

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DR. MICHAEL J. DUBIN,

Plaintiff,

v.

Case No. 10-cv-713

Jury Demanded

VERONICA DELCOURT,
and GWEN TORKELSON,

Defendants.

COMPLAINT

Plaintiff, Dr. Michael J. Dubin (“Dubin”), by his counsel, Fox & Fox, S.C., complains of Defendants, Veronica Delcourt (“Delcourt”) and Gwen Torkelson (“Torkelson”)(sometimes collectively “Defendants”), as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this suit pursuant to 28 U.S.C. §§ 1331 and 1343. Dubin is alleging employment discrimination and related retaliation under the Civil Rights Act of 1866, 42 U.S.C. § 1981, and 42 U.S.C. § 1983.

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) as Defendants are located in this judicial district and the acts complained of all occurred within this judicial district.

PARTIES

3. Dubin is an individual residing in the Western District of Wisconsin and is of the Jewish faith. At all times relevant, Dubin was an employee of Madison Area Technical College – Madison, a community technical college for the greater Madison,

Wisconsin area, and part of the Wisconsin Technical College System (hereafter "MATC").

4. At all times relevant, Defendant Veronica Delcourt was employed as Dean of MATC's Arts & Science Center, Madison, Wisconsin, with full supervisory authority over Dubin.

5. Delcourt is being sued in her individual capacity for actions taken while acting within the scope of her authority as Dean of MATC's Arts & Science Center, and at all times relevant, was acting under color of state law within the meaning of 42 U.S.C. § 1983.

6. At all times relevant, Defendant Gwen Torkelson was employed as Director of MATC's Human Resources Department, Madison, Wisconsin.

7. Torkelson is being sued in her individual capacity for actions taken while acting within the scope of her authority as Director of MATC's Human Resources Department, and at all times relevant, was acting under color of state law within the meaning of 42 U.S.C. § 1983.

SALIENT FACTS

8. In or about August of 2000, Dubin was hired as an Adjunct Instructor by MATC to teach in its (then) Arts & Science Division on a semester-by-semester basis. Thereafter, in view of his exemplary teaching performance, Dubin was promoted to the position of full-time, replacement Instructor.

9. In the spring of 2006, Dubin, individually, and through his legal counsel, raised various concerns of possible employment discrimination with MATC in connection with its (then) decision to reject his application for a permanent, full-time Instructor position.

10. Several months later, MATC finally offered Dubin a full-time Instructor position commencing in the fall of 2006, which he accepted.

11. Thereafter, Dubin worked as a full-time Instructor in MATC's Arts & Science Center until July of 2009 at which time his employment was terminated by MATC.

12. At all relevant times, Dubin was qualified for his full-time Instructor position, performed his job duties in a satisfactory manner, received exemplary teaching evaluations by his students, and was recognized by his fellow faculty members for his teaching acumen and accomplishments.

13. At all times relevant, since or about the spring of 2006, Dubin was subjected various unequal and discriminatory terms and conditions of employment because of his religion, Jewish, and/or in retaliation for his and his counsel's complaints of employment discrimination to MATC.

14. Such discrimination and/or retaliation included, but was not limited to, being subject to humiliating, anti-Semitic remarks by the (then) Chair of the History/Social Science Department, Richard Shaten, who, *inter alia*, accused Dubin of being a "litigious Jew" who was inferior to non-Jews in the department, and subjecting Dubin to other unfair terms and conditions of employment at MATC.

15. Dubin was also subjected to religious discrimination and/or retaliation by others, including Janet Stevens ("Stevens"), who dislikes Dubin because he is Jewish and who openly stated that Dubin was "not needed" in the History/Social Science Department since there were "already enough Jews" there. Stevens also made various untrue, profane and disparaging remarks about Dubin to MATC students and faculty, and boasted that she will help "get Dubin fired."

16. Pursuant to MATC policy, Dubin complained about his concerns of religious discrimination and retaliation at MATC, but to no avail.

17. Thereafter, Delcourt advised Dubin, *inter alia*, that although he was a highly accomplished Instructor who was well regarded by students and faculty alike, and who had increased enrollment at MATC, he was still viewed as “special case” by Delcourt because he had retained legal counsel to address issues of discrimination and had otherwise complained about discrimination at MATC.

18. Delcourt also informed Dubin that in view of his and his attorney's complaints of discrimination, his teaching career at MATC was being adversely affected. Delcourt and/Torkelson also directed or encouraged other members of the administration to treat Dubin unfairly.

