

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
2013 FEB 27 P 1:34

**PAULA MELVILLE**

**Plaintiff,**

**v.**

**TOWN OF ADAMS,           By and  
Through**

**MICHAEL OUELLETTE, ARTHUR  
HARRINGTON, JASON HNATONKO,  
SCOTT NICHOLS, Individually and as  
they comprise the TOWN OF ADAMS  
BOARD OF SELECTMEN,**

**JONATHAN BUTLER, Individually and  
in His Capacity as ADAMS TOWN  
ADMINISTRATOR,**

**ERICA SAMSON, Individually and in  
Her Capacity as DIRECTOR OF THE  
COUNCIL ON AGING of the Town of  
Adams,**

**DONALD POIROT, Individually and in  
His Capacity as CHIEF OF POLICE of  
the Town of Adams,**

**MIRICK, O'CONNELL, DEMALLIE &  
LOUGEE, LLP, By and Through  
COREY HIGGINS, and DEMITRIOS  
MOSCHOS,**

**Individually and in Their Capacity as  
SPECIAL COUNSEL to the Town of  
Adams,**

**AFSCME COUNCIL 93, AFL-CIO,  
By and Through NADINE KENNEDY,  
Individually and in Her Capacity as  
STAFF REPRESENTATIVE to the  
Clerical Unit of the Town of Adams, and  
COMMONWEALTH OF  
MASSACHUSETTS**

**OFFICE OF THE ATTORNEY  
GENERAL, By and Through  
JONATHAN SCLARSIC, Individually  
and in His Capacity as ASSISTANT  
ATTORNEY GENERAL of the  
Massachusetts Office of the Attorney  
General,**

**CIVIL ACTION NO.:** \_\_\_\_\_

**BERKSHIRE COUNTY SHERIFF'S  
OFFICE, By and Through  
RONALD CLARK, Individually and in  
his Capacity as PROCESS SERVER of  
the the CIVIL PROCESS DIVISION of  
the Berkshire County Sheriff's Office,  
Defendants.**

**COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

1) This suit in law and equity seeks redress for civil rights violation of the First, Ninth, and Fourteenth Amendments of the United States Constitution, conspiracy and collusion, retaliation, deprivation of civil rights pursuant to 42 U.S.C. §§ 1983 and 1985, defamation in violation of M.G.L. c. 12, § 11I, the so-called Massachusetts Civil Rights Act, intimidation, a violation of the right to privacy to which Plaintiff Paula Melville (“Melville”), an individual and special municipal employee of the Town of Adams, has been subjected at the hands of officials, employees, and agents of the Town of Adams, Massachusetts.

2) Melville was a dedicated member of the Board of Selectmen of the Town of Adams. Because of her too-often dissenting voice and propensity for investigation, Melville became the target of a conspiracy by Adams officials, employees, and agents to undermine Melville and hopefully bring about Melville's resignation from the Adams Board of Selectmen. Melville's reputation and standing in the community were systematically destroyed by the false, unsubstantiated, and unlawful allegations of unspecified ethics violations being levied against her. (Appendix A)

3) In addition, Melville was threatened with arrest by the Adams Police Chief if Melville failed to follow written “orders” of the Adams Board of Selectmen, which included visiting town

properties and speaking to town employees. Melville was threatened with being reported to the Massachusetts Ethics Commission by the Adams Board of Selectmen.

4) As a direct result of the actions of the Adams Town Administrator, the Adams Board of Selectmen, the law firm of Mirick, O'Connell, Demallie & Logee, LLP, the Adams Police Chief, Adams Council on Aging Director, AFSCME COUNCIL 93, AFL-CIO, the Massachusetts Office of the Attorney General, and the Berkshire County Sheriff's Office, Melville's civil rights were violated. As a direct result of the emotional distress inflicted upon Melville by those named above, the happiness and enjoyment Melville felt as a public servant were destroyed. In addition, Melville experienced a loss of income upon resigning from the Adams Board of Selectmen.

#### **JURISDICTION**

5) This action arises under 42 U.S.C. § 1983 and 42 U.S.C. § 1985, M.G.L. c .214, § 1B, M.G.L. c. 12, § 11I and the common law of the Commonwealth of Massachusetts, as hereinafter more fully appears. All conditions precedent to jurisdiction have been met.

#### **PARTIES**

6) Plaintiff Paula Melville, former member of Adams Board of Selectmen, resides at 10 Summer Street, Adams, Berkshire County, Massachusetts.

7) Defendant Town of Adams is a Massachusetts incorporated municipality operating under the laws of Massachusetts and ordinances established by the Town of Adams. Its principal offices are located at Adams Town Hall, 8 Park Street, Berkshire County, Massachusetts.

8) Defendant Michael Ouellette resides in the Town of Adams, Berkshire County, Massachusetts, and is an elected member of the Adams Board of Selectmen, served as its Chair, and is being sued individually and in his official capacity acting under color of state law.

9) Defendant Arthur Harrington resides in the Town of Adams, Berkshire County, Massachusetts, and is an elected member of the Adams Board of Selectmen, served as its Vice-Chair, and is being sued individually and in his official capacity acting under color of state law.

10) Defendant Jason Hnatonko resides in the Town of Adams, Berkshire County, Massachusetts, and is an elected member of the Adams Board of Selectmen and is being sued individually and in his official capacity acting under color of state law.

11) Defendant Scott Nichols resides in the Town of Adams, Berkshire County, Massachusetts, and is an elected member of the Adams Board of Selectmen and is being sued individually and in his official capacity acting under color of state law.

