

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

MARK C. NELSON
A/K/A MARK EDWARDS,

Plaintiff,

vs.

Case No. 4:14 cv –00107 - JM

GANNETT CO., INC.,
D/B/A TODAY'S THV CHANNEL 11; and
ARKANSAS TELEVISION COMPANY

Jury Trial Demanded

Defendant.

FIRST AMENDED COMPLAINT – DISCRIMINATION & RETALIATION

COMES NOW the Plaintiff, Mark C. Nelson, who performs his duties as sports broadcaster under the name Mark Edwards ("Plaintiff" or "Mark Edwards"), and for his First Amended Complaint – Discrimination and Retaliation against the Gannett Co., Inc. (referred to as "Gannett" or "Defendant"), which conducts business in the State of Arkansas as Today's THV Channel 11 ("THV Channel 11" or "Channel 11"), states as follows:

I. INTRODUCTION & STATEMENT OF THE CASE

1. This lawsuit is being amended to add a claim of *retaliation*. This employment lawsuit brought on behalf of Plaintiff Mark Edwards, who was an up-and-coming, talented young African-American broadcaster from Arkansas, concerns a corporate custom, policy, pattern and practice of systemic and continuing employment discrimination by the Defendant Gannett on the basis of race. This case also involves allegations of race-based misrepresentation and deceit in an employment setting and adverse, unfair and racially-motivated employment actions by Gannett against the Plaintiff Mark Edwards, including retaliation, resulting in denial

of a promised promotion and his ultimate unlawful termination after Plaintiff filed an Equal Employment Opportunity Commission ("EEOC") claim of discrimination and this federal lawsuit claiming discrimination in employment for the denial of the promotion he was promised.

2. The Defendant's unlawful discrimination in employment on the basis of race has permeated throughout the Defendant's all white corporate board. Defendant's board has never hired an African-American for upper level management at THV Channel 11 in Little Rock, Pulaski County, Arkansas. Defendant has engaged in and implemented a discriminatory corporate custom, policy, pattern and practice, which has directly and adversely affected the employment of Mark Edwards at Defendant's THV Channel 11 television station. Plaintiff seeks relief under federal and state law for unlawful race discrimination, misrepresentation and deceit pertaining to Plaintiff's employment with Gannett, and retaliation by Gannett against the Plaintiff for seeking relief from discrimination through EEOC and this federal district court.

3. Defendant Gannett perpetuates and maintains an unlawful corporate custom, policy, pattern and practice of failing to train, market and promote African-Americans, and provide equal opportunities, pay, terms and benefits for those qualified African-American individuals similarly qualified, or more qualified, than white employees in similarly situated employment positions within the Defendant company. This corporate custom, policy, pattern and practice affected Plaintiff with his employment. Gannett warrants and represents to the public, government agencies and its African-American employees in writing that it is an "equal opportunity" employer and "committed to equal opportunity." However, on-the-other-hand, Defendant, as part of its unlawful uniform, corporate custom, policy, practice and procedure, systematically excludes and disparately treats African-American employees by denying equal

promotion opportunities, equal pay, terms and benefits with regard to promotion to leadership positions.

4. Defendant Gannett has no objective promotion system to allow equal employment opportunities to African-Americans, such as the Plaintiff, for advancement, promotion and equal pay, terms and benefits. Defendant Gannett has no objective promotion policy for African-American employees that want to be promoted to the number one prime-time anchor positions in Little Rock. Instead of an objective, uniformly applied promotion policy, Defendant has implemented and utilizes a subjective management promotion system, with white or Caucasian leaders in corporate management and oversight positions. This subjective policy provides an unlawful, discriminatory mechanism to implement and maintain Defendant's continuing, unlawful corporate custom, policy, pattern, and practice, which has adversely impacted the Plaintiff in his employment with the Defendant. As a result of this corporate discriminatory motive and practice, Plaintiff was not promoted as promised by Gannett under Gannett's subjective and discriminatory promotion system.

5. Plaintiff was told by white management at Gannett, during July, 2012, that he would receive everything at THV 11, but the title of a prime-time anchor, director, including an increase in pay, full promotion, advertising and marketing of him on the television station. Plaintiff was advised by Gannett that the "title" of sports director would be eliminated, but not the "position." Plaintiff was induced by Gannett into believing that he would receive all of the accolades of a prime-time anchor, director and that he would be treated just like all white prime-time anchors at THV 11. However, this promotion never occurred and Plaintiff continues to be denied this promotion. Gannett has become adept and skilled at utilizing pre-textual (misleading and false) plausible reasons as sleight-of-hand for denying promotion as a sophisticated

subjective "cover" for Gannett's discriminatory attitude and *animus* toward the promotion and advancement of African-Americans into prime-time anchor positions in Little Rock, Arkansas. Defendant's discriminatory, subjective, arbitrary and unfair employment process, upon information and belief, uses subjective focus groups, alleged corporate restructuring reasoning, and other subjective, false means and methods, which are subjectively manipulated by white supervisors and managers, employed by Gannett, to (a) deny African-Americans equal employment opportunities in its Little Rock broadcasting company, (b) to advance favored white employees into prime-time anchor positions and (c) to hide and conceal Defendant's true discriminatory *animus* or motive toward promotion of African-Americans to prime-time anchor positions in Little Rock, Arkansas.

6. Under its entrenched and pervasive subjective promotion system, Defendant systematically excludes African-American employees utilizing a "one-and-done" promotion policy and by perpetuating a repressive glass ceiling denying African-Americans advancement and promotion opportunities to African-Americans, as compared to similarly or lesser qualified white employees for leadership positions, including the sports anchor and director position at Today's THV Channel 11. Defendant's unlawful discriminatory employment practices and disparate treatment have adversely affected Plaintiff with regard to his promotion, advancement, equal pay and opportunity within the company.

7. Over half a century ago, under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-2(a), an employer is not to consider the color of one's skin or country of origin as a negative mark against that person in matters of employment. Equality means equal opportunity and the prohibition of using or factoring in race or national origin as a deciding or considering factor in promoting persons within a company. Defendant has denied Plaintiff equal

opportunity, promotion and advancement within its company in violation of federal and state law. Plaintiff brings his employment discrimination lawsuit under 42 U.S.C. §§ 1981, 2000e, *et seq.* and Arkansas state law. Plaintiff seeks all compensation permitted by law and injunctive and equitable relief as deemed appropriate and just, including, but not limited to reinstatement, back pay, front pay, loss of employment and career opportunities, training, marketing, promotion, advancement, injunctive relief and attorney's fees, as permitted by law and equity. Plaintiff seeks a remedy for Defendant's volitional, willful and wanton discriminatory, fraudulent, and tortious acts toward the Plaintiff and to enjoin Defendant's invidious, uniform systemic and corporate-wide unlawful discriminatory practices of failing to promote African-Americans, such as the Plaintiff, to the prime-time sports director position at Today's THV Channel 11. Further, Plaintiff brings this lawsuit to restore and make Plaintiff whole as he was promised and remedy for Gannett's unlawful, retaliatory termination of Plaintiff's employment because Plaintiff sought relief from EEOC and filed this federal lawsuit.

II. PARTIES

8. Plaintiff Mark C. Nelson, also known as Mark Edwards on television, is an African-American male. He resides and is domiciled in Little Rock, Pulaski County, Arkansas.

9. Defendant Gannett Co., Inc., which conducts business in Arkansas through Today's THV Channel 11 ("Gannett"), through its wholly-owned, controlled, operated and subsumed subsidiary Arkansas Television Company, Gannett's licensee of THV Channel 11 in Arkansas (collectively "Gannett"). Gannett is a Delaware corporation with its principal place of business and headquarters located at 7950 Jones Branch Drive, McLean Virginia 22107. Defendant's registered agent is CT Corporation System, 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060. At all relevant times herein, agents, servants, employees, representatives,

officers, managers and directors acted within the course and scope of their conduct on behalf of Gannett with regard to any acts or omissions pertaining to the employment of Plaintiff. Arkansas Television Company, upon information and belief, is Gannett's Arkansas licensing entity (for THV Channel 11), who may be served through the Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201. At all relevant times, Gannett is the controlling entity, which supervises, manages, governs, directs, affirms and controls all employment actions.

10. Gannett represents itself as an international media and marketing solutions company that informs and engages more than 110 million people every month through its powerful network of broadcast, digital, mobile and publishing properties. Gannett has recently announced acquisition of Belo Corp. for \$2.2 billion creating the largest independent station group of major network affiliates in the top 25 markets, including stations to be serviced by Gannett under shared services and similar arrangements. Gannett represents that it now reaches 1/3 (33 1/3 %) of all television households in America. With the acquisition, Gannett announced it will become the #1 CBS affiliate group, the #4 ABC affiliate group, and will expand its already number #1 NBC affiliate group position.

11. Gannett employs far in excess of the number of employees required for application of state and federal employment discrimination statutes protecting employees from discrimination in the workplace.

III. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this lawsuit. Plaintiff brings federal and state law claims.

13. This Court has subject matter jurisdiction over this lawsuit pursuant to federal law, including, but not limited to, 28 U.S.C. § 1343 and 42 U.S.C. § 2000(e), *et seq.* Prior to

filing his Title VII claim for relief, Plaintiff exhausted his administrative remedies through the federal EEOC office located in Little Rock, Pulaski County, Arkansas by alleging race discrimination against Today's THV Channel 11. The Little Rock EEOC office mailed an EEOC letter (commonly referred to as a private "right-to-sue" letter for Title VII), for responding company, Gannett Co., Inc., on November 26, 2013, to the Plaintiff. This employment lawsuit is filed within the 90 day period, adopts, relates back to and incorporates by reference herein the factual allegations and claims alleged in the prior Complaint filed on February 24, 2014 (Doc 1). Plaintiff's right-to-sue letter and administrative complaint is attached hereto as Exhibit "1," incorporated herein and hereby made a part of the record hereof. Plaintiff has withdrawn and removed all class action allegations and proceeds seeking individual relief. *Plaintiff has amended his lawsuit alleging a claim of employment retaliation for Gannett's unlawful termination of Plaintiff from employment, which has occurred since his EEOC charge was filed and this federal employment discrimination lawsuit was filed.* The Little Rock EEOC office mailed a private right-to-sue letter on May 6, 2014. Plaintiff's right-to-sue letter and administrative complaint for his race discrimination and retaliation claim are hereto as Exhibit "2," incorporated herein and hereby made a part of the record hereof.

