

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Colorado

EUGENE HOWARD

Plaintiff

v.

CITY OF FORT COLLINS & KATHLEEN WALKER

Defendant

Civil Action No. 17-cv-00493 RPM-MEH

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) City of Fort Collins
300 LaPorte Avenue
Fort Collins, CO 80521

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark S Bove, PC
730 17th Street, Suite 635
Denver, CO 80202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/24/2017



s/D. Berardi
Signature of Clerk or Deputy Clerk

RECEIVED

MAR 02 2017

CITY ATTORNEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

EUGENE HOWARD,

Plaintiff,

v.

CITY OF FORT COLLINS and KATHLEEN WALKER,

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiff, Eugene Howard, by and through his attorney, Mark S. Bove, P.C., hereby submits the following Complaint with Jury Demand, stating and alleging as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Eugene Howard ("Mr. Howard"), is a citizen of the United States and a resident and citizen of the State and District of Colorado. Mr. Howard is of African-American race and color.

2. Defendant City of Fort Collins is a municipal corporation and political subdivision of the State of Colorado that exists and operates pursuant to the laws of Colorado, is an employer within the meaning of 42 U.S.C. §2000e, et seq., and is a person within the meaning of 42 U.S.C. §1983.

3. Defendant Kathleen Walker was at pertinent times, the Operations Manager of Transfort, the public transportation agency of the City of Fort Collins, and had authority to make personnel decisions concerning Mr. Howard's employment, including termination of his employment, and is a person within the meaning of 42 U.S.C. §1983.

4. This is an action to redress race discrimination in employment practices, and in the making and execution of contracts, and to vindicate the civil and constitutional rights of Mr. Howard, including those provided by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Claims are brought pursuant to 42 U.S.C. §2000e, 42 U.S.C. §1981, and 42 U.S.C. §1983. Jurisdiction is based on 28 U.S.C. §1331 and §1343, and 42 U.S.C. § 2000e-5.

5. The unlawful employment practices and other actions complained of herein occurred primarily in the State and District of Colorado. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. § 2000e-5(f).

6. On or about February 5, 2016, Mr. Howard filed a Charge of Discrimination against the City of Fort Collins, with the Equal Employment Opportunity Commission (EEOC). He obtained a Notice of Right to Sue on this Charge from the EEOC on or about January 3, 2017.

GENERAL ALLEGATIONS

7. Plaintiff incorporates by reference paragraphs 1 through 6 as if set forth here verbatim.

8. Mr. Howard began his employment with the City of Fort Collins ("the City") on or about August 4, 2014. At the time of the events in question, he worked as a Bus Operator. Mr. Howard's work performance at all pertinent times was at least satisfactory.

9. Mr. Howard successfully passed his introductory period in the Bus Operator position. He received a pay raise at the time of passing the introductory period. He received an additional pay raise and a commendation regarding his work.

10. Mr. Howard observed that, during his tenure, there were virtually no other African-American or black persons employed as bus operators by the City of Fort Collins. Indeed, based on his knowledge and belief, there was only one other black or African-American bus operator employed by the City during the entire time he worked for the City, out of approximately 90 operators employed at any given time. Neither Ms. Walker nor any other supervisor or manager of the City in Mr. Howard's line of authority, was black or African-American.

11. On or about January 11, 2015, a white female, D.B., alleged that Mr. Howard improperly touched her, at his home, after she had spent the night there in the company of Mr. Howard's grandson, C.T. The allegations of D.B. were completely false and baseless, and were never corroborated by any physical evidence, any testimonial evidence, or any evidence of any other type. The allegations of D.B. were based on racially discriminatory stereotyping of a long historical lineage, that of the oversexed black man defiling the innocent white woman.

