

# MEMORANDUM

Office of the City Attorney

041011

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

**TO:** Mayor and City Commissioners

**DATE:** February 28, 2005

**FROM:** City Attorney

**CONSENT**

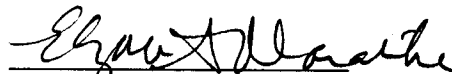
**SUBJECT:** Steve T. Malu vs. the City of Gainesville; United States District Court;  
Case No.: 1:04cv356MMP

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**Recommendation:** The City Commission authorize the City Attorney, and/or special counsel if insurance coverage is available, to represent the City in the case styled Steve T. Malu vs. the City of Gainesville; United States District Court; Case No.: 1:04cv356MMP.

On February 7, 2005, the City of Gainesville was served with a summons and complaint. Mr. Steve Malu alleges that he did not get the Equal Opportunity Charter Officer position because of his race and national origin and in retaliation for filing a complaint against the City.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

EAW/cgow

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

STEVE T. MALU,

Plaintiff,

CASE NO.: 1:04CV356 mmr/ak

Vs.

CITY OF GAINESVILLE,

Defendant

**VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, STEVE T. MALU (hereinafter "MALU"), files this Verified Complaint and Demand for Jury Trial against Defendant, CITY OF GAINESVILLE (hereinafter "CITY"), and states as follows:

**GENERAL ALLEGATIONS**

1. The plaintiff was born in Nigeria and resides permanently in the United States and, at all times relevant to this Complaint, is and was a resident of the City of Gainesville, Alachua County, Florida.
2. Defendant CITY is and was an employer as defined by 42 U.S.C. § 2000e, et seq. of the Civil Rights Act of 1964, as amended in 1991, and Chapter 760.02(7), Florida Statutes (1999).
3. This is an action for damages brought under 42 U.S.C § 2000e, et seq. of the Civil Rights Act of 1964 (hereinafter "Title VII"), and jurisdiction of this Court is proper by virtue of 28 U.S.C. § 1343.

OFFICE OF CLERK  
U.S. DISTRICT CT.  
NORTHERN DIST. FLA.  
GAINESVILLE, FLA.

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4. **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.**
5. **All conditions precedent to jurisdiction under title VII have been complied with as follows: On or about February 12, 2004 Plaintiff initially filed a complaint for discrimination with the Florida Commission on Human relations (FCHR) and the United states Equal opportunity Commission (EEOC), the case having been assigned EEOC Number 150-2004-01501. See Plaintiff Exhibit "A". Plaintiff received a Notice of the Right to Sue on July 13, 2004. See Plaintiff's Exhibit "B" attached hereto and made a part hereof by reference. MALU is entitled to bring this action as a matter of law.**

#### **STATEMENT OF FACTS**

6. **Malu re-alleges and incorporates by reference paragraphs 1 through 5 above as if set forth in full herein.**
7. **Plaintiff, MALU, is a permanent resident of United States and a resident of Alachua County, Florida, residing at 8008 N. W. 31<sup>st</sup> Avenue, #1408, Gainesville, Florida 32606.**
8. **The unlawful employment practices alleged herein were committed within the state of Florida.**
9. **MALU was employed as Affirmative Action officer for the Defendant CITY's Equal Opportunity department until he was terminated on August 5, 2002.**

- 10. On or about, February 22, 2000 Malu filed a conflict of interest report with the City Manager against the Human Resources Director, Tom Motes. The report was based on a comment made by Motes stating that he (Motes) would “join the crusade against affirmative action”. Jimmie Williams, MALU’s supervisor, was also at that meeting.**
- 11. Shortly after that meeting, MALU received a less-than-satisfactory performance evaluation and an extended probationary period.**
- 12. On, or about May 18, 2001, MALU was wrote up for insubordination after complaining to his superiors about discriminatory employment practices against blacks in the way the CITY recruited new employees, and expressing same at a City Commission meeting. Also, MALU’s budget authority was denied.**
- 13. On or about May 29, 2002, MALU filed a complaint with the EEOC, and hand delivered a copy on the same day to his supervisor Jimmie Williams. Shortly after MALU filed the complaint with the EEOC, MALU was written up by his supervisor.**
- 14. After the EEOC contacted MALU’s employer, regarding his charge of discrimination, Jimmie Williams, MALU’s supervisor, called MALU into his office.**
- 15. On July 26, 2002, MALU was notified of graffiti on the wall in the men’s restroom which stated, “Nigerian Nigger Go Home”, after his supervisor, Jimmie Williams came down enrout the men’s restroom to deliver a suspension notice to MALU. Jimmie Williams had called MALU a “cancer**

that should be cut out” saying that he “did not like Nigerians, that Nigerians are too cocky and arrogant”

16. On or about, July 26, 2002 Williams again wrote MALU up, suspended MALU without pay and made recommendation to the City Manager for MALU’s termination.
17. MALU’s network files and security card were cancelled the day of his suspension, his office door locks were changed and Malu was not allowed to come back after the three day suspension, and was fired on August 5, 2002.
18. On, or about, July 29, 2002 Malu filed grievance with the City Manager Wayne Bowers, against Jimmie Williams based on the racial and national origin discrimination.
19. On, or about, September 16, 2003, MALU applied for the EEO Director position with the CITY.
20. On, or, about December 5, 2003, MALU was asked to sign a waiver of his Title VII rights not to sue the CITY, and, MALU refused signing the waiver because of his ongoing lawsuit against the CITY, as a result, his application was withdrawn from consideration for the EEO Director Job.
21. The CITY’s waiver was used to justify interfering with MALU’s Title VII protected right as an applicant, to file a charge or participate in an investigation or proceeding without retaliation. The waiver was not knowing and voluntary as required by Older Workers Benefit Protection Act, §201, 104 Stat. 983, 29 U.S.C. § 626 (f)

**22. In addition, as a result of MALU's complaint of discrimination and retaliation to the EEOC and ongoing lawsuit, MALU, was disqualified in retaliation for the complaint with the EEOC, and the ongoing lawsuit against the CITY.**

**COUNT 1**

**Race discrimination and Retaliation  
In violation of Title VII of the Civil rights Act of 1964**

**23. MALU re-alleges and incorporates by reference paragraph 1 through 22 above, as if set forth in full herein.**

**24. This is a complaint for Discrimination based on national origin and retaliation in continuous violation of Title VII of the Civil rights Act of 1964, as amended in 1991, 42 U.S.C. § 2000e, et seq. by MALU against the Defendant CITY and it is the proper vehicle for bringing a claim against the Defendant CITY as MALU's employer.**

**25. The disparate treatment and wrongful disqualification described herein was because of MALU's national origin and in retaliation for MALU's filing a complaint and lawsuit against the CITY. The Defendant CITY's discriminatory practice and retaliation has affected the term and conditions of MALU's employment.**

**26. Race, national origin, and a waiver of Title VII rights are not bona fide occupational qualifications as reasonably necessary for the normal conduct of an EEO Director duties in the Defendant CITY's Equal Opportunity Department.**

27. As a direct and proximate result of these violations of MALU's rights, he has suffered and will continue to suffer economic damages, lost potential income, educational opportunities, emotional distress, mental anguish, depression and anxiety, pain and suffering, loss of the capacity for enjoyment of life, humiliation, loss of dignity, injury to reputation and lost of savings.
28. As a result of Defendant CITY's retaliatory and discriminatory action, MALU is forced to bring this action in court to protect his rights and, as such, is entitled to fees and costs for bringing this action.

#### **PRAYER AND RELIEF**

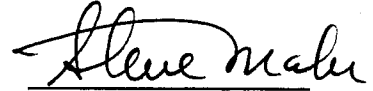
**WHEREFORE Plaintiff, STEVE T. MALU respectfully requests this honorable Court to:**

- A. Grant MALU judgment for economic damages, back pay, front pay, emotional distress, mental anguish, pain and suffering, loss of the capacity for enjoyment of life, humiliation, loss of dignity, injury to reputation and loss of savings;**
- B. Award MALU nominal, general, compensatory, actual and punitive damages from Defendant CITY;**
- C. Grant MALU reasonable compensation for the other costs of this action;**
- D. Award MALU all other relief this Court deems just and equitable.**

**Plaintiff, STEVE T. MALU, 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.**



**Steve T. Malu**

**Respectfully submitted,**



**Steve T. Malu Pro Se  
8008 N.W. 31<sup>st</sup> Ave #1408  
Gainesville, Florida 32606  
Telephone: 352-367-1956**



# CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

FEPA  
 EEOC

150-2004-01501

## Florida Commission On Human Relations

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Mr. Steve T. Malu**

Home Phone No. (Incl Area Code)

**(352) 367-1956**

Date of Birth

**05-20-1955**

Street Address

City, State and ZIP Code

**8008 N.W. 31st Ave.#1408, Gainesville, FL 32606**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**CITY OF GAINESVILLE**

No. Employees, Members

**15 - 100**

Phone No. (Include Area Code)

**(904) 334-2006**

Street Address

City, State and ZIP Code

**200 East University Avenue, Gainesville, FL 32601**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE     COLOR     SEX     RELIGION     NATIONAL ORIGIN  
 RETALIATION     AGE     DISABILITY     OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**09-16-2003**

**09-16-2003**

CONTINUING ACTION

THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):

I. I am a Black Nigerian individual. I filed EEOC Charge No. 150-A2-02726. On date September 16, 2003, I applied for the position of EEO Director Charter Officer. I believe I have been discriminated against due to my race, Black, National Origin, Nigerian and in retaliation.

The Respondent wanted for me to waive my rights not to sue them if I accepted the position. I refused to do so and I was denied the position. The Respondent has continued to seek applicants.

III. I believe that I was discriminated against in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, for having filed a previous charge of employment discrimination.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

**2/12/04**

*Steve Malu*

Date

Charging Party Signature

**EXHIBIT**

"A"

DISMISSAL AND NOTICE OF RIGHTS

To: Steve T. Malu
8008 N.W. 31st Ave.#1408
Gainesville, FL 32606

From: Miami District Office
2 South Biscayne Blvd
Suite 2700
Miami, FL 33131

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No. 150-2004-01501 EEOC Representative Consuelo Nodar, Investigator Telephone No. (305) 530-6054

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
While reasonable efforts were made to locate you, we were not able to do so.
You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Federico Costales, Director

JUL 13 2004

(Date Mailed)

Enclosure(s)

cc: Elizabeth A. Waratuke
Litigation Attorney
CITY OF GAINESVILLE
Office of the City Attorney
200 East University Avenue, Suite 425
Gainesville, FL 32601

