

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MAURA McCORMICK**  
**Plaintiff**

**CIVIL ACTION**  
**NO 10-cv-1660**

**JURY TRIAL DEMANDED**

**v.**

**COUNTY OF BUCKS**  
**and**  
**DAVID NEIL, JR., Individually and in**  
**His Official Capacity with the County**  
**Of Bucks**  
**Defendants.**

obtained & posted by:

[www.911Dispatch.com](http://www.911Dispatch.com)

**PLAINTIFF'S SECOND AMENDED COMPLAINT**

**I. INTRODUCTION**

Plaintiff Maura McCormick files the within action to redress the violations of the Equal Protection Clause and the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983 and seeks declaratory relief and damages.

**II. JURISDICTION**

1. This Court has subject matter jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1343.

2. This is an action pursuant to the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. § 1983, to redress the deprivation of Plaintiff's constitutional rights who, due to her female gender, was subjected to daily severe and pervasive sexual harassment and gender discrimination which was severe and pervasive enough to change and/or materially affect the terms, conditions and privileges of Plaintiff's employment with Defendant County of Bucks.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(h), since all Defendants reside in this District and the events giving rise to the claims occurred in this District.

### **III. PARTIES**

4. Plaintiff Maura McCormick is an adult female individual and a citizen and resident of the Commonwealth of Pennsylvania, residing therein at 910 Avenue B, Langhorne, PA 19047.

5. Defendant County of Bucks is a political subdivision within the Commonwealth of Pennsylvania, headquartered at 55 East Court Street, Doylestown, PA 18901.

6. Defendant David Neil, Jr. Individually and in his Official Capacity with the County of Bucks is an adult male individual, who is believed to be a citizen and resident of the Commonwealth of Pennsylvania, whose address for purposes of service of process is c/o County of Bucks, 55 East Court Street, Doylestown, PA 18901.

### **IV. FACTS UPON WHICH CLAIMS ARE BASED**

7. Plaintiff Maura McCormick has been employed as a 911 Dispatcher for Defendant County of Bucks since approximately 2001.

8. At all times relevant hereto, Defendant David Neil, Jr., served as the Assistant Superintendent of Operations of Department of Emergency Communications of Defendant County of Bucks.

9. At all relevant times, Defendant David Neil, Jr.'s position was superior to the position of Plaintiff McCormick and Defendant David Neil, Jr. had supervisory authority over Plaintiff.

10. At all relevant times, Defendant David Neil, Jr. was acting in his official capacity and under color of state law.

11. At all relevant times, Defendant David Neil, Jr., while acting in his supervisory and official capacity and under the color of state law, engaged in daily pattern and practice of severe and pervasive sexual harassment and gender discrimination directed towards Plaintiff Maura McCormick, an employee of Defendant County of Bucks' Radio Room and Emergency Communications Department.

12. At all relevant times, Defendant County of Bucks knew or should have known about the existence of a sexually charged, discriminatory and derogatory atmosphere in its Department of Emergency Communications and specifically in Defendant's Radio Room, where on a daily basis, Plaintiff Maura McCormick was subjected to sexually suggestive remarks, lewd jokes, unwelcome touching, pornographic and sexually explicit imagery and unwanted sexual harassment by supervisors, including by Defendant David Neil, Jr.

13. Beginning in or about 2001 and continuing on a daily basis until his termination in April of 2008, Defendant David Neil, Jr., engaged in the pattern and practice of severe and pervasive sexual harassment and gender discrimination directed towards Plaintiff Maura McCormick, which included, but was not limited to making sexually suggestive remarks, lewd jokes and commentary, unwelcome touching and other unwanted sexual harassment.

---

**COUNT I**  
**PLAINTIFF MAURA MCCORMICK v. ALL DEFENDANTS**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION**  
**42 U.S.C. § 1983**

14. Plaintiff Maura McCormick hereby incorporates the preceding paragraphs of her Complaint as though stated in length herein.

15. The above-described conduct of Defendants constitutes a pattern and practice of harassment and discrimination based on Plaintiff's female gender.

16. The said conduct was severe and pervasive and affected the terms, conditions and

privileges of Plaintiff's employment and created a hostile work environment for Plaintiff based on her female gender.

17. At all times Defendants were acting as state actors, in their official capacities and under the color of state law, and with express intent to discriminate against Plaintiff based on her female gender and to deprive her of her Constitutional Right to Equal Protection Under the Law.

18. As a result of Defendants' conduct, as described above, Plaintiff Maura McCormick suffered injuries and damages, which include, but are not limited to emotional distress, embarrassment and humiliation, anxiety, sleep disturbances, depressed mood, feelings of worthlessness, helplessness, and hopelessness, loss of enjoyment of life and life's pleasures and other ills, injuries and damages the full extent of which is yet unknown and which may continue indefinitely into the future.

19. As a further result of Defendants' conduct, as described above, Plaintiff Maura McCormick was forced to incur and is expected to continue to incur ongoing attorney's fees and various other administrative costs, the full extent of which is not yet known.

WHEREFORE, Plaintiff Maura McCormick requests the following relief be granted:

a) This Honorable Court find that Defendants are in violation of the law and have infringed on Plaintiff's Constitutional Rights to Equal Protection Under the Law.

b) That Defendants be forever and permanently enjoined from infringing on Plaintiff's Constitutional Rights.

c) That Defendants be ordered to pay Plaintiff Maura McCormick damages and be required to pay Plaintiff's attorneys' fees and costs of suit.

d) That this Honorable Court order any other relief that may be just and proper under the Constitution and laws of the United States.

**COUNT II**  
**PLAINTIFF MAURA MCCORMICK v. DEFENDANT DAVID NEIL, JR.**  
**PUNITIVE DAMAGES**

20. Plaintiff hereby incorporates the preceding paragraphs of her Complaint as though stated in length herein.

21. The conduct of Defendant David Neil, Jr., performed in his official capacity and under color of state law, constituted intentional, willful, wanton, deliberate and malicious infringement on, violation and intentional and reckless disregard of Plaintiff's Constitutional Rights to Equal Protection under the Law based on her female gender.

WHEREFORE, Plaintiff Maura McCormick seeks the award of Punitive Damages.

Respectfully submitted,

**GALFAND BERGER, L.L.P.**

BY:

  
\_\_\_\_\_  
DEBRA A. JENSEN, ESQUIRE  
HENRY YAMPOLSKY, ESQUIRE  
1835 Market Street Suite 2710  
Philadelphia, PA 19103  
(215) 665-1600  
Fax: (215) 564-2262  
[djensen@galfandberger.com](mailto:djensen@galfandberger.com)  
[hyampolsky@galfandberger.com](mailto:hyampolsky@galfandberger.com)  
Attorneys for Plaintiff Maura McCormick

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAURA McCORMICK

Plaintiff,

v.

