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9 **BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE**
10 **CIVIL RIGHTS DIVISION**
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14 **Brian Charles Vaeth,**
15 *Affiant*
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17 v.
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19 **Governor Martin O'Malley, Baltimore OEM**
20 **Director Robert Maloney,**
21

22 and
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24 **Mayor Stephanie Rawlings-Blake, City Council**
25 **President Bernard "Jack" Young, Councilman**
26 **James B. Kraft (D-1), Councilman Brandon Scott**
27 **(D-2), Councilman Robert Curran (D-3),**
28 **Councilman Bill Henry (D-4), Councilwoman**
29 **Rochelle "Rikki" Spector (D-5), Councilwoman**
30 **Sharon Green Middleton (D-6), Councilman Nick**
31 **Mosby (D-7), Councilwoman Helen Holton (D-8),**
32 **Councilman William "Pete" Welch (D-9),**
33 **Councilman Edward Reisinger (D-10), Councilman**
34 **William Cole (D-11), Councilman Carl Stokes**
35 **(D-12), Councilman Warren Branch (D-13),**
36 **Councilwoman Mary Pat Clarke (D-14), in their**
37 *official and individual capacities,*
38

39 and
40

41 **Board of Trustees, Fire & Police Employees**
42 **Retirement System of Baltimore City**
43 **Peter E. Keith, Vice Chairman, Joan M.**
44 **Pratt, CPA, Harry E. Black, John P. Skinner,**
45 **Dickson J. Henry, Frank B. Coakley, Benjamin**
46 **F. DuBose Jr., Victor C. Gearhart, Robert A.**
47 **Haukdal, William "Ray" Hudson, Paul S.**
48 **DeSimone, Sharon Garcia, Claims Administrator**
49 **and former members Frederick McGrath, Hearing**
50 **Examiner, Bd. Chairman Stephan G. Fugate,**
51 **Edward Heckrotte, in their official and**

**AFFIDAVIT COMPLAINT
IN SUPPORT OF AFFIANT'S
REQUEST TO PRESENT
EVIDENCE BEFORE A FEDERAL
GRAND JURY**

1 *individual capacities,*

2
3 and

4
5 The Baltimore City Board of Estimates **Mayor**
6 **Stephanie Rawlings-Blake**, *Board President*
7 **Bernard “Jack” Young**, *Board Secretary* **Joan**
8 **M. Pratt**, and *Board members* City Solicitor
9 **George Nilson**, *Director of Public Works*
10 **Alfred H. Foxx, Jr.**, *in their official and*
11 *personal capacities*

12
13 and

14
15 *The Baltimore City Board of Ethics* Chairperson
16 **Linda B. (“Lu”) Pierson**, **Dawna M. Cobb**,
17 **Guy E. Flynn**, **Peggy E. Wall**, **Jennifer**
18 **Burdick**, *Director* **Mr. Avery Aisenstark**, and
19 *Deputy Ethics Director* Thaddeus Watulak, *in*
20 *their official and personal capacities*

21
22 and

23
24 *Chief of the Baltimore City Fire Department*
25 **James Clack**, *Deputy Chief* **Rod Devilbiss, Jr.**,
26 *Medical Director* *Public Safety Infirmery* **James**
27 **Levy, MD**, *in their official and personal*
28 *capacities*

29
30 and

31
32 **William Taylor**, Vice President IAFF,
33 **Rick Hoffman**, President IAFF Local 734,
34 Former President IAFF Local 734 **Robert**
35 **Sledgeski**, Former Local 734 Vice President
36 **Jerome Robusto**, former Local
37 734 Vice President **David Cox**

38
39 and

40
41 **George Nilson** *City Solicitor*, **David Ralph**
42 *Deputy Solicitor*, **Elena DiPietro** *Chief, Legal*
43 *Advice and Opinions Practice Group*, **Thomas**
44 **Corey** *Chief, Minority and Women's Business*
45 *Opportunity Office*, **Carolyn A. Espy** *Chief,*
46 *Collections Practice Group*, **Gary Gilkey**,
47 *Chief, Labor & Employment Practice Group*,
48 **Sandra R. Gutman** *Chief, Land Use Practice*
49 *Group*, **Mark H. Grimes** *Chief Legal Counsel,*
50 *Legal Affairs Practice Group*, **Richard E.**
51 **Kagan** *Chief, Corporate Practice Group*, **Kurt**

1 **Heinrich** *Central Bureau of Investigation,*
2 **Matthew Nayden** *Chief, Litigation Practice*
3 *Group, in their official and personal capacities*

4
5 *Respondents,*

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10 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF AFFIANT’S DEMAND**
11 **FOR AN INVESTIGATION INTO THE DISCRIMINATORY ACTIONS OF THE CITY OF**
12 **BALTIMORE TO ULTIMATELY BRING CRIMINAL CHARGES BEFORE A FEDERAL**
13 **GRAND JURY TO INDICT RESPONDENTS FOR FRAUD, OBSTRUCTION OF JUSTICE,**
14 **CRIMINAL CONTEMPT, PERJURY, AND MALFEASANCE OF OFFICE AMONG OTHERS,**
15 **AND TO INVOKE PROTECTIONS UNDER PROVISIONS FOUND IN THE**
16 **WHISTLEBLOWER’S ACT**

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19 **AUTHORITIES**
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22 Age Discrimination in Employment Act of 1967, 81 Stat. 602, 29 U.S.C. § 621 *et seq.* (1976 ed. and
23 Supp.V).

24
25 Baltimore City Code Articles 11, 12, & 22

26
27 Baltimore City Charter Subtitles 12 Central Bureau of Investigation, and 22-26 Department of Law.

28
29 Baltimore City Civil Service Commission Rule 57.

30
31 Baltimore City Fire Department Manual of Procedures, Sections 106-2, 106-3, 115-5, 301-1, 302-1,
32 327-3, 328, 328-1, 329-3, 366-1, 366-2, , 366-3, 366-3-1, & 366-6.

33
34 H.R.Conf.Rep. 95-950, p. 12, U.S.Code Cong & Admin.News 1978, 504, 534

35
36 H.R. 1746, the Equal Opportunity Act of 1972, 118 Cong.Rec. 7166, 7167 (1972)

37
38 Maryland Local Government Tort Claims Act

39
40 Maryland Rules of Civil Procedure, 2-535

41
42 Memorandum of Understanding 2002-2003, the Union of the International Association of Firefighters
43 for Baltimore City and the Mayor and City Council of Baltimore City.

44
45 National Labor Relations Act

46
47 NFPA 1582 Physical Standards

48
49 Rule 55, 56, 57, & 58 of the Civil Service Commission of Baltimore City
50

1 S. Rep. No. 92-415, p. 37 (1971), U.S. Code Cong. & Admin. News 1972, p. 2137
2
3 Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.* (1970
4 ed.)
5
6 42 USC 1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.
7
8 FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION
9
10 FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
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12 18 USC 4 - MISPRISION OF FELONY
13
14 18 USC 241 CONSPIRACY AGAINST RIGHTS
15
16 18 USC 242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW
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18 18 USC 371 DEFRAUDING THE UNITED STATES
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20 18 USC 1001 PERJURY AND FALSE COMPLAINTS
21
22 18 USC 1002 POSSESSION OF FALSE PAPERS TO DEFRAUD UNITED STATES
23
24 18 USC 1003 DEMANDS AGAINST THE UNITED STATES
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26 18 USC 1503 INTIMIDATE A WITNESS,
27
28 18 USC 1505 OBSTRUCTION OF PROCEEDINGS BEFORE DEPARTMENTS, AGENCIES,
29 AND COMMITTEES
30
31 18 USC 1510 OBSTRUCTING A CRIMINAL INVESTIGATION
32
33 18 USC 1512 TAMPERING WITH A WITNESS, VICTIM OR INFORMANT,
34
35 18 USC 1512 ENGAGING IN MISLEADING CONDUCT
36
37 18 USC 1514 CIVIL ACTION TO RESTRAIN HARASSMENT OF A VICTIM OR WITNESS
38
39 18 USC 1515 DEFINITIONS FOR CERTAIN PROVISIONS; GENERAL PROVISION
40
41 18 USC 1621 PERJURY GENERALLY
42
43 18 USC 1622 SUBORNATION OF PERJURY
44
45 18 USC 1623 FALSE DECLARATIONS BEFORE GRAND JURY OR COURT
46
47 18 USC 1701 OBSTRUCTION OF MAILS GENERALLY
48
49 18 USC 1702 OBSTRUCTION OF CORRESPONDENCE
50
51 18 USC 1968 CIVIL INVESTIGATIVE DEMAND

1 18 USC 2071 CONCEALMENT, REMOVAL, OR MUTILATION GENERALLY
2
3 18 USC 2384 SEDITIOUS CONSPIRACY
4
5 18 USC 2521 INJUNCTION AGAINST ILLEGAL INTERCEPTION
6
7 28 USC 1331 FEDERAL QUESTION
8
9 28 USC 1343 CIVIL RIGHTS AND ELECTIVE FRANCHISE
10
11 31 USC 3729 -3732. FALSE CLAIMS
12
13 42 USC 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS
14
15 42 USC 1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS
16
17 42 USC 1986 ACTION FOR NEGLIGENCE TO PREVENT
18
19 42 USC 1987 PROSECUTION OF VIOLATION OF CERTAIN LAWS
20
21 18 USC 1927 THROUGH 18 USC 1967 (RICO) RACKETEERING, INFLUENCE, CORRUPTION,
22 ORGANIZATION ACT
23
24 18 USC 1960, 1901, 1905, 1911, 1952, 1956, 1957, 1961, 1962, 1963, 1964 (RICO) CIVIL RICO
25 (CCE)
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27 CASES CITED

28

29
30 Biscoe v. Baltimore City Police Dept., 96 Md. App. at 22;
31
32 Edwards v. City of Goldsboro, 981 F. Supp. 406 (E.D.N.C. 1997);
33
34 New York Times Co. v. Sullivan, 376 U.S.254, 270 (1964);
35
36 Pendergast v. State of Maryland, 99 Md. App. at 149;
37
38 United States v. Bellrichard, 994 F.2d 1318, 1322 (8th Cir.);
39
40 United States v. Davis, 876 F.2d 71, 73 (9th Cir.);
41
42 United States v Dysart, 705 F.2d at 1256;
43
44 United States v. Kosma, 951 F.2d 549, 554 n.8 (3d Cir. 1991);
45
46 United States v. Miller, 115 F.3d 361, 363 (6th Cir.);
47
48 United States v. Roberts, 915 F.2d 889, 890-91 (4th Cir.1990);
49
50 United States v. Watts, 394 U.S. at 708
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Brian Charles Vaeth, in proper person, hereby respectfully submits the following allegations, which has led to the denial of benefits to disabled retirees of the Baltimore City Fire and Police Departments upon the occurrence of an administrative hearing before the Board of Trustees for the Fire and Police Employees' Retirement System of Baltimore City. As a proximate result of arbitrary and capricious rulings and the Respondents continuing refusal to provide a medical evaluation to assess a disabled retiree's ability to return to duty, as provided by the Baltimore City Code, Affiant and members who are similarly situated are routinely subjected to continuing discrimination when attempts to grieve issues are undertaken. In accordance with the Baltimore City Code Affiant has asserted that this denial and the alleged violations contained throughout this complaint are in retaliation for prevailing in grievances filed against Respondents in association with their violations of a labor contract, retaliation for

1 residing outside of the jurisdiction of Baltimore City, disclosures of the unlawful employment
2 practices of the Mayor and City Council of Baltimore City, criticism of the manner in which
3 pension funds were being handled, and his criticism for the manner in which the City Solicitor
4 counsels the Bd. of Trustees, F&PRS, along with the Mayor and City Council, and the Chief of
5 Fire Department's involvement in the managed retirement funds belonging to the membership
6 of the F&PRS .¹

7 Affiant respectfully incorporates the aforementioned, as if fully set forth herein and in
8 furtherance of those claims, submits the following in support of these allegations.

9 **RELATED CASES**

10 The details surrounding Affiant's claim are a result of previous claims filed in the Circuit
11 Court for Baltimore City, case numbers **24C00005120, 24C03007014, 24C07009752**, which
12 were an appeal of an administrative agency's unlawful determination of the denial for
13 retirement benefits from the Fire & Police Employees' Retirement System of Baltimore City
14 and the manner in which the proceedings were conducted. Affiant also filed claims in the
15 United States District Court for the District of Maryland, case numbers **RDB-08-708**, US Court
16 of Appeals case number **09-2056** and **WDQ-10-0182**, Court of Appeals case number **11-2122**.
17 The United States District Court claims were brought pursuant to the Americans with
18 Disabilities Act of 1990, as amended 42 U.S.C. sec. 12101 et seq., the Rehabilitation Act of
19 1973, as amended, 29 U.S.C. sec. 701 et seq. (Rehabilitation Act), and the 14th Amendment to
20 the Constitution for allegations of the denial of due process and equal protection under federal,
21 as well as, Maryland State laws.

22 23 **JURISDICTION STATEMENT**

24

¹ **Baltimore City Code Article 1, Subtitle 8-2. Personnel actions.**

In any personnel action, the affected employee may have the action alleged to be in retaliation for a disclosure investigated by way of a grievance or dismissal appeal.

Since United States District Court claims were brought pursuant to the Americans with Disabilities Act of 1990, as amended 42 U.S.C. sec. 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 701 et seq. (Rehabilitation Act), and the 14th Amendment to the Constitution for allegations of the denial of due process and equal protection under Federal, as well as, Maryland State laws causing Affiant's employment to be terminated without cause, the United States District Court has original jurisdiction over this claim. Because the allegations contained in this complaint occurred as a result of the prior proceedings in the US District Court, to which the allegations aforementioned are charged against Respondents and which are fully disclosed herein, this agency has jurisdiction to investigate this claim and is brought forth under federal and Constitutional laws.

“The Fourteenth Amendment prohibits the state from depriving any person of “life, liberty, or property without due process of law.” The Court has long recognized that the Due Process Clause “guarantees more than fair process.” Washington v. Glucksberg, 521 U.S. 702, 719 (1997).

ARGUMENT

Even the City realizes that controversies in employment exist. So much so that the issue is addressed in the Baltimore City Code, as follows:

“The City Council finds that unresolved disputes involving employees in the municipal service are injurious to the public, the municipality, and municipal employees. Therefore, adequate means should be provided for preventing controversies between the municipality and its employees and for resolving them when they occur”.²

² MUNICIPAL LABOR RELATIONS ART. 12 SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS§ 1-2. Findings and policy.
(a) Preventing and resolving controversies.

1 The Baltimore City Code further mandates that:

2 *“Because the paramount interest of the public and the nature of municipal*
3 *governmental processes make it necessary to impose special limitations upon public*
4 *employment, it is incumbent upon the municipality to provide orderly procedures for*
5 *the participation by municipal employees and their representatives in the*
6 *formulation of personnel policies and plans, to insure the fair and considerate*
7 *treatment of municipal employees, to eliminate employment inequities, and to*
8 *provide effective means of resolving questions and controversies with respect to*
9 *terms and conditions of employment, at the same time insuring that the public*
10 *health, welfare, and safety will be at all times maintained.*³

11 To ensure that the public health, welfare, and safety at all times are maintained, the
12 Baltimore City Code instructs:

13 *“To that end, it is necessary in the public interest that the municipal*
14 *officials, municipal employees, and their representatives, shall enter into*
15 *negotiations with affirmative willingness to resolve grievances and differences.”*⁴

16 Due to Respondents continued failure to act according to the aforementioned
17 provisions of the Baltimore City Code, Affiant respectfully submits this complaint alleging
18 fraud, perjury, and obstruction of justice claims, among others, against the above named
19 Respondents.

20 Affiant was subject to an administrative hearing process due to a recurrence of a Line
21 of Duty injury in 2003, wherein, Mr. Frederick McGrath denied Affiant of Special Line of Duty

³ MUNICIPAL LABOR RELATIONS ART. 12 SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS§ 1-2. Findings and policy.
(b) *Fair treatment of employees.*

⁴ MUNICIPAL LABOR RELATIONS ART. 12 SUBTITLE 1
DEFINITIONS; GENERAL PROVISIONS§ 1-2. Findings and policy.
(c) *Cooperative efforts.*

1 Disability Benefits. Affiant immediately filed a timely appeal of that decision in the Circuit
2 Court for Baltimore City in September of 2003. This appeal was dismissed for lack of
3 prosecution in November of 2004, while Affiant was undergoing post surgical treatment and
4 therapy that Respondents were paying for in association with a Worker's Compensation
5 Commission award for this injury.

6 Due to Respondents unlawful actions surrounding the denial of his disability
7 application, he filed a complaint in the Baltimore City Circuit Court for Maryland in December
8 of 2007. This action was removed by Affiant to this Court in March of 2008, designated on the
9 Court Clerk's docket as civil action number RDB-08-708. A transcript of the proceedings is
10 provided. Upon the decision of the Court to grant Respondents' Motion for Summary Judgment
11 in August of 2009, after Respondents committed fraud upon the Court, Affiant filed a timely
12 appeal of that decision, of which the United States 4th Circuit Court of Appeals dismissed on
13 November 23, 2010. A mandate was issued on December 15, 2010. Case Number 09-2056.

14 Affiant filed a Motion to Intervene in a lawsuit filed by the Union representatives of the
15 active and retired members of the F&PRS in this Court, Robert F. Cherry v. Bd. of Trustees,
16 F&PRS, Civil Action Number MJG 10-01447, for their alleged mismanagement of the funds
17 belonging to the membership. Affiant's Motion was dismissed for being filed too early.

18 **FRAUDULENT CONCEALMENT**

19 It is Affiant's request that due to the serious nature of the allegations contained in this
20 complaint an impartial and proper investigation of the unlawful actions of the City of Baltimore
21 is ordered.

22 **18 USC 2384 SEDITION CONSPIRACY, 31 USC 3729 FEDERAL FALSE CLAIMS ACT, 18** 23 **USC OBSTRUCTING A CRIMINAL INVESTIGATION, 18 USC 4 FEDERAL REPORTING** 24 **OF CRIME, 18 USC 1001 STATEMENTS OR ENTRIES GENERALLY**

25
26 Affiant further alleges that the Respondents intentionally involve the IAFF (hereafter
27 the International Association of Firefighters) Local Union 734 to demonstrate prejudice and

1 discrimination by refusing to uphold federal and state laws by rejecting requests from members
2 to forward disputes of improper employment policies and actions of the Baltimore City Fire
3 Department properly and to provide equal representation to their members. IAFF Local Union
4 734 is the recognized bargaining unit for the Baltimore City Fighters, as recognized by the
5 Mayor and City Council of Baltimore.⁵ During all times relevant herein, Affiant consistently
6 received positive performance evaluations, particularly regarding his ability to work
7 cooperatively with others.

8 **18 USC 2384 SEDITIOUS CONSPIRACY, 31 USC 3729 FEDERAL FALSE CLAIMS ACT, 18**
9 **USC OBSTRUCTING A CRIMINAL INVESTIGATION, 18 USC 4 FEDERAL REPORTING**
10 **OF CRIME, 18 USC 1001 STATEMENTS OR ENTRIES GENERALLY**
11

12 Baltimore's police and firefighters engage in one of the most dangerous and physically
13 taxing professions in the nation, wherein they face life-threatening conditions and regularly risk
14 physical injury and death on the job. Their physical standards require them to be able to endure
15 substantial, sustained physical and emotional stress. In cases of injury to members of the police
16 and fire departments an agency contracted by the City of Baltimore viewed to represent the
17 interests of the Mayor and City Council of Baltimore and not those of the injured member, the
18 Public Safety Infirmary at Mercy Medical Center commits serious violations of federal law,
19 causing them to be excessively entangled in the business of Baltimore City. Members are
20 ordered to report to the medical clinic that is located on the campus of the Mercy Hospital,
21 which is managed by the Sisters of Mercy, a Catholic organization, to be examined in relation
22 to those injuries. Mercy PSI bills the member's private insurance for Non Line of Duty
23 occurrences, which they are ordered by the City of Baltimore to attend. Because of the

⁵ **Baltimore City Code Article 12 Subtitle 4.**

CERTIFICATION AND RECOGNITION OF EMPLOYEE ORGANIZATIONS

4-1. In general.

(a) *Employer may recognize.*

The employer is hereby empowered to recognize any employee organization certified as hereinafter provided as the exclusive representative of the employees in an appropriate unit.

