

October 23, 2003

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

SUCCESSFUL DEFENSE OF LITIGATION

*James Wallace v. City of San Diego*

U.S. District Court, Case No. 01cv00703JM (RBB)

## **INTRODUCTION**

The City of San Diego recently succeeded in reversing an adverse jury verdict in an employment discrimination case. Plaintiff James Wallace voluntarily resigned from the San Diego Police Department in 2000, and then filed a lawsuit against the City, alleging that he was the victim of retaliation and constructive termination. A federal court jury subsequently returned a verdict for Plaintiff in the amount of \$256,800. The City filed two motions after trial, both of which were granted. The court granted judgment in favor of the City, and also conditionally granted the City's motion for a new trial.

## **FACTS**

Wallace was employed by the San Diego Police Department for 25 years, and held the rank of sergeant for his last 16 years. During his tenure as a member of the San Diego Police Department, Wallace also served in the military reserves, and was called up to active duty several times. During the time period relevant to this lawsuit, Wallace was assigned to the Department's Eastern Division, and served under the command of Lieutenant Jorge Guevara and Captain Cheryl Meyers.

Although Wallace was in a supervisory position, he was disciplined several times during the final four years of his career, the discipline ranging from supplemental performance evaluations to an Advance Notice of Termination. The recommendation for termination was based primarily on Plaintiff's failure to report back to work on the date specified by the

Department after his various tours of military service ended. Unbeknownst to the Department, federal law allowed Plaintiff to return to work anytime within 14 days after his military service ended.

Plaintiff appealed his termination, and Assistant Chief Rulette Armstead heard the appeal. Based on her understanding of the pertinent federal law, she rescinded the termination, and instead issued a four day suspension for additional violations other than the failure to report to work as directed. Plaintiff was transferred, with his consent, to Northern Division, where he served without incident for three months before he resigned.

### **LITIGATION**

Plaintiff contended in his lawsuit that his proposed termination and his 4 day suspension were actions taken in retaliation for his having exercised his rights under federal law not to return to work immediately after his military service ended. He also contended that his command at Northern Division made conditions so intolerable for him that he was compelled to resign, i.e., that he was constructively terminated.

The case was tried before a jury in federal court in March 2003. The jury returned a unanimous verdict finding that Plaintiff was the victim of unlawful retaliation, and awarded him the full amount of his claimed damages, \$256,000, which represented his lost wages for the three additional years he had planned to work before he retired.

The City filed two post-trial motions to seek relief from the jury verdict. The first motion requested that the trial judge set aside the jury verdict and enter judgment for the City as a matter of law. The second motion requested that the judge grant the City a new trial. Judge Jeffrey T. Miller ruled that there was no substantial evidence to support the jury verdict, and granted the City's motion for judgment as a matter of law, reversing the judgment in favor of Plaintiff and entering judgment for the City. In addition, the judge conditionally granted the City's motion for new trial, which will only become effective if the appellate court reverses Judge Miller's order granting judgment in favor of the City. Plaintiff recently filed a notice of appeal with the Ninth Circuit Court of Appeals.

Deputy City Attorney Mark Stiffler tried the case on behalf of the City, and will also represent the City in the appeal.

Respectfully submitted,

CASEY GWINN

MSS:cbs:Civ.  
RC-2003-28

City Attorney