# Please Vote on Two Citation Formats

By Joseph Kimble

I'd like to try an experiment. It's not exactly scientific, but the results could be revealing—and useful.

There's a story behind the experiment, but I'll save the story for the July column. For now, I'll just encourage all you loyal readers to vote. Below are three pairs of examples. Only the second pair has slight differences; otherwise, they are identical except for the placement of the citations. The examples marked #1 do it one way; the examples marked #2 do it another. Which do you think reads better?

Please send me an e-mail (kimblej@cooley.edu) and say in the subject line "I vote for #1" or "I vote for #2." No split votes, please.

| #1 | #2 |
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| On February 10, 2009, Burton issued a memorandum to Plaintiff reassigning her from her bid position as a school officer to a general corrections officer at TCF. (Defs.' Ex. L.) Defendant Barnhardt testified that the move was not punitive, and that Plaintiff was not disciplined in any way. (Barnhardt Dep. at 113–114, Defs.' Ex. J.) Plaintiff receives the same pay, maintains the same rank, and works on the same shift. (*Id.* at 113.) However, her job assignments now rotate. (*Id.*) And, as set forth above, she no longer has a set schedule, with weekends and holidays off. (Pl.'s Dep. at 10, Pl.'s Ex. 153.) Plaintiff also testified that her previous position as a school officer was less dangerous, because it has less contact with the prison population. (*Id.* at 153–54.) | On February 10, 2009, Burton issued a memorandum to Plaintiff reassigning her from her bid position as a school officer to a general corrections officer at TCF.[1] Defendant Barnhardt testified that the move was not punitive, and that Plaintiff was not disciplined in any way.[2] Plaintiff receives the same pay, maintains the same rank, and works on the same shift.[3] However, her job assignments now rotate.[4] And, as set forth above, she no longer has a set schedule, with weekends and holidays off.[5] Plaintiff also testified that her previous position as a school officer was less dangerous, because it has less contact with the prison population.[6]<br>1 Defs.' Ex. L.<br>2 Barnhardt Dep. at 113–114, Defs.' Ex. J.<br>3 *Id.* at 113.<br>4 *Id.*<br>5 Pl.'s Dep. at 10, Pl.'s Ex. 153.<br>6 *Id.* at 153–54. |

| #1 | #2 |
|---|---|
| Defendants assert that its alleged adverse action is too trivial to survive summary judgment. It's undisputed that Plaintiff's reassignment did not result in a loss of pay, a change of shift time, or a drop in rank….<br>Sixth Circuit case law does not support Defendant's position. Where the record demonstrates that "being transferred…causes Plaintiffs to suffer harm to their reputations… and can negatively impact their daily experiences including their commute, coworker friendships, and community relationships," *Leary v. Daeschner,* 349 F.3d 888, 901 (6th Cir. 2003), the Sixth Circuit has held that "involuntary transfer from one job to another is action that 'would likely chill a person of ordinary firmness from continuing to engage in that constitutionally protected activity.'" *Id.* (*quoting Bloch v. Ribar,* 156 F.3d 673, 679 (6th Cir. 1998) (impairment of reputation, humiliation, mental suffering subject to compensatory damages)). The Sixth Circuit has held that even when the employee suffers no loss in pay or rank, such a transfer can qualify as an adverse action for purposes of retaliation claims. *Id.*; *see also Boger v. Wayne County,* 950 F.2d 316, 321 (6th Cir. 1991) (where "extreme embarrassment, humiliation, extreme mental anguish, and loss of professional esteem" was alleged, "Plaintiff need not have suffered loss of salary, promotional opportunities, seniority or other monetary deprivations to have a cognizable interest protected by the First Amendment or the equal protection clause."). | Defendants assert that its alleged adverse action is too trivial to survive summary judgment. It's undisputed that Plaintiff's reassignment did not result in a loss of pay, a change of shift time, or a drop in rank….<br>Sixth Circuit case law does not support Defendant's position. A record may demonstrate that being transferred "causes Plaintiffs to suffer harm to their reputations… and…negatively impact[s] their daily experiences including their commute, coworker friendships, and community relationships."[1] If so, then the "involuntary transfer from one job to another is action that 'would likely chill a person of ordinary firmness from continuing to engage in that constitutionally protected activity.'"[2] The Sixth Circuit has held that even when the employee suffers no loss in pay or rank, such a transfer can qualify as an adverse action for purposes of retaliation claims.[3]<br>1 *Leary v. Daeschner,* 349 F.3d 888, 901 (6th Cir. 2003).<br>2 *Id.* (*quoting Bloch v. Ribar,* 156 F.3d 673, 679 (6th Cir. 1998) (impairment of reputation, humiliation, mental suffering subject to compensatory damages)).<br>3 *Id.*; *see also Boger v. Wayne County,* 950 F.2d 316, 321 (6th Cir. 1991) (where "extreme embarrassment, humiliation, extreme mental anguish, and loss of professional esteem" was alleged, "Plaintiff need not have suffered loss of salary, promotional opportunities, seniority or other monetary deprivations to have a cognizable interest protected by the First Amendment or the equal protection clause."). |

| #1 | #2 |
|---|---|
| Once Plaintiff meets her burden of establishing a prima facie case of retaliation, the burden shifts to the employer who "may 'show[] by a preponderance of the evidence that it would have reached the same decision…even in the absence of the protected conduct.'" *Rodgers v. Banks,* 344 F.3d 587, 602 (6th Cir. 2003) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 287 (1977)). This latter burden, however, "'involves a determination of fact' and ordinarily is 'reserved for a jury or the court in its fact-finding role.'" *Id.* (quoting *Perry v. McGinnis,* 209 F.3d 597, 604 n.4 (6th Cir. 2000)). Defendants argue they can meet this burden as a matter of law, asserting that they would have reassigned Plaintiff based on "complaints from staff and prisoners about the unnecessarily harsh manner in which she performed her duties as school officer." (Defs.' Br. at 16.) | Once Plaintiff meets her burden of establishing a prima facie case of retaliation, the burden shifts to the employer who "may 'show[] by a preponderance of the evidence that it would have reached the same decision…even in the absence of the protected conduct.'"[1] This latter burden, however, "'involves a determination of fact' and ordinarily is 'reserved for a jury or the court in its fact-finding role.'"[2] Defendants argue they can meet this burden as a matter of law, asserting that they would have reassigned Plaintiff based on "complaints from staff and prisoners about the unnecessarily harsh manner in which she performed her duties as school officer."[3] |

1 *Rodgers v. Banks,* 344 F.3d 587, 602 (6th Cir. 2003) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 287 (1977)).
2 *Id.* (quoting *Perry v. McGinnis,* 209 F.3d 597, 604 n.4 (6th Cir. 2000)).
3 Defs.' Br. at 16.

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"Plain Language" is a regular feature of the ***Michigan Bar Journal***, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. We seek to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain-English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For more information about plain English, see our website—www.michbar.org/generalinfo/plainenglish/.