

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Copy

Cheshire Superior Court
12 Court St.
Keene NH 03431

Telephone: (603) 352-6902
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

ORDER OF NOTICE ON COMPLAINT
PAD Rule 1

Case Name: **City of Keene v James Cleaveland, et al**
Case Number: **213-2013-CV-00241**

A lawsuit has been filed against Kate Ager; Ian Bernard aka Freeman; James Cleaveland; Graham Colson; Garrett Ean; Peter Eyre in this Court. A copy of the complaint is attached. If you have been previously served with a document entitled "Writ of Summons", disregard any deadline contained therewith. These are the relevant deadlines in your case:

The Court ORDERS that ON OR BEFORE:

- | | |
|-----------------------------------|---|
| November 07, 2013 | City of Keene shall have this Order of Notice and the attached Complaint served upon Kate Ager; Ian Bernard aka Freeman; James Cleaveland; Graham Colson; Garrett Ean; Peter Eyre by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law. |
| November 14, 2013 | City of Keene shall file the returns of service with this Court. Failure to do so may result in this action being discontinued without further notice. |
| 30 days after Defendant is served | Kate Ager; Ian Bernard aka Freeman; James Cleaveland; Graham Colson; Garrett Ean; Peter Eyre must file a written appearance form and written answer or other responsive pleading form with this Court. A copy of the answer and/or responsive pleading must be sent to the party listed below and any other party who has filed an appearance in this matter. |

Notice to Kate Ager; Ian Bernard aka Freeman; James Cleaveland; Graham Colson; Garrett Ean; Peter Eyre: If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:
Charles P. Bauer, ESQ

Gallagher Callahan & Gartrell PC
PO Box 1415
214 North Main Street
Concord NH 03302-1415

BY ORDER OF THE COURT

September 23, 2013

James I. Peale
Clerk of Court

(555)



CHARLES P. BAUER

214 N. Main Street
P.O. Box 1415
Concord, NH 03302-1415

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September 23, 2013

VIA HAND DELIVERY

James I. Peale, Clerk
Cheshire County Superior Court
12 Court Street
Keene, NH 03431

Re: City of Keene v. James Cleaveland, et al.

Dear Clerk Peale:

Enclosed for filing are an original and seven (7) copies of the Complaint Declaration regarding the above.

Also enclosed is a check in the amount of Two Hundred and Fifty Dollars and No Cents (\$250.00) to cover the filing fee.

Thank you for your attention to this matter.

Very truly yours,



Charles P. Bauer

CPB:lbl
Enclosures

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

CITY OF KEENE

v.

JAMES CLEAVELAND; GARRET EAN; KATE AGER; IAN FREEMAN;
GRAHAM COLSON; and PETE EYRE

Docket No. _____

COMPLAINT DECLARATION

NOW COMES the City of Keene ("City"), by its counsel, Gallagher, Callahan and Gartrell, P.C., and complains of James Cleaveland, Garret Ean, Kate Ager, Ian Freeman, Graham Colson, and Pete Eyre ("Defendants"), and says as follows:

Introduction

1. This civil action, which requests a civil jury trial for an award of money damages, is brought against each of the named Defendants for their individual and collective actions and conduct of harassing, intimidating and interfering with the City of Keene and the City of Keene Parking Enforcement Officers ("PEOs") and damaging the employment contractual relationships between the City and its PEOs.

Parties

2. Plaintiff, the City, is a duly organized New Hampshire municipal corporation with an address of 3 Washington Street, Keene, NH 03431.

- 3.
- a. Defendant, James Cleaveland, is a New Hampshire resident with a mailing address of 173 Washington Street, Apt. 9, Keene, New Hampshire.
 - b. Defendant, Garrett Ean, is a New Hampshire resident with a mailing address of 75 Leverett Street, Keene, New Hampshire.
 - c. Defendant, Kate Ager, is a New Hampshire resident with a mailing address of 6 Mystic Place, Keene, New Hampshire.
 - d. Defendant, Ian Freeman, is a New Hampshire resident with a mailing address of 73 Leverett Street, Keene, New Hampshire.
 - e. Defendant, Graham Colson, is a New Hampshire resident with a mailing address of 34 Walnut Street, Keene, New Hampshire.

- f. Defendant, Pete Eyre, is a New Hampshire resident with a mailing address of 29 North Lincoln Street, Keene, New Hampshire.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction pursuant to RSA 491:7.
5. Venue is appropriate because the City is located in Cheshire County and the acts and actions complained of occurred in Cheshire County.

Factual Allegations

6. The City solicits, interviews, hires, trains, supervises, pays, provides benefits to, attempts to retain, and contractually employs Parking Enforcement Officers (“PEOs”).
7. PEOs are employed by the City to enforce motor vehicle parking laws and regulations in Keene, New Hampshire by patrolling the City streets.
8. The City provides its PEOs with wages and benefits in exchange for satisfactory job performance.
9. The City has economic employment relationships with its PEOs.
10. The City has protected legal property interests in the employment relationships with its PEOs.
11. PEOs have no arrest powers, but wear distinctive uniforms to inform the public of their status as City employees and parking enforcement personnel.
12. PEOs are responsible to the City and the community for checking and regulating parking in the City.
13. As of January 2013, the City employed three PEO employees.
14. Beginning in or around December 2012, and continuing to the present, Defendants, acting individually and in concert together, have intentionally and/or negligently engaged in persistent and ongoing efforts to interfere and prevent the City and its PEOs from carrying out their employment parking enforcement responsibilities.
15. Defendants have intentionally and/or negligently engaged in persistent and ongoing efforts to interfere with the City’s employment contractual relationship with its PEOs by creating hostile and unsafe work environments for the PEOs.
16. Defendants, acting individually and in concert together and by implied and express agreement among themselves, have intentionally and/or negligently taunted, interfered

with, harassed, and intimidated the PEOs in the performance of their employment duties by, among other actions and conduct:

- a. Following, surrounding, touching or nearly touching, and otherwise taunting and harassing the PEOs in groups of one, two, or more;
- b. Running up behind the PEOs very quickly, startling them, and making it difficult for them to concentrate on job performance and personal safety;
- c. Encouraging the PEOs to their terminate employment relationships with the City;
- d. Crowding, bumping into, and taunting the PEOs, including subjecting them to profanities and derogatory statements;
- e. Following and harassing the PEOs on days on, days off, and through the Internet;
- f. Communicating with the PEOs in taunting and intimidating ways;
- g. Video recording the PEOs at very close proximity as the PEOs attempt to perform their employment duties; and
- h. Engaging in other actions and conduct directed against the City and its PEOs to interfere and prevent the City and its PEOs from carrying out their employment duties.

17. The City and the PEOs have requested that Defendants cease their harassment, interference, and intimidation.

18. Given the employment contractual relationship between the City and its PEOs, the City has a legal right to protect its employment interests with the PEOs.

19. Given the employment contractual relationships between the City and its PEOs, the City has legitimate and legal interests to prevent and avoid workers' compensation claims, disability claims, unnecessary sick day claims, and other adverse employment consequences that arise from hostile and unsafe work environments, and prevent the loss or alterations of employment status of its PEOs created by Defendants.

20. Given the employment contractual relationships between the City and its PEOs, the City has legal obligations to:

- a. Protect all of its employees, including the PEOs, from hostile work environments created by Defendants; and
- b. Protect all of its employees, including the PEOs, from unsafe work environments created by Defendants.

21. Defendants' actions and conduct, acting individually and in concert together and by implied and express agreement among themselves, have proximately caused one PEO to

resign from employment with the City and another PEO to significantly change job duties with the City.

22. Defendants' actions and conduct have proximately caused the City to incur financial and administrative costs associated with:

- a. the loss of employment of a PEO;
- b. undertaking other employment arrangements for other PEOs; and
- c. providing the PEOs with professional counseling and advice to deal with the stress and anxiety due to the hostile and unsafe work environments.

23. Defendants' actions and conduct have proximately caused the PEOs to experience anxiety and emotional distress, on and off the job, which have adversely affected their work environment and job performance for the City.

