

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

U.S. DISTRICT COURT  
CLERK  
01 FEB - 6 PM 4:47

DONALD DRNEK, )  
)  
Plaintiff )  
)  
v. )  
)  
CITY OF CHICAGO, )  
an Illinois Municipal Corporation, )  
)  
Defendant )

01C 0840

FILED-EDS  
503-0371

No.

JUDGE BUCKLO

Trial by Jury Demanded

MAGISTRATE JUDGE ASHMAN

**COMPLAINT**

The plaintiff, Donald Drnek, by and through his attorneys, for his complaint against  
of Chicago, an Illinois Municipal Corporation, states as follows:

PROHIBITED  
FEB 07 2001

**THE PARTIES**

1. Plaintiff Donald Drnek ("Drnek") is a citizen of the United States and a resident of Chicago, Illinois. Drnek is a former police officer and former employee of the City of Chicago who was wrongfully terminated or "involuntarily retired" on December 31, 2000 because of his age. Plaintiff Drnek was age 65 at the time of his termination. Plaintiff Drnek is an "employee" for the purposes of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §630(f).

2. Defendant City of Chicago is an Illinois Municipal Corporation located within this judicial district which maintains its own police force. The City of Chicago is an "employer" under the ADEA, 29 U.S.C. §630(b).

**JURISDICTION AND VENUE**

- 3. This cause of action lies pursuant to Section 7 of the ADEA, 29 U.S.C. § 626.
- 4. Jurisdiction is based upon 28 U.S.C. § 1331 and 29 U.S.C. § 626.

1-1

5. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because the claim arose in this judicial district.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. Conditions Precedent Met**

6. All conditions precedent to this action have been fulfilled. On September 19, 2000, Plaintiff timely filed a charge with the Equal Employment Opportunity Commission alleging age discrimination in termination (attached as Exhibit 1) and received his right to sue letter within the last ninety days (attached as Exhibit 2).

#### **B. Background**

7. Plaintiff was born on May 22, 1935 and is 65 years old.

8. On or about July 1, 1957, plaintiff was hired by the City of Chicago as a police officer.

9. At all times pertinent hereto, plaintiff performed his job duties as a police officer in a satisfactory manner.

10. Nevertheless, sometime in December 2000, plaintiff was informed that pursuant to an ordinance adopted by the City of Chicago on May 17, 2000, plaintiff was to be terminated or “involuntarily retired” because he was over the age of 63 years.

11. Beginning on or around September 30, 1996 and continuing to the present, there existed and continues to exist a legislatively-created “public safety” exception to the ADEA, 29 U.S.C. 623(j), which provides in relevant part:

(j) Employment as firefighter or law enforcement officer

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained—

(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)

(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

12. On May 17, 2000, the City of Chicago adopted an ordinance which amended Chapter 2-152-140 of the Municipal Code to read as follows:

(a) Effective December 31, 2000, the age of 63 shall be the maximum age for employment of sworn members of the police department, including a sworn member who is transferred or appointed to a supervisory or administrative position.

\* \* \*

- (d) All persons to whom this ordinance applies shall be retired upon attainment of age 63. Any person to whom this ordinance applies whose age is 63 or more on December 31, 2000 shall be retired upon that date.

Chicago Municipal Code 2-152-140 (hereinafter, the "Ordinance" or "Municipal Code").

13. Following enactment of the Ordinance, plaintiff was terminated by the City of Chicago on December 31, 2000, the effective date of the Ordinance, for exceeding the mandatory retirement age.

**C. The Real Purpose in Enacting the Ordinance**

14. The purpose of Section 2-152-410 of the Municipal Code was not to promote the interests of public safety. Rather, the Ordinance was enacted as a subterfuge to evade the purposes of the ADEA. The Ordinance was passed to accomplish objectives which were unrelated to public safety, through the mandatory retirement of police officers over the age of 63.

15. The enactment of Section 2-152-410 of the Municipal Code was for the purpose of eliminating from the ranks of the Police Department plaintiff and other police officers who had surpassed 63 years of age, among other reasons, to allow the City of Chicago to hire and promote younger officers within the City of Chicago Police Department.

**COUNT I**

**AGE DISCRIMINATION IN TERMINATION**

16. Plaintiff adopts and realleges paragraphs 1 through 15.

17. By enacting Municipal Code 2-152-410 and terminating plaintiff's employment, defendant and its agents have willfully and intentionally discriminated against plaintiff on the basis of his age in a manner that acts as a subterfuge of the ADEA.

