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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

DONTE L. KELLY,

Plaintiff,

vs.

MATANUSKA ELECTRIC  
ASSOCIATION, INC., TUCKERMAN  
BABCOCK and WAYNE D.  
CARMONY,

Defendants.

Case No. 3:09-CV-\_\_\_\_\_

**COMPLAINT**

Plaintiff, Donte L. Kelly, by and through his counsel of record, Ingaldson, Maassen & Fitzgerald, P.C., respectfully alleges, upon information and belief, as follows:

1. Plaintiff, Donte Kelley, at all relevant times for purposes of this action, is a resident of the Third Judicial District in the State of Alaska.

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2. Defendant Matanuska Electric Association, Inc. is an Alaska corporation, registered and doing business in the Third Judicial District in the State of Alaska.

3. Defendant Tuckerman Babcock at all relevant times for purposes of this action, is a resident of the Third Judicial District in the State of Alaska.

4. Defendant Wayne D. Carmony at all relevant times for purposes of this action, is a resident of the Third Judicial District in the State of Alaska.

5. Jurisdiction of the subject matter of this action is established in this Court under the United States Civil Rights Act of 1991, as amended, Title 42 of the United States Code § 1981 and § 1985, and under 28 U.S.C. § 1332(a)(1). This is the proper venue for this action under United States Civil Rights Act of 1991, as amended, Title 42 of the United States Code § 1981 and § 1985, and under 28 U.S.C. § 1931(b), in that unlawful acts alleged herein were committed within this Court's jurisdiction.

#### Background Allegations

6. Plaintiff Donte L. Kelly is an African-American man.

7. At all relevant times, for purposes of this action, plaintiff was an employee of Matanuska Electric Association, Inc. ("MEA").

8. Defendant MEA is an electrical cooperative corporation organized under the laws of Alaska, serving the electrical needs of the Matanuska Valley.

9. MEA portrays to its employees and cooperative members that it will not tolerate harassment or discrimination of any of its employees based on their race and is

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committed to providing a work environment free from all forms of discrimination and conduct that can be considered harassing, coercive or disruptive.

10. From 1990 to the present date, Plaintiff has been an MEA employee and has worked primarily as a subforeman and lineman.

11. During his employment with MEA plaintiff has worked with several co-workers, supervisors and directors, all MEA employees, who include Jerry Little, Todd Niva, Bob Mau, Tom Kelly, Frank Bettine, Bob Drake, Tuckerman Babcock and Wayne Carmony who are all Caucasian men.

12. At all times material to this complaint, the individual directors, supervisors, employees and/or agents mentioned herein, acted within the scope of their duties as directors, supervisors, employees and/or agents of MEA.

#### Factual Allegations

13. The allegations set forth above and below are incorporated by reference as if fully set forth herein.

14. Defendant MEA hired plaintiff Donte L. Kelly not only because of his skills and qualifications, but as a symbol of MEA's purported commitment to diversity. Despite this purported commitment to diversity MEA maintained a work environment in which racial harassment and discrimination were tolerated among directors, supervisors, officials, and employees of the company.

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15. Throughout plaintiff's employment with MEA he has been treated differently than Caucasians similarly employed by MEA because he is African-American.

16. This disparate treatment included plaintiff's subjection to racist harassment, a racially hostile work environment, retaliation for his opposition to discriminatory practices, and a pervasive pattern of race discrimination.

17. This disparate treatment included different standards of conduct, unequal work assignments, unequal opportunities, unequal promotion, and unequal disciplinary measures directed toward plaintiff as opposed to Caucasians similarly employed by MEA.

18. Throughout plaintiff's employment with MEA, he has received positive performance evaluations.

19. Throughout plaintiff's employment with MEA, he has been subjected to racist comments and epithets by co-workers, often made in the presence of or by supervisors. These comments, without limitation, include being called "Nigger," "boy," "Nappy," "being black is your cross to bear," "Donny," being told it is "to dark to see in here" and several other racist comments.

20. Throughout plaintiff's employment with MEA, he has had to endure several overt racial incidents, which have included a hangman's noose placed above his desk; a coffin like mailbox placed above his MEA locker that was painted jet black and contained the word "Napville" stenciled on one side and J. Kelly on the other side;

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having his work solutions referred to as a “Nigger rig;” and the heads of MEA refer to him as “boy.”

21. Throughout plaintiff’s employment with MEA he has been passed over for job promotions for which he is qualified. Instead, the promotions have been given to less qualified Caucasian males with poor work history performances and the individual who placed the hangman’s noose above his desk was promoted to plaintiff’s supervisor. Plaintiff has not received these promotions because he is an African-American.

22. After bidding for supervisor positions, plaintiff was told by a supervisor that he should “never bid for a position.”

23. The race hostile environment was promoted by MEA officials, including without limitation, director Tuckerman Babcock instructing subordinates that if plaintiff bid for a job and there were no other bidders, the position was to be eliminated; director Wayne D. Carmony, who repeatedly referred to plaintiff as “boy” and, at minimum, tacitly promoted the hostile environment.