12. Consistent with the historical stereotyping, the Larimer County Sheriff's Department, on or about March 10, 2015, arrested and jailed Mr. Howard on charges of felony sexual assault, despite the absence of evidence supporting such a charge. Mr. Howard retained counsel, who investigated the matter and established that Mr. Howard was not guilty of the charges filed, nor any other misconduct involving D.B. On August 27, 2015, the District Attorney for the Eighth Judicial District moved to dismiss all charges against Mr. Howard, due to insufficient evidence, and in the interest of justice, which dismissal was granted by the court.

13. On the morning of March 11, 2015, Mr. Howard, who was scheduled to work that day, was still in the process of seeking release from jail. Mr. Howard's wife, who is also employed by the City of Fort Collins, therefore contacted his supervisor, Carolyn Harmes, to notify Ms.

Harmes that Mr. Howard would not be able to come in to work that day. On March 13, 2015, Mr. Howard spoke directly with Ms. Harmes, and requested a leave of absence of one week, for personal reasons. On information and belief, both the absence request of March 11 and the one-week leave of absence request of March 13, were granted by the City.

14. On March 19, 2015, Mr. Howard met with Kathleen Walker, Operations Manager, and Craig Dubin, Administrative Manager, regarding his return to work. Mr. Howard fully disclosed the criminal charge against him, including the identification of the alleged victim as white, and explained the baseless nature of the allegations, the lack of any supporting evidence, and his full innocence of the allegations against him.

15. Ms. Walker and Mr. Dubin did not allow Mr. Howard to return to work, but rather placed him on administrative leave without pay. On April 3, 2015, Mr. Dubin telephoned Mr. Howard, and told him to report to a meeting on April 6, 2015.

16. At the meeting of April 6, 2015, which was attended by Mr. Dubin and Mr. Howard, Mr. Dubin gave Mr. Howard a written Notice of Termination, issued by Ms. Walker, stating that Mr. Howard's employment with the City was terminated, based on his alleged failure to report the criminal charges, and based on his alleged off-duty conduct related to the allegations of D.B. Mr. Howard was provided with no written notice of proposed termination, was provided with no pre-termination right to be heard, was provided with no appeal rights, and was provided with no other procedural protections, including those specified by the City's Personnel Policies and Procedures.

17. In fact, Mr. Howard duly reported the criminal charges prior to his return to work, in conformity with the City Personnel Policies and Procedures; and, in fact, the City did no meaningful investigation of the allegations against Mr. Howard, and adopted the racial stereotyping

and race discrimination employed by D.B. and Larimer County, in deciding to unlawfully terminate Mr. Howard's City employment. And, the City had no proper cause for the termination of Mr. Howard's employment under its Personnel Policies and Procedures.

18. Following dismissal of the charges by the District Attorney, Mr. Howard, individually and through his former counsel, Lee Christian, contacted the City, advised the City of the dismissal, and requested reinstatement to his position. The City declined to reinstate Mr. Howard or take any other remedial action.

FIRST CLAIM FOR RELIEF

19. Plaintiff incorporates by reference paragraphs 1 through 18 as if set forth here verbatim.

20. Defendant City of Fort Collins intentionally engaged in illegal employment practices and policies by discriminating against plaintiff on the basis of his race and color in discharging him from employment, in violation of Title VII of the Civil Rights Act of 1964, as amended.

21. As a result of said unlawful employment practices, Mr. Howard has suffered and will continue to suffer loss of pay, salary and benefits, pension accrual, prejudgment interest, other monetary losses, and reasonable attorney's fees and costs.

22. As a result of said unlawful employment practices, Mr. Howard has suffered and will continue to suffer physical, mental and emotional injuries and disabilities, loss of career opportunities, inconvenience, disruption and loss of enjoyment of life, and related injuries of a similar nature, entitling him to compensatory damages.

