2012, Plaintiff and Defendant Hines exchanged e-mails over Plaintiff's concern that City officials and employees were requesting travel money without

supporting documentation. Plaintiff was concerned that auditors would “[chew] us up alive” over the practice of disbursing travel money without evidence of hotel reservations, training registrations, and the like. Defendant Hines’ response was that he would not “change the system that has been in place.” A copy of this e-mail exchange is attached to and incorporated into this Amended Complaint as Exhibit C-2. Plaintiff’s concern was that City officials and employees were using public funds to front expenses for their personal trips or activities.

20. In late April 2012, Plaintiff met with an attorney from the Arkansas Municipal League about Lipscomb’s spending habits, failure to produce documentation for his expenses, and publically confronting Plaintiff over Plaintiff’s inquiries about Lipscomb’s spending habits. Plaintiff was advised to suggest to the auditors that they review the Continuing Education account for Lipscomb’s office.

21. On 14 May 2012, Plaintiff was called to Defendant Hines’ office at approximately 8:00 a.m. Plaintiff met with Defendant Hines and Lipscomb. Defendant Hines told Plaintiff that Plaintiff had the option of either resigning or being fired.

22. Plaintiff refused to resign protesting that he had done nothing wrong.

23. Defendant Hines then produced and delivered to Plaintiff a letter dated 14 May 2012 which read:

Please accept this letter as official notification of immediate termination. The City of Rogers is no longer in need of your services. Any and all city owned property in your possession should be returned immediately. Your final paycheck will include the payout of any accrued vacation time.

A copy of this letter is attached to and incorporated into this Amended Complaint as Exhibit D.

24. Plaintiff told the Mayor and Lipscomb that they were violating Defendant Rogers’

ordinances by attempting to remove him from office in this matter.

25. Lipscomb responded that he would not debate the question with Plaintiff.

26. Defendant Hines then accompanied Plaintiff to Plaintiff's office where he demanded that Plaintiff give him Defendant Rogers' access reader fob and the key to Plaintiff's office. Defendant Hines threatened to call the police if Plaintiff did not leave the building. Defendant Hines told Plaintiff to, "Get the f\*\*\* out of my building."

27. Defendant Hines then released to new media a "Personnel Action Report" which listed six reasons for terminating Plaintiff. Among the reasons were "insubordination," "intimidation," "disrespect," "lack of decorum," "failure in ethics," "violation of state statute," and "lying, bullying, and information fabrication." The news media published Defendant Hines' reasons by newspaper, television, and the Internet. One such publication, which includes the "Personnel Action Report," is attached to and incorporated within this Amended Complaint as Exhibit E.

28. Defendant Hines then distributed the "Personnel Action Report" to members of Defendant's City Council and invited them to contact him. A copy of the communication from Defendant Hines to members of Defendant's City Council is attached to and incorporated into this Amended Complaint as Exhibit F.

29. Between 11:06 a.m. and 11:57 a.m. on the same day, Defendant Rogers communicated Plaintiff's termination to approximately 87 individuals who had done business with Defendant Rogers through Plaintiff's position as Treasurer. Copies of these communications are attached to and incorporated into this Amended Complaint collectively as Exhibit G.

30. Plaintiff was not aware of the reasons for his termination until he read the “Personnel Action Report” on the Internet after he had been removed from his office.

31. The information contained with the “Personnel Action Report” is either false, misleading, or taken out of context.

32. Plaintiff attempted to contact the members of Defendant’s City Council to inform them that he had not abandoned his office as Defendant’s Treasurer but had been illegally forced from that office by Defendant Hines.

33. Defendant Rogers, through its City Attorney, advised the members of Defendant Rogers’ City Council to refrain from discussing Plaintiff’s termination with Plaintiff. A copy of the City Attorney’s communication with members of Defendant’s City Council is attached to and incorporated into this Amended Complaint as Exhibit H. At least two members of Defendant’s City Council advised Defendant’s City Attorney that they would not meet with Plaintiff. *See* Exhibits I and J which are attached to and incorporated into this Amended Complaint.

34. Defendant Rogers, by and through the actions of its City Attorney, continued to publish the “Personal Action Report” to various other media outlets. A copy of one such publication is attached to and incorporated into this Amended Complaint as Exhibit K.

35. Defendant Rogers, through its City Attorney, justified Plaintiff’s termination under Ark. Code Ann. § 14-42-110(a)(1) (Supp. 2011) which reads, in its pertinent part:

Mayors in cities of the first class and second class and incorporated towns shall have the power to appoint and remove all departments heads . . . .

36. Plaintiff was not a “department head” of Defendant Rogers.

37. There was in effect on 14 May 2012, another Arkansas statute which provides a

procedure for removing appointed city officers. This statute, Ark. Code Ann. § 14-42-109 (2) (Supp. 2011) reads,

The council of any city or incorporated town may provide, by proper ordinance, for the removal of any appointive officer upon a majority vote of the council.