14. This Court has jurisdiction over the parties to this lawsuit. Pursuant to 42 U.S.C. § 2000(e)-(5)(f)(3), "[e]ach United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdictions of actions brought under" federal Title VII. Furthermore, this Court has specific and general *in personam* and *in rem* jurisdiction over Gannett. Gannett has a local network station location in Little Rock, markets and advertises in Arkansas, directly avails itself of the privileges of conducting business in Arkansas by selling and distributing various multi-media, including television, Internet and

newspapers, such as USA Today. Gannett earns millions in revenue and profits from its economic activities in Arkansas, including this federal district. A substantial part of the wrongdoing alleged in this lawsuit took place in Arkansas. Gannett is authorized to conduct business in the State of Arkansas and purposefully and systematically avails itself of the media market, which are sufficient bases for this Court to exercise jurisdiction over Gannett under traditional notions of fair play and substantial justice.

15. Venue is proper in this district pursuant to 28 §§ U.S.C. 1391(a) and (b) because a substantial part of the events, acts and omissions giving rise to the claims occurred in the Eastern District of Arkansas where Gannett has a substantial, ongoing, systemic physical and economic presence. Venue is proper in this federal judicial district where the Plaintiff resides, the Defendant conducts business, including operating a television station and where unlawful acts occurred in this district. Pursuant to 42 U.S.C. § 2000(e)-(5)(f)(3), an employment discrimination lawsuit on account of race "may be brought in any judicial district in the State in which the unlawful unemployment practice is alleged to have been committed"

IV. DEFENDANT'S AGENTS AND CO-CONSPIRATORS

16. Other persons or firms not named as a Defendant in this lawsuit herein may have participated in the violations alleged herein and may have acted as agents, representatives, affiliates, partners or joint-venturers, performed with or assisted Defendant in furthering the unlawful acts and statements in furtherance thereof. Defendant is jointly and severally liable for the acts of any agents, representatives, affiliates, partners, joint-venturers, or joint tortfeasors whether or not named in this lawsuit.

V. STATEMENT OF FACTS

17. Plaintiff is currently a sports broadcaster for the Defendant and performs his employment duties in Little Rock, Pulaski County, Arkansas. Plaintiff graduated from Henderson State University in Arkansas with a degree in Broadcast Journalism in May, 1993. After graduation, Plaintiff worked in radio broadcasting. Around 1999, Plaintiff participated in acting in Los Angeles, California during that year. After acting in Los Angeles, Plaintiff was employed in radio broadcasting in Arkansas.

18. Around 2003, Plaintiff was hired at Defendant's television station, THV Channel 11 in the sports department. There are typically three positions in sports broadcasting. The first position is the anchor and sports director on weekdays. The second position is for weekend sports anchor. The third position involves sports reporting/production, editing and broadcasting of sports events.

19. At the time Plaintiff was hired, he was the third in line for promotion to sports director. Wes Moore, a white male with similar sports broadcasting experience, was the second or number two position at THV Channel 11, and served as the weekend sports anchor. Craig 'O Neill was the sports director in the number one position.

20. Plaintiff continued in the number three position at THV for several years. In 2007, Plaintiff was offered a prime sports broadcasting spot at WEWS in a top 15 news market in Cleveland, Ohio for \$87,000. This broadcasting position provided a substantial increase in pay, promotion, terms, conditions, privileges and employment benefits for the Plaintiff. The position offered Plaintiff the opportunity to cover and broadcast professional sports teams, such as the Cleveland Cavaliers, Cleveland Browns, Cleveland Indians on television and also provided further advancement opportunities in major sports broadcasting venues.

21. At the time this offer was made to the Plaintiff, Larry Audas, the President and General Manager at Defendant's station in Little Rock, Arkansas, authorized and acting on behalf of Defendant Gannett, advised Plaintiff that Gannett was opposed to Plaintiff leaving Little Rock for the new advancement and business opportunity in Cleveland. Mr. Audas, authorized and acting on behalf of Gannett, promised Plaintiff that Defendant would promote Plaintiff to a higher sports broadcasting position on weekends with Gannett's THV Channel 11, in the number two position, and ultimately Plaintiff would be promoted to the number one position as sports director at THV Channel 11, if Plaintiff stayed in Little Rock, Arkansas. Additionally, based upon the promise and material representation of fact, Plaintiff was to be the morning show co-anchor in Little Rock, Arkansas.

22. In reasonable reliance on this material representation of fact and promise by Gannett, Plaintiff agreed to give up and forego the advancement and business opportunity in Cleveland. Relying on this promise, Plaintiff worked for a week with Tom Brannon and Robin Richardson on the Channel 11 morning show. After working with the morning show, Plaintiff was offered a Channel 11 weekend morning show co-anchor position. Plaintiff worked at this position for approximately four years. As a result of, and in reliance on, Channel 11's material representation and promise to Plaintiff that Plaintiff would be on track for a prime-time, sports director, leadership position at THV Channel 11, and the weekend co-anchor position, Plaintiff gave up the Cleveland, Ohio position of employment. Gannett paid reimbursement to the Cleveland station for travel costs and the Cleveland position was then offered to another person.

23. In the middle of 2011, Michael Caplan, a white male, became President and General Manager of THV Channel 11, for Gannett in Little Rock. Plaintiff was working as the THV Channel 11 morning show co-anchor and broadcasting sports for the Defendant. In

approximately May, 2012, Wess Moore, the white sports anchor and director, left Channel 11. After Wess Moore left, Plaintiff should have been promoted as previously promised and represented by the Defendant, to take over as the number one anchor and sports director for THV Channel 11, along with the additional advertising, marketing, promotion and raise-in-pay that accompanies such advancement and promotion within the company. However, contrary to its promise, Defendant refused to promote Plaintiff and never offered this position to Plaintiff.

24. At all relevant times, Defendant employed all white management at THV Channel 11, who acted on behalf of all white Gannett upper management and hired essentially all white anchors utilizing highly subjective criteria with no documentation of any standardization in the promotion process. Gannett's promotion system was a subjective, discriminatory, corporate customer, policy, practice and procedure, which adversely and unfairly impacted and harmed the Plaintiff in his employment. Channel 11 was compromised of all white prime-time anchors and all white upper-management who made subjective, discriminatory employment decisions which unfairly discriminated against Plaintiff. Within the confines of this unlawful, entrenched promotion system, rather than offer the promised advancement and promotion to Plaintiff, instead, Channel 11 hired another white male anchor. Defendant never explained to Plaintiff the reason for denying Plaintiff the promotion to a prime-time anchor, sports director position at THV Channel 11, which Defendant had promised to the Plaintiff. For reasons concealed, suppressed and omitted from Plaintiff, Defendant continued to deny promotion to Mark Edwards.

25. After again denying the promotion and career advancement promised to Plaintiff in 2012, Defendant's white management marketed, advertised and promoted white anchors at THV Channel 11 through "promos." At all relevant times, Defendant suppressed, concealed and

omitted the material fact from Plaintiff that because of its unlawful and discriminatory promotion system, it did not and would not promote African-Americans, such as the Plaintiff, to the number one prime time anchor and sports director position at its Little Rock, Arkansas station. Gannett further concealed, suppressed and omitted the material fact that Defendant did not intend to have Plaintiff, or other African Americans, advance or receive a top sports prime time anchor or leadership position at THV Channel 11, and obtain equal opportunity for terms, benefits, privileges and opportunities and meaningful, quality television broadcasting positions, including the sports anchor, director position for weekdays and primetime viewing at THV Channel 11. Moreover, in addition to denying Plaintiff the promotion to prime-time anchor promised to the Plaintiff, Defendant understaffed and failed to provide support for Plaintiff's sports broadcasts, as it did for other white sports broadcasters in other Gannett stations.

26. In the latter part of 2012 (November and December), a television broadcasting company in Arizona, KPNX, offered Plaintiff a substantial, meaningful and quality promotion, including a large increase in pay, benefits, privileges, and also a television director and leadership advancement business opportunity. The lowest salary would have been, upon information and belief, approximately \$129,000. Plaintiff had a very strong background and good work history in Arkansas. Therefore, the Arizona television company actively recruited Plaintiff to provide a very substantial promotion and pay increase. Defendant, however, through its white upper management and officers directly interfered with Plaintiff's business expectancy with the Arizona television company and provided misleading racially motivated information to the Arizona station to interfere with the promotion and business expectancy and prevent the promotion.

27. Rob Mennie, Vice-President, Senior News Executive with Gannett, acting for and on behalf of Gannett, provided false and misleading information to the Arizona television company, about Mark Edwards' broadcasts and work in Arkansas. Mr. Mennie's communication with the Arizona television management included false, unfair, racial, stereotyped information about the Plaintiff, which gave a false and misleading image of Plaintiff's ability and motivation to be a director, leader and prime-time anchor in a television broadcasting company. Defendant failed to advise the Arizona company that Defendant did not provide adequate resources, support and backing for the Plaintiff in Little Rock to cover Arkansas sports events, and had treated Plaintiff unfairly and differently than other similarly situated white employees within the company.

28. On or about December 13, 2012, Defendant advised the Arizona television company to not hire the Plaintiff. Defendant concealed and suppressed from Plaintiff its discriminatory and subjective behavior and false and misleading communication with the Arizona television company. Defendant did not disclose to the Plaintiff that Gannett's officer and Vice-President had directly interfered with the Plaintiff's substantial career advancement at another station and had provided false and misleading racially motivated and stereotyped information disparaging Plaintiff's reputation and further injuring his career in television broadcasting. Not only did Defendant interfere with and permanently disrupt and end Plaintiff's opportunity, Defendant also continued to deny Plaintiff the promotion, which Plaintiff had been promised because of Defendant's entrenched hostility toward advancement of African-Americans into prime-time, anchor positions.