COUNTY OF BUCKS

and

**DAVID NEIL, JR., Individually and in  
His Official Capacity with the County  
Of Bucks**

**Defendants.**

CIVIL ACTION  
NO 10-cv-1660

**CERTIFICATE OF SERVICE**

I, Henry Yampolsky, Esquire, hereby certify that a true and correct copy of Plaintiff's Second Amended Complaint was served on the following individuals via United States Postal Service, First Class Mail, Postage pre-paid on May 26, 2010:

County of Bucks  
55 East Court Street  
Doylestown, PA 18901

David Neil, Jr.  
c/o County of Bucks  
55 East Court Street  
Doylestown, PA 18901

GALFAND BERGER, L.L.P.

BY:

  
HENRY YAMPOLSKY, ESQUIRE  
1835 Market Street  
Suite 2710  
Philadelphia, PA 19103  
(215) 665-1600  
Fax: (215) 564-2262  
[hyampolsky@galfandberger.com](mailto:hyampolsky@galfandberger.com)

Attorney for Plaintiff Maura McCormick

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAURA McCORMICK,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
COUNTY OF BUCKS and	:	NO. 10-CV-1660
DAVID NEIL, JR.,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANT  
COUNTY OF BUCKS TO THE SECOND AMENDED  
COMPLAINT OF MAURA MCCORMICK**

Defendant County of Bucks (the “County” or “Defendant”), by and through its undersigned counsel,<sup>1</sup> hereby answers the Second Amended Complaint filed by Plaintiff Maura McCormick (“Plaintiff”), denying every averment except as to those expressly admitted below.

**I. INTRODUCTION**

It is admitted that Plaintiff files this action under the Equal Protection Clause and the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983 and seeks declaratory relief and damages in the introductory paragraph of the Second Amended Complaint. It is denied that Plaintiff is entitled to any relief or damages under the Equal Protection Clause or the Fourteenth Amendment. It is also denied that the County violated the Equal Protection Clause and the Fourteenth Amendment.

**II. JURISDICTION**

1. Admitted.

---

<sup>1</sup> The undersigned counsel does not represent Defendant David Neil, Jr.

2. It is admitted that Plaintiff brings this action under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. The remaining averments contained in paragraph 2 of the Second Amended Complaint are denied.

3. Admitted.

### **III. PARTIES**

4. Admitted.

5. Admitted.

6. It is admitted that David Neil, Jr. is an adult individual. The County is without knowledge or information sufficient to form a belief as to the truth of the averment that Plaintiff believes that Mr. Neil is a citizen and resident of the Commonwealth of Pennsylvania. The remaining averments contained in paragraph 6 of the Second Amended Complaint are denied.

### **IV. FACTS UPON WHICH CLAIMS ARE BASED**

7. Admitted.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.



**COUNT I**  
**PLAINTIFF MAURA MCCORMICK v. ALL DEFENDANTS**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION**  
**42 U.S.C. § 1983**

14. The County incorporates herein by reference its answers to Paragraphs 1 through 13 of the Second Amended Complaint as though fully set forth herein.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

WHEREFORE, Defendant County of Bucks requests that this Court dismiss the Second Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

**COUNT II**  
**PLAINTIFF MAURA MCCORMICK v. DEFENDANT DAVID NEIL, JR.**  
**PUNITIVE DAMAGES**

20. The County incorporates herein by reference its answers to Paragraphs 1 through 19 of the Second Amended Complaint as though fully set forth herein.

21. Denied.

WHEREFORE, Defendant County of Bucks requests that this Court dismiss the Second Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and laches.

**FOURTH AFFIRMATIVE DEFENSE**

The County acted at all times in good faith and for legitimate and nondiscriminatory reasons.

**FIFTH AFFIRMATIVE DEFENSE**

The County's actions or inactions were not the proximate, legal, or substantial cause of any damages, injury or loss suffered by Plaintiff, the existence of which is denied.

**SIXTH AFFIRMATIVE DEFENSE**

The County exercised reasonable care to prevent and correct promptly any harassing behavior and the Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the County or to avoid harm otherwise.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**EIGHTH AFFIRMATIVE DEFENSE**

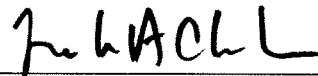
The County took prompt remedial and appropriate steps in response to complaints of sexual harassment brought against David Neil.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because all actions of the County were proper, privileged, justified, and undertaken in good faith.

WHEREFORE, Defendant County of Bucks requests that the Court dismiss the Second Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

Date: July 26, 2010



Frank A. Chernak (Attorney I.D. No. 57602)  
Alexandra Bak-Boyчук (Attorney I.D. 204414)  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
(215) 864-8234  
Email: [chernakf@ballardspahr.com](mailto:chernakf@ballardspahr.com)  
Email: [bakboychuka@ballardspahr.com](mailto:bakboychuka@ballardspahr.com)

Attorneys for Defendant  
County of Bucks

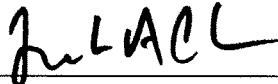
**CERTIFICATE OF SERVICE**

I, Frank A. Chernak, hereby certify that on the 26<sup>th</sup> day of July, 2010, the foregoing Answer of Defendant County of Bucks to the Second Amended Complaint of Maura McCormick has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that I caused a true and correct copy of same to be served upon the following counsel for Plaintiff via electronic filing:

Henry Yampolsky, Esquire  
1835 Market Street  
Suite 2710  
Philadelphia, PA 19103

Tracy P. Hunt, Esquire  
110 N. State Street  
Newtown, PA 18940

Date: July 26, 2010

  
\_\_\_\_\_  
Frank A. Chernak

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**

Marie Funk

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Henry Yampolsky, Esq., Galfand Berger, LLP, 1835 Market  
Street, Suite 2710, Phila., PA 19103 (215) 665-1600

**DEFENDANTS**

County of Bucks and David Neil, Jr., Individually and in his  
Official Capacity with the County of Bucks

County of Residence of First Listed Defendant Bucks County  
(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)

- |   | 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)

CONTRACT	TORTS	PROPERTY RIGHTS	LABOR/EMPLOYMENT	OTHER
<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 (Excl. 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	<b>PERSONAL INJURY</b> <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  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <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))  <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 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):  
42 USC Sect. 1983

Brief description of cause:  
Civil Rights

**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

05-26-10

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Marie Funk, 133 Wigton Circle, Perkasie, PA 18944

55 East Court Street, Doylestown, PA 18901

Address of Defendant: \_\_\_\_\_

Place of Accident, Incident or Transaction: County of Bucks, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

I, Henry Yampolsky, Esq., (Check Appropriate Category)  
counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 05-26-10

Henry Yampolsky, Esq.

Attorney-at-Law

200213

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05-26-10

Henry Yampolsky, Esq.

