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Our File Number: 47620-70

Attorney for Defendants: City of Sea Isle City; William J. Kennedy, Chief of Police; City of Sea Isle City Police Department; James Iannone, Police Commissioner; and, J. Gansert, Patrolman

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - CAMDEN**

ANEQUA R. JOYCE, a minor by her mother and legal guardian; GLENDON DURHAM, a minor by his mother and legal guardian; and, DORETHA WATERS-RICE, in her own right and on behalf of Anequa R. Joyce And Glendon Durham,

Plaintiffs,

v.

CITY OF SEA ISLE CITY; SEA ISLE CITY BOARD OF EDUCATION; SEA ISLE CITY SCHOOL; JOANN SMITH, individually, and in her official capacity as chief school administrator for the Sea Isle City School; ANGELA DAVENPORT, individually, and as agent, servant, and employee of Sea Isle City School; and, GAIL RODGER, individually, and as agent, servant, and employee of Sea Isle City School; CITY OF SEA ISLE CITY, NEW JERSEY, POLICE DEPARTMENT; WILLIAM J. KENNEDY, individually, and in his official capacity as the Chief Of The Sea Isle City, New Jersey, Police Department, and in his official capacity as the President Of The Sea Isle City Board Of Education; JAMES IANNONE, individually, and in his official capacity as the Police Commissioner Of The Sea Isle City, New Jersey, Police Department; J. GANSERT, individually, and as agent, servant, and employee of the Sea Isle City, New Jersey, Police Department; and, JANE AND JOHN DOES (1-5), individually

Defendants

Civil Action

Number 04-cv-5345 (RBK)

**ANSWER TO AMENDED
COMPLAINT, SEPARATE
DEFENSES, and JURY
DEMAND ON BEHALF OF
DEFENDANTS,
City of Sea Isle City, City of
Sea Isle Police Department,
William J. Kennedy,
James Iannone
and Jon Gansert, with
CROSS-CLAIMS AGAINST
CO-DEFENDANTS,
City of Sea Isle City Board
of Education, Sea Isle City
School, Joann Smith,
Angela Davenport and Gail
Rodger, and with
COUNTERCLAIMS AGAINST
PLAINTIFF**

I. INTRODUCTION

(1) The Defendants deny all of the allegations contained in the introductory paragraph to the extent that the allegations pertain to the City of Sea Isle City, The City of Sea Isle City Police Department, Chief William J. Kennedy, Commissioner James Iannone, and Patrolman Jon Gansert.

II. PARTIES

The Plaintiffs

(2) It is denied that Doretha Waters-Rice is the mother of Anequa R. Joyce. With respect to the remaining allegations, the allegations are neither admitted nor denied. Plaintiffs are left to their proofs.

(3) Neither admitted nor denied. Plaintiffs are left to their proofs.

(4) Neither admitted nor denied. Plaintiffs are left to their proofs.

The Defendants

(5) Admitted.

(6) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(7) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(8) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(9) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(10) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(11) Admitted. However, the City of Sea Isle City Police Department is not a separate legal entity capable of suing or being sued in its own capacity.

(12) It is admitted that Chief Kennedy is the Chief of Police for the City of Sea Isle Police Department. Chief Kennedy was also the President of the Board of Education, and is represented by separate counsel. To the extent that any allegation in this numbered paragraph pertains to William Kennedy in his capacity as President of the Board of Education, that allegation is left to his separate counsel to answer. It is denied that Chief Kennedy is responsible for establishing the policies, practices, and regulations for the Police Department.

(13) It is admitted that James Iannone is the Police Commissioner of the Police Department. It is admitted as to the address. The remaining allegations of this numbered paragraph are denied.

(14) Admitted.

(15) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(16) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(17) Denied.

III. JURISDICTION AND VENUE

(18) Neither admitted nor denied. Plaintiffs are left to their proofs.

(19) Neither admitted nor denied. Plaintiffs are left to their proofs.

