



Steve Bullock, Governor  
Pam Bucy, Commissioner

**Human Rights Bureau**  
Marieke Beck, Bureau Chief

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March 11, 2015

Joshua Clark  
c/o Rhoades & Siefert PLLC  
430 North Ryman Second Floor  
Missoula, MT 59802

SUBJECT: Joshua Clark v Missoula County  
Case No. 0151017366  
SUBJECT: Joshua Clark v Terry McDermott - Missoula County Sheriff  
Case No. 0151017367  
SUBJECT: Joshua Clark v Jason Johnson – Missoula County Undersheriff  
Case No. 0151017368

Your complaint has been docketed, and a copy is enclosed for your records. To proceed with the investigation, the enclosed release form must be signed and returned to me as soon as possible. Please be sure the case number noted above is on any correspondence.

The respondent has also been sent a copy of the complaint. When we receive their response, you'll be sent a copy so you can respond to their statement as well.

Voluntary resolution is an option. I encourage you to consider the possibility of a mutually agreeable solution. If you are interested, discuss this with your investigator.

You must keep us informed of any changes to your address and phone number, as well as current contact information for witnesses. If you have any questions or need an accommodation to participate in our process, please contact me as soon as possible by e-mail or at one of the numbers listed below.

Kim Cobos  
Data Manager  
Human Rights Bureau

**Human Rights Bureau**  
PO Box 1728  
Helena MT 59624-1728

Enclosed: Copy of Complaint, Release Form, Voluntary Resolution Flyer

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Phone (406) 444-2884

TDD (406) 444-9696

Fax (406) 443-3234

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Helena, MT 59624-1728

**HUMAN RIGHTS BUREAU  
EMPLOYMENT RELATIONS DIVISION  
DEPARTMENT OF LABOR AND INDUSTRY  
P.O. BOX 1728, HELENA MT 59624-1728  
(800) 542-0807 or (406) 444-2884**

**Standard Release Form**

I hereby authorize anyone possessing medical, personnel, educational, or any other information necessary for a full investigation of my human rights complaint to furnish such information to the Human Rights Bureau, P.O. Box 1728, Helena, MT 59624-1728.

I hereby release anyone so authorized and the Human Rights Bureau from all liability for any damages whatsoever in furnishing and obtaining said information. Any and all applicable information released to the Human Rights Bureau shall be used for the purpose of investigating my complaint.

This release shall remain in full effect for a period of 180 days from the date received by the Human Rights Bureau.

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Date

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Signature of Charging Party\*

---

Printed Name of Charging Party

\*If the Charging Party is not signing the form please specify your relationship to the Charging party (e.g., parent, guardian)

Quentin M. Rhoades  
Nicole L. Siefert  
**RHOADES & SIEFERT, P.L.L.C.**  
430 North Ryman, Second Floor  
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MAR 10 2015

HUMAN RIGHTS BUREAU

*Attorneys for Charging Party*

**MONTANA DEPARTMENT OF LABOR & INDUSTRY  
EMPLOYMENT RELATIONS DIVISION  
HUMAN RIGHTS BUREAU**

**JOSHUA F. CLARK,**

Charging Party,

vs.

**MISSOULA COUNTY SHERIFF  
TERRY J. MCDERMOTT,  
UNDERSHERIFF JASON  
JOHNSON, and the COUNTY  
OF MISSOULA, MONTANA,**

Respondent.

HRB Case 0151017366  
0151017367  
0151017368

**HUMAN RIGHTS  
COMPLAINT**

Pursuant to MONT. CODE ANN. § 49-2-501, Joshua F. Clark, through his attorneys, complains to the Human Rights Bureau, Employment Relations Division, Montana Department of Labor and Industry, as follows:

## I.

### CHARGING PARTY

1. Joshua F. Clark (Clark), c/o **RHOADES & SIEFERT, P.L.L.C.**,  
430 N. Ryman, 2nd Floor, Missoula, Montana 59802; 406-721-9700.

