She sued the mayor and city of Carolina for sex discrimination under Title VII and Puerto Rican law in the pre-hiring process, and for discrimination and retaliation claims in the post-hiring period. The mayor filed a motion to dismiss all claims against him, while the city filed a motion to dismiss *only the post-hire* claims. The District Court granted the mayor's motion to dismiss since Garayalde-Rijos never opposed it. It also granted the city's motion to dismiss the post-hire claims under Puerto Rican law since Garayalde-Rijos did not exhaust her administrative avenues, and the Title VII claims because she failed to allege a prima facie case. Finally, the Court, sua sponte, dismissed all her pre-hire claims without notice or explanation. Garayalde-Rijos appealed.

HELD: The First Circuit affirmed the dismissal of all claims against the mayor because Garayalde-Rijos failed to oppose the motion, and the post-hire Title VII claims because of her failure to exhaust administrative remedies. But the Circuit Court reversed the District Court on her pre-hire claims, concluding the District Court erred with its sua sponte dismissal.

DISCUSSION:The Circuit Court noted that sue sponte dismissals are rare, extreme and erroneous unless the party is given notice and opportunity to amend the complaint. The city had not met its burden, which was to establish that, even viewing everything most favorably to Garayalde-Rijos, her claim was meritless. The Court also rejected the city's alternative argument (made only in appeal) that, since Garayalde-Rios was ultimately hired, she could only complain of a delay in hiring, which complaint would not survive on remand. The Court rejected dismissal of the case at the pleading stage because all that was required was a claim plausible on its face. The Court found this threshold easily met given she was the only female to apply, had the highest scores, would have been the first woman ever in the city's fire department--and that less qualified and lower-scoring men were hired before her. The mere fact that she was ultimately hired did not mean she had not been discriminated against – she was denied benefits and pay for an eight-month period.

As for the retaliation claim, the Circuit Court stated bluntly that the District Court was wrong as to the law. Relying on the fact that this case was at the pleading stage, not summary judgment, the Court found the District Court's requirement that Garayalde-Rijos state a prima facie case plainly incorrect. She only had to state a plausible claim, and this she had done. The allegation that she had not been provided with adequate protective gear sufficed to state a claim.

http://media.ca1.uscourts.gov/pdf.opinions/13-1487P-01A.pdf (last accessed May 1, 2014).

Employment: Lawsuit Alleging Retaliatory Firing Due to Request for Hearing Fails to Raise Issue of Public Concern

Morgan v. Covington Township, No. 13-3488 (3d Cir. Apr. 16, 2014).

Where a police officer argued that he was terminated in retaliation for having requested a hearing, the Third Circuit has upheld a lower court determination that the complaint did not raise Constitutionally-cognizable issues of public concern.

William Morgan, a Covington police officer, was suspended without pay by the town after his sergeant sent the Board of Supervisors a letter noting two incidents. In the first, Morgan allegedly interfered in an investigation involving his ex-girlfriend by coercing a man making accusations against her to drop them. In the second he allegedly unlawfully used his police credentials to enter the apartment of another ex-girlfriend. The town's suspension notice indicated that the town was also considering termination and that Morgan had the right to a hearing. He retained a lawyer and sought a hearing. Two days thereafter, the town notified him that the allegations had been forwarded to the state police for further investigation. Morgan subsequently failed to show up for two consecutive hearings, whereupon the town terminated him.

Morgan sued, contending that the town and personally-named defendants retaliated against him for exercising his First Amendment right to petition: he was exercising his constitutional right to participate in the democratic process, which he did by seeking a hearing and filing the lawsuit. The District Court found for the town.

HELD: The Third Circuit affirmed, holding that Morgan had not raised an issue of public concern.

DISCUSSION: The Court stated the rule that a public employee may bring retaliation claims against a public employer if the employee was exercising his constitutional rights. The so-called Petition Clause gives citizens the right to "petition the Government for a redress of grievances." This right gives public employees the ability to participate as a citizen in the democratic process, but does not "transform everyday employment disputes into matters of constitutional litigation." The Circuit agreed with the District Court that Morgan was not expressing his views on a matter of public concern when he sought a hearing or filed his lawsuit. Morgan's letter requesting the hearing made vague only reference to misconduct by the government and focused primarily on getting his job back. Moreover, he failed to appear at the requested hearing, despite two opportunities. In essence, Morgan's lawsuit did nothing more than inform the public of the circumstances of *Morgan's own* dismissal, and did not express a political or social point of view, or discuss systemic problems in the town's procedures.

The Court recognized that although a complaint focuses on employment, it might be possible to find that it also concerns a matter of public concern; mixed motives are possible in employment scenarios, but the context and content of the complaint must show a mixed motive. Morgan's case lacked any such showing. Moreover, the public officials in the case were not alleged to have retaliated based on a ground that could be applied to others – race, gender, sexual harassment, etc., but rather on the narrow circumstances of Morgan's employment, indicating it was not on matter of public concern.

The Court also rejected Morgan's argument that newspapers running stories about his case evidenced that it was an issue of public concern. Although newspaper publicity might indicate public concern, the context and content of Morgan's claims did not support such a finding. He had not published a letter to the editor, had refused to speak to the media, and did not use the hearing or media to advance any political or social message. The new media coverage of the story merely amounted to "the personal gripe of one employee."

http://law.justia.com/cases/federal/appellate-courts/ca3/13-3488/13-3488-2014-04-16.html (last accessed May 1, 2014).