

Linda J. Johnson
Assistant Municipal Attorney
Email: courtdocs@muni.org

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

HEATHER MACALPINE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MUNICIPALITY OF ANCHORAGE,)	
et al.,)	
)	
Defendants.)	
)	Case No. 3AN-22- 06827CI

ANSWER

Defendants Municipality of Anchorage, Mayor Dave Bronson in his official capacity, Niki Tshibaka in his official capacity, Matthew Jendrusina in his official capacity, and Raylene Griffith in her official capacity (collectively the MOA) hereby respond to the complaint filed by Plaintiff Heather MacAlpine (“MacAlpine”) as follows. MacAlpine has listed “other persons responsible,” but since these persons are not identified, the MOA cannot ascertain whether representation will be appropriate and therefore reserves all rights until the appropriate time.

PARTIES

1. The MOA admits paragraph 1 of the complaint.
2. The MOA admits it is a home rule municipality whose boundaries are within the

Third Judicial District.

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

3. The MOA admits that Dave Bronson is the Mayor of the Municipality of Anchorage. It is correct, but immaterial for purposes of this lawsuit, that he resides in Alaska.

4. The MOA admits paragraph 4 of the complaint.

5. The MOA admits paragraph 5 of the complaint.

6. The MOA admits paragraph 6 of the complaint.

7. The MOA denies the allegations contained in paragraph 7 of this complaint.

JURISDICTION AND VENUE

8. The MOA admits paragraph 8 of this complaint.

9. The MOA admits paragraph 9 of this complaint.

10. The MOA admits venue is proper as alleged in paragraph 10 of this complaint, but the Individual Defendants were not “personally” served, they were served in their “official capacity.”

FACTS GIVING RISE TO THE LAWSUIT

11. The MOA admits that MacAlpine was hired as Director of the Office of Equal Opportunity (OEO) in 2015 by the Berkowitz Administration, and continued to serve under interim Mayor Austin Quinn Davidson, into the Bronson Administration. MacAlpine’s identified duties are only partially correct. After numerous years of working in OEO, MacAlpine admitted multiple times that she was unsure of her own job duties. After the Office of Equity and Justice (OEJ) was created, MacAlpine began reporting to the Director of OEJ. She missed multiple supervisory meetings and made it clear she was unhappy that she reported to OEJ. MacAlpine applied for the OEJ position under the

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 2 of 12

Berkowitz Administration but was not chosen. All remaining allegations in paragraph 11 of the complaint are denied.

12. The MOA admits the allegations contained in paragraph 12 of the complaint.

13. The MOA is without information as to the allegations in paragraph 13 of the complaint and therefore it must deny the allegations.

14. Ombudsman Darrel Hess testified at an Assembly Work Session that he recommended that Library employees contact the Anchorage Equal Rights Commission, the Alaska State Commission on Human Rights or the Office of Equal Opportunity. The MOA is without information as to the truth of the remaining allegations in paragraph 14 of the complaint and therefore it must deny the allegations

15. "Employee A" has not been identified therefore it is impossible for the MOA to evaluate the statements and allegations attributed to "Employee A" and cannot assess whether "Employee A" made the allegations listed in paragraph 15, or in the subparagraphs, of the complaint; therefore, it must deny the allegations in paragraph 15 and all subparagraphs.

a. The MOA denies the allegations in paragraph 15a of the complaint.

b. The MOA denies the allegations in paragraph 15b of the complaint.

c. The MOA denies the allegations in paragraph 15c of the complaint.

d. The MOA denies the allegations in paragraph 15d of the complaint.

e. The MOA denies the allegations in paragraph 15e of the complaint.

16. The MOA admits that several Library employees have resigned their positions during the last 12 months. The MOA is without information as to the truth of the

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 3 of 12

statements made by “Employee A” and cannot assess whether “Employee A” made the allegations in paragraph 16 of the complaint, therefore the allegations made in paragraph 16 of the complaint are denied.

17. The MOA admits that the Library Advisory Board sent a letter to the Bronson Administration and the content of the letter speaks for itself. The characterizations made about the Library and the letter are incorrect or overstated, and therefore the MOA denies the remainder of the allegations made in paragraph 17 of the complaint.

18. The MOA admits that MacAlpine emailed Human Resources in April 2022 to request a Teams meeting. The remainder of the allegations made in paragraph 18 of the complaint are denied.

19. MacAlpine’s job duties were limited with respect to employee’s complaints of discrimination. The argumentative statements made in paragraph 19 of the complaint are denied.

20. The MOA admits that MacAlpine met with Adan Garcia and Matthew Jendrusina, and that Mr. Jendrusina attended the meeting via Teams. Human Resources cannot investigate an allegation without speaking to a person directly affected or who heard or made a statement, but no such person was identified by MacAlpine. The remainder of the allegations made in paragraph 20 of the complaint are denied.

