

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA  
AT ANCHORAGE

Elena Barron

Plaintiff(s),

vs.

Alaska Native Tribal Health Consortium

Defendant(s).

CASE NO. 3AN-18-04962 CI

SUMMONS AND  
NOTICE TO BOTH PARTIES  
OF JUDICIAL ASSIGNMENT

To Defendant: Alaska Native Tribal Health Consortium

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days\* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented)

Isaac Zorea

, whose address is: PO Box 210434  
Anchorage, AK 99521

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm), to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge GUIDI  
and to a magistrate judge.

☐ This case has been assigned to District Court Judge \_\_\_\_\_

CLERK OF COURT

By: [Signature]

Deputy Clerk



2-26-18

Date

I certify that on 2-26-18 a copy of this Summons was  
☐ plaintiff ☐ plaintiff's counsel along with a copy of the  
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order  
to serve on the defendant with the summons.  
Deputy Clerk [Signature]

☐ mailed ☒ given to

\* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

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

ELENA BARRON,

Plaintiff,

v.

ALASKA NATIVE TRIBAL HEALTH  
CONSORTIUM,

Defendant.

Case No. 3AN-18-

CI

4962

FILED in the TRIAL COURT,  
State of Alaska Third Judicial District  
FEB 26 2018  
Clerk of the Trial Court

**COMPLAINT**

COMES NOW, Elena Barron, the plaintiff above named, by and through her attorney, Isaac Derek Zorea, and complains as follows:

**I. JURISDICTION**

1.1. At all relevant times, plaintiff, Elena Barron, resided in Anchorage, Alaska, Third Judicial District, State of Alaska.

1.2. At all relevant times, defendant, Alaska Native Tribal Health Consortium, has maintained significant business connections in Anchorage, Alaska, Third Judicial District, State of Alaska.

1.3. Venue properly rests within the Third Judicial District, State of Alaska.

**II. FACTS**

2.1. On November 14, 2016, Plaintiff, Elena Barron, began her employment with Defendant Alaska Native Tribal Health Consortium, as a respiratory therapist. To start her new job, Ms. Barron needed to relocate from Nome, Alaska, where she previously lived.

ISAAC DEREK ZOREA  
ATTORNEY & COUNSELOR AT LAW  
P.O. BOX 210434  
ANCHORAGE, AK 99521  
PHONE: (907) 830-1385 FAX: (800) 536-1071

1           2.2. At first, Plaintiff's employment began well, with no significant  
2 problems. But on November 11, 2016, Elena Barron heard discussion by staff  
3 members in her department talking about "HR hires." She sensed that these  
4 discussions cast HR hires in a negative light. Later that day, Ms. Barron asked Craig  
5 Bevercomb, the department director, if she was considered a "HR hire." He replied  
6 that she was a HR hire.

7           2.3. On November 24, 2016, Plaintiff noticed Zachary Malbalay, her  
8 supervisor, treat her differently than a co-worker who was Caucasian. He required her  
9 to conduct a procedure that was beyond her job duty, while not requiring the  
10 Caucasian co-worker to do the same procedure.

11           2.4. During late November 2016, both Melinda and Plaintiff Elena Barron  
12 were pregnant. However, Plaintiff is a Native woman, and Melinda is a Caucasian  
13 woman. During the course of our job duties, Zachary Malbalay told Plaintiff that  
14 Melinda would not have an assignment in Pediatrics because she was pregnant, then  
15 he turned around and gave that assignment to Plaintiff, who was also pregnant.

16           2.5. On Friday December 9, 2016, Zachary Malbalay approached Plaintiff,  
17 telling her that the director, Craig Bevercomb, wanted him to talk to her about  
18 something. Mr. Malbalay then proceeded to tell Plaintiff that she was in a very  
19 unique position. Unlike other therapists, Mr. Malbalay pointed out that Plaintiff was  
20 more likely to have relatives come to our hospital because she was Native-Alaskan.