12) Defendant Jonathan Butler resides in the Town of Adams, Berkshire County, Massachusetts, and is Town Administrator in the Town of Adams and is being sued individually and in his official capacity acting under color of state law.

13) Defendant Erica Samson resides in the Town of Adams, Berkshire County, Massachusetts, and is Director of the Council on Aging in the Town of Adams and is being sued individually and in her official capacity acting under color of state law.

14) Defendant Donald Poirot resides in the Town of Cheshire, Berkshire County, Massachusetts and is the Chief of Police in the Town of Adams and is being sued individually and in his official capacity acting under color of state law.

15) Defendant Mirick, O'Connell, Demallie & Lougee, LLP, is a Massachusetts incorporated limited liability partnership entity of attorneys at law operating under the laws of Massachusetts and Massachusetts Rules of Professional Conduct established by the Massachusetts Supreme Judicial Court. Its principal offices are located at 100 Front Street, Worcester, Worcester County, Massachusetts

16) Defendant Mirick, O'Connell, Demallie & Lougee, LLP, is a Massachusetts incorporated limited liability partnership entity of attorneys at law operating under the laws of Massachusetts and Massachusetts Rules of Professional Conduct established by the Massachusetts Supreme Judicial Court. Its principal offices are located at 100 Front Street, Worcester, Worcester County, Massachusetts

17) Defendant Corey Higgins resides in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, and is Associate in the Labor, Employment, and Employee Benefits Group at Mirick, O'Connell, Demallie, Lougee, LLP, and is being sued individually and in his capacity as Special Counsel for the Town of Adams acting under color of state law.

18) Defendant Demitrios Moschos (a/k/a D. M. Moschos) resides in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, and is Senior Partner in the Labor, Employment, and Employee Benefits Group at Mirick, O'Connell, Demalle, Lougee, LLP, and is being sued individually and in his capacity as Special Counsel to the Town of Adams acting under color of state law.

19) Defendant AFSCME Council 93 is a Massachusetts organization pursuant to M.G.L. c. 150E and is affiliated with the AFL-CIO and represents Massachusetts municipal employees. One of its principal places of business located at 96 Industry Avenue, 2<sup>nd</sup> Floor, Springfield, Hampden County, Massachusetts.

20) Defendant Nadine Kennedy resides in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, and is Staff Representative to Town of Adams Clerical Unit Local #204 of AFSCME, Council 93, AFL-CIO and is being sued individually and in her official capacity as Staff Representative at AFSCME, Council 93, AFL-CIO acting under color of state law.

21) Defendant the Commonwealth of Massachusetts Office of the Attorney General is an advocate and resource for the Commonwealth and its residents. Its primary offices are located at One Ashburton Place, Boston, Suffolk County, Massachusetts.

22) Defendant Jonathan Sclarcis resides in \_\_\_\_\_ County, Massachusetts, and is Assistant Attorney General, Division of Open Government, Commonwealth of Massachusetts Office of the Attorney General and is being sued individually and in his official capacity acting under color of state law.

23) Defendant the Berkshire County Sheriff's Office is a division of government operating under the laws of Massachusetts and its primary mission is to protect the public from criminal offenders by operating a safe, secure and progressive correctional facility while committing to crime prevention awareness in the community . Its principal place of business is located at 467 Cheshire Road, Pittsfield, Berkshire County, Massachusetts.

24) Defendant Ronald Clark resides in Adams, Berkshire County, Massachusetts, and is Process Server for the Civil Process Division of the Berkshire County Sheriff's Office and is being sued individually and in his official capacity acting under the color of law.

#### **FACTS**

25) On May 3, 2010, Melville was elected by voters of the Town of Adams to serve a three-year term on the Adams Board of Selectmen.

26) On June 18, 2010, the following headline appeared in the hardcopy and electronic versions of the *North Adams Transcript*: "Melville under fire at Adams Selectmen meeting, because Melville sought an accounting of state-level spending of funds earmarked for development of an area of Adams known as Greylock Glen. (Appendix B)

27) On July 9, 2010, the following headline appeared in the hardcopy and electronic versions of the *North Adams Transcript*: “Melville raises concerns at Board meeting,” because Melville’s experience was that business was conducted only across the table during a meeting. (Appendix C)

28) On September 16, 2010, an article entitled “Adams school project vote in limbo,” appeared on the electronic news media, *iBerkshires.com*, and described a regular meeting of the Adams Board of Selectmen during which several members of the community asked Melville to rescind a vote Melville had made opposing reconstruction of a regional school building. (Appendix D)

29) The meeting agenda of the Adams Board of Selectmen for February 9, 2011, included an agenda item, “Who Is in Charge?” was proposed by Melville. (Appendix E)

30) Policy decisions belong to the Adams Board of Selectmen. The Board of Selectmen serves as Chief Executive Officer and Chief Administrative Officer of the Town of Adams, as empowered by M.G.L. c. 41.

31) On February 17, 2011, the following headline appeared on the electronic news medium, *iBerkshires.com*: “Adams Board airs grievances over colleague” [Melville]. (Appendix F)

32) On April 20, 2011, the following headline appeared on the electronic news medium, *iBerkshires.com*: “Adams Board Members Vote ‘No Confidence’ in Colleague” (Melville.) (Appendix G)

33) On February 28, 2011, Melville also paid a visit to the Adams Prudential Committee. Melville saw Town Administrator Butler and Selectman Harrington at this meeting. When Butler authorized use of the Forest Warden’s property, Melville interrupted the meeting and in-

formed the Prudential Committee that Butler and Harrington were not authorized to be at the meeting, nor did they have the authority to offer use of the Forest Warden's property.

