

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
AT LEXINGTON**

**CASE NO.:** \_\_\_\_\_

*Electronically Filed*

**NICHOLAS CHARLES BREINER**

**PLAINTIFF**

**V.**

**COMPLAINT**

**BOARD OF EDUCATION  
OF MONTGOMERY COUNTY**

**DEFENDANT**

Comes now, the Plaintiff and through counsel and for his Complaint states as follows:

**I. JURISDICTION**

1. The Court has jurisdiction over the subject matter of this case pursuant to 28 USC §§ 1331 and 1343; 29 USC § 6269(c)(1) and 42 USC §2000e (f)(3).

**II. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2. On or about August 3, 2017 the Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging discrimination on the grounds of discrimination based on sex.
3. The Plaintiff received his right to sue letter on March 15, 2018 allowing him ninety (90) days within which to bring an action under Title VII.
4. This action was commenced within that ninety (90) day period.

**III. PARTIES**

5. The Plaintiff, Nicholas Charles Breiner, is a bisexual male residing in Montgomery County, Kentucky.
6. The Defendant Board of Education of Montgomery County is an employer as defined by 42 USC § 2000e and KRS 344.030(2).

**IV. ALLEGATIONS**

7. At all times relevant to the Plaintiff's cause of action he was employed by the Defendant as Director of Vocal Music and Director of Theater Development at McNabb Middle School.
8. On April 7, 2017 the Plaintiff disclosed his sexual orientation as a bisexual male over social media .
9. On or about April 10, 2017 the Plaintiff was summonsed to a meeting where he was questioned about his sexual orientation by the Defendant, Deputy Director Rick Culross.
10. On April 11, because of his sexual orientation the Plaintiff was defamed by Administrative Office of the Court employee whose assignment includes McNabb Middle School.
11. The Plaintiff has filed a Complaint against Ledford in Montgomery County Circuit Court, and it is not subject to this action.
12. After the April 10, 2017 meeting the Plaintiff began to experience disparate terms in the condition of his employment including but not limited to calling into unscheduled meeting, accused of violating policy not associated with Plaintiff, harassing phone calls during class and unfavorable evaluation.
13. On or about May 8, 2017 the Plaintiff was "pink slipped" by the Defendant.
14. When the Plaintiff requested the reason for the "pink slip" the Plaintiff was told by the McNabb Middle School Principle that it was due to budget restraints.
15. In July 2017, the Plaintiff discovered that his position at McNabb Middle School was taken by a heterosexual female.
16. The Plaintiff was a victim of disparate treatment due to his sexual orientation.

**COUNT I**

17. The Plaintiff includes all prior and subsequent paragraphs and incorporates them by reference.
18. The Plaintiff was qualified to continue his position of Director of Vocal Music and Director of Theater Department at McNabb Middle School.
19. Despite his qualifications he was discharged from his employment.
20. His position was taken by a heterosexual female.

21. Upon information and belief, the Plaintiff's sexual orientation was the motivating factor in the Defendant's decision to terminate the Plaintiff.
22. Upon information and belief, the Defendant discharged the Plaintiff due to his sexual orientation.
23. As a result the Plaintiff has suffered past economic losses, consequential damages, damages for embarrassment and harassment, harassment and other non-pecuniary losses which demand compensation.

WHEREFORE, the Plaintiff prays for the following relief:

- A. The Court determines that the Plaintiff was a victim of discrimination based on his sexual orientation in violation of Title VII.
- B. The Court award the Plaintiff damages both pecuniary and non-pecuniary as well as compensatory damages including liquidated damages.
- C. The Court award punitive damages against the Defendant.
- D. The Court award reinstatement and back pay including loss of benefits and in the alternative front pay.
- E. The Court award prejudgment and post judgment interest.
- F. The Court award the Plaintiff reasonable attorney fees and costs of this action.
- G. The Court summons a jury to address all issues raised by the Plaintiff's Complaint.
- H. The Court award any and all legal and/or equitable relief the Plaintiff to which may be entitled.

Respectfully Submitted,

/s/ Edward E. Dove  
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Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

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

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

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

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

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

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

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

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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

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

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

DEFENDANTS

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, 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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