

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:15-cv-1826

DEREK M. RICHTER,

Plaintiff,

v.

CITY OF COMMERCE CITY, COLORADO;  
and TROY SMITH in his individual capacity;  
DAVID CUBBAGE in his individual capacity;  
and KAREN STEVENS in her individual capacity,

Defendants.

---

**COMPLAINT AND JURY DEMAND**

---

**THIS ACTION IS EXEMPT FROM FILING FEES UNDER 38 U.S.C. § 4323(h)(1).**

COMES NOW the Plaintiff, Derek Richter, by and through his attorneys, the Law Office of Thomas G. Jarrard, PLLC and Crotty and Son Law Firm, PLLC, and alleges:

**PARTIES**

1. Plaintiff, Derek M. Richter (hereinafter "Richter" or "Plaintiff") resided in the State of Colorado at all times pertinent hereto.
2. Defendant, Commerce City, Colorado, ("Commerce") is a municipal corporation that, for the purposes of 38 U.S.C. § 4303(4), is a private employer.

3. Defendant, Troy Smith, is the Commerce City Police Chief, Mr. Richter's supervisor, exercised control of the employment benefits and opportunities of Mr. Richter, was a primary decision maker regarding Defendants' violation of Mr. Richter's rights, and for the purposes of 38 U.S.C. § 4303(4) is an employer.

4. Defendant, David Cubbage, is the Commerce City Police Lieutenant, Mr. Richter's supervisor, exercised control of the employment benefits and opportunities of Mr. Richter, was a primary decision maker regarding Defendants' violation of Mr. Richter's rights, and for the purposes of 38 U.S.C. § 4303(4) is an employer.

5. Defendant, Karen Stevens, is the Commerce City's Deputy City Attorney, exercised control of the employment benefits and opportunities of Mr. Richter, was a primary decision maker regarding Defendants' violation of Mr. Richter's rights, and for the purposes of 38 U.S.C. § 4303(4) is an employer.

#### **JURISDICTION AND VENUE**

6. Subject matter jurisdiction is conferred on this Court by 38 U.S.C. § 4323(b)(3), which provides that the District Courts of the United States have jurisdiction over a USERRA action brought against an employer. This Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1331, because this action arises under laws of the United States, and under 28 U.S.C. § 1343(a)(4), because Plaintiff seeks to secure relief under an Act of Congress that protects civil rights.

7. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2). Defendant Commerce is an employer that maintains places of business in the district of this United States District Court, and a substantial part of the events giving rise to the claims in this action occurred in this district.

### **CLAIMS FOR RELIEF**

8. Mr. Richter serves as a Police Officer with the Commerce City Police Department (“CCPD”) and has done so since August 18, 2008. In addition to serving with the CCPD, Mr. Richter has served with the Colorado Army National Guard since October 25, 2001. Mr. Richter continues to serve in the Colorado Army National Guard. As a CCPD officer Mr. Richter received the department’s second highest award (the “Medal of Valor”) for bravery during a shooting as well as accolades from Commerce City citizens for his professional demeanor and performance.

9. During the course of Mr. Richter’s employment Commerce also employed Mr. Richter’s former supervisors Lieutenant David Cabbage and Sergeant Wayne Granger, and Philip Baca, as its Chief of Police, from 2007-2012, Commerce also employed Interim Police Chief Charles Saunier from 2012-2013, Human Resources Director Heather Spencer, and Karen Stevens, Commerce City’s Deputy City Attorney. From 2013 to the present Commerce employed Troy Smith as its Chief of Police.

10. In his capacity as an officer in the Colorado Army National Guard Mr. Richter currently holds the rank of Captain. The Colorado Army National Guard requires (and required at all relevant times herein) Mr. Richter to conduct military duty one weekend per month and conduct an annual two week military duty rotation. At times the Colorado Army National Guard ordered Mr. Richter to duty for service in addition to his one weekend/month and two week/year training obligation.

