

1. That the Plaintiff, Wayne Peak, is a citizen of the Commonwealth of Massachusetts residing at 6 Seminole Circle, Andover, Massachusetts but that during certain dates pertinent hereto, he was a citizen of the State of New Hampshire residing in Atkinson, New Hampshire at 61 Main Street.

2. That the Defendant, Philip Consentino, is and was at all times pertinent hereto, a citizen of the State of New Hampshire residing at Main Street, Atkinson, County of Rockingham, and also Chief of the Atkinson, New Hampshire Police Department and is being sued individually and in his capacity as a member of said Police Department.

3. That at all times pertinent hereto, the Defendant Philip Consentino was acting in an individual capacity and under color of State law, in excess and abuse of the authority conferred upon him by the law and laws of the State of New Hampshire.

4. That acting under color of authority conferred upon the Defendant by the laws of the State of New Hampshire, the Defendant individually and in concert with others, during the years 1981, 1982, 1983 and 1984, did unlawfully and under color of state law, conspire, plan, plot and act to discredit, dishonor and publicly disgrace the Plaintiff; did deprive the Plaintiff of his constitutional rights to Freedom of Speech; Due Process and Equal Protection pursuant to the First (1st), Fifth (5th), and Fourteenth (14) Amendments, to the United States Constitution, and Part One (1); articles One (1), Two (2), Four (4), Fourteen (14) and Fifteen (15) of the Constitution of New Hampshire, by causing false, and specious criminal accusations to be made and filed

against the Plaintiff, and by publicly, openly and repeatedly slandering, defaming and otherwise attacking the Plaintiff's character and reputation, and further by attempting to intimidate, harrass, abuse and otherwise influence witnesses who would testify on behalf of the Plaintiff with regard to the allegations contained in the criminal charges against him.

5. That Defendant's actions stem from wrongful and malicious motivations designed to prevent or interfere with the investigation of official wrongdoing by Defendant as set forth below.

6. That on/or about January, 1980, the Plaintiff, Wayne Peak, was appointed by the Rockingham County Superior Court to fill a vacant position on the Board of Selectmen for the Town of Atkinson.

7. That during his tenure as Selectmen, the Plaintiff learned that Defendant, Consentino, in his capacity as Chief of Police for Atkinson had, over the course of several years, appropriated certain monies which were generated by the Atkinson Police Department in the normal course of the business; said monies resulting from charges for accident reports, permits and other similar services.

8. That the Plaintiff learned, after making several inquires, that said monies should have been treated as Town funds and, accordingly should have been deposited with the Town Treasurer.

9. That notwithstanding the foregoing, the Defendant, Philip Consentino, in his capacity as Chief of Police, did in fact appropriate said funds for the use and benefit of a private organization known as the Atkinson Police Association; said association functioning as an independent and private entity, neither credited, nor formally recognized by the Town of Atkinson, and having no budgetary or financial status in said Town and therefore not held accountable to the Town for use of said funds.

10. That the Defendant, Philip Consentino, knew that his misappropriation of said funds was illegal and yet he thwarted all investigations regarding same.

11. That the Plaintiff, Wayne Peak, during his tenure and in his capacity as a Selectman, did bring the aforementioned information and knowledge to the attention of the Defendant Consentino, in his capacity as Chief of Police, and requested an accounting from the Defendant Consentino with respect to said funds.

12. That instead of cooperating with the Plaintiff, the Defendant Consentino steadfastly, obstinately and improperly refused to comply with this reasonable request and did in fact indicate to the Plaintiff that he had no intention of cooperating with the Plaintiff or any other Town official with regard to the request for an accounting.

13. That the Plaintiff Peak, in his capacity as a Selectmen, attempted to enlist the aid of the other members of the Board in an effort to compel the Defendant, Philip Consentino, to make an accounting of the funds in question.

14. That notwithstanding the fact that the other members of the Board acknowledged the impropriety of Defendant, Consentino's conduct, they were unable and/or unwilling to take any official action to compel an accounting.

15. That the Plaintiff Peak as consequence of his inability to get the Board of Selectmen to comply with what he felt was a fiduciary responsibility, and construing the Board's inaction as a dereliction of duty, chose to resign his position on the Board effective on December 15, 1980.