34) On January 26, 2011, at a Selectmen's workshop meeting, the Director of the Adams Council on Aging addressed the Adams Board of Selectmen on many topics concerning the Adams Council on Aging and her experiences so far as newly-appointed Director.

35) On February 7, 2011, Melville met for over an hour with the Director of the Adams Council on Aging, discussing the operation of and opportunities for the Adams Council on Aging. Melville was introduced to participants, volunteers, and Town personnel of the Adams Council on Aging' and its social day program.

36) On Friday, February 25, 2011, Melville picked up at Adams Town Hall a copy of the Adams Town Administrator's recommended Town operating budget for fiscal year 2012.

37) On February 27, 2011, Melville spoke on the telephone with a member of the Executive Board of the Adams Council on Aging, who also did not know about the elimination of the Adams Council on Aging's social day program, which was proposed in the Adams Town Administrator's recommended Town operating budget for fiscal year 2012.

38) On February 28, 2011, Melville visited the Adams Council on Aging sites located in the Adams Community Center building at 20 East Street, Adams, Massachusetts, seeking clarification from the Adams Council on Aging Director about the Council's social day program, which was not included in the FY2012 budget recommended by the Adams Town Administrator.

There Melville made separate brief comments about the Adams Town Administrator's recommended FY2012 budget to three employees of the Adams Council on Aging: the part-time Administrative Assistant, the Director, and one of the Town staff members of the Council's social day program.

39) On February 28, 2011, Melville spoke on the telephone with another member of the Executive Board of the Adams Council on Aging, who also did not know about the elimination of the Adams Council on Aging's social day program, which was proposed in the Adams Town Administrator's recommended Town operating budget for fiscal year 2012.

40) On Monday, February 28, 2011, at around 4:30 p.m., Melville received written notice of an emergency meeting of the Adams Board of Selectmen, called for 6:30 p.m. The written meeting notice was delivered by a member of the Civil Process Division of the Berkshire County Sheriff's Office. The single item on the written meeting notice was, "Discussion of Charges//Allegations concerning Member Paula Melville." (Appendix H)

41) Generally, the practice of the Adams Board of Selectmen, when dealing with sensitive issues of a personal, health, or financial nature of an individual, would go into executive session, citing the reason: "To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or discuss the discipline or dismissal of, or complaints or charges against, a public officer, employee, staff member or individual." Melville's full name was published widely in agenda items during the time on and around February 28, 2011.

42) On February 28, 2011, four members of the Adams Board of Selectmen affirmed four orders against Melville, who was not in attendance at the emergency meeting of the Adams Board of Selectmen on February 28, 2011.

43) On February 28, 2011, Melville read unsigned copies of the four orders affirmed by four members of the Adams Board of Selectmen at its emergency meeting on February 28, after the copies of the orders were posted electronically on *iBerkshires.com* at around 10:00 p.m. on February 28, 2011. (Appendix I)

44) Tucked behind the mailbasket outside her home on the afternoon of March 1, 2011, Melville discovered a Berkshire County Sheriff's envelope, with copies of the four orders signed by the Chair of the Adams Board of Selectmen at the time, Michael Ouellette. A statement by Ouellette about the actions of the Adams Board of Selectmen at its emergency meeting of February 28, 2011, on Town letterhead, was also enclosed. (Appendix J)

45) One order against Melville affirmed by the Adams Board of Selectmen on February 28, 2011, stated Melville violated M.G.L. c. 150E and alleged that Melville did self-dealing or gave the appearance of direct-dealing when she spoke with Adams Council on Aging employees on February 28, 2011.

46) A second order against Melville affirmed by the Adams Board of Selectmen on February 28, 2011, directs Melville "to not discuss Town business with Town Department Heads or other Town employees."

47) In the same second order, Melville was ordered "to not discuss Town business directly with Town Department Heads or any other Town employees at any time without the permission of the Town Administrator.

48) To seek the permission of the Adams Town Administrator in order to speak directly with Town employees would be done against Melville's will.

49) A third order against Melville affirmed by the Adams Board of Selectmen on February 28, 2011, stated that Melville violated the provisions of M.G.L. c. 268A, § 23(c)(2) and maintained that Melville released confidential information.

50) The same third order stated that Melville violated the provisions of M.G.L. c. 150E and maintained Melville released confidential information.

51) In maintaining that Melville broke two laws of the Commonwealth of Massachusetts, the Adams Board of Selectmen voted to refer Melville to the State Ethics Commission, citing M.G.L. c. 30A. The headline published electronically on *iBerkshire.com* on February 28, 2011, read, “Adams Selectmen File Ethics Complaint Against Melville.” (Appendix K)

52) The Massachusetts State Ethics Commission never contacted Melville on the matter related herein.

53) A fourth order against Melville affirmed by the Adams Board of Selectmen on February 27, 2011, directed Melville “to not enter upon Town Department premises.”

54) In the same fourth order, Melville was ordered “not to enter upon Town Department premises without the express prior permission of the Town Administrator.”

55) To seek the permission of the Adams Town Administrator in order to enter upon Town property would be done against Melville's will.

56) The Adams Chief of Police, Donald Poirot, said in a news media article published in hardcopy and electronically by the *North Adams Transcript* on March 1, 2011, that “while he would like a legal opinion from counsel first, he thinks the Board's vote counts as an order of no trespass which can be enforced by a police officer through either asking the person to leave or placing them under arrest.” (Appendix L)

57) During March of 2011, Melville was stopped from approaching an employee of the Adams Department of Public Works as he held up his hand motioning stop while operating heavy equipment after hours on Orchard Street in Adams. The employee pointed at Melville and shouted, “I can't talk to you!” Melville returned to the car and the D.P.W. employee explained the situation to Melville's companion who then shared that the employee was fixing an ice jam caused by a new subdivision in the area.

