

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHELLE KENNEY, individually as the surviving mother of ANTWON M. ROSE, II. and as ADMINISTRATRIX of the Estate of ANTWON M. ROSE, II. and ANTWON ROSE, SR., individually as the surviving father of ANTWON M. ROSE, II.

Plaintiffs,

CIVIL NO

## JURY TRIAL DEMANDED

V.

THE CITY OF EAST PITTSBURGH PA,  
MICHAEL ROSFELD, CHIEF OF POLICE  
LORI FRUNCEK, MAYOR LOUIS J. PAYNE  
Defendants.

## ORIGINAL COMPLAINT

NOW COMES Michelle Kenney, individually as the surviving mother of Antwon M. Rose, II., deceased and as the Personal Representative of the estate of Antwon M. Rose, II. and Antwon M. Rose, Sr., Individually as the surviving father of Antwon M. Rose, II., deceased, complaining of Defendants, the city of East Pittsburgh, PA, more particularly the East Pittsburgh Police Department (“EPPD”), by and through its agent and servant, Michael Rosfeld, individually and in his official capacity as an East Pittsburgh Police Officer, and for cause would show the Honorable Court as follows:

## I.

## NATURE OF THE ACTION

1. This is an action brought by the Plaintiffs against Defendants, the city of East Pittsburgh, PA, more particularly the East Pittsburgh Police Department, by and through its agent and servant, Michael Rosfeld ("Rosfeld") for his use of excessive and deadly force resulting in the

unlawful shooting death of Antwon M. Rose, II. ("Rose") under the color of law in violation of his individual rights under the Fourth Amendment of the United States Constitution and in violation of his civil rights pursuant to 42 U.S.C. § 1983.

2. Plaintiffs allege that the East Pittsburgh, PA ("City of East Pittsburgh") and its policymakers, specifically the East Pittsburgh City Council, Mayor Louis J. Payne ("Payne") and Chief of Police Lori Frunceck ("Fruncek") (collectively referred herein as the "Policymakers") failed to properly train, supervise, screen, discipline, transfer, counsel or otherwise control officers who are known, or who should have been known, to engage in the use of excessive force and/or deadly force, including those officers repeatedly accused of such acts. The Policymakers, specifically the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck had a duty, but failed to implement and/or enforce policies, practices and procedures for the EPPD that respected Antwon M. Rose, II's constitutional rights to assistance and protection. Defendant City of East Pittsburgh and its Policymakers, specifically the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck's failure to adequately supervise and train Defendant Rosfeld, implement the necessary policies and the implementation of unconstitutional policies caused Antwon M. Rose, II.'s unwarranted and excruciating physical and mental anguish and death. Defendant Rosfeld consciously disregarded the rights of Plaintiffs and Rose, knowing that the Policymakers would approve and/or ratify his actions. For these civil rights violations and other causes of action discussed herein, Plaintiffs seek answers and compensation for damages and the wrongful death of Antwon M. Rose, II.

## II.

### PARTIES

3. Plaintiff Michelle Kenney is a person of the full age of majority and a resident of Rankin, Pennsylvania in Allegheny County. Michelle Kenny sues on behalf of herself and as the personal representative of the Estate of Antwon M. Rose, II., deceased.

4. Plaintiff Antwon M. Rose, Sr. is a person of the full age of majority and a resident of Rankin, Pennsylvania in Allegheny County. Antwon M. Rose, Sr. sues on behalf of himself and as the personal representative of the Estate of Antwon M. Rose, II., deceased.

5. Defendant Michael Rosfeld, is and/or was at all times acting under color of law in the scope and course of his duties as a police officer with the East Pittsburgh Police Department. He is being sued in his individual and official capacity as an employee of the East Pittsburgh Police Department. Michael Rosfeld may be served at the East Pittsburgh Police Department at 813 Linden Avenue, East Pittsburg, PA 15112 or wherever he may be found. He is being sued in his individual and official capacity as an employee of the East Pittsburgh Police Department.

6. Defendant, the City of East Pittsburgh, is a municipality located in Allegheny County, Pennsylvania. The City of East Pittsburgh operates the East Pittsburgh Police Department. The City of East Pittsburgh funds and operates the EPPD, which, along with the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck are responsible for the implementation of the police department's budget, policies, procedures, practices, and customs, as well as the acts and omissions, challenged by this suit. The EPPD is also responsible for preventive, investigative, and enforcement services for all citizens of the City of East Pittsburgh. The City of East Pittsburgh may be served with citation herein by and through its agent for service of process, Denise Hartford, City Secretary, at 813 Linden Avenue, East Pittsburg, PA 15112 or wherever she may be found.

