

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____-CV-_____()

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE HONORABLE JERRY BRASWELL,
SENIOR RESIDENT SUPERIOR COURT JUDGE
FOR NORTH CAROLINA JUDICIAL DISTRICT
8-B, in his official capacity,

AND

ADMINISTRATIVE OFFICE OF THE COURTS
OF THE STATE OF NORTH CAROLINA,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, United States of America ("United States"), by the undersigned attorneys,
makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and
Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to
38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) and 28 U.S.C.
§ 1391(b). Defendants, The Honorable Jerry Braswell, Senior Resident Superior Court Judge for
North Carolina Judicial District 8-B ("Judge Braswell") and the Administrative Office of the
Courts of the State of North Carolina (the "AOC") maintain places of business in this judicial

district in Wayne County, North Carolina. Additionally, a substantial part of the events giving rise to the claim occurred in this district.

4. Defendant Judge Braswell is a constitutional officer of the State of North Carolina.

5. Defendant AOC is an agency of the State of North Carolina.

CLAIM FOR RELIEF

6. Defendant Judge Braswell was responsible for appointing and reappointing Magistrates in North Carolina's 8th Judicial District during the relevant period of time covered by this Complaint.

7. On or about January 1, 2005, James L. Myles ("Mr. Myles") was appointed by Defendant Judge Braswell, to serve as a Magistrate in North Carolina's 8th Judicial District, which includes Wayne County, North Carolina, for a two-year term.

8. As a Magistrate, Mr. Myles was employed by Defendant AOC.

9. Mr. Myles' salary as a Magistrate was paid by Defendant AOC.

10. At the time of his appointment, and throughout his term as a Magistrate, Mr. Myles served in the United States Army Reserve ("Army Reserve").

11. Mr. Myles enlisted in the United States Army in December of 1986. He served in the Army for approximately nine years, achieving the rank of sergeant, and was honorably discharged in March of 1995.

12. Mr. Myles enlisted in the Army Reserve in November of 2005, achieved the rank of staff sergeant, and continues to serve in the Army Reserve.

13. During 2006, Mr. Myles attended drill sergeant school and received the training

required to serve as a drill sergeant, and he presently serves as a drill sergeant training members of the United States Navy and United States Air Force who will be deployed in Iraq and Afghanistan, and around the world.

14. As a result of his service in the Army Reserve, Mr. Myles was required to take days off from work as a Magistrate in 2006 to complete his military duties.

15. As a Magistrate, Mr. Myles was supervised by the Chief District Court Judge in North Carolina's 8th Judicial District, the Honorable Joseph Setzer ("Judge Setzer").

16. On, November 2, 2006, Defendant Judge Braswell sent a letter to Mr. Myles criticizing Mr. Myles' attendance record, including absences necessitated by Mr. Myles' military service obligations, and indicating that Mr. Myles' "National Guard duty comes second to your job."

17. Defendant Judge Braswell attached a memorandum to his letter of November 2, 2006, prepared by Judge Setzer, which alleged that Mr. Myles had taken 188 days off from work between January 1, 2006 and September 30, 2006, including "54 days for military duty."

18. In his letter of November 2, 2006, Defendant Judge Braswell prohibited Mr. Myles from taking any non-emergency leave until after April 30, 2007.

19. The Clerk of the Court in North Carolina's 8th Judicial District is responsible for nominating Magistrates for reappointment.

20. On or about October or November of 2006, the Clerk of the Court nominated Mr. Myles for reappointment to an additional term as a Magistrate.

21. In February or March of 2007, Defendant Judge Braswell did not reappoint Mr. Myles to an additional term as a Magistrate.

22. Defendant Judge Braswell's decision to not reappoint Mr. Myles as a

Magistrate was motivated in part by Mr. Myles' military service.

23. In deciding whether to reappoint Mr. Myles, Defendant Judge Braswell, placed emphasis on Mr. Myles' use of military leave, and should have considered whether it was unlawful to do so.

24. Mr. Myles filed a complaint under USERRA with the United States Department of Labor on July 17, 2007.

25. The United States Department of Labor's Veterans' Employment and Training Service ("VETS") conducted an investigation of Mr. Myles' complaint.

26. During the VETS investigation, Defendant Judge Braswell indicated in a letter dated August 8, 2007 that Magistrate reappointment decisions were "completely" within his discretion and that "USERRA has no application on this case."

27. VETS sent a letter to Defendant Judge Braswell, dated August 29, 2007, indicating that, in the opinion of VETS, Mr. Myles' claim was meritorious and Mr. Myles was entitled to reappointment.

28. In response to the August 29, 2007 letter from VETS, Defendant Judge Braswell indicated in a letter to VETS, dated September 6, 2007, that Mr. Myles was not reappointed as a Magistrate because of his failure to coordinate "his time off with the needs and demands of his job." Defendant Judge Braswell went on to say "[a]n employee has a right to take vacation, sick leave or attend to military duties but when it is taken is a matter of concern for the employer and not a unilateral decision made by the employee."

29. Defendant Judge Braswell's refusal to reappoint Mr. Myles as a Magistrate was at least in part motivated by Mr. Myles' service in the Army Reserve and was, therefore, in violation of USERRA, 38 U.S.C. § 4311.

30. Because of Defendant Judge Braswell's conduct, Mr. Myles has suffered significant monetary damages, a loss of benefits, and a loss of opportunities in an amount to be proven later at trial.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment against Defendants as follows:

- a. Declare that Defendants' failure or refusal to reappoint Mr. Myles as a Magistrate was unlawful and was therefore in violation of USERRA, 38 U.S.C. § 4311;
- b. Order that Defendants fully comply with the provisions of USERRA by reappointing Mr. Myles as a Magistrate;
- c. Order that Defendants fully comply with the provisions of USERRA by paying Mr. Myles all amounts due to him for his loss of wages and any lost benefits caused by Defendants' failure or refusal to comply with the provisions of USERRA;
- d. Enjoin Defendants from taking any action against Mr. Myles that fails to comply with the provisions of USERRA;
- e. Declare that Defendants' violation of USERRA was willful;
- f. Award Mr. Myles liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C);
- g. Award Mr. Myles prejudgment interest on the amount of lost wages and benefits found due; and
- h. Grant such other and further relief as may be just and proper.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

This 14th day of November, 2008.

Respectfully submitted,

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

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Attorneys for Plaintiff United States

CIVIL COVER SHEET

JS 44 (Rev. 3/99)

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

United States of America

DEFENDANTS

Jerry Braswell, Senior Resident Superior Court Judge for N.C. Judicial District 8-B, in his official capacity, & Administrative Office of the Courts of the State of N.C.

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

County of Residence of First Wayne
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael J. Alexis, U.S. Dept. of Justice, Civil Rights Division, 950 Pennsylvania Ave., NW, Patrick Henry Bldg., Room 4906, Washington, DC 20530, 202-305-3056 and R. A. Renfer, Jr., Assistant U.S. Attorney, 310 New Bern Avenue, Suite 800, Raleigh, NC 27601-1461, 919-856-4287

Attorneys (If Known)

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

- X 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)

- | | | | | | |
|---|----------------------------|--------------------------------|---|----------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | DEF <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	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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	PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <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"/> 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 <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<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"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- x 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 and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Sections 4301-4333.

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 November 14, 2008

SIGNATURE OF ATTORNEY OF RECORD /s/ R. A. Renfer, Jr., Assistant U.S. Attorney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse
(Rev. 12/96)**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

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

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

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

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

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