58) In May of 2011, Melville learned from an Adams Department Head that the department heads had received an e-mail from the Adams Town Administrator directing them not to respond to Melville.

59) In the days following Tropical Storm Irene in late July, 2011, Melville went to the Adams Department of Public Works on North Summer Street to report water overfowing from a man-hole on Lime Street. A D.P.W. employee who was outside saw Melville and rushed into the D.P.W. building. The D.P.W. Shift Supervisor quickly came out to take Melville's information, blocking Melville's entry into the D.P.W. building.

60) In September of 2011, Melville went to the Adams Police Station to speak with an officer who had not replied to Melville's written request for information. The Sergeant told Melville he had received a written notification from the Adams Town Administrator directing him not to respond to Melville.

61) In his September 22, 2011, letter to Melville, the Adams Town Administrator confirmed that the "orders" against Melville affirmed by the Adams Board of Selectmen on February 28, 2011, were enforced. (Appendix M)

62) In the days prior to Adams Special Town Meeting of December 5, 2011, Melville requested in person from the Adams Town Assessor information the Adams Town Assessor had compiled that related to a warrant article of Adams Special Town Meeting. The Adams Town Assessor, an elected official, stated that Melville probable should make her request for the information to the Adams Town Administrator, to whom the Adams Town Assessor had given a copy of the information.

63) As provided by “Article V, § 4-23,” of “Chapter 4” of the *Adams Town Code*, “The Board of Selectmen may, whenever it deems necessary, employ special counsel to assist or act in place of the Town Counsel.” (Appendix N)

64) The Adams Board of Selectmen did not convene a meeting to conduct the business of hiring Special Counsel Corey Higgins or Special Counsel D.M. Moschos, employees of the Mirick O'Connell law firm, who provided advice and produced documentation for Adams government officials and others on and around February 28, 2011. (Appendix O)

65) Employees of the Mirick, O'Connell law firm, Corey Higgins and D. M. Moschos, acted without lawful authority when they advised and produced documentation for the Adams Town Administrator and the Adams Board of Selectmen on and around February 28, 2011, as the Mirick O'Connell law firm had not been properly engaged to provide said services. (Appendix O)

66) The law firm Mirick O'Connell accepted payment in the amount of \$1,300.00 from the Town of Adams for the services its employees provided to Adams government officials on February 28, 2011. (Appendix L & Appendix P)

67) On Thursday, March 3, before an executive session of the Adams Board of Selectmen that Melville did not attend, Melville demanded and was handed by a member of the Adams Board of Selectmen an unredacted copy of an unsigned, unaddressed letter composed by the Adams Council on Aging Director on February 28, 2011, in which the Adams Council on Aging Director described her view of the events that took place at the Adams Council on Aging site on the morning of February 28, 2011. (Appendix Q)

68) Board Chair Ouellette did not cite a chapter, article, or section of Town of Adams statute when he wrote in belated response to Melville's query. Ouellette named the *Adams Town Char-*

ter as the jurisdiction under which the Adams Board of Selectmen and the Adams Town Administrator took action on and around February 28, 2011. (Attachments R & S)

69) In her undated letter addressed to Corey Higgins of the Mirick O'Connell law firm, AFSCME Staff Representative Nadine Kennedy asserted that Melville "approached AFSCME members employed in and announced that they were going to be laid off," and declared. "The Unit would have had no choice but to file a Charge of Prohibited Practice with the Division of Labor Relations." (Appendix T)

70) The AFSCME Staff Representative did not respond to Melville's written request that Kennedy recant the statements Kennedy made in her undated letter addressed to Corey Higgins of the Mirick O'Connell law firm or that Kennedy identify what exactly Melville violated that would have caused the Adams Clerical Bargaining Unit to file a "Charge of Prohibited Practice with the Division of Labor Relations" of the Commonwealth of Massachusetts. (Appendix U)

71) As provided by section "(a)23" under "Part II, Management Rights," of the *Agreement between the Town of Adams and the AFSCME, Council 93, AFL-CIO (Clerical Unit), July 1, 2008, to June 30, 2011*, the Town of Adams may exercise without bargaining with the Unit its power or authority or prerogative "To layoff due to lack of funds or lack of work,, or for any other lawful reason." (Appendix V)

72) As provided by section "(a)9" under "Part II, Management Rights," of the *Agreement between the Town of Adams and the AFSCME, Council 93, AFL-CIO (Clerical Unit), July 1, 2008, to June 30, 2011*, the Town of Adams may exercise without bargaining with the Unit its power or authority or prerogative "To establish new job descriptions, abolish, change, and interpret job descriptions." (Appendix V)

73) As provided by section “(a)10” under “Part II, Management Rights,” of the *Agreement between the Town of Adams and the AFSCME, Council 93, AFL-CIO (Clerical Unit), July 1, 2008, to June 30, 2011*, the Town of Adams may exercise without bargaining with the Unit its power or authority or prerogative “To increase, diminish, change or discontinue operations in whole or in part.” (Appendix V)

74) As provided by “Section 11 (k)” of “Part II” of the *Adams Town Charter*, “The town administrator shall be the agent of the board of selectmen for collective bargaining and may employ special counsel to assist him in the performance of these duties.” This is the only exception stated in the *Adams Town Charter* with regard to the hiring of special counsel. (Appendix W)

75) According to Massachusetts Assistant Attorney General Jonathan Sclarsic -- in his October 19, 2011, response addressed to D. M. Moschos of the Mirick O’Connell law firm -- with regard to the Open Meeting Law complaint made by Melville on April 6, 2011 -- there existed a February 16, 2011, agreement between the Town of Adams and the Adams Clerical Unit, Local #204. (Appendix X & Appendix Y)

76) Melville has no knowledge of any such agreement between the Town of Adams and the Adams Clerical Unit, Local #204 made on or around February 16, 2011.