Additional service is being made on Mayor Louis J. Payne at 813 Linden Avenue, East Pittsburgh, PA 15112 wherever he may be found.

7. Defendant, Lori Frunceck, is an individual who is the Chief of Police at the time of the incident. In such capacity as Chief of Police, she was charged with the supervision, direction, and control of the Officers of the East Pittsburgh's traffic stops, use of force, the use of deadly force, and the vetting, screening and/or reviewing of hiring new employees.

8. Defendant, Mayor Louis J. Payne is an individual who is the Mayor of the Borough of East Pittsburgh. Defendant Payne is charged with oversight of, among other things, the supervision, direction, and control of the Officers of the East Pittsburgh Police Department. In addition, Payne is charged with oversight and implementation of all policies, procedure, and/or guidelines of the East Pittsburgh Police Department.

### **III.**

#### **JURISDICTION AND VENUE**

9. Jurisdiction exists in this court pursuant to 28 U.S.C. §§ 1331 and 1343 as this action is brought under, inter alia, the Fourth Amendment of the United States Constitution and 42 U.S.C. §1983, to redress the deprivation of rights, privileges and immunities guaranteed to decedent Antwon M. Rose, II., by constitutional and statutory provisions. Plaintiffs further invokes the supplemental jurisdiction of this court pursuant to 28 U.S.C. § 1367 to adjudicate pendent claims arising under the laws of the State of Pittsburgh.

10. Venue is proper in this court because the causes of action occurred within the Western District of Pennsylvania.

**IV.**  
**FACTS**

11. On or about, June 19, 2018 at approximately 8:40 p.m., Rose was one of three passengers in a vehicle being operated in the area of Grandview Avenue, located in East Pittsburgh. Defendant Rosfeld was patrolling in and around the same area where the vehicle containing Rose was an occupant. Defendant Rosfeld activated the lights and sirens of his patrol car, signaling the vehicle containing Rose to pull over. The vehicle immediately complied and came to a stop near the 600 block of Grandview Avenue.

12. Without waiting for backup units to arrive, Defendant Rosfeld immediately drew his weapon and began to shout menacing and hostile orders at the occupants of the vehicle, including Rose. The tone and demeanor of Defendant Rosfeld was so aggressive that it caused the occupants of the vehicle to fear for their lives. Moreover, the aggression projected by Defendant Rosfeld alarmed a nearby witness, Lashaun Livingston, who then made the decision to record the actions of Defendant Rosfeld.

13. Defendant Rosfeld ordered the occupants of the vehicle, Trevon Robinson, Zai Juan Hester and Antwon Rose II, out the vehicle as he attempted to allegedly arrest all three suspects without waiting for the arrival of backup units. Rose alighted from the passenger seat of the vehicle showing his hands to Defendant Rosfeld who then had his weapon pointed directly at him. Fearing for his life, Rose attempted to run in the opposite direction of where Defendant Rosfeld stood with his firearm.

14. Rose did not threaten Defendant Rosfeld or any other person, nor did he make any threatening gestures that would have given the appearance that he had a weapon or represented a

danger to the public. Rose was not armed. Without issuing a verbal warning or attempting any pursuit whatsoever, Rosfeld immediately fired three rounds, in rapid succession, at his back, striking his back, the side of his face, and the arm of seventeen year-old Antwon Rose causing him to collapse to the ground where he laid in extreme pain.

15. Defendant Rosfeld kept his weapon pointed at Rose as he laid on the ground. At no time did Rosfeld attempt to provide medical aid and/or treatment to Rose who, after some time, was transferred to the UPMC hospital where he later died of his injuries.

16. Upon information and belief, Defendant Rosfeld was terminated from his previous position at the University of Pittsburgh Police Department for performing false arrests, assaults, and falsification of records. Despite his record the EPPD hired Defendant Rosfeld. East Pittsburgh either knew, or through their lack of a failure to investigate, didn't know of Rosfeld's checkered history, resulting in culpability for such a hire.

17. Moreover, Defendant East Pittsburgh, has admitted that it has no official policies in place to govern police conduct, the manner in which investigations of critical incidents, such as officer involved shootings, must be conducted, and the hiring of new officers to the force.

