

STATE OF MICHIGAN  
3rd JUDICIAL COURT  
WAYNE COUNTY

REQUEST FOR HEARING  
ON A MOTION  
(PRAECIPE)  
ORDER/JUDGMENT

CASE NO.  
01-119644 CZ  
01-119642 CZ

PLAINTIFF NAME (S)  
ISAIAH SMITH/REGINALD HARVEL

VS. DEFENDANT NAME (S)  
CITY OF DETROIT, ET AL.

PLAINTIFF'S ATTORNEY, BAR NO.,  
ADDRESS, AND TELEPHONE NO.  
O'NEAL O. WRIGHT (P29816)  
547 EAST JEFFERSON  
DETROIT, MI 48226  
(313) 961-6643

**FILED**  
CATHY M. GARRETT  
WAYNE COUNTY CLERK  
SEP 05 2001  
BY *[Signature]*

DEFENDANT'S ATTORNEY, BAR NO.,  
ADDRESS AND TELEPHONE NO.  
GWENDOLYN A. JOHNSON (P55298)  
660 WOODWARD AVE, STE 1650  
DETROIT, MI 48226  
(313) 237-3003

List additional attorneys on other side)

1. Motion Title: MOTION TO CONSOLIDATE
2. Moving Party: DEFENDANTS'
3. Please place on the motion calendar for: *[Signature]*

**JUDGE'S COPY**  
**MOTION FEE PAID**

| Judge           | Bar No. | Date              | Time      |
|-----------------|---------|-------------------|-----------|
| JAMES J. RASHID |         | SEPTEMBER 7, 2001 | 9:00 A.M. |

Adj. to: \_\_\_\_\_ Adj. to: \_\_\_\_\_

4. I certify that I have made personal contact with O'NEAL O. WRIGHT on \_\_\_\_\_, 2001 regarding concurrence in relief sought in this motion and that concurrence has been granted or that I have made reasonable concurrence with motion.

Date: August 21, 2001 Attorney *[Signature]* Bar No. P-55298  
GWENDOLYN A. JOHNSON

**ORDER/JUDGMENT**

DATED: 9/5/01  
IT IS ORDERED THAT THIS MOTION IS: *after a TIC w/ both counsel*

DENIED  GRANTED IN PART/~~DENIED~~ *reserved* IN PART  TAKEN UNDER ADVISEMENT  DISMISSED

GRANTED AND IT IS FURTHER ORDERED AND ADJUDGED:  
*case consolidated for all purposes thru settlement conference. Issue of consoli-  
on trial is reserved for future determination.*  
Approved as to form and substance by Counsel for: *[Signature]*

Plaintiff \_\_\_\_\_  
Defendant \_\_\_\_\_  
Date \_\_\_\_\_

CIRCUIT JUDGE  
FILE EITHER IN PERSON OR BY MAIL  
WITH: CATHY M. GARRETT  
WAYNE COUNTY CLERK  
201 Coleman A. Young  
Municipal Center  
Detroit, Michigan 48226

TO: JAMARIO MITCHELL #386 239  
CARSON CITY, CF  
CARSON CITY  
FROM: M. D. BUKOWSKI  
P.O. BOX 35278

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ISAAH SMITH,

Plaintiff,

vs.

CITY OF DETROIT, a municipal corporation, BENNY NAPOLEON in his representative capacity as Chief of Police, ASSISTANT CHIEF MARVIN WINKLER, DEPUTY CHIEF MICHAEL HALL, and COMMANDER DENNIS RICHARDSON, Jointly and Severally,

Defendants.

O'NEAL O. WRIGHT & ASSOCIATES, P.C.  
O'NEAL O. WRIGHT (P29816)  
Attorney for Plaintiff  
547 East Jefferson  
Detroit, Michigan 48226  
(313) 961-6643  
\*\*\*\*\*

*Isaiah Smith*

COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

GENERAL AND JURISDICTIONAL ALLEGATIONS

NOW COMES the plaintiff, ISAAH SMITH, by and through his attorney, O'NEAL O. WRIGHT & ASSOCIATES, P.C, by O'NEAL O. WRIGHT, and for his Complaint against the Defendants, says:

Jurisdiction and Parties

1. This is an action to enforce Plaintiff's civil and common law rights.
2. Plaintiff, ISAAH SMITH, resides in Wayne County, Michigan.
3. Defendant CITY OF DETROIT (hereinafter "CITY") is a Michigan municipal corporation which owns, operates, manages, directs and controls the Detroit Police Department.