77) No agenda or recorded minutes of a meeting convened by the Adams Board of Selectmen shows the introduction, the reporting, the discussion, or the affirmative vote of the Adams Board of Selectmen with regard to the February 16, 2011, agreement alleged to exist between the Town of Adams and the Adams Clerical Unit, Local #204.

78) Headlines that were published electronically and in hardcopy forms by news medium reporting on the Massachusetts Office of the Attorney General's determination with regard to Melville's Open Meeting Law Complaint of April 6, 2011, were, “AG: Adams Meeting to Repri-

mand Melville Legal” and “Attorney General clears Adams Selectmen of any wrongdoing” (Appendix Z & Appendix AA)

79) In her undated letter to Corey Higgins of the Mirick O’Connell law firm, AFSCME Staff Representative Nadine Kennedy makes no reference to the February 16, 2011, agreement alleged to exist between the Town of Adams and the Adams Clerical Unit, Local #204. (Appendix T)

80) The Massachusetts Office of the Attorney General took more than six months to respond to the Open Meeting Law Complaint that Melville filed against the Adams Town Administrator and Adams Board of Selectmen on April 6, 2011.

81) AFSCME Staff Representative Nadine Kennedy cited a “Charge of Prohibited Practices” by the Adams Clerical Bargaining Unit, Local #204, as a threat. (Appendix T)

82) The threat by AFSCME Staff Representative Kennedy, in her undated letter addressed to Corey Higgins of the Mirick O’Connell law firm, to “file a Charge of Prohibited Practice with the Division of Labor Relations” due to the (alleged) actions of Melville of February 28, 2011, gave validity and weight to the actions of Adams government officials and others on and around February 28, 2011.

83) Michael Ouellette, Chairman of the Adams Board of Selectmen from May 2010 through April of 2011, read aloud AFSCME Staff Representative Kennedy’s undated letter to Higgins of the Mirick O’Connell law firm during the Adams Board of Selectmen’s regular meeting of March 16, 2011, which was broadcast live over the Northern Berkshire Community Television Corp. (Appendix BB)

84) All regular meetings of the Adams Board of Selectmen are televised live over the Northern Berkshire Community Television Corp. and are rebroadcast on the evening of the Tuesday of

the week following the regular meeting, which the March 16, 2011, regular meeting of the Adams Board of Selectmen was. (Appendix CC)

85) Parts of AFSCME Staff Representative Kennedy's undated letter to Corey Higgins of the Mirick O'Connell law firm were published in hardcopy and by electronic means by the news medium, *North Adams Transcript* on March 17, 2011. The article was entitled, "Melville files complaint with state AG against Adams Selectmen."

86) Parts of AFSCME Staff Representative Kennedy's undated letter to Corey Higgins of the Mirick O'Connell law firm were published by electronic means by the news medium, *iBerkshires.com*, on March 16, 2011. (Appendix BB)

87) On March 17, 2011, the *iBerkshires.com* article, "Adams Board Says Action Again Melville Forestalled Labor Complaint," was published electronically on the national Internet website of AFSCME. (Appendix DD)

88) The actions of AFSCME Staff Representative Nadine Kennedy on and around March 16, 2011, condoned the actions of Adams government officials and others on or around February 28, 2011.

89) On March 2, 2011, the Adams Board of Selectmen voted in the affirmative to approve changes to the Adams Board of Selectmen *Policy Guidelines Handbook*. Part 3 of Section "Statement of Ethics," of the *Handbook* now reads:

4. A member of the Board of Selectmen, in his or her relations with Town staff, shall:
  - a. Treat all staff and other employees as professionals, with clear honest communications that respects the abilities, experience, and dignity of each individual.
  - b. Limit questions of Town staff to those of a general nature. Specific questions requiring detailed information or written documentation shall be directed only to the Town Administrator. It shall be the Town Administrator's responsibility to direct his staff to provide the requested information, or otherwise seek direction from the Board.
  - c. Never publicly criticize an individual employee. Concerns about staff performance

should only be made to the Town Administrator through private conversation.  
(Appendix EE)

90) Prior to March 2, 2011, Part 4 of Section 108, "Statement of Ethics," of the Adams Board of

Selectmen *Policy Guidelines Handbook* read:

4. A member of the Board of Selectmen, in his or her relations with Town staff, should:
  - a. Treat all staff as professionals, with clear, honest communications that respects the abilities, experience, and dignity of each individual.
  - b. Limit contact with specific Town staff. Questions of Town staff and/or requests for additional background information should be directed only to the Town Administrator, Town Counsel, Administrative Assistant to the Board of Selectmen, or Department heads. The office of the Town Administrator should be copied on all requests or correspondence.
  - c. Never publicly criticize an individual employee. Concerns about staff performance should only to the Town Administrator through private conversation.
  - d. Limit requests for staff support, and ensure that all requests go through the Town Administrator's office. (Appendix FF)

89) Under the orders affirmed by the Adams Board of Selectmen on February 28, 2011, and the Adams Selectmen *Policy Guidelines Handbook*, Melville's sole avenue of information gathering was through the Adams Town Administrator, with whom Melville had a strained relationship.

91) To seek all information, which Melville saw fit to secure during the execution of her sworn duties as a member of the Adams Board of Selectmen, through the Town Administrator would be done against Melville's will.

92) On March 2, 2011, during a regular meeting of the Adams Board of Selectmen, Melville warned members of the Adams Board of Selectmen that they were trampling upon Melville's personal liberties. (Appendix GG)

93) Melville has yet to receive copies of "Articles of Information" and annual filings of the Adams Police Benevolent Association, despite Melville's numerous times since 2007 and even as a member of the Adams Board of Selectmen.

94) Employees at the corporation and at charities of the Massachusetts Office of the Secretary of State could not find that the Adams Police Benevolent Association was registered to do business in Massachusetts, when speaking with Melville over the telephone some time ago.

95) Melville was denied, in her multiple requests even as a member of the Adams Board of Selectmen, a copy of the rules and regulations governing the Adams Police Department in guidance of its members. The Adams Board of Selectmen is responsible for setting those rules and regulations of the Adams Police Department. (Appendix HH)

96) According to Michael Ouellette, Chair of the Adams Board of Selectmen until May 2012, there exists in Adams Town Hall a file with Melville's name that contains a letter of censure by the Adams Board of Selectmen, for one of Melville's actions on February 28, 2011. (Appendix II)

97) As provided by section "1(C)" of "Chapter 200" of the *Adams Town Code*, elected officials of the Town of Adams are exempt from application of the Adams "Personnel Rules and Regulations." (Appendix JJ)

98) The Civil Process Division of the Berkshire County Sheriff's Office is responsible for serving legal documents and court papers from all Massachusetts Courts, as well as courts in other countries and states. (Appendix KK)

99) When an employee of the Civil Process Division of the Berkshire County Sheriff's Office, Ronald Clark, used his authority through the Berkshire County Sheriff's Civil Process Division to deliver non-court documents to Melville on February 28 and March 1 of 2011, he 1) gave credibility and weight to the actions against Melville taken by Adams government officials and others on and around February 28, 2011, 2) added to the appearance that official legitimate business was being conducted on and around February 28, 2011, by Adams government officials

and others, 3) gave validity to the ethics violations alleged against Melville by Adams government officials and others, 4) sponsored unlawful, uninvestigated, unsubstantiated, and unproven allegations against Melville, and 5) added to the portrayal that Melville had done wrong.

100) The actions of all Defendant Parties, on and around February 28 to March 17 of 2011 collectively contributed to the creation and perpetuation of the portrayal of Melville in a false light.

101) Melville has been elected as Adams Town Meeting Member from Precinct 3 several times, to the Adams Parks Commission for two terms, and to one term on the School Committee of the Adams-Cheshire Regional School District. Appointments have included filling an unfinished term on the Parks Commission, Capital Planning Committee, and a term on the Adams Finance Committee.

102) Melville served as the parent member to the School Council of C. T. Plinkett School in Adams for seven years.

103) Melville wrote the grant that was awarded a match to fund-raising that created the Adams Skateboard Park. Melville initiated a "Tall Trees of Adams" program and a "First Fish Certificate" for residents and visitors who caught their first fish in the Tow of Adams.

104) Teaming up with the Adams Youth Center for two of them, Melville organized three successful trips to Washington, D.C., for public school 8<sup>th</sup> Grade students.

105) Melville served as secretary or treasurer to several Adams community groups including parent-teacher groups of the Town of Adams schools, the High School football booster club, and the Thunderbolt Skirunners.

106) The headline that appeared on the front page of the hardcopy of the *North Adams Transcript* on May 10, 2012, read, "SELECTWOMAN MELVILLE RESIGNS AFTER TOWN'S RECENT ELECTIONS." (Appendix LL)

**COUNT I – VIOLATION OF DUE PROCESS RIGHT (ORDERS)**

107) Adams Selectmen acted unlawfully in assuming authority not vested in their office, but rather acted as agents of the Massachusetts judicial system. Melville was an elected official and had a right to maintain her office for the remainder of her elected term, thus a valid interest.

108) The Selectmen deprived Melville of her elected position by drafting orders banning Melville from public buildings as well as from speaking with town employees. These actions were done without a hearing and without any evidence to sustain these actions. Melville was deprived her right to represent the town of Adams as a selectperson due to the Adams' Selectmen's silencing her without due process of the law. The Selectmen improperly brought charges/allegations, decreed judgment, and meted out punishment against Melville.

**COUNT II – VIOLATION OF DUE PROCESS RIGHT (EMERGENCY MEETING)**

109) The charges/allegations against Melville remain uninvestigated and unsubstantiated. Furthermore, the "emergency meeting" wherein Melville was the sole topic of discussion, was not attended by Melville. Melville was denied the opportunity to seek legal counsel for this meeting. Melville received notification of the emergency meeting two hours before the emergency meeting was to take place, giving her no opportunity to prepare for or attend the meeting. Thus, Melville was also denied due process through lack of notice by the Town Officials.

**COUNT III – VIOLATION OF DUE PROCESS RIGHT (NOTICE OF HEARING)**

110) Melville was not informed of her rights under the law, with regard to the redress of the unlawful, purposeful, malicious, prohibitive, and defamatory actions based on fabrication, taken against her on and around February 28, 2011.