1 responsibility bestowed upon Mercy PSI by the City of Baltimore relating to their having the
2 discretion of determining the final duty status of members of both the Fire and Police
3 Departments and the number of charges brought against Respondents due to allegations of
4 discrimination, it causes them to be excessively entangled in the business of the City of
5 Baltimore, therefore, violating the First Amendment to the United States Constitution.⁶ While
6 Affiant concedes that they operate a service that is non secular in nature, the profits of that
7 service go to serve their greater mission, which is to advocate their religious beliefs. Mercy PSI
8 is compensated for their services with tax revenue paid to the City of Baltimore and the United
9 States of America by Baltimore City residents and businesses for the legitimate, legal business
10 purposes of the City of Baltimore only and is not intended to assist the church in advancing
11 religion and certainly not intended to be compensation to a religious organization that exercises
12 such discretion against governmental employees. This complaint pleads the alleged misconduct
13 demonstrated by the aforementioned agencies, organizations, individuals, officers, and that of
14 the Office of the Baltimore City Solicitor's Office, in association with their willful violating of
15 the Constitutional rights of the employees within the Baltimore City Police and Fire
16 Departments. Unlike other City employees, Baltimore's public safety workers do not receive
17 Social Security benefits. Accordingly, the City enacted the F&PRS, through which the City
18 swore an oath "to provide, and not in any way, diminish or impair retirement, death, and
19 disability benefits for Baltimore police, firefighters, and certain other public safety workers in
20 accordance with Article 22 § 29 et seq. of the Baltimore City Code. Once employed, Baltimore
21 police and firefighters are induced to continue employment with the City by the benefits
22 guaranteed to them until they become disabled from the performance of their duties. These

⁶ **Baltimore City Fire Department Manual of Procedures 302-1**

The Medical Director of the Public Safety Infirmary shall be responsible for clinical determinations of physical qualifications of individuals to perform the tasks required by the various job classifications within the Fire Department. NFPA 1582 Standard on Medical Requirements, 1992 Edition, or later revision, shall be used as a guideline for clinical judgment of physical and medical suitability of public safety personnel, both prospective and incumbent.

1 benefits address the unique needs of these members due to their not being eligible to collect
2 Social Security benefits and because of the high risk and increased physical demands of their
3 jobs.

4 **DISABILITY DISCRIMINATION**

5 Affiant filed a timely appeal of an August 2003 decision of the Panel of Hearing
6 Examiners for the Bd. of Trustees, F&PRS before the Circuit Court for Baltimore City. This
7 appeal was filed to challenge the arbitrary and capricious findings of fact concerning a
8 perceived disability resulting in the denial of an award of a Special Disability Pension Benefit
9 from the Bd. of Trustees, F&PRS. Upon successfully recovering from a surgical procedure
10 relating to the Line of Duty injury, Affiant requested reinstatement to his position due to the
11 administrative hearing examiner's determination that he was "not disabled from performing the
12 duties of a firefighter for the City of Baltimore." Affiant further requested a review of the
13 matter before the Bd. of Trustees, F&PRS, as is also mandated by the Baltimore City Code to
14 ensure that fairness was upheld in proceedings against any board, commission, or agency, and
15 requested a review by all agencies responsible for the oversight of other Boards and
16 Commissions under designation by the Baltimore City Charter. Affiant requested the assistance
17 of Mr. Thomas P. Taneyhill, Executive Director of the F&PRS, Mr. Stephan G. Fugate,
18 Chairman Bd. of Trustees, F&PRS of Baltimore City, and the assistance from representatives
19 from Baltimore City Firefighter's Local Union 734 throughout the period covered in this
20 complaint, in an effort to clear his name against the unfounded charges of Respondents,
21 however, these requests were ignored. It is evident that a proper investigation was not carried
22 out because it would have revealed the occurrences of the abovementioned violations of
23 Affiant's Constitutional rights and he would not have to resort to the filing of a legal action to
24 ensure the most fundamental protections that are due to him are upheld. Representation for
25 Affiant was requested of his recognized bargaining, the Baltimore City Firefighter's Union
26 Local 734, but they refused.

1 **18 USC 2384 SEDITIOUS CONSPIRACY, 31 USC 3729 FEDERAL FALSE CLAIMS ACT, 18**
2 **USC OBSTRUCTING A CRIMINAL INVESTIGATION, 18 USC 4 FEDERAL REPORTING**
3 **OF CRIME, 18 USC 1001 STATEMENTS OR ENTRIES GENERALLY**
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5 Affiant was refused reinstatement and a charge of discrimination was filed with the Equal
6 Employment Opportunity Commission. A copy of a "Right to Sue" letter was issued to Affiant
7 and was provided to the US District Court. Affiant understands the duty that proving those
8 allegations presents and does not rely on the findings, or lack thereof, of the EEOC's
9 investigation alone to prove them. Affiant asserts that as a result of discrimination being
10 demonstrated by Respondents, wherein they have had settle numerous other lawsuits, the City
11 retaliates against members who speak out on matters of public concern regarding the manner in
12 which the City manages the funds belonging to the members of the F&PRS and their
13 management of the business interests of Baltimore City, as a whole.

14 **28 SC 1331 FEDERAL QUESTION, 42 USC 12101 et seq, 18 USC 241 Conspiracy**

15 Affiant asserts that because of the fraudulent concealment of evidence that was crucial
16 to being able to decide Affiant's request for retirement benefits and the City Solicitor's false
17 and defamatory statements, as evidenced by correspondence with the hearing examiner, the
18 decision is based on fraud and therefore, it should be disregarded. The Record before the panel
19 of Hearing Examiners did not contain any of the evidence pertaining to the injury of 2003.
20 During the time Affiant has been diligently prosecuting this action, a news article was
21 published in the Baltimore Sun that is directly associated with Affiant's claim of fraudulent
22 concealment. In that article the Baltimore Sun reported that:

23 *"Six months into Mayor Martin O'Malley's first term, my chief of staff made a surprise*
24 *visit to the office that handled workers' compensation claims for city and school employees.*
25 *Most of the workers were missing - at lunch, Michael R. Enright was told, although the hour*
26 *was 2 p.m. There was paper everywhere, Enright said - piled on desks and crammed into*
27 *shelves, defying any organized filing system. And near the entrance hung a picture of the mayor*
28 *- former Mayor Kurt L. Schmoke, that is. Today, that office no longer exists. In its place is a*
29 *private company, Comp Management Inc., hired to manage claims for the city. A city-run*
30 *health clinic that evaluated injured employees has been replaced by a private one operated by*
31 *Mercy Medical Center that tends to send them back to work sooner...*

1 ...Union officials say the city is being ungrateful to workers, but city officials say Baltimore
2 simply cannot afford to keep injured workers permanently at their old salaries.
3

4 Consequently, Affiant is attempting to prove that the City Solicitor commits constructive fraud
5 and unfair/deceptive practices with regard to the administration of retirement benefits. It is obvious
6 from the evidence presented herein that a portion of Affiant's file was lost in this office and not
7 presented as evidence that he was undergoing medical treatment at the same time as the administrative
8 hearing was conducted. While Comp Management was handling the Worker's Comp case, surprisingly
9 no evidence from Comp Management exists in the record that was presented to the hearing examiner.
10 The Solicitor's Office will counter with false evidence regarding their good faith and the
11 reasonableness of their conduct, including obfuscating the fact that they unlawfully withheld evidence
12 that was crucial to Affiant's claim that was part of his employment file. The City Solicitor frequently
13 asserts outlandish defenses for claims brought against the City or officials. In a memorandum by Judge
14 Dennis Sweeney, in the sentencing of former Mayor Sheila Ann Dixon, he wrote,

15 "During the pretrial motions in this case, I heard arguments from the defense that
16 a developer...who was involved in numerous large and prominent developments in
17 Baltimore could not be considered under city ethics laws to be either "doing business"
18 with the City or "being regulated" by the City and thus Ms. Dixon was free to accept any
19 gift from him regardless of the amount. The argument could be expected from Ms.
20 Dixon's criminal defense lawyers who are duty bound to raise all conceivable arguments
21 on her behalf, but it was quite another thing for this argument to be supported by an
22 affidavit from the City Solicitor of Baltimore who basically asserted that developers such
23 as Mr. Lipscomb were not "doing business with the City" or "regulated" by it. This
24 official position of the City was not met to my knowledge by any dissent or outrage by
25 other elected City officials at the time it became public."
26

27 Whether or not counsel becomes a material witness, there is a possibility that the jury
28 will hear evidence about counsel's prior representation of IAFF Local Union 734 Baltimore
29 Firefighters.

30 Affiant filed an Ethics Complaint with the Baltimore City Department of Legislative
31 Reference, which is under the direction of the City Solicitor's Office and not surprisingly, the
32 review found no evidence of an ethics violation. Their refusal to recognize Affiant's right to an

1 investigation into this matter is a cover up and the City Solicitor's Office are the perpetrators of
2 that fraud, whether willful or not it is alleged to be a violation due to their lack of action despite
3 being mandated to do so by Article 12 of the Baltimore City Code. What has occurred is a
4 violation of the criminal statute prohibiting fraud against the F&PRS.

5 In enacting the State's Public Ethics Law, the General Assembly sought to ensure that "the
6 people maintain the highest trust in their government officials and employees," and to assure the
7 "impartiality and independent judgment of those officials and employees. . . ." S.G. § 15-101(a). See
8 Sugarloaf Citizens Ass'n, Inc. v. Gudis, 319 Md. 558, 575 (1990) (stating that Montgomery County's
9 ethics law, like the State's ethics law, "has been read as manifesting the 'General Assembly's strong
10 desire to assure the impartiality and independent judgment of public officials'" (citation omitted).
11 Further, the Legislature intended that the ethics provisions be "liberally construed to accomplish this
12 purpose." S.G. § 15-101(c). See Carroll County Ethics Comm'n v. Lennon, 119 Md. App. 49, 71 (1998).
13 As the Court said in Lennon, 119 Md. App. at 64,

14 **CASE HISTORY**

15
16 Affiant was a Baltimore City Firefighter from August 1993, through July 2002 and was
17 seriously injured in the Line of Duty on August 2, 1996, and required surgery for what was diagnosed as
18 a herniated disc at L/5 central and to the left and a slight bulge at the disc above. Affiant, sufficiently
19 recovered to return to his full range of duties as a firefighter in October of 1996, approximately 2 and 1/2
20 months after surgery. The Manual of Procedures of the Baltimore City Fire Department prescribes
21 departmental operation procedures in effect during this period that allowed 1 year of injury leave time
22 with an additional 12 weeks at the employees available leave expense if there is an anticipated return to
23 duty. As you can see, Affiant utilized only a very small portion of leave time, which should adequately
24 demonstrate that Affiant was committed to his position. In May of 1997, within 8 months after this
25 injury, Affiant experienced back pain while he was lifting weights while at his assigned fire station. He
26 consulted his operating physician, Dr. John Dean Rybock in order to ascertain the extent of the injury,
27 given the fact that he had to have such an invasive procedure associated with his back injury in the past.
28 Dr. Rybock is a well respected neurosurgeon who has since moved on to become the Dean of

1 Admissions for the Johns Hopkins University. Affiant was diagnosed with a mild muscle strain and he
2 returned to work for two years after this event.