Attorney-at-Law

200213

Attorney I.D.#

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Marie Funk, 133 Wigton Circle, Perkasie, PA 18944  
55 East Court Street, Doylestown, PA 18901  
 Address of Defendant: \_\_\_\_\_

Place of Accident, Incident or Transaction: County of Bucks, PA  
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
 Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
 Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
 Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
 Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
 (Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
 (Please specify)

### ARBITRATION CERTIFICATION

I, Henry Yampolsky, Esq., counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 05-26-10 Henry Yampolsky, Esq. 200213  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05-26-10 Henry Yampolsky, Esq. 200213  
 Attorney-at-Law Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Marie Funk : CIVIL ACTION

v. :

County of Bucks and David Neil, Jr., :  
Individually and in his official Capacity : NO.  
with the County of Bucks :

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ~~(X)~~

05-26-10

Date

Henry Yampolsky, Esq.

Attorney-at-law

Plaintiff, Marie Funk

Attorney for

(215) 665-1600

Telephone

(215) 564-2262

FAX Number

hyampolsky@galfandberger.com

E-Mail Address



**Civil Justice Expense and Delay Reduction Plan  
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS  
(See §1.02 (e) Management Track Definitions of the  
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

## UNITED STATES DISTRICT COURT

for the  
Eastern District of PennsylvaniaMarie Funk*Plaintiff*

v.

County of Bucks, et al*Defendant*

Civil Action No.

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: County of Bucks*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)***Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (*give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

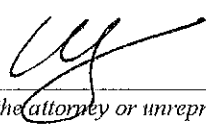
**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 05-26-10  
*Signature of the attorney or unrepresented party*Henry Yampolsky, Esquire*Printed name*Galfand Berger, LLP  
1835 Market Street, Suite 2710  
Philadelphia, PA 19103*Address*hyampolsky@galfandberger.com*E-mail address*(215) 665-1600*Telephone number*

## UNITED STATES DISTRICT COURT

for the  
Eastern District of PennsylvaniaMarie Funk*Plaintiff*

v.

County of Bucks, et al*Defendant*

Civil Action No.

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: David Neil, Jr., Individually and in his Official Capacity with the County of Bucks*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)***Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

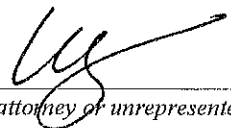
**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 05-26-10  
*Signature of the attorney or unrepresented party*Henry Yampolsky, Esquire*Printed name*Galfand Berger, LLP  
1835 Market Street, Suite 2710  
Philadelphia, PA 19103*Address*hyampolsky@galfandberger.com*E-mail address*(215) 665-1600*Telephone number*

## UNITED STATES DISTRICT COURT

for the  
Eastern District of Pennsylvania

Marie Funk

*Plaintiff*

v.

County of Bucks, et al

*Defendant*

Civil Action No.

## WAIVER OF THE SERVICE OF SUMMONS

To: Henry Yampolsky, Esquire

*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: \_\_\_\_\_

*Signature of the attorney or unrepresented party*

County of Bucks

*Printed name of party waiving service of summons**Printed name**Address**E-mail address**Telephone number*

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

## UNITED STATES DISTRICT COURT

for the  
Eastern District of Pennsylvania

Marie Funk

Plaintiff

v.

County of Bucks, et al

Defendant

Civil Action No.

## WAIVER OF THE SERVICE OF SUMMONS

To: Henry Yampolsky, Esquire

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: \_\_\_\_\_

Signature of the attorney or unrepresented party

David Neil, Jr., Invid. &amp; in his Official Capacity with the County

Printed name of party waiving service of summons

of Bucks

Printed name

Address

E-mail address

Telephone number

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIE FUNK

133 Wigton Circle

Perkasie, PA 18944

Plaintiff,

v.

COUNTY OF BUCKS

55 East Court Street

Doylestown, PA 18901

and

DAVID NEIL, JR., Individually and in  
His Official Capacity with the County  
Of Bucks

c/o County of Bucks

55 East Court Street

Doylestown, PA 18901

Defendants.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT

**I. INTRODUCTION**

Plaintiff Marie Funk files the within action to redress violations of the Equal Protection Clause and the Fourteenth Amendment of the United States Constitution, 42 U.S.C. § 1983 and seeks declaratory relief and damages.

**II. JURISDICTION**

1. This Court has subject matter jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1343.

2. This is an action pursuant to the Fourteenth Amendment to the U.S. Constitution,

42 U.S.C. § 1983, to redress the deprivation of Plaintiff's constitutional rights who, due to her female gender, was subjected to daily severe and pervasive sexual harassment and gender discrimination which was severe and pervasive enough to change and/or materially affect the terms, conditions and privileges of Plaintiff's employment with Defendant County of Bucks.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(h), since all Defendants reside in this District and the events giving rise to the claims occurred in this District.

### **III. PARTIES**

4. Plaintiff Marie Funk is an adult female individual and a citizen and resident of the Commonwealth of Pennsylvania, residing therein at 133 Wigton Circle, Perakise, PA 18944.

5. Defendant County of Bucks is a political subdivision within the Commonwealth of Pennsylvania, headquartered at 55 East Court Street, Doylestown, PA 18901.

6. Defendant David Neil, Jr., Individually and in his official capacity with the County of Bucks is an adult male individual, who is believed to be a citizen and resident of the Commonwealth of Pennsylvania, whose address for purposes of service of process is c/o County of Bucks, 55 East Court Street, Doylestown, PA 18901.

### **IV. FACTS UPON WHICH CLAIMS ARE BASED**

7. Plaintiff Marie Funk has been employed as a 911 Dispatcher for Defendant County of Bucks since approximately 1987.

8. At all times relevant hereto, Defendant David Neil, Jr., served as the Assistant Superintendent of Operations of Department of Emergency Communications of Defendant County of Bucks.

9. At all relevant times, Defendant David Neil, Jr.'s position was superior to the positions of Plaintiff Marie Funk and Defendant David Neil, Jr. had supervisory authority over

Plaintiff Funk.

10. At all relevant times, Defendant David Neil, Jr. was acting in his official capacity and under the color of state law.

11. At all relevant times, Defendant David Neil, Jr., while acting in his supervisory and official capacity and under the color of state law, engaged in daily pattern and practice of severe and pervasive sexual harassment and gender discrimination directed towards Plaintiff Marie Funk, an employee of Defendant County of Bucks' Radio Room and Emergency Communications Department.

12. At all relevant times, Defendant County of Bucks knew or should have known about the existence of a sexually charged, discriminatory and derogatory atmosphere in its Department of Emergency Communications and specifically in Defendant's Radio Room, where on a daily basis, Plaintiff Marie Funk was subjected to sexually suggestive remarks, lewd jokes, unwelcome touching, pornographic and sexually explicit imagery and unwanted sexual harassment by supervisors, including by Defendant David Neil, Jr.

13. Beginning in approximately 1987 and continuing up and until his termination in April of 2008, Defendant David Neil, Jr., engaged in the pattern and practice of severe and pervasive sexual harassment and gender discrimination directed towards Plaintiff Marie Funk, which included, but was not limited to making sexually suggestive remarks, lewd jokes and commentary, unwelcome touching and other unwanted sexual harassment.