9644  
Wright  
JUN 12 2001

JURY FEE  
THIS DATE:  
BY: \_\_\_\_\_

01-119644 CZ 6/12/2001  
JDG: LOUIS F SIMMONS JR  
SMITH ISAAH  
VS  
DETROIT CITY OF

FILED  
CATHY M. GARRETT  
WAYNE COUNTY CLERK  
JUN 12 2001  
BY *Cathy M. Garrett*

4. The Detroit Police Department employs defendants, Dennis Richardson, Michael Hall, Marvin Winkler and Benny Napoleon.

5. Defendant DENNIS RICHARDSON (hereinafter "RICHARDSON") was at all material times employed by or was an agent of the Detroit Police Department. He is being sued in his individual and official capacities.

6. Defendant BENNY NAPOLEON (hereinafter "NAPOLEON") was at all material times Chief of Police of the City of Detroit and a policy-making officer in the Detroit Police Department. He is being sued in both his individual and official capacities.

7. Defendant MARVIN WINKLER (hereinafter "WINKLER") was at all material times Assistant Chief of Police of the City of Detroit and a policy-making officer in the Detroit Police Department. He is being sued in both his individual and official capacities.

8. Defendant MICHAEL HALL (hereinafter "HALL") was at all material times Deputy Chief of Police of the City of Detroit and a policy-making officer in the Detroit Police Department. He is being sued in both his individual and official capacities.

9. At all material times, each Defendant acted under color of the law, statute, ordinance or under the policy for practices, customs, and usages of the City of Detroit and the Detroit Police Department.

10. The events giving rise to this action occurred in Wayne County, Michigan. The amount in controversy exceeds Twenty Five Thousand (\$25,000.00) Dollars, exclusive of interest, costs, and attorney fees, and this matter is otherwise within the jurisdiction of this Court.

#### Background Facts

11. That the Plaintiff repeats and realleges paragraphs 1 through 10 above with the same force and effect as though set forth in full herein.

12. That the Plaintiff began his employment with Defendant City of Detroit Police Department on or about May 3, 1971 as a police officer. On October 26, 1988, he was appointed Investigator and in March, 1998, he was promoted to Sergeant.

13. That the Plaintiff was assigned to the Detroit Police Homicide Section on March 25, 1975 and remained in that assignment until the action described herein occurred.

14. That at all times relevant, Plaintiff performed his job in a manner that was satisfactory or above.

15. That in June 1998, Plaintiff, a Detroit Homicide Investigator testified in a civil trial in Wayne County Circuit Court stating: "Detaining witnesses is an investigative tool and that Detectives hold witnesses overnight. Probably every other day."

16. That Sergeant Reginald Harvel, another Homicide investigator testified at the same trial stating: "Everybody that's arrested for murder isn't necessarily arrested because they are suspected of committing a murder," "we...do what we have to do in order to get to the bottom of an investigation." Sgt. Harvel also testified that "there is a procedure in the Detroit Police Department for taking into custody people that are not suspected of homicide, but you believe may have information."

17. That the above testimony and other statements made at the trial by Plaintiff and Sgt. Reginald Harvel were true and accurate.

18. That on March 29, 2001, in a major article published in the Detroit Free Press with the heading "Cops confirmed that they jailed witnesses," portions of the June 1998 trial testimony of Plaintiff and Sgt. Harvel were cited.

19. That Defendants publicly disputed Plaintiff and Sgt. Smith's testimony denying that a policy existed in Homicide Section of the Detroit Police Department, to arrest witnesses not charged with the Homicide.

20. That on March 30, 2001, Defendant NAPOLEON, upon the recommendations of Defendants RICHARDSON, HALL and WINKLER, took adverse action against the Plaintiff and Sgt. Harvel because of their testimony by transferring them out of the Homicide Section.

21. That Plaintiff was transferred to the Telephone Crime

Reporting Section.

22. That Plaintiff was then ostracized and defamed by the Defendants, both publicly and privately.

23. That Defendant NAPOLEON made a statement to the Detroit Free Press in announcing the reassignment of Plaintiff and Sgt. Harvel stating: "If the Police Department doesn't play by the rules, then there are no rules."