3 Affiant's back situation worsened to the point that he required an additional surgery in
4 1999. MRI scans prior to this second surgery showed only a small disc bulge at L5, which did
5 not explain the severity of back pain experienced at the level of the previous Line of Duty
6 injury related surgery of 1996. In an effort to provide a reason for Affiant's severe reports of
7 back pain, an exploratory surgery was performed. This surgery was done by the same
8 neurosurgeon who performed the first surgery on Affiant's back. This occurrence was deemed
9 to be a Non Line of Duty injury but Affiant grieved this finding by Mercy PSI, as it was
10 directly related to the previous Line of Duty injury and therefore it should have been deemed as
11 such. Affiant prevailed in this grievance and he was granted Line of Duty leave time.

12 **18 USC 242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, 18 USC 371 Defrauding**
13 **the United States, 18 USC 1003 DEMANDS AGAINST THE UNITED STATES**

14
15 Dr. Rybock notes in his post operative report that during this procedure, "...post
16 surgical scarring was noted to be quite thick, particularly overlying the shoulder of the nerve
17 root and there was a large mass of very vascular fibrous tissue in the axilla of the nerve root.
18 Further dissection to the axilla of the nerve root revealed the presence of an underlying
19 fragment of disc." This is reflective of a recurrence of the 1996 injury. During his recovery
20 from the surgery, Affiant was diagnosed with a post surgical infection and Mercy PSI's
21 interference further delayed his return to duty from the Line of Duty recurrence. A delay in
22 diagnosing this infection because of Dr. Lyons' prejudicial diagnosis of drug seeking behavior
23 caused Affiant to be hospitalized further hampering his anticipated return to duty. At that time,
24 Affiant was prevented from participating in the promotional exam for the position of Fire
25 Lieutenant.

26 **18 USC 2071 CONCEALMENT, REMOVAL, OR MUTILATION GENERALLY, 31 USC 3729 -**
27 **3732. FALSE CLAIMS**
28

1 Post surgical complaints of severe pain were initially dismissed as routine surgical side
2 effects by Dr. Rybock. During this time, Affiant was ordered to report to the Public Safety
3 Infirmary for follow up visits to determine his duty status only. The Public Safety Infirmary at
4 Mercy Medical Center is the employer's medical representative. During these visits, reports of
5 severe pain were demonstrated by Affiant to Dr. Paula Lyons who determined that Affiant was
6 either narcotic dependant or in danger of becoming narcotic dependant, as an explanation for
7 Affiant's behavior. This is a very serious allegation for Dr. Lyons to make that is part of
8 Affiant's medical and permanent employment file, without following procedures to determine
9 such a negative diagnosis, as an answer for Affiant's complaints. As previously stated, a post
10 operative infection was found and would be symptomatic of demonstrating severe pain,
11 however, Dr. Lyons did not note a retraction in Affiant's file that permanently states that drug
12 seeking behavior was not occurring to relieve this pain. Affiant was ordered to attend medical
13 examinations at Mercy PSI, which was not part of his personal physician's post operative care.
14 Transportation that was available to members with Line of Duty injuries to attend these
15 examinations at the Public Safety Infirmary was not provided to Affiant, despite his repeated
16 requests. Affiant was ordered to report to Mercy PSI by Dr. Lyons, even though she was aware
17 of his being prescribed prescription narcotic pain medication. Ultimately, Affiant was forced to
18 complete an application for Special Disability Retirement Benefits from the Bd. Of Trustees,
19 F&PRS after the Medical Director of PSI deemed him unable to perform his duties.

20 **ABUSIVE DISCHARGE**

21 Mr. Frederick McGrath denied Affiant's application. In his decision, he ruled that
22 Affiant was disabled from the performance of his duties due to a Non Line of Duty injury that
23 occurred on May 8, 1999. This is an error, as there is no evidence contained in exhibit five (5)
24 (Briefs as submitted to the F&PRS and hearing examiner) that exists that would support this
25 finding. The hearing examiner was so motivated to deny the pension benefit to Affiant that

1 either he made this up, or he made a mistake concerning the actual date of the occurrence of
2 this incident. As the record shows, an incident such as the one the hearing examiner uses to
3 support his finding of fact did occur on May 8, 1997, and not in 1999. The incident in 1997 was
4 diagnosed as a simple muscle strain and Affiant immediately returned to duty and continued to
5 work for two more years until the existence of excessive scar accumulation occurring as a result
6 of the previous surgery, caused him to be placed off duty in March of 1999. A timely appeal
7 was filed in the Circuit Court for Baltimore City, due to violations of misconduct committed by
8 Mr. McGrath, however, Affiant requested and was approved to be reinstated to the department
9 before the appeal was needed to be decided by the court.

10 **18 USC 242 CONSPIRACY AGAINST RIGHTS, 42 USC 1983 CIVIL ACTION FOR**
11 **DEPRIVATION OF RIGHTS, 42 USC 1985 CONSPIRACY TO INTERFERE WITH CIVIL**
12 **RIGHTS, 42 USC 12101 et seq. 42 USC 1986 ACTION FOR NEGLIGENCE TO PREVENT**

13
14 Affiant had several occurrences of back pain following being reinstated beginning with
15 a Sept 2001 report, wherein Affiant experienced severe pain after “stepping off a fire truck”
16 and he sought his neurosurgeon’s services for a follow up examination. It was determined that
17 there was further deterioration of the L4-5 disc, a reflection of the original injury as noted by
18 Dr. Rybock. Affiant returned to his duties until he suffered another injury in June of 2002. This
19 injury should have been designated as a recurrence of a Line of Duty injury and Affiant given
20 the full 1 year recovery leave time, as prescribed in the Baltimore City Fire Department’s
21 Manual of Procedures in effect at that time. Instead it was determined to be a Non Line of Duty
22 injury, reducing Affiant’s recovery time to only 6 months. The recovery from surgery to correct
23 such an injury could not be accomplished in such a shortened amount of time, causing Dr.
24 Lyons of Mercy PSI to deem Affiant unable to perform his full duties under NFPA 1582
25 standards and he was ordered to file another retirement application.⁷ The procedures involved

⁷ **NFPA 1582 Standards**
3.3.15 Medical Condition Classifications.

1 in instances of being deemed medically unfit for duty by the employer are prescribed in the
2 Manual of Procedures and Article 22 of the Retirement Section of the Baltimore City Code.
3 Because the medical director is given the authority to deem members unfit, the only procedure
4 prescribed to be followed is that as provided in Article 22, § 34 (e-1) and continue throughout.⁸
5 As Affiant relied on the representations concerning his disqualification from returning to his
6 duties under the NFPA 1582 standards for physical requirements and that the Medical Director
7 had the final determination over the physical standards of members and would not reconsider
8 that decision, Affiant was ordered to report to the Bd. of Trustees, F&PRS to file an application
9 for disability retirement benefits. Affiant was instructed by both his Union representative that
10 the Chief of Fire Department that the medical director had this authority and there was nothing

3.3.15.1 Category A Medical Condition. A medical condition that would preclude a person from performing as a member in a training or emergency operational environment by presenting a significant risk to the safety and health of the person or others.

6.13 Spine and Axial Skeleton.

6.13.1 Category A medical conditions shall include the following:

- (2) History of multiple spinal surgeries or spinal surgery involving fusion of more than 2 vertebrae, discectomy or laminectomy, or rods that are still in place
- (3) Any spinal or skeletal condition producing sensory or motor deficit(s) or pain due to radiculopathy or nerve root compression
- (4) Any spinal or skeletal condition causing pain that frequently or recurrently requires narcotic analgesic medication.

⁸ **(e-1) Line-of-duty disability benefits.**

(1) A member shall be retired on a line-of-duty disability retirement if:

(i) a hearing examiner determines that the member is totally and permanently incapacitated for the further performance of the duties of his or her job classification in the employ of Baltimore City, as the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on his or her part; and

(ii) for any employee who became a member on or after July 1, 1979, the application for line-of-duty disability benefits is filed within 5 years of the date of the member's injury.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

(i) apply to the Board of Trustees, on a form approved by the Board; and

(ii) submit the application to the Board no later than 1 year following the member's last day of City employment.

1 they could do. This was in relation to the medical director not ordering a FCE, or the Functional
2 Capacity Examination, as is required by law.

3 **18 USC 242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, 42 USC 1986 ACTION**
4 **FOR NEGLECT TO PREVENT, 42 USC 1985 CONSPIRACY TO INTERFERE WITH CIVIL**
5 **RIGHTS**

6
7
8 If there is no dispute with the adverse employment action the medical director's
9 determination that Affiant had suffered a significant injury to his back sufficiently enough to be
10 concerned for his safety or the safety of others, the only requirement is to file the disability
11 application as provided. Although Affiant's attorney of record at the time delivered notice of
12 Respondents violation of the procedures for deeming Affiant unfit for duty on December 2,
13 2002, 26 days before his severing of his employment, this dispute was ignored. This notice is
14 sufficient to demonstrate a dispute with the procedures PSI was employing to disqualify Affiant
15 from returning to duty and would also be sufficient to notify Respondents of the dispute under
16 Civil Service Rules 55-57 that a member file notice of a dispute of an adverse employment
17 action, if one exists. Affiant was told that the reason this dispute was being ignored was
18 because of the medical director having final say in the matter and his refusal to reconsider his
19 decision. Affiant continued the course of treatment ordered by his doctor and no hearing on the
20 issue never commenced.

21 **18 USC 1002 POSSESSION OF FALSE PAPERS TO DEFRAUD THE US**

22 The provision found under section (a-3) (*Application*), of the retirement article
23 prescribes that for a member to retire under subsection (a-1) or (a-2) of that section, the
24 member must apply to the Bd. of Trustees F&PRS, on a form approved by the Board. The
25 application must set forth the date the member wants to retire and be submitted no less than 30
26 days nor more than 90 days before the date of retirement. Again, Affiant protested that this
27 "Cutting-Off" of employment was unlawful and again, his dispute was ignored.