IV. FACTUAL ALLEGATIONS

(20) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(21) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(22) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(23) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of

wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(24) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(25) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(26) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(27) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(28) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(29) Upon the advice of counsel for these answering Defendants, the allegations of this numbered paragraph do not appear to allege any act of wrongdoing against these answering Defendants. To the extent an answer is required, the allegations are denied.

(30) Denied.

(31) It is admitted that an arrest warrant was signed against the Plaintiff, Doretha Waters-Rice for violation of N.J.S.A. 2C:12-3A. The remaining allegations of this numbered paragraph are denied.

(32) Denied. Defendants Felsing and Gansert were permitted entry into the home, there was no destructive search of the home, nor did they intimidate Louis and Walter Rice who were present at the time. In fact, Walter Rice was in a catatonic state and failed to respond to any questions of the police officers.

(33) Denied.

(34) Neither admitted nor denied as to the state of mind of Doretha Waters-Rice when she returned home. However, it is admitted that she did surrender herself to the police.

(35) It is admitted that Defendants Gansert and Felzing returned to the residence at 122 43rd Street on November 25, 2003. The remaining allegations are denied.

(36) Denied.

(37) Denied.

(38) It is admitted that Plaintiffs originally believed Gansert to be the officer who made the statements and it is admitted that he was not the officer

who made the racially motivated remarks and who confiscated and destroyed the tape.

(39) It is admitted that the charges were dropped by the Cape May County Prosecutor's office. The remaining allegations of this numbered paragraph are denied.

(40) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(41) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(42) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(43) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(44) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(45) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(46) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(47) Denied. The Defendants, Sea Isle City, nor Kennedy, had any way of knowing about any alleged pervasive racial discrimination either at the school or in the town as it pertained to Plaintiffs due to the fact that Plaintiffs have admitted that they never advised anyone of any problems.

(48) Denied.

(49) Denied.

(50) Upon the advice of counsel, these answering Defendants have insufficient information upon which to admit or deny the allegations of this numbered paragraph. Plaintiffs are left to their proofs.

(51) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(52) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(53) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(54) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(55) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(56) Denied.

(57) Upon the advice of counsel, this allegation does not pertain to these answering Defendants and therefore no answer is required. To the extent that an answer is required, the allegation is denied.

(58) Denied.

(59) Denied. In fact, Plaintiff Doretha Waters-Rice, and Glendon Durham have admitted in their depositions that they never advised the City of Sea Isle City, The Defendant Police Department, nor Kennedy, Iannone or Gansert of any problem associated with their race as alleged in the Complaint.

(60) It is denied that Sea Isle City or the Police Department knew of any hostile intimidating or racially discriminatory practices, either in the Police Department, or in the town. Particularly with respect to these Plaintiffs, none of the Plaintiffs advised the City of Sea Isle City or the Police Department, nor Kennedy, Iannone, or Gansert of any problem they were having living in the town.

(61) Denied.

(62) Denied.

(63) Denied.

**FIRST CLAIM FOR RELIEF
42 U.S.C. §1983**

(64) The answers to allegations and averments 1 through 63 above are incorporated by reference herein, as if fully set forth.

(65) Denied.

(66) Denied.

(67) Denied.

(68) Denied.

**SECOND CLAIM FOR RELIEF
42 U.S.C. §1985**

(69) The answers to allegations and averments 1 through 68 above are incorporated by reference herein, as if fully set forth.

(70) Denied.

(71) Denied.

(72) Denied.

**THIRD CLAIM FOR RELIEF
NEW JERSEY LAW AGAINST DISCRIMINATION**

(73) The answers to allegations and averments 1 through 72 above are incorporated by reference herein, as if fully set forth.

(74) Denied.

(75) Denied.

**FOURTH CLAIM FOR RELIEF
NEW JERSEY CONSTITUTION**

(76) The answers to allegations and averments 1 through 75 above are incorporated by reference herein, as if fully set forth.

(77) Denied.

(78) Denied.