29. Defendant's affirmative, unlawful, unfair, discriminatory actions and behavior created an employment situation in Little Rock, Arkansas, leaving the Plaintiff without a

promised promotion, without a substantial opportunity in another television market and with an unfairly and wrongfully damaged reputation as a result of Defendant's corporate custom, policy, pattern and practice of employment discrimination.

30. In January, 2013, after Gannett's direct interference, the Arizona television company advised the Plaintiff that the Plaintiff was not going to receive the Arizona job. Defendant concealed, suppressed and omitted the fact that it had directly and unlawfully communicated with the television station in Arizona and further omitted from Plaintiff that Defendant had provided false, racial stereotyped information about Plaintiff's employment and work history with Defendant. During this time period, upon information and belief, Defendant further manipulated evidence of focus groups to cast a negative impression on the Plaintiff, perpetuate its racial glass ceiling and denial of the promotion to sports director position promised to the Plaintiff. Defendant's unlawful, retaliatory, deceptive, tortious and unfair conduct and actions against the Plaintiff interfered with and terminated his employment business opportunity and expectancy, disparaging Plaintiff's reputation in the television broadcasting community, and locked Plaintiff in an unequal and disparate employment setting with the Defendant.

31. Plaintiff, respectfully and in good faith, approached Defendant, Mr. Caplan, the THV Channel 11 manager, in 2012, and 2013, to discuss his employment situation with the Defendant, including the opportunity for marketing, advancement, promotion, increase in pay and meaningful, quality change by promotion to the position of number one sports director, which had been promised to Plaintiff on more than one occasion. However, at all relevant times, and as part of its continuing suppression, unequal and disparate treatment of African-Americans, including Plaintiff, Defendant repeatedly denied the Plaintiff equal opportunity for advancement to sports director position and equal pay, promotion and marketing. As part of its ongoing

pretext and false, deceptive, unfair and discriminatory corporate attitude and subjective custom, policy, pattern and practice, Defendant did not provide a true reason for its failure to advance Plaintiff to the promised sports director position. Defendant's adverse and discriminatory employment practices adversely impacted the Plaintiff, denied him promotion to sports director on repeated, continual time periods, were contrary to prior promises made by the Defendant, and prevented Plaintiff from obtaining significant advancements and career opportunities in other television markets because of Defendant's interference and unlawful actions.

32. After being denied promotion to prime-time anchor, sports director, Plaintiff filed an EEOC claim on February 18, 2013, seeking relief from racial discrimination. A right-to-sue letter was issued and mailed by EEOC on November 26, 2013. Gannett was the Responding Party to the EEOC claim of race discrimination for denial of promotion. Communication occurred with Gannett, who was fully aware of the charge of discrimination and of Plaintiff's intent to seek relief from race discrimination. After the EEOC claim was filed, Gannett purported to offer Plaintiff a short extension of his employment. Gannett would not promote Plaintiff to prime-time anchor, sports director as was promised.

33. This federal lawsuit was filed against Gannett on February 24, 2014, alleging racial discrimination for denial of Plaintiff's promotion he was promised. Around this time period, Gannett hatched and implemented a retaliatory scheme to unilaterally terminate the Plaintiff because of his EEOC claim and federal lawsuit claiming employment discrimination.

34. On April 15, 2014, a short period after filing his EEOC claim and this federal lawsuit, Gannett abruptly and unilaterally terminated Plaintiff. Gannett, as part of its retaliatory scheme, retaliated against the Plaintiff and unilaterally terminated the Plaintiff from employment before Plaintiff's brief contract extension had even run through the end of April.

35. Gannett terminated Plaintiff. However, Plaintiff, at all relevant times, had sought to be promoted to the position of prime-time anchor and director with Gannett and remain in employment with Gannett. Gannett's acts were direct and affirmative employment retaliatory acts to terminate Plaintiff for filing a charge of race discrimination with EEOC and for seeking remedy in the law and equity by filing this federal lawsuit for being denied a promotion on the basis of Plaintiff's race. As a false cover or "pretext" to mask and conceal Gannett's retaliation against Plaintiff for Plaintiff exercising his lawful rights to file a federal lawsuit and seek remedy for employment discrimination, Gannett brought up false, misleading, bogus and untrue allegations against the Plaintiff at the time of its unlawful, retaliatory termination.

36. At all relevant times, Plaintiff wanted to stay and remain at THV Channel 11 and be promoted as promised. *The whole basis for Plaintiff's initial lawsuit is to be promoted within Gannett as was promised him by Gannett.* Gannett, however, used Plaintiff's filing of this race discrimination lawsuit for denial of promotion as a catalyst, basis and means for it to initiate a scheme and devise to retaliate against the Plaintiff and end his employment at Gannett.

37. In sum, Plaintiff was considered a good employee at Gannett at all times up through the filing of this discrimination lawsuit. Gannett's retaliatory termination of the Plaintiff was a surprise to the Plaintiff, temporally close in time to Plaintiff's EEOC filing and this federal lawsuit, and direct retaliation for Plaintiff seeking relief through EEOC and the federal court system for race discrimination in employment.

VI. CORPORATE SYSTEMIC CUSTOM, POLICY, PRACTICE AND PROCEDURE
(RACIAL GLASS CEILING – SPORTS DIRECTOR POSITION)

38. Defendant Gannett has a corporate custom, policy, pattern, practice and procedure of not promoting African-Americans to sports director and leadership positions and utilizing a "one-and-done policy" that unfairly treats and disparately impacts African-Americans employed

within the company. Gannett's corporate board and leadership is primarily white. Across the Southern Region of the United States and in Little Rock, Arkansas, Defendant has not trained, marketed, promoted or advanced African-Americans to top prime-time anchor, director positions as it has similarly situated white employees with the same or even less experience.

39. Historically, Defendant has targeted, recruited, hired and promoted white anchors for top anchor, director and leadership positions – "number one" positions. White employees are placed on a "fast track" for promotion and advancement to top prime-time, anchor positions and are promoted and advanced over equally or sometimes more qualified African-Americans. For example, Defendant, in the State of Arkansas at THV Channel 11, created a targeted recruitment and training program, policy and practice, designed for a white, middle age female anchor (ultimately filled by Dawn Scott), to begin and grow within THV 11. Defendant's unfair program which subjectively and unfairly targeted advancement of subjectively selected white employees within Gannett (which it viewed as better reflecting Gannett's image), is part of Gannett's historic position of maintaining a white image for its prime-time anchor position and Defendant's historic and systemic discriminatory attitude and *animus* toward promotion of African-Americans in lead, weekday anchor positions. In implementing the racially preferential program, Defendant bypassed an equally qualified African-American female, Richelle A. McCoy. *See* Exhibit "3" (¶¶ 6-20), adopted herein by reference and hereby made a part of the record hereof.

40. However, while implementing a program that subjectively and unfairly impacted and excluded African-Americans from sports director and lead, number one anchor positions, Defendant failed to implement or abandoned any diversity program or attempt at diversification of its employment setting for African-Americans in sports anchor roles. Defendant used

subjective means of promoting employees within its company, including, but not limited to the use and manipulation of "focus" groups, which became one of Gannett's tool of choice to subjectively influence decision making for number one anchor positions. Gannett manipulated focus groups to achieve an outcome to support white anchors and leadership and to prevent Plaintiff from becoming a prime-time anchor.

41. Through its disparate and manipulative application of focus groups, and other subjective employment management methods, upon information and belief, Gannett denied well known popular and successful African-American television broadcasters, such as T.J. Holmes, a CNN broadcaster, primary director positions, even though focus groups evidenced that Mr. Holmes performed, or was received, as well or even better among audiences than his white employee counterparts. Further, upon information and belief, a very competent and qualified young African-American, Todd Wilson, was denied a lead anchor role even though focus groups demonstrated Mr. Wilson performed well and was well-received.

42. In sum, the overall employment atmosphere and attitude with the Defendant, at all relevant times alleged herein, was hostile toward recruitment, training, leadership, management and advancement of African-Americans into top sports broadcasting leadership positions and opportunities. Gannett's disparate treatment of Plaintiff, and similarly situated African-American employees, has created a repressive work environment stifling and denying advancement of African-Americans within the company through a systemic and uniform policy of denial creating a disparate impact and overall racial glass ceiling. Gannett utilizes a subjective, secretive and subversive promotion system that deceptively discriminates against and represses African-American employees. Gannett uses pretextual (false or misleading) reasons or plausible excuses for not promoting African-Americans, which are often couched as reasons, such as corporate

discretion, corporate restructuring, corporate re-shuffling, or lack of ambition of the African-American employee. Gannett does not have an objective and non-discriminatory means of promoting African-Americans or a system that ensures and guarantees African-Americans equal opportunity employment promotion and advancement opportunities, including equal pay and employment terms, benefits and privileges for prime-time anchor position in Little Rock, Arkansas.

43. Gannett's overall suppression of a particular race in an employment setting and glass ceiling effect has caused many young African-Americans to leave THV 11 to find alternative employment in other parts of the United States (or quit broadcasting in general because of discouragement over the unfair treatment and exposure in the media market experienced through Gannett). Gannett's disparate treatment and uniform corporate custom, policy, practice and procedure has resulted in less opportunity, less training, less marketing, less promotion and repressed and lower incomes for African-Americans employed by the company. Plaintiff brings this lawsuit under federal and state law civil rights and employment law, seeking relief from Defendant's unlawful race discrimination in an employment setting in Arkansas.

VII. FRAUDULENT CONCEALMENT AND TOLLING

44. At all relevant times herein, Defendant Gannett affirmatively promoted and represented itself to government agencies and to the public, as an "equal opportunity employer." However, Gannett affirmatively, willfully, wantonly and wrongfully concealed, suppressed, omitted and withheld material information about its racially discriminatory and selective corporate business custom practices, policies and procedures with regard to promotion of African-Americans to the weekly sports director, number one anchor position. Defendant further affirmatively misrepresented information to Plaintiff concerning Defendant's willingness to pay

African-Americans equally with similarly situated or even lesser qualified white employees and willingness to promote African-Americans within the corporate television broadcasting structure to weekday sports anchor, director positions. Defendant's concealment, suppression and misrepresentation to the Plaintiff was ongoing and continuing. During this time period, Plaintiff could not learn or discover the operative facts giving rise to his claims of denial of promotion and promise despite his due diligence because of Gannett's concealment, suppression and omission of material facts pertaining to its promotion policy. Defendant's affirmative, fraudulent, ongoing and continuing concealment and suppression of material facts, regarding its discriminatory motives, corporate custom, policy, pattern, practice and unlawful actions, regarding Plaintiff's employment with the Defendant, was an ongoing implemented unlawful custom, policy, practice and procedure and subjective, arbitrary, tortious means of corporate behavior, which affirmatively tolls any statute of limitations period up through the filing of this lawsuit. The continuing denial of promotion on the basis of race in violation of state and federal law was continuing at all relevant times herein from 2007, up through the time of this lawsuit.

45. Plaintiff respectfully brings the following claims to obtain relief from the unlawful practices complained of in this employment discrimination lawsuit.

VIII. CAUSES OF ACTION & CLAIMS FOR RELIEF

1. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e

46. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

47. The United States Constitution and Title VII of the Civil Rights Act of 1964, as amended, preclude discrimination in an employment setting upon the basis of race. Pursuant to 42 U.S.C. § 2000e-(2)(a)(1): "It shall be an unlawful employment practice for an employer ...

to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race [or] color."

48. Moreover, under Title VII, 42 U.S.C. § 2000e-2(k)(1)(A), a company's policies, practices and procedures in employment may not have a disproportionately adverse effect on African-American employees.

49. Plaintiff Mark Edwards is an African-American employee and, therefore, protected by Title VII in an employment setting. At all relevant time periods herein, Plaintiff was highly qualified for a prime-time number one anchor, sports director position in Little Rock, Arkansas and had performed his job very well and competently. Plaintiff was denied promotion on multiple occasions after being promised and after requesting to be promoted to a prime-time number one anchor, sports director position. The denial of Plaintiff's promotion was an adverse employment action, occurred on multiple occasions, is continuing in nature and was because of the color of Plaintiff's skin, i.e., it was based upon circumstances reflecting and suggesting a discriminatory motive or impact. THV Channel 11 also filled a co-anchor position by hiring a lesser qualified, similarly situated, white male and continued to deny Plaintiff a promotion contrary to Defendant's promise and material representation to the Plaintiff that he would be a number one anchor, director.

50. Discrimination in an employment setting on the basis of the color of one's skin in our modern society is wrongful, invidious, intolerable and contrary to Title VII. In the modern workplace, racial discrimination and denial of equal employment opportunity goes against the bounds of decency, justice, equality and what people of a free nation and society value, trust and represent. Discrimination is invidious and cuts at the heart of what we value as a society because it is the intentional or wanton treatment of a person differently from another simply because of

the color of that person's skin. Racial discrimination is secretive, subjective, furtive, shrewd, sophisticated, manipulative, confusing, depressing, repressing, discouraging and casts a large and oppressive net over any hard-working, willing person who wants equal opportunity to earn a fair and equal salary and also equal opportunities for training, marketing, advancement and promotion. Being denied equal employment opportunities because of the color of one's skin is simply wrong in an employment setting and directly violates federal law. Defendant's fraudulent and malicious representations and discrimination on the basis of the color of Plaintiff's skin were made intentionally, knowingly, willfully or wantonly and affirmatively caused harm to Plaintiff.

51. Plaintiff has been subjected to employment discrimination on account of his race and the color of his skin as the Defendant has failed to offer Plaintiff meaningful, quality advancement opportunities, including increased pay, marketing, promotion, privileges, terms, benefits and advancement to a prime-time anchor position at THV Channel 11. Defendant concealed, suppressed, manipulated and hid its true racial *animus* and corporate racially biased attitude from Plaintiff. At all relevant times alleged herein, Plaintiff turned down a more favorable employment position based upon affirmative, material representations and promises by the Defendant and was denied a more favorable employment position because Defendant intentionally interfered with and retaliated against Plaintiff's employment advancement opportunity using racially motivated stereotypes to deny him the opportunity.

52. As a direct and proximate result of being subject to racial discrimination, Plaintiff experienced damages in an employment workplace and was denied equal pay, opportunities, promotion, terms, benefits, privileges, marketing and advancement in an employment setting.

53. Plaintiff seeks injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, equitable relief, costs, pre- and post-judgment interest

and attorney's fees as permitted by federal law, including, but not limited to: 42 U.S.C. § 2000(e)(5)(k) and 42 U.S.C. § 1988.

2. 42 U.S.C. § 1981 (14th Amendment to U.S. Constitution)

54. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

55. 42 U.S.C. § 1981 (and Title VII) prohibits racial discrimination, unequal and unfair treatment in the making, performance, modification of employment contracts, including all terms, benefits, privileges, opportunities, terms and conditions of the contractual relationship.

56. Plaintiff has been subjected to employment discrimination on account of his race and color of his skin as the Defendant has failed to offer Plaintiff meaningful, quality advancement opportunities, including increased pay, marketing, promotion, terms, benefits, privileges and advancement to a sports director, lead anchor position. Defendant concealed, suppressed, manipulated and hid its true racial *animus* and corporate racially biased attitude from Plaintiff. At all relevant times alleged herein, Plaintiff turned down a more favorable employment position based upon material representations and promises by the Defendant and was denied a more favorable employment position because Defendant intentionally interfered with and retaliated against Plaintiff using racial, stereotypes, which were a pretext and subterfuge for its discriminatory corporate custom, policy, practice and procedure of not promoting African Americans to the sports director position at Channel 11.

57. As a direct and proximate result of being subject to racial discrimination, Plaintiff experienced damages in his employment workplace and was denied equal pay, opportunities, terms, benefits, privileges, promotion, marketing and advancement in an employment setting.

58. Plaintiff seeks injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, equitable relief, costs, pre- and post-judgment interest and attorney's fees as permitted by federal law, including, but not limited to: 42 U.S.C. § 2000(e)(5)(k) and 42 U.S.C. § 1988.

3. Ark. Code Ann. § 16-123-101, et seq. (Arkansas Civil Rights Act)

59. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

60. The Arkansas Civil Rights Act, as codified at Ark. Code Ann. § 16-123-101, *et seq.*, provides citizens of Arkansas the right to be free from discrimination in an employment setting.

61. Pursuant to Ark. Code Ann. § 16-123-107(a): "The right of an otherwise qualified person to be free from discrimination because of race ... is recognized as and declared to be a civil right." This right shall include, but not be limited to: "(1) The right to obtain and hold employment without discrimination." Ark. Code Ann. § 16-123-107(a)(1).

62. Pursuant to Ark. Code Ann. § 16-123-107(c)(1)(A): Any individual who is injured by employment discrimination by an employer in violation of subdivision (a)(1) of the Arkansas Civil Rights Act shall have a civil action in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and, in the discretion of the court, the cost of litigation and a reasonable attorney's fee.

63. Plaintiff has been subjected to employment discrimination on account of his race as the Defendant has failed to offer Plaintiff advancement opportunities, including increased pay, training, marketing, promotion and advancement to the prime-time anchor, director position.

Defendant concealed, suppressed, manipulated and hid its true racial *animus* and corporate racially biased attitude from Plaintiff at all relevant times alleged herein in order to keep the Plaintiff employed and knowing Plaintiff turned down more favorable positions in other television markets based upon material representations made by the Defendant to the Plaintiff. Further, Defendant retaliated against Plaintiff, intentionally tortuously interfered with and retaliated against Plaintiff's employment opportunity in Arizona using racial, stereotypes thereby preventing Plaintiff from obtaining a meaningful, quality promotion and advancement and better opportunities and enjoyment of benefits, privileges, terms and conditions of employment.

64. As a direct and proximate result of being subject to racial discrimination, Plaintiff experienced damages in the employment workplace.

65. Plaintiff seeks injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, equitable relief, costs, pre- and post-judgment interest and attorney's fees as permitted by Arkansas law, including Ark. Code Ann. § 16-123-107(c)(1)(A).

4. Fraud, Deceit and Affirmative Misrepresentation, Concealment, Suppression and Omission

66. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

67. Defendant Gannett publicly warrants and represents itself as having an "equal opportunity" employment policy, including to government agencies, such as the EEOC and being an "equal opportunity employer," including an employment diversity program (which it never implemented in Little Rock, Arkansas). The company has an entrenched historic discriminatory policy or practice of not promoting African-Americans to prime-time anchor and director positions at its Little Rock, Arkansas television station.

68. In 2007, Defendant Gannett affirmatively made a promotion and binding promise to the Plaintiff. This binding promise was breached and violated in 2012, and continuing up to the current time period. Gannett's representations of material fact about equal employment opportunities with THV Channel 11, were intended to induce and did affirmatively induce Plaintiff's reliance on the representations so Plaintiff would disavow, forbear, give up, and not seek employment at a different television broadcasting company and remain in employment with Defendant. Defendant made the material misrepresentations to Plaintiff knowing that because of Gannett's racially discriminatory *animus*, the company would not offer Plaintiff the promised promotion, marketing and advancement opportunities at THV 11. Defendant knowingly concealed, suppressed and omitted this material information from Plaintiff.

69. Plaintiff reasonably relied upon continuing representations by the Defendant that Plaintiff would be promoted to a prime-time number one anchor, director position at THV Channel 11, and be given opportunities for advancement in employment, including advanced salary, promotion and marketing opportunities and ability to develop, *inter alia*, the prime-time anchor and sports director position at THV Channel 11.

70. Defendant intended to induce the Plaintiff into foregoing and not seeking opportunities at other employment markets even though at the time the false representations of material fact were made, Defendant never intended to promote the Plaintiff to a prime-time, number one position as sports anchor, director, and never intended to provide Plaintiff with employment training, advancement, promotion and marketing opportunities as it had represented to the Plaintiff, or as it offered similarly situated white employees. At all relevant times herein, as part of its continuing unlawful custom, policy, practice and procedure, Defendant continued to falsely assure, promise and represent to the Plaintiff employment opportunities that Defendant

never intended to provide to Plaintiff because of Plaintiff's race, including and up through the filing of this lawsuit.

71. Defendant's false representations of material fact to the Plaintiff concerning the Plaintiff's employment opportunities and employment benefits, privileges, terms and conditions were intended to induce Plaintiff to reasonably rely upon the false and deceptive representations. Plaintiff did reasonably rely upon the false and deceptive assurances and representations to his harm and detriment, including lost business opportunities, career advancement and promotion, and has experienced damages as the proximate result of Defendant's false and deceptive representations.

72. As a direct and proximate result of being subject to fraud and racial discrimination, Plaintiff experienced damages in the employment workplace.

73. Plaintiff seeks injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, equitable relief, costs, pre- and post-judgment interest and attorney's fees as permitted by state and federal law.

5. Detrimental Reliance, Promissory Estoppel and Restitution

74. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

75. Plaintiff had an employment contract with Gannett and, therefore, was not an at-will employee.

76. In 2007, Gannett affirmatively promised Plaintiff a prime-time anchor, director position within the company.

77. Defendant Gannett's promise was a promise which the promisor Gannett should reasonably have expected to induce action or forbearance of a definite and substantial character

on the part of the promisee Plaintiff Mark Edwards and which did induce such action or forbearance. Therefore, the promise is binding upon Defendant if injustice can be avoided only by the enforcement of the promise.

78. Plaintiff relied upon and acted to his detriment upon the material false and deceptive promises, representations and assurances from the Defendant that African-American employees would enjoy full benefits, privileges, terms and conditions of equal employment and that Plaintiff would be promoted to prime-time anchor and director position if he did not take a job in Cleveland (forbearance), and would stay in Little Rock, Arkansas.

79. In equity, morality, in good conscience and to avoid an injustice to the Plaintiff, Defendant Gannett's promise should be enforced and Defendant should pay damages and make restitution for its wrongful and unlawful actions, which have harmed the Plaintiff to his detriment in the employment workplace.

80. As a direct and proximate result of being subject to racial discrimination, Plaintiff experienced reliance damages, harm, detriment and injustice in the employment workplace.

81. Plaintiff seeks injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, equitable relief, costs, pre- and post-judgment interest and attorney's fees, as permitted by federal and Arkansas law.

6. Title VII (42 U.S.C. 2000e, et. seq.) and 42 U.S.C. § 1981 – Retaliation

82. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

83. After being denied promotion to prime time anchor, sports director, Plaintiff filed an EEOC claim on February 18, 2013. A right-to-sue letter was issued and mailed on November 26, 2013. Gannett was the Responding Party to the charge of discrimination. At all relevant

times, Plaintiff wanted to remain as an employee with Gannett and be promoted. Plaintiff filed this federal lawsuit against Gannett on February 24, 2014, alleging racial discrimination for Plaintiff's denial of promotion, which had been promised Plaintiff. Gannett hatched and implemented a scheme to retaliate against the Plaintiff, after the race discrimination lawsuit, and unilaterally terminated the Plaintiff on April 15, 2014. Plaintiff amended his charge to the Little Rock EEOC office adding retaliation in employment as a charge. EEOC issued a right-to-sue notice on May 6, 2014. This amended complaint adds this claim of retaliation.

84. Gannett terminated Plaintiff, even though Plaintiff had at all relevant times, sought to be promoted to the position of prime-time anchor and director. Gannett's acts were a direct employment retaliation act against the Plaintiff for filing a charge of race discrimination and for seeking remedy in the law and equity for being denied a promotion. As part of its unlawful scheme to terminate Plaintiff, Gannett brought up false issues about Plaintiff's work performance and Plaintiff's willingness to work at THV Channel 11 on or about April 15, 2014, as a false pretext and cover for Gannett's unlawful scheme to retaliate and unlawfully terminate Plaintiff's employment. At all relevant times, Plaintiff wanted to stay at THV Channel 11 and be promoted. *The whole basis for Plaintiff's initial lawsuit is to be promoted within Gannett as was promised him by Gannett.* Gannett used Plaintiff's EEOC filing for denial of promotion as a catalyst, basis and means for it to initiate a scheme and devise to retaliate against the Plaintiff for Plaintiff lawfully exercising his rights for remedy for discrimination and terminate Plaintiff's employment for alleging discrimination.

85. Plaintiff sustained an adverse employment action, a job termination, in a temporally short period of time after Plaintiff exercised his lawful rights to file an EEOC claim and federal lawsuit pertaining to discrimination Plaintiff experienced because of his race. The

termination was less than two months after this lawsuit was filed. The termination was the direct result of the EEOC claim and federal lawsuit alleging race discrimination in employment for denying Plaintiff his promised promotion and a shock to the Plaintiff.

86. As a direct and proximate result of Gannett's unlawful retaliation and termination of Plaintiff's employment, Plaintiff seeks reinstatement to employment, injunctive relief, back pay, front pay, compensatory damages, restitution, loss of prospective earnings, business expectancy, equitable relief, costs, pre- and post-judgment interest and attorney's fees as permitted by federal law, including, but not limited to: 42 U.S.C. § 2000(e)(5)(k) and 42 U.S.C. § 1988.

IX. CAUSATION AND DAMAGES

87. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

88. As a direct and proximate result and cause of the racial, intentional, willful and wanton tortious acts committed by the Defendant, in a continuing course of corporate custom, policy, practice and procedure, as alleged hereinabove, Plaintiff has sustained damages in excess of the amount required for federal diversity jurisdiction, including, but not limited to:

- (a) Reinstatement to employment at THV Channel 11;
- (b) Loss of training, marketing, promotion and advancement opportunities;
- (c) Unequal pay for equal labor and qualifications;
- (d) Loss of back pay, front pay, benefits, terms, privileges and prospective earnings and career development opportunities;
- (e) Emotional anguish, embarrassment and distress; and
- (f) All other damages and relief permitted under state and federal law.

X. PUNITIVE DAMAGES

89. Plaintiff realleges and incorporates by reference herein the preceding paragraphs as though stated herein word-for-word.

90. Defendant engaged in a corporate policy, pattern and practice of not promoting or offering the same training, marketing, promotion, advertising, benefits, privileges, terms and conditions of employment uniformly across the board to African-Americans employees as was provided to similarly situated, or lesser qualified white employees. Defendant knew or ought to have known, in the light of the surrounding circumstances that Gannett's conduct would naturally and probably result in injury and damages to the Plaintiff. These actions, include, but are not limited to, providing false, racially motivated, material representations about the Plaintiff to other television companies, intentionally and directly interfering with promotion and career advancement opportunities in other markets available to the Plaintiff, denying Plaintiff promotion solely on account of his race and color of his skin and retaliating against the Plaintiff for exercising his lawful rights to file a claim of discrimination with EEOC and a lawsuit to remedy such discrimination.

91. Defendant intentionally and willfully pursued such racially motivated, fraudulent, misleading, disparaging, career damaging and tortious conduct against the Plaintiff with conscious disregard and willful and wanton indifference to the Plaintiff and his right not to be discriminated against. Further, Defendant pursued discriminatory actions, which were adverse to Plaintiff's employment status, career, opportunities, terms, benefits, privileges and advancement opportunities, including other television markets. Plaintiff, therefore, is entitled to punitive or exemplary damages to deter this type of overarching, wrongful conduct in an employment setting for which the law provides a remedy.

92. Plaintiff, pursuant to Fed. R. Civ. P. 38, hereby demands a jury trial.

XI. PRAYER FOR RELIEF

93. Plaintiff reserves the right to amend his First Amended Complaint for race discrimination and retaliation as additional facts are discovered as permitted by the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant for:

- (1) Compensatory, actual, special and consequential damages as permitted by law in excess of the amount required for federal diversity jurisdiction;
- (2) Injunctive relief to enjoin the discriminatory practices complaint of herein;
- (3) Equitable relief and restitution as permitted by law, including *reinstatement to employment to a promoted position as promised*, back pay, front pay, promotion and business opportunities, loss of employment benefits, privileges, terms, promotion, and all other damages permitted by law and equity;
- (4) Punitive damages;
- (5) Taxable and statutory costs and fees, including expert fees, filing fees, deposition costs, travel costs, transcript costs, audio, visual and technology costs and all other costs and fees permitted by law;
- (6) Attorney's fees as permitted by federal and state law, including, but not limited to: 42 U.S.C. § 2000(e)-(5)(k), 42 U.S.C. § 1988, and Ark. Code Ann. § 16-123-107(c)(1)(A);
- (7) Pre- and post-judgment interest on a judgment, including any interest, fees and costs incurred in recovering on any judgment awarded in favor of Plaintiff; and
- (8) All other relief permitted by law and equity.

Respectfully submitted,

/s/ Phillip Duncan by Richard Quintus

Phillip J. Duncan, ABN #74039

Richard Quintus, ABN#2000078

William R. Pointer, ABN#2007216

Justin C. Zachary, ABN#2010162

Timothy P. Reed, ABN #2012210

DUNCAN FIRM, P.A.

