

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

YENETAMIE DIAZ ZAYAS, ANGEL REYES and
their conjugal partnership,

Plaintiffs,

v.

**MUNICIPIO DE GUAYNABO, HECTOR O'NEILL
GARCIA, , ALBA ALVELO,** and their conjugal
partnership **ABC CORPORATION, INSURANCE
COMPANY DEF, JANE DOE, JOHN DOE,** and
their conjugal partnership,

CIVIL NO. 18-

**FOR: EMPLOYMENT
DISCRIMINATION,
FIRST AMENDMENT,
RETALIATION**

**PLAINTIFFS DEMANDS
TRIAL BY JURY**

COMPLAINT

TO THE HONORABLE COURT:

COME NOW Plaintiffs Yenetamie Diaz Zayas, Angel Reyes, and their conjugal partnership through their undersigned attorneys, and respectfully **ALLEGE** and **PRAY** as follows:

I. JURISDICTION

1. This suit is brought and jurisdiction lies pursuant to 42 U.S.C. 1983, as amended, and the First Amendments of the United States Constitution and Title VII, as amended. This Honorable Court's jurisdiction over state law claims is invoked pursuant to the doctrine of pendent or supplemental jurisdiction.

2. The following local laws are invoked: Law 100 of June 20, 1959, as amended, 29 Laws of P.R. Anno. 146 et seq. ("Law 100"), 29 L.P.R.A. 146a; Articles 1802 and 1803 of the Civil Code of Puerto Rico.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 2 of 31

3. The proper venue for this case lies in this Court, as all individual parties are residents of Puerto Rico, the Municipio de Guaynabo is in Puerto Rico, Mayor Hector O'Neill, Alba Alvelo, and his conjugal partnership reside in Puerto Rico, and the causes of action took place in Puerto Rico.

II. PARTIES

4. Plaintiffs Yenetamie Diaz, Angel Reyes, are of legal age, are residents of Puerto Rico and form a conjugal partnership. At all times relevant to the instant Complaint, plaintiffs were individuals protected by the laws invoked in this Complaint.

5. Defendant, Municipio de Guaynabo has its principal place of business in Puerto Rico. At all times relevant to this Complaint, this defendant was an "employer" as defined by the laws invoked in this Complaint.

6. Defendants Hector O'Neill Garcia and Alba Alvelo have constituted a conjugal partnership in Guaynabo, Puerto Rico.

7. Defendant Corporation ABC is a corporate entity that may have liability for the facts set forth in this Complaint.

8. Defendant Insurance Company DEF is one or more insurance companies that may have issued and have in effect policies of insurance for the risks that result from the acts stated in this Complaint, the identity of which are unknown at present.

9. Defendants John Doe, and Jane Doe, and their conjugal partnerships, are persons responsible for the acts and damages alleged in the instant case whose identities are unknown at this moment.

III. FACTS

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 3 of 31

10. Officer Diaz began to work for the municipal police department in 2009.

11. At the time, Officer Diaz was 20 years old, a single mother with a special needs child.

12. Co-defendant O'Neill, the mayor of Guaynabo, was the commander of the Guaynabo Police Force at the time.

13. Shortly after Officer Diaz began working for the municipality, she approached Mayor O'Neill to ask about assistance for her daughter, who suffers from hearing loss, attention deficit disorder, and hyperactivity to get into a Head Start program.

14. Shortly thereafter, Mayor O'Neill called Officer Diaz at her mother's house.

15. Mayor O'Neill invited Officer Diaz out to lunch and during those lunches, he asked if he could take her out to dinner.

16. Officer Diaz said that she was not interested, but the mayor kept insisting, and Officer Diaz finally acceded.

17. The dinners were attended by Mayor O'Neill, Officer Diaz, and Yolanda Rodriguez, an employee of the municipality of Guaynabo, who was Mayor O'Neill's special assistant at that time.

18. Officer Rodriguez is now retired.

19. Mayor O'Neill pressured Officer Diaz to have sex with her.

20. Officer Diaz did not want to have sex with Mayor O'Neill who is a married man, several decades older than she is, but she was afraid that he would fire her if she refused.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 4 of 31

21. Mayor O'Neill has an apartment where he would meet with Officer Diaz to have sex with her.

22. The two also engaged in sexual relations at the workplace.

23. In 2012 through 2013, Mayor O'Neill began hitting Officer Diaz after he got drunk.

24. Mayor O'Neill also raped Officer Diaz repeatedly, when she refused to have sex with him voluntarily.

25. Officer Diaz went to Ryder Hospital in Guaynabo on more than one occasion due to the injuries she suffered from Mayor O'Neill's beatings.

26. In October 2014, Officer Diaz ended her relationship with Mayor O'Neill.

27. Mayor O'Neill then learned that Officer Diaz had met someone, her now husband, Angel Reyes, and was starting to see him.

28. Mr. Reyes began to work for the municipal police department of Guaynabo as an officer in 1996.

29. In 2005, the municipality promoted Officer Reyes to sergeant after he passed the sergeants' exams with the last group of sergeants who were promoted based on their merits.