18. Plaintiffs would show that at all times material hereto, the Defendant Rosfeld was acting under the color of law when he shot and killed Rose.

19. Moreover, no reasonably competent official would have concluded that the actions of Defendant Rosfeld described herein would not violate Rose's constitutional rights. In other words, no reasonably prudent police officer under similar circumstances could have believed that Defendant Rosfeld's conduct was justified nor was the treatment of Rose, reasonable.

20. There is no evidence that the Defendant Rosfeld or anyone else were in danger of imminent death or great bodily harm. There were no struggles that would indicate that the use of

excessive and/or deadly force was justified.

21. Rose posed no risk to Defendant Rosfeld or any other person in the immediate area. Rose did not attempt to harm Defendant Rosfeld when Defendant Rosfeld shot Rose three (3) times.

22. Defendant Rosfeld's unlawful and unwarranted acts, lack of training, and the official customs or practices of the EPPD caused Plaintiffs' injuries. As a direct and proximate result of the Defendants' conduct, the Plaintiffs have sustained substantial damages and pecuniary loss. The East Pittsburgh City Council, Mayor Payne, and Chief of Police Frunceck, knew of Defendant Rosfeld's erratic behavior and lack of training but did nothing to protect Rose from the harm he suffered. In the alternative, the East Pittsburgh City Council, Mayor Payne, and Chief of Police Frunceck failed to vet Rosfeld.

23. Defendant Mayor Payne and Chief Frunceck knew that the East Pittsburgh Police Department had no official guidelines or other standard operating procedures that would guide the screening, reviewing, and ultimate hiring of new recruits.

24. Rose was seventeen (17) years old when he was killed by Defendant Rosfeld. Rose was very well liked and respected by his peers. He was in good health, with a reasonable life expectancy of living at least 67 more years to age 84. He leaves behind his parents.

25. During his lifetime, Rose was industrious and energetic and a good son. He gave support, advice, counsel, comfort, care, and protection to his parents and family. In all reasonable probability, he would have continued to do so. Rose was an Advance Placement Honor Roll Student and had been admitted to college where he planned to pursue a career as a mechanical engineer or attorney.

26. Upon information and belief, at the time of the incident, the EPPD did not have policies and procedures to aggressively curtail death and/or injuries as a result of the improper use of deadly force and have not disciplined officers involved in a cover-up of a crime.

## **V. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **EXCESSIVE FORCE BY DEFENDANT ROSFELD (Individually and in his official capacity)**

#### **COUNT 1-42U.S.C. § 1983**

27. Plaintiffs incorporate by reference paragraphs 1 through 26 as if fully set forth herein. Plaintiffs would show that Defendant Rosfeld's actions on the occasion in question were wrongful, malicious and reckless in depriving Rose of his constitutional rights, as alleged more fully below.

28. Plaintiffs would show that at all times material hereto, Defendant Rosfeld had a duty to avoid the infliction of unjustified bodily injury to Rose, to protect his bodily integrity and to not trample on his constitutional rights.

29. Plaintiffs would show that Defendant Rosfeld failed to act as a reasonable officer would have acted in the same or similar circumstances. That is, Defendant Rosfeld, without justification or the need to do so, used excessive and deadly force as described above and killed Rose without legal justification. Rose neither made any threatening gestures, nor uttered any threatening remarks toward Defendant Rosfeld at the time Rosfeld shot Rose three times in rapid succession. Rose posed no immediate threat to the safety of Defendant Rosfeld or others when Rosfeld shot Rose three times.



30. Defendant Rosfeld was not provoked when he fired multiple shots at Rose for no lawful or justifiable reason. Defendant Rosfeld gave no warning or opportunity to comply to such command prior to shooting Rose. Rose died as a result of the gunshot wound to his body. The excessive and deadly force used by Defendant Rosfeld was not reasonable, justified nor was it necessary under the circumstances.

31. Defendant Rosfeld's actions were not objectively reasonable because he followed a procedure designed to inflict excessive and deadly force in restraining individuals in a non-life threatening situation.

32. Plaintiffs would show that Defendant Rosfeld denied Rose of his right to be free from the use of excessive force in violation of the Fourth Amendment to the United States Constitution.

33. The force used by Defendant Rosfeld was unnecessary, excessive and unreasonable under the circumstances, as Rose did not pose an immediate threat to the safety of Defendant Rosfeld or others and the use of such excessive and deadly force was unnecessary. Defendant Rosfeld embarked on a willful, malicious, reckless and outrageous course of conduct that was intended to cause and, in fact, caused Rose to suffer extreme and severe mental and emotional distress, agony and anxiety.