**FIFTH CLAIM FOR RELIEF
CLAIM FOR MALICIOUS PROSECUTION**

(79) The answers to allegations and averments 1 through 78 above are incorporated by reference herein, as if fully set forth.

(80) Admitted as to Doretha Waters-Rice.

(81) Denied.

(82) Denied.

(83) Denied.

(84) Denied.

(85) Denied.

**SIXTH CLAIM FOR RELIEF
42 U.S.C. §1983 & 42 U.S.C. §1985: RETALIATION**

(86) The answers to allegations and averments 1 through 85 above are incorporated by reference herein, as if fully set forth.

(87) Denied.

(88) Denied.

(89) Denied.

(90) Denied.

(91) Denied.

**SEVENTH CLAIM FOR RELIEF
NEW JERSEY LAW AGAINST DISCRIMINATION: RETALIATION**

(92) The answers to allegations and averments 1 through 91 above are incorporated by reference herein, as if fully set forth.

(93) Denied.

(94) Denied.

(95) Denied.

SEPARATE AND AFFIRMATIVE DEFENSES

Now come the Defendants, jointly, severally, or in the alternative and plead the following separate and affirmative defenses.

1. Any injuries and/or damages sustained by the Plaintiff are the result of the act and/or acts of independent, intervening agencies over which these answering Defendants had no power or control.

2. These answering Defendants did not breach any duty which may have been owed to the Plaintiff in this action.

3. The Complaint fails to set forth a cause of action as to these answering Defendants and these answering Defendants reserve the right to move to dismiss the Complaint on that ground.

4. This action is barred by reason of the Statutory Immunity of the

Defendants and these answering Defendants reserve the right to move to dismiss the Complaint on that ground.

5. This claim is barred and/or limited by the Plaintiff's failure to avail herself of administrative remedies and/or arbitration. Plaintiff failed to exhaust administrative remedies.

6. This claim is barred or limited by reason of the New Jersey Joint and Several Liability Act, N.J.S.A. 2A:15-1 et seq. and/or the New Jersey Comparative Negligence Act N.J.S.A. 2A:53A-1 et seq.

7. This claim is barred and/or limited by the New Jersey Collateral Source Rule N.J.S.A. 2A:15-97.

8. This claim is barred and/or limited by reason of the Plaintiff's failure to mitigate damages.

9. This claim is barred and/or limited by way of the Doctrine of Estoppel.

10. This claim is barred and/or limited by reason of the Doctrine of Waiver.

11. Without making any admission as to any of the factual averments by the Plaintiff against these answering Defendants, these answering Defendants assert that no action of these answering Defendants directed to the Plaintiffs were with malice or in any regard other than in good faith and, therefore, these answering Defendants are not responsible to the Plaintiff for any damage.

12. These answering Defendants assert that the actions taken by these answering Defendants were privileged, subject to immunity and/or partial

immunity, and/or authorized by law.

13. These answering Defendants assert that the Plaintiffs have failed to plead any Constitutional and/or statutory violation and/or property deprivation with such specificity as to state a cognizable claim under 42 U.S.C. Section 1983.

14. Specifically, Sea Isle City and its Police Department assert that the Plaintiffs are not able to establish acts or omissions by Sea Isle City in the face of persistent, widespread practices so common and well settled as to be imputable to Sea Isle City or its Police Department, constituting a blatant and routine disregard and/or deliberate indifference to the rights of the Plaintiff.

15. Specifically, Sea Isle City and its Police Department assert that the Plaintiff is unable to show any policy and/or procedure and/or act attributable to Sea Isle City which was so inadequate as to amount to a deliberate indifference to the Plaintiff's Constitutional rights and/or to otherwise amount to a cognizable claim by Plaintiff against Sea Isle City under 42 U.S.C. Section 1983.

16. At all times, the acts and/or conduct of these answering Defendants in regard to the Plaintiffs were fair, objective, and in good faith, taking into consideration the essential functions of the Plaintiff's job.

17. All employment decisions of these answering Defendants in regard to the Plaintiffs were made for legitimate business reasons and/or professional considerations and not for any discriminatory purpose.