## II.

### RESPONDENTS

2. Terry J. McDermott (McDermott), Missoula County Sheriff,  
200 W. Broadway, Missoula, MT 59802; 406-258-4810.

3. Jason Johnson (Johnson), Missoula County Undersheriff, 200  
W. Broadway, Missoula, MT 59802; 406-258-4810.

4. Missoula County, a subdivision of the State of Montana, c/o  
Board of County Commissioners, Missoula County Courthouse, 200 West  
Broadway Street, Missoula, MT 59802; (406) 258-4877

## III.

### FACTS

#### A.

#### Clark's Career

5. Clark has 22 years of law enforcement service in Missoula, Montana. During his long career, his performance evaluations were consistently "above satisfactory." He was never once disciplined. Clark started as a detention officer with the Missoula County Sheriff's Office in March 1993. The Missoula Police Department hired Clark on February 1,

1994, and served there until December 31, 2003, when the Missoula County Sheriff's Office hired him. He has numerous awards and letters of commendation and appreciation that span his career, going back to the academy.

6. Clark took on a variety of extra duty assignments throughout his law enforcement career at both the City and County. His supervisors picked him for challenging positions and extra responsibilities. He performed well in these special assignments, and in his career in general. As a young deputy, management asked him to serve on a review board that resulted in a detention officer being found guilty and terminated. Supervisors relied on Clark to take on more and more responsibilities, the most challenging of which was deputy coroner. Clark served as deputy coroner from August 2006 to December 2009 and then again from July 2011 to December 2014.

7. Sheriff Ibsen promoted Clark to Captain of Professional Standards, from Senior Deputy, in July 2011. This was a brand new division and bore the responsibility for sensitive internal investigations of deputies and detention officers. Clark did not request this assignment but knew that the job had to be done, and wanted to help the people of Missoula County, the Sheriff's Office, and Sheriff Ibsen. In this position, Clark performed the thankless and stressful role of policing the police, investigating his peers and holding them accountable when necessary. Sheriff Ibsen specifically asked Clark to handle this responsibility because he had faith in his professionalism, and Clark's belief that those in law enforcement owe it to the people to uphold their public trust.

8. The Professional Standards Division was a unique position and oversaw the Training Lieutenant, who was in charge of all training for the sworn deputies. It also oversaw the Public Information Officer (PIO) position, which is the voice and face of the department. This position is even more unique since the Captain of Professional Standards does not answer to Undersheriff, but directly to the Sheriff. Also, if the Sheriff and Undersheriff are unavailable, the P.S. Captain takes over filling the role of the Sheriff, even if he is not the most senior Captain, which Clark was not

when he first took the position.

9. In his role as Captain of Professional Standards, Clark investigated a number of deputies and detention officers for various allegations of professional or official misconduct. Clark recommended discharge from the force in a few of these cases.

10. Clark accepted a promotion to Undersheriff on March 3, 2013. Detective Captain Maricelli had retired, and Undersheriff Dominick requested to move to his “dream job”: Captain of Detectives. Clark agreed to move into the Undersheriff post because he knew, whoever the next sheriff was, he would not be demoted past Captain under any new Sheriff. This was his understanding, from the custom and practice of the last 30 years as well as the express terms of MONT. CODE ANN. § 7-32-2102(2), and based on this custom and practice and express law, it was also, on information and belief, the understanding of Sheriff Ibsen, Captain Dominick, and Captain Brad Giffin, and almost anyone else who had worked as a deputy in the last 30 years.

11. After promoting him to Captain and then Undersheriff, the County invested a great deal of time and money in Clark’s advanced education and training, including 528 hours of training in the following technical and leadership courses and classes:

- Supervising Performance Improvement (7 Hours)
- Investigating Personnel Issues (7 Hours)
- Preventing Harassment (4 Hours)
- Advanced Homicide Investigations - Beyond the Obvious (32 Hours)
- Managing Police Discipline (15 Hours)
- Negotiating-Real World Strategies for the Professional Setting (8 Hours)
- Internal Affairs - Five Day (35 Hours)
- First Line Supervisor (32 Hours)
- Mid Level Management (32 Hours)
- MT Executive Leadership Institute (160 Hours)