**COUNT IV – VIOLATION OF OPEN MEETING LAW**

111) Adams Selectmen did not convene meeting for the introduction, reporting, or discussion that led to affirmative vote that directed Adams Town Administrator to initiate actions taken on February 28, 2011.

112) No agenda or recorded minutes of a meeting convened by the Adams Board of Selectmen or its subcommittees shows the introduction, reporting, discussion, or affirmative vote that led to the actions taken by the Adams Board of Selectmen on February 28, 2011.

113) The Adams Board of Selectmen did not convene a meeting to conduct the business of hiring Special Counsel Corey Higgins or D.M. Moschos, employees of the Mirick O'Connell law firm, who provided advice and produced documentation for Adams government officials and others on and around February 28, 2011.

**COUNT V – VIOLATION OF DUE PROCESS RIGHT (NEVER INFORMED OF  
CHARGES AGAINST MELVILLE)**

114) Melville remains uncertain as to the meaning of the charge against her and also as to how charge of direct-dealing or the appearance of direct-dealing apply to her. Melville remains uncertain as to the meaning of the charge against her and also as to how the charge of interfering in collective bargaining apply to her. Because the Selectmen chose to take actions against Melville and not adequately inform her of the allegations against her or the facts in those allegations, the Selectmen denied Melville due process of the law in effectively stripping her of her elected position through their orders.

**COUNT VI - RETALIATION AGAINST REPORTING EMPLOYEE (M.G.L. c. 149, §  
185)**

**(Donald Poirot)**

115) Since 2007, Melville has made repeated requests for copies of the “Articles of Incorporation” and “Annual Filing” submitted by the Adams Police Benevolent Association to the Office of the Secretary of the Commonwealth of Massachusetts. Melville was told by employees of the Office of the Secretary of the Commonwealth of Massachusetts that neither the Nonprofit Corporation Division nor the Corporations Division held registration of the Adams Police Benevolent Association.

116) The actions Adams government officials took on and around February 28, 2011 can be viewed as retribution against Melville as a whistleblower.

117) Melville was elected to serve several terms as an Adams Town Meeting Member from Precinct 2, to one term on the Adams-Cheshire Regional School Committee.

118) The actions of the Defendant Parties changed Melville’s life in ways Melville would not have chosen, which greatly aggrieves Melville.

#### **COUNT VII – DEFAMATION – ERICA SAMSON**

119) Under Massachusetts law, to prevail on a claim for defamation the plaintiff must establish that: (1) the defendant published an oral (slander) or written (libel) statement; (2) the statement was about, and concerned, the plaintiff; (3) the statement was defamatory; (4) the statement was false; and (5) the plaintiff suffered economic loss, or the claim is actionable without proof of economic loss. Stanton v. Metro Corp., 438 F.3d 119, 124 (1st Cir. 2006); Massachusetts Sch. Of Law at Andover, Inc. v. Am. Bar Ass’n, 14 F.3d 26, 42 (1st Cir. 2006). A statement will be considered “defamatory” if it “may reasonably be [understood] as discrediting [the plaintiff] in the minds of any considerable and respectable class of the community.” Disend v. Meadowbrook Sch., 33 Mass. App. Ct. 674, 675 (1992).

120) Here, Samson provided a written statement to the effect that Samson imagined that Melville spoke with Council on Aging employees about the town budget. This is false. Melville never made any such statements. The statement was defamatory because it suggested that Melville was going “rogue” around town, violating collective bargaining agreements and not doing her job properly. Statements concerning a person’s career or job are considered slander per se and as such, damages are assumed.

121) Finally, public officials alleging defamation have a higher burden of showing actual malice. Actual malice means a reckless disregard for the truth or an actual knowing of falsity. Here, actual malice is proven by the hasty and improper way the Adams Selectmen dealt with Melville’s alleged ethics infraction in not properly proving any ethical infraction did occur. Furthermore, actual malice can be imputed in the Selectmen’s retaliatory behavior against Melville’s truth seeking and “whistle blowing actions,” namely, doing her duty as an elected official to represent her constituents.

**COUNT VIII – DEFAMATION – ADAMS SELECTMEN (MICHAEL OUELLETTE, ARTHUR HARRINGTON, JASON HNATONKO, SCOTT NICHOLS)**

122) Adams government officials acted without lawful authority when they took action against Melville on February 28 2011. Adams government officials and others acted with a reckless disregard for the truth in their charges/allegations made against Melville on February 28, 2011. Adams government officials, on and around February 28, 2011, failed to conduct their due diligence. The charges/allegations Adams government officials and others made against Melville remain uninvestigated and unsubstantiated.

123) These allegations and statements suggested that Melville acted improperly. There are numerous newspaper articles which contain quotes inferring Melville was guilty of ethics viola-

tions. However, no ethics violations were ever charged. Further, Melville has never been informed of the nature of her alleged ethics violations. This suggestion – that a Selectperson – engaged in ethics violations and that other selectmen were turning against her – is sufficient to show defamation. The fact that the selectmen never engaged in a fact-finding session or properly held a hearing regarding these supposed violations is indicative of their willful disregard for the truth.

**COUNT IX – VIOLATION OF DUE PROCESS RIGHT**

124) Melville was made subject to unlawful orders affirmed by Adams Selectmen. If Melville were to enter specific town property or speak to town employees, she was threatened with possible arrest. On August 2, 2011 Adams Town Administrator letter that confirmed orders had been enforced.

**COUNT X – VIOLATION OF CODE OF PROFESSIONAL CONDUCT (Rule 762E of  
Massachusetts Superior Court)**

125) Adams Special Counsel provided advice and documents contrary to constitutional and common law.