**COUNT I**  
**PLAINTIFF MARIE FUNK v. ALL DEFENDANTS**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION**  
**42 U.S.C. § 1983**

14. Plaintiff hereby incorporates the preceding paragraphs of her Complaint as though stated in length herein.



15. The above-described conduct of Defendants constitutes a pattern and practice of harassment and discrimination based on Plaintiff's female gender.

16. The said conduct was severe and pervasive and affected the terms, conditions and privileges of Plaintiff's employment and created a hostile work environment for Plaintiff based on her female gender.

17. At all times Defendants were acting as state actors, in their official capacities and under color of state law, and with express intent to discriminate against Plaintiff based on her female gender and to deprive her of her Constitutional Right to Equal Protection Under the Law.

18. As a result of Defendants' conduct, as described above, Plaintiff Marie Funk suffered injuries and damages, which include, but are not limited to emotional distress, embarrassment and humiliation, anxiety, sleep disturbances, depressed mood, feelings of worthlessness, helplessness, and hopelessness, loss of enjoyment of life and life's pleasures and other ills, injuries and damages the full extent of which is yet unknown and which may continue indefinitely into the future.

19. As a further result of Defendants' conduct, as described above, Plaintiff Marie Funk was forced to incur and is expected to continue to incur ongoing attorney's fees and various other administrative costs, the full extent of which is not yet known.

WHEREFORE, Plaintiff Marie Funk request the following relief be granted:

a) This Honorable Court find that Defendants are in violation of the law and have infringed on Plaintiff's Constitutional Rights to Equal Protection Under the Law.

b) That Defendants be forever and permanently enjoined from infringing on Plaintiff's Constitutional Rights.

c) That Defendants be ordered to pay Plaintiff's damages and be required to

pay Plaintiff's attorneys' fees and costs of suit.

d) That this Honorable Court order any other relief that may be just and proper under the Constitution and laws of the United States.

**COUNT II**  
**PLAINTIFF MARIE FUNK v. DEFENDANT DAVID NEIL, JR.**  
**PUNITIVE DAMAGES**

20. Plaintiff hereby incorporates the preceding paragraphs of her Complaint as though stated in length herein.

21. The conduct of Defendant David Neil, Jr., performed in his official capacity and under color of state law, constituted intentional, willful, wanton, deliberate and malicious infringement on, violation and intentional and reckless disregard of Plaintiff's Constitutional Rights to Equal Protection under the Law based on her female gender.

WHEREFORE, Plaintiff Marie Funk seeks the award of Punitive Damages.

Respectfully submitted,

**GALFAND BERGER, L.L.P.**

BY:

  
DEBRA A. JENSEN, ESQUIRE  
HENRY YAMPOLSKY, ESQUIRE  
1835 Market Street Suite 2710  
Philadelphia, PA 19103  
(215) 665-1600  
Fax: (215) 564-2262  
[djensen@galfandberger.com](mailto:djensen@galfandberger.com)  
[hyampolsky@galfandberger.com](mailto:hyampolsky@galfandberger.com)  
Attorneys for Plaintiff Marie Funk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MARIE FUNK</b> Plaintiff	:	<b>CIVIL ACTION</b>
	:	<b>NO:</b>
	:	
	:	<b>JURY TRIAL DEMANDED</b>
	:	
v.	:	
	:	
<b>COUNTY OF BUCKS</b>	:	
and	:	
<b>DAVID NEIL, JR., Individually and in</b>	:	
<b>His Official Capacity with the County</b>	:	
<b>Of Bucks</b>	:	
<b>Defendants.</b>	:	

**CERTIFICATE OF SERVICE**

I, Henry Yampolsky, Esquire, hereby certify that a true and correct copy of Plaintiff's Complaint was served on the following individuals via United States Postal Service, First Class Mail, Postage pre-paid on May 26, 2010:

County of Bucks  
55 East Court Street  
Doylestown, PA 18901

David Neil, Jr.  
c/o County of Bucks  
55 East Court Street  
Doylestown, PA 18901

GALFAND BERGER, L.L.P.

BY:

  
HENRY YAMPOLSKY, ESQUIRE  
1835 Market Street, Suite 2710  
Philadelphia, PA 19103  
(215) 665-1600  
Fax: (215) 564-2262  
[hyampolsky@galfandberger.com](mailto:hyampolsky@galfandberger.com)  
Attorney for Plaintiff Marie Funk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MARIE FUNK  
133 Wigton Circle  
Perkasie, PA 18944  
Plaintiff**

**Vs.**

**COUNTY OF BUCKS  
55 East Court Street  
Doylestown, PA 18901**

**AND**

**DAVID NEIL, JR.  
c/o County of Bucks  
55 East Court Street  
Doylestown, PA 18901  
Defendants**

**CIVIL ACTION NO.  
10-CV-02553**

**JURY TRIAL DEMANDED**

**DEFENDANT, DAVID NEIL, JR.'S, ANSWER TO PLAINTIFF'S  
COMPLAINT**

Defendant, David Neil, Jr., by and through his counsel hereby Answers the allegations set forth in Plaintiff's Complaint and states:

**JURISDICTIONAL STATEMENT**

1. Admitted.
2. Denied as stated. Defendant, Neil, denies he engaged in workplace sexual harassment or discrimination of any kind towards Plaintiff.
3. Admitted in part. It is admitted only that as set forth in Plaintiff's

Complaint it appears all parties to the instant action reside in the Eastern District and Plaintiff's Complaint alleges certain conduct of the parties occurred in the Eastern District.

**PARTIES**

4. Denied as stated. Defendant, Neil, has no knowledge as to the veracity of the averments set forth in this paragraph and therefore cannot admit or deny said averments.

5. Admitted, to the best of Defendant, Neil's, knowledge.

6. Admitted in part, denied in part. It is admitted that Defendant Neil is an adult individual residing in the County of Bucks. It is specifically denied as stated that Defendant Neil is currently employed in an official capacity with the County of Bucks.

**FACTS UPON WHICH CLAIMS ARE BASED**

7. Admitted in part, denied in part. Defendant, Neil, has no knowledge as to the veracity of the averments regarding how long Plaintiff worked for Defendant, Bucks County, as set forth in this paragraph and therefore cannot admit or deny said averments. It is admitted, however, that Plaintiff did work as a telecommunicator and/or 911 dispatcher in the radio room of the Bucks County Communications Center for some period of time.

8. Denied as stated. It is denied that Defendant David Neil Jr., served as the Assistant Superintendent of Operations for Department of Emergency Communications of Defendant County of Bucks since 1987.

9. Denied as stated. Defendant, Neil, worked for Defendant, Bucks County, for a longer period of time than Plaintiff and, as a result, had greater seniority than Plaintiff.

