

MEMORANDUM

Office of the City Attorney

001239
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: April 23, 2001

FROM: City Attorney


CONSENT

SUBJECT: Darrell E. Elmore v. City of Gainesville and Wayne Bowers, in his official capacity as City Manager and Individually; United States District Court Case No.: 1:01 CV 35 SPM


Recommendation: The City Commission authorize the City Attorney and/or special counsel if insurance coverage is available to represent the City and the City Manager in the case styled Darrell E. Elmore v. City of Gainesville and Wayne Bowers, in his official capacity as City Manager and Individually; Case No.: 1:01 CV 35 SPM.

On April 6, 2001, City Manager Wayne Bowers received a summons and complaint from Darrell Elmore, former Equal Opportunity Director for the City of Gainesville. On April 9, 2001, the City of Gainesville received a summons and complaint from Darrell Elmore in the same matter. Mr. Elmore alleges that he was discharged for racially discriminatory reasons.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

United States District Court

NORTHERN

DISTRICT OF

FLORIDA

GAINESVILLE DIVISION

DARRELL E. ELMORE,

Plaintiff,

v.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 1:01cv35 SPM

CITY OF GAINESVILLE, and WAYNE BOWERS,
in his official capacity as City Manager and Individually

Defendant.

TO: (Name and address of defendant)

Wayne Bowers, City Manager
City Hall
Gainesville, Florida 32602

A TRUE COPY
STEPHEN M. OELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 407, on the 6 day
of April, 2001
By W. Bowers
As Deputy Sheriff

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Gary L. Printy
Attorney at Law
1301 Miccosukee Road
Tallahassee, Florida 32308-5068

20

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

ROBERT A. MOSSING, CLERK

CLERK

[Signature]
(BY) DEPUTY CLERK

DATE

April 3, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

DARRELL E. ELMORE

Plaintiff,

vs.

CITY OF GAINESVILLE and WAYNE
BOWERS, in his official capacity as City
Manager and Individually.

Defendants.

CASE NO: 1:01 cv 35 SPM

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DARRELL E. ELMORE (hereinafter "ELMORE"), by and through the undersigned counsel, files this Complaint against Defendants, CITY OF GAINESVILLE (hereinafter "CITY"), and WAYNE BOWERS (hereinafter "BOWERS"), in his official capacity as City Manager and individually, and states:

GENERAL ALLEGATIONS

1. ELMORE is a citizen of the United States and at all times relevant to this complaint was a resident of Gainesville, Alachua County, Florida.
2. At all times material, defendant BOWERS is and was the City Manager for the defendant CITY and, as such, was ELMORE's direct supervisor with sole discretion to hire and fire him.

3. Defendant CITY is an employer as defined by 28 U.S.C. §§ 1981 and 1983, *et seq.*, and the Civil Rights Act of 1964, as amended in 1991.

4. This is an action for damages brought under the provisions of 42 U.S.C. §§ 1981 and 1983 and the Civil Rights Act of 1964, as amended in 1991. This Court has jurisdiction under 42 U.S.C. § 1343.

5. Venue is proper in this Court pursuant to the provisions of 28 U.S.C. § 1391(b) in that this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

STATEMENT OF FACTS

6. ELMORE is a 39-year-old, African-American male citizen of the United States.

7. At all times material, defendant BOWERS is and was the City Manager for the defendant CITY.

8. From February 5, 1998, to October 12, 2000, ELMORE was employed as the Equal Opportunity Director for the defendant CITY, under the direct supervision of the defendant BOWERS.

9. The Equal Opportunity Program of the defendant CITY had been dormant for the four years preceding the hiring of ELMORE. ELMORE was hired to revive the program and he immediately drafted the First Equal Opportunity Employment Policy Handbook for defendant CITY. The handbook was adopted by the City Commission in July 1999, and it

clearly outlined that the investigation of discrimination charges filed by City employees would be under the direction and authority of the Equal Opportunity Director.

10. Because it was not a charter office, the Equal Opportunity Director reported directly to the City Manager, as opposed to the City Commission. In January 2000, the City Commission voted to make the Equal Opportunity Director a Charter Officer, but failed to gain the required approval from the Florida Legislature.

11. In April 2000, the City's Affirmative Action Officer filed a sworn complaint against defendant CITY with the Equal Opportunity Department. The complaint alleged race, national origin, color discrimination and retaliation against the Human Resources Director for the defendant CITY.

12. On several occasions, defendant BOWERS addressed inquiries to ELMORE about the complaint filed by the City's Affirmative Action Officer and implied that there should be no investigation of the allegations.