11. During the October 2008 timeframe CCPD allowed Mr. Richter and Eric Ewing, a CCPD officer and military reservist, to request “special consideration” – as allowed under the governing collective bargaining agreement – so both individuals could be

placed on a shift schedule referred to as the “A Side Shift”. Mr. Richter and Mr. Ewing requested placement on the A Side Shift in order to minimize the effect Mr. Richter and Mr. Ewing’s military necessitated workplace absences would have on the CCPD. The CCPD approved Mr. Richter and Mr. Ewing’s A Side Shift placement. Mr. Richter and Mr. Ewing worked the A Side Shift during 2008.

12. Between Mr. Richter’s August 18, 2008, hire and the above-described October 2008 shift bid events Mr. Richter was not mobilized for military duty in excess of his weekend duty.

13. However, during 2009 the Colorado Army National Guard ordered Mr. Richter to approximately eighty (80) days of military duty. The 80 day timeframe included 53 days’ consecutive duty running from August 25, 2009, to October 16, 2009.

14. Not liking Mr. Richter’s military related absences, Mr. Richter’s supervisor, Lieutenant Cubbage refused to allow Mr. Richter and Mr. Ewing to jointly work the A Side Shift during 2010 because Mr. Richter’s and Mr. Ewing’s military absences were causing “too much of a manning problem” for the department. However, Lieutenant Cubbage’s “manning problem” statement was inaccurate as openings existed that would have allowed Mr. Richter and Mr. Ewing to work jointly on the A Side Shift.

15. During fiscal year 2010 (October 1, 2009 – September 30, 2010) the Colorado Army National Guard ordered Mr. Richter to approximately 132 days military duty.

16. During the October 2010 shift bid process Lieutenant Cubbage, again, refused to allow Mr. Richter and Mr. Ewing to jointly work the A Side Shift even though openings existed to allow both individuals to work that shift. Again Lieutenant Cubbage

articulated that Mr. Richter and Mr. Ewing could not work together because of the effect their military related absences were having on the department.

17. On one level, the CCPD's stated reason for not allowing two drilling reservist/employees to work together on the same shift makes sense as the CCPD needs to ensure shifts are manned with individuals who do not have military related obligations. The CCPD's stated reason, however, is inaccurate because during the above referenced time frame the "manning issues" were caused not so much by military-employee absences but individuals, including Cubbage, who were on injury leave.

18. Mr. Richter, as part of the 2011 shift was placed under the supervision of Sergeant Granger. Sergeant Granger detested Mr. Richter's military service.

19. During the January 2011 to April 2011 timeframe Sergeant Granger made the following comments to Mr. Richter - - - comments that came in close proximity to Mr. Richter returning from military duty - - - "Hey, what's up part time cop" "You're here long enough to be a part time cop." And on October 10, 2011, Sergeant Granger remarked to Mr. Richter, who recently returned from multi-day military tour, "Hey rookie...who's going to train the rookie."

20. Sergeant Granger also made the disparaging "part time cop" and "rookie" comments to Mr. Ewing during the May – August 2011 timeframe. During August 2011 Mr. Ewing received laudatory comments from CCPD Sergeant-in-training Daniel Shaefer. Sergeant Granger, privy to those comments, begrudgingly said words to the effect of "yea, you do a pretty good job when you are here" and "I don't have a problem with you except that you are gone all the time on military leave."

21. Sergeant Granger's comments were not isolated off the cuff comments. On or about September 23, 2010, Sergeant Granger, in a meeting witnessed by CCPD officer Kevin Lord, informed the CCPD management about Granger's plan to "take away" the "military guys'" benefits and make it "cost prohibitive" for reservists like Mr. Richter and Mr. Ewing to deploy. Mr. Granger's plan (which Granger stated he had already vetted with Human Resources) included the suggestion that reservists be charged for their benefits while on deployment. CCPD Commander, Charles Baker, in response to Granger's plan said words to the effect of "we can't stop military activation." To that Granger replied "Yes we can...we can make it so cost prohibitive that they won't go on military orders."