10. Admitted in part, Denied as stated. Plaintiff's Complaint names Defendant Neil both individually and in his official capacity. It is admitted that Defendant Neil was an employee of the County of Bucks. The remaining averment is denied as a conclusion of law.

11. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded.

12. Denied. The averments set forth in this paragraph are directed to Defendants other than Answering Defendant and are therefore denied. To the extent any of the averments in this paragraph are directed at Answering Defendant they are specifically denied and strict proof in support of such averment is demanded.

13. Denied as stated. Defendant, Neil, voluntarily retired from the employ of the County of Bucks. By way of further answer, the averments set forth in this paragraph are specifically denied as conclusions of law. Moreover, the remaining averments are specifically denied and strict proof in support of such averments is demanded.

**COUNT I – 42 U.S.C. §1983**

14. Defendant, Neil, incorporates by reference his Answers to paragraphs 1 – 13 of Plaintiff's Complaint as though more fully set forth herein. As such, no further response is necessary.

15. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

16. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

17. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

18. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

19. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

**WHEREFORE**, Defendant, David Neil, Jr., seeks judgment in his favor and against Plaintiff and respectfully requests this Court dismiss Plaintiff's Complaint with prejudice, and award costs and attorneys fees against Plaintiff.

**COUNT II – PUNITIVE DAMAGES**

20. Defendant, Neil, incorporates by reference his Answers to paragraphs 1 – 19 of Plaintiff's Complaint as though more fully set forth herein. As such, no further response is necessary.

21. Denied. The averments set forth in this paragraph are specifically denied and strict proof in support of such averments is demanded. By way of further answer, the averment set forth in this paragraph purports to be a conclusion of law for which no further response is required.

**WHEREFORE**, Defendant, David Neil, Jr., seeks judgment in his favor and against Plaintiff and respectfully requests this Court dismiss Plaintiff's Complaint with prejudice, and award costs and attorneys fees against Plaintiff.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches.



**FOURTH AFFIRMATIVE DEFENSE**

Defendant's actions were not the proximate or direct cause of any damages, injury or loss allegedly suffered by Plaintiff, the existence of which is denied.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands.

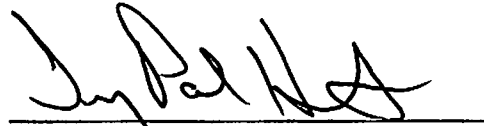
**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**WHEREFORE**, Defendant, David Neil, Jr., respectfully requests this Court dismiss Plaintiff's Complaint with prejudice, and award costs and attorneys fees against Plaintiff.

**TIMBY HUNT, LLC**

Date: 7/27/10



Tracy Paul Hunt, Esquire  
PA Atty. ID: 80158  
tph@timbyhunt.com  
A. Anthony Rohach, Esquire  
PA Atty. ID: 200964  
aar@timbyhunt.com

110 North State Street  
Newtown, PA 18940  
(215) 968-6886

Attorneys for Defendant,  
David Neil, Jr.

**CERTIFICATE OF SERVICE**

I, Tracy Paul Hunt, Esquire, hereby certify that on July 27, 2010, I caused a true and correct copy of the foregoing Answer of Defendant, David Neil, Jr., to Plaintiff's Complaint to be filed electronically and that it is available for viewing and downloading from the Court's ECF system. I further certify that I caused a true and correct copy of same to be served via first class mail upon the following counsel of record:

Henry Yampolsky, Esquire  
Galfand Berger, L.L.P.  
1835 Market Street  
Suite 2710  
Philadelphia, PA 19086

Frank A. Chernak, Esquire  
Ballard Spahr, LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103

A handwritten signature in black ink, appearing to read 'Tracy Paul Hunt', is written over a horizontal line.

Tracy Paul Hunt, Esquire  
A. Anthony Rohach, Esquire  
Attorneys for Defendant, David Neil, Jr.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**LUCILLE OLIVIERI,  
P.O. Box 481  
Newtown, PA 18940**

**Plaintiff**

**v.**

**COUNTY OF BUCKS  
55 East Court Street  
Doylestown, PA 18901**

**AND**

**DAVID NEIL, JR.  
c/o County of Bucks  
55 East Court Street  
Doylestown, PA 18901**

**Defendants**

**CIVIL ACTION NO.  
09-CV-1240**

**JURY TRIAL DEMANDED**

**AMENDED COMPLAINT**

Plaintiff Lucille Olivieri, by and through her undersigned counsel, hereby files the following complaint against the defendants in the above-captioned case.

**JURISDICTIONAL STATEMENT**

1. This Court has subject matter jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331, which gives district court jurisdiction over all civil actions arising under the Constitution, laws and treaties of the United States. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1343, which gives district courts original jurisdiction over (a) any civil action authorized by law to be commenced by any person to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the

United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and (b) any civil action to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights. The Court has supplemental jurisdiction over Ms. Olivieri's claim under the Pennsylvania Human Relations Act ("PHRA") pursuant to 28 U.S.C. § 1367.

2. This is an action to redress the deprivation of Ms. Olivieri's constitutional rights and to redress pervasive "hostile environment" sexual harassment under the First and Fourteenth Amendments pursuant to 42 U.S.C. § 1983. Ms. Olivieri also filed sexual harassment complaints in the Equal Employment Opportunity Commission and Pennsylvania Human Relations Commission ("PHRC"). She has exhausted her administrative remedies at the PHRC, because more than one year has elapsed since she filed her sexual harassment complaint in that agency. 43 P.S. § 959; *Thush v. Manufacturers Resource Center*, 315 F. Supp. 2d 650, 656 (E.D.Pa. 2002) (Brody, J.) (citing *Burgh v. Borough Council of the Borough of Montrose*, 251 F.3d 465, 471 (3<sup>rd</sup> Cir. 2001)). In this amended complaint, Ms. Olivieri has added a count against both defendants under the PHRA.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), since all defendants reside in this district and the events giving rise to the claims occurred in this district.

**THE PARTIES**

4. Ms. Olivieri is an adult individual who resides the address captioned above. Ms. Olivieri is vested with certain rights, privileges and immunities as a citizen of these United States and of the Commonwealth of Pennsylvania.

5. Defendant, the County of Bucks ("Bucks County"), is a local government unit within the Commonwealth of Pennsylvania and government employer whose main office is at the address captioned above.

6. Defendant, David Neil, Jr. ("Neil") is an adult individual who was employed by the County of Bucks at all times relevant to this case until late April 2008.

7. Since 1994, Ms. Olivieri worked for Bucks County as a telecommunicator and/or 911 dispatcher in the radio room in the Bucks County Communication Center.

8. At all times between 1994 and 2008, Neil was several levels above Ms. Olivieri and superior to her in the job hierarchy. Neil's job title was the assistant superintendent of operations in the radio room.

9. Neil worked in or about the radio room for years before 1994-95. The PHRC found that Neil was also the point person in the radio room for Carmen Thome, Director of Human Resources for Bucks County, from approximately 1998 until 2008.

10. From 1994 until April 2008, on a daily basis, Neil tormented Ms. Olivieri and other female employees in the radio room in Ms. Olivieri's presence with harassing conduct that occurred because of her gender and the other female employees' gender.

11. A reasonable woman would consider Neil's harassing conduct sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or offensive working environment.

12. Neil's harassing conduct against Ms. Olivieri and other female employees in her presence has included the following:

- A. Constant unwelcome, severe and pervasive streams of vile, gender-related epithets and sexually derogatory comments, such as "fat fucking pig," "dirty cunt," "filthy pig," "bitch" and numerous other, equally vile variations on these themes.
- B. Repeated unwelcome solicitations for sex to Ms. Olivieri and other female employees.
- C. Repeated demands that Ms. Olivieri and other employees give him their prescription pain medications, including but not limited to Percocet.
- D. Verbal insinuations by Neil that it would be easier for Ms. Olivieri and other female employees to obtain days off and vacation if they (a) gave him their prescription pain medications or (b) had sex with him. Neil's customary way of making these insinuations was phrased in quid pro quo terms, such as "one hand washes the other."
- E. Neil looked down Ms. Olivieri's blouse and asked to see her nipples.
- F. Neil pulled the lower part of Ms. Olivieri's pants down to show the top of a tattoo and stated that he thought the tattoo said: "Eat at Luigi's."
- G. Neil placed his finger on Ms. Olivieri's chin and asked if he could place his balls there so that she could perform fellatio on him.
- H. In Ms. Olivieri's presence, Neil looked down the blouses of other female employees such as Nicole Crescenzo to look at their breasts.
- I. In Ms. Olivieri's presence, Neil brushed Maura McCormick's<sup>1</sup> hair away from her breasts so he could have a better view of her cleavage.

---

<sup>1</sup> McCormick is another female employee in the radio room.

J. In Ms. Olivieri's presence, Neil rubbed against McCormick and two other female employees in the radio room, Lisa Reed and Donna Schwartz, face to face and front to back. More specifically, he rubbed his front section against their front sections and his groin against their buttocks areas.

K. Neil asked Ms. Olivieri many times how her vaginal area is groomed. He specifically asked if she was "clean" and if he could perform oral sex upon her.

L. Neil asked Ms. Olivieri if he could come to her house and perform oral sex on her.

M. Neil stated to Ms. Olivieri that he received Viagra from his doctor and could have sex for hours.

N. In Ms. Olivieri's presence, Neil asked multiple female employees in the radio room (McCormick and Crescenzo) about the size and color of their nipples.

O. On multiple occasions, Neil massaged Ms. Olivieri's shoulders without her consent, often while she was working and handling emergency calls with potential life-or-death consequences.

P. On multiple occasions, Neil looked into Ms. Olivieri's personal effects without her consent.

Q. Many incidents in which Neil harassed me were witnessed by other employees in the radio room, such as Crescenzo and Robert McNally.

13. Ms. Olivieri complained about Neil's conduct on multiple occasions to her supervisors in the Bucks County radio room and to Bucks County Human Resources ("Human Resources").

14. For years, these complaints went unheeded. Indeed, Human Resources either ignored or, at one point, harshly admonished Ms. Olivieri when she complained about on-the-job sexual harassment.

15. Specifically, in 1999, Ms. Olivieri reported the harassment of another employee, Joe Cummings, to Bucks County Human Resources. Carmen Thome, the Human Resources director, told Ms. Olivieri in no uncertain terms to keep her mouth shut about sexual harassment. Thome made this statement in the presence of Dennis Forsythe, superintendent of the radio room, and Jeanne Katz, Ms. Olivieri's union shop steward.

16. In 2003, Ms. Olivieri suffered a panic attack as a result of Neil's harassment and was forced to take a week off from work.

17. At this point, Ms. Olivieri told Ann Markowitz in Human Resources about Neil's harassment. Her response was: "Oh, Dave Neil. Just ignore him. He's a pain in the ass."

18. In 2007, Ms. Olivieri complained along with several other female employees to Fred Blunt, Training Coordinator, about Neil's harassment, but Neil's harassment continued unabated.

19. In 2007 and 2008, Ms. Olivieri complained multiple times to Chris Mitchell, her immediate supervisor, about Neil's harassment, but Neil's harassment continued unabated.

20. In April 2007, Ms. Olivieri complained to Kathy Koszarek, a squad coordinator and supervisor two levels above Ms. Olivieri, about Neil's harassment. Koszarek responded: "I know what you mean. He's on a crash and burn course."



21. In February 2008, Ms. Olivieri complained again to Fred Blunt, Training Coordinator, about Neil's harassment, but Neil's harassment continued unabated.

22. In March 2008, Blunt told Ms. Olivieri that he was astonished that nothing had been done about Neil's harassment.

23. Nevertheless, Neil's harassment continued unabated through mid-April 2008.

24. As a result of Neil's continuing and constant harassment, Ms. Olivieri (a) has suffered from depression and anxiety, (b) had multiple panic attacks since 2003, (c) was forced to take time off from work, (d) was forced to take blood pressure medication, and (e) became withdrawn, isolated and alienated from other people.

25. Neil's harassment created a hostile work environment as that term is defined under 42 U.S.C. § 1983 and related judicial decisions.

26. The County of Bucks did not exercise reasonable care to prevent and correct promptly Neil's sexually harassing behavior

27. Ms. Olivieri repeatedly attempted to utilize preventive or corrective opportunities, such as complaining to Human Resources and her superiors, but her attempts did not lead to any action by the County of Bucks from 1999 through mid-April 2008.

28. On or about August 1, 2008, Ms. Olivieri cross-filed sexual harassment complaints in the PHRC and EEOC relating to the above misconduct.

29. On or about November 25, 2008, after a factfinding investigation, the PHRC issued a finding of probable cause against the defendants.

30. Prior to the PHRC's finding of probable cause, Ms. Olivieri had an excellent work record in almost two decades of employment with the County of Bucks.

31. Subsequent to the PHRC's finding of probable cause, the County of Bucks has made Ms. Olivieri the target of disciplinary investigations and has imposed disciplinary measures against her for alleged infractions which were, at most, trivial, and which are not alleged or penalized when committed by similarly situated employees.

32. In early March 2009, the County of Bucks imposed Level I discipline (a reprimand) against Ms. Olivieri because she allegedly used improper procedures during several 911 calls.

33. Ms. Olivieri filed a grievance for the imposition of this disciplinary action.

34. On March 17, 2009, the County of Bucks sent Ms. Olivieri home with pay pending further investigation after again accusing her of using improper procedures during 911 calls.

35. On March 18, 2009, the County of Bucks held Ms. Olivieri's grievance hearing as well as a disciplinary hearing relating to its March 17, 2009 accusations that she had used improper procedures during 911 calls.