28 **US CONSTITUTION 14 TH AMENDMENT Denial of Due Process**

1 Affiant requested the representation of his Union, IAFF Local 734, to grieve the issue
2 of Mercy PSI arbitrarily deeming Non Line of Duty injuries that actually occur in the Line of
3 Duty injuries again, however, Jerry Robusto, the Union representative assigned to monitor PSI
4 refused.⁹ In response to Affiant's request for review of this matter by the Civil Service
5 Commission of Baltimore City, he was placed into a vocational rehabilitation program for
6 employment in a position in the private sector of industry, not associated with firefighting or
7 placement within the employment of City of Baltimore. Due to the Baltimore City Fire
8 Department and PSI's refusal to make the proper determination of this injury as a Line of Duty
9 injury and their demonstrated actions of not allowing him to return to duty, Affiant sought the
10 proper and accepted practice of having an inter vertebral spinal fusion procedure with a Doctor
11 who was chosen by the Worker's Compensation Commission representative to oversee his
12 treatment, since Baltimore City is self insured in this aspect. This was facilitated through an
13 award by the Commissioner of Maryland's Worker's Compensation Commission deeming this
14 injury to be a direct result of a Line of Duty injury. Affiant was subjected to the administrative
15 hearing while he was in the process of recovering from this extensive surgical procedure and
16 had not completed his treatment.¹⁰ Affiant was threatened with the cutting off of his Worker's
17 Compensation Benefit, which was his only source of income, if he did not comply with the
18 requirement of the program to actively seek employment.

⁹ **3-1. Employee rights.**

Employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, assist, or participate in any employee organization, or to refrain from forming, joining, assisting, or participating in any employee organization, freely and without fear of penalty or reprisal, to negotiate collectively through representatives of their own choosing on terms and conditions of employment subject to the limitations herein stated and the administration of grievances arising there under, subject to the applicable provisions of any law, ordinance, or charter provisions relating thereto. (*City Code, 1976/83, art. 1, §122.*) (*Ord. 68-251.*)

¹⁰ **6.1.2** If a candidate presents with a condition that temporarily interferes with his/her ability to safely perform essential job tasks, the pre-placement medical evaluation shall be postponed until the candidate has recovered from that condition.

1 **US CONSTITUTION 14TH AMENDMENT DENIAL OF DUE PROCESS, 18 USC 2071**
2 **CONCEALMENT, REMOVAL, OR MUTILATION GENERALLY, 18 USC 1512**
3 **TAMPERING WITH A WITNESS, VICTIM OR INFORMANT, 18 USC 1512 ENGAGING IN**
4 **MISLEADING CONDUCT, 18 USC 1513 RETALIATION AGAINST A WITNESS, VICTIM**
5 **OR AN INFORMANT,**
6
7

8 **ABUSE OF DISCRETION & SLANDER**
9

10 A contradiction exists and raises a dispute of a material fact. The dispute raised is not
11 one of Affiant's own action but that of the Worker's Compensation Commissioner's
12 determination of the causation of this injury and the Hearing Examiner's incorrect ruling and
13 how the administration of retirement benefits, due to severing him from his position, has
14 afforded him no rightful benefit, compensation, or offer of reinstatement, when the causation of
15 this injury has already been determined. False and defamatory statements made by the City
16 Solicitor's Office results in Affiant being subjected to continuing prejudice and discrimination.
17 Affiant's file that would reflect that Affiant was undergoing surgery for the injury in question
18 throughout this complaint was never turned over to the hearing examiner for inclusion in the
19 record.¹¹ During Affiant's recovery from the spinal surgery, his appeal of the decision of the
20 hearing examiner was dismissed by the Circuit Court, despite his inability to prosecute it due to
21 the occurrence of the aforementioned surgery and recovery. Affiant never received the
22 notification that the action was being dismissed. When he inquired with the court to ascertain
23 the appeal's status with the Clerk of the Circuit Court, he discovered this fact and immediately
24 sought to correct this error. The City Solicitor knew of this surgery taking place but willingly
25 chose not to disclose it to the court even though they were paying the costs associated with it in
26 relation to Affiant's Worker's Compensation Award. Affiant was contacted by the City Council
27 President's Office, in what Affiant viewed as being in response to his filing of the EEOC
28 Complaint he filed, wherein they demonstrated their desire to investigate Affiant's allegations.
29 As a result of that investigation the City Council President's Office issued a determination that

¹¹ http://articles.baltimoresun.com/2005-01-25/news/0501250108_1_workers-compensation-claims-city-officials-school-workers from (www.vaeth4senator.com)

1 Affiant's right to be re-examined was not being provided and further recommended that Chief
2 Clack initiate the re-examination process for Affiant. Chief Clack informed Affiant, upon the
3 occurrence of a meeting with the Chief, Sabrina Willis, Assistant City Solicitor, and Mr.
4 Roman Clarke, Aide to Chief Clack, that there was nothing he could do because his hands were
5 tied because Affiant had a pending lawsuit against the City. The determinations of the
6 investigation were ignored.

7 **18 USC 1503 INTIMIDATION, 18 USC 1001 PERJURY AND FALSE COMPLAINTS**
8 **STATEMENTS OR ENTRIES GENERALLY**
9

10 Former Chief of the BCFD William J. Goodwin, by his own words and actions and
11 through his agents on numerous occasions, made it clear that the Fire Department was trying to
12 force members of the Fire Department into retirement due to either age or disability. Affiant
13 alleges that Chief Goodwin intentionally and unlawfully discriminated against him based on
14 this presumed disability by refusing to reinstate him upon the presumptively correct decision of
15 the hearing examiner that he was not disabled from the performance of his duties. Affiant
16 contends that it was not his desire to retire and he can perform the duties of a firefighter,
17 without accommodation on the part of the employer. The Baltimore City Fire Department
18 would have been within its right to require him to show that he could perform the essential
19 duties of a firefighter, according to the National Fire Protection Agency's 1582 standards. If he
20 was unable to return to the essential functions of his job as a firefighter, a Medical Evaluation
21 would have been required to support this finding and is provided for, not only in Federal statute
22 regarding the Americans with Disabilities Act of 1990, as amended, and the Rehabilitation Act
23 of 1973, as amended, but the Baltimore City Code, Article 22 Retirement Systems, as well.

24 The procedures that would have occurred if he was unable to meet the physical
25 requirements of a firefighter, such as being able to wear a self contained breathing apparatus,
26 was first that the employer must comply with the ADA and attempt to reasonably accommodate

1 his disability. This was not done. As matter of fact, Affiant asserts that he is eminently qualified
2 for the firefighter position, by virtue of his distinguished career and can perform his duties
3 regardless of where he is assigned within the Department, without an accommodation needing
4 to be made.

5 **18 USC 1001 PERJURY AND FALSE COMPLAINTS STATEMENTS OR ENTRIES**
6 **GENERALLY**
7

8 Chief Clack's actions in denying his request for reinstatement, with a qualifying
9 disability, subjects Affiant to ridicule and disparate treatment, which constitutes discrimination
10 under the ADA and Rehabilitation Act. The determination of this disability occurred prior to
11 the 12 month allowance for recovery and was undermined by PSI's interference in obtaining
12 the proper medical care for this injury. If this had been in question, there was an established
13 procedure to assess and remedy the situation, of which PSI, the BCFD, and Baltimore
14 Firefighter's Local 734 failed and refused to use. The seriousness of Affiant's injury and the
15 grievances he filed, wherein he prevailed, are the motivating factor in Chief Clack's decision to
16 deny his reinstatement to the Department and were a direct violation of the ADA and the
17 Rehabilitation Act. Respondents acted willfully and negligently in their attempt to obfuscate his
18 rights under the ADA and the Rehabilitation Act by denying him his position as a firefighter.
19 As a result he suffered damage to his reputation, physical and mental anguish over the loss of
20 his job, a calling of which he desired since his childhood and the loss of enjoyment of life's
21 pleasures. As a further direct and proximate result of the unjust terminating of Affiant, he has
22 suffered and will continue to suffer a substantial loss of earnings to which he would have
23 otherwise been entitled. This includes but is not limited to the loss of any increase in salary he
24 would have enjoyed or the opportunity for promotion through the ranks of the Fire Department.

25 **42 USC 12101 et seq THE PUBLIC HEALTH AND WELFARE, 18 USC 1001 PERJURY AND**
26 **FALSE COMPLAINTS STATEMENTS OR ENTRIES GENERALLY**
27

1 Despite the fact that the agencies named had an obligation to protect Affiant, they
2 negligently breached this duty by not reviewing the proceedings properly as directed by the
3 Baltimore Code & Charter. Upon the abovementioned agency's notice of a request to review
4 this matter, procedures established by the Baltimore City Code and Charter in reference to each
5 agency's duty to investigate all matters and compliance with other agencies was not adhered to.
6 The City has also demonstrated their reluctance to act in a manner that affords a fair and
7 impartial tribunal as directed.

8 **18 USC 241 CONSPIRACY AGAINST RIGHTS, 18 USC 371 DEFRAUDING THE UNITED**
9 **STATES, 18 USC 1505 OBSTRUCTION OF PROCEEDINGS BEFORE DEPARTMENTS,**
10 **AGENCIES, AND COMMITTEES**
11

12 Although Maryland Law does not require a strict compliance with the rules of evidence
13 in the administrative procedure, it does not effectively throw out the rules of evidence in
14 administrative hearings but affords the easing of the rule in an attempt to achieve a fair and
15 impartial tribunal. In this action, the reliability to achieve a fair and impartial decision is
16 compromised when an adherence to at least an abbreviated list of basic rules would ensure just
17 that, such as the hearing examiner's ability to exclude evidence that is immaterial, irrelevant,
18 and incompetent, as is prevalent throughout the record submitted by the City Solicitor as
19 evidence constructed by the Board of Trustees, F&PRS, for admission.

20 The Baltimore City Code and Charter direct each agency to cooperate and assist each
21 other with actions brought against the Mayor and City Council or in the alternative, to assist the
22 City Solicitor. If a level of cooperation with those agencies been adhered to a review of this
23 matter by the Court would not be unnecessary and would not run counter to the establishment
24 of these agencies by the Mayor, to reduce the City's unjustifiable expenses, as the cost of
25 defending this case against a reasonable question of legal importance such as the limitation of
26 constitutional rights afforded to citizens of the United States when their dedication and

1 commitment to this calling and the taking of their property illegally is the underlining causation
2 which justifies this action.