22. Additionally, during a Shift Supervisor / Sergeant's meeting between Daniel Schafer, a former CCPD Sergeant, Chris Solano, Granger, and Cubbage, the issue of military duty was also discussed. Either Granger or Cubbage stated that CCPD should discourage police officers from being military personal by taking away shift bid preferences and related benefits, including health insurance. At that meeting it was revealed that Ms. Stevens informed Cubbage and Granger that it was perfectly fine "to increase the cost for military personnel while on duty."

23. Sergeant Granger's discriminatory comments continued throughout 2010 and through 2011 culminating in a November 15, 2011, comment made to Mr. Ewing. To wit: on November 15, 2011, Mr. Ewing attended a meeting with CCPD management. Mr. Ewing was on military orders that day. As such, Mr. Ewing attended the meeting late in the afternoon of November 15, 2011, and attended the meeting in his military dress uniform. Mr. Ewing encountered Sergeant Granger enroute to the meeting and

told Sergeant Granger that he was using comp-time for the work hours missed on November 15, 2011. To that Sergeant Granger responded words to the effect of “oh, if you’re using comp-time then I don’t need a copy of your orders and if you want to spend your time off dressed in a monkey suit I don’t care what you do.”

**(Mr. Richter’s Protected Activity)**

24. On December 2, 2011, Mr. Richter and Mr. Ewing filed a Military Discrimination complaint with the CCPD’s HR office. Mr. Richter’s and Mr. Ewing’s filing of the complaint constitutes protected activity under USERRA 38 U.S.C. § 4311(b), for which retaliation is forbidden.

25. The CCPD HR acknowledged receipt of the December 2, 2011, complaint.

**(The CCPD’s Retaliation)**

26. On or about December 19, 2011, Mr. Cubbage, refused to approve approximately 10.5 hours of overtime pay inuring to Mr. Richter. This was the first time in Mr. Richter’s CCPD career that management had questioned any aspect of his overtime work.

27. The timely receipt of overtime pay constitutes a benefit of employment and it is illegal to deny an employee a benefit of employment on account of that employee’s protected activity.

28. From January 2, 2012 to January 20, 2012 the Colorado Army National Guard activated Mr. Richter so he could attend U.S. Army Airborne School in Ft. Benning, Georgia. Mr. Richter broke his rib during the second (of his five) required parachute jumps but, nevertheless, completed the training and, upon returning to Colorado was placed on “incapacitation” (INCAP) status until March 20, 2012.

29. By March 5, 2012, the CCPD knew that Mr. Richter was returning to work but, in violation of USERRA 38 U.S.C. § 4313, required Mr. Richter to undergo a fit for duty examination *before* returning to work. See *Petty v. Metro Gov't of Nashville-Davidson County*, 538 F.3d 431, 441 (6<sup>th</sup> Cir. 2008)(*citing* 38 U.S.C. § 4302(b) and *holding* “[b]y applying its [neutral] return-to-work process to Petty, Metro not only delayed his re-employment, but as we shall explain, it also limited and withheld benefits to which Petty was entitled under USERRA.”). As such, subjecting Mr. Richter to an unlawful pre-employment screening, which took place on March 9, 2012, constitutes retaliation. Nonetheless, Mr. Richter attended the pre-service entrance examination, passed the examination, returned to work, and continued to experience retaliation.

30. On May 2, 2012, the CCPD retaliated against Mr. Richter by, for the first time in Mr. Richter’s career at CCPD, subjecting Mr. Richter to an internal investigation alleging that Mr. Richter left his duty assignment and performed his work unsatisfactorily. The CCPD based its investigation on allegations contained in an anonymous letter sent to the Commerce City Council in the April 2012 timeframe. The anonymous letter alleged that Mr. Richter missed training to participate in a union meeting and falsified training records. The CCPD’s initiation of the investigation violated CCPD policy as well as the directive from the Commerce City’s mayor.

31. Upon information and belief the above-reference investigation was ratified by the Commerce City’s attorney, Karen Stevens.