34. Accordingly, Defendant Rosfeld is liable to Plaintiffs for compensatory and punitive damages under 42 U.S.C. § 1983. Plaintiffs bring this claim both individually and as successors-in-interest to Decedent. Plaintiffs seek survival damages, including for the nature and extent of Decedent's injuries, pre-death pain and suffering, emotional distress, and loss of life and enjoyment of life, as well as wrongful death damages under this claim. Plaintiffs also seek attorney's fees.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**SECOND CAUSE OF ACTION**

**FAILURE TO TRAIN BY THE CITY OF EAST PITTSBURGH, CHIEF LORI FRUNCEK, MAYOR LOUIS J. PAYNE**  
**COUNT II 42 U.S.C. § 1983**

35. Plaintiffs incorporates regarding paragraphs 1 through 34 as if fully set forth herein. Prior to June 19, 2018, the East Pittsburgh Police Department, Chief Lori Frunceck, and/or Mayor Louis J. Payne knew or should have known that Defendant Rosfeld exhibited a pattern of escalating encounters with the public.

36. Defendant Rosfeld was acting under color of law and acting pursuant to customs, practices and policies of the City of East Pittsburgh and the EPPD in regards to the use of deadly force as authorized and/or ratified by the Policymakers, specifically the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck.

37. Rose was deprived of rights and privileges secured to him by the United States Constitution and by other laws of the United States, by the City of East, Chief Lori Frunceck, and/or Mayor Louis J. Payne failed to provide proper training, adequate supervision or discipline in dealing with individuals such as Rose in violation of 42 U.S.C. §1983 and related provisions of federal law and in violation of the above cited constitutional provisions.

38. With respect to the claims made the basis of this lawsuit, the City of East Pittsburgh, Chief Lori Frunceck, Mayor Louis J. Payne, and/or the EPPD failed to adequately train its officers on how to deal with individuals during an arrest and the subsequent use of deadly force. The failure to train its officers in a relevant respect reflects a deliberate indifference to the City of East Pittsburgh, the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck to the rights of the City's inhabitants and is actionable under 42 U.S.C. § 1983.

39. Defendant the City of East Pittsburgh under the direction of the East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck developed and maintained a policy of deficient training of its police force in the use of force, including the proper use of deadly force and dealing with individuals during an arrest. The EPPD's training was designed and implemented by Chief Frunceck under the direction of the Mayor and/or the East Pittsburgh City Council, to act in this regard.

40. The East Pittsburgh City Council, Mayor Payne and Chief of Police Frunceck's failure to provide adequate training to its officers on how to deal with individuals during an arrest and the subsequent use of deadly force reflect deliberate indifference by the Policymakers and reckless and conscious disregard for the obvious risk that officers would use excessive or deadly force on citizens and made the violations of Rose's constitutional rights, including his death, a reasonable probability.

41. Plaintiffs would show that Defendant Rosfeld's actions were the result of, or within the scope of, wrongful and reckless customs, policies, practices and/or procedures for which the city of East Pittsburgh, EPPD, and Chief Frunceck under the direction of the East Pittsburgh City Council and or Mayor Louis J. Payne knew or should have known but never provided the requisite and proper training.

42. On information and belief, Defendant the City of East Pittsburgh, Chief Frunceck, and/or Mayor Louis J. Payne acting through official policies, practices, and customs, and with deliberate, callous, and conscious indifference to the constitutional rights of Rose failed to implement and/or enforce the policies, procedures; and practices necessary to provide constitutionally adequate protection and assistance to Rose during his struggle to survive and implemented policies, procedures, and practices which actually interfered with or prevented with or prevented Rose from receiving the protection, assistance and care he deserved.

43. For instance, the following conduct, policies, and customs, *inter alia*, by Defendants violated Rose's constitutional rights:

- a. the City of East Pittsburgh and EPPD's failure to adequately train, supervise or discipline its officers who commit a wrongful act or attempt to cover-up a wrongful act of a fellow officer;
- b. Defendants' policy on the proper use of deadly force;
- c. Defendants' inadequate training on how to deal with individuals during an arrest;
- d. Using deadly force against Rose although he was not an immediate threat to Defendant Rosfeld or any other person; and
- e. the City of East Pittsburgh and EPPD's failure to review, screen, and/or vet new hires.