900 S. Shackleford Road, Suite 725

Little Rock, Arkansas 72211

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EEOC Form 61 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Mark C. Nelson**
6816 Marguerite Ln
Little Rock, AR 72205

From: **Little Rock Area Office**
820 Louisiana
Suite 200
Little Rock, AR 72201

*On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
493-2013-00594	Johnny L. Glover, Investigator	(501) 324-6475

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (*briefly state*)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

William A. Cash Jr. / JJA

**William A. Cash, Jr.,
Area Office Director**

NOV 26 2013

(Date Mailed)

Enclosures(s)

cc: **Cynthia L. Hale**
Counsel/EEO and Labor Relation
GANNETT CO. INC
7950 Jones Branch Drive
Mc Lean, VA 22107



Enclosure with EEOC
Form 161 (11/09)

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

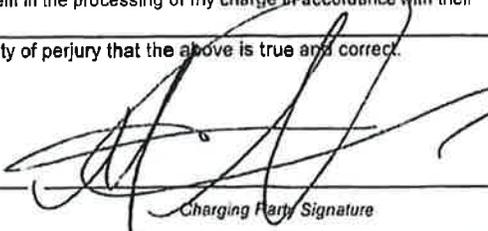
If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
		Amended 493-2013-00594	
and EEOC			
State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)	Date of Birth
Mr. Mark C. Nelson			
Street Address		City, State and ZIP Code	
6816 Marguerite Ln, Little Rock, AR 72205			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
KTHV CHANNEL 11		15 - 100	(501) 376-1111
Street Address		City, State and ZIP Code	
720 Iazard Street, Little Rock, AR 72203			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE	
<input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		Earliest Latest 06-29-2012 01-07-2013 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>I was hired in December 2003 as a Producer/Reporter. In June 2012, the previous Sports Director left. I asked management about being promoted to the Sports Director position. I was denied. I am performing the Sports Director duties. I was told I would receive the pay increase and promoted with the other main anchors. In August 2012, a news Anchor was hired. Between August and October 2012, I was not included in any of the main anchor promotions. I have inquired several times about the Sports Director position, most recently in January 2013.</p> <p>In July 2012, I was told that the Sports Director title would be eliminated. In December 2012, I was told I would not get the pay increase because I am under contract.</p> <p>I believe I have been denied promotion and pay increase because of my race, African American, in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY -- When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.			
11/13/13 Date		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
 Charging Party Signature			

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

Amended
493-2013-00594

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):

I also believe that other African American employees as a class have been denied promotions to Sports Director positions and other upper management positions.

M.A.

When a fellow African American Gannett employee asks a member of management "If there are ever African Americans promoted to positions of power, including main Anchors like Sports Directors etc." The answer from the member of management should never be laughter and an abrupt "no".

I believe these incidents show a pattern and practice of discriminatory behavior toward African Americans.



I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

11/13/13
 Date

[Handwritten Signature]
 Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge if **retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EEOC FORM 131 (11/08)

U.S. Equal Employment Opportunity Commission

<p>Cynthia Linscott Hale Counsel/EEO and Labor Relations Gannett Co. Inc 7950 Jones Branch Drive McLean, VA 22107</p>	<p>PERSON FILING CHARGE</p> <p style="text-align: center;">Mark C. Nelson</p> <p>THIS PERSON (check one or both)</p> <p><input type="checkbox"/> Claims To Be Aggrieved</p> <p><input type="checkbox"/> Is Filing on Behalf of Other(s)</p> <hr/> <p>EEOC CHARGE NO. 493-2013-00594</p>
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NOTICE OF CHARGE OF DISCRIMINATION
(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII)
 The Equal Pay Act (EPA)
 The Americans with Disabilities Act (ADA)
 The Age Discrimination in Employment Act (ADEA)
 The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to
 If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Johnny L. Glover,
Investigator

EEOC Representative

Telephone **(501) 324-6475**

Little Rock Area Office
820 Louisiana
Suite 200
Little Rock, AR 72201
Fax: (501) 324-5991

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race
 Color
 Sex
 Religion
 National Origin
 Age
 Disability
 Retaliation
 Genetic Information
 Other

See enclosed copy of charge of discrimination.

Date November 22, 2013	Name / Title of Authorized Official William A. Cash, Jr., Area Office Director	Signature
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403. 2013-00594



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE



Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.

1. Personal Information

Last Name: NELSON First Name: MARK MI: C
Street or Mailing Address: 6816 Marguerite Ln Apt Or Unit #:
City: Little Rock County: Pulaski State: AR ZIP: 72205
Phone Numbers: Home: Work: ()

Cell: () Email Address:
Date of Birth: Sex: Male [X] Female [] Do You Have a Disability? [] Yes [X] No

Please answer each of the next three questions.
i. Are you Hispanic or Latino? [] Yes [X] No
ii. What is your Race? Please choose all that apply. [] American Indian or Alaska Native [] Asian [] White [X] Black or African American [] Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? African-American

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Bessie Nelson Relationship: Mother
Address: 9109 TANHA A City: LR State: AR Zip Code: 72204
Home Phone: (501) 225-0317 Other Phone: ()

2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

[X] Employer [] Union [] Employment Agency [] Other (Please Specify)

Organization Contact Information (If the organization is an employer, provide the address where you actually worked. If you work from home, check here [] and provide the address of the office to which you reported.) If more than one employer is involved, attach additional sheets.

Organization Name: KTHV Channel 11 (Gannett)
Address: 720 Izard County: Pulaski
City: LR State: AR Zip: 72201 Phone: (501) 244-376-1111

Type of Business: Media Job Location if different from Org. Address:
Human Resources Director or Owner Name: Michael Caplan Phone: (501) 376-1111

Number of Employees in the Organization at All Locations: Please Check (v) One
[] Fewer Than 15 [] 15 - 100 [] 101 - 200 [] 201 - 500 [X] More than 500

3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? [] Yes [X] No

Attached

Date Hired: Job Title At Hire:
Pay Rate When Hired: Last or Current Pay Rate:
Job Title at Time of Alleged Discrimination: Date Quit/Discharged:
Name and Title of Immediate Supervisor:

If Job Applicant, Date You Applied for Job _____ Job Title Applied For _____

4. What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

- Race
- Sex
- Age
- Disability
- National Origin
- Religion
- Retaliation
- Pregnancy
- Color (typically a difference in skin shade within the same race)
- Genetic Information; choose which type(s) of genetic information is involved:
 - i. genetic testing
 - ii. family medical history
 - iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: _____

If you checked genetic information, how did the employer obtain the genetic information? _____

Other reason (basis) for discrimination (Explain). _____

5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed. (Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: _____ Action: _____
Reasons Explained Enclosed

Name and Title of Person(s) Responsible: _____

B) Date: _____ Action: _____

Name and Title of Person(s) Responsible: _____

6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.

Reasons Attached

7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?

Explained in letter

8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.

Of the persons in the same or similar situation as you, who was treated better than you?

A. Full Name <i>Wess Moore</i>	Race, sex, age, national origin, religion or disability <i>White, 41</i>	Job Title <i>Sports director</i>
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Description of Treatment *Attached*

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

Of the persons in the same or similar situation as you, who was treated worse than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Of the persons in the same or similar situation as you, who was treated the same as you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
Stephanie Bryant	(B) Female	

Description of Treatment

No promotion

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:

- Yes, I have a disability
- I do not have a disability now but I did have one
- No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

Yes No

If "Yes," what medication, medical equipment or other assistance do you use?

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes No

If "YES", when did you ask? _____ How did you ask (verbally or in writing)? _____

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for:

How did your employer respond to your request?

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number
Address Eddy Alyse Eddy	Morning Show Co-host	

What do you believe this person will tell us?

B. Full Name	Job Title	Address & Phone Number
Stephanie Bryant Stephanie Bryant	Noon Show Anchor	

What do you believe this person will tell us?

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes No

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

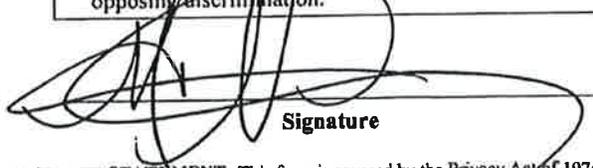
16. Have you sought help about this situation from a union, an attorney, or any other source? Yes No

Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1 I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

Box 2 I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.


Signature

2/18/2013
Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

- FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08).
- AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a), 42 USC §2000ff-6.
- PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
- ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters
- WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.** Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

Mr William Cash Jr.
EEOC Little Rock Area Office
820 Louisiana, Suite 200
Little Rock, Arkansas 72211

Dear Mr. Cash,

I am writing to file a charge of discrimination against my employer, KTHV. The station is a CBS affiliate, owned and operated by Gannett. I am an African-American, born and raised in Little Rock, Arkansas. I was hired in December of 2003 as a producer/reporter. Currently, I do not have a title, but I am functioning as the Sports Director. I have asked for the title as well as the pay increases that would come with the title, but I was denied. I have been denied because of race and I have documented my requests several times. The following reflects my true feelings.

The Sports director position has always been a part of the news stations. Ours has been available since June of 2012. The last sports director, Wess Moore, was white and would still be in the position if he was there. In the past when that position became available it went to the person with the next highest tenure which would be me in this case. Since that's how things have always been done, my expectation was that I was going to receive a promotion into the position of Sports director after he left. I was originally told that they were thinking of getting rid of the Sports Director title but they would make sure to include me on the promo shots with the other main anchors and I would get the raise in pay. The other expectations existed when I was enticed to decline a position in Cleveland in 2007. In 2007, I applied for and was offered a position as a Sports Anchor/Reporter with WEWS, a news station in Cleveland, OH. At that time I was just a reporter/producer and was told by the sports director and news director that if I found another job I would be allowed to take that position. Cleveland is a major sports market and I was to follow and report on the Cleveland Cavaliers in the NBA Finals as my first assignment. The position would have been a great boost to my career and would have provided a stepping stone in my overall plan to enhance my broadcasting experience and worth. My goal, at the time, was to get to an ESPN/National sports anchor position. After being offered the position in Cleveland, I was informed by management that Gannett had plans for me moving up in the company. I was excited about the opportunity of moving up in Gannett. That enticement was the idea of advancement, promotion, and key member of a news team with my present employer. I was enticed not to accept the position and be patient for opportunities within the company. In 2010 there was a change in management. I didn't notice it initially, but with hindsight I can now see how the atmosphere and environment began to change toward me. I was oblivious to these changes until September of 2012. From the time that I started until September 2012, several white employees advance in what I perceived as a normal policy and practice of advancement in the Sports Director position. Therefore, as part of the normal practice of KTHV Channel 11, I observed white employees advance into anchor positions on a regular basis. However, when it became my turn to advance and my expectation interest to be filled, I was denied the promotion. Not only do white employees get promotions, they also receive better promotion from the station's promotion department. Once management changed, it was

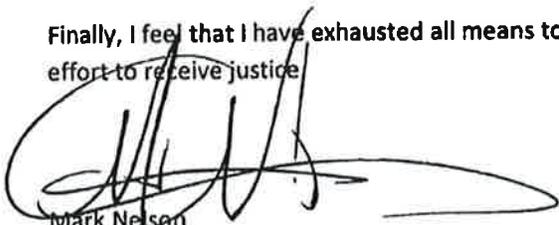
decided that a white employee would be brought in and branded as a sports personality. A white anchor was hired and placed on the evening desk. As I stated earlier, the station promotion of the white employees is far greater than that of the African-American employees. I have never been more embarrassed and self conscience than the day I went on air September 3rd, 2012. The prior weekend KTHV pounded the airwaves with promotions of the newly hired white employee and branded him as a sports guy that can also do news. What follows is a chronology of events that causes me to now bring this charge of racial discrimination against KTHV.

- September 1, 2012---A promo ran that branded a white male that had less qualifications and less experience at this affiliate as the new sports person.
- Employees as well as fellow news stations and viewers began to ask me why I was not being included in the promotions with the rest of the main anchors.
- Over the next few months, I respectfully confronted management with my concerns that I was not being promoted because of my race. During these verbal and written exchange with management, I gave specific examples of employees that were relating this as race and my conclusion that it was racially motivated. I specifically and respectfully spoke with management and stated that "perception is reality". I did not want to create what I thought might hinder my opportunity for advancement in the broadcasting community at large so I did not file a charge at that time.
- In December of 2012, I chose to seek employment in the phoenix, Arizona market. There was a position open and I applied for it. I was verbally offered a position as a morning show co-host. Shortly afterwards, I was told a member of upper level Gannett management injected himself into the decision making process by making a phone call to the management there. In the end a white employee was hired. From what I was told the new white employee had previously applied before, but the process continued even after he auditioned for the part. I spoke with that member of upper level management and he stated to me that he was upset about our coverage of a story that broke. Later in our conversation he stated that he understood KTHV did not have the adequate resources to cover the event in question. He gave the impression of being content with what we did after he understood WHY we covered the event the way we did. Even after the conversation, the member of upper level management did not specify whether or not he was going to rectify the situation he caused in Phoenix.
- After the first of January 2013, I once again respectfully approached management about concerns I had regarding my advancement and how I felt about my opportunities. Once again, my concerns fell on deaf ears. The response was either silence or answers that did not directly address the issues at hand. I asked the same member of upper management for a response on an email regarding other opportunities. I felt as though the phone call he made to the Phoenix market not only hurt my chances there but with other major markets in Gannett. Again, I received "NO RESPONSE". No matter how I stated my concerns, management sidestepped my questions.
- In February of 2013 at a meeting involving a specific team designed to help promote our website it was asked why my photo wasn't with other white anchors. The response was

verbatim: "I spoke with David Craft about the cover photo-a sports anchor wont be featured until we have a sports director."

- Based on these series of events, I now believe that my future with Gannett has been dramatically compromised because of race. I am aware that there has been prior discrimination lawsuits filed and settled (enclosed). I am also aware of what I now believe to be other discriminatory decisions and preferential treatment that have occurred during my time of employment at KTHV Channel 11.
- I believe I am encountering a discriminatory atmosphere that involves a pattern of practice and conduct where African-Americans such as myself and others cannot excel. Simply put, we are not given equal opportunity as white employees. This includes special training, preferential selection for placement, promotions, advancement, and salary increases. For example, TJ Holmes, an African-American news anchor, left KTHV Channel 11 under circumstances where he was passed over for a white employee. I know of other employees who have had issues where minorities have experienced the same discriminatory atmosphere and environment.

Finally, I feel that I have exhausted all means to resolve this issue. Filing a complaint is my last effort to receive justice

A handwritten signature in black ink, appearing to read 'Mark Nelson', with a long horizontal flourish extending to the right.

Mark Nelson
Dba: Mark Edwards
KTHV Channel 11

EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Mark C. Nelson**
6816 Marguerite Ln
Little Rock, AR 72205

From: **Little Rock Area Office**
820 Louisiana
Suite 200
Little Rock, AR 72201

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

493-2014-00829

Kenneth Collins,
Intake Supervisor

(501) 324-5522

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

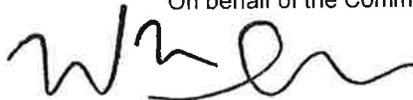
Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



KC

MAY 06 2014

(Date Mailed)

Enclosures(s)

William A. Cash, Jr.,
Area Office Director

cc: **Cynthia Hale, Esq.**
Counsel/EEO & Labor Relations
GANNETT CO INC
7950 Jones Branch Drive
Mc Lean, VA 22107



**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** – not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

APR 23 2014

Charge Presented To: Agency(ies) Charge No(s):

FEPA

EEOC

M.N. Prior ~~493-2014-00594~~
Amended ~~493-2014-00594~~

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mark C. Nelson

Home Phone (Incl. Area Code)

(501) 551-3651

Date of Birth

10-11-1971

Street Address

City, State and ZIP Code

6816 Marguerite Lane, Little Rock, Arkansas 72205

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Gannett Co., Inc., d/b/a Today's THV Channel 11 (in Arkansas)

No. Employees, Members

More than 500

Phone No. (Include Area Code)

501-376-1111

Street Address

City, State and ZIP Code

7950 Jones Branch Drive, McLean, Virginia 22107-0830
(720 IZARD STREET, LITTLE ROCK, AR 72203 - THV Channel 11)

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

- RACE
- COLOR
- SEX
- RELIGION
- NATIONAL ORIGIN
- RETALIATION
- AGE
- DISABILITY
- GENETIC INFORMATION
- OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was hired in December 2003 as a producer/reporter. I have a degree in broadcast journalism. I am an African-American, born and raised in Little Rock, Arkansas and have dark skin. I performed my job well at THV Channel 11 and was recognized nationally. In 2007, WEWS, a television station in Cleveland, Ohio, offered me a significant position with increase and pay and responsibility. My first assignment was to cover the Cleveland Cavaliers in the NBA Finals. Gannett management is primarily all white. Gannett management promised me that I would be on a fast-track for promotion to a prime-time anchor, director position if I would stay at THV Channel 11. In reliance on that promise, I stayed at THV Channel 11 and did not take the Cleveland position. In 2010/2011, Michael Caplan, a white male, became President and General Manager at THV Channel 11. He did not promote me. In the Summer of 2012, Wess Moore, a white male, left the sports director position at THV Channel 11. I sought promotion, but was denied promotion without explanation. After September, 2012, white employees, less qualified than I was, were brought into THV Channel 11. I was denied promotion through the fall of 2012 to a prime-time anchor, director position even though I was seeking to be promoted. I was offered a job with substantial pay increase and responsibility at a news station in Arizona, but Rob Mennie, VP for Gannett communicated

NOTARY - When necessary for State and Local Agency Requirements

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

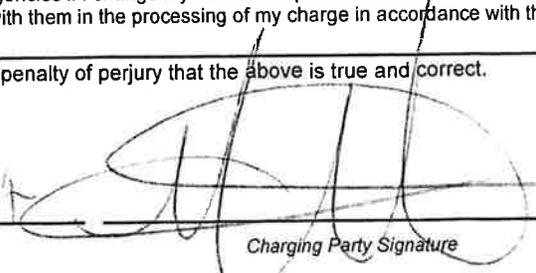
I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

4/22/14
Date



Charging Party Signature

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

Amended
 493-2014-00829

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

racially-motivated and false, racially stereotyped information to the news station (another Gannett station) without informing me that this racially stereotyped information was being provided to the news stations. I was advised that I would be denied the substantial promotion to the Arizona news station KPNX, in January of 2013. Gannett management did not provide me a response on why I was denied this position and has not articulated a reason why I have been denied a promotion even though I was promised a promotion in 2007, and 2012, a position for advancement were available for my promotion within THV Channel 11. Since January of 2013, I have been denied promotion to anchor and sports director. I filed an EEOC claim in February 2013. In that claim, I wrote a letter to the EEOC director of the Little Rock Field Office outlining the facts pertaining to my treatment with my employer. This charge of discrimination incorporates those facts and is an amendment to and new charge pertaining to the continuing denial of promotion and adverse employment actions I have experienced at THV Channel 11 because of Gannett. I have already filed a lawsuit seeking promotion within Gannett in Little Rock and to stay with the company. I wanted to stay with Gannett and receive a promotion promised to me. As I stated in my earlier charge of discrimination filed with EEOC on April 14, 2014, the sports department was not eliminated.

Since filing my employment discrimination charge on April 14, 2014, I received a termination of employment letter on April 15, 2014 from Gannett. At no time did I ever agree to leave THV Channel 11. Rather, I wanted a promotion, which was the basis for my previous charge and my lawsuit. This termination letter ended my employment at THV Channel 11. The termination is based on untrue reasons and is retaliation for filing my EEOC charges and the filing of my lawsuit against Gannett for not being promoted as promised.

I believe I have been denied promotion on a continuing basis and pay increase associated with a prime-time anchor, director position because of my race, African-American, in violation of Title VII of the Civil Rights Act of 1964, as amended. This is part of a continuing pattern and practice of race discrimination and denial of promotion, which has occurred at the Little Rock television station.

I also believe I am being retaliated against for filing an EEOC claim and pursuing my legal rights for seeking relief from discrimination in employment, in violation of Title VII of the Civil Rights Act of 1964, as amended.



I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

4/22/14

Date

[Handwritten Signature]

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
EASTERN DISTRICT COURT
DISTRICT ARKANSAS
FEB 09 1999
JAMES W. MCGORMACK, CLERK
By: _____ PLAINTIFF
DEP. CLERK

RICHELLE A. MCCOY

V.

NO. LR-C-98-280

**TODAY'S THV CHANNEL 11,
A COMMERCIAL BROADCASTING COMPANY**

DEFENDANT

AMENDED COMPLAINT

1. Jurisdiction is pursuant to 28 U.S.C. Section 1343 and 42 U.S.C. 2000(e) et. seq.
2. Plaintiff seeks relief pursuant to 42 U.S.C. Sections 1981 and 2000(e) et. seq., as amended.
3. Plaintiff Richelle A. McCoy is an African American citizen of the United States who resides in Pulaski County, Arkansas. She brings this action to obtain vindication of rights secured to her by 42 U.S.C. Sections 1981 and 2000(e), et. seq., as amended.
4. Plaintiff seeks injunctive relief, damages and equitable relief in the form of back pay, front pay, and restoration of any benefits which she has lost in the interval between the date or dates to which she was subjected to race and sex discrimination as well as retaliatory conduct committed by the defendant and the time that this matter is ultimately decided by the Court.
5. The defendant is Today's THV Channel 11, a commercial broadcasting company, located in Pulaski County, Arkansas. Susan Newkirk is the General Manager and Agent for Service of Process for Defendant Today's THV Channel 11. Today's THV Channel 11 is referred to hereafter as "Channel 11". Channel 11 is an employer as that term is defined as 2000(e) et. seq. It is a



commercial television broadcasting company which employs more than fifteen individuals including the plaintiff Richelle A. McCoy.

6. Plaintiff has been employed at Channel 11 since graduation from college in 1992. She has a Bachelor of Arts Degree with a Major in Journalism from Memphis State University and has attended seminars and other educational programs while employed by Channel 11. She is currently employed in the position of weekend anchor person for the news at 5:00 p.m. and 10:00 p.m. on Saturdays and Sundays. She also performs general reporter and medical reporter duties during the three days of week she does not serve as weekend Channel 11 anchor person.

7. Plaintiff has served as a general reporter for weekend, night side reporter and day side reporter for Channel 11. She first signed a contract in January, 1995 with Channel 11 as weekend anchor person.

8. Throughout plaintiff's work experience with Defendant Channel 11, her work evaluations have been good. They have all been informal although there is a formal evaluation system in place.

9. Plaintiff's weekend anchor ratings have been and are the highest ratings that the station has received and receives for any of its news programs.

10. In 1996, Channel 11 began considering the addition of a weekday anchor person to supplement its weekday anchor staff. For approximately one year, the matter was studied by station management. None of the studies taken by Channel 11 were objective nor were they reduced to writing. They focused upon a target market which was epitomized by a white female person 39 years of age who lives in Bryant, Saline County, Arkansas. The profile was memorialized in posters and placards which were displayed prominently in the station and which form the basis of written handout

to prospective customers.

11. In May of 1997, the defendants decided to add a person to the weekday anchor team. This was occasioned by the fact that Anne Jansen, the regular anchor was had gotten married and would not be available for regular weekday assignments that she had been doing.

12. Upon the creation of the vacancy for a weekday anchor, the Station Manager, Susan Newkirk and News Director, John Rehrauer, decided not to post the position or to advertise for it. Instead, they selected a person for the position named Dawn Scott, a white employee. Scott did not apply for the position, on information and belief. Plaintiff, however, had continuously sought promotions into the first vacancy for weekday anchor.

13. When plaintiff learned that Ms. Scott had been selected for the anchor for the position she approached Rehrauer to inquire as to the reasons the station selected Scott instead of plaintiff for the position. Rehrauer indicated that Susan Newkirk, General Manager, made the decision. Upon learning that she had not been selected for the position and being unable to obtain reasons for her nonselection from Channel 11 management, plaintiff filed a Charge of Employment Discrimination with the Equal Employment Opportunity Commission (EEOC) on July 18, 1997, which was within 180 days of the employment decision. (A copy of her EEOC Charge is attached hereto as Plaintiff's Exhibit "A").

14. On February 10, 1998, plaintiff received Notice of Right to Sue from the EEOC regarding her Charge of Employment Discrimination. (See Plaintiff's Exhibit "B" hereto). Because plaintiff filed a timely Charge of Discrimination with the EEOC and has received Notice of Right to Sue, this action is timely presented to the Court for relief as provided by 42 U.S.C. 2000(e) *et. seq.*, as amended. The allegations which accompany her EEOC Charge and which are set out

herein, also provide the basis for a cause of action pursuant to 42 U.S.C. Section 1981, under which she also seeks relief.

15. Plaintiff has been subjected to employment discrimination due to her race or color by the decision of the defendant, Channel 11, to bypass her for the position of weekday anchor in violation of her rights as secured by Title VII of the Civil Rights Act, 42 U.S.C.S. § 1981, and the Fourteenth Amendment to the United States Constitution.

16. Furthermore, in February 1998, the defendant promoted Dawn Scott to the 5:00 p.m. weekday anchor position, again bypassing the plaintiff on account of her race. The defendant has discriminated against the plaintiff, on account of her race, by affording Dawn Scott and other white employees similarly situated as the plaintiff with more favorable working terms and conditions of their employment in violation of her rights as secured by 42 U.S.C.S. § 1981, and the Fourteenth Amendment to the United States Constitution.

17. The station's employment decisions are based, at least in part, upon racial considerations. The profile adopted by the station of the white female, 39 years of age who lives in Bryant, Arkansas, has a corollary expectation that that market can best be addressed by a white female person in the weekday anchor position. Qualifications became secondary to defendant to the racial consideration in the employment selection process. At the time that Channel 11 selected Dawn Scott as the anchor person, Scott had no experience in this market as an anchor person. Scott did have weekend anchor experience in Sioux City, Iowa, which is ranked as the 140th market as compared to Little Rock, Arkansas which is ranked 57th in the market. In comparing the objective qualifications of the two persons, plaintiff had two years more experience than Scott and has just as much education as well as the highest market ratings of any anchor person at Channel 11 during the

time the employment decision was made.

When she was selected to work at Channel 11, plaintiff was advised by Channel 11 that she had a bright future and that she should expect to be fairly and nondiscriminatorily treated. Promotions would be forthcoming provided her work performance was satisfactory after she had "paid her dues," according to management.

18. Plaintiff paid her dues at a far higher rate of payment than the person selected. She was performing satisfactorily in all respects, had good evaluations, good market ratings and was well respected in the target market area. The only shortcoming she had was that she did not meet the racial expectation of the anchor which had been projected for the target market. Channel 11 favored Dawn Scott with significantly greater pay than pay that plaintiff earned as well as a contract for a term of years, commercial promotions, personal allowances, such as clothing, hair, make up, cellular telephone and any expenses that, in Scott's discretion, could be justified as being job related. Plaintiff believes that the difference in pay and the value of the benefits lost is approximately \$75,000.00.

19. Plaintiff also believes that she has been deprived of market exposure which has monetary value and which allows upward mobility in larger markets as a television anchor, due to the intentional acts of management at Channel 11.

20. The acts of management at Channel 11 with respect to the selection of Scott and the nonselection of plaintiff for weekday anchor was not only intentional but it was willful based upon the race of plaintiff, a fact which plaintiff could not change, and upon the race of the targeted market that Channel 11 sought to outreach.

21. Plaintiff has been deprived of well established and well defined rights secured by federal law and she has been subjected to intentional discrimination due to her race or color. As a

consequence, she has lost income, professional standing, future advancement opportunities and standing in the profession. She has also suffered mental anguish and mental distress due to the fact that she is required to withstand the effects of the past discrimination on a daily basis while she works as the weekend anchor for Channel 11. She has no effective recourse by which to redress the allegations set forth herein other than this action for injunctive and equitable relief for damages. Any other recourse would be too time consuming, costly, uncertain and vexatious as to afford full relief. Plaintiff is entitled to be made a weekday anchor on at least the same terms as Dawn Scott and provide the same emoluments as Ms. Scott for the past and the future. She is also entitled to compensatory damages and punitive damages for the wrongs perpetrated upon her by Channel 11.

22. Since filing her Charge of Discrimination (251-97-1280), the plaintiff has been retaliated against by being denied promotional opportunities. Furthermore, the plaintiff has again been the victim of race and now sex discrimination when the defendant placed Dawn Scott, a white female, and Andy Pearson, a white male, in the 5, 6, and 10 p.m. Weekday anchor positions on or about August 4, 1998.

23. The plaintiff filed a charge of discrimination (251-98-1362) alleging that she is a victim of race and sex discrimination, as well as a victim of retaliation. (A copy of said charge of discrimination is attached herein as Plaintiff's Exhibit "C").

24. On August 31, 1998, the plaintiff was issued a "Dismissal and Notice of Rights" letter giving her permission to file a lawsuit within 90 days on Charge No. 251-98-1362. (A copy of said letter is attached herein as Plaintiff's Exhibit "D").

WHEREFORE, plaintiff respectfully prays that the Court set this matter for early hearing, after affording reasonable discovery, and after such hearing, grant her the following relief:

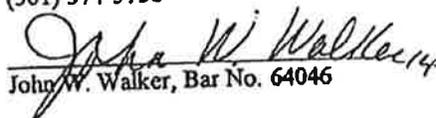
- 1) a mandatory injunction requiring that plaintiff be placed into a weekday anchor position at Channel 11 and paid that pay as she would have earned had she been selected initially for the position which takes into the account that she had greater objective qualifications than Dawn Scott;
- 2) an injunction prohibiting Channel 11 from taking an adverse employment action against plaintiff because she initiated this action;
- 3) an injunction requiring Channel 11 to be nondiscriminatory with respect to its future treatment and other employment relationship with the plaintiff;
- 4) equitable relief in the form of back pay and front pay including benefits or the value thereof that plaintiff did not receive because of her nonselection for the anchor positions;
- 5) injunction requiring the defendant to create a racially nondiscriminatory work place;
- 6) compensatory damages in the amount of \$100,000.00 and punitive damages in the amount of \$2,000,000.00 or such amount as a jury finds necessary to vindicate plaintiff for the wrongful actions perpetrated upon her by Channel 11.

Plaintiff further prays for her costs including reasonable counsel fees.

Respectfully submitted,

JOHN W. WALKER, P.A.
1723 Broadway
Little Rock, Arkansas 72206
(501) 374-3758

By:


John W. Walker, Bar No. 64046

By:


Austin Porter Jr., Bar No. 86145

CERTIFICATE OF SERVICE

I, Austin Porter Jr., do hereby certify that a copy of the foregoing pleading has been served on Jerry Hunter, BRYAN CAVE, One Metropolitan Square, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102-2750, and upon Arkie Byrd, Attorney at Law, MAYS, BYRD, & HICKS, P.A., 415 Main Street, Little Rock, Arkansas 72201-3801, by placing a copy of the same in the United States Mail with sufficient postage prepaid, on this 7th day of February 1999.


Austin Porter Jr.