30. After 2005, the municipality ceased to promote based on exams.

31. In 2012, the municipality transferred Sergeant Reyes to the Transit Department, a division where the officers were frequently afforded the opportunity for overtime because of campaigns to establish roadblocks to reduce drunk driving.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 5 of 31

32. Sgt. Reyes took advantage of these opportunities and increased his annual income by \$8,000 to \$10,000.

33. In 2013, the municipality recognized Sgt. Reyes as sergeant of the year.

34. In 2014, the municipality recognized Sgt. Reyes as sergeant of his division repeatedly.

35. When Officer Diaz began dating Sgt. Reyes, Defendants' retaliation against her and eventually her husband for ending her relationship with Mayor O'Neill went into high gear.

36. At that point, Officer Diaz worked as the director of the Division of Regulations and Environmental Matters (DRAAS are its initials in Spanish). In that position, her duties were: to draft work plans, evaluate complaints, prepare the vacation plan, inventory the property in the office, property assigned to officers and patrol cars, draft lists of services provided, and process subpoenas for officers to appear in court.

37. Between November 2014 and June 2015, Mayor O'Neill frequently visited DRAAS. He held meetings there, supervised operations, greeted certain people, such as, the DRAAS secretary, who was the sister of his executive secretary.

38. Every time Mayor O'Neill visited the DRAAS offices, Officer Diaz hid to avoid seeing him.

39. On February 13, 2015, when Officer Diaz arrived at her office, she found a floral arrangement on her desk.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 6 of 31

40. Officer Diaz understood that Mayor O'Neill had sent the flowers since the only people who had access to her office with a master key were the mayor and Engineer Roberto Silva, the city's chief engineer.

41. The incident disturbed Officer Diaz and made her feel unsafe in her office. In light of the history of Officer Diaz's relationship with the mayor, this act constituted an unwanted sexual approach by the mayor.

42. After the February 13, 2015 incident, Officer Diaz received several telephone calls on her cell phone from a blocked number, as the mayor had called her in the past. For that reason, Officer Diaz did not answer the calls.

43. Soon after Officer Diaz began seeing Angel Reyes, Lt. Davila, her direct supervisor, the chief of Mayor O'Neill's security detail informed her that she was being transferred to the Center of Operations.

44. One morning, Sgt. Reyes was having breakfast with Officer Diaz before going to work, and his supervisor came into the bakery and saw them together.

45. Sgt. Reyes had routinely been permitted a shift change because he was taking classes at UMET.

46. After Sgt. Reyes was seen having breakfast with Officer Diaz, his requests for shift changes were routinely denied by his supervisors at the Guaynabo Municipal Police Force.

47. After Sgt. Reyes was seen having breakfast with Officer Diaz, he was transferred from his unit, so that he was no longer eligible for overtime work.

48. In August of 2015, Officer Diaz took one of the mayor's calls.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 7 of 31

49. Mayor O'Neill informed Officer Diaz that on the 4th of July 2015, she had been seen by a friend of his with another man in the Luis Muñoz Marin Airport in the departure area for the Dominican Republic.

50. Mayor O'Neill added that he knew where she and her friend had stayed and that he had copies of their stamped passports.

51. Mayor O'Neill was angry and frustrated, and he screamed at Officer Diaz that she was a whore and that she was doing this to get back at him for everything he had done to her, that she belonged to him and had to be with him or no other man.

52. Mayor O'Neill also told Officer Diaz that he would not stand for being mocked by his employees, since her new boyfriend could not hold a candle to him.

53. On August 27, 2015, to Officer Diaz's surprise, she received an official subpoena regarding an administrative investigation against her regarding an incident that allegedly occurred on June 30, 2015.

54. The charges were subsequently dropped but appear to be part of the harassment campaign conducted by all Defendants.

55. Officer Diaz filed a complaint with the Equal Employment Opportunity Commission.

56. After Officer Diaz filed her EEOC complaint, she was at a training on government ethics at the Yolanda Guerrero Cultural Center, seated about three to five rows back from where the mayor was addressing the people in attendance.

57. Officer Diaz purposely sat several seats away from her now husband, Angel Reyes, to avoid problems with Mayor O'Neill.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 8 of 31

58. Despite this, as soon as Mayor O'Neill located Officer Diaz, he started to stare at her in an intimidating manner and told her that there were going to be some changes in the police force and not to complain to supervisors, since the changes would be at his orders.

59. That afternoon, Mayor O'Neill began to call Officer Diaz's cellular phone insistently.

60. When Officer Diaz finally answered the phone, Mayor O'Neill called her a whore and impertinent [fresca], asked how she has dared to do this; that she was his and nobody else's; that no one should dare to mock him; in particular that other man [Reyes].

61. After listening to Mayor O'Neill vent, Officer Diaz told him that she did not have to put up with him and much less his disrespect.