44. In addition, Defendant City of East Pittsburgh, Chief Frunceck, Mayor Louis J. Payne, and/or EPPD, as applicable, failed and refused to implement customs, policies, practices or

procedures, and failed to train its personnel adequately on the appropriate policies, practices or procedures regarding the proper use of deadly force. In so doing, Defendant City of East Pittsburgh knew that it was acting against the clear dictates of current law, and knew that as a direct consequence of their deliberate decisions, the very situation that occurred -- *i.e.*, Rose's death-- in all reasonable probability would occur.

45. The City of East Pittsburgh, Chief Frunceck, and/or Mayor Louis J. Payne's failure to properly train and discipline its deputies was the proximate cause of the violations of Rose's constitutional rights.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**THIRD CAUSE OF ACTION**

**MUNICIPAL LIABILITY - UNCONSTITUTIONAL CUSTOM OR POLICY**

**COUNT III 42 U.S.C. § 1983**

46. Plaintiffs hereby repeat, re-state, incorporate, each and every allegation in paragraphs 1 through 45 of this Complaint with the same force and effect as if fully set forth herein.

47. On and for some time prior June 19, 2018 (and continuing to the present date) Defendant City of East Pittsburgh deprived Rose of the rights and liberties secured to him by the Fourth and Fourteenth Amendments to the United States Constitution, in that said defendant and its supervising, and managerial employees, agents, and representatives, acting with gross negligence and with reckless and deliberate indifference to the rights and liberties of the public in general, of Rose, and of persons in his class, situation and comparable position in particular, knowingly maintained, enforced and applied an official policy recognized by the City of East Pittsburgh and the East Pittsburgh Police Department.

48. Defendant Rosfeld acted under color of law.

49. Defendant Rosfeld acted pursuant to an expressly adopted official policy or a longstanding practice or custom of the Defendant City of East Pittsburgh.

50. Defendants City of East Pittsburgh and Rosfeld together with the policymakers, including the City Council, and supervisors maintained, inter alia, the following unconstitutional customs, practices, and policies:

- a. Using excessive force, including excessive deadly force;
- b. Providing inadequate training regarding the use of deadly force;
- c. Providing inadequate training regarding the de-escalation of force;
- d. Providing inadequate training regarding firing at a non-threatening suspect;

and

e. Employing and retaining as Officers and other personnel, who Defendant City of East Pittsburgh, at all times material herein, knew or reasonably should have known had dangerous propensities for abusing their authority and for mistreating citizens by failing to follow written East Pittsburgh Police Department policies and for using excessive force;

f. Inadequately supervising, training, controlling, assigning and disciplining East Pittsburgh police officers and other East Pittsburgh Police Department personnel, including officers, who Defendant City of East Pittsburgh knew, or in the exercise of reasonable care, should have known had the aforementioned propensities and character traits.

g. Employing and retaining officers who have been known to be abusive towards African Americans;

h. Maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling the intentional misconduct by all officers, who are East Police Department officers.

i. Failing to adequately discipline City of East Pittsburgh Officers for the above-referenced categories of misconduct, including “slaps on the wrist,” discipline that is so slight as to be out of proportion to the magnitude of the misconduct, and other inadequate discipline that is tantamount to encouraging misconduct;

j. Refusing to discipline, terminate, or retrain the officers involved, even where shootings were determined in court to be unconstitutional;

k. Encouraging, accommodating, or facilitating a “blue code of silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or simple “code of silence,” pursuant to which deputies do not report other deputies’ errors, misconduct or crimes. Pursuant to this code of silence, if questioned about an incident of misconduct involving another deputy, while following the code, the deputy being questioned will claim ignorance of the other deputies’ wrongdoing;

l. Maintaining a policy of inaction and an attitude of indifference towards soaring

numbers of police shootings, including failing to discipline, retrain, investigate, terminate, and recommend criminal prosecution for those who participate in shootings of unarmed people.

m. Having and maintaining an unconstitutional custom and practice of using excessive force and covering up police misconduct. These customs and practices by the City of East Pittsburgh were condoned by said defendants in deliberate indifference to the safety and rights of its civilians, including Plaintiffs, and decedent.

51. By reason of the aforementioned policies and practices of Defendants, Plaintiffs experienced severe pain and suffering and the loss of their son, for which they are entitled to recover damages. The aforementioned acts and omissions also caused decedent's pain and suffering, loss of enjoyment of life, and death.

52. Defendant City of East Pittsburgh together with various other officials, whether named or unnamed, had either actual or constructive knowledge of the different policies, practices, and customs alleged in the paragraphs above. Despite having knowledge as stated above, these defendants condoned, tolerated and through actions and inactions ratified such policies. Said defendants also acted with deliberate indifference to both the foreseeable effects and consequences of these policies and to the constitutional rights of Plaintiffs, and other individuals similarly situated.

53. By perpetuating, sanctioning, tolerating, and ratifying the outrageous conduct and other wrongful acts, Defendant City of East Pittsburgh, acted with an international, reckless, callous disregard for the well-being of decedent and his constitutional as well as human rights. Defendant City of East Pittsburgh, and each of its actions were willful, wanton, oppressive malicious, fraudulent, and extremely offensive and unconscionable to any person of normal sensibilities.



54. Furthermore, the policies, practices, and customs implemented, maintained and still tolerated by Defendant City of East Pittsburgh, were affirmatively linked to, and were a significantly influential force behind, the Plaintiffs and the decedent's injuries.

55. Plaintiffs have also been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Decedent, and will continue to be so deprived for the remainder of their natural lives.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**FIFTH CAUSE OF ACTION**

**FOURTH AMENDMENT - DENIAL OF MEDICAL CARE**

**COUNT IV 42 U.S.C. § 1983**

56. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 55 of this Complaint.

57. Defendant Rosfeld acted under color of law.

58. The denial of medical care by Defendant Rosfeld deprived Decedent of his right to be secure in his person against unreasonable searches and seizures as guaranteed to Decedent under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment. Defendant Rosfeld did nothing to assist or attempt to save Rose's life and critical time elapsed before help finally arrived. Rose was left on the ground after being shot three (3) times.

59. Defendant Rosfeld knew of the risk of harm that he was enhancing by failing to provide medical treatment and/or by delaying such treatment.

60. Defendant Rosfeld's delay in providing medical treatment reflects deliberate indifference and reckless and conscious disregard for the obvious risk that made the violations of Plaintiffs' constitutional rights, a reasonable probability.

61. As a proximate result of Defendants' conduct, Rose suffered injuries and damages as set forth herein, including great physical pain and emotional distress up to the time of his death, loss of enjoyment of life, loss of life, and loss of earning capacity.

62. The conduct of Defendant Rosfeld was willful, wanton, malicious, and done with reckless disregard for the rights and safety of Rose and therefore warrants the imposition of exemplary and punitive damages as to Defendant Rosfeld.

63. As a result of his misconduct, Defendant Rosfeld is liable for Rose's injuries, because he was an active participant or because he failed to prevent these violations.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

#### **FIFTH CAUSE OF ACTION**

#### **FOURTH AMENDMENT - SUBSTANTIVE DUE PROCESS** **COUNT V 42 U.S.C. § 1983** **(Against Defendant Rosfeld)**

64. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 63 of this Complaint as though fully set forth.

65. Defendant Rosfeld acted under the color of law.

66. Defendant Rosfeld, acting under color of state law, and without due process of law, deprived Plaintiffs of their right to a familial relationship in such a manner as to shock the conscience by seizing decedent by use of unreasonable, unjustified and deadly force and violence,

causing injuries which resulted in Rose's death, all without provocation and attempted to conceal his excessive use of force and hide the true cause of decedent's demise to deprive Plaintiffs of their right to seek redress, all in violation of rights, privileges, and immunities secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution.

67. The aforementioned actions of Defendant Rosfeld along with other undiscovered conduct, shock the conscience, in that he acted with deliberate indifference to the constitutional rights of Rose and Plaintiffs, and with purpose to harm unrelated to any legitimate law enforcement objective.

68. Defendant Rosfeld is liable to Plaintiffs for Rose's injuries and death, either because he was an integral participant in the use of deadly force, or because he failed to prevent these violations.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**SIXTH CAUSE OF ACTION**

**NEGLIGENCE**

**COUNT VI**

**(AGAINST ALL DEFENDANTS)**

69. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 68 of this Complaint as though fully set forth.

70. Defendant City of East Pittsburgh, by and through its respective agent and employee, proximately caused the death of Rose as a result of Defendant Rosfeld's negligent conduct and/or negligent failure to act as set-forth herein.

71. Police Officers and volunteers, including Defendant Rosfeld, have a duty to use reasonable care to prevent harm or injury to others. This duty includes, but is not limited to, using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

72. Defendants breached this duty of care. Upon information and belief, the actions and inactions of Defendants were negligent and reckless, including but not limited to:

- (a) the failure to properly and adequately assess the need to detain, arrest, and use force or deadly force against Rose;
- (b) the negligent tactics and handling of the situation with Rose, including pre-shooting negligence;
- (c) the negligent detention, arrest, and use of force, including deadly force, against Rose;
- (d) the negligent post-shooting conduct, including the failure to provide prompt medical care to Rose;

- (e) the failure to properly train and supervise employees and volunteers, including Defendant Rosfeld; and
- (f) the failure to properly screen, vet, and review applicants, such as Rosfeld, during the hiring process.

73. The City of East Pittsburgh is vicariously liable for the wrongful acts of Defendant Rosfeld because a public entity is liable for the injuries caused by its employees within the scope of employment if the employee's act would subject him or her to liability.

74. As an actual and proximate result of said defendants' negligence, and the resulting death of Rose, Plaintiffs have sustained pecuniary loss resulting from the loss of companionship, comfort, support, society, care, sustenance and services of their son, decedent, and will continue to be so deprived for the remainder of their natural lives, in an amount according to proof at trial.

75. As a further actual and proximate result of said defendants' negligence, Plaintiffs incurred funeral and burial expenses, in an amount according to proof at trial.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**SEVENTH CAUSE OF ACTION**

**ASSAULT AND BATTERY**

**(Against Defendant Rosfeld)**

76. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 75 of this Complaint as though fully set forth.

77. At or about the dates and places alleged herein, Defendant Rosfeld, while acting within the course and scope of his duties as a Police Officers for the EPPD, without provocation, warrant, necessity or legal justification, assaulted and battered Rose by shooting him at least three (3) times and attacking Rose with unreasonable and excessive force and violence, thereby causing Rose's injuries and death as herein described.

78. Defendant Rosfeld's used unreasonable force against Rose, including but not limited to, shooting Rose three times.

79. Plaintiffs are informed and believe, and upon such information and belief alleges, Defendant City of East Pittsburgh is responsible for implementing, maintaining, sanctioning, ratifying, and/or condoning a policy, custom, or practice under which the individual Defendants committed the aforementioned illegal and wrongful acts.

80. Plaintiffs are informed and believes, and upon such information and belief alleges, Defendants are liable for the injuries, damages, and death of Rose they knew, or should have known, the customs, practices, policies and acts of Defendant Rosfeld, who caused Rose's death, by failing to provide him with safety and the medical attention he required when he commenced suffering from medical distress.

81. As a legal result of Defendants' acts and omissions as described, Rose suffered a traumatic and brutal assault by Defendant Rosfeld leading to his death. Plaintiffs have incurred funeral and services expenses in an amount according to proof.

82. Plaintiffs have also been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Rose and will continue to be so deprived for the remainder of their natural lives.

83. The City of East Pittsburgh is vicariously liable for the wrongful acts of Defendant Rosfeld because a public entity is liable for the injuries caused by its employees within the scope of employment if the employee's act would subject him or her to liability.

84. Defendants, and each of them, committed the aforementioned acts and omissions knowingly, willfully, maliciously and with the expressed intent to harm Rose and conscious or reckless disregard for the risk of death to Rose. By reason thereof, Plaintiffs seek punitive and exemplary damages from Defendants, in an amount according to proof at trial.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.



**EIGHTH CAUSE OF ACTION**

**SURVIVAL ACTION**

85. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 84 of this Complaint as though fully set forth.

86. Plaintiff Michelle Kenney and Antwon Rose, Sr. are the Personal Representatives for the estate of Antwon M. Rose, II.

87. Rose died as a result of the Defendants' wrongful conduct.

88. Rose would have been entitled to bring this action against the Defendants if he had lived.

89. The decedent's right of action for the wrongful conduct against the Defendants survive in favor of heirs, legal representatives, and the estate of the deceased.

90. Defendants are liable to Plaintiffs for the loss of Rose's life, pain and suffering, and the violation of his civil rights.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**NINTH CAUSE OF ACTION**

**WRONGFUL DEATH**

91. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 90 of this Complaint as though fully set forth.

92. By reason of Defendant Rosfeld's wrongful conduct of killing Rose without the threat of imminent death or serious bodily harm, Defendants are liable for damages.

93. Defendants Rosfeld's conduct that caused Rose's death was a producing cause of Rose's injury, which resulted in the following damages: loss of a family relationship, love, support, services, emotional pain and suffering, and for their acts and infliction of emotional distress caused by the wrongful killing of Rose.