- The Pain Behind the Badge/Winning the Battle (8 Hours)
- Brady & Giglio Liability in Law Enforcement (1 Hours)
- Privacy and the Right to Know (7 Hours)
- Documenting Disciplinary Action (4 Hours)
- Advanced Leadership Audio Course-Investment in Excellence (20 Hours)
- Effective Disciplinary Action (7 Hours)
- Montana's Wrongful Discharge Act (4 Hours)
- MVCIA Conference: Child Abuse & Child Homicide Investigations (32 Hours)
- US DHS/FEMA G290 Basic Public Information Officer (14 Hours)
- Applied Statement Analysis Techniques (8 Hours)
- MT National Academy Spring Conference (8 Hours)
- True Lies: Detecting Deception (8 Hours)
- Tactical Commanders Conference (14 Hours)
- FBI National Academy Associates Fall Conference (13 Hours)
- A 30 Year Study of Deadly Force Encounters by Law Enforcement (8 Hours)
- Tactical Emergency Medicine (4 Hours)
- Leadership (Afternoon Session - MSPOA Conference) (4 Hours)
- Human Resources (2 Hours)
- Building Psychological Flexibility: Life Skill Training for Police (14 Hours)
- FBI NAA Leadership Training 2014 (16 Hours)

12. After Clark's promotion to Undersheriff, Patrol Captain Giffin moved to Clark's old job as Captain of Professional Standards. Lt. Rob Taylor was promoted to Patrol Captain. If Clark had stayed at his position of Captain of Professional Standards, and someone else would have been promoted to Undersheriff, Clark would have remained as the second senior Captain, behind Patrol Captain Giffin, followed by Captain Dominick. Following this order of seniority, when Clark left Undersheriff, he should have been returned to Captain. With Captain Giffin's retirement in November 2014, Clark should be the senior Captain in the department.

B.

**McDermott's & Johnson's Human Rights Complaints**

13. On August 9, 2013, McDermott filed a human rights complaint against the Missoula County Sheriff's Office, Sheriff Carl Ibsen, and Captain Mike Dominick, alleging discrimination and retaliation on the basis of political belief.

14. On September 9, 2013, Clark signed a five-page witness statement adverse to McDermott's complaint, denying a number of material facts cited in the complaint as evidence, and speaking critically of McDermott's character and fitness in direct and candid terms.

15. Similarly, on June 5, 2013, Johnson filed a human rights complaint against the Missoula County Sheriff's Office alleging discrimination and retaliation on the basis of political belief.

16. On June 24, 2013, Clark signed a witness statement adverse to Johnson's complaint, denying a number of material facts cited in the complaint as evidence.

C.

**The New Sheriff**

17. A new Sheriff, McDermott, was elected on November 4, 2014, and sworn into office in December 2014. He acknowledged disruption to morale in the Sheriff's Office that had resulted from a long tough campaign, but promised in the news media not to act hastily.

18. Clark had been McDermott's principal opponent during the election, running against McDermott on the Democratic Party ticket in the primary, and then as a write-in candidate in the general election. During

the campaign, Clark criticized McDermott's ethics freely, such as McDermott's unpaid Missoula County property tax bills. Clark then filed a political practice complaint against McDermott in August 2014. In October, the complaint was found by the Commissioner of Political Practices to have merit. In a decision dated October 8, 2014, McDermott was found to have accepted and failed to report illegal corporate contributions, and the case was referred for prosecution. It remains pending.

19. In August, 2014, McDermott approached Clark to have a closed-door talk. First, McDermott warned Clark, "you need to control your wife," because she had been critical of him to other deputies. McDermott then told Clark that if he had lost the primary election, he had planned to "retire," and made it clear that since Clark lost the election, he was expected to do the same. Since Clark intended to work at least five more years before considering retirement, his answer was "I am not going to retire." McDermott appeared agitated and displeased by Clark's response.

20. After the general election in November 2014, a rumor was started at the Sheriff's Office that Clark was planning to retire and move to Kalispell or "up north." McDermott had actually asked Sheriff Ibsen if Clark was retiring and moving north. Clark also fielded telephone calls from Missoula City Police officers that asked if he was retiring and moving to Kalispell. Clark told McDermott and his supporters repeatedly that he was not planning on retiring, that he had a twelve-year-old son and a daughter getting ready to go to college, and intended to continue working full-time to support his family. The rumor persisted in the Sheriff's Office, however, until Clark felt impelled to circulate an email explaining to everyone who might care that he had no intention to retire.

