

**RESOLUTION NO. RS2019-1676** (VERCHER) – This resolution would authorize the Department of Law to settle the claim of Monica Blake against the Metropolitan Government in the amount of \$150,000.

This case arises out of the last several years of Ms. Blake's employment with the Metropolitan Nashville Police Department (MNPd). Ms. Blake's allegations involve fact patterns spanning almost a decade, but the most pertinent allegations involve MNPd policies and Ms. Blake's social media activity.

Ms. Blake began working for MNPd in 2005 and became a School Resource Officer in 2011. She alleges that she was the victim of discrimination and retaliation by members of the MNPd following various social media posts. From March to May 2018, Ms. Blake made various posts in which she criticized members of the MNPd, aired personal grievances about her MNPd employment, and expressed support for a Community Oversight Board. In many of these posts, she identified herself as an MNPd employee but did not include a disclaimer that the views expressed were her own views.

Police officer conduct is guided by standards within the MNPd departmental manual which provide that failure to adhere to the standards can result in disciplinary action. Ms. Blake challenged MNPd policies regarding social media, defamation, and derogatory notices as being constitutionally vague and overbroad under the First Amendment.

A disciplinary hearing was held on January 10, 2019, and MNPd imposed an 18 day suspension. Four violations of the MNPd manual were sustained. Violations 1 and 2 related to Ms. Blake's failure to appear in uniform and without her firearm for a departmental meeting. A one-day suspension was imposed for each violation. Violations 3 and 4 related to the social media posts. A five-day suspension was imposed for failure to include a disclaimer on her social media posts. An eleven-day suspension was imposed for conduct unbecoming, as the posts accused MNPd employees of oppression, misconduct, mistreatment, injustice, and vindictiveness. This disciplinary action and 18 day suspension is the foundation of Ms. Blake's retaliation claim.

Ms. Blake filed suit alleging First Amendment retaliation and prior restraint claims under 42 U.S.C. 1983; sexual and racial harassment under the Tennessee Human Rights Act; sexual and racial discrimination under the THRA; retaliation under THRA; racial harassment, retaliation, and discrimination under 42 U.S.C. 1981; retaliation under Title IX; and a claim under Tennessee's Public Employee Political Freedom Act. Ms. Blake's alleged damages consist of backpay for the 18 day suspension, emotional distress, and attorneys' fees. While this claim is in its procedural infancy, the Metro Legal Department estimates fees in excess of \$250,000.00 would eventually be incurred in the required investigation and trial.

Public employers are limited in restricting the free speech liberties their employees enjoy as private citizens. A public employee's right to speak is not without limits, but speech is generally protected when the employee speaks as a private citizen about matters of public concern, and the employee's interest in the speech outweighs the employer's interest in the efficiency of the public services it provides. Here, Ms. Blake's social media posts expressed personal employment concerns and grievances, but also included statements about the Community Oversight Board -- a matter of public concern. Generally, if an employee engages in protected activity (speech) and adverse employment action is taken by his or her employer motivated by that activity, the employer can be found guilty of retaliation.

The Department of Law recommends settlement of this claim for \$150,000. Resolving this matter at this early stage will avoid a possible jury verdict well before significant attorneys' fees have accrued. Because Ms. Blake will resign as a condition of settlement, it resolves the underlying employment concerns and secures dismissal of the claims against the individual MNPD employee. Significant risk is thereby eliminated for all parties.

No disciplinary action has been taken against the employees involved.

*Fiscal Note: This \$150,000 settlement would be the fourth payment from the Judgments and Losses Fund in FY19 for a cumulative total of \$555,000. The fund balance would be \$2,809,081 after this payment.*