**COUNT XI – VIOLATION OF CODE OF PROFESSIONAL BEHAVIOR (Massachusetts)**

126) Adams Special Counsel were hired contrary to Adams Town laws and accepted payment for advice and documentation they provided on and around February 28, 2011.

**COUNT XII – INTERFERENCE WITH EXPRESSION OF FREE SPEECH**

127) Limiting Melville's communication with town employees unduly influenced her right of free speech.

**COUNT XIII - VIOLATION OF EQUAL PROTECTION CLAUSE**

128) The only recourse available to Melville for the removal of the orders against her was through the Office of the Massachusetts Attorney General, whereby the orders of the Adams Selectmen would be would be negated if the Adams Selectmen violated the Massachusetts Open Meeting Law with relation to the emergency meeting of February 28, 2011.

**COUNT XIV - VIOLATION OF DUE PROCESS RIGHT**

129) The Office of the Massachusetts Attorney General took more than six months to provide a determination with regard to the Open Meeting Law complaint Melville filed on April 6, 2011. This investigation was nonexistent and the Attorney General did not perform due diligence to determine if the Selectmen had actually had an open meeting and followed proper protocol. This lack of due diligence by the Attorney General perpetuated the illegal orders against Melville and eliminated this channel of redress, which, had the Attorney General conducted due diligence, would have found in Melville's favor.

**COUNT XV - INTERFERENCE WITH FREEDOM OF SPEECH**

130) Handbook changes served the same purpose as the order affirmed by Adams Selectmen.

**COUNT XVI - INTERFERENCE WITH A PRIVILEGE**

131) Melville was informed that all information, requests, and responses thereto were to go through and come from the Adams Town Administrator alone. Therefore, Melville was deprived of her ability to serve her community and was unable to conduct the fact-gathering and investigation needed to fulfill her sworn duties to the people of Adams, in her elected position as a member of the Board of Selectmen.

**COUNT XVII - SUBSTANTIVE DUE PROCESS VIOLATION**

132) The actions of Nadine Kennedy on and around March 16, 2011, gave credence to the unlawful actions of government officials and others on and around February, 2011.

**COUNT XVIII – FALSE LIGHT (ALL ADAMS SELECTMEN)**

False light requires a showing of (1) A publication by the defendant about the plaintiff; (2) made with actual malice; (3) which places the Plaintiff in a false light; AND (4) that would be highly offensive to a reasonable

Here, there were numerous articles published by iBerkshires, an online news source, as well as The Transcript, which contain statements made by the Selectmen about Melville. Actual malice is the same standard discussed above. As mentioned prior, actual malice is proven by the hasty and unconscionable way the Adams Selectmen dealt with an alleged ethics violation and the lack of care and diligence they performed. Furthermore, actual malice can also be imputed based on the retaliation against Melville for seeking the truth and attempting to have the town government function according to town rules and in accord with citizen's needs and concerns. These statements made it seem that Melville was unethical and doing illegal actions as a selectperson. None of these claims have ever, nor will ever be substantiated because they are false. Finally, a reasonable person would find being accused of an ethical violation highly offensive.

**COUNT XIX – RETALIATION AGAINST PUBLIC OFFICIAL (BUTLER AND**

After Melville went to the Adams Prudential Committee meeting on February 28, 2011 and informed the Committee that Butler and Harrington were not authorized to be at that meeting, nor did they have the authority to offer the Forest Warden's property, they reacted by calling an emergency meeting and trying to embarrass, harass, slander, and effectively get Melville to quit. Their actions were a clear violation against decency and due process.

**COUNT XX – INTERFERENCE WITH THE RIGHT TO FREE ASSEMBLY/ASSOCIATION (FIRST AMENDMENT)**

133) Denying Melville the ability to move freely and to enter onto any and all Town premises as other citizens violated Melville's right to freedom of assembly/association.

**COUNT XXI – INTERFERENCE WITH THE RIGHT TO FREE ASSEMBLY/ASSOCIATION (FIRST AMENDMENT)**

134) Limiting Melville's ability to move freely to promote, promote, and defend common interests with Town employees violated Melville's right to assembly/association.

**PLEADING**

135) Melville was earnest in her efforts and endeavors.

136) Because of the actions taken on and around February 28m 2011, by Adams officials, employees, agents, and others, there are some who were led to believe Melville did wrong. Melville did no wrong.

137) Melville has withstood some sound hits as a public figure. The unlawful and purposeful actions of officials, employees, and agents of the Town of Adams went beyond the pale and caused Melville publicly and privately significant aggrievement.

138) Melville's career as a public servant, which she expected to enjoy the rest of her life, is at a finish. In addition to the affronts, wrongs, and injustices described herein, Melville suffers the marring of her parents' good name, as each was a popular educator in the area for many years.

**PRAYERS FOR RELIEF**

The Plaintiff requests that this Court do the following:

- a) Enter judgment for the Plaintiff and against the Defendants on all counts of this complaint;
- b) Award the Plaintiff money which will compensate her for any loss of wages and/or benefits incurred as a result of the unlawful acts;
- c) Award the Plaintiff an amount of money which will fairly compensate her for her humiliation

and damage to her reputation and earning capacity;

d) Order that the Defendants pay the Plaintiff's costs and attorney's fees resulting from this action;

e) Order that the Defendants, where permissible by law, be ordered to pay punitive damages;

f) Award such other and further relief as the Court deems just and proper to make the Plaintiff whole.

**THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED IN THIS COMPLAINT.**

Date: February 24, 2013

*Paula I. Melville*

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The Plaintiff,  
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