32. On or about May 23, 2012, CCPD Sergeant Kelly Hamilton publically disclosed confidential information regarding Mr. Richter and Mr. Ewing’s military discrimination



claim. Mr. Hamilton stated that he received the information from CCPD HR. CCPD HR's disclosure of such information violates CCPD policy.

33. From May 28, 2012, to October 17, 2012, the Colorado Army National Guard activated Mr. Richter for military duty. On or about June 12, 2012, the CCPD posted a job opening for a position called "Commander." "Commander" is a position higher than Mr. Richter's then-existing job title. Since Mr. Richter was on military orders at the time of the Commander posting he was unable to compete for the Commander position.

34. On or about August 8, 2012, Mr. Richter requested, in writing, that the CCPD allow Mr. Richter to compete for the Commander position upon his return from military duty. Mr. Richter's request to the CCPD informed CCPD of his (Richter's) rights under USERRA.

35. The CCPD did not allow Mr. Richter to compete for the Commander position.

36. On or about September 14, 2012, Mr. Ewing (on Mr. Richter's behalf) filed an additional complaint with the CCPD's HR department claiming, in part, that the CCPD's HR office breached company practice and procedure by informing other CCPD employees who held positions superior to Mr. Richter and Mr. Ewing of the substance of Richter/Ewing's December 2011 military discrimination complaint even though said individuals had no reason to know the substance of the complaint.

37. On or about September 28, 2012, Mr. Richter informed the CCPD of his (Richter's) intent to return to work on October 17, 2012.

38. Mr. Richter returned to work on or about October 17, 2012. But on or about October 21, 2012, Mr. Richter received additional orders activating him for the October

28, 2012 to November 9, 2012. Mr. Richter subsequently served with the military during that timeframe.

39. On or about October 16, 2012, Commerce City received a Colorado Open Records Act (CORA) request. Although the request did not specifically call for information relating to Mr. Richter and Mr. Ewing's retaliation claims, Commerce City disclosed Mr. Richter and Mr. Ewing's identities - - - an act that further establishes retaliatory animus.

40. On or about October 28, 2012, Chief Sauiner informed Mr. Ewing that he (Sauiner) was not allowed to consider Mr. Ewing or Mr. Richter for Commander.

41. From January 2, 2013, through March 31, 2013, Mr. Richter served with the Colorado Army National Guard.

42. On or about April 1, 2013, the Colorado Army National Guard mobilized Mr. Richter for an approximate 400 day timeframe. Mr. Richter promptly informed the CCPD of his mobilization and requested the City cease deducting health care benefits from his paycheck as Mr. Richter did not want to have to pay for benefits he would not be able to use.

43. October 15, 2013, the CCPD advertised for a Sergeant position. At that time the CCPD had approximately four (4) Sergeant vacancies.

**(Mr. Richter's Protected Activity)**

44. On or about November 7, 2013, Mr. Richter, while still on military duty, informed (via Mr. Ewing) the CCPD that he intended to apply for the Sergeant position. Mr. Ewing, acting on behalf of Mr. Richter, informed the CCPD that Mr. Richter was requesting to be considered for the position as allowed under USERRA.

45. On or about November 15, 2013, Mr. Ewing informed the CCPD that Mr. Richter's military duties, which included managing "resources...actively involved in combat operations in various parts of the world" precluded Mr. Richter from personally applying for the position or timely responding to the CCPD's communication.

**(The CCPD's retaliation)**

46. On or about November 22, 2013, the CCPD's Chief responded to Mr. Richter's request, accused Mr. Richter of making a false statement, accused Mr. Richter of being insubordinate for allegedly failing to respond to the Chief's instructions (all while Mr. Richter was on military leave), and stated that Mr. Richter's "failure to apply [for the job] in the required time frame was the reason you will not be considered."

47. On or about November 22, 2013 the CCPD initiated an internal affairs investigation alleging, in part, that Mr. Richter's November 7, 2013, request to be considered for the Sergeant position contained "untruthful information."