3 The hearing examiner's actions concerning misconduct, as demonstrated by the Board
4 of Trustees of the Fire and Police Employees Retirement Systems of Baltimore is not consistent
5 with the rules of evidence for admissibility. The malfeasance of office demonstrated by the
6 abovementioned agencies, boards, commissions, and others by not properly reviewing this
7 action as directed by the Baltimore City Code and Charter has caused serious economic injury
8 to Affiant and the negligence displayed in not protecting him from harm, when no violation of
9 any rule, law, or ordinance was demonstrated by him to justify the severing of his employment
10 with the Baltimore City Fire Department.

11 Affiant was separated from his position as a firefighter because he was injured in the
12 Line of Duty, which is not justification for terminating an employee. It is justified by medical
13 disability after proper compensation is afforded to the employee by process of a fair and
14 impartial tribunal, the inclusion of evidence relating to the matter, and the privilege of law
15 given its appropriate consideration as directed by the Court. The responsibility of conducting
16 administrative hearings, as prescribed in the Maryland Rules of Procedures, was given to the
17 agencies to promote the law and lessen the congestion of these cases in the Court and not
18 designed to give an unfair advantage to either party. It does not allow the City Solicitor, or
19 anyone else in that matter, to include evidence that is immaterial, irrelevant, or simply to
20 include evidence that is meant to obfuscate. This case is full of irrelevant evidence that even the
21 hearing examiner could have excluded but chose not to and as a result became confused
22 causing him to make a critical error in his finding of fact, which ultimately led him to this
23 alleged illegal decision.

24 The Maryland Declaration of Rights, Article 19 states; "every man, for any injury done
25 to him in his person or property, ought to have remedy by the course of the Law of the land,
26 and ought to have justice and right, freely without sale, fully without denial, and speedily

1 without delay, according to the Law of the land. The Maryland Code of Public Laws, 15-101,
2 Legislative findings; policy; liberal, construction further explains that the General Assembly of
3 Maryland recognizing that our system of representative government is dependent upon the
4 people maintaining the highest trust in their government officials and employees, finds and
5 declares that the people have a right to be assured that the impartiality and independent
6 judgment of those officials and employees will be maintained.”

7 An appeal was timely noted in the Baltimore City Circuit Court but was not held due to
8 Affiant having another surgery on his back. That surgery, which was directly associated with
9 this injury ultimately occurred in October of 2003, a month after he received the hearing
10 examiner’s decision. Upon being terminated from his position on December 28, 2002, the City
11 of Baltimore placed Affiant in a vocational rehabilitation program. The vocational
12 rehabilitation program was established by the Worker’s Compensation Commission deeming
13 this a work related injury. During the retraining process, Affiant was medically evaluated to
14 determine his functionality in March of 2003 and as a result thereof, it was determined that he
15 would require a more extensive spinal procedure to be performed to correct the seriousness of
16 his disability. The hearing examiner pointed to the results of this Functional Capacity Exam
17 conducted under the vocational rehabilitation process, well after his “Cut-Off” date of
18 December 28, 2002, that cast a dim light on his condition. It was opinioned that the test was
19 largely self-limiting and stressed that he could not have used maximum effort. Affiant has
20 asserted that they could not have received a maximum effort result because Affiant was
21 pending surgery for the same injury for which they were testing his functionality. Had that
22 medical evidence been presented to the hearing examiner properly, the alleged act of fraud
23 would not be raised after all the City was liable for payment of the bills associated with this
24 work related injury. Comp Management, Inc. the third party administrator for Respondents
25 either did not turn over the medical files associated with this or the City never asked for them.
26 This rises for beyond just a mere mistake and must be viewed as a conspiracy by Respondents

1 done with full knowledge and willful intent to sabotage any attempt to receive a fair hearing
2 before the Panel of Hearing Examiners due to the pension crisis, as is currently demonstrated in
3 which Affiant filed a Motion to Intervene to protect his interests as a result of the City unlawful
4 actions, which will be brought to light. Although a contract existed between members of Local
5 734 and the City of Baltimore, Affiant was effectively terminated from his position, without
6 just cause, due to being deemed medically unfit for duty by the medical representative for the
7 City of Baltimore, but ruled to be not disabled by the representative of the agency that is
8 responsible for the administration of retirement benefits. No reason was given for this
9 termination, as there are no specific charges that allow for termination when no rule or policy is
10 violated.

11 **DUE PROCESS & EQUAL PROTECTION VIOLATIONS**

12 If the employee is not deemed to be disabled, the employee should be placed back on
13 duty. The Maryland Court held in *Biscoe v. Baltimore City Police Dept.*, that “[i]f an officer
14 claiming [an] incapacity applies for retirement and is rejected upon a finding that he or she can
15 perform the duties of an available position, the Police Commissioner cannot dismiss the officer
16 upon a finding that the officer cannot perform those duties.” Biscoe, 96 Md. App. at 22. Thus,
17 the contradictory findings that existed in Biscoe did not concern the “permanence” of Biscoe’s
18 injuries. Instead, the contradiction existed because, on the one hand, Biscoe was told by the
19 Board that he could perform his duties and, on the other hand, he was told by the police
20 department that he could not perform them. In other words, the hearing examiner determined
21 that Officer Biscoe was still able to perform “light duties” and, thus, was not totally disabled.
22 About three months later, in April of 1991, the Director of Personnel wrote a letter to Biscoe
23 explaining that his use of medical leave was far above the precinct average and that he needed
24 to reduce greatly his use of leave. When Biscoe continued to use an excessive amount of sick
25 leave, the Director recommended that he be brought before the disciplinary board. After

1 numerous administrative and judicial hearings, Biscoe was terminated from the police force
2 because of his inability to perform his duties, even light duty on a full-time basis, a conclusion
3 by the Department completely at odds with the Board's determination that Biscoe was able to
4 perform light duties. Thus, the issue in Biscoe was not the "permanency" of Officer Biscoe's
5 injuries but the conflict created by the fact that the disability retirement board found that Biscoe
6 was still able to perform light duty, and therefore not qualified for a pension, and the fact that
7 the police department later terminated Biscoe's employment because it determined that
8 Biscoe's injuries did not permit him to perform even light duty on a full-time basis. This
9 conflict created an impermissible Catch-22.

10 Courts have ruled that when a contract employee is terminated, a process has to be
11 adhered to that provides for a pre-termination hearing and a final determination hearing before
12 terminating the employee. *Edwards v. City of Goldsboro*, 981 F. Supp. 406 (E.D.N.C. 1997).
13 Affiant was only afforded a hearing for disability retirement benefits before the Panel of
14 Hearing Examiners for the Bd. of Trustees, F&PRS, not a hearing for violating policy or rules
15 pertaining to the City of Baltimore and discipline or discharge as provided for in the
16 Memorandum of Understanding 2002-2003, between the City of Baltimore and the Baltimore
17 Firefighter's Local Union 734. Disparate treatment has been alleged in two circumstances. The
18 first is by the Public Safety Infirmary of the BCFD. In contradiction to the physical standards
19 provision of the Manual of Procedures of the BCFD, the medical representatives of PSI
20 violated the provisions of that standard, subjecting Affiant and others similarly situated to being
21 treated differently than other injured firefighters. This treatment causes them to be overlooked
22 for non-suppression positions after recovering from an injury.

23 Respondents, the Mayor and City Council, were paying the costs for the vocational
24 rehabilitation program and therefore had to pay for the costs associated with the surgery, as it
25 was a reflection of the Line of Duty injury covered under the Maryland Worker's
26 Compensation Commission. Despite Respondents' knowledge of the need for this surgery and

1 the recovery associated with such an invasive spinal procedure, Respondents subjected him to
2 the administrative hearing process anyway.

3 The second hearing commenced before the same hearing examiner, before Affiant was
4 released from his doctor's care and again, he was denied. In Mr. McGrath's decision, he asserts
5 that Affiant is not disabled, contrary to the determination of the Public Safety Infirmary.

6 Affiant was discharged from his employment as a firefighter for the City of Baltimore, despite
7 his desire to remain in his position, with absolutely no retirement benefit, and no healthcare
8 benefit. There is no indication of "just cause" to discharge Affiant. In Mr. McGrath's decision,
9 he asserts that Affiant is not disabled, contrary to the adoption of the NFPA 1582 standards by
10 which PSI disqualified him from returning to his duties. It was at that point, Affiant requested
11 to be reinstated, which would be consistent with rulings by the Maryland Court of Appeals and
12 Mr. McGrath's decision that Affiant was not disabled from the performance of his job. This
13 request was not honored nor was the grievance procedure afforded to him, as agreed upon in
14 the Memorandum of Understanding between the Mayor and City Council of Baltimore and the
15 members of IAFF Union Local 734, the bargaining representative of fire fighters.

16 Reinstatement to the department was again requested asserting this fact and again it
17 was rejected. Mr. Robert Maloney, Lieutenant, BCFD Headquarters advised Affiant to continue
18 with his legal pursuits, as there was nothing he could do for him. The actions of the City of
19 Baltimore in regard to this complaint were calculated to punish Affiant for exercising a
20 legitimate legal right and were punitive and vindictive, undermining the orderly administration
21 of justice. The hearing examiner was prejudiced and the conduct of the hearing was not fair and
22 impartial, as outlined in the Baltimore City Code, Article 22. These actions amount to judicial
23 misconduct that violates fundamental fairness and is shocking to the universal sense of justice.
24 Because the hearing examiner is not considered a judge, no charge of misconduct can be
25 brought against him, even though misconduct is demonstrated throughout this complaint.