62. On October 28, 2015, Officer Diaz again received a number of calls from a blocked number, which she believed to be Mayor O'Neill since he often called her from a blocked number, so she did not answer them.

63. On November 2, 2015, Police Commissioner Wilfredo Martinez told Officer Diaz that she had two options for continuing to work at the municipal police department: that she accept that a colleague be her supervisor at DRAAS, or be transferred to the traffic division.

64. Officer Diaz was surprised and hurt by this news of a demotion. She began to cry and questioned Commissioner Martinez's decision.

65. Commissioner Martinez responded that this was not his decision; the decision came from his boss: Mayor O'Neill.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 9 of 31

66. Officer Diaz told Commissioner Martinez that this was very unfair and said she wanted to meet with the mayor about the decision.

67. Immediately after her meeting with Commissioner Martinez, Officer Diaz called Mayor O'Neill to discuss the news that the commissioner had given her.

68. Mayor O'Neill told Officer Diaz to meet her at his apartment in Alto Monte Apartments, located in San Juan, that very afternoon.

69. Officer Diaz answered that she had no problem meeting there, but that it was going to be a short conversation, solely about work.

70. At about 4:00 pm that same day, Officer Diaz met with Mayor O'Neill in his apartment.

71. Officer Diaz began by telling the mayor what the police commissioner had informed her, but Mayor O'Neill changed that subject and asked why she had not answered his calls on October 28th.

72. Mayor O'Neill told Officer Diaz that he had called her cell phone repeatedly because he wanted to be with her, but that she had not answered him; and that if she had taken his calls and been with him on that day, things would be very different.

73. Mayor O'Neill added that Officer Diaz could still fix things by "being with him" then.

74. Officer Diaz answered that their relationship had ended; that there was no one more loyal to his administration than her; that she was responsible and dedicated to her job; that his decisions about her job were unfair and motivated by his anger due to his jealousy and spite.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 10 of 31

75. Mayor O'Neill responded that Officer Diaz was garbage and did not respect herself as a woman because she was a whore.

76. At that moment, Officer Diaz received a text message from Reyes, telling her that he had just been transferred out of the traffic division, where he was eligible to work overtime, to a different division where there was no opportunity for overtime.

77. Officer Diaz then asked Mayor O'Neill why he took that unfair action against Reyes, given that Reyes had nothing to do with what had gone between Mayor O'Neill and Officer Diaz.

78. Mayor O'Neill, angry and out of control, tried to take Officer Diaz's cell phone away from her by force to see the message she had just received.

79. When Officer Diaz kept the phone from Mayor O'Neill, he pushed both his hands against her chest and pushed her back.

80. Next, Mayor O'Neill picked up two chairs and threw them against the floor.

81. Mayor O'Neill also broke a floor fan.

82. Frightened, Officer Diaz told Mayor O'Neill to calm down, that he was too angry.

83. Mayor O'Neill then told Officer Diaz to call Commissioner Martinez from her cell phone, which she did, and Mayor O'Neill told Commissioner Martinez to come to the apartment immediately.

84. Despite the charged atmosphere, Officer Diaz insisted to Mayor O'Neill that he should stop retaliating against her and Reyes, telling the mayor that she understood that his actions were due to her refusal to respond to his sexual advances.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 11 of 31

85. Mayor O'Neill left the apartment and locked Officer Diaz in, but Officer Diaz managed to unlock the door and exit.

86. When Officer Diaz went to her car, she saw that Commissioner Martinez's official vehicle was blocking her car's exit from the parking lot.

87. Commissioner Martinez was outside of his vehicle, talking to Mayor O'Neill.

88. Commissioner Martinez then told Officer Diaz that she should go back to the apartment because she and the commissioner needed to talk.

89. Once Officer Diaz and Commissioner Martinez got to the apartment, he started talking about loyalty and how all of them need to protect the boss.

90. After that conversation, Officer Diaz went back to her car to wait for Martinez to move his van so that she could leave.

91. On November 10 or 11, Officer Diaz met with Commissioner Martinez again regarding her work situation.

92. Commissioner Martinez told Officer Diaz that he was sorry, but that he was between a rock and a hard place, which meant that Officer Diaz's work situation would stay the same.

93. In January 2016, all of a sudden and for no good reason, Officer Diaz's work conditions became intolerable due to a hostile environment that had been intensifying gradually;

94. Officer Diaz lost her authority, she was transferred, and she continued to be treated abusively and humiliatingly.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 12 of 31

95. On January 7, 2016, Lieutenant Wilfredo Castillo and Sergeant Emilio Marquez called all the personnel for meeting in the conference room.

96. When the meeting began, Lt. Castillo, Sgt. Marquez, Officers Burgos, Concepcion, Marrero, and Officer Diaz were present.

97. Castillo told Officer Diaz that she was going to cease being in charge of DRAAS and that Sgt. Marquez was going to be in charge.

98. Lt. Castillo asked Officer Diaz to help with the transition with a memo that same day.

99. Officer Diaz responded that there was no way she could draft such a memo in one day after having worked there for several years.

