

**TESTIMONY OF RICHARD E. CONDIT  
SENIOR COUNCIL  
GOVERNMENT ACCOUNTABILITY PROJECT**

**BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA**

**COMMITTEE ON GOVERNMENT OPERATIONS  
AND THE ENVIRONMENT**

**JUNE 26, 2009**

Good Morning. I appreciate the opportunity to testify on aspects of the Whistleblower Protection Amendment Act of 2009. Considering the testimony of my colleague Tom Devine and other witnesses this morning, I will confine my comments to one distinct area of the law involving disciplinary actions.

As presently written, the District's Whistleblower Protection Act (WPA) provides that any manager, supervisor, department director, or other District official who threatens or takes a prohibited personnel action or otherwise retaliates against an employee because of the employee's protected disclosure(s) shall be subject to disciplinary action up to dismissal. D.C. Code § 1-615.55(a). In addition, as part of the relief ordered in a whistleblower case the law current provides that the supervisor who is found to have violated the employee's rights "shall be subject to a civil fine not to exceed \$1000." D.C. Code § 1-615.55(b).

Section 2(d) of the Bill amends this provision to increase the civil penalty from \$1000 to \$10,000. GAP applauds this improvement as well as the other important amendments in the Bill. However, in order for the disciplinary action section of the Bill to be meaningful it

must make clear that employees when forced to file suit defending themselves against retaliation also have the right to seek disciplinary accountability against the offending supervisors individually and to demand that the court, administrative body, or arbitrator that hears the case may also assess an appropriate civil penalty.

When the Act was passed, this was the clear language of the law. It was hailed as an accountability breakthrough, because otherwise those who retaliate have nothing to lose. Unfortunately, it has been a victim of hostile judicial activism that has simply refused to recognize the Council's action. Courts that have considered the issue have ruled that the disciplinary section of the current law does not provide a right of action against supervisors. See, *e.g.*, *Winder v. Erste*, 2005 WL 736639, at \*9; *Tabb v. District of Columbia, et al.*, 477 F.Supp.2d 185, 189 (D.D.C. 2007).

Therefore, the Council needs to clarify for the Courts its intent to allow aggrieved employees to include retaliating supervisors as defendants in lawsuits or administrative actions and authorize the tribunal to assess damages and an appropriate civil fine for violating

the law. GAP recommends modifying the language in Section 2(d) of the Bill to accomplish this important goal.

The importance of individual accountability for managers, supervisors, and others with authority over employees cannot be overstated. As you are no doubt aware, there are agencies of the District Government that have demonstrated strong inclinations to retaliate against whistleblowers and to avoid openness, transparency and accountability at almost any cost. These agencies include the Fire & Emergency Medical Services Department (FEMS), Child & Family Services Agency (CFSA), and even, the Office of Attorney General (OAG).

The stories of harassment and retaliation suffered by employees who make protected disclosures are compelling. For example, Captain Vanessa Coleman, who has been a firefighter since 1992, made protected disclosures about the handling of the March 2008 Mt. Pleasant apartment building fire. Capt. Coleman has also made disclosures about the abuse of authority and violations of policy and regulations perpetrated by higher level officials in her chain-of-command. As a result of her disclosures, Capt. Coleman was

illegally ordered to submit to a psychological examination by

Assistant Chief Brian Lee. Capt. Coleman has challenged this action