21. “Employee A” has not been identified, therefore, it is impossible for the MOA to evaluate the statements and actions attributed to “Employee A” or whether “Employee A” made the statements or contacted Human Resources. The MOA is without information

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 4 of 12

as to the truth of the allegations raised in paragraph 21 of the complaint and therefore it must deny the allegations

22. The MOA denies that it was dismissive to any Loussac Library employee and takes all allegations made seriously. The MOA cannot reveal confidential personnel matters and therefore the MOA cannot confirm or deny the allegations about alleged complaints filed with Human Resources by employees. The remainder of the allegations made in paragraph 22 of the complaint are denied

23. MacAlpine did not share the information alleged in this paragraph with anyone at the MOA and therefore the MOA is without information as to the truth of the allegations raised in paragraph 23 of the complaint and therefore it must deny the allegations.

24. MacAlpine did not inform anyone that she was going to visit the Library or that she was meeting with employees. The MOA is without information as to the allegations contained in paragraph 24 of the complaint and therefore it must deny the allegations.

25. "Employee B" has not been identified, therefore, it is impossible for the MOA to evaluate the statements and allegations attributed to "Employee B." The MOA is without information as to the truth of the statements made by "Employee B" and cannot assess the allegations in paragraph 25 of the complaint; therefore, it must deny the allegations.

a. The MOA denies the allegations in paragraph 25a of the complaint.

b. The MOA denies the allegations in paragraph 25b of the complaint.

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 5 of 12

c. The MOA admits that Ms. Eledge expressed that she preferred to have a diverse group of people to select books, for balance. The MOA denies the remainder of the allegations in paragraph 25c of the complaint.

d. The MOA denies the allegations in paragraph 25d of the complaint.

26. There is no information provided as to who the “other employees” were that allegedly made the statements about Ms. Eledge. The MOA denies the allegations in paragraph 26 of the complaint.

27. The MOA admits that MacAlpine requested a second meeting with Human Resources, to include Deputy Municipal Attorney Blair Christensen, who agreed to meet. The MOA reserves all attorney-client and work product privileges. MacAlpine does not hold the privilege and has no authority to disclose any advice or information she received from the MOA Legal Department on any matter. Any remaining allegations contained in paragraph 27 of the complaint are denied.

28. The MOA is without information as to the truth of the allegations in paragraph 28 of the complaint; therefore, it must deny the allegations.

29. The MOA admits that MacAlpine was terminated on May 11, 2022, in the Human Resources Department, and that Matthew Jendrusina and Raylene Griffith were present. The OEO Director is an executive level position, and therefore serves at the pleasure of the Mayor. The MOA admits that the letter attached as Ex. 2 is true and correct. All other allegations made in paragraph 29 of the complaint are denied.

30. The MOA denies that the discussions regarding a pay raise for an OEO employee were related to MacAlpine’s termination. The characterizations made about the

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

raise discussions are incorrect or overstated. The MOA denies the remainder of the allegations in paragraph 30 of the complaint.

31. The MOA admits that when a pay raise was denied, MacAlpine was informed she could research potential grants and other funding sources for possible sources of revenue for OEO, but that she failed to do so. The remainder of the allegations in paragraph 31 of the complaint are denied.

32. The MOA denies the allegations in paragraph 32 of the complaint.

33. The MOA denies the allegations in paragraph 33 of the complaint.

34. The MOA denies the allegations in paragraph 34 of the complaint.

a. The MOA denies the allegations in paragraph 34a of the complaint.

b. The MOA denies the allegations in paragraph 34b of the complaint.

c. The MOA denies the allegations in paragraph 34c of the complaint.

d. The MOA denies the allegations in paragraph 34d of the complaint.

35. The MOA denies the allegations in paragraph 35 of the complaint

36. The MOA denies the allegations in paragraph 36 of the complaint.

37. The MOA admits that Niki Tshibaka attended the June 15, 2022, Library Advisory Board meeting in his official capacity. The MOA denies all other allegations in paragraph 37 of the complaint.

38. The MOA admits that Niki Tshibaka is the Chief Human Resources Officer and supervises the employees who perform employment investigations. The MOA denies all other allegations in paragraph 38 of the complaint.

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

39. The MOA admits that Niki Tshibaka wore a t-shirt to the June 15, 2022, Library Advisory Board that stated, "I'm with Judy." The MOA denies all other allegations in paragraph 39 of the complaint.

40. The MOA denies the allegations in paragraph 40 of the complaint.

41. The MOA denies the allegations in paragraph 41 of the complaint.

42. The MOA denies the allegations in paragraph 42 of the complaint.

COUNT I: BREACH OF THE ANCHORAGE WHISTLEBLOWER ACT

43. The MOA incorporates its responses to paragraphs 1-42 as if stated herein.

44. This is a purported statement of the law to which no response is required. Legal briefing on the meaning and application of the law will be made when appropriate. The MOA denies any factual inference in paragraph 44 of the complaint.