100. It was Thursday. Lt. Castillo gave Officer Diaz until Monday to complete the memorandum.

101. Lt. Castillo ordered Officer Diaz to turn over her office to Sgt. Marquez because he was going to be the new supervisor in charge of DRAAS.

102. Officer Diaz felt denigrated as a woman, since she was the only woman in the office; had not done anything to lose her position as supervisor; and was being substituted by a man.

103. Officer Diaz asked permission to leave the meeting because she was overcome with the sadness, frustration, and fear her demotion invoked.

104. The permission was conceded, and Officer Diaz went to the bathroom to be alone to cry.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 13 of 31

105. After Officer Diaz managed to calm herself down, she asked Sgt. Marquez for permission to leave work early, taking sick leave. Sgt. Marquez granted her request.

106. Officer Diaz's devastation was so great she was not able to go to work the next two days. Instead, she stayed home, depressed and distraught.

107. On January 10, 2016, Officer Diaz turned in the report as ordered and turned over her office to Sgt. Marquez.

108. On January 11, 2016, Sgt. Marquez ordered Officer Diaz to give up her desk because its location was bothering a colleague.

109. Sgt. Marquez ordered Officer Diaz to work from the table in the conference room.

110. Officer Diaz asked Sgt. Marquez to make her demotion official via documentation.

111. Officer Diaz then went to her former supervisor, Engineer Silva, to tell him what was happening to her.

112. Eng. Silva told Officer Diaz that he would take care of the situation.

113. That same day Eng. Silva approached Commissioner Martinez about the situation.

114. On January 12, 2016, Sgt. Marquez told Officer Diaz she could have her office back because he was being re-located.

115. Later that day, at a meeting with Officer Diaz's colleagues, officers Burgos, Concepcion, and Marrero, when Officer Diaz was addressing the officers, Sgt. Marquez interrupted to tell them if they had any problems they could resolve them since they were

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 14 of 31

men, but if they had any question, they could consult him, man-to-man, because Officer Diaz, as a woman, was incapable of understanding such things, all the while laughing sarcastically at Officer Diaz.

116. On several occasions, Sgt. Marquez told the officers that a man was needed to maintain order in the office.

117. Sgt. Marquez's sexist comments as an agent for the Municipality of Guaynabo made Officer Diaz feel humiliated and denigrated as a woman.

118. Such talk had never occurred before Officer Diaz rejected Mayor O'Neill's advances and made it clear to him that she would not return to their abusive relationship.

119. On information and belief, the sexist conduct of Sgt. Marquez and the others was done at the instructions of Mayor O'Neill and was part of his and the municipality's intentional creation of a hostile environment for Officer Diaz, communicating official disdain for Officer Diaz.

120. In 2016, the municipality had ??? employees.

121. On January 19, 2016, Officer O'Neill asked Sgt. Marquez to allow someone to help her with the inventory of vehicles she was conducting because she did not understand parts of the document.

122. Sgt. Marquez answered by yelling at Officer Diaz that she was to complete the form herself; no one would help her.

123. Officer Diaz again escaped to the bathroom to cry and to calm herself down.

124. When Officer Diaz had composed herself, she complained to Lt. Castillo that Sgt. Marquez had berated her for seeking help to complete the form correctly.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 15 of 31

125. Lt. Castillo said that he would take care of it, and shortly thereafter, Sgt. Marquez appeared by Officer Diaz's side, more furious than ever, and told her that she was *never* to go over his head to complain and that what happened in their office, stayed in their office.

126. Marquez then told Officer Diaz that he had arranged with an officer from another office to help Officer Diaz complete the inventory, even though there were three officers and Sgt. Marquez himself in their office, any of whom could have given Officer Diaz the instructions.

127. On January 21, 2016, Martinez answered Officer Diaz's request, indicating that she had not be deprived of her job duties, she had simply been re-assigned as coordinator of the office and Sgt. Marquez had been assigned to be supervisor of the DRAAS offices.

128. On January 23, 2016, Mayor O'Neill called Officer Diaz incessantly.

129. When Officer Diaz finally answered, Mayor O'Neill told her that he had seen Sgt. Reyes in the Genesis Bakery that morning, and that seeing him made Mayor O'Neill so angry that he wanted to "break his head.'

130. Officer Diaz got so angry she hung up the phone.

131. Toward the end of January 2016, Officer Diaz entered her office, and found Mayor O'Neill sitting in her chair, masturbating.

132. Shortly after seeing Officer Diaz, Mayor O'Neill ejaculated right there.

133. Officer Diaz was terrified, struck still with fear, and she asked the mayor how he had dared to do such a crazy thing.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 16 of 31

134. Officer Diaz was too afraid to report Mayor O'Neill's conduct at the time, but on January 28, 2016, she met with Commissioner Martinez and reviewed the facts surrounding her demotion with him, telling him that she had been deprived of all her responsibilities.