48. The CCPD refused to allow Mr. Richter to interview for the Sergeant position.

49. The selection process for the above-referenced Sergeant vacancies took place in January 2014. Yet, following the completion of the selection process one Sergeant vacancy still existed.

50. In early 2014 Mr. Richter requested that the CCPD cash out Mr. Richter's annual paid military leave, paid general leave, and paid holidays that Mr. Richter had accrued. The CCPD complied with Mr. Richter's request.

51. On or about April 15, 2014, Mr. Richter informed the CCPD that his military orders had been extended beyond Mr. Richter's anticipated May 4, 2015, return date.

52. On or about December 1, 2014, Mr. Richter, as had been his prior practice, requested the CCPD cash out Mr. Richter's accrued Military Leave pay (15 days) and all of Mr. Richter's General Leave (267 hours).

53. On or about December 9, 2014, the City's attorney, Karen Stevens, refused to cash out Mr. Richter's accrued Military Leave and General Leave pay. Instead, Ms. Stevens placed Mr. Richter in what she labeled as a "military hold" status. A non-benefit accruing status that Mr. Richter remains in to this day.

54. At all times Mr. Richter gave the CCPD reasonable advance notice of his military service, served honorably, served less than five years (cumulative) with the military, and timely requested reemployment with the CCPD.

55. Mr. Richter has not waived his rights to reemployment under USERRA or any other law.

56. Mr. Richter is entitled to promotional opportunities he was denied while engaged in military obligations.

57. Any explanations or excuses that Defendants allege in response to the clear violations of USERRA in this complaint are a pretext derived to avoid responsibility or liability.

58. To the extent that Defendants allege application of any State Law, (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter constitutes any limitation on Mr. Richter's employment benefits or rights under USERRA, it is illegal, null and void, inapplicable, of no force or effect and preempted pursuant to 38 U.S.C. § 4302(b), 20 C.F.R. § 1002.7(b).

### **CAUSES OF ACTION**

59. Commerce violated Mr. Richter's rights as guaranteed by the USERRA 38 U.S.C. §§ 4301 to 4335, including but not limited to: 38 U.S.C. § 4311 discrimination and retaliation in employment; 38 U.S.C. §§ 4312, 4313 reemployment rights; § 4316, and 20 C.F.R. § 1002.247, rights and benefits of persons absent from employment for service in the armed forces; 38 U.S.C. § 4318, denial of retirement and pension benefits; and 38 U.S.C. § 4323(d), 20 C.F.R. § 1002.312(c), willful violations of his USERRA rights.

#### **(CAUSE OF ACTION NO. 1 - DISCRIMINATION 38 U.S.C. § 4311(a))**

60. Plaintiff re-alleges the above paragraphs.

61. In order to state a USERRA discrimination claim an employee must establish (a) membership in the uniformed services (b) an adverse employment action and (c) that the employee's military obligation was a motivating factor in the employer's adverse employment action.

62. Mr. Richter was (and is) a member of the Colorado Army National Guard, a uniformed service.

63. An employer's denial of an employee's request to take a promotional examination that the employee missed on account of the employee's military service is an adverse employment action. *Fink v. City of New York*, 129 F.Supp.2d 511 (E.D.N.Y. 2001). Likewise, an employer's denial of contractually and/or legislatively conferred leave benefits that would inure to similarly-situated employees constitutes discrimination as does forbidding an employee from working a certain shift when no legitimate non-discriminatory reason exists to deny the employee such shift placement.

64. As such, Commerce's denial of, *inter alia*, Mr. Richter's request to compete for the Sergeant and Commander vacancies, denial of Mr. Richter's request to be placed on the A Side Shift, and denial of Mr. Richter's 2014 request for the leave hours constitutes an adverse employment action which, in turn, constitute USERRA violations.

65. The CCPD's acts and omissions have caused Mr. Richter damages in an amount to be established at trial.

**(CAUSE OF ACTION NO. 2 - DISCRIMINATION/RETALIATION 38 U.S.C. § 4311(c))**

66. Plaintiff re-alleges the above paragraphs.

67. In order to state a USERRA retaliation claim a plaintiff must establish his or her protected activity was a motivating factor in the employer's adverse employment action.