18. Any and all damages alleged to have been suffered by the Plaintiffs are not causally related to any act and/or omission alleged to be chargeable to these answering Defendants.

19. Insofar as any State law claim by Plaintiffs, other than a claim under the New Jersey Law Against Discrimination, the claim must be dismissed as the Plaintiff failed to comply with the required notice provisions of the New Jersey Tort Claims Act N.J.S.A. 59:8-1 et seq.

20. Plaintiffs failed to invoke and/or utilize the policies and procedures of the City prohibiting discrimination/harassment and, thus, the Complaint of the Plaintiff must be dismissed.

21. Certain claims are barred by the applicable Statute of Limitations and these answering Defendants reserve the right to dismiss on that ground.

22. The Complaint must be dismissed, as the Plaintiffs failed to obtain a "right to sue" letter, thereby barring Plaintiff's claims.

23. This individually named answering Defendant did not aid, abet, incite or coerce any act of discrimination/harassment.

24. The Complaint is barred by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et. seq.

25. These answering Defendants are immune from liability pursuant to the provisions of N.J.S.A. 59:2-1, et. seq.

26. These answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-1 and 59:2-2, as to the immunities available to the public entity and/or public employee.

27. These answering Defendants are not liable to the Plaintiff in that there is no liability upon any public employees pursuant to the provisions of N.J.S.A. 59:2-2(b).

28. These answering Defendants are immune from liability pursuant to the provisions of N.J.S.A. 59:3-1, et seq.

29. These answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-3 and 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

30. These answering Defendants assert the applicability of the provisions of N.J.S.A. 59:8-3 through 59:8-7 regarding failure to provide adequate and timely notice of claim.

31. These answering Defendants assert the applicability of the provisions of N.J.S.A. 59:8-8 through 59:8-11 regarding failure to timely file notice of claim and/or failure to file notice of claim as set forth therein.

32. Any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accordance with the judgments, damages and interest provided in N.J.S.A. 59:2-2.

33. These answering Defendants assert the applicability of N.J.S.A. 59:9-3 and 59:9-4 regarding joint tortfeasors and the comparative negligence of the Plaintiffs.

34. These answering Defendants, by pressing the aforementioned defense(s), does not intend to limit its defense and/or rights under the Act and hereby affirmatively pleads the procedural and substantive provisions of the New Jersey Tort Claims Act: N.J.S.A. 59:1-1, et. seq. which are applicable and have not been previously cited in this Answer.

35. These answering Defendants hereby reserve the right to amend

this Answer to assert additional separate defenses as may be revealed and/or suggested by ongoing investigation and/or discovery.

36. There is no cause of action against the City for intentional infliction of emotional distress and no such cause of action can be asserted against a public entity under the New Jersey Tort Claims Act, N.J.S.A. 59:2-10.

37. The individual Defendants are immune under the New Jersey Tort Claims Act under the provisions of N.J.S.A. 59:3-4 through 3-14.

38. The answering Defendants have not acted willfully, maliciously or wantonly and thus punitive damages are not appropriate.

39. The individually named answering Defendants are entitled to qualified immunity under the State and/or Federal Constitution.

40. The individually named answering Defendants are entitled to supervisory immunity and/or is not a supervisor of the Plaintiff and thus liability cannot be imposed.

41. Plaintiff failed to file a Notice of Tort Claim on Chief Kennedy and therefore, cannot maintain a tort action against him.

42. Plaintiff failed to file a Notice of Tort Claim on James Iannone and therefore, cannot maintain a tort action against him.

43. The Sea Isle City Police Department is not a separate legal entity capable of suing or being sued.

44. Jon Gansert is not a separate legal entity capable of suing or being sued.

45. Commissioner Iannone has no actual knowledge of any acts of the

Police Department or its officers related to the incidents in Plaintiffs' Complaint, nor did he acquiesce in any conduct related thereto. Defendant reserves the right to file a motion on that basis.