36. At the conclusion of the March 18, 2009 hearings, the County of Bucks again reprimanded her, sent her home with pay and ordered her to take remedial training relating to 911 call procedures, a class normally reserved for new trainees, not an employee such as Ms. Olivieri who has handled calls for over a decade.

37. These disciplinary actions are in retaliation for Ms. Olivieri's sexual harassment complaints against the County of Bucks in the PHRC and EEOC.

**COUNT I - 42 U.S.C. § 1983**  
**Plaintiff v. All Defendants**

38. The foregoing paragraphs of the amended complaint are incorporated by reference as if stated in full herein.

39. Under the Due Process Clause of the Fourteenth Amendment, Ms. Olivieri has the right in the government workplace to personal security, bodily integrity, and to exclusive control and knowledge of her prescription medications.

40. Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, Ms. Olivieri has the right to be free in the government workplace from sexual harassment from other government employees.

41. Under the Fourth Amendment, Ms. Olivieri had the right to be free from illegal searches and seizures of her person and her prescription medications.

42. Defendants intentionally and deliberately violated all of these constitutional rights through the misconduct delineated in the foregoing paragraphs.

43. Ms. Olivieri believes and therefore avers that the County of Bucks has unconstitutional customs or policies of (a) deliberately ignoring, failing to investigate and impose disciplinary actions against its employees for sexual harassment against other employees in the government workplace, (b) deliberately ignoring, failing to investigate and impose disciplinary actions against Neil for sexual harassment against Ms. Olivieri in the government workplace, (c) deliberately ignoring, failing to investigate and impose disciplinary action for illegal seizures in the government workplace and violations of government employees' personal security and bodily integrity and (b) failing to adequately supervise and train government employees to refrain the forms of misconduct alleged in subparagraphs (a), (b) and (c).

44. Ms. Olivieri believes and therefore avers that the County of Bucks has followed these unconstitutional customs or policies not only with regard to herself but also with regard to other female employees in the government workplace.

45. Ms. Olivieri has suffered severe and permanent psychological damage, physical harm and emotional distress as a direct and proximate result of defendants' violations of her First, Fourth and Fourteenth Amendment rights.

**COUNT II – 42 U.S.C. § 1983**  
**Plaintiff v. County of Bucks**

46. The foregoing paragraphs of the amended complaint are incorporated by reference as if stated in full herein.

47. Under the First Amendment and Fourteenth Amendment, Ms. Olivieri has the right to speak out on matters of public concern, the right of access to administrative agencies such as the PHRC and EEOC, the right to file sexual harassment actions in the PHRC and EEOC based on harassment in the government workplace, the right to be free from retaliation by her government employer for filing sexual harassment actions in the PHRC and EEOC, and the right to be free from retaliation by her government employer for filing grievances in response to unwarranted disciplinary action.

48. The County of Bucks intentionally and deliberately violated all of these constitutional rights by taking disciplinary action against Ms. Olivieri in retaliation for her sexual harassment complaints against the County of Bucks in the PHRC and EEOC and her grievance filed in March 2009.

49. In violation of Ms. Olivieri's due process and equal protection rights under the Fourteenth Amendment, the County of Bucks has selectively enforced its employment regulations against Ms. Olivieri by alleging infractions against her and disciplining her but not alleging any infractions against or disciplining similarly situated employees for the same conduct.

50. Ms. Olivieri has suffered severe and permanent psychological damage, physical harm and emotional distress as a direct and proximate result of defendants' violations of her First, Fourth and Fourteenth Amendment rights.

**Count III – Pennsylvania Human Relations Act  
Plaintiff v. All Defendants**

51. The foregoing paragraphs of the amended complaint are incorporated by reference as if stated in full herein.


52. Both defendants created, committed and/or permitted to continue sexual harassment and a hostile work environment in violation of the PHRA, 43 Pa.C.S. § 951 *et seq.*, since (a) Ms. Olivieri was a member of a protected class; (b) she was subjected to sexual harassment in the forms described in the foregoing paragraphs; (c) the harassment was based on her sex; and (d) the sexual harassment unreasonably interfered with her work performance and created an intimidating, hostile or offensive environment that severely affected her psychological well-being.

53. The County of Bucks knew or should have known about Neil's harassing conduct from 1998 onward but failed to take remedial action to stop Neil's misconduct.

54. Due to the County of Bucks' failure to act or investigate, Ms. Olivieri was subject to sexual harassment in the forms described in the foregoing paragraphs.

55. Ms. Olivieri has suffered severe and permanent psychological damage, physical harm and emotional distress as a direct and proximate result of defendants' violations of her rights under the PHRA.

**WHEREFORE**, Ms. Olivieri demands that judgment be entered in her favor and against defendants, jointly and severally, for compensatory damages, punitive damages, interest, costs and attorney fees.



---

Thomas D. Schneider, Esquire  
55 Green Valley Road  
Wallingford, PA 19086  
(610) 565-1134  
(610) 565-2342 (FAX)

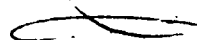
Attorney for Plaintiff  
Lucille Olivieri

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2009, I served a true and correct copy of the foregoing motion to file amended complaint against the County of Bucks and accompanying memorandum of law upon the following persons via first-class mail, postage prepaid:

Frank A. Chernak  
Ballard Spahr Andrews & Ingersoll LLP  
1735 Market St, 51st Fl  
Philadelphia, PA 19103-7599

Tracy P. Hunt  
Timby Hunt LLC  
110 North State Street  
P.O. Box 99  
Newtown, PA 18940



\_\_\_\_\_  
Thomas D. Schneider

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LUCILLE OLIVIERI,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
COUNTY OF BUCKS and	:	NO. 09-1240
DAVID NEIL, JR.,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANT COUNTY OF BUCKS  
TO THE AMENDED COMPLAINT OF LUCILLE OLIVIERI**

Defendant County of Bucks (the “County” or “Defendant”), by and through its undersigned counsel,<sup>1</sup> hereby answers the Amended Complaint filed by Plaintiff Lucille Olivieri (“Plaintiff”), denying every averment except as to those expressly admitted below.

1. The allegations contained in Paragraph 1 of the Amended Complaint are deemed to be denied to the extent that they state conclusions of law to which no responsive pleading is required.

2. It is admitted that Ms. Olivieri has filed sexual harassment complaints in the Equal Employment Opportunity Commission (“EEOC”) and Pennsylvania Human Relations Commission (“PHRC”). The County denies the allegations made in this paragraph to the extent that these allegations state conclusions of law to which no responsive pleading is required. If and to the extent a further response is deemed to be required, the County admits only that Plaintiff purports to bring a civil rights action against the defendants in this matter under the statutes cited. Further, the County denies that Plaintiff is entitled to any relief under the cited

---

<sup>1</sup> The undersigned counsel does not represent Defendant David Neil, Jr.



statutes. The remaining averments contained in Paragraph 1 of the Amended Complaint are denied.