68. Mr. Richter's protected activity consists of, without limitation, Mr. Richter's November 2013 assertion of his USERRA protections as part of his request to compete for the Sergeant vacancy, Mr. Richter's August 2012 assertion of his USERRA rights as part of his request to compete for the Commander vacancy, and Mr. Richter's November 2011 military-discrimination complaint against CCPD management.

69. The CCPD's adverse employment actions include, without limitation, denying Mr. Richter the opportunity to compete for the Sergeant and Commander vacancies, not approving Mr. Richter's request for overtime pay, subjecting Mr. Richter to a pre-employment return to work medical examination even though such an examination was barred under USERRA, and subjecting Mr. Richter to internal investigations.

70. The CCPD's acts and omissions have caused Mr. Richter damages in an amount to be established at trial.

71. As a result of Defendants unlawful conduct in violation of USERRA and the necessity of this action to seek a remedy, Mr. Richter fears further retaliation against his employment rights by Defendants or its managers, directors or employees. Therefore, the employment relationship that Mr. Richter enjoyed at Commerce prior to the events giving rise to this action is irreparably damaged through no fault of his own.

**(CAUSE OF ACTION NO. 3 – VIOLATION OF 38 U.S.C. § 4316)**

72. Plaintiff re-alleges the above paragraphs.

73. USERRA, 38 U.S.C. § 4316, requires that an employer treat an employee on military leave as if the employee remained continuously employed insofar as that employee would continue to accrue the benefits his or her non-military co-workers would accrue during the course of their employment.

74. An employer cannot avoid affording the servicemember-employee the benefits the employee would have accrued but for the employee's military service. See 29 C.F.R. § 1002.149.

75. Paid military leave conferred under a legislative scheme is a benefit of employment under USERRA. *Pucilowski v. Department of Justice*, 498 F.3d 1341, 1344 (Fed. Cir. 2007).

76. Defendants' violated § 4316, among other ways, by placing Mr. Richter on a fictional "military hold" status and denying Mr. Richter pay for the 15 days military leave, and 267 hours general leave even though similarly situated employees not on military leave receive such benefits during the course of their employ with Commerce City.

**(CAUSE OF ACTION NO. 4 – VIOLATION OF USERRA 38 U.S.C. § 4318)**

77. Plaintiff re-alleges the above paragraphs.

78. Under USERRA 20 C.F.R. § 1002.262(a) an employer must make its employer-portion of the service member-employee's retirement contribution within 90 days of the employee's return to work; and, in the case of a plan, like Commerce's, which is contingent upon the employee making his or her make-up contribution, make the employer contribution in accordance with the plan's requirements.

79. Upon information and belief, Commerce failed to provide service credit or make the employer component of Mr. Richter's retirement contribution within 90 days of Mr. Richter's return to work and, upon information and belief, Commerce failed to make its employer match contribution in accordance with the plan's requirements.

**(WILLFUL VIOLATIONS OF USERRA – 38 U.S.C. § 4323)**

80. Plaintiff re-alleges the above paragraphs.

81. At all times relevant hereto, Commerce City maintained a posted notice where employers customarily place notices for employees as required by 38 U.S.C. § 4334.

82. At all times relevant hereto, Commerce City maintained policies that prohibit unlawful discrimination.

83. The supervisors who had responsibility over the employment decisions alleged in this complaint had access to the requirements imposed upon employers under the USERRA, including, but not limited to, posted USERRA workplace notices and Commerce City applicable employment policies or procedures.



84. The persons at Commerce City charged with the employment related decisions alleged in this complaint were familiar with the requirements imposed upon employers under the USERRA.

85. At all times relevant hereto, Messrs. Smith, Cabbage and Ms. Stevens had access to the requirements of USERRA.

86. At all times relevant hereto, Commerce City had a duty to conduct itself in compliance of the law of USERRA and to ensure its agents followed the Act.