21           2.6. Next, during the December 9, 2016, encounter between Mr. Malbalay  
22 and Plaintiff Elena Barron, Mr. Malbalay suggested that because she was Native-  
23 Alaskan she needed to find other employment with one of the other hospitals in  
24 Anchorage. He further stated that she had only the weekend to decide whether to quit,  
25 or Plaintiff would have to meet with Mr. Bevercomb, presumably to be fired. Ms.  
26 Barron told him it was an inappropriate time and place for such a discussion.  
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1           2.7. Having spent thousands of dollars to relocate her family Nome, Alaska  
2 to Anchorage, Alaska, and being in her 6th month of a high-risk pregnancy, Mr.  
3 Malbalay's comments on December 9, 2016 caused Plaintiff Elena Barron  
4 considerable stress and concern that entire weekend, fearing that she would lose her  
5 job. Further, since Mr. Malbalay spoke to her late in the evening on December 9,  
6 2016, the it was too late, that day, to reach out to human resources or to acquire legal  
7 representation.

8           2.8. On December 12, 2016, when Plaintiff arrived at work she directly  
9 consulted with Craig Bevercomb concerning the confrontation with Mr. Malbalay.  
10 Mr. Bevercomb denied instructing Mr. Malbalay to speak with her. However, Mr.  
11 Bevercomb stated that it was within Mr. Malbalay's authority to ask her questions.  
12 When Plaintiff asked him whether Malbalay should be asking questions about race, he  
13 stated that he probably should not be asking about race, but he stated that Malbalay is  
14 just uninformed about Alaskan Native culture.

15           2.9. Despite the race-related confrontation between Mr. Malbalay and  
16 Plaintiff, Mr. Bevercomb told her that she should still work with Malbalay. Fearing it  
17 would look unprofessional of her if she refused, Plaintiff said she would continue  
18 working with Malbalay.

19           2.10. Later, that day on December 12, 2016, Plaintiff realized that Mr.  
20 Beavercomb had spoken with Mr. Malbalay because there was a noticeable change in  
21 Malbalay's demeanor toward Plaintiff. Mr. Malbalay's behavior was so was cold, and  
22 unfriendly, that Plaintiff believed the relationship was a danger to the patient's and  
23 she requested that he no longer orient her.  
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1           2.11. The remaining of Plaintiff's orientation was spent with different co-  
2 workers, who stated that she was doing an excellent job. Even during her orientation  
3 with the other co-workers, Rebecca Arthen and Fran Cuff, Mr. Malbalay made  
4 comments stating that Plaintiff was not working hard, even though her new  
5 supervisors disagreed.

6           2.12. On January 1, 2017, Plaintiff noticed a significant problem with her  
7 pregnancy, and discovered that her child had died in utero. Plaintiff was forced to  
8 deliver her still born child by C-section. Her doctor believed that stress played a  
9 significant role in her failed pregnancy.

10           2.13. Despite the tragedy she endured, Craig Bevercomb did not provide  
11 support in her request for leave, although after appealing to his superiors, she was  
12 granted some leave time to recover physically and emotionally.

13           2.14. In February 13, 2017, Plaintiff had another encounter with Mr.  
14 Malbalay, which showed his animosity toward Alaska Natives and their culture.  
15 Plaintiff noticed Mr. Malbalay make a rude, disgusted, facial expression after a co-  
16 worker thanked Plaintiff for a jar of fish that she had given her. Plaintiff forwarded an  
17 account of this episode to the Hospital's HR, which informed Mr. Beavercomb about  
18 the incident. Nothing was done, however.

19           2.15. Despite numerous race-related complaints about Zachary Malbalay, the  
20 Hospital gave him a promotion to Clinical Educator for Respiratory Therapy. This  
21 promotion occurred despite numerous complaints about his racial animus toward  
22 Alaska Natives, and his youth and inexperience, having only two years on the job.

23           2.16. Shortly after assuming his new position with Alaska Native Tribal  
24 Health Consortium, on April 30, 2017, Zachary Malbalay wrote an email to Hospital  
25 administrators attacking Plaintiff professionally. She was required to respond to his  
26 unfounded allegations.



2.17. On May 4, 2017, Plaintiff was required to report to the HR department, and answer questions about her work skills. The professional attack continued the stress that she had been experiencing at work, and caused her to have medical problems, such as seizures caused by stress.

2.18. Based on the harassment that she was experiencing at work, Plaintiff filed with the Anchorage Equal Rights Commission, hoping that its mediation would alleviate the racial discrimination she experienced. However, Alaska Native Tribal Health Consortium refused to respond to the human rights commission. Further, when Plaintiff brought her concerns to the hospital's HR, she was given no resolution.