1 During the proceeding before the Bd. of Trustees, F&PRS, Affiant objected to Mr.
2 McGrath's sitting as finder of fact due to the mistake he previously made that was challenged
3 for its correctness. Ultimately his decision was overturned, as evidenced by Affiant's
4 reinstatement following the first hearing. Prior to the commencement of the second hearing,
5 Mr. McGrath stated to Affiant, "What makes you think you can come here and file another
6 application for Line of Duty benefits after I already denied them to you?" Nowhere does the
7 record before Mr. McGrath reflect that the determination of Affiant's disability was made by
8 the employer and not the desire of Affiant to obtain retirement benefits. Evidence shows that
9 Affiant was anxious to return to work, yet PSI would not allow it therefore, they did not order
10 the required FCE that would have permitted Affiant to return to his duties. Mr. McGrath and
11 the Assistant City Solicitor, Mr. Abraham Schwartz continued to proceed, attacking Affiant's
12 credibility when asked about the existence of a Functional Capacity Examination. Affiant
13 responded that there was no FCE related to PSI's decision that Affiant was unable to perform
14 his duties, but there was an FCE that was conducted 4 months after his cut-off of December 28,
15 2002, that could not be used for the purposes of the hearing because the FCE was conducted
16 well after his severance with department and was for the purpose of the vocational
17 rehabilitation program. Affiant felt it to be prudent to inform Mr. McGrath of the circumstances
18 surrounding the FCE and the inappropriateness of introducing it for the purposes of the hearing.
19 Mr. McGrath failed to recognize Affiant's truthfulness and attacked his credibility. After this
20 FCE was performed it was found that Affiant was self-limiting, or not being truthful about his
21 abilities, as if he was acting when demonstrating his limitations until the onset of pain. The
22 FCE was conducted while Affiant was awaiting surgery for the injury, which would support
23 the complaints of pain that were found to be subjective. The hearing examiner ruled that
24 Affiant's credibility was at question and no further testimony of his could be believed. Mr.
25 McGrath could not have made a proper finding of fact in this case because evidence that was
26 crucial to Affiant's case was fraudulently concealed by Respondents. No evidence of the final

1 surgical procedure was introduced by the City that led to his being deemed unable to return to
2 duty. Evidence that was fraudulently concealed from Dr. Halikman, the physician chosen by
3 the Bd. of Trustees, F&PRS and from being submitted in the record before the hearing
4 examiner, was crucial in Mr. McGrath's being able to come to a decision that was consistent
5 with deciding cases of disability retirement benefits.

6 Affiant felt that if it was the decision of the employer to retire him, then he was
7 justified in applying for and receiving the benefit even though there is no evidence that he
8 desired to retire. Evidence shows that this was the prejudicial opinion of the Assistant City
9 Solicitor, Abraham Schwartz, with no evidence to that opinion being submitted other than that
10 of Affiant's testimony that PSI made the determination in relation to the physical standards
11 contained in NFPA 1582 that Baltimore City adopted.

12 **FRAUD/PERJURY**

13 In support of Affiant's allegations of fraudulent concealment, that evidence was
14 withheld by the City of Baltimore that was crucial to his claim, Assistant Chief Rod Devilbiss,
15 Jr. submitted an affidavit to this Court, in a prior proceeding, that after performing an
16 investigation no evidence of a dispute could be found. Assistant Chief Devilbiss, Jr. committed
17 perjury or Respondents withheld this information intentionally. With reverence and respect to
18 Chief Devilbiss Jr.'s, distinguished career in the department and Affiant's personal knowledge
19 of him, it is Affiant's allegation that the evidence had to be intentionally withheld by the City
20 of Baltimore because Chief Devilbiss, Jr. has never been known to falsify official records or
21 make misrepresentations associated with them.

22 Since it was an injury that Affiant suffered in the Line of Duty, not only was he eligible
23 for a disability benefit, he was also subject to being re-examined for the potential to return to
24 duty.

1 Additionally, since Affiant was being removed from his job through no fault of his
2 own, he was treated as if his position had been abolished when in fact, his position was filled
3 by another member and the City has since hired several classes to hire new probationary
4 firefighters. It is alleged that this demonstrates the hearing examiner's intent to maliciously act
5 and cause Affiant not to be re-examined for his potential return to duty.

6 Due to the fact that the hearing examiner's decision that Affiant is not disabled from
7 the performance of his duties has not been overturned as of yet on appeal, it remains
8 presumptively correct and therefore Affiant should have been provided with all of the rights to
9 re-examination for rehire.

10 The proximate result of the hearing examiner's actions has left Affiant unemployable
11 in the workforce. Affiant had no opportunity for discovery from the City Solicitor, which is not
12 consistent with the preparation of a proper defense of the City Solicitor's evidence for
13 admissibility and the malfeasance of office demonstrated by the abovementioned agencies,
14 boards, commissions, and their members by not properly reviewing this action, as directed by
15 the Baltimore City Code and Charter that caused serious economic injury to Affiant and the
16 negligence displayed in not protecting him from harm when no violation of any rule, law, or
17 ordinance was demonstrated by him to justify the severing of his employment from the
18 Baltimore City Fire Department.

19 Due to the serious economic situation Affiant encountered he was forced to settle the
20 award of his Worker's Compensation Commission benefit in September of 2007 for less than
21 originally awarded. This payment is the last date a payment from Respondents to Affiant was
22 made in relation to this injury. During the times relevant in this complaint, Affiant continually
23 reapplied or requested to be reinstated to his position.

24 Due to the arbitrary, capricious, decision of Mr. Frederick McGrath, with willful malice as intended
25 to cause Affiant further injury, he has not been provided with an opportunity to be re-examined for his
26 potential return to duty. Prior to the filing of this complaint, in what Affiant thought was the Mayor's

1 Office response to his EEOC Complaint, Affiant was directed to contact the director of the Mayor's
2 Commission on Disabilities, Dr. Nollie Wood, who instructed him to contact the ADA Coordinator for
3 the Baltimore City Fire Department. He was further instructed by Dr. Wood to contact the executive
4 secretary for the Fire Department, Mrs. Barbara Hemberger for the designated ADA Coordinator's
5 contact information. Mrs. Hemberger referred Affiant to Captain Richard Smothers, as the the designated
6 ADA Coordinator. Upon meeting with Captain Smothers, wherein Affiant offered the details
7 surrounding this complaint, he agreed that Affiant's rights were seriously violated, however, he didn't
8 know what he could do. Captain Smothers informed Affiant that he would contact Dr. Wood to ascertain
9 his role in these proceedings. Dr. Wood instructed Mr. Smothers that he could not be involved due to his
10 being a part of the appeal process.

11 Affiant's personnel file continues to contain false charges, including charges that he was
12 narcotic dependant; that he was not well motivated to return to his duties; among other
13 occurrences, as alleged throughout all times relevant herein. This information is being shared
14 with other agencies in order to comply with Maryland regulations and the fact that Baltimore
15 City has a practice of providing all records pertaining to a former employees, to prospective
16 employers and investigating agencies. The false charges contained in his file are a motivating
17 factor in his not being considered for reinstatement and much less helpful in his even being
18 successful in obtaining new employment. In order to have the aforementioned false charges
19 removed from his record, Affiant continually requested an opportunity to clear his name,
20 however, these requests remain ignored. Affiant felt as though he was justified in requesting
21 this opportunity to clear his name because his appeal to challenge the determinations was
22 dismissed from the Circuit Court for Baltimore City while Affiant was undergoing post
23 operative medical care associated with this injury and he received no notice of the appeal's
24 dismissal by the Court. In June of 2004, the City Council of Baltimore elected to provide
25 members who were retired under provisions of Article 22 of the Baltimore City Code, that if
26 the member's application for benefits was previously denied for the injury not occurring within

1 5 years of the application, they could re-file for benefits and be considered otherwise eligible
2 for them.¹² Affiant never received notice of this provision, as well. Affiant sent numerous
3 complaints requesting an opportunity to clear his name, since his appeal was not heard due to
4 the aforementioned reason that he was undergoing post operative care for a very invasive spinal
5 surgery, but he has not been afforded an avenue of redress.

6 Affiant asserts that he has been deprived of the right to due process and his property
7 interests in his job without receiving a fair and impartial tribunal as directed. Affiant is further
8 deprived of his liberty interest in his reputation without the name clearing hearing to which he
9 is entitled.

10 **42 USC 1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 31 USC 3729 -3732.**
11 **FALSE CLAIMS, 18 USC 2384 SEDITIOUS CONSPIRACY, 18 USC 1512 Tampering with a**
12 **witness, Victim or Informant, 18 USC 1512 Engaging in Misleading Conduct, 18 USC 1513**
13 **Retaliation against a witness, victim or an informant, 18 USC 1621 Perjury generally, 18 USC**

¹² **(r-1) *Special transitional rules for certain line-of-duty disability applicants.***

- (1) A member or former member who applies for a line-of-duty disability benefit under subsection (e-1) of this section or for a 100% line-of-duty disability benefit under subsection (f-1) of this section is entitled to the benefit, without regard to the 5-year statute of limitations set by subsection (e-1)(1)(ii) of this section, if the applicant:
 - (i) files a completed application with the Board of Trustees on or after January 3, 2005, and on or before April 1, 2005; and
 - (ii) is found by a hearing examiner to be otherwise eligible for the benefit by having met all other criteria set by law.
- (2) If a retired or former member was denied a line-of-duty disability benefit because a hearing examiner found that he or she had not filed the application within 5 years of his or her injury, the retired or former member is nonetheless entitled to the line-of-duty disability benefit if she or he:
 - (i) files a new completed application with the Board of Trustees on or after January 3, 2005, and on or before April 1, 2005; and
 - (ii) is found by a hearing examiner to be otherwise eligible for the line-of-duty disability benefit originally applied for by having met all other criteria set by law at the time of his or her original application.

Editor's Note: The preceding subsection (r-1) was added by Ordinance 04-889. Section 2 of that Ordinance further provided: [A]ny increased benefits payable to a retired or former member who applies for and is granted line-of-duty disability benefits under ... § 34(r-1)(2) ... are to be paid prospectively from the date on which the member files his or her new application. Any benefit increases under ... § 36A applicable to a line-of-duty disability benefit granted under § 34(r-1)(2) shall be calculated as if the member had been awarded the line-of-duty disability effective with his or her date of retirement, but the additional § 36A benefit increases shall only be paid prospectively from the date the retired member files his or her new application under § 34(r-1)(2).

