

CIOLEK LTD.

ATTORNEYS AT LAW

FOR IMMEDIATE RELEASE:

TOLEDO, OHIO - Tuesday, October 6, 2009, Brian Schwartz, former advisor to the Toledo's Mayor Finkbeiner, has filed a lawsuit in Lucas County Common Pleas Court for wrongful termination. Mr. Schwartz's attorney, Scott Ciolek, filed the Complaint this morning asking for a damage award in excess of \$150,000.

The Complaint alleges that the City of Toledo had violated the State of Ohio's prohibition on residency requirements (ORC § 9.481) when it demanded that Mr. Schwartz place his family's home on the market or be terminated. Mr. Schwartz was out of work for more than a year.

A copy of the Complaint is attached to this document.

About Ciolek LTD - Attorneys at Law

Ciolek LTD is a general practice law firm located in Toledo, Ohio. For information about us please visit ohio.law.pro.

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Jurisdiction and Venue

3. Jurisdiction of this Court is invoked pursuant to Revised Code § 2305.01, and this Court's primary jurisdiction over such actions.
4. Venue lies in this forum, as Defendant has its principal place of business in Lucas County.

Parties

5. Plaintiff Brian Schwartz ("Mr. Schwartz") is a resident of Lucas County, Ohio, and a citizen of the United States.
6. Defendant City of Toledo is an Ohio Municipal Corporation located in Lucas County, Ohio, with its offices located at One Government Center, 640 Jackson, Suite 2200.

General Allegations

7. Defendant City of Toledo hired Mr. Schwartz as Mayor's Executive Assistant on or about June 14, 2006.
8. Mr. Schwartz, at all times relevant to this litigation, worked full-time at Defendant's offices located at One Government Center in Toledo, Ohio.
9. Mr. Schwartz was at all relevant times competent and qualified for his position with Defendant.
10. During the course of his employment with Defendant, Mr. Schwartz was well-regarded. Mr. Schwartz received no negative performance reviews.
11. In April 2008, Mr. Schwartz received a letter from Bob Reinbolt, the mayor's chief of staff. This letter alleged that Mr. Schwartz was not in compliance with a residency requirement established by Defendant. The letter further stated that Mr. Schwartz would be terminated unless he placed his home on the market for sale.

12. Due to the adverse housing market, Mr. Schwartz could not sell his home without suffering a substantial loss on the property.
13. In response to the letter Mr. Schwartz resigned his position as Mayor's Executive Assistant, because Mr. Schwartz was unable to comply with Defendant's unreasonable and illegal demands.
14. Other than alleged failure to comply with Defendant's residency requirement, Defendant cited no other justification for termination of Mr. Schwartz's employment.
15. Pursuant to § 9.481(B)(1), "Except as otherwise provided in division (B)(2) of this section, no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state."
16. Pursuant to § 9.481(C), "Except as otherwise provided in division (B)(2) of this section, employees of political subdivisions of this state have the right to reside any place they desire."
17. Pursuant to § 9.481(B)(2):
 - (a) Division (B)(1) of this section does not apply to a *volunteer*.
 - (b) To ensure adequate response times by certain employees of political subdivisions to emergencies or disasters while ensuring that those employees generally are free to reside throughout the state, the electors of any political subdivision may file an initiative petition to submit a local law to the electorate, or the legislative authority of the political subdivision may adopt an ordinance or resolution, that requires any individual employed by that political subdivision, as a condition of employment, to reside either in the county where the political subdivision is located or in any adjacent county in this state [emphasis added]."
18. At no time during his employment was Mr. Schwartz a "volunteer" within the meaning of § 9.481(B)(2)(a).
19. At no time during his employment did Mr. Schwartz hold a position requiring him to respond to "emergencies or disasters."

20. At the time Defendant terminated Mr. Schwartz, Defendant was fully aware of Ohio Revised Code § 9.481.
21. At no time prior to terminating Mr. Schwartz's employment did Defendant "file an initiative petition to submit a local law to the electorate," or "adopt an ordinance or resolution" as provided for by Ohio Revised Code § 9.481.
22. Prior to terminating Mr. Schwartz's employment Defendant initiated litigation to challenge the constitutionality of Ohio Revised Code § 9.481 in the Lucas County Court of Common Pleas which was dismissed and appealed by defendant.
23. After a series of appeals by Defendant and other similarly situated Municipalities the Supreme Court of Ohio upheld the constitutionality of Ohio Revised Code § 9.481.

COUNT ONE:

Wrongful Termination in Violation of Public Policy

24. Plaintiff restates the allegations contained in paragraphs 1-23 as if fully rewritten here.
25. To enforce its residency requirement, Defendant gave Mr. Schwartz the choice of selling his home on commercially unreasonable terms, or facing termination. These oppressive conditions amounted to constructive termination of Mr. Schwartz's employment.
26. By enacting Revised Code § 9.481, the Ohio legislature established a clear public policy against residency requirements in the context of political subdivisions (with limited exceptions not applicable in this case).
27. More broadly, there is a clear public policy that political subdivisions must follow laws properly enacted by the Ohio legislature.

28. Despite these clear public policies, Defendant constructively terminated Mr.

Schwartz's employment for failing to comply with Defendant's residency requirements.

29. In light of Revised Code § 9.481, Defendant's residency requirement is unlawful and against public policy.

30. Defendant had no other reason to terminate Mr. Schwartz.

31. As a result of being constructively terminated, Mr. Schwartz suffered severe economic loss (including but not limited to lost income, pension contributions, paid vacation time and health insurance), attorney fees, emotional distress, and embarrassment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brian Schwartz respectfully requests this Court to enter a judgment that, by constructively terminating Mr. Schwartz, Defendant City of Toledo violated Ohio Rev. Code § 9.481 and Ohio public policy. Mr. Schwartz demands of Defendant City of Toledo back pay (with reasonable interest) in an amount to be proven at trial, punitive damages in an amount to be decided by a jury, and compensatory damages in the amount of \$150,000. Mr. Schwartz also requests reasonable attorney's fees and costs, and such other relief as the court may deem appropriate.

Respectfully submitted,

Scott A. Ciolek (0082779)
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing complaint has been served on the individual listed below by delivery, this _____ day of October, 2009:

Adam Loukx, Acting Law Director
One Government Center
640 Jackson
Toledo, Ohio 43604
Counsel for the Defendant

Scott A. Ciolek
Attorney for Plaintiff