3. Admitted.

**THE PARTIES**

4. It is admitted that Ms. Olivieri is an adult individual and is vested with certain rights, privileges and immunities as a citizen of these United States and of the Commonwealth of Pennsylvania. The County is without knowledge or information sufficient to form a belief as to the truth of the averment contained in Paragraph 4 of the Amended Complaint that Ms. Olivieri resides at the address in the caption of the Amended Complaint, and on that basis denies that averment.

5. Admitted.

6. It is admitted that Defendant David Neil, Jr. ("Neil") is an adult individual who was employed by the County of Bucks. The remaining averments contained in Paragraph 6 of the Amended Complaint are denied.

7. Admitted.

8. It is admitted that at some time, Neil's job title was the Assistant Superintendent of Operations. The remaining averments contained in Paragraph 8 of the Amended Complaint are denied.

9. Admitted.

10. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 10 of the Amended Complaint, and on that basis denies those averments.

11. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 11 of the Amended Complaint, and on that basis denies those averments.

12. It is admitted that McCormick was another female working in the radio room as referenced in footnote 1 to Paragraph 12 of the Amended Complaint. The County is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 12, A through Q, of the Amended Complaint, and on that basis denies those averments.

13. Denied.

14. Denied.

15. It is admitted that Dennis Forsythe and Jeanne Katz were in the room during a conversation involving Carmen Thome, the Human Resources Director, and Plaintiff. The remaining averments contained in Paragraph 15 of the Amended Complaint are denied.

16. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 16 of the Amended Complaint, and on that basis denies those averments.

17. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of the Amended Complaint, and on that basis denies those averments.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 23 of the Amended Complaint, and on that basis denies those averments.

24. The County is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 24 of the Amended Complaint, and on that basis denies those averments.

25. Denied.

26. Denied.

27. Denied.

28. Admitted.

29. Admitted.

30. Denied.

31. Denied.

32. It is admitted that in early March 2009, the County of Bucks imposed Level I discipline (a reprimand) against Ms. Olivieri. The remaining averments contained in Paragraph 32 of the Amended Complaint are denied.

33. Admitted.

34. It is admitted that on March 17, 2009, the County of Bucks sent Ms. Olivieri home with pay pending further investigation. The remaining averments contained in Paragraph 34 of the Amended Complaint are denied.

35. It is admitted that on March 18, 2009, the County of Bucks held Ms. Olivieri's grievance hearing as well as a disciplinary hearing. The remaining averments contained in Paragraph 35 of the Amended Complaint are denied.

36. It is admitted that at the conclusion of the March 18, 2009 hearings, the County of Bucks sent Ms. Olivieri home with pay and ordered her to take remedial training relating to 911 call procedures. The remaining averments contained in Paragraph 36 of the Amended Complaint are denied.

37. Denied.

WHEREFORE, Defendant County of Bucks requests that the Court dismiss the Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

**COUNT I – 42 U.S.C. § 1983**  
**Plaintiff v. All Defendants**

38. The County incorporates herein by reference its answers to Paragraphs 1 through 37 of the Amended Complaint as though fully set forth herein.

39. The allegations contained in Paragraph 39 of the Amended Complaint are deemed to be denied to the extent that they state conclusions of law to which no responsive pleading is required. If and to the extent a further response is deemed to be required, the County denies the averments contained in Paragraph 39 of the Amended Complaint.

40. The allegations contained in Paragraph 40 of the Amended Complaint are deemed to be denied to the extent that they state conclusions of law to which no responsive pleading is required. If and to the extent a further response is deemed to be required, the County denies the averments contained in Paragraph 40 of the Amended Complaint.

41. The allegations contained in Paragraph 41 of the Amended Complaint are deemed to be denied to the extent that they state conclusions of law to which no responsive pleading is required. If and to the extent a further response is deemed to be required, the County denies the averments contained in Paragraph 41 of the Amended Complaint.

42. Denied.

43. The County is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's beliefs. The remaining averments contained in Paragraph 43 of the Amended Complaint are denied.

44. The County is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's beliefs. The remaining averments contained in Paragraph 44 of the Amended Complaint are denied.

45. Denied.

**COUNT II – 42 U.S.C. § 1983**  
**Plaintiff v. County of Bucks**

46. The County incorporates herein by reference its answers to Paragraphs 1 through 45 of the Amended Complaint as though fully set forth herein.

47. The allegations contained in Paragraph 47 of the Amended Complaint are deemed to be denied to the extent that they state conclusions of law to which no responsive pleading is required. If and to the extent a further response is deemed to be required, the County denies the averments contained in Paragraph 47 of the Amended Complaint.

48. Denied.

49. Denied.

50. Denied.

**COUNT III – Pennsylvania Human Relations Act  
Plaintiff v. All Defendants**

51. The County incorporates herein by reference its answers to Paragraphs 1 through 50 of the Amended Complaint as though fully set forth herein.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

WHEREFORE, Defendant County of Bucks requests that the Court dismiss the Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the applicable Statute of Limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and laches.

**FOURTH AFFIRMATIVE DEFENSE**

The County acted at all times in good faith and for legitimate and nondiscriminatory reasons.

**FIFTH AFFIRMATIVE DEFENSE**

The County's actions or inactions were not the proximate, legal, or substantial cause of any damages, injury or loss suffered by Plaintiff, the existence of which is denied.

**SIXTH AFFIRMATIVE DEFENSE**

The County exercised reasonable care to prevent and correct promptly any harassing behavior and the Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Defendants or to avoid harm otherwise.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims have not been timely filed with the appropriate administrative agencies.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for relief are limited by the statutory limitations on damages.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate her damages.

**TENTH AFFIRMATIVE DEFENSE**

The County took prompt remedial and appropriate steps in response to Plaintiff's complaints of sexual harassment.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages is unconstitutional.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because all actions of the County were proper, privileged, justified, and undertaken in good faith.

WHEREFORE, Defendant County of Bucks requests that the Court dismiss the Amended Complaint, enter judgment in its favor, and assess costs and attorney fees against the Plaintiff.

Date: October 23, 2009



Frank A. Chernak (Attorney I.D. No. 57602)  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
(215) 846-8234  
Email: [chernakf@ballardspahr.com](mailto:chernakf@ballardspahr.com)

Attorneys for Defendant County of Bucks



**CERTIFICATE OF SERVICE**

I, Frank A. Chernak, hereby certify that on the 23<sup>d</sup> day of October, 2009, a true and correct copy of the foregoing Answer of Defendant County of Bucks to the Amended Complaint of Lucille Olivieri has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that I caused a true and correct copy of same to be served upon the following counsel via electronic filing:

Thomas D. Schneider, Esquire  
55 Green Valley Road  
Wallingford, PA 19086

Tracy Paul Hunt, Esquire  
110 N. State Street  
Newtown, PA 18940

Date: October 23, 2009

Frank A. Chernak  
Frank A. Chernak