19. As a result of the foregoing, on or about January 26, 2009, and at the specific behest and direction of Delcourt and/or Torkelson, MATC issued Dubin a preliminary Notice of Non-Renewal of his teaching contract (signed by Torkelson), which Notice was then summarily adopted by the MATC Board of Directors in May of 2009, resulting in Dubin's permanent termination of employment with MATC in July of 2009.

20. Defendants' actions, as alleged, were unlawful, intentional and motivated by a discriminatory and/or retaliatory animus Dubin in view of his religion, Jewish, and/or his and/or his counsel ongoing complaints of discrimination and retaliation at MATC.

21. Defendant's upper management, including MATC President, Betsey Barhorst, deliberately failed to take any appropriate corrective action to prevent, fairly investigate, discipline those involved and/or otherwise rectify this situation.

22. The above-described conduct by Defendants, and each of them, was willful and/or in reckless disregard for Dubin's rights and substantially interfered with his employment.

COUNT I
**(RACE DISCRIMINATION AND RETALIATION CLAIMS AGAINST DELCOURT
IN VIOLATION OF 42 U.S.C. SECTIONS 1981 AND 1983)**

1. Plaintiff adopts and incorporates paragraphs 1 – 22 above, as paragraph 1 of Count I.

2. The effect of the policies and the practices alleged above by Delcourt was discriminatory, retaliatory and deprived Plaintiff of equal employment opportunities, to make and enforce contracts, and otherwise adversely affected his status as an employee because of his religion, Jewish, and/or his complaints of discrimination, in violation of 42 U.S.C. Sections 1981 and 1983.

3 As a direct and proximate result of said unlawful employment practices and disregard for Plaintiff's rights and dignity, as alleged, Plaintiff has lost wages and compensation, and has also suffered emotional distress, humiliation and anxiety about his ability to support his family, and his future employability and earning capacity, as well as the disruption of his personal life.

4. Plaintiff has suffered irreparable injury from said policies, practices and usages as alleged, all of which violated 42 U.S.C. Sections 1981 and 1983.

Relief Sought

WHEREFORE, Dubin prays that this Court grant the following relief against Defendant Veronica Delcourt:

- A. Award him lost compensation and employment benefits since or about August, 2009, and lost interest thereon, as well as damages for his career losses, and damages for

emotional pain, suffering, humiliation and anxiety, all in an amount to be proven at trial.

- B. Award him punitive damages in an amount to be proven at trial;
- C. Grant him his reasonable attorney's fees and costs; and
- D. Grant him any additional relief that is warranted.

COUNT II

**(RACE DISCRIMINATION AND RETALIATION CLAIMS AGAINST TORKELSON
IN VIOLATION OF 42 U.S.C. SECTIONS 1981 AND 1983)**

1. Plaintiff adopts and incorporates paragraph 1 of Count I as paragraph 1 of Count II.

2. The effect of the policies and the practices alleged above by Torkelson was discriminatory, retaliatory and deprived Plaintiff of equal employment opportunities, to make and enforce contracts, and otherwise adversely affected his status as an employee because of his religion, Jewish, and/or his complaints of discrimination, in violation of 42 U.S.C. Sections 1981 and 1983.

3 As a direct and proximate result of said unlawful employment practices and disregard for Plaintiff's rights and dignity, as alleged, Plaintiff has lost wages and compensation, and has also suffered emotional distress, humiliation and anxiety about his ability to support his family, and his future employability and earning capacity, as well as the disruption of his personal life.

4. Plaintiff has suffered irreparable injury from said policies, practices and usages as alleged, all of which violated 42 U.S.C. Sections 1981 and 1983.

Relief Sought

WHEREFORE, Dubin prays that this Court grant the following relief against Defendant Gwen Torkelson:

- A. Award him lost compensation and employment benefits since or about August, 2009, and lost interest thereon, as well as damages for his career losses, and damages for emotional pain, suffering, humiliation and anxiety, all in an amount to be proven at trial.
- B. Award him punitive damages in an amount to be proven at trial;
- C. Grant him his reasonable attorney's fees and costs; and
- D. Grant him any additional relief that is warranted

PLAINTIFF DEMANDS A TRIAL BY JURY

Dr. Michael J. Dubin

/s/ Randall B. Gold

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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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury
PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability
610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other
422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
820 Copyrights 830 Patent 840 Trademark
861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609
400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

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 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

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:

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: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

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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: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: