

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

KAREN BARNES,

Plaintiff,

V.

Civil Action No.: _____

CITY OF NORFOLK, VIRGINIA,

Defendant.

COMPLAINT

COMES NOW the plaintiff, Karen Barnes (hereinafter "Barnes") and for her Complaint against City of Norfolk, Virginia (hereinafter "Norfolk"), states as follows:

The Parties

1. At all times relevant to this action, Barnes was an individual and a resident of Chesapeake, Virginia and an employee of Norfolk.
2. At all times relevant to this action, Norfolk was a municipal corporation employing more than 500 individuals in the Norfolk, Virginia area. At all times relevant to this action, Norfolk was an "employer" within the meaning of Title VII §701, 42 U.S.C. §2000e(b) in that Norfolk was a person engaging in an industry affecting commerce and had fifteen or more employees for each

working day in each of the twenty or more calendar weeks during the years that it employed Barnes or the preceding calendar year.

Jurisdiction and Venue

3. This case involves an action discrimination in employment based on sex, hostile work environment based upon gender and retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq.
4. This Court has subject matter jurisdiction pursuant to 42 U.S.C. §2000e-5(f) and 28 U.S.C. §1343(4).
5. Barnes timely filed charges of gender discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) on November 18, 2016, charge number 437-2007-00164.
6. On May 31, 2016, Barnes retired from Norfolk early due to repeated acts of gender discrimination by Norfolk and retaliation by Norfolk for Barnes complaints of gender discrimination by Norfolk.
7. On February 7, 2019, Barnes received Notice of Right to Sue letters from the United States Equal Employment Opportunity Commission.
8. Barnes has exhausted her administrative remedies prior to filing this action.
9. Venue is proper in this Honorable Court as all acts giving rise to plaintiff’s cause of action occurred within the Eastern District of Virginia in the Norfolk division.

Facts

10. Barnes became employed by Norfolk on December 1, 1985 as an EMT officer. Over the next 30 years, Barnes was promoted to the position of Assistant City Fire Marshall for Norfolk. In 2007, Barnes was given law enforcement powers by Norfolk and permitted to carry a weapon.
11. Barnes is a female and a member of a protected class within the meaning of Title VII of the Civil Right Act of 1964.
12. In October of 2014, Barnes and other a female employees of the Norfolk Fire Marshall's office, including Karen Baka, solicited a large number of staff to write letters of complaint regarding Chief Burris and Captain Ansell of the Norfolk Fire Marshall's office alleging disparate treatment of female employees as well as a hostile work environment based upon gender.
13. Following Barnes' complaints of gender discrimination in October, 2014, Captain Ansell was reassigned. However, Chief Burris remained in command of the Norfolk Fire Marshall's Office and immediately began a campaign of retaliation against Barnes and others for their complaints of gender discrimination. At one point, in October 2014, Chief Burris stated anyone that "went behind" his back to complaint would "feel his wrath."

14. At all times relevant to this action, Chief Burriss and Chief Wise were males and were direct supervisors of Barnes.
15. Prior to the autumn of 2015, Barnes was (and remained) an exemplary employee with no disciplinary actions on her employment record with Norfolk.
16. Beginning in the fall of 2015, Chief Burriss began routinely subjecting Barnes to verbal attacks and treated her less favorably than similarly situated male employees. The verbal acts were based on Barnes' status as a female employee of the Fire Marshall's office.
17. The Norfolk Fire Marshall's office routinely discriminated against Barnes and other female employees of the Fire Marshalls' office in that that it:
 - Failed to allow Barnes and other female employees the same training opportunities as similarly situate male employees;
 - Asking male and female officers if they "had the testicles and ovaries" to tell him what they were doing;
 - Denying female employees (including Barnes) the opportunity to participate in the bar task force while similarly situate male employees were allowed to participate;

- Routinely sent demeaning emails to Barnes and copied the email to other employees in the office. This conduct was not practices on similarly situate male employees;
- Chief Burriss would routinely yell at Barnes both privately and in public. Burriss did not yell at similarly situated male employees;
- After Barnes' filed her complaints of gender discrimination, on April 20, 2016, Chief Burriss came to Barnes' office, conspicuously placed his hand on his gun and asked Barnes in a loud angry tone "Are you having a good day?"

18. In January 2016, Barnes filed an additional complaint of gender discrimination. Chief Wise of the Norfolk Fire Department advised Karen Barnes that he was "looking into" their complaints about the conduct of Chief Burriss at a December 2015 meeting.
19. In February 2016, Chief Mann was brought in to investigate the complaints of discrimination by Barnes. Chief Mann and Chief Burriss would go to lunch often with Chief Mann during this period and Chief Mann stated that Chief Burriss was a friend of his.
20. From January 2016 through March 2016, Chief Wise routinely belittled Barnes in front of colleagues.
21. In May, 2016, Karen Barnes brought her complaints about Chief Burriss and the hostile work environment based upon gender at the fire department to Norfolk's City Auditor, John Sanderlin. Barnes

specifically advised Sanderlin that Chief Burriss and Chief Wise treated Barnes and other female employees far less favorably than his similarly situated male coworkers. Barnes also advised Sanderlin that she had been retaliated against for her opposition to said gender discrimination.

22. In July 2016, Chief Burriss asked one of Barnes' coworkers, Scott Phillips-Gartner if he "knew what was going on" with Barnes' gender discrimination complaint.
23. As a result of the general discrimination, hostile work environment based upon gender and retaliation, Barnes chose to retire effective May 31, 2016.
24. Prior to her retirement date, Barnes requested to purchase her service weapon and to obtain a retired law enforcement officer concealed weapon permit and many officers had done in the past.
25. Prior to Barnes' request, the Norfolk Fire Marshall's office had routinely granted similarly situated male employee and male employees with less service time than Barnes the right to purchase their service weapon and obtain retired law enforcement concealed carry permits.
26. Chief Wise denied Barnes' request to purchase her service weapon and to obtain a retired law enforcement officer concealed weapon permit.

27. Chief Wise's decision to deny Barnes' request was based upon Barnes' gender and in direct retaliation for Barnes' opposition to gender discrimination and in direct retaliation for Barnes' participation in an EEOC investigation.

Count I (Title VII--Hostile Work Environment)

28. Paragraphs 1 through 27 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.
29. As a term and condition of her employment, Norfolk regularly subjected Barnes to an offensive, demeaning, humiliating and hostile work environment based upon Barnes' Gender (female).
30. The conduct of Norfolk was unwelcome, was based upon Barnes' gender and was severe, regular and pervasive enough to create an objectively hostile, offensive and abusive working environment based upon sex/gender so as to alter the conditions of Barnes employment.
31. The offensive conduct of Norfolk was severe, regular and pervasive enough to cause Barnes to suffer humiliation and stress at work as well as psychological and physical harm that interfered with her job performance.
32. Even after Barnes and others reported the severe and pervasive harassment by Barnes' supervisors to Norfolk's human resources department and the City Auditor, Norfolk took no remedial action.

33. As a direct and proximate result of the hostile and offensive work environment based upon gender that was created and maintained by Norfolk, Barnes has suffered damages including denial of job promotions, constructive termination of employment, pain and suffering and loss of enjoyment of life.

Count II (Title VII—Gender Discrimination)

34. Paragraphs 1 through 33 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.

35. Norfolk routinely treated its female employees less favorably than similarly situated male employees.

36. Norfolk, through its supervisors, routinely discriminated against its female employees, including Barnes, subjected them to harsh and demeaning terms and conditions of employment (including cleaning fire debris) while not subjecting similarly situated male employees to those same terms and conditions of employment.

37. Norfolk, through its supervisors, routinely discriminated against its female employees, including Barnes, by denying certain more desirable jobs such as the bar task force or assignment to the environmental crimes task force while allowing similarly situated but less qualified male employees those jobs.

38. At all times that Barnes was subjected to the foregoing adverse employment actions, Barnes was qualified and performed her job

duties at a level that reasonably met Norfolk's legitimate expectations.

39. As a direct and proximate result of Norfolk's actions, Barnes was subjected to adverse employment actions based upon her gender.

40. As a direct and proximate result of Norfolk's actions, Barnes suffered damages including lost salary and benefits as well as pain and suffering, inconvenience and loss of enjoyment of life.

Count III (Title VII—Retaliation—Oppositional Activities and Participation Activities)

41. Paragraphs 1 through 40 of the Complaint are hereby fully incorporated by reference as if fully re-alleged herein.

42. Norfolk knowingly and intentionally retaliated against Barnes, including but not limited to constructively terminating her employment, in direct retaliation for Barnes actions taken to oppose gender discrimination against Karen Barnes' and other female employees'

43. Norfolk knowingly and intentionally retaliated against Barnes, including but not limited to constructively terminating her employment, in direct retaliation for Barnes' participation a gender discrimination complaint filed by Scott Phillips-Gartner.

44. In fact, the retaliatory conduct by Norfolk towards Barnes increased and became more severe after she began to oppose gender discrimination and complained to management at Norfolk's City Auditor and Human Resources Department.

45. As a direct and proximate result of Norfolk's retaliation against Barnes, she has suffered damages including lost salary and benefits as well as pain and suffering, inconvenience and loss of enjoyment of life.

Jury Demand

46. Barnes demands a trial by jury on all issues so triable in this action.

Relief Sought

WHEREFORE, Barnes moves this Honorable Court to enter judgment in his favor against Norfolk and to award:

- A. All of Barnes' lost salary and benefits from May 1, 2016 until entry of judgment in this action plus interest on such back pay;
- B. Barnes' lost future salary and benefits;
- C. Damages for emotional pain and suffering, inconvenience and loss of enjoyment of life;
- D. An award of Barnes' attorney's fees and costs incurred in this action as well as other costs incurred in this action.

Respectfully Submitted,

KAREN BARNES

A handwritten signature in blue ink, appearing to read "W.B.M.", is written over a horizontal line.

Of Counsel

W. Barry Montgomery, Esquire (VSB# 43042)
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Karen Barnes

(b) County of Residence of First Listed Plaintiff Chesapeake, VA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

W. Barry Montgomery, KPM Law, 901 Moorefield Park Dr., Ste. 200
Richmond, VA 23236 Tel: (804) 320-6300

DEFENDANTS

City of Norfolk, Virginia

County of Residence of First Listed Defendant Norfolk, VA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 2000e


Brief description of cause:
Title VII employment discrimination and retaliation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Morgan DOCKET NUMBER 2:18-cv-00565 - HCM

DATE 04/23/2019 SIGNATURE OF ATTORNEY OF RECORD


FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____