135. On February 1, 2016, Sgt. Marquez gave Officer Diaz a list of job responsibilities.

136. Officer Diaz was re-assigned to the intake station and ordered to investigate civilian complaints.

137. This change in responsibilities occurred shortly after Mayor O'Neill's latest disgusting sexual advance – the masturbation in Officer Diaz's chair. .

138. On February 3, 2016, Sgt. Marquez yelled at Officer Diaz, admonishing her that she had no authority to leave the workplace during the workday.

139. Officer Diaz responded that she had not left the workplace, and Sgt. Marquez asked why her car was not on the lot, and she answered that she had lent her car to someone.

140. On February 9, 2016, Eng. Silva met with Officer Diaz and Sgt. Marquez.

141. Eng. Silva told the two that Officer Diaz was to coordinate everything related to DRAAS and that Sgt. Marquez was in charge of security in the Center of Operations of the Municipality of Guaynabo.

142. On February 12, 2016, when Officer Diaz arrived at her office, there was again a floral arrangement on her desk.

143. Officer Diaz put the flowers in the wastebasket.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 17 of 31

144. The secretary who worked in the Center of Operations, who is the sister of the woman who was Mayor O'Neill's personal executive secretary, saw Officer Diaz throw the flowers away.

145. Upon seeing this, the secretary immediately went to Mayor O'Neill's office in the Center of Operations.

146. Officer Diaz felt hounded and without escape from the mayor's unwanted sexual attentions.

147. That same day, collapsing under the pressure, Officer Diaz asked Eng. Silva to be allowed to take ten days of vacation leave.

148. Eng. Silva agreed that Officer Diaz could take the time off, but told her that she had to wait ten days, until February 22.

149. While Officer Diaz was on leave, she received a call from Officer Burgos telling her that the paperwork surrounding her vacation leave was missing and that if it did not appear, she would take the leave without pay.

150. Officer Diaz responded that the paperwork was where it had always been, which it was.

151. On March 3, 2016, while Officer Diaz was still on leave, Lt. Jorge Davila, who was the chief of Mayor O'Neill's security detail, notified her that he would be replacing Sgt. Marquez and that she would report to him when she returned from vacation.

152. On March 8, 2016, Lt. Davila informed Officer Diaz that she was to be transferred to security duties in an outside guardhouse at the Center of Operations.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 18 of 31

153. On March 14, 2016, Officer Diaz was re-assigned to work in the guardhouse by co-defendant Municipio de Guaynabo.

154. The guardhouse was constructed of wooden panels as walls and a zinc roof; it had no air conditioning.

155. The location is desolate at night, dangerous.

156. On March 16, 2016, in the evening Mayor O'Neill arrived at the guardhouse in a white Explorer SUV.

157. The mayor wished Officer Diaz a happy birthday, and she turned around, saying that it was not her birthday.

158. Upon being ignored, the mayor left.

159. On March 21, 2016, Officer Diaz met with Lt. Castillo to discuss her evaluations for 2013 and 2014.

160. Even though employees are supposed to be evaluated annually, Officer Diaz's first evaluation was dated 2013.

161. Lt. Castillo told Officer Diaz to sign the evaluations for 2013 and 2014.

162. Officer Diaz asked Lt. Castillo if he had been her supervisor those years, and he answered that he had not.

163. Officer Diaz agreed to sign the evaluations as received, but since she disagreed with the content of the evaluations, she wrote that on them as well.

164. Lt. Castillo told Officer Diaz that he did not believe in super police officers; that he never gave high evaluations; and that her refusal to accept his evaluations would lead to hearings about the evaluation and that she would have to testify about them.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 19 of 31

165. Officer Diaz responded that she understood the process and was fine with it.

166. Lt. Castillo then gave Officer Diaz her evaluation for 2014, with which she also disagreed since it was quite negative, so she signed it as received, but that she did not agree with its contents.

167. Officer Diaz then asked Lt. Castillo for a copy of the documents.

168. Officer Diaz subsequently sent a memo to Commissioner Martinez about the evaluations with a copy to the Human Resources Department, documenting her dispute about the evaluations' content.

169. On April 8, 2016, when Officer Diaz was working in the guardhouse, Mayor O'Neill drove up to the guardhouse in his official vehicle driven by Officer Correa, with the mayor in the back seat.

170. Mayor O'Neill lowered the window and made sexual and vulgar movements with his tongue, while winking at Officer Diaz.

171. Officer Diaz turned her back and ignored Mayor O'Neill.

172. Mayor O'Neill returned later in one of his many personal vehicles.

173. Officer Diaz continued to ignore Mayor O'Neill.

174. On April 26, 2016, Lieutenant Zuleika Leon tried to give Officer Diaz the 2013 and 2014 evaluations, indicating that Commissioner Martinez had ordered her to do so.

175. Officer Castillo answered that she would not sign them since she had requested a copy of her personnel file and the evaluations that Lt. Castillo had drafted had been filed.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 20 of 31

176. In Officer Diaz's presence, Lt. Leon called Commissioner Martinez, who told Lt. Leon that as soon as Officer Diaz signed the evaluations that Lt. Leon had, the other ones would be removed from Officer Diaz's file.