16. That in February of 1981, the Plaintiff Peak, in his capacity as a private citizen, filed a Petition for a Writ of Mandamus from the Rockingham County Superior Court seeking to direct and compel the Board of Selectmen to take appropriate action regarding the misuse of public funds by Defendant Consentino.

17. That in early May of 1981, shortly after initiating said Petition for a Writ of Mandamus, the Plaintiff made known his intent to go before the Grand Jury in Rockingham County to seek an indictment against the Defendant Philip Consentino for misuse of public funds, and did in fact discuss this with the appropriate authorities.

18. That on or about May 25, 1981, several gun shots were fired at the Atkinson Police Department by an unknown person or persons; resulting in damage to the building but no injuries.

19. That the Defendant Philip Consentino implicated the Plaintiff, Wayne Peak, as a primary suspect in the incident resulting in the Plaintiff being investigated by the New Hampshire

State Police, that the Plaintiff was implicated by the Defendant regardless of his unblemished criminal record, despite being a former Town official, despite the fact that the Plaintiff is a successful and respected businessman, and despite any evidence whatsoever that he did, or would commit such an act. Further, the investigating State Police officer found that there was no basis upon which to believe the Plaintiff was in any way involved.

20. Plaintiff believes this action and the actions taken by the Defendant, as outlined in the following allegations were designed to impede, prevent, prejudice or otherwise cause the Plaintiff to cease pursuing his Petition for Mandamus and his pursuit of justice.

21. That on or about June 5, 1981, the Defendant Philip Consentino issued a complaint to the Plaintiff Wayne Peak charging him with Reckless Operation.

22. That said complaint was dated June 4, 1981 and alleged that six days previously on May 30, 1981, the Plaintiff Wayne Peak:

Did operate a 1980 Cadillac vehicle, New Hampshire registration 142163 upon a public way, to wit: Route 121, Main Street, Atkinson, New Hampshire in a generally northerly direction at a speed greater than is reasonable and prudent under the conditions without regard to the actual and potential hazards then existing exceeding the posted speed limit of 35 m.p.h. to wit: 70 to 85 miles per hour in violation of RSA 262-a:54 and that at said excessive speed did chase and force Philip V. Consentino, then lawfully operating a motorcycle on a public way, to operate said motorcycle at speeds greater than prudent under the conditions to wit: speeds in excess of 70 miles per hour thus endangering the life of Philip V. Consentino and the life and safety of the public.

23. That a trial was scheduled and held in Plaistow District Court on July 21, 1981, and the trial resumed and concluded on July 28, 1981.

24. That a primary issue in the trial was whether the Plaintiff was driving a Rolls Royce or a Cadillac on the evening in question.

25. That the Defendant Consentino testified that the Plaintiff was driving a Cadillac.

26. That during the Plaistow District Court trial the Plaintiff testified that he was driving a Rolls Royce and not a Cadillac on the evening of May 30, 1981, and produced several witnesses who testified under oath, directly or indirectly, in support of and in corroboration of that fact.

27. That prior to and during the Plaistow District Court trial, the Defendant Consentino in concert with others did openly and blatantly harrass, intimidate, threaten and abuse certain defense witnesses, including a police officer from Lowell, Massachusetts in what can only be construed as an attempt to prevent or otherwise influence testimony.

28. That the Plaintiff was found Guilty of Reckless Operation in the District Court and took a De Novo appeal to the Rockingham County Superior Court.

29. That in August of 1981, as a result of ongoing and continuing harrassment directed toward the Plaintiff and his family, including but not limited to, being followed by an Atkinson police cruiser at all times of the day and evening and being stopped by the Atkinson Police for no reason, the Plaintiff

was forced to move out of the State, despite the fact that he had just built a new home and intended to live there with his wife and child for the foreseeable future.

30. That on September of 1981 the Defendant Consentino caused the Plaintiff to be investigated by the Federal Bureau of Investigation on charges involving interstate transportation of stolen vehicles and other criminal matters, the Defendant Consentino having no actual knowledge or belief that said allegations were true, this action was taken by the Defendant regardless of Plaintiff's unblemished criminal record and despite the fact that there was no evidence whatsoever to support these spurious and damaging allegations.