38. There was in effect on 14 May 2012, ordinance of Defendant Rogers which reads,

The city treasurer may be removed from office for cause upon a two-thirds vote of the elected and qualified members of the city council.

The ordinance is codified at Rogers Code, §2-234 a copy of which Code section is attached to and incorporated into this Amended Complaint as Exhibit L.

39. Plaintiff was not removed from office by a vote of Defendant Rogers' City Council.

40. On 29 May 2012, Plaintiff, by letter to Defendant Hines, requested a "name clearing" hearing. A copy of Plaintiff's letter is attached to and incorporated into this Amended Complaint as Exhibit M.

41. Defendant Hines denied Plaintiff's request for a "name clearing" hearing by letter dated 31 May 2012 stating that Plaintiff was an "at will employee" who "had no constitutionally-protected property or liberty interest in continued employment." A copy of Defendant Hines' letter is attached to and incorporated into this Amended Complaint as Exhibit N.

42. Plaintiff has been damaged by Defendants' actions.

43. Defendants' actions were intentional, malicious, wilful, and taken in knowing disregard of Plaintiff's rights under federal and Arkansas law or taken in reckless disregard of such rights.

#### **IV. Count One – Due Process Violation (Property Interest)**

44. Plaintiff had a property interest in continued employment as Treasurer under

Arkansas law.

45. Plaintiff could be removed as Treasurer before his term ended only “for cause”

46. Plaintiff was entitled to an opportunity to be heard at a meaningful time and in a meaningful manner before he was terminated. Defendants did not afford Plaintiffs this opportunity.

47. Defendants terminated Plaintiff without a pre-termination hearing of any kind and for the purpose of depriving Plaintiff of a property right, that being a legitimate expectation of continued employment as Treasurer.

48. Defendants’ actions, taken under color of state law, deprived Plaintiff of his rights and privileges secured by the United States Constitution and the Constitution of the State of Arkansas without proper due process of law.

49. As a result of Defendants’ unlawful acts, Plaintiff has suffered loss of income, loss of fringe benefits, and job security.

50. As a result of Defendants’ unlawful acts, Plaintiff has suffered humiliation, embarrassment, mental distress and emotional anguish, loss of self-esteem, and harm to personal and business reputation.

**V. Count Two – Due Process Violation (Liberty Interest)**

51. Statements made by Defendant Hines and Defendant Rogers’ City Attorney and published by various media outlets have injured Plaintiff’s reputation and impeded his ability to find other employment. Such statements have impugned Plaintiff’s honesty, integrity, and trustworthiness. Plaintiff has been stigmatized by such statements.

52. Plaintiff was not offered a “name clearing” hearing except in the context of a statutory

proceeding that did not apply to Plaintiff's position as Treasurer.

53. Defendants' actions, taken under color of state law, deprived Plaintiff of his rights and privileges secured by the United States Constitution and the Constitution of the State of Arkansas without proper due process of law.

54. As a result of Defendants' unlawful acts, Plaintiff has suffered humiliation, embarrassment, mental distress and emotional anguish, loss of self-esteem, and harm to personal and business reputation.

**VI. Count Three – Arkansas Whistle-Blower Act Violation.**

55. Plaintiff suffered an adverse action, that is termination of his employment, because he communicated in good faith to an appropriate authority the existence of waste of public funds or a violation or suspected violation of a law, rule, or regulation.

56. Plaintiff has been damaged because Defendants' retaliated against him for engaging in protected activity.

57. Plaintiff offered to voluntarily mediate this claim by a letter addressed to Defendant Hines as is required by Ark. Code Ann. 21-1-604(f)(2) (Supp. 2011). A copy of this letter is attached to and incorporated into this Amended Complaint as Exhibit O. Defendants failed to respond to Plaintiff's offer.

**VII. Relief Requested.**

58. Plaintiff asks this Court to enter Judgment in his favor against Defendants, jointly and severally, for:

A. Damages for loss of income and fringe benefits.

B. Damages for humiliation, pain, suffering, emotional distress, and loss of

reputation.

C. Punitive damages.

D. The costs of this action including a reasonable attorney's fee.

E. Such injunctive or equitable relief as the Court deems proper.

F. Such other and future relief as the Court deems proper.

59. Plaintiff demands a trial by jury.

JERRY HUDLOW,  
PLAINTIFF

By:

/s/ Stephen Lee Wood

Stephen Lee Wood (81170)

Stephen Lee Wood, P.A.

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CERTIFICATE OF SERVICE

I certify that on this \*\*\* October 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Mr. Ben Lipscomb  
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Mr. Jim Clark  
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