24. That Defendant WINKLER was upset with the testimony of the Plaintiff and Sgt. Harvel and called them, "dumb m\_\_\_\_\_ f\_\_\_\_\_."

25. That the Detroit Free Press also reported that Defendant NAPOLEON made the decision to transfer the Plaintiff and Sgt. Harvel after reviewing the Sergeants' sworn testimony in a 1998 civil lawsuit.

26. That Plaintiff's testimony in the 1998 civil trial was protected conduct, for the following reasons:

- a. It was part of a civil trial governed by the Michigan Court Rules;
- b. It was testimony pursuant to a subpoena;
- c. Plaintiff was requested by Sgt. Harvel, a fellow law enforcement officer, to participate in the Court's action;
- d. Plaintiff testified at the trial on behalf of Sgt. Harvel, an employee of a law enforcement agency.

27. That Plaintiff was continually harassed by Defendants and others, such that he was unable to continue his employment.

28. That Plaintiff was constructively terminated and defamed.

29. That Defendants' acts were done pursuant to, and under color of, the laws and authority granted by the State of Michigan and City of Detroit, the City of Detroit charter and/or the City of Detroit ordinances, and/or rules promulgated pursuant to state law.

COUNT I-WHISTLEBLOWERS' ACT

30. That the Plaintiff repeats and realleges paragraphs 1 through 29 above with the same force and effect as though set forth in full herein.

31. The Whistleblowers' Protection Act states:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. MCL 15.362; MSA 17.428(2).

32. That the Whistleblowers' Act, and the legislative policy as embodied in the Act, encourages public employees to speak the truth regarding their superiors in the Department, to appropriate persons.

33. That Plaintiff reported to the Wayne County Circuit Court, by his testimony, the existence of the Detroit Police Department's de facto policy of detaining witnesses to homicides even though they are not suspects of the homicides.

34. That Plaintiff's testimony was true and accurate.

35. That the actions of these Defendants were therefore improper, illegal and retaliatory, and in violation of said Act.

#### COUNT II - RETALIATION - PUBLIC POLICY

36. That Plaintiff realleges and reiterates paragraphs 1 through 29 of the General Allegations and paragraphs 30 through 35 of Count I, as though fully set forth at length.

37. That Plaintiff also testified truthfully regarding the Homicide Section's practice of violating the Detroit Police Department's Rules and Regulations.

38. That the actions of Defendants in transferring and in forcing Plaintiff out of the Department because he testified truthfully and because he refused to lie under oath, were in retaliation and in contravention of the public policy of the State of Michigan and were therefore unlawful.

COUNT III - CONSTRUCTIVE DISCHARGE

39. That the Plaintiff realleges and reiterates paragraphs 1 through 29 of the General Allegations, paragraphs 30 through 35 of Count I, and paragraphs 36 through 38 of Count II, as though fully set forth at length.

40. That at all times relevant, Plaintiff ISAIAH SMITH was employed pursuant to an express and/or implied contract of employment.

41. That Plaintiff, throughout his employment, consistently performed his job duties competently and effectively, satisfying or exceeding all applicable performance standards and requirements.

42. That the constructive discharge of Plaintiff was in retaliation for Plaintiff engaging in activity which is both constitutionally and statutorily protected.

43. That as a direct and proximate result of Plaintiff's wrongful and/or constructive discharge, Plaintiff suffered the following loss and injuries, among others:

- a. Loss of wages, past and future;
- b. Loss of fringe benefits, past and future;
- c. Loss of wage-earning capacity and employment opportunities, past and future;
- d. Humiliation, anxiety and embarrassment;
- e. Emotional distress.

WHEREFORE, Plaintiff requests that this Court enter Judgment for Plaintiff and against Defendants in an amount to which he is found to be entitled, including interest, costs and attorney fees, exemplary and/or punitive damages and for such other relief as is allowed by law.

COUNT IV - VIOLATION OF THE MICHIGAN CONSTITUTION

44. That the Plaintiff realleges and reiterates paragraphs 1 through 29 of the General Allegations, paragraphs 30 through 35 of Count I, paragraphs 36 through 38 of Count II, and paragraphs 39 through 43 of Count III, as though fully set forth at length.