D.

### Clark's Demotion

21. When McDermott first announced he was thinking of running for sheriff, McDermott told Clark he wanted him to stay in the Captain of Professional Standards position, because it was a tough job, and Clark was both good at it and trustworthy. But that was before Clark took a stand against him. As it turned-out, on January 1, 2015, McDermott demoted Clark five ranks, to Senior Deputy Sheriff, and assigned him to work on Sgt. Petersen's patrol team for the Sunday to Tuesday graveyard shift.

22. At the same time Clark was demoted to patrol deputy, a sergeant who endorsed McDermott during the campaign, and attacked Clark publicly, was leap-frogged past lieutenant to Captain of Patrol.

23. Clark's new position included no supervisory duties. At the time, all four of the patrol teams were short-staffed. Sgt. Petersen's patrol team was the shortest with four people on the shift. The other three teams had five deputies on the shift. The other three teams had a Senior Deputy II as the Acting Sergeant. This meant that these three teams did not have a Senior Deputy II, so the Senior Deputy on each team was serving as the acting Senior Deputy II.

24. If Clark would have been put on any of the three other teams, he too would be the acting Senior Deputy II, and would have had at least some duties of supervising and mentoring junior deputies. Although "acting Senior Deputy II" is the lowest supervisory position in the patrol division, it is still higher than the position to which Clark was demoted. At the time of his demotion, Clark was the third most senior patrol deputy, and the most senior deputy without any rank on patrol.

25. Indeed, he was 15th in seniority among the 47 sheriff's deputies. And as for total law enforcement experience, there were only five sworn members of the Sheriff's Office that have as much or more total years as Clark did. (Ken Guy, Mike Dominick, Dave Walrod, Bob Parcell,

Scott Newell). Yet, he was demoted to the lowest rank for which he was eligible, with no supervisory duties whatsoever. The summary method of this five-rank demotion, to the lowest possible rank for a deputy with at least four years of service, functioned as assault on Clark's leadership stature and professional reputation and was obviously personally humiliating to Clark. McDermott's actions were designed to and did cause an extremely negative emotional response in Clark.

26. While Clark maintained his former Captain's pay, the graveyard patrol posting stripped him of valuable benefits such as weekends off; nights off; holidays off; flexible work and vacation schedules; civilian work clothes; and FBI national academy eligibility.

27. After McDermott demoted Clark five full ranks to patrol deputy, new Undersheriff Jason Johnson falsely reported to news media that Clark had turned-down a detective position, and was satisfied with the arrangement: "He felt like that was the fairest decision." Since McDermott had made "no discrimination" a pillar of his campaign, it was important for the media to report to the public that McDermott was keeping his promises.

28. Clark then complained to McDermott and Johnson, in an email, that Johnson's statements to the press were flatly inaccurate. In fact, Clark had asked to be returned to his old rank, as the law requires. In a responsive email, McDermott expressly admitted to Clark that the happy talk portrayed in the newspaper was "inaccurate." Yet, McDermott made no effort to publicly correct Johnson's misstatement of the facts.

29. At the time of Clark's demotion, the last position he had occupied prior to his acceptance of the Undersheriff post, Captain of Professional Standards, was open and available. McDermott could have assigned him to that position, or another Captain could have been moved laterally to the position, and some other captaincy offered to Clark. Instead, Clark was demoted to the lowest possible rank that can be occupied by a deputy sheriff with four or more years in service.

30. McDermott then promoted a sergeant, who had been an ardent McDermott loyalist during the campaign, past the intermediate rank of lieutenant, up to Captain of Professional Standards. This even though during Clark's tenure in that post, he took more complaints about this individual than any other sworn deputy or detention officer in the County.

E.