2.19. Shortly after realizing that Defendant Alaska Native Tribal Health Consortium would not provide a resolution to Plaintiff's complaints of racial discrimination, she felt she had no option but to quit the hostile working environment that had become unbearably stress-filled.

2.20. Plaintiff was constructively terminated from her employment with Defendant Alaska Native Tribal Health Consortium on August 20, 2017.

## CAUSES OF ACTIONS

A. DISPARATE TREATMENT AND RETALIATION ON THE BASIS OF RACE:  
VIOLATION OF 42 U.S.C. § 1981.

3.1. Elena Barron incorporates all the facts and allegations within the paragraphs listed above, 2.1 through 2.20, and alleges that Defendant, Alaska Native Tribal Health Consortium, violated the Civil Rights Act of 1866, codified as 42 U.S.C. § 1981.

3.2. Plaintiff, Elena Barron, alleges and affirms that she is a member of a racial classification, Native-Alaskan, that is protected from discrimination, and/or retaliation, under the federal statute 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991.

1           3.3. During the period of plaintiff's employment for defendant, Alaska  
2 Native Tribal Health Consortium, Elena Barron experienced disparate treatment on  
3 the basis of her racial classification, by her supervisor, Zachary Malbalay and Craig  
4 Bevercomb, by being treated differently in the terms and conditions of her  
5 employment from other employee not within her racial classification.

6           3.4. In addition to being treated differently by her employer because of her  
7 race, Barron's employer, Alaska Native Tribal Health Consortium, refused to prevent  
8 continued disparate treatment toward Elena Barron, thereby creating a hostile work  
9 environment by permitting Zachary Malbalay to continue altering her terms and  
10 conditions of employment.

11           3.5. During the period of her employment, plaintiff Elena Barron objected  
12 to her supervisor, Craig Bevercomb, concerning her disparate treatment by Zachary  
13 Malbalay, and he refused to provide her an venue for redress.

14           3.6. Plaintiff Elena Barron alleges, and affirms, that because she resisted  
15 the hostile and disparate treatment by Zachary Malbalay, defendant Alaska Native  
16 Tribal Health Consortium, retaliated against Ms. Barron and permitted Mr. Malbalay  
17 to treat her in a disparate manner on the basis of her race.

18           3.7. Plaintiff, Elena Barron, alleges that the conduct outlined in paragraph  
19 3.1 to 3.6 above, violated the protections provided her within federal statute 42 U.S.C.  
20 § 1981, as amended by the Civil Rights Act of 1991, which prohibits disparate  
21 treatment and retaliation based on race.

22           3.8. As compensation for the conduct alleged above, plaintiff, Elena  
23 Barron, seeks all remedies available under 42 U.S.C. § 1981, including but not limited  
24 to, compensatory damages, lost pay, lost opportunity for advancement, emotional  
25 damages caused by the loss of her child and Zachary Malbalay's conduct, humiliation,  
26 punitive damages, and attorney fees.

1  
2 **PRAYER OF RELIEF**

3 WHEREFORE, Plaintiff Elena Barron, requests judgment against defendant  
4 Alaska Native Tribal Health Consortium, as follows:  
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6 1. Full and complete payment of all back wages, future wages,  
7 prejudgment interest, liquidated damages, and punitive damages caused when Alaska  
8 Native Tribal Health Consortium, retaliated against and/or treated in a disparate  
9 manner, Elena Barron because of her Race within an amount within the jurisdictional  
10 limit of this court, with an exact amount to be proven at trial.


11 2. Elena Barron seeks all remedies available under 42 U.S.C. § 1981,  
12 including but not limited to, compensatory damages, lost pay, lost opportunity for  
13 advancement, emotional damages caused by the loss of her child and Zachary  
14 Malbalay's conduct, humiliation, punitive damages, and attorney fees.

15 3. Elena Barron requests punitive damages against Alaska Native Tribal  
16 Health Consortium based on the egregious manner by which it treated plaintiff, given  
17 her medical conditions.

18 4. Elena Barron seeks actual reasonable attorney fees, 42 U.S.C. § 1981  
19 and 42 U.S.C. § 1988, and all permitted prejudgment interests on the unpaid wages.

20 5. Plaintiff Elena Barron seeks such other relief as the court may deem  
21 just and proper based on the egregious nature of defendants' conduct.

22 Dated: February 26, 2017

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25 Isaac D. Zorea  
26 ABA No. 0011090  
27 Counsel for Elena Barron  
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