31. That during the months ensuing the District Court trial (August 1981 - February, 1982) in an evil, malicious and willful scheme to defame and discredit the Plaintiff, the Defendant did falsely, maliciously, openly and publicly accuse the Plaintiff of having committed Perjury, of bribing witnesses, and of being involved in other criminal activities.

32. That during the months ensuing the District Court trial (August 1981 - February, 1982) the Defendants did falsely, maliciously, openly and publicly accuse certain Plaintiff's witnesses, including a Plaistow Police Officer, of having been bribed by the Plaintiff to commit perjury, and did otherwise harrass, abuse and threaten said witnesses in an attempt to prevent said witnesses from testifying on behalf of the Plaintiff and/or in an attempt to influence their testimony.

33. As a result of said plot and allegations by the Defendant, on or about November 8, 1981, an indictment for Perjury against the Plaintiff was sought from the Grand Jury, which offense carries a maximum penalty of seven and one-half to fifteen years at hard labor in the New Hampshire State Prison, said charge being a Class B Felony.

34. That two days after testifying before the Grand Jury a Plaistow police officer, who corroborated the Plaintiff's contention that he was driving a Rolls Royce on the night of May 30, 1981, was terminated from his employment as a Training Officer for the Atkinson Police Department by Defendant Consentino for no good cause or reason, said action was taken in direct retaliation of said officer having testified at the Grand Jury in a fashion that favored the Plaintiff.

35. The Grand Jury would not return a true bill on the charge of Perjury, but despite this and despite the fact that the Plaintiff has an unblemished reputation as a citizen and businessman, and despite the supporting testimony of several witnesses, and based upon said plot and allegations by the Defendant's and as a result thereof, an information was brought against the Plaintiff for the misdemeanor of False Swearing, pursuant to RSA 641:2, dated November 9, 1981.

36. That Plaintiff was found Not Guilty, after trial, by the Rockingham County Superior Court of the charge of Reckless Operation on February 17, 1982.

37. On April 19, 1983, the misdemeanor of False Swearing was marked "Nolle Prosequi" by the Rockingham County Attorney and no further criminal charges remain in existence against the Plaintiff.

38. That in May of 1984, the Defendant Philip Consentino, acting individually, did slander and defame the Plaintiff by orally publishing to certain public officials of the Town of Atkinson that the Plaintiff "Wayne Peak is on the verge of financial collapse" and "is having problems with his marriage and is getting divorced".

39. That said allegations are slanderous and defamatory per se and are part of an ongoing and continuing scheme, plot or vendetta to tarnish the reputation of the Plaintiff, to bring discredit to and to harm the Plaintiff in his personal life and business career; and were part of a plot and conspiracy to embarrass and humiliate Plaintiff with the purpose of retaliation and revenge against Plaintiff for filing the Writ of Mandamus referred to above.

40. That subsequent to publishing said slanderous statements the Defendant Consentino, acting in his capacity as Chief of Police, wrote a letter to one of the persons to whom he published the above statement and, in said letter, did threaten or otherwise mention possible criminal prosecution against that person for an unrelated matter. Said letter was written subsequent to the time that the Defendant Consentino knew that this person had informed the Plaintiff that the statements were made and said letter was clearly written to harrass, intimidate and otherwise influence a

potential witness and is further evidence of Defendant Consentinos misuse and abuse of his authority under color of State law.

41. That since December of 1980, the Plaintiff Peak has held no public office or been in anyway involved in public activities in the Commonwealth of Massachusetts, the State of New Hampshire or any other State.

42. That the aforementioned wrongful and bad faith conduct by the Defendant Philip Consentino, under color of State law, and otherwise, have caused and continue to cause the Plaintiff substantial, severe and permanent embarrassment, humiliation, mental anguish, damage to his career and reputation, and further damage by way of legal expenses incurred to defend criminal charges against him and he has, by way of said activities, been deprived of his New Hampshire and United States constitutional rights to Freedom of Speech, Due Process and Equal Protection of the law.

43. The Plaintiff seeks the following relief in judgment against the Defendant:

A. Damages for his economic harm, damages for his reputation, damages for embarrassment, humiliation and mental anguish, enhanced compensatory and punitive damages and reasonable attorneys fees pursuant to the Common Law and Constitutional Law of the State of New Hampshire and 42 U.S.C.A. 1983.