SECOND CLAIM FOR RELIEF

23. Plaintiff incorporates by reference paragraphs 1 through 22 as if set forth here verbatim.

24. Defendants, in the course and scope of their employment, and acting intentionally and with racial animus toward Mr. Howard, denied him the same rights as are enjoyed by white citizens to make and enforce contracts. In the performance of the contract for Mr. Howard's employment, defendants denied him the full and equal benefit of all laws and proceedings for the security of persons and property, and denied his right to be subject to the same extent as white citizens to like punishment, pains, penalties and exactions, all in violation of 42 U.S.C. §1981.

25. As a result of said violation, Mr. Howard has suffered and will continue to suffer loss of pay, salary and benefits, pension accrual, prejudgment interest, other monetary losses, and reasonable attorney's fees and costs.

26. As a result of the said violation, Mr. Howard has suffered and will continue to suffer physical, mental and emotional injuries and disabilities, loss of career opportunities, inconvenience, disruption and loss of enjoyment of life, and related injuries of a similar nature, entitling him to compensatory damages.

27. The actions of defendants were done intentionally and willfully. Defendants knew that their conduct was prohibited by federal law, or reasonably should have known that their conduct was prohibited by federal law.

28. The conduct of defendants was attended by circumstances of willful and wanton disregard for the rights and feelings of Mr. Howard, and an award of punitive damages is therefore justified.

THIRD CLAIM FOR RELIEF

29. Plaintiff incorporates by reference paragraphs 1 through 28 as if set forth here verbatim.

30. Mr. Howard has and had a right to equal protection of the laws, pursuant to Title VII of the Civil Rights Act of 1964, as amended, and pursuant to 42 U.S.C. §1981, and pursuant to the Fourteenth Amendment to the United States Constitution.

31. Mr. Howard had a protected property interest in his continued public employment with the City of Fort Collins, pursuant to federal law, Colorado law, and the ordinances, rules and policies of the City, including the City's Personnel Policies and Procedures.

32. Acting under color of state law, Defendants deprived Mr. Howard of his property interest in continued employment without due process of law, and deprived him of equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution, and under 42 U.S.C. §1981, without due process of law, all in violation of 42 U.S.C. §1983.

33. Defendants acted pursuant to their custom, policy and usage in depriving Mr. Howard of his right to due process of law and equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution; and under 42 U.S.C. § 1981, all in violation of 42 U.S.C. § 1983.

34. Defendant Walker had final policy-making and decision-making authority on behalf of the City of Fort Collins with respect to the termination and discharge of Mr. Howard.

35. As a result of the unlawful conduct of Defendants, Mr. Howard has suffered and will continue to suffer loss of pay, salary and benefits, pension accrual, prejudgment interest, other monetary losses, and reasonable attorney's fees and costs.

36. As a further result of the unlawful conduct of Defendants, Mr. Howard has suffered and will continue to suffer physical, mental and emotional injuries and disabilities, loss of career opportunities, inconvenience, disruption and loss of enjoyment of life, and related injuries of a similar nature.

37. The unlawful acts of Defendants were committed with malice or reckless indifference to the federally protected rights of Mr. Howard, justifying an award of punitive damages.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor and against Defendants, including the following relief:

- a. Injunctive relief as the Court deems proper;
- b. Back pay, benefits, pension and seniority;
- c. Front pay as applicable;
- d. Compensatory, general and punitive damages as provided by law;
- e. Prejudgment and post judgement interest;
- f. Costs and reasonable attorney's fees, including expert witness fees; and
- g. Such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL TO A JURY OF SIX ON ALL ISSUES SO TRIABLE.

MARK S. BOVE, P.C.

s/ Mark S. Bove
Mark S. Bove
730 17th Street, Suite 365
Denver, CO 80202
303-393-6666
msbove@aol.com

Address of plaintiff:
17037 Mars Hill Lane
Wellington, CO 80549

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____ -cv- _____ - _____

Plaintiff(s),

v.

Defendant(s).