1 **1622 SUBORNATION OF PERJURY, 18 USC 1623 FALSE DECLARATIONS BEFORE**
2 **GRAND JURY OR COURT**
3

4 The City Solicitor’s Office was involved in the arrest of Affiant after he made a phonecall
5 to Congressman John Sarbane’s Office. The Congressman’s office alleged that Affiant made
6 threatening statements to them concerning the City Solicitor’s Office and their actions. This
7 was not true and a false claim was filed with the Baltimore County Police Department. Whether
8 a particular communication constitutes a true threat depends on both its language and its
9 context. *Pendergast*, 99 Md. App. at 149. As the United States Court of Appeals for the Fourth
10 Circuit explained in *Roberts*, 915 F.2d at 890-91, “the context in which the words were written,
11 the specificity of the threat, and the reaction of a reasonable recipient familiar with the context
12 in which the words were written are factors which must be considered” in determining whether
13 a writing is a “true threat.” *See also United States v. Miller*, 115 F.3d 361, 363 (6th Cir.)
14 (stating that “if a reasonable person would foresee that an objective rational recipient of the
15 statement would interpret its language to constitute a serious expression of intent to harm,
16 kidnap, or kill the President or other statutorily protected target, that message conveys a ‘true
17 threat’”), *cert. denied*, 522 U.S. 883 (1997); *United States v. Davis*, 876 F.2d 71, 73 (9th Cir.)
18 (per curiam) (noting that the recipient’s state of mind, as well as actions taken in response, are
19 relevant to the determination of whether a true threat was made), *cert. denied*, 493 U.S. 866
20 (1989). Of import here, “[a] threat may be considered a ‘true threat’ even if it is premised on a
21 contingency.” *United States v. Beltrichard*, 994 F.2d 1318, 1322 (8th Cir.), *cert. denied*, 510
22 U.S. 928 (1993); *see United States v. Kosma*, 951 F.2d 549, 554 n.8 (3d Cir. 1991) (recognizing
23 that conditional threats could still be considered “true threats”); *Dysart*, 705 F.2d at 1256 (“A
24 statement may constitute a threat even though it is subject to a possible contingency in the
25 maker’s control”) (quoting trial court’s jury instructions with approval). *Cf. Moosavi*, 355 Md.
26 at 664 (construing former Art. 27, § 9, which provided that “a person may not threaten . . . to:
27 (1) Set fire to or burn a structure,” and stating that the statute “does not look to the truth or

1 falsity of the statement; rather, it punishes statements which constitute communicated
2 intentions to do harm”). The Supreme Court observed, *id.* at 707: “[A] statute such as this one,
3 [i.e., 18 U.S.C. § 871], which makes criminal a form of pure speech, must be interpreted with
4 the commands of the First Amendment clearly in mind. What is a threat must be distinguished
5 from what is constitutionally protected speech.” Quoting *New York Times Co. v. Sullivan*, 376
6 U.S.254, 270 (1964), the Court elaborated, *Watts*, 394 U.S. at 708: [W]e must interpret the
7 language Congress chose “against the background of a profound national commitment to the
8 principle that debate on public issues should be uninhibited, robust, and wide-open, and that it
9 may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government
10 and public officials.” The Supreme Court concluded that the words in issue were a “kind of very
11 crude offensive method of stating a political opposition to the President.” *Id.* at 708. However,
12 when viewed “in context,” and considered with “the expressly conditional nature of the
13 statement and the reaction of the listeners,” who reportedly laughed, the Supreme Court
14 determined that the words did not constitute a “threat” to the President within the scope of the
15 statute. *Id.* It reasoned: “We do not believe that the kind of political hyperbole indulged in by
16 Affiant fits within that statutory term.” *Id.*

17 **18 USC 1503 Intimidate a Witness,**

18 Affiant incorporates by reference all paragraphs of this Complaint, the evidence
19 submitted in the form of exhibits and the index, as if fully set forth herein. Affiant has
20 demonstrated an entitlement to relief and the balancing of equities favors the issuance of an
21 injunction against Respondents. Unless Respondents are enjoined from the conduct as alleged
22 herein, Affiant will continue to be subject to economic injury, of which to date can be
23 calculated but in relation to future loss, they cannot be accurately determined, at this time.
24

25 Nothing in the law allows for fraudulent actions from either party in adversarial
26 proceedings such as this. For this reason and for the malicious behavior as demonstrated by the

1 City Solicitor's Office, Affiant respectfully requests the granting of an investigation. When
2 firefighters or police officers become disabled in the Line of Duty, if errors in the legislation
3 exists the firefighter or police officer should not be subject to having his life destroyed by a
4 corrupt agency of the City, just to avoid taking responsibility for their own incompetence and
5 fraudulent misrepresentations. Affiant is not attempting to litigate any claim for retirement
6 benefits before this agency, it is his desire to report the above allegations to request an
7 investigation to be commenced in order to discover and sanction the unprofessional conduct of
8 the City Solicitor's Office. The requisite fraud on the court occurs where "it can be
9 demonstrated, clearly and convincingly, that a party has sentiently set in motion some
10 unconscionable scheme calculated to interfere with the judicial system's ability impartially to
11 adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the
12 presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corp.*, 892 F.2d
13 1115, 1118 (1st Cir.1989).

14 When reviewing a case for fraud, the Court should "consider the proper mix of factors"
15 and carefully balance a policy favoring adjudication on the merits with competing policies to
16 maintain the integrity of the judicial system. *Id.* At 1117-18. Because dismissal sounds the"
17 death knell of the lawsuit," Courts must reserve that medicine for instance where the defaulting
18 party's misconduct is correspondingly egregious." *Id.* At 1118. The trial court has the inherent
19 authority, within the exercise of sound judicial discretion, to dismiss an action when a Affiant
20 has perpetrated a fraud on the court, or where a party refuses to comply with court orders."
21 *Kerblum v. Schnieder*, 609 SO. 2d 138, 139 (FL. 4th DCA 1992).

22 Affiant has forwarded complaints to each one of the agencies named herein and has not
23 received the fair investigation into his claim, as is mandated. Affiant hereby respectfully
24 requests that he be afforded the full attention of the Board of Ethics and not just the Executive
25 Director Avery Aisenstark, who has recently been found to have not met with the Board for 6
26 years. It is during the 6 years, as covered herein, that Affiant filed his first complaint with the

1 Board of Ethics. The Executive Director demonstrated that the Board of Ethics dismissed the
2 complaint. How can this be possible when Mr. Aisenstark hasn't met with them in 6 years. Due
3 to the allegations of fraud and obstruction of justice, Affiant hereby requests that he be afforded
4 all of the provisions, as found in Article 8 of the Baltimore City Code. A hearing to present the
5 volumes of evidence into these allegations is requested.

6 **CONCLUSION**

7 Throughout this period of time, Affiant has not "slept" on his rights and has exhausted
8 all of his options at redressing this issue. The actions of Respondents', through private counsel,
9 must be viewed as malicious in that an error was made, wherein Affiant was denied a
10 retirement benefit and they remain woefully ignorant of the fact the Affiant's life has
11 effectively been destroyed. The Assistant City Solicitor introduced a letter to Mr. McGrath,
12 based solely upon his opinion without evidence of any kind to support it and Mr. McGrath
13 utilized that, plus his own prejudicial opinions to serve an interest of his own to deny Affiant
14 his rightful benefit even if it meant he would have to do it unlawfully.

15 A manifest injustice, from a natural reading of the term itself, requires that there exist a
16 fundamental flaw in the court's decision that without correction would lead to a result that is
17 both inequitable and not in line with applicable policy. The evidence presents this sufficiently
18 as to request that the Court grant Affiant's request to reopen this appeal. Affiant has diligently
19 sought the restoration of his property right at all times contained herein, has had to research the
20 law on his own and, as has been stated in the pleadings before the honorable US District Court,
21 Affiant has had to go from performing his job, saving others to researching a very complex
22 legal issue involving very a fundamental issue, in an effort to save his own. The erroneous
23 decision of the hearing examiner subjects Affiant to prejudice and discrimination upon the
24 occurrence of an interview for prospective employment. Affiant feels as though if this issue is
25 not redressed, he will be subject to an undue burden in supporting himself in the future, all
26 because of his commitment to Respondents' and the Citizens of Baltimore. As Affiant was

1 assembling this conclusion, remarks from President O'Bama resonates from the very heart of
2 this matter. Those remarks were,

3 *That large-heartedness — that concern and regard for the plight of*
4 *others — is not a partisan feeling. It is not a Republican or a Democratic*
5 *feeling. It, too, is part of the American character. Our ability to stand in other*
6 *people's shoes. A recognition that we are all in this together; that when*
7 *fortune turns against one of us, others are there to lend a helping hand. A*
8 *belief that in this country, hard work and responsibility should be rewarded by*
9 *some measure of security and fair play; and an acknowledgment that*
10 *sometimes government has to step in to help deliver on that promise.*

11 Without regard to political party affiliation, the President's poignant remarks
12 concerning the character of the American citizen is that we possess the ability to "stand in other
13 people's shoes" and realize exactly that, "...that we are all in this together." Certainly, Affiant's
14 fortune turned against him and he has been requesting a helping hand for the past six years,
15 without success. Affiant believed that by fulfilling his lifelong desire to serve in such a noble
16 profession as fire fighting, protecting the lives and property of the citizens of Baltimore, the
17 reward for his dedication and commitment to the public service would be some sort of measure
18 of fair play. Article 12 of the Baltimore City Code mandates fair play as essential to ensure the
19 public trust in government to ensure that public policy remains intact. This is furthered by the
20 intent prescribed in Article 11, § 1-2 of the Baltimore City Code. Although this provision
21 became available after the erroneous decision of Mr. McGrath, he was never notified of this
22 rule despite the many requests for review he has submitted to Respondents'.

23 While many in this country may be deeply skeptical that government is looking out for
24 them, that skepticism is born from a continuing attitude of prejudice and discrimination to be
25 demonstrated by actions like those alleged in the foregoing, especially when committed by the
26 government. While the politically safe move maybe to defer this matter, Affiant cannot afford
27 to "kick this can further down the road."

1 For the reasons enclosed, Affiant respectfully requests that this honorable Court permit
2 the re-opening of this appeal, to address the denial of Special Line of Duty Retirements
3 Benefits. Affiant does not believe that this request poses an apparent hardship on this Court or
4 Respondents' counsel, as provisions for re-examining proceedings before the F&PRS have
5 been allowed, in prior instances.

6 Respectfully,
7
8
9

10 Brian Vaeth
11 8225 Poplar Mill Road
12 Nottingham, MD 21236-5581
13 (410) 931-4423
14

15 **AFFIDAVIT**
16

17 I, Brian Charles Vaeth, Affiant before the Department of Justice, hereby solemnly affirm under
18 the penalties of perjury that the enclosed statement is true and complete, to the best of my knowledge
19 and belief, this 19th day of November, 2012 and is respectfully submitted for consideration.
20
21
22
23

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34

**MAYOR AND CITY COUNCIL OF
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Baltimore, MD 21202,

**BOARD OF ESTIMATES FOR THE
MAYOR AND CITY COUNCIL
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**BOARD OF ETHICS FOR THE
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**BOARD OF TRUSTEES OF THE FIRE
AND POLICE EMPLOYEES' RETIREMENT
SYSTEM OF THE CITY OF BALTIMORE,**

a body politic and corporate
7 East Redwood Street, 19th Floor
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and

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JAMES LEVY, MD., individually and
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1
2 **FREDERICK McGRATH**, individually and
3 in his capacity as Hearing Examiner for the
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8

9 **THOMAS P. TANEYHILL**, in his capacity
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