177. Officer Diaz asked Lt. Leon for a copy of the evaluations.

178. On May 17, 2016 Officer Diaz complained to Officer William Rivera that as she was the only woman who worked in the Center of Operations, and she had to share the bathroom with the nine male officers, who they left the bathroom filthy.

179. Since Officer Rivera did nothing, Officer Diaz brought up the problem with the filthy bathroom again, and Officer Rivera asked, what do you want me to do? They are men and, sadly, that's the way it is.

180. Then Officer Rivera asked Officer Diaz, do you use that bathroom? Officer Diaz answered that she had to use it. Officer Rivera told Officer Diaz to put the seat down every time because that is the way they leave the bathroom. Officer Diaz let Officer Rivera know that his answer was not satisfactory.

181. On June 25, 2016, Mayor O'Neill arrived in an official vehicle driven by Officer Ulises Garcia at the guardhouse where Officer Diaz was working.

182. Mayor O'Neill addressed Officer Diaz, and she ignored him.

183. The mayor then shouted at Officer Diaz that she had to open the SUV's door as part of her work duties, so she opened the door.

184. On June 27, 2016, Mayor O'Neill, driving an official vehicle, stopped at the guardhouse.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 21 of 31

185. Up to that time, Officer Diaz had not complained except as described herein because of her fear of retaliation.

186. During Officer Diaz's relationship with Mayor O'Neill, she was the victim of emotional aggression and physical violence.

187. Officer Diaz knew that Mayor O'Neill controlled the Guaynabo Municipal Police Force.

188. Mayor O'Neill also had influence with the state police and the Puerto Rico Department of Justice.

189. In fact, on one occasion Mayor O'Neill told Officer Diaz that he had been in a relationship with another woman whose arm he broke.

190. That victim went to the District Attorney, who immediately called Mayor O'Neill, and then District Attorneys persuaded the victim of Mayor O'Neill's assault not to follow through with the criminal complaint.

191. On June 30, 2016, Officer Diaz filed complaint number 515-2016-00398 with the EEOC in San Juan.

192. After the EEOC began investigating, Mayor O'Neill contacted Officer Diaz through a friend and asked her to settle her claims with him.

193. In exchange for Officer Diaz withdrawing her claims against him, Mayor O'Neill agreed to pay plaintiffs money and to stop retaliating against Officer Diaz.

194. On information and belief, the money came from the Municipality of Guaynabo, not Mayor O'Neill personally.

195. Officer Diaz did not have an attorney when she negotiated this agreement.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 22 of 31

196. Mayor O'Neill's friend, who is an attorney, negotiated the agreement with Officer Diaz and Mr. Reyes.

197. The agreement did not advise Officer Diaz or Mr. Reyes of the right to have their own attorney.

198. The agreement did not afford Officer Diaz or Mr. Reyes the opportunity to reconsider the decision to settle.

199. The agreement was signed on December 27, 2016.

201. The agreement was to be confidential, even though the EEOC is a public agency; Mayor O'Neill was a public official; and, on information and belief, the money to be paid was public money.

201. By January 2, 2017, defendants were violating the agreement.

202. Even though the agreement provided that Officer Diaz was to be restored to working as coordinator in the DRAAS office, by January 2, 2017, Sergeant Jose Franceschini, badge number 5-167 was distributing the complaints that came into the office.

203. On January 11, 2017, Officer Diaz was in a patrol car with Officers Quiñones, badge number 379, Burgos, badge number 391, and Rivera, badge number 058 to return property to Sgt. Franceschi, pursuant to his orders.

204. Lt. Davila, the chief of Mayor O'Neill's security team ordered the group taken out of city hall by Officer Chamorro, telling them that they could not be there because Officer Diaz was in the patrol car.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 23 of 31

205. On January 20, 2017, Officer Diaz began to talk to an officer about how to handle a complaint.

206. The officer told Officer Diaz that Sgt. Franceschi had already given her those instructions.

207. On January 23, 2017, Officer Diaz told Sgt. Franceschi she felt uncomfortable because she did not have any work responsibilities or duties and Lt. Davila was running the office.

208. On January 24, 2017, Sgt. Franceschi communicated directly with Officer Rivera to find out what she had on her agenda.

209. Sgt. Franceschi's communication violated the chain of command and assured that Officer Diaz had nothing to do.

210. On January 25, 2017, called Officer Burgos and asked what he had on his agenda for the day, again leaving Officer Diaz out of the process, even though her job as coordinator required that she coordinate the work at DRAAS.

211. On January 31, 2017, Sgt. Franceschi assigned another complaint to Officer Burgos, again leaving Officer Diaz out of the process.

212. On February 4, 2017, Officer Diaz noticed in DRAAS's computerized system that Sgt. Franceschi was assigned all the Law 140 [complaints between neighbors] complaints without informing Officer Diaz.

213. On February 8, 2017, Sgt. Franceschi again asked Officer Burgos his agenda for the day. He also asked Officer Burgos who was in the office. In this way, Sgt.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 24 of 31

Franceschi continued the practice of precluding Officer Diaz from performing her functions as coordinator of DRAAS.

214. On February 10, 2017, a complaint came into the office, and Sgt. Franceshi assigned Officer Delgado to investigate it.

215. On February 21, 2017, Officer Delgado told Officer Diaz that Officer Cotto was going to start work in DRAAS.

216. When Officer Diaz learned this, she asked Sgt. Franceshi when Officer Cotto had begun working in the office, and the sergeant told Officer Diaz, untruthfully, that Officer Cotto had not started work with the office yet.

217. Sgt. Franceshi's falsehood was designed to and in fact, limited Officer Diaz's authority to coordinate the work in the office.

218. On February 23, 2017, Officer Diaz needed to call Sgt. Franceshi for work, which she did repeatedly, but the sergeant was with Lt. Davila, the chief of Mayor O'Neill's security detail.

219. On March 6, 2017, Lieutenant Cristina Cruz Villegas called Officer Diaz to ask if Officer Cotto was working, and Officer Diaz responded that she understood that Officer Cotto was in the Amelia area with Officer Delgado.

220. Lt. Cruz told Officer Diaz that she had been trying to call Sgt. Franceshi, because Lt. Davila had left instructions that Officer Cotto begin work that day in city hall.

221. Officer Diaz responded that the sergeant had not told her anything, but that she, Officer Diaz, understood that Lt. Davila could not make any personnel decision without asking.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 25 of 31

222. Lt. Soto responded, "I am going to tell you the truth. No one wants me to say it, and they do not want to talk to you, but since I don't have anything to hide: Lt. Davila is in charge of this office.

223. Officer Diaz responded that that was not what she had been told.

224. Lt. Soto responded that Officer Diaz should not go against the grain ["nadar contra el corriente"] and that she should talk to her attorney.

225. The next day, Officer Cotto began working in city hall.

226. On April 28, 2017, Officer Rivera sent Officer Diaz a text with a photo saying that the municipality's recycling and public works officers were cutting a tree that was above her vehicle in the parking lot.

227. Officer Diaz went out to the parking lot and found all the other cars had been moved out, apparently because their owners had been advised to move them due to the tree cutting.

228. This was the first time during Officer Diaz's employment at the Municipality of Guaynabo that any tree in the parking lot had ever been cut down.

229. On information and belief, defendants ordered that the tree be cut down without advising Officer Diaz as another means of harassing her.

230. On several occasions Officer Diaz complained to Sgt. Franceshi that she had been deprived of her duties as coordinator and the Lt. Davila was issuing orders in the office.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.

Complaint

Page 26 of 31

231. On several occasions when Officer Diaz walked between offices in city hall, department directors and supervisors would point at her and laugh, making her feel humiliated.

232. Officer Diaz came to the conclusion that there was nothing more she could do.

233. She was tired and surrendered, so she spent most of her time in her office, occasionally providing instruction to those colleagues who sought it from her.

234. Nonetheless, Officer Diaz continued to draft duty rosters, but Sgt. Franceshi did the same, and he used his duty rosters, not hers.

235. Since municipal employees walked by her office and pointed and stared at her, by the end of April 2017, Officer Diaz eventually decided to put a piece of paper so that she did not have to see this.

235. Sgt. Franceshi then told him that Engineer Urbina had told Sgt. Franceshi that Eng. Silva had said that Officer Diaz had to take down the paper.

236. Officer Diaz asked why, saying she was just trying to have a bit of privacy, and Sgt. Franceshi said that those were the orders.

237. At the end of May 2017, Sgt. Franceshi informed Officer Diaz that he was going on vacation, and that Lieutenant Rosa badge number 4-145 would be filling in for him to be in charge of the office.

238. Sgt. Franceshi said that Lt. Rosa would approve Officer Diaz's vacations in July because he would still be out, and that Officer Diaz should refer any situation that occurred to Lt. Rosa.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 27 of 31

239. Lt. Rosa allowed Officer Diaz to perform her duties for a week or so. He was the only municipal employee to do so after Officer Diaz complained to the EEOC.

240. Nonetheless, by June 6, 2017, Officer Diaz was informed by Officer Rivera that Officer Rivera was being transferred to Marqueza park.

241. Lieutenant Wilfredo Castillo was the supervisor at Marqueza Park.

242. Officer Diaz called Lt. Rosa asked if she could recommend someone else for the position, since that officer had made several nasty comments to Officer Rivera and threw things around when she was near her.

243. Lt. Rosa responded that Lt. Castillo said that those were the orders, and that if she had a complaint, she should put it in writing.

244. Officer Diaz explained the situation to Officer Rivera and gave her permission to take comp time.

245. On June 8, 2017, Officer Rivera informed Officer Diaz that Stephanie Perez from the municipality's Time Card office had called her to ask who had authorized the comp time.

246. Officer Rivera said that Officer Diaz had authorized the comp. time.

247. Ms. Perez responded that the only one who could authorize comp. time was Lt. Rosa.

248. Officer Diaz called Ms. Perez and told her that she had authorized the comp time for Officer Rivera.

249. Ms. Perez responded that only Lt. Rosa could make decisions in DRAAS until the sergeant returned from his vacation.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 28 of 31

250. Officer Diaz responded that she had the authority to make decisions.

251. Ms. Perez indicated that she would call Lt. Rosa to check.

252. Lt. Castillo questioned the comp. time that Officer Rivera received based on Officer Diaz's authorization.

253. Officer Diaz was drained and exhausted by these daily battles, and she eventually ended up on sick leave.

254. Ms. Diaz filed a second EEOC complaint due to the retaliation she experienced after filing the first claim.

255. Shortly after that, Mayor O'Neill resigned, but the harassment continued because the majority of people he had appointed remained in their positions.

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983

First Amendment Right of Free Association

256. Plaintiffs incorporate as if realleged the preceding paragraphs with the same force and effect as if herein set forth.

257. Defendants violated plaintiffs' free association rights by discriminating against them and retaliating against them for associating with each other and eventually marrying.

258. Defendants should compensate plaintiffs for their economic losses, punitive damages, attorneys' fees pursuant to 42 U.S.C. § 1988 in an amount of no less \$1,000,000.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 29 of 31

SECOND CLAIM FOR RELIEF
TITLE VII

259. Plaintiffs incorporate as if re-alleged the preceding paragraphs with the same force and effect as if herein set forth.

260. Under Title VII, plaintiffs are entitled to economic damages, compensatory damages, and punitive damages in an amount not less than \$1,000,000.

THIRD CLAIM FOR RELIEF

LAW 100

261. The acts of defendants, previously stated in this Complaint, also violate Puerto Rico's Act 100 of June 30, 1959, as amended, 29 L.P.R.A. 146 et seq. because the discrimination based on gender was a motivating factor and made a difference in the decision to retaliate against plaintiffs, and defendants willfully or in the alternative unwilfully, engaged in practices that discriminated against plaintiffs on the basis of Officer Diaz's gender and complaints of sexual harassment.

262. As a result of the before mentioned, plaintiffs are entitled to be paid by defendants the following damages:

- a) Liquidated damages of double the lost overtime pay that is awarded, which exceeds the sum of \$10,000.00 plus interest.
- b) A sum in excess of \$1,000,000.00 for emotional distress and mental anguish, such amount to be doubled pursuant to the law.
- c) Any other permitted damages under the law.

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 30 of 31

FOURTH CLAIM FOR RELIEF
ARTICLE 1802
(Mental and Moral Damages)

263. Plaintiffs incorporate as if re-alleged the preceding paragraphs with the same force and effect as if herein set forth.

264. As a result of the before mentioned acts and omissions, the defendants have directly and intentionally inflicted emotional distress, humiliation, harassment, loss of enjoyment of life, and mental anguish on the plaintiffs, in an amount in excess of \$2,000,000.00. Officer Diaz has suffered immensely because of the illegal activities of defendants and is desperate, depressed, and anxious. She has spent endless nights and days of worry, uncertainty and despair. Defendants' actions also caused harm to the physical health of Officer Diaz, requiring medical treatment. Officer Reyes also suffered emotional harm due to defendants' actions.

TRIAL BY JURY

165. Plaintiffs demand a trial by jury.

WHEREFORE, in view of the foregoing, plaintiffs respectfully request that judgment be entered against the defendants jointly and severally, as follows:

- a) Ordering the defendants to pay plaintiffs a sum in excess of \$1,000,000.00, plus interest as per the First Claim for Relief (Section 1983);
- b) Ordering the defendants to pay plaintiffs a sum in excess of \$1,000,000.00, plus interest as per the Second Claim for Relief (Title VII);

Yenetamie Diaz, et als. vs. Municipio de Guaynabo, et als.
Complaint
Page 31 of 31

c) Ordering the defendants to pay plaintiffs a sum in excess of \$1,010,000.00, plus interest as per the Third Claim for Relief (Law 100, Statutory prohibition against discrimination based on gender);

d) Ordering defendants to pay plaintiff the amount they owe of \$2,000,000.00 plus legal interest and attorney's fees as per the Fourth Claim for Relief (Article 1802Mental and Moral Damages);

e) Ordering defendants to cease and desist from any further discriminatory conduct;

f) Ordering the defendants in the respective causes of action to pay interests, costs, and attorneys fees, pursuant to 42 USCA §§ 1988 and 2002-5(k); and,

g) Granting such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 10th day of September 2018.

**LAW OFFICES OF
JANE BECKER WHITAKER**
P.O. Box 9023914
San Juan, Puerto Rico 00902-3914
Tel. 787-945-2406

/s/ JANE BECKER WHITAKER
JANE BECKER WHITAKER
USDCPR Bar Number 205110
janebeckerwhitaker@gmail.com
janebeckerwhitaker@yahoo.com