**CONSENT/NON-CONSENT TO THE EXERCISE OF JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE**

Under 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, D.C.COLO.LCivR 72.2, and D.C.COLO.LAPR 72.2 – Consent Jurisdiction of a Magistrate Judge, you are notified that a United States magistrate judge of this district court is available to handle all dispositive matters in this civil action, including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge, however, is permitted only if all parties voluntarily consent and the district judge orders the reference to a magistrate judge under 28 U.S.C. § 636(c). An appeal from a judgment entered by a magistrate judge shall be taken directly to the appropriate United States Court of Appeals in the same manner as an appeal from any other judgment of a district court.

Consent to magistrate judge jurisdiction is voluntary, and no adverse consequence shall result if consent is declined. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned. Pursuant to D.C.COLO.LCivR 72.2, no district judge or magistrate judge, court official, or court employee may attempt to influence the granting or withholding of consent to the reference of any civil matter to a magistrate judge under this rule.

If this civil action has been referred to a magistrate judge to handle certain nondispositive matters, that reference shall remain in effect. Upon entry of an order of reference pursuant to 28 U.S.C. § 636(c), the civil action will be assigned to the magistrate judge then assigned to the case.

You are directed to confer with all parties in this action and execute and file with the Court the attached Election Concerning Consent/Non-Consent to United States Magistrate Judge Jurisdiction, indicating either the unanimous consent of the parties or that at least one party has declined to consent, at the earlier of (1) no later than seven days before the scheduling conference, if any; or (2) 45 days after the filing of the first response, other than an answer, to the operative complaint. All parties must

either consent to the exercise of magistrate judge jurisdiction, or any party may decline to consent. In either event, **filing of the Election Concerning Consent/Non-Consent to United States Magistrate Judge Jurisdiction is mandatory**, indicating either the unanimous consent of the parties or that at least one party has declined to consent.

Any party added to the civil action after reference to a magistrate judge shall be notified by the clerk of the obligation to complete and file the mandatory Election Concerning Consent/Non-Consent to United States Magistrate Judge Jurisdiction. If any added party does not consent to magistrate judge jurisdiction within 21 days from the date of the notice, the civil action shall be assigned to a district judge, and the magistrate judge shall continue on the case as if consent had been declined initially.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____ -cv- _____ - _____

Plaintiff(s),

v.

Defendant(s).

**ELECTION CONCERNING CONSENT/NON-CONSENT TO
UNITED STATES MAGISTRATE JUDGE JURISDICTION**

Under 28 U.S.C. § 636(c) and

(1) D.C.COLO.LCivR 40.1(c) (Assignment of Cases/Direct Assignment to Magistrate Judges);

or

(2) Fed. R. Civ. P. 73 and D.C.COLO.LCivR 72.2 (Consent Jurisdiction of a Magistrate Judge);

or

(3) D.C.COLO.LAPR 72.2 (Consent Jurisdiction of a Magistrate Judge).

CHECK ONE

all parties in this civil action CONSENT to have a United States magistrate judge conduct all proceedings in this civil action, including trial, and to order the entry of a final judgment;

OR

at least one party in this civil action DOES NOT CONSENT to have a United States magistrate judge conduct all proceedings in this civil action, including trial, and to order the entry of a final judgment.

Signatures	Party Represented	Date
_____	_____	_____
Print name	_____	_____
_____	_____	_____
Print name	_____	_____
_____	_____	_____

NOTE: You are directed to confer with all parties in this action and execute and file with the Court this Election Concerning Consent/Non-Consent to United States Magistrate Judge Jurisdiction, indicating either the unanimous consent of the parties or that at least one party has declined to consent, at the earlier of (1) no later than seven days before the scheduling conference, if any; or (2) 45 days after the filing of the first response, other than an answer, to the operative complaint. All parties must either consent to the exercise of magistrate judge jurisdiction, or any party may decline to consent. In either event, **filing of the Election Concerning Consent/Non-Consent to United States Magistrate Judge Jurisdiction is mandatory**, indicating either the unanimous consent of the parties or that at least one party has declined to consent.