



David A. Clarke Jr.
Sheriff

Milwaukee County Sheriff's Office

NEWS RELEASE

Fran McLaughlin
Public Information Officer
Cell: 414-254-9488
Phone: 414-278-5226
frances.mclaughlin@milwaukeecountywi.gov



FOR IMMEDIATE RELEASE
May 14, 2015

Court Rules: Sheriff Clarke NOT a Racist!

Milwaukee, WI – The US Court for the Eastern District of Wisconsin yesterday ruled in favor of Sheriff David A. Clarke Jr. in a case made against him and the county by a former deputy sheriff.

John Nelson sued alleging “sex and race discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) and 42 U.S.C. § 1981, deprivation of rights under the equal protection clause in violation of 42 U.S.C. § 1983, and retaliation in violation of Title VII and § 1981.”

Judge Nancy Joseph stated, "However, the undisputed evidence shows that since 2006, Sheriff Clarke promoted twenty-eight individuals to the rank of Deputy Sheriff Captain and of these twenty-eight individuals, twelve have been white males, nine have been white females, two have been black males, three have been black females, one has been a Hispanic female, and one has been a Hispanic male. Thus, since 2006, Sheriff Clarke has promoted more males than females (15 males and 13 females), and more whites than non-whites (21 whites, 7 non-whites). Further, as a group, white males comprise the largest single category of individuals promoted to the position of Deputy Sheriff Captain by Sheriff Clarke. Thus, the evidence does not demonstrate that similarly situated employees outside of the protected group systematically receive better treatment."

As far as retaliation, the Judge writes:

"However, the issue remains whether Nelson’s exclusion from...meetings constitutes a materially adverse action. As the Supreme Court stated in *Burlington Northern*, 548 U.S. at 67, the antiretaliation provision protects an individual “not from all retaliation, but from retaliation that produces an injury or harm.” In *Burlington Northern*, the Supreme Court stated that the significance of any given act of retaliation will often depend upon the particular circumstances at hand and used as an example a supervisor’s refusal to invite an employee to lunch. The Court stated that this is normally a nonactionable petty slight; however, to retaliate by excluding an employee from a weekly training lunch that contributes significantly to the employee’s professional advancement “might well deter a reasonable employee from complaining about discrimination.”

-more-

For more information about the Milwaukee County Sheriff's Office, visit our website at www.mksheriff.org and our facebook page at <http://www.facebook.com/MilwaukeeCountySheriff>
Follow us on Twitter @MCSOSheriff

“Nelson has not shown how his exclusion from the command staff meetings impacted his ability to perform his job or otherwise harmed him. It is undisputed that command staff meetings were generally held every Tuesday morning and that the meetings were business meetings in which various current events were discussed including blunders on the agency, inmate escapes, squad accidents, or new initiatives. It is also undisputed that if any information that was discussed in the command staff meetings was relevant to or excluded absent individuals, those individuals could receive the notes or communicate with their supervisors or co-workers who attended the meetings. Nelson does not dispute that his commanding officer, Aisha Barkow, was present at the meetings. Because Nelson could receive all relevant information from Barkow, it is unclear how exclusion from the command staff meetings would hinder Nelson’s ability to perform his duties.”

In closing, the judge sums up the decision as follows:

"Nelson has offered no evidence from which a reasonable jury could conclude that the defendants discriminated against him based on his sex and race and retaliated against him for exercising his rights under Title VII and § 1981. With regard to Nelson’s discrimination claims, Nelson failed to produce either direct or circumstantial evidence that would permit a jury to infer that discrimination motivated the MCSO’s failure to promote him to the position of Deputy Sheriff Captain. Further, Nelson has not shown under the indirect method of proof that he applied for the position. Finally, because Nelson failed to show he was subjected to a materially adverse action, his retaliation claims fail. As such, the defendants’ motion for summary judgment is granted."

###