45. That the actions and omissions of all Defendants, including

their supervisory failures, customs and policies, constitute violations of the 1963 Michigan Constitution as set forth below:

- a. Denial of freedom of speech, expression, conscience, and association under Article 1, Sections 3 and 5;
- b. Denial of due process and of the right to fair and just investigation under Article 1, Section 17.

46. That as a direct and proximate result of the unconstitutional actions, omissions, customs, and policies of each Defendant as set forth above, Plaintiff sustained injuries and damages as described in the Counts above. Plaintiff suffered the following loss and injuries among others:

- a. Loss of wages, past and future;
- b. Loss of fringe benefits, past and future;
- c. Loss of wage-earning capacity and employment opportunities, past and future;
- d. Humiliation, anxiety and embarrassment;
- e. Emotional distress.

WHEREFORE, Plaintiff requests that this Court enter Judgment for Plaintiff and against Defendants in an amount to which he is found to be entitled, including interest, costs and attorney fees, exemplary and/or punitive damages and for such other relief as is allowed by law.

COUNT V - DEFAMATION

47. That the Plaintiff realleges and reiterates paragraphs 1 through 29 of the General Allegations, paragraphs 30 through 35 of Count I, paragraphs 36 through 38 of Count II, paragraphs 39 through 43 of Count III, and paragraphs 44 through 46 of Count IV, as though fully set forth at length.

48. That Defendants RICHARDSON, HALL, NAPOLEON AND WINKLER'S statements and actions lowered the Plaintiff's reputation in the Detroit Police Department by accusing the Plaintiff of violating the Department's Rules and Regulations and by stating that the Plaintiff was lying about the Detroit Police Department Homicide Section's de facto policy of



arresting witnesses it suspected in a homicide.

49. That when Defendants published the statements they knew or should have known the statements were untrue.

50. That said Defendants made those untrue and defamatory statements with malice, with the knowledge that the statements were untrue at the time they were made, and recklessly failed to check the veracity of the statements. They unreasonably disregarded Plaintiff's rights and sensibilities in spite of the harm which could reasonably be expected to occur to Plaintiff as the result of those statements.

51. That said statements made by Defendants were untrue in that Plaintiff's testimony at the civil trial was accurate in describing the policy and practice of the Homicide Section of the Detroit Police Department.

52. That there was no privilege for Defendants to have made the said defamatory statements.

53. That, as a result of the said defamatory communications, Plaintiff ISATAH SMITH was harmed personally and professionally in as much as he was constructively terminated from his position, his reputation was harmed by the lowering of his estimation in the community, making it difficult for him to find a comparable position, and other harm.

WHEREFORE, Plaintiff requests judgment against said Defendants for general damages in excess of Twenty Five Thousand (\$25,000.00) Dollars and for exemplary damages in the amount of One Million (\$1,000,000.00) Dollars, plus costs, interest, and attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that he be granted temporary and permanent injunctive, declaratory and monetary relief, including the following:

1. Reinstatement as an active Sergeant in the Homicide Section Detroit Police Department;
2. An adequate money judgment, including damages for mental

and notional distress;

- 3. Appropriate costs, interest and attorneys's fees so wrongfully sustained by being required to bring this action;
- 4. Such other and further relief which is fair and equitable under the circumstances.

DEMAND FOR TRIAL BY JURY IS HEREBY MADE

I declare under the penalties of perjury that the above statements are true to the best of my knowledge and belief.

Dated: 6-8-01

*Isaiah Smith*  
 \_\_\_\_\_  
 ISAIAH SMITH

Dated: 6-8-01

Respectfully submitted,

O'NEAL O. WRIGHT & ASSOC., P.C.  
*O'Neal O. Wright*  
 By: \_\_\_\_\_  
 O'NEAL O. WRIGHT (P29816)  
 Attorney for Plaintiff  
 547 East Jefferson  
 Detroit, Michigan 48226  
 (313) 961-6643

**FILED**  
 KATHY M. GARRETT  
 WAYNE COUNTY CLERK  
 JUN 12 2001  
 BY *Cathy M. Smith*

01-119644 CZ 6/12/2001  
 JUDGE LOUIS F. SIMMONS JR  
 SMITH ISAIAH  
 vs  
 DETROIT CITY OF