87. Defendants' conduct was willful as defined by 38 U.S.C. § 4323(d), 20 C.F.R. § 1002.312(c), because Mr. Richter gave Commerce multiple notices that its actions would violate USERRA, but with knowledge Commerce showed reckless disregard for the matter, and Commerce recklessly disregard their own policies and posted USERRA work-place notices. As such, Mr. Richter requests liquidated damages as allowed under USERRA.

#### **JURY TRIAL DEMAND**

Mr. Richter hereby demands a trial by jury.

#### **REQUEST FOR RELIEF**

Mr. Richter respectfully prays for:

A. Compensation for all injury and damages suffered by Mr. Richter including, but not limited to, both economic and non-economic damages, in the amount to be proven at trial including back pay, front pay, pre and post judgment interest, lost benefits of employment, negative tax consequences of any award, liquidated damages, exemplary damages, and punitive damages as provided by law.



### CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**  
DEREK M. RICHTER

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

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
Law Office of Thomas G. Jarrard  
1020 N Washington Street  
Spokane, WA 99201 (425) 239-7290

**DEFENDANTS**  
CITY OF COMMERCE CITY, COLORADO; and TROY SMITH,  
DAVID CUBBAGE and KAREN STEVENS, INDIVIDUALLY

County of Residence of First Listed Defendant \_\_\_\_\_  
*(IN U.S. PLAINTIFF CASES ONLY)*

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

Attorneys *(If Known)*

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

1 U.S. Government Plaintiff

3 Federal Question *(U.S. Government Not a Party)*

2 U.S. Government Defendant

4 Diversity *(Indicate Citizenship of Parties in Item III)*

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

*(For Diversity Cases Only)*

	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	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 500 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 896 Arbitration
					<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
					<input type="checkbox"/> 950 Constitutionality of State Statutes

**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

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
38 U.S.C. 4323(B) USERRA

**VI. CAUSE OF ACTION**

Brief description of cause:  AP Docket

WILLFUL VIOLATION OF SERVICE MEMBER'S USERRA RIGHTS, DISCRIMINATION AND BENEFITS ect.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

DATE: 08/24/2015

SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

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





AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 1:15-cv-1826

**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 \$ \_\_\_\_\_ 0.00.

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 Colorado

DEREK M. RICHTER

\_\_\_\_\_  
*Plaintiff*

v.

CITY OF COMMERCE CITY; TROY SMITH, DAVID  
CUBBAGE and KAREN STEVENS, INDIVIDUALLY

\_\_\_\_\_  
*Defendant*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. 1:15-cv-1826

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* TROY SMITH, Police Chief  
City of Commerce City  
7887 E. 60th Ave.  
Commerce City, CO 80022

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:

THOMAS G. JARRARD  
LAW OFFICE OF THOMAS G. JARRARD, PLLC  
1020 N WASHINGTON STREET  
SPOKANE, WA 99201  
(425) 239-7290

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. 1:15-cv-1826

**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 \$ \_\_\_\_\_ 0.00.

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:



Civil Action No. 1:15-cv-1826

**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 \$ \_\_\_\_\_ 0.00.

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 Colorado

DEREK M. RICHTER

\_\_\_\_\_  
*Plaintiff*

v.

CITY OF COMMERCE CITY; TROY SMITH, DAVID  
CUBBAGE and KAREN STEVENS, INDIVIDUALLY

\_\_\_\_\_  
*Defendant*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. 1:15-cv-1826

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* KAREN STEVENS, Deputy City Attorney  
City of Commerce City  
7887 E. 60th Ave.  
Commerce City, CO 80022

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:

THOMAS G. JARRARD  
LAW OFFICE OF THOMAS G. JARRARD, PLLC  
1020 N WASHINGTON STREET  
SPOKANE, WA 99201  
(425) 239-7290

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*

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 1:15-cv-1826

**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 \$ \_\_\_\_\_ 0.00.

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: