

Tenth Circuit Decision Reminds Educational Institutions to be Wary of Whistleblower Retaliation Claims

On April 24, 2020, the Tenth Circuit Court of Appeals revived a former college coach's retaliation claim brought against his previous employer. The case, *Marc Benjamin v. Board of Trustees of Barton Community College*, involves a former women's softball coach who claimed he was terminated by the college because he "blew the whistle" on other college coaches who had violated league rules. The district court that first heard the case granted summary judgment in favor of the college, effectively finding that no reasonable jury could find in favor of Mr. Benjamin's claims. Mr. Benjamin appealed, and the Tenth Circuit subsequently reversed the district court's decision.

The Tenth Circuit found significant factual differences between Mr. Benjamin's and the college's narratives. Mr. Benjamin asserted that he had been terminated because he reported athletic conference rules violations of other coaches at the college to his supervisor, the college's Athletic Director. The college, on the other hand, contended that Mr. Benjamin's termination was unrelated to his report of the violations, and that Mr. Benjamin was terminated for misconduct, including use of foul language, abuse of discretionary funds, poor recruiting performance and complaints received regarding his behavior from players and their parents. When courts are presented with discrepancies such as these, they often reject summary judgment in favor of a trial, where the evidence can be fully heard and decided upon.

The Tenth Circuit was also concerned that evidence could reveal that the college's reasons for terminating Mr. Benjamin were "pretextual," or given as an excuse to disguise the college's true, discriminatory motive of terminating Mr. Benjamin for reporting the other coaches' violations. Specifically, the court found that a reasonable jury could find that the college's reasons for terminating Mr. Benjamin were pretextual because (1) the short temporal proximity between Mr. Benjamin's reporting to his supervisor the rules violation of other coaches and his termination; (2) the fact that many of the college's reasons for terminating Mr. Benjamin, in terms of his alleged misconduct, had occurred long before he made the report of the rules violation, as well as before their decision to terminate him; and (3) his supervisor manufactured reasons to justify his termination. The court also noted that despite the college's laundry list of Mr. Benjamin's deficiencies as an employee, he had never been disciplined prior to his termination.

The case has been returned to the district court, where the proceedings will continue to trial. The Tenth Circuit's decision is a reminder to all employers that the termination of an employee who has acted as a "whistleblower" and reported a violation of law or policy will be subjected to a heightened scrutiny by the courts. Therefore, it is particularly important for employers who receive allegations of employee misconduct to investigate and address those allegations as promptly as possible to make clear that the termination or other discipline is unrelated to the employee's whistleblowing activity.

If you would like more information on this decision, or on whistleblower retaliation cases, please contact [Theresa Rusnak](#), or the attorney at Bond, Schoeneck & King with whom you are in frequent contact.



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