18. Section 2-152-410 of the Municipal Code was not part of a bona fide hiring or retirement plan as required by Section 623(j) of the ADEA.

19. By terminating plaintiff's employment, defendant knew and/or showed a reckless disregard for the matter of whether its conduct violated the ADEA.

20. As a result of the unlawful and willful acts complained of herein, Plaintiff has suffered loss of employment, wages, benefits, and other compensation, as well as emotional distress, embarrassment, humiliation, and other mental anguish.

## COUNT II

### AGE DISCRIMINATION IN TERMINATION

21. Plaintiff adopts and realleges paragraphs 16-20.

22. In 1996, at the same time as it enacted the current provisions of 29 U.S.C. Section 623 (j) of the ADEA, Congress also enacted regulations requiring development and implementation of performance tests for police officers attaining mandatory retirement age to determine whether they are fit to continue their employment despite their age. The regulation, Public Law 104-208, 110 Stat. 3009-24 (Sept. 30, 1996), provides in relevant part:

\* \* \*

(c) ADVISORY GUIDELINES.--Not later than 4 years after the date of enactment of this Act, the Secretary shall develop and issue, based on the results of the study required by subsection (a), advisory guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of law enforcement officers and firefighters to perform the requirements of the jobs of the officers and firefighters.

(d) JOB PERFORMANCE TESTS. --

- (1) IDENTIFICATION OF TESTS.--After issuance of the advisory guidelines described in subsection (c), the Secretary shall issue regulations identifying valid, nondiscriminatory job performance tests that shall be used by employers seeking the exemption described in section 4(j) of the Age Discrimination in Employment Act of 1967 with respect to firefighters or law enforcement officers who have attained an age of retirement described in such section 4(j).
- (2) USE OF TESTS.--Effective on the date of issuance of the regulations described in paragraph (1), any employer seeking such exemption with respect to a firefighter or law enforcement officer who has attained such age shall provide to each firefighter or law enforcement officer who has attained such age an annual opportunity to demonstrate physical and mental fitness by passing a test described in paragraph (1), in order to continue employment.

23. When read in conjunction with the above regulations, the spirit and letter of Section 423(j) provides an exception to the ADEA for mandatory retirement laws only when the officer can no longer meet the fitness requirements of his job.

24. Municipal Code §2-152-410, as written and as currently interpreted by the City of Chicago, is in direct contravention to Section 423(j) in that it fails to provide any officer, including plaintiff, with an opportunity to prove his fitness for duty. This is not the result intended or contemplated by Section 423(j).

25. Consequently, Municipal Code §2-152-410 violates the ADEA and is void and unenforceable since the Federal law, in this case, preempts the Ordinance.

26. At no time was plaintiff ever offered the opportunity to prove his “physical and mental” fitness to remain on the job.

27. In the absence of determining plaintiffs’ mental and physical fitness for duty, the City of Chicago’s termination of the plaintiff pursuant to Municipal Code Section 2-152-410 is in violation of the ADEA.

28. By terminating plaintiff’s employment, defendant and its agents have willfully and intentionally discriminated against plaintiff on the basis of his age.

29. As a result of the unlawful and willful acts complained of herein, Plaintiff has suffered loss of employment, wages, benefits, and other compensation, as well as emotional distress, embarrassment, humiliation, and other mental anguish.

### **COUNT III**

#### **FEDERAL DUE PROCESS – DECLARATORY AND INJUNCTIVE RELIEF**

30. Plaintiff adopts and realleges paragraphs 21-29.

31. Section 2-152-410 of the Municipal Code is unconstitutionally vague in that it does not provide an opportunity for City of Chicago police officers, like plaintiff, who reach the age of 63, to demonstrate their fitness for duty.

32. Section 2-152-410 is unenforceable and void as written in violation of the Fourteenth Amendment of the Constitution of the United States (U.S.C.A. Const. Amend. 14).

33. Plaintiff has no adequate remedy at law as he is currently 65 years old and every day that passes shortens his useful working life, which cannot be replaced. For the same reason, he has

and continues to suffer irreparable injury due to his inability to work as a police officer, including not only the inability to earn the same type of living as before his termination, but the inability to finish his career in his chosen profession.

34. As a result of the unlawful and willful acts complained of herein, Plaintiff has suffered loss of employment, wages, benefits, and other compensation, as well as emotional distress, embarrassment, humiliation, and other mental anguish, and loss of his useful working life as a police officer.