13. In approximately late July 2000, ELMORE scheduled interviews with the defendant BOWERS and other officers in an attempt to investigate the complaint filed by the Affirmative Action Officer.

14. In October 1999, the defendant BOWERS sent ELMORE a memorandum stating, "in the future, please provide to me in advance any written information that will be distributed from the Equal Opportunity Department to any board, committee, or member of the City Commission."

15. Pursuant to the defendant BOWERS's October 1999, memo, ELMORE provided an advance copy of a July 31, 2000, memorandum to defendant BOWERS prior to distributing it to the City Commission.

16. On August 23, 2000, the defendant BOWERS sent ELMORE a memorandum, in which defendant BOWERS accused ELMORE of ignoring his October 27, 1999, directive by not gaining prior approval of the distribution and further accused ELMORE of insubordination. Until this time, the only requirement of which ELMORE had been informed was that he must provide an advance copy of his distributions to the defendant BOWERS.

17. In the last week of August 2000, ELMORE continued his attempts to investigate the complaint of discrimination filed by the City's Affirmative Action Officer, notwithstanding the opposition of defendant BOWERS. During that same period, defendant BOWERS presented ELMORE with an agreement to terminate his employment effective September 1, 2000. After ELMORE refused to sign the agreement, defendant BOWERS promptly suspended him without pay and eventually terminated his employment, citing insubordination and misconduct.

18. On October 5, 2000, defendant BOWERS conducted an evidentiary hearing into the propriety of his decision to terminate ELMORE. Subsequent to the hearing defendant BOWERS issued a termination letter to ELMORE on October 12, 2000.

COUNT I

19. The allegations contained in paragraphs 1 through 18 of this Complaint are incorporated by reference as set forth herein.

20 Title 42 U.S.C. § 1981 is the proper vehicle for bringing claims against the defendants CITY and BOWERS, in his official capacity as City Manager and individually, as the direct supervisor of the ELMORE with the authority to hire and fire employees.

21. As a direct and proximate result of these violations of ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

22. Because of the discriminatory conduct of the defendants, ELMORE has been forced to hire an attorney and is entitled to recover reasonable attorney fees and costs.

23. Based on the willful and discriminatory conduct of the defendants, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

COUNT II

24. The allegations contained in paragraphs 1 through 23 of this Complaint are incorporated by reference as if set forth herein.

25. Title 42 U.S.C. § 1981 is the proper vehicle for bringing claims against the defendant CITY as ELMORE's employer.

26. As a direct and proximate result of these violations of the ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

27. Because of defendant CITY's discriminatory conduct, ELMORE has been forced to hire an attorney and is entitled to recover reasonable attorney fees and costs of bringing this action.

28. Based on the willful and discriminatory conduct of the defendant CITY, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

COUNT III

29. The allegations contained in paragraphs 1 through 18 of this Complaint are incorporated by reference as if set forth herein.

30. Title 42 U.S.C. § 1983 is the proper vehicle for bringing claims against the defendants, CITY and BOWERS, in his official and individual capacity.

31. ELMORE enjoyed a property interest in his job and professional reputation as Equal Opportunity Director for the defendant CITY.

32. ELMORE's rights to his property are guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

33. Defendant CITY, under the color of state law, violated ELMORE's rights and denied him the enjoyment of his employment for racially discriminatory reasons. To ensure that the pattern of discrimination of the defendant CITY was not properly investigated, defendant BOWERS used the pretext of insubordination to terminate ELMORE from his position.

34. As a direct and proximate result of these violations of ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

35. Because of the discriminatory conduct of defendants CITY and BOWERS, ELMORE has been forced to hire an attorney and is entitled to recover the reasonable costs of his attorney.

36. Based on the willful and discriminatory conduct of the defendants CITY and BOWERS, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

WHEREFORE, Plaintiff DARRELL E. ELMORE demands judgment against defendants and prays this court:

A. Grant ELMORE judgment for economic damages, lost potential wages, back pay, front pay, employment benefits, pain and suffering, humiliation, and loss of enjoyment of life;

B. Award ELMORE nominal, general, compensatory, punitive and actual damages;

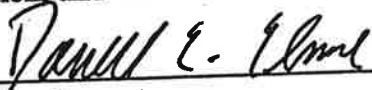
C. Grant ELMORE reasonable attorney fees and other costs of this action;

D. Award the ELMORE such other relief as be deemed just and equitable.

Plaintiff, DARRELL E. ELMORE, respectfully requests a trial by jury in this matter.

Verification

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information, and belief.



Darrell E. Elmore

Respectfully submitted,



GARY L. PRINTY

FL BAR ID NO. 363014

LAW OFFICE OF GARY L. PRINTY

1301 Miccosukee Road

Tallahassee, Florida 32308-5068

Telephone: (850) 877-7299

FAX: (850) 877-2211

Attorney for Plaintiff

Darrell E. Elmore

United States District Court

NORTHERN DISTRICT OF FLORIDA

GAINESVILLE DIVISION

DARRELL E. ELMORE,

Plaintiff,

v.

SUMMONS IN A CIVIL CASE

CASE NUMBER: 1:01 cv 35 spm

CITY OF GAINESVILLE, and WAYNE BOWERS,
in his official capacity as City Manager and Individually

Defendant.

TO: (Name and address of defendant)

City of Gainesville, Florida
c/o The Honorable Paula DeLaney, Mayor
Gainesville, Florida 32602

A TRUE COPY
STEPHEN M. GELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 240P, on the 9 day
of April, 2001
By P. Brown
As Deputy Sheriff

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Gary L. Printy
Attorney at Law
1301 Miccosukee Road
Tallahassee, Florida 32308-5068



20

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

ROBERT A. MOSSING, CLERK

CLERK

DATE

April 3, 2001

(BY) DEPUTY CLERK

[Handwritten signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

DARRELL E. ELMORE

Plaintiff,

vs.

CITY OF GAINESVILLE and WAYNE
BOWERS, in his official capacity as City
Manager and Individually.

Defendants.

CASE NO: 1:01cv35 SPM

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DARRELL E. ELMORE (hereinafter "ELMORE"), by and through the undersigned counsel, files this Complaint against Defendants, CITY OF GAINESVILLE (hereinafter "CITY"), and WAYNE BOWERS (hereinafter "BOWERS"), in his official capacity as City Manager and individually, and states:

GENERAL ALLEGATIONS

1. ELMORE is a citizen of the United States and at all times relevant to this complaint was a resident of Gainesville, Alachua County, Florida.
2. At all times material, defendant BOWERS is and was the City Manager for the defendant CITY and, as such, was ELMORE's direct supervisor with sole discretion to hire and fire him.

3. Defendant CITY is an employer as defined by 28 U.S.C. §§ 1981 and 1983, *et seq.*, and the Civil Rights Act of 1964, as amended in 1991.

4. This is an action for damages brought under the provisions of 42 U.S.C. §§ 1981 and 1983 and the Civil Rights Act of 1964, as amended in 1991. This Court has jurisdiction under 42 U.S.C. § 1343.

5. Venue is proper in this Court pursuant to the provisions of 28 U.S.C. § 1391(b) in that this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

STATEMENT OF FACTS

6. ELMORE is a 39-year-old, African-American male citizen of the United States.

7. At all times material, defendant BOWERS is and was the City Manager for the defendant CITY.

8. From February 5, 1998, to October 12, 2000, ELMORE was employed as the Equal Opportunity Director for the defendant CITY, under the direct supervision of the defendant BOWERS.

9. The Equal Opportunity Program of the defendant CITY had been dormant for the four years preceding the hiring of ELMORE. ELMORE was hired to revive the program and he immediately drafted the First Equal Opportunity Employment Policy Handbook for defendant CITY. The handbook was adopted by the City Commission in July 1999, and it

clearly outlined that the investigation of discrimination charges filed by City employees would be under the direction and authority of the Equal Opportunity Director.

10. Because it was not a charter office, the Equal Opportunity Director reported directly to the City Manager, as opposed to the City Commission. In January 2000, the City Commission voted to make the Equal Opportunity Director a Charter Officer, but failed to gain the required approval from the Florida Legislature.

11. In April 2000, the City's Affirmative Action Officer filed a sworn complaint against defendant CITY with the Equal Opportunity Department. The complaint alleged race, national origin, color discrimination and retaliation against the Human Resources Director for the defendant CITY.

12. On several occasions, defendant BOWERS addressed inquiries to ELMORE about the complaint filed by the City's Affirmative Action Officer and implied that there should be no investigation of the allegations.

13. In approximately late July 2000, ELMORE scheduled interviews with the defendant BOWERS and other officers in an attempt to investigate the complaint filed by the Affirmative Action Officer.

14. In October 1999, the defendant BOWERS sent ELMORE a memorandum stating, "in the future, please provide to me in advance any written information that will be distributed from the Equal Opportunity Department to any board, committee, or member of the City Commission."

15. Pursuant to the defendant BOWERS's October 1999, memo, ELMORE provided an advance copy of a July 31, 2000, memorandum to defendant BOWERS prior to distributing it to the City Commission.

16. On August 23, 2000, the defendant BOWERS sent ELMORE a memorandum, in which defendant BOWERS accused ELMORE of ignoring his October 27, 1999, directive by not gaining prior approval of the distribution and further accused ELMORE of insubordination. Until this time, the only requirement of which ELMORE had been informed was that he must provide an advance copy of his distributions to the defendant BOWERS.

17. In the last week of August 2000, ELMORE continued his attempts to investigate the complaint of discrimination filed by the City's Affirmative Action Officer, notwithstanding the opposition of defendant BOWERS. During that same period, defendant BOWERS presented ELMORE with an agreement to terminate his employment effective September 1, 2000. After ELMORE refused to sign the agreement, defendant BOWERS promptly suspended him without pay and eventually terminated his employment, citing insubordination and misconduct.

18. On October 5, 2000, defendant BOWERS conducted an evidentiary hearing into the propriety of his decision to terminate ELMORE. Subsequent to the hearing defendant BOWERS issued a termination letter to ELMORE on October 12, 2000.

COUNT I

19. The allegations contained in paragraphs 1 through 18 of this Complaint are incorporated by reference as set forth herein.

20 Title 42 U.S.C. § 1981 is the proper vehicle for bringing claims against the defendants CITY and BOWERS, in his official capacity as City Manager and individually, as the direct supervisor of the ELMORE with the authority to hire and fire employees.

21. As a direct and proximate result of these violations of ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

22. Because of the discriminatory conduct of the defendants, ELMORE has been forced to hire an attorney and is entitled to recover reasonable attorney fees and costs.

23. Based on the willful and discriminatory conduct of the defendants, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

COUNT II

24. The allegations contained in paragraphs 1 through 23 of this Complaint are incorporated by reference as if set forth herein.

25. Title 42 U.S.C. § 1981 is the proper vehicle for bringing claims against the defendant CITY as ELMORE's employer.

26. As a direct and proximate result of these violations of the ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

27. Because of defendant CITY's discriminatory conduct, ELMORE has been forced to hire an attorney and is entitled to recover reasonable attorney fees and costs of bringing this action.

28. Based on the willful and discriminatory conduct of the defendant CITY, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

COUNT III

29. The allegations contained in paragraphs 1 through 18 of this Complaint are incorporated by reference as if set forth herein.

30. Title 42 U.S.C. § 1983 is the proper vehicle for bringing claims against the defendants, CITY and BOWERS, in his official and individual capacity.

31. ELMORE enjoyed a property interest in his job and professional reputation as Equal Opportunity Director for the defendant CITY.

32. ELMORE's rights to his property are guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

33. Defendant CITY, under the color of state law, violated ELMORE's rights and denied him the enjoyment of his employment for racially discriminatory reasons. To ensure that the pattern of discrimination of the defendant CITY was not properly investigated, defendant BOWERS used the pretext of insubordination to terminate ELMORE from his position.

34. As a direct and proximate result of these violations of ELMORE's rights, he has sustained economic damages, lost potential income, educational opportunities, sustained emotional pain and suffering, humiliation, anxiety, embarrassment, and distress.

35. Because of the discriminatory conduct of defendants CITY and BOWERS, ELMORE has been forced to hire an attorney and is entitled to recover the reasonable costs of his attorney.

36. Based on the willful and discriminatory conduct of the defendants CITY and BOWERS, as set forth herein, ELMORE is entitled to a substantial award of punitive damages as provided by law.

WHEREFORE, Plaintiff DARRELL E. ELMORE demands judgment against defendants and prays this court:

- A. Grant ELMORE judgment for economic damages, lost potential wages, back pay, front pay, employment benefits, pain and suffering, humiliation, and loss of enjoyment of life;
- B. Award ELMORE nominal, general, compensatory, punitive and actual damages;
- C. Grant ELMORE reasonable attorney fees and other costs of this action;
- D. Award the ELMORE such other relief as be deemed just and equitable.

Plaintiff, DARRELL E. ELMORE, respectfully requests a trial by jury in this matter.

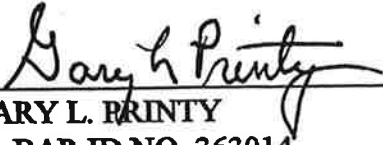
Verification

I affirm under the penalty of perjury that the foregoing document is true and correct to the best of my personal knowledge, information, and belief.



Darrell E. Elmore

Respectfully submitted,



GARY L. PRINTY

FL BAR ID NO. 363014

LAW OFFICE OF GARY L. PRINTY

1301 Miccosukee Road

Tallahassee, Florida 32308-5068

Telephone: (850) 877-7299

FAX: (850) 877-2211

Attorney for Plaintiff

Darrell E. Elmore