WHEREFORE, Plaintiffs ask for the entrance of judgment against the Defendants, individually and jointly, as follows:

- a. compensatory damages in an amount to be determined by this Court to be just, fair and reasonable;
- b. punitive damages;
- c. prejudgment and post judgment interest;
- d. the costs incurred in the prosecution of this matter;
- e. reasonable counsel fees; and,
- f. such other and further relief as the Court deems just and appropriate.

**DAMAGES**

94. As a direct and proximate result of the defendants acts and/or omissions alleged herein, decedent Rose suffered:

- a) Shock, fright, anxiety and mental distress
- b) Conscious pain and suffering
- c) Death
- d) Loss of life and loss of enjoyment of life

95. As a direct and proximate result of the defendants' acts or omissions, Plaintiffs have suffered and continue to suffer:

- a) Grief, shock, sorrow and emotional distress.
- b) Loss of love, companionship, and society.
- c) Pecuniary injuries.
- d) Funeral costs.

**TRIAL BY JURY**

96. Plaintiffs have paid a jury fee and demands trial by jury.

**PRAYER**

WHEREFORE, Plaintiffs pray judgment against Defendants and each of them as follows:  
AS TO EACH CLAIM FOR RELIEF AS APPLICABLE.

1. For General and Special Damages, including both survival and wrongful death damages, according to proof;
2. For Exemplary Damages as provided by law; in an amount to be proved against each

- individual Defendant;
3. Punitive damages;
  4. For Attorney's Fees under U.S.C. 1985 and 1988;
  5. For Costs of Suit;
  6. For such other and further relief as the Court may deem proper

Respectfully submitted,

By: */s/ Monte J. Rabner*  
Monte J. Rabner, Esquire  
PA. ID No. 68251  
Rabner Law Offices, P.C.  
222 Boulevard of the Allies  
Second Floor  
Pittsburgh, Pa 15222  
(412) 765-2500  
(412) 765-3900 Fax.  
[monte@rabnerlaw.com](mailto:monte@rabnerlaw.com)

By: */s/ Fred G. Rabner*  
Fred G. Rabner, Esquire  
PA. ID No. 77337  
Rabner Law Offices, P.C.  
222 Boulevard of the Allies  
Floor 2  
Pittsburgh, Pa 15222  
(412) 765-2500  
(412) 765-3900 Fax.

By: */s/ Ashley M. Cagle*  
Ashley M. Cagle, Esquire  
PA. ID No. 312497  
Rabner Law Offices, P.C.  
222 Boulevard of the Allies  
Pittsburgh, Pa 15222  
(412) 765-2500  
(412) 765-3900 Fax.

**ATTORNEYS FOR PLAINTIFFS**

JS 44 (Rev. 06/17)

**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 NEXT PAGE OF THIS FORM.)

**Michael Rose, Jr.** individually as the surviving mother of Antwon M. Rose, Jr., and as Administratrix of the Estate of Antwon M. Rose, Jr., and Antwon Rose, Sr., individually as the surviving father of Antwon M. Rose, Jr.

(b) County of Residence of First Listed Plaintiff Allegheny

(EXCEPT IN U.S. PLAINTIFF CASES)

**Monte J. Rabner, Esquire, Fred G. Rabner, Esquire, Ashley M. Cagle, Esquire; Rabner Law Offices, P.C.** 222 Boulevard of the Allies, Floor 2 Pittsburgh, Pennsylvania, 15222; (412)765-2500

**Deborah East** Pittsburgh, PA; Michael Rosfeld; Chief of Police Lori Fruncek; Mayor Louis K. Payne

County of Residence of First Listed Defendant Allegheny

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

**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. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

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 (Excludes 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 <input type="checkbox"/> 196 Franchise	<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"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <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	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<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 checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. 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 - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

Excessive and Deadly Force Resulting in the unlawful shooting death of Antwon M. Rose, Jr.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
8/1/18

SIGNATURE OF ATTORNEY OF RECORD  
/s/ Monte J. Rabner

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44A REVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the ( ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1. ☐ This case is related to Number \_\_\_\_\_. Short Caption \_\_\_\_\_.
2. ☐ This case is not related to a pending or terminated case.

**DEFINITIONS OF RELATED CASES:**

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit  
**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

**I. CIVIL CATEGORY** (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: \_\_\_\_\_

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.