### **Clark's Constructive Discharge**

31. McDermott and Johnson announced the summary demotion to Clark on December 30, 2014. Clark was assigned to patrol graveyard, without a Taser; with an expired bulletproof vest; without a mobile data terminal; without a log-in or training for the Mobile record management system; and without training or any instruction on the Watchguard car video system, none of which had been on-line back when Clark had been a patrol deputy. When he went on his first new shift, Clark had not qualified with his duty handgun in his duty gear (uniform belt and holster) for the past three and one-half years, since he always qualified in what he wore the most, plain clothes gear. His duty rifle was rebuilt in December, moreover, and he had not re-qualified with it yet. He was assigned a duty shotgun, but neither ammunition nor an opportunity to qualify with it. And it is customary in the Sheriff's office to supply 14-30 days notice prior to an involuntary shift change. McDermott gave Clark only two days notice.

32. As further retaliation, McDermott took negative and arbitrary personnel action against two other prominent Clark supporters, moving one from a prestigious captaincy to a new non-supervisory position, and another out of the Public Information Officer position – the very conduct Undersheriff Johnson had complained so bitterly about when he and McDermott filed their civil rights complaints in the Summer 2013.

33. Despite the retaliation, Clark did not want to retire, as McDermott had so strongly suggested during the campaign, and was determined to make the most of a bad situation. Immediately, as soon as

he went to work for his new patrol sergeant, Clark was called-up for guidance and leadership, including, in particular, two harrowing but successful gun-involved suicide negotiations. Plainly, the Sheriff's Office had need of skilled and experienced supervisors like Clark. Still, it was more important for McDermott to punish Clark than to conserve him, with his twenty-two years of exemplary law enforcement training and experience, as a key resource and leader.

34. McDermott's and Johnson's naked antagonism and continuing effort to humiliate and belittle Clark, on top of the already heightened stress normally involved in law enforcement, immediately took a telling toll. Clark began suffering insomnia, drastic weight loss, and other severe physical and emotional symptoms. He sought medical attention, and his physician recommended a leave of absence, and counseling. When Clark adhered to this advice, McDermott indulged in casual conversation about Clark's medical issues outside his chain of command, implying to Clark's fellow deputies complaints about a lack of commitment. McDermott's disclosures were in clear violation of Clark's right to privacy, as well as long-established personnel policies of the County and the Sheriff's Office, and apparently designed to alienate Clark from his fellow deputies.

35. Clark learned that his medical leave was also the topic of open speculation at the sergeant's meeting the week of January 14, 2015. The sergeants or acting sergeants then went back to their teams and informed the teams of Clark's medical leave. When Clark complained about this treatment to Missoula County Human Resources Department Head, Patty Baumgart, Baumgart furthered the campaign of harassment by informing Sheriff McDermott and Johnson about the specifics of Clark's complaint. This even though Baumgart stated in an email that she would not share the specifics about the complaint unless Clark gave her permission to do so.

36. McDermott and Johnson were in such a hurry to bury Clark on the graveyard shift, they even refused Clark's offer to walk them through the quarterly reporting for the West Central Montana Drug Task Force grant, which was due on January 10, 2015. This was one of the Undersheriff's responsibilities that now fell to Johnson, who nearly let it

lapse. Ultimately, railroading Clark was so important to McDermott and Johnson that they allowed it to jeopardize the very mission of the Sheriff's Office.

37. The most likely reasonable inference in these circumstances is that in the summary demotion of his political antagonist, McDermott and Johnson intended (a) to humiliate and degrade Clark in front of his peers and former subordinates; (b) to demonstrate to him that, given Clark's political stance, his training, experience, skills, and seniority were no longer of any value to or needed by the Sheriff's Office; and (c) to make a pathetic mockery of the sacrifices he and his family had made during his long and faithful years of law enforcement service. The most likely conclusion, on the evidence, is that McDermott's and Johnson's ultimate purpose was to force Clark into early retirement. McDermott and Johnson most likely also intended to send an intimidating message to anyone else who might have the temerity to challenge or oppose them in any future Human Rights Bureau proceeding or political campaign.