**CROSS CLAIMS AGAINST CO-DEFENDANTS
FOR CONTRIBUTION AND INDEMNIFICATION**

1. This Cross-Claiming Defendants have been sued as more particularly disclosed in the original Complaint filed by Plaintiffs.

2. Without admitting liability whatsoever, the answering Defendants hereby demand from any and all other Co-Defendants currently named or to be named to this action both contribution and indemnification pursuant to any and all applicable provisions of federal law, and/or, by way of demand for complete indemnification against all other Co-Defendants currently named or to be named, assert that any negligence on the part of the answering Defendants is only secondary, vicarious and imputed whereas the negligence of any and all such other Defendants was primary, direct and active.

WHEREFORE, the answering Defendants demand judgment in their favor and against the Co-Defendants pursuant to the New Jersey Joint Tortfeasors Contribution Act, N.J.S.A. 2A:53-1 *et seq.* and the New Jersey Comparative Negligence Act, N.J.S.A. 2A:15-5.1 *et seq.*, together with interest, costs and counsel fees.

COUNTERCLAIM AGAINST PLAINTIFFS

Defendants/Counterclaimants, City of Sea Isle City; William J. Kennedy, City of Sea Isle City Police Department, James Iannone, and Jon Gansert, by way of Counterclaim against the Plaintiffs say:

1. Defendants/Counterclaimants repeat and reallage their answers to the allegations of Plaintiffs and the affirmative and separate defenses as though set forth more fully herein.

2. As against Defendants, City of Sea Isle City, William J. Kennedy, James Iannone, and Jon Gansert, this action is frivolous, unreasonable and without foundation and fact and brought in bad faith.

WHEREFORE, these Defendants demand judgment against the Plaintiffs for attorneys fees, costs of suit and such other relief as the Court deems proper and just pursuant to all applicable laws and regulations.

DESIGNATION OF TRIAL COUNSEL

The Court is advised that A. Michael Barker, Esquire, is hereby designated as Trial Counsel.

DEMAND FOR JURY TRIAL PURSUANT TO RULE 1:8(c)

Please be advised that Defendants, City of Sea Isle City, William J. Kennedy, Chief of Police, City of Sea Isle City Police Department, James Iannone, Police Commissioner, and, Jon Gansert, Patrolman, hereby demand a trial by jury as to all issues.

PRAYER FOR RELIEF

The Defendants respectfully request that the Complaint be dismissed and that the Court award costs and reasonable fees, and all such other relief as the Defendants may be entitled to, to the Defendants.

NOTICE PURSUANT TO RULES 1:5-1(A) AND 4:17-4

Please take notice that the undersigned attorneys do hereby demand,

pursuant to the above-cited Rules of Court, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answers to interrogatories, and all documents, papers and other material referred to therein, received from any party, upon the undersigned attorneys, **AND TAKE NOTICE THAT THIS IS A CONTINUING DEMAND.**

RESERVATION OF RIGHTS

Defendant reserves the right, at or before trial, to move to dismiss the Complaint and/or for summary judgment, on the grounds that the Complaint fails to state a claim upon which relief can be granted and/or that the Defendant is entitled to judgment as a matter of law, based on any or all of the above defenses.

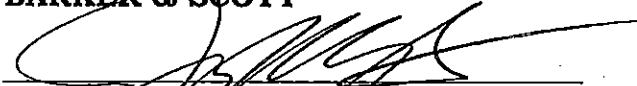
CERTIFICATION OF COUNSEL

The matter in controversy is not subject to any other known action pending in any other court or if any pending or contemplated arbitration proceeding. There are no other parties known who should be joined to this action pursuant to Rule 4:28 or who are subject to joinder pursuant to Rule 4:29-1(b).

Dated: 8/1/06

BY:

BARKER & SCOTT


Joseph M. Scott, Esquire
Attorneys for Defendants, City of Sea Isle City;
William J. Kennedy, Chief of Police; City of Sea
Isle City Police Department; James Iannone,
Police Commissioner; and, Patrolman J.
Gansert