24. Defendants' actions and conduct present safety concerns and risks to the PEOs and the general public. Defendants' activities often take up sidewalk space as the PEOs attempt to perform their job functions with Defendants following them closely. Private citizens using City sidewalks have become ensnared in Defendants' activities.

25. The motoring public is also at risk as Defendants run across streets to intercept the PEOs. Defendants follow the PEOs' City vehicles on foot and by bicycles and cars. This forces the PEOs to be hyper-vigilant of Defendants' close proximity to their vehicles while maintaining a safe distance from the general motoring public.

26. The PEOs often find themselves at the center of confrontations between Defendants and the general public. Private citizens have shouted from cars and confronted Defendants on the sidewalks within close proximity to the PEOs.

27. Such confrontations interfere with the PEOs' job functions and are dangerously distracting for the PEOs, Defendants, and the general public when they occur on active streets and sidewalks.

28. The City has a right and duty to protect its interests and the well-being of its employees.

29. The City's protected property interests in the employment relationships with its PEOs have been damaged by the Defendants' actions and conduct.

COUNT I
INTENTIONAL INTERFERENCE WITH EMPLOYMENT CONTRACTUAL
RELATIONS BY DEFENDANTS

30. The City incorporates herein all factual and legal allegations set forth in paragraphs 1–29 above.

31. The City has economic employment relationships with its PEOs.

32. The City has protected property interests in the employment contractual relationships with its PEOs.

33. Defendants are aware of the City's economic employment relationships with the PEOs and with the employment duties of the PEOs.

34. Defendants, acting individually and in concert together and by implied and express agreement among themselves, have intentionally and improperly interfered with the City's economic employment relationships with its PEOs.

35. The City has been damaged by the Defendants' actions and conduct.

36. The City has suffered and will continue to suffer harm due to the PEOs' inability to perform their job duties effectively because of Defendants' actions and intentional interference conduct.

37. The City has suffered damages, all within the jurisdictional limits of the Court, for the following:

- a. Loss of an employee;
- b. A modified schedule for another employee because of the Defendants' behavior;
- c. Hiring costs to replace the lost employee;
- d. Monetary and administrative expenses with regard to counseling and other Human Resource issues; and
- e. The PEOs' inability to properly perform their employment duties.

38. The City may suffer further damage by way of resignations or employment accommodations for one or more PEOs for the working conditions caused by Defendants' intentionally harassing behavior.

COUNT II
NEGLIGENCE BY DEFENDANTS

39. The City incorporates herein all factual and legal allegations set forth in paragraphs 1–38 above.

40. Defendants had legal duties to the City and its PEO employees not to engage in actions and conduct that would create hostile and unsafe working and employment conditions for the PEOs.

41. Defendants, acting individually and in concert together and by implied and express agreement among themselves, breached their duties by engaging in actions and conduct that created hostile and unsafe working and employment conditions for the PEOs.

42. Defendants' actions and conduct have proximately caused damages to the City.

43. The City has suffered and incurred damages as a result of the Defendants' actions and conduct, all within the jurisdictional limits of the Court.

COUNT III
ATTORNEYS' FEES AND COSTS AGAINST DEFENDANTS

44. The City incorporates herein all factual and legal allegations set forth in paragraphs 1–43 above.

45. Based on New Hampshire law, the City is entitled to recover its attorneys' fees and costs associated with this civil action, and the equity injunctive petition, against Defendants based on Defendants' actions and conduct.

REQUEST FOR A JURY TRIAL

46. The City requests a trial by jury.

WHEREFORE, the City requests the following affirmative relief:

- a. Judgment against each Defendant, jointly and individually, for all damages, costs, attorneys' fees, and interest, within the jurisdictional limits of the Court; and
- b. Grant such other relief as may be proper and just.

Respectfully submitted,

CITY OF KEENE

By Its Attorneys,

GALLAGHER, CALLAHAN & GARTRELL, P.C.

Dated: September 23, 2013

By: 

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Caroline K. Lyons, Esquire (#20796)
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