

**STATE OF RHODE ISLAND
KENT, SC.**

SUPERIOR COURT

KRISTEN B. BENOIT,
Plaintiff

VS.

C.A. No. KC\17-

**GAYLE CORRIGAN, in her individual
and official capacity as Town Manager for:
the Town of East Greenwich; the
TOWN OF EAST GREENWICH, by and
through LINDA DYKEMAN, in her
capacity as Finance Director for the Town:
of East Greenwich, THE EAST
GREENWICH TOWN COUNCIL,
and SUZANNE CIENKI, SEAN TODD,
ANDREW DEUTSCH, NINO
GRANATIERO, and MARK
SCHWAGER, in their individual and
official Capacities as members of the East
Greenwich Town Council,
Defendants**

COMPLAINT

I. Introduction

This action is brought by the Plaintiff, Kristen B. Benoit, against Defendants seeking declaratory and injunctive relief, and other equitable relief, as well as attorney's fees, litigation expenses, and compensatory and punitive damages from the Defendants for wrongful termination of her employment and denial of employment and other rights and protections in violation of 1) the Rhode Island Open Meetings Act ("OMA"), R.I.G.L. § 42-46-1, *et seq.*; 2) the Town of East Greenwich Town Charter, 3) the Rhode Island Parental and Family Medical Leave Act, R.I.G.L. §28-48-1, *et seq.* ("RIPFMLA"); and 4) the Rhode Island Civil Rights Act of 1990, R.I.G.L. §42-112-1, *et seq.* ("RICRA").

II. Parties

Plaintiff

1. Plaintiff Kristen B. Benoit is a resident of the Town of Coventry, County of Kent, State of Rhode Island.

Defendants

2. Defendant Gayle Corrigan is sued in her individual and official capacity as the purported Town Manager for the Town of East Greenwich.

3. Defendant Town of East Greenwich ("Town") is a duly authorized and organized municipality existing under the laws of the State of Rhode Island and is sued by and through its Finance Director, Linda Dykeman, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the Town.

4. Defendant Suzanne Cienki is sued in her individual and official capacity as the President and member of the East Greenwich Town Council ("Town Council").

5. Defendant Sean Todd is sued in his individual and official capacity as a member of the Town Council.

6. Defendant Andrew Deutsch is sued in his individual and official capacity as a member of the Town Council.

7. Defendant Nino Granatiero is sued in his individual and official capacity as a member of the Town Council.

8. Defendant Mark Schwager is sued in his individual and official capacity as a member of the Town Council.

9. Defendants Cienki, Todd, Deutsch, Granatiero, and Schwager are also referred to herein collectively as "Town Council."

III. Jurisdiction

10. This Court has jurisdiction over Plaintiff's claims asserted a) under the OMA pursuant to R.I.G.L. § 42-46-8(c), b) the RIPFMLA pursuant to R.I.G.L. §28-48-6, c) under the RICRA pursuant to R.I.G.L. §42-112-2; and, d) for declaratory and injunctive relief under R.I.G.L. § 8-2-13. Additionally, the monetary amount claimed herein is sufficient to establish the jurisdiction of the Superior Court pursuant to R.I.G.L. § 8-2-14.

IV. Venue

11. Venue is proper in this Court pursuant to R.I.G.L. §9-4-3 insofar as Plaintiff resides in the County of Kent, State of Rhode Island.

V. Material Facts

A. Employment Background

12. On or about February 13, 2006, Plaintiff was hired as the Town Budget and Accounting Manager.

13. She was subsequently appointed Acting Finance Director for the Town on January 2, 2014 and Finance Director on April 28, 2014.

14. Plaintiff was appointed by the Town Manager with the approval of the Town Council as required by the Town of East Greenwich Town Charter ("Town Charter").

15. During the entire period of her employment, Plaintiff never received any warnings nor was she ever disciplined or counseled for deficient work performance.

16. During every year of Plaintiff's tenure as Finance Director, the Town received the Government Finance Officers Association "Certificate of Achievement for Excellence in Financial Reporting."

17. On or about June 16, 2017, Plaintiff went out on medical leave approved by the Town and protected under the RIPFMLA.

B. First OMA Violations—June 19, 2017 Meeting

18. On June 19, 2017 at 8:00 a.m., the Town Council held a special meeting in closed session.

19. The Town Council voted in executive session at that meeting to 1) approve a separation agreement with its Town Manager Thomas Coyle and 2) appoint Defendant Corrigan as Acting Town Manager.

20. No public notice was provided that the Town Council intended to appoint an Acting Town Manager.

21. The appointment of Defendant Corrigan should have been discussed and voted upon in a public session.

22. The hiring of personnel or appointing of replacement or acting officers are not actions which may properly be taken in executive session. *See* R.I.G.L. § 42-46-5 (listing purposes for which meetings may be held in executive session).

23. No record of any minutes of the meeting was made by the Town Council.

24. *The Town Council violated R.I.G.L. § 42-46-6(b) by failing to provide adequate notice to the public of the nature of the business to be discussed at the June 19, 2017 special meeting. East Greenwich Firefighters Association v. Corrigan, et al., KC-2017-0898, dated Nov. 8, 2017 (“Dec.”) at 41.*

25. *The Town Council violated R.I.G.L. § 42-46-5 by discussing and voting on the appointment of an Acting Town Manager in an executive session at the June 19, 2017 special meeting. Dec. at 43.*

26. *The Town Council violated R.I.G.L. § 42-46-7 by not keeping a record of the June 19, 2017 meeting. Dec. at 43.*

27. *The Defendants' violations of the OMA described above were willful and knowing.*

Dec. at 73.

C. First Town Charter Violations—June 19, 2017 Meeting

1) Section C-64 Violation

28. Section C-64 of the Town Charter states: “[n]o official vote on any matter shall be taken at any meeting which is **not open to the public.**” Dec. at 46 (emphasis in decision).

29. *The Town Council violated § C-64 of the Town Charter when it voted in executive session, and not in an open meeting, to appoint Defendant Corrigan as Acting Town Manager, at the June 19, 2017 meeting.* Dec. at 46-47.

2) Section C-67 F Violation

30. Section C-67 F of the Town Charter, provides that “in the event that the Town Manager resigns or is removed from office” the Town Council shall “designate an officer of the Town, other than a Town Council Member, to serve as Town Manager . . . until a successor to the Town Manager has assumed the duties of the office.”

31. Accordingly, the Town Council must designate an officer of the Town as Acting Town Manager if the Town Manager resigns or is removed from office. Dec. at 47.

32. Defendant Corrigan was not an officer of the Town at the time of her purported appointment as Town Manager and she therefore could not lawfully serve as “Acting Town Manager” according to the Town Charter. Dec. 47.

33. *The Town Council violated § C-67 F of the Town Charter insofar as Defendant Corrigan was not an officer of the Town at the time she was appointed Acting Town Manager on June 19, 2017.* Dec. 47.

3) Section C-63 B Violation

34. Section C-63 B of the Town Charter provides that the Town Council may call special meetings, but those meetings must be properly noticed—pursuant to the OMA—and the only business that may be conducted during a special meeting is that which is contained in the notice. Dec. at 48.

35. At the June 19, 2017 meeting, the Town Council appointed Defendant Corrigan as the Acting Town Manager; however, the agenda listed only one executive session item with no information pertaining to the appointment of an Acting Town Manager. Dec. at 48.

36. *The Town Council violated § C-63 B of the Town Charter by transacting business at a special meeting on June 19, 2017 without providing proper notice of the topic to the public[, specifically voting to appoint Defendant Corrigan as Acting Town Manager].* Dec. at 48.

D. Res Judicata/Collateral Estoppel

37. *As consequence of the foregoing OMA and Town Charter violations, the Town Council's vote on June 19, 2017 appointing Defendant Corrigan as Acting Town Manager is, and has been declared, null and void by the Kent County Superior Court.* Dec. at 69.

38. Based on the doctrines of *res judicata* and/or *collateral estoppel*, the Defendants are legally bound and subject to and cannot contest the determinations of the Court in *East Greenwich Firefighters Association v. Corrigan, et al.*, KC-2017-0898, dated Nov. 8, 2017 as set forth herein in the italicized paragraphs above.

E. Second OMA Violations—June 26, 2017 Meeting

39. At its meeting on June 26, 2017, the Town Council voted to go into executive session pursuant to R.I.G.L. 42-46-5 (a) (2).

40. Two different justifications were posted for convening the executive session: one was a Pawtucket Credit Union lawsuit and the other was a generalized statement pertaining to collective

bargaining or litigation, specifically to discuss legal implications related to municipal collective bargaining agreement obligations and common-law/statutory obligations of the Town.

41. According to the draft minutes of the executive session meeting, there was extensive discussion regarding the “One Town” restructuring plan to combine certain administrative positions and functions of the Town and School Department.

42. This discussion included the elimination of staff positions and lay-offs of municipal employees and the consolidation of department level positions in a merged school-town administration.

43. Upon information and belief, at that meeting, the employment performance/status of the Plaintiff, as well as that of Sharon Kitchin, Director of Human Resources, and Pamela Aveyard, Executive Assistant to the Town Manager were discussed.

44. Upon information and belief, the Town Council also discussed replacing the Plaintiff, Ms. Kitchin and Ms. Aveyard, in whole or part, by naming Linda Dykeman as the “joint” Town Finance Director and School Department Business Manager.

45. “[A]n employee’s contract is in most cases inextricably intertwined with a discussion of that employee’s job performance, character, or physical or mental health.” Opinion of Attorney General, ADV OM 04-06, 2004 WL 3557540 at *1 (R.I. 2004).

46. The Town Council voted in executive session to approve “the Acting Town Manager’s restructuring and reorganization plan for “One Town” implementation”

47. According to the draft minutes of the executive session meeting, “[g]iven the nature of the topic, [the Town Council] decided to keep the vote under seal until implementation was completed.”

48. No votes or action taken in the executive session were reported in the minutes of the public session of the meeting.

49. *The Town Council violated R.I.G.L § 42-46-6(b) by failing to provide adequate notice to the public of the nature of the business to be discussed at the June 26, 2017 executive session meeting, which included discussion of a major policy initiative with enormous potential impact on the public and governmental operations, the so-called "One Town Plan."*

50. *The Town Council violated R.I.G.L §§ 42-46-4 and 5 by discussing and voting at the June 26, 2017 executive session on a major policy initiative with enormous potential impact on the public and governmental operations, the so-called "One Town Plan," because the topic was not a) noticed to the public and b) a proper subject for a non-public session.*

51. *The Town Council violated R.I.G.L § 42-46-4 and 7 by not keeping a proper public record of the June 26, 2017 meeting by not reporting and including in its minutes of the public hearing the votes recorded in executive session, because the votes a) should have been made in the public session, and b) there was no vote finding that immediate disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).*

52. *Even if the subject matter was proper for an executive session to the extent it involved discussion of job performance, character, or physical or mental health of the Plaintiff or any other person under R.I.G.L §42-46-5(a)(1), the Town Council violated R.I.G.L §§ 42-46-4 and 5 by voting on such a subject at the June 26, 2017 executive session. See *In re: Health Services Council*, ADV OM 99-12 ("[u]nder § 42-46-5(a)(1) ...the public body must limit itself to 'discussion' and any votes must be taken in open session.") (quoting *Graziano v. R.I. Lottery Commission*, OM 99-06).*

53. *Even if the subject matter was proper for an executive session to the extent it involved discussion of job performance, character, or physical or mental health of the Plaintiff under R.I.G.L §42-46-5(a)(1), the Town Council violated R.I.G.L §§ 42-46-4 and 5(a)(1) because*

the Plaintiff was never provided “notifi[cation] in advance in writing [of the June 26, 2017 meeting] and advised that [she] may require that the discussion be held at an open meeting.”

54. *The failure to provide the foregoing notice to the Plaintiff renders any action taken against the Plaintiff at the June 26, 2017 meeting null and void as a matter of law under R.I.G.L. § 42-46-5 (a) (1).*

55. The Town has exhibited a pattern of conduct surrounding the Town’s dealings with Defendant Corrigan and her appointment as Acting Town Manager and Town Manager evidencing the Town’s lack of respect for the spirit and intention of the OMA. Dec. at 62.

F. Second Town Charter Violations—June 26, 2017 Meeting

Section C-64 Violation

56. *The Council violated § C-64 of the Town Charter when it voted at the June 26, 2017 executive session on a major policy initiative with enormous potential impact on the public and governmental operations, the so-called “One Town Plan,” because the meeting was not open to the public.*

G. Termination of Plaintiff’s Employment

57. On or about July 7, 2017, Plaintiff received a letter dated June 30, 2017 postmarked July 3, 2017 from the Town signed by Defendant Corrigan as purported “Acting Town Manager.”

58. That letter provided in pertinent part that the Plaintiff was being “separated effective June 30, 2017 at 1:00 p.m.” due to “budget restructuring and fiscal consolidations” necessitated by the “One Town model.”

59. As Finance Director, my client was a department head in Town government. Town Charter, § C-91.

H. Third Town Charter Violations—Plaintiff's Termination

1) Section C-85 A Violation

60. Section C-85 A of the Town Charter provides that the Town Manager may remove a department head or officer "subject to the approval of the majority of all members of the Town Council."

61. *Accordingly, even assuming, arguendo, Defendant Corrigan was qualified to hold the position of Acting Manager and that she was properly appointed as such, Defendant Corrigan had no authority to terminate the Plaintiff without Town Council approval.*

62. Any purported approval of the Town Council to terminate the Plaintiff or authorization to Defendant Corrigan to terminate the Plaintiff was obtained or issued in violation of the OMA at the June 26, 2017 executive session meeting discussed at length above.

63. To the extent the Town Council intends to vote to terminate the employment of a Town employee, it has to be done at a public meeting of that public body duly called. R.I.G.L. §§ 42-46-5(a)(1) and 6(b).

64. Neither the posted agenda on June 26, 2017 nor any prior or subsequent posted agenda of the Town Council provided notice to the public that termination of the Plaintiff was going to be considered by the Town Council.

65. There are no minutes of either the June 26, 2017 public or executive session recording any votes of the Town Council approving or authorizing the termination of the Plaintiff's employment with the Town.

2) Administrative Code, Part I, Ch. 1, § B. 1)

66. On information and belief, the Administrative Code was promulgated by the Town's Personnel Board, approved by the Town Council, and has never been repealed.

67. Indeed, §1-9 (3) of the revised “Code of the Town of East Greenwich, Rhode Island” provides that that code shall not be “construed to repeal or affect the validity” of, *inter alia*, “any personnel regulations.”

68. The Administrative Code provides, in pertinent part, that a department head “may be removed by the Town Manager with the approval of the majority of the Town Council for *misconduct or inefficiency*.” Administrative Code, Part I, Ch. 1, § B. 1) (emphasis added).

69. *Since, according to the express wording of her termination letter, Plaintiff was not removed for misconduct or inefficiency, her termination was unlawful in violation of the Charter and Administrative Code.*

3) *Town Charter §C-117 F Violation*

70. Notwithstanding the applicability of the Administrative Code, Part I, Ch. 1, § B. 1), § C-117 F of the Town Charter provides that employees shall be entitled to continued employment subject only to good behavior, satisfactory job performance, the availability of related Town funds and continuation of the position.

71. Again, pursuant to the express wording of her termination letter, the Plaintiff was not terminated for unsatisfactory behavior or performance.

72. Plaintiff was terminated due to “budget restructuring and fiscal consolidation.”

73. Nor was Plaintiff terminated due to lack of funding—the position was not de-funded in the most recent budget.

74. Indeed, the motion that passed at the June 8, 2017 meeting of the Town Council was to approve the FY2017 budget only, not to adopt the “One Town model” or eliminate the position of Finance Director.

75. Moreover, the position could not have been eliminated as the Director of Finance is a position established by the Town Charter which the Town Council has no authority to eliminate, absent

an amendment to the Charter. *See* Charter, Article XV, §C-91 (“There shall be a Department of Finance, the head of which shall be the Director of Finance . . .”).

76. *Accordingly, the Plaintiff’s termination was unlawful in violation of the express wording of § C-117 F of the Charter.*

I. Violation of the RIPFMLA and the RICRA

1) *Serious Medical Condition and Disability*

77. At the time of Plaintiff’s termination, she was on and within a period of approved medical leave under the RIPFMLA.

78. The medical leave was required due to a chronic and disabling injury to her left knee, which left her unable to sit, stand, or walk for prolonged periods or climb stairs without significant pain.

79. The Town was well aware of the Plaintiff’s foregoing disability.

80. The purpose of the medical leave was to enable the Plaintiff to undergo and rehabilitate from a surgical procedure designed to alleviate her disability.

81. At the time of her termination, Plaintiff was on schedule to return to work within the period of her approved RIPFMLA leave.

2) *RIPFMLA*

82. The Plaintiff’s foregoing disability qualified as a “serious illness” entitling Plaintiff to a medical leave under the RIPFMLA.

83. Pursuant to the RIPFMLA, the Plaintiff was entitled to return to work for the Town following her leave pursuant to, *inter alia*, the same terms and conditions she enjoyed prior to commencement of her leave.

84. Instead, Defendants refused to allow the Plaintiff to return to the same position and refused to offer her an alternative position with equivalent pay, benefits and working conditions.

85. The termination of Plaintiff's employment while out on approved leave constitutes unlawful retaliation and interference with and a violation of her rights under the RIPFMLA.

3) **RICRA**

Protected Physical Impairment

86. The medical condition from which Plaintiff was suffering clearly qualifies as a disability protected from discrimination under the RICRA and applicable law.

87. Moreover, in light of the patently unlawful and discriminatory manner in which the Defendants treated Plaintiff by terminating her employment while on approved medical leave, there can be no doubt that Defendants perceived or regarded Plaintiff to have a disability.

88. At all relevant times, Defendants had *a record* of the Plaintiff's impairment, as that term is defined and applied under the RICRA and applicable law.

89. At all relevant times, Defendants were aware that the Plaintiff had need of reasonable accommodation due to her disability as detailed above.

Qualified Individual

90. At all relevant times, the Plaintiff was able to perform her *regular* duties, "with or without reasonable accommodation."

91. Accordingly, at all relevant times, the Plaintiff was a *qualified individual* or *otherwise qualified*, as those terms are defined under the RICRA and applicable law.

Reasonable Accommodation

92. At all relevant times, Plaintiff was in need of a reasonable accommodation for her disability in the form of a brief medical leave, to which she was entitled under the RICRA.

93. Rather than provide the accommodation reasonably required by the Plaintiff under the circumstances, Defendants terminated Plaintiff's employment.

4) *Adverse Employment Action and Pattern and Practice of Discrimination*

94. The Defendants took adverse employment action against the Plaintiff, specifically terminating her employment, in whole or in part, because the Plaintiff was suffering from a disability and/or because Defendants perceived or regarded the Plaintiff as being disabled or having an impairment and/or because there was a record of her impairment, as defined in accordance with applicable law.

95. On information and belief, the Defendants have exhibited a pattern and practice of terminating employees of the Town perceived to be disabled while on medical leave.

5) *Discriminatory Animus—Pretext*

96. That reason asserted by Defendants for taking the adverse employment action complained of herein is clearly a *post hoc* fabrication—a pretext—by which Defendants seek to avoid legal liability for their actions, which only further serves to support the inference that Plaintiff was treated adversely due to unlawful disability discrimination and/or retaliation in violation of applicable law.

97. Discriminatory intent may also be established where, as here, an employer fails to follow its own policy and procedures relative to, among other things, the procedure and grounds for termination of employment.

98. Moreover, the close temporal proximity of protected conduct to the adverse employment action described herein raises a compelling inference of discriminatory intent.

6) *Retaliation*

99. In addition and in the alternative, Defendants took adverse employment action against Plaintiff in retaliation for Plaintiff having exercised her right to a reasonable accommodation in the form of an approved medical leave, in violation of Plaintiff's statutory rights and/or protections against retaliatory conduct under the RICRA and the RIPFMLA.

J. Motivation and Harm

100. Defendants' wrongful and/or unlawful acts and/or omissions, including, but not limited to, those described herein, were knowing and willful and/or motivated by malice or ill will toward the Plaintiff, and Defendants otherwise acted in bad-faith and/or with reckless indifference to the statutorily protected rights of the Plaintiff.

101. As a proximate result of Defendants' wrongful and/or unlawful discriminatory acts and/or omissions, including, but not limited to, those described herein, Plaintiff suffered, is now suffering, and will continue to suffer emotional and economic injury including, but not limited to, pecuniary losses, loss of income, loss of back and front pay, loss of employment benefits, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation, damage to her professional and personal reputation, and has incurred and will continue to incur expenses for legal services, and other great harm.

VI. Causes of Action

102. Plaintiff realleges and incorporates each and every allegation contained in paragraphs 1 through 101 of this Complaint in each of the counts below with the same force and effect as if set forth therein.

COUNT ONE

Violation of Rhode Island Open Meetings Act – Actionable under R.I.G.L. §42-46-8

103. Defendants, by their individual and/or concerted acts and/or omissions, including but not limited to those alleged herein, have violated the OMA, causing Plaintiff to suffer harm as aforesaid, and for which Plaintiff is entitled to relief as provided under R.I.G.L. § 42-6-8 (d).

COUNT TWO
Violation of the East Greenwich Town Charter

104. Defendants, by their individual and/or concerted acts and/or omissions, including but not limited to those alleged herein, have violated the Town Charter, causing Plaintiff to suffer harm as aforesaid, and for which Plaintiff is entitled to relief under applicable law.

COUNT THREE
*Rhode Island Parental and Family Medical Leave Act,
R.I.G.L. §28-48-1, et seq.*

105. Defendants, by their individual and/or concerted acts and/or omissions, including, but not limited to, those described herein, violated the Plaintiffs' statutory rights in violation of the RIPFMLA, cause the Plaintiff to suffer damages as aforesaid, and thereby deprived the Plaintiff of rights secured under the RIPFMLA.

COUNT FOUR
*Rhode Island Civil Rights Act of 1990,
R.I.G.L. §42-112-1, et seq.*

106. Defendants, by their individual and/or concerted acts or omissions, including, but not limited to, those described herein, engaged in unlawful discrimination against the Plaintiff in violation of the RICRA, causing the Plaintiff to suffer damages as aforesaid, and thereby deprived the Plaintiff of rights secured under the RICRA.

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. Judgment against the Defendants;
2. A declaratory judgment declaring the acts and/or omissions of the Defendants, including, but not limited to, those complained of herein, to be in violation of the OMA;
3. A declaratory judgment declaring all action taken by the Defendants in violation of the OMA to be null and void pursuant to, *inter alia*, R.I.G.L. §§ 42-46-5 (a)(1) and 8 (d);

- 4. A declaratory judgment declaring the acts and/or omissions of the Defendants, including, but not limited to those complained of herein, to be in violation of the RIFFMLA and RICRA.
- 5. An injunction or other equitable relief, including but not limited to an award of back pay as well as front pay and/or reinstatement and other compensation and/or benefits to make her whole for all earnings and benefits she would have received but for Defendants' termination of her employment.
- 6. An award of compensatory damages.
- 7. An award of exemplary and/or punitive damages.
- 8. An award of reasonable attorney's fees and costs of litigation to Plaintiff pursuant to R.I.G.L. § 42-46-8(d) and/or other applicable law;
- 9. An award of prejudgment interest; and,
- 10. Such other and further relief as this Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

Plaintiff, **Kristen B. Benoit**,
By her attorneys,
SINAPI LAW ASSOCIATES, LTD.

Date: December 22, 2017

/s/ Richard A. Sinapi
Richard A. Sinapi, Esq. (#2977)
2374 Post Road, Suite 201
Warwick, RI 02886
Phone: (401) 739-9690; Fax (401) 739-9040
Email: ras@sinapilaw.com