24. The hostile work environment also was exhibited by the disparate treatment plaintiff and other similarly situated Caucasian workers received when reprimanded for minor problems. Throughout plaintiff’s employment with MEA, he received reprimands for minor problems (for example, leaving work early with his foreman’s permission) while Caucasian workers who engaged in the same conduct were not reprimanded, and often promoted.

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25. Additionally, plaintiff has historically filed complaints about racial harassment incidents that occurred on the job, which have then resulted in an investigation of plaintiff and frequently he is then effectively reprimanded or penalized for filing a complaint.

26. As a consequence of the ongoing and pervasive racial discrimination, harassment, and hostile work environment plaintiff has suffered and continues to suffer severe emotional distress, economic loss and humiliation.

**First Cause of Action**  
**§ 1981 – Race Discrimination**

27. Plaintiff incorporates the allegations in paragraphs 1 through 26 as set forth herein.

28. Because plaintiff is African-American, defendant MEA denied plaintiff the same rights to make and enforce contracts enjoyed by Caucasians employed by MEA, including rights involving the making, performance, modification, and termination of their respective employment contracts with Defendant, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991.

29. In the employment practices described above, MEA intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of plaintiff, entitling him to punitive damages.

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30. As a consequence of the racial misconduct of MEA, plaintiff has been damaged and is entitled to compensatory and punitive damages in the sum prescribed by 42 U.S.C. § 1981, as well as attorneys fees.

**Second Cause of Action**  
**§ 1985 – Race Discrimination**

31. Plaintiff incorporates the allegations in paragraphs 1 through 30 as set forth herein.

32. Because plaintiff is African-American, MEA and its employees, including Tuckerman Babcock and Wayne D. Carmony, conspired to deprive plaintiff of equal protection of the laws afforded to and enjoyed by Caucasian citizens employed by MEA, in violation of 42 U.S.C. § 1985(3).

33. In the employment practices above, MEA intentionally engaged in discriminatory practices with malice and/or with reckless indifference to the federally protected rights of plaintiff, entitling him to punitive damages.

34. As a consequence of the foregoing misconduct of MEA, plaintiff sustained severe emotional distress, humiliation and incurred economic loss.

35. As a consequence of the foregoing misconduct of MEA, plaintiff has been damaged and is entitled to compensatory and punitive damages in the sum prescribed by 42 U.S.C. § 1985, as well as attorneys fees.

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**Third Cause of Action**  
**Title VII Discrimination**

36. Plaintiff incorporates the allegations in paragraphs 1 through 35 as set forth herein.

37. Plaintiff is an African-American so is a member of a protected class under 42 U.S.C.A. § 2000e *et. seq.*

38. Due to plaintiff's race, MEA intentionally discriminated against him in relation to his employment and advancement at MEA.

39. Employees who were similarly situated, and not in a protected class, were treated differently and such disparate treatment caused plaintiff to suffer emotional and financial damages.

**Fourth Cause of Action**  
**Title VII Retaliation**

40. Plaintiff incorporates the allegations in paragraphs 1 through 39 as set forth herein.

41. Plaintiff was engaged in a protected activity when he reported and opposed discriminatory conduct by MEA, its supervisors and employees.

42. As a consequence of plaintiff's reporting of racial harassment he suffered adverse employment decisions.

43. The adverse employment decisions were motivated by plaintiff's protected activity such there was a casual connection between the adverse decision and the protected activity.

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**Fifth Cause of Action**  
**Alaska Race Discrimination**  
**AS 18.80.210**

44. Plaintiff incorporates the allegations in paragraphs 1 through 43 as set forth herein.

45. Because plaintiff is an African-American, MEA denied plaintiff work promotions for which he was qualified and hired Caucasians to fill these positions whom were less qualified and had poor work performance histories.

46. As a consequence of the racial misconduct of MEA, plaintiff has been damaged; humiliated and suffered severe emotional distress and is entitled to compensatory and punitive damages.

**Sixth Cause of Action**  
**Alaska Hostile Work Environment**

47. Plaintiff incorporates the allegations in paragraphs 1 through 46 as set forth herein.

48. The above acts of racial harassment, disparate treatment and use of derogatory racial slurs created a hostile and abusive work environment for African-Americans, by MEA, its officers, directors, supervisors, managers, officials and/or employees.

49. As a consequence of MEA's racial harassment and the racially hostile work environment plaintiff sustained severe emotional distress, humiliation and economic loss.

WHEREFORE, plaintiff, Donte L. Kelly, prays for the following relief:

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1. For a judgment against defendant, the exact amount to be proven at trial.
2. For costs and attorney fees;
3. For punitive and compensatory damages;
4. For prejudgment interest; and
5. For such other and further relief as this court deems just and equitable.

Dated: February 13, 2008

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