38. Despite his desire to continue in service, the outrageous treatment – and the alarming effects it had on Clark's morale, physical and mental health and family relationships – were too much for Clark to cope with on top of the psychological rigors already associated with law enforcement. McDermott and Johnson had succeeded. The hostility forced on Clark the only reasonable avenue left available to him: retirement. After 22 years in law enforcement, he clocked out for the last time on January 30, 2015, without ceremony, thanks or goodbye.

39. As a malicious parting shot, someone with access to Missoula County human resource records later leaked portions of Clark's personnel file to the news media, a page of which then appeared on a local television news station's web page on February 5, 2015.

## IV.

### LAW AND ANALYSIS

#### A.

##### Unlawful Discrimination

40. To establish a *prima facie* case of discrimination, in violation of MONT. CODE ANN. §§ 49-2-303 and 308, Clark need show only that:

- (a) He is a member of a protected class;
- (b) He was qualified for the job;
- (c) McDermott took adverse action against him; and
- (d) Evidence establishes a reasonable inference that Clark was replaced by someone outside of his protected class.

41. *Clark is a member of a protected class:* Employees of political subdivisions of the State of Montana, like Missoula County, are protected under Mont. Code Ann. § 49-2-308(1)(c), with respect to their political beliefs and activities. Clark's status as a political candidate who ran against McDermott, and who reported McDermott for adjudicated campaign law violations, establishes his membership in a protected class. Furthermore, Clark was protected as the past undersheriff. Montana law forbids a sheriff from demoting an undersheriff to a position with less seniority than the position in which he served immediately before accepting the undersheriff position:

A deputy sheriff appointed undersheriff ... *shall* resume other duties within the sheriff's office, while maintaining tenure *and* seniority, if the sheriff appoints another to succeed the deputy sheriff as undersheriff.

MONT. CODE ANN. § 7-32-2102(2) (emphasis added). Thus, Montana law actually requires, affirmatively, that new sheriffs “shall” return past undersheriffs to jobs equal or greater in seniority to the ones occupied before becoming undersheriff.

42. *Clark was qualified for his past job.* Clark was thoroughly qualified for a captaincy, having served as both Captain of Professional Standards and as Undersheriff.

43. *McDermott took adverse action against Clark:* McDermott summarily and immediately demoted Clark by four full ranks below captain, and demoted him to a graveyard patrol shift in which he had no supervisory duties, was neither properly refreshed and retrained, nor properly or fully equipped, and lost valuable benefits such as day-shift, weekdays, holidays-off, flexible vacation time, civilian duty clothes and eligibility for the prestigious FBI national academy.

44. *The deputy who took Charging Party’s former position is not a member of a protected class:* The sergeant who took over as Captain of Professional Standards shares McDermott’s political perspective. He was a vocal supporter of McDermott in the campaign for sheriff. After McDermott took office, he leap-frogged two full ranks from sergeant to Captain of Professional Standards. He is not a member of a protected class because his political views do not differ from those of McDermott.

## B.

### **Unlawful Retaliation**

45. McDermott can also be said to have retaliated against Clark, in violation of MONT. CODE ANN. § 49-2-301, if it can be shown merely that:

- (a) Clark opposed or participated in a protected activity;
- (b) McDermott took an adverse action against him subsequent to

his participation in the protected activity; and

(c) There is a causal connection between the protected activity and the adverse action.

46. There is little need to discuss the satisfaction of these three criteria. Clark testified against McDermott in September, 2013, in McDermott's Human Rights Bureau proceedings; Clark ran against McDermott in two elections; and Clark reported McDermott to proper authorities when McDermott violated Montana's campaign laws. And McDermott retaliated, taking extreme adverse personnel action against Clark, in violation of express provisions of the Montana code designed by the Legislature to protect undersheriffs from this very sort of pay-back.

47. McDermott and Johnson's retaliatory motives are illuminated starkly by the following light: The Sheriff's Office is budgeted for only three captaincies: Patrol, Detectives and Professional Standards. Montana law, specifically MONT. CODE ANN. § 7-32-2102(2), requires that an undersheriff who leaves the position upon the election of a new sheriff must be paid at the same rate as the posting he gave up to become undersheriff. In Clark's case, that was Captain of Professional Standards. If McDermott could legally demote Clark below the rank of captain, the County would still be required to nevertheless pay Clark as a captain. And in that event, the Sheriff's Office would have to either function short of one captain, or find extra money in the budget for a fourth captain. Obviously, neither option is managerially responsible nor fiscally sound. Yet, so intent was McDermott and Johnson on retaliating against Clark, they gave no heed to the difficulty it would create for the other deputies, who would have to cover for the vacant captaincy, on the one-hand, or the restrictions of the County's budget, on the other. Instead, McDermott and Johnson indulged themselves, punishing Clark, and profligately wasting County resources by paying the County's newest graveyard patrol deputy one of the three budgeted captains' salaries.

48. McDermott imposed punishment and retaliation against Clark in a barely disguised attempt to humiliate him; to ruin his long and

exemplary career in law enforcement; and to make an example of him in the eyes of others who might consider opposing McDermott. The causal connection could therefore not be more direct or clear. If Clark had only acquiesced in McDermott's political ambitions, and kept his mouth shut when McDermott complained of discrimination, Clark could have continued in his service with honor and distinction. Clark's decision to oppose McDermott, however, resulted in the loss of Clark's career and livelihood. McDermott made sure it would become a life-changing mistake.

C.

### **Wrongful Discharge**

49. It is unlawful for a sheriff to discharge a deputy sheriff from employment except in the manner set forth in Title 7, Part 32, Mont. Code Ann., and only for the causes listed under MONT. CODE ANN. § 7-32-2107(1).

50. "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. MONT. CODE ANN. § 39-2-903.

51. McDermott and Johnson constructively discharged Clark as a deputy, and subjected him to a hostile work environment, when they summarily demoted him five ranks, and put him on a graveyard shift in a role where Clark had no updated training or supplies, no supervisory control over any other deputies, when there were waiting open a number of other positions available for which Clark was well qualified, and had even occupied previously with high performance evaluations. In addition, the patrol team to which Clark was assigned included one deputy whom Clark had previously investigated while Captain of Professional Standards, and whom Clark had, after a formal review board, recommended for termination. Seeking to punish Clark, and to make an example of him from which others were intended to learn, McDermott and Johnson ruined

Clark's career. No objective, reasonable person would find this situation tolerable, and voluntary termination, or in this case, early retirement, was the only reasonable alternative.

52. Clark's constructive discharge was not in the manner set forth in Title 7, Part 32, Mont. Code Ann., and not for one of the causes listed under MONT. CODE ANN. § 7-32-2107(1).

53. McDermott's, Johnson's and the County of Missoula's conduct toward Clark was unlawful; in violation of Montana law, including the Government Code of Fair Practices, MONT. CODE ANN. § 7-32-2107, MONT. CODE ANN. § 7-32-2102(2), and MONT. CODE ANN. §§ 49-2-301, 303 and 308; and contrary to the 14th Amendment of the U.S. Constitution. McDermott's and the County of Missoula's acts and omissions amount to discrimination and retaliation in the workplace, wrongful discharge, negligence *per se*, intentional infliction of emotional distress, and actionable under 42 U.S.C. § 1983.

## V.

### **REQUEST FOR RELIEF**

54. Clark requests the Human Rights Bureau to investigate his complaint, and enjoin McDermott and the County of Missoula from discriminating and retaliating against others like him in the Sheriff's Office who might disagree with McDermott's politics.

55. Clark requests compensatory damages, including special damages for lost salary and benefits, and reduced pension in a sum of \$731,327.15; and general damages for infringement upon rights of free speech and privacy, humiliation, and emotional distress caused by the unlawful conduct of McDermott, Johnson and the County of Missoula, in a sum to be determined by the HRB.

56. Clark requests full indemnification against the attorney fees and costs he has obligated himself to pay in bringing this complaint.

DATED this 10<sup>th</sup> day of March, 2015.

Respectfully Submitted,  
**RHOADES & SIEFERT, P.L.L.C.**

By: Nicole Siebert

Quentin M. Rhoades

Nicole L. Siefert

## *For the Chargin'*

### *The Charging Party*

That he is Clerk in this County  
and understands the papers for me that I have written and things  
will be true, accurate and complete.