45. The MOA denies the allegations in paragraph 45 of the complaint.

46. The MOA denies the allegations in paragraph 46 of the complaint.

COUNT II: VIOLATION OF THE ALASKA HUMANS RIGHTS ACT

47. The MOA incorporates its responses to paragraphs 1-46 as if stated herein.

48. This is a purported statement of the law to which no response is required. Legal briefing on the meaning and application of the law will be made when appropriate. The MOA denies any factual inference in paragraph 48 of the complaint.

49. The MOA denies the allegations in paragraph 49 of the complaint.

50. The MOA denies the allegations in paragraph 50 of the complaint.

MUNICIPALITY
OF
ANCHORAGE

OFFICE OF THE
MUNICIPAL
ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

**COUNT III: WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY.**

51. The MOA incorporates its responses to paragraphs 1-50 as if stated herein.

52. The MOA admits that MacAlpine was the Director of the Office of Equal Opportunity. The MOA denies all other allegations in paragraph 52 of the complaint.

53. The MOA denies the allegations in paragraph 53 of the complaint.

**COUNT IV: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR
DEALING.**

54. The MOA incorporates its responses to paragraphs 1-53 as if stated herein.

55. This is a purported statement of the law to which no response is required. Legal briefing on the meaning and application of the law will be made when appropriate. The MOA denies any factual inference in paragraph 55 of the complaint

56. The MOA denies the allegations in paragraph 56 of the complaint.

57. The MOA denies the allegations in paragraph 57 of the complaint.

AFFIRMATIVE DEFENSES

1. MacAlpine has failed to exhaust her administrative remedies.

2. MacAlpine's complaint, in whole or in part, fails to state a claim upon which relief can be granted.

3. The damages alleged by MacAlpine, if any, were directly and legally caused by her own conduct.

4. MacAlpine unreasonably failed to take advantage of any preventive or corrective opportunities provided by the MOA to avoid harm.

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

5. The MOA acted in a manner that was proper, reasonable, lawful and in good faith.

6. The MOA took reasonable steps to prevent and correct any alleged damages.

7. MacAlpine's damages may be barred, in whole or in part, by MacAlpine's failure to mitigate or to fully mitigate.

8. MacAlpine's alleged damages may have been caused, in whole or in part, by MacAlpine's own acts or omissions, thereby barring or reducing the amount of any recovery.

9. MacAlpine's claims are barred, in whole or in part, by statutory and common law immunities.

10. MacAlpine's claims for non-economic damages are limited by law.

11. Punitive damages are not available against the MOA and the inclusion of punitive damages in the complaint is a Rule 11 violation.

12. Discovery of evidence after MacAlpine filed this case may be of such severity that it is sufficient to justify disciplinary action against MacAlpine on those grounds alone and/or cuts off her alleged damages as of the date of discovery.

13. MacAlpine did not engage in a protected activity.

14. MacAlpine has failed to allege facts sufficient to determine the elements that are necessary to prove each and every claim.

15. MacAlpine has tried this case in the press, and the voluntary publication of her complaint has caused and/or contributed to her economic damages.

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 10 of 12

16. The MOA reserves the right to assert any and all additional affirmative defenses as may be revealed by further investigation and/or discovery in this action

RELIEF

WHEREFORE, the MOA having answered the complaint, the MOA respectfully requests that it be awarded the relief as follows:

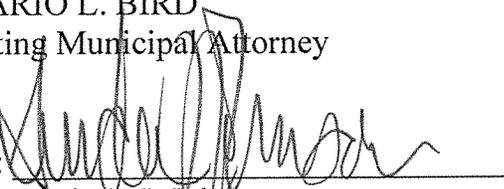
A. For judgment in favor of the MOA dismissing MacAlpine's complaint with prejudice;

B. For judgment awarding the MOA its attorney's fees pursuant to Alaska R. Civ. P. 82 and costs pursuant to Alaska R. Civ. P. 79; and

C. For such other relief as this Court deems just and equitable under the circumstances.

Respectfully submitted this 19th day of July, 2022

MARIO L. BIRD
Acting Municipal Attorney

By: 

Linda J. Johnson
Assistant Municipal Attorney
Alaska Bar No. 8911070

MUNICIPALITY
OF
ANCHORAGE

OFFICE OF THE
MUNICIPAL
ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer
MacAlpine v MOA; Case No. 3AN-22-06827CI
Page 11 of 12

Certificate of Service

I certify that on 07/19/2022, I caused to be emailed a true and correct copy of the foregoing to:

Ashburn & Mason, P.C.

Eva R. Gardner

eva@anchorlaw.com

Jeffrey W. Robinson

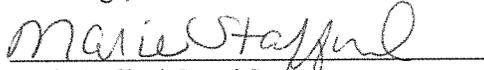
jeffrey@anchorlaw.com

Benjamin J. Farkash

ben@anchorlaw.com

1227 West 9th Avenue, #200

Anchorage, AK 99501



Marie Stafford, Legal Secretary

Municipal Attorney's Office

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Answer

MacAlpine v MOA; Case No. 3AN-22-06827CI

Page 12 of 12