#### **COUNT IV**

#### **ILLINOIS DUE PROCESS – DECLARATORY AND INJUNCTIVE RELIEF**

35. Plaintiff adopts and realleges paragraphs 30-34.

36. Section 2-152-410 is unenforceable and void as written in violation of Article I, Section 2 of the Illinois Constitution.

37. Plaintiff has no adequate remedy at law as he is currently 65 years old and every day that passes shortens his useful working life, which cannot be replaced. For the same reason, he has and continues to suffer irreparable injury due to his inability to work as a police officer, including not only the inability to earn the same type of living as before his termination, but the inability to finish his career in his chosen profession.

38. As a result of the unlawful and willful acts complained of herein, Plaintiff has suffered loss of employment, wages, benefits, and other compensation, as well as emotional distress, embarrassment, humiliation, and other mental anguish, and loss of his useful working life as a police officer.




**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Donald Drnek respectfully requests that this Court enter an order:

- a. Declaring that Municipal Code Section 2-152-410 is in violation of, and superceded by, the ADEA, and is void and unenforceable;
- b. Declaring that the conduct of the defendant as described herein is in violation of Section 7 of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 et.seq.;
- c. Awarding plaintiff the salary, with interest, that he has lost as a result of defendant's conduct;
- d. Awarding plaintiff compensatory damages;
- e. Awarding plaintiff reasonable attorneys' fees and costs;
- f. Declaring that City of Chicago Municipal Code Section 2-152-410 is unconstitutionally void and unenforceable on its face;
- g. Issuing a mandatory injunction against Defendant requiring that plaintiff be reinstated to his position as police officer with full back pay, salary, benefits, and seniority applicable to him on the date of termination and subsequently as if he had remained employed today; and
- h. Awarding plaintiff such other and further relief as this Court deems proper and just.

Respectfully submitted,

  
\_\_\_\_\_  
One of the Attorneys for Plaintiffs

Date: February 6, 2001

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JS 44  
(Rev. 12/96)

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Donald Drnek

*cat 2*

**DEFENDANTS**

City of Chicago  
**MAGISTRATE JUDGE ASHMAN**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Cook  
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

See Attachment

**DOCKETED**  
**FEB 07 2001**  
**OIC 0840**  
**JUDGE BUCKLO**  
FILED  
U.S. DISTRICT COURT

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R R & Truck <input type="checkbox"/> 850 Airline Regs <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 890 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Age Discrimination In Employment, Federal Due Process, Illinois State Due Process

**VII. REQUESTED IN COMPLAINT**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint  
JURY DEMAND:  YES  NO

VIII. This case  is not a refiling of a previously dismissed action.

is a refiling of case number \_\_\_\_\_, previously dismissed by Judge \_\_\_\_\_

DATE  
2-6-01

SIGNATURE OF ATTORNEY OF RECORD

*[Handwritten Signature]*

### **Attachment to Civil Cover Sheet**

1.(c). ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of Donald Drnek,  
Plaintiff,  
v.  
City of Chicago, an Illinois Municipal Corporation,  
Defendant.

**01C 0840**

**JUDGE BUCKLO**

Case Number:

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Donald Drnek, Plaintiff

**MAGISTRATE JUDGE ASHMAN**

**DOCKETED  
FEB 07 2001**

(A)	(B)
SIGNATURE <i>Clint Krislov</i>	SIGNATURE <i>Michael R. Karnuth</i>
NAME Clint Krislov	NAME Michael R. Karnuth
FIRM Krislov & Associates, Ltd.	FIRM Krislov & Associates, Ltd.
STREET ADDRESS 20 North Wacker Drive, Suite 1350	STREET ADDRESS 20 North Wacker Drive, Suite 1350
CITY/STATE/ZIP Chicago, IL 60606	CITY/STATE/ZIP Chicago, IL 60606
TELEPHONE NUMBER 312-606-0500	TELEPHONE NUMBER 312-606-0500
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 1531433	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6257807
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)	(D)
SIGNATURE <i>Ronald L. Futterman</i>	SIGNATURE <i>Joan Matlack</i>
NAME Ronald L. Futterman	NAME Joan Matlack
FIRM Futterman & Howard, Chtd.	FIRM Futterman & Howard, Chtd.
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TELEPHONE NUMBER 312-427-3600	TELEPHONE NUMBER 312-427-3600
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 00898937	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06197420
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>