

Justin Rapp

vs.

City of Wichita, Kansas

**SUMMONS**

**Chapter 60 - Service by Attorney or Process Server**

To the above-named Defendant/Respondent:

**City of Wichita, Kansas  
c/o Jeff Longwell  
455 N Main  
1st Floor  
Wichita, KS 67202**

You are hereby notified that an action has been commenced against you in this court. You are required to file your answer or motion under K.S.A. 60-212, and amendments thereto, to the petition with the court and to serve a copy upon:

Syliva B. Penner  
301 N. Main Street  
1900 Epic Center  
Wichita, KS 67202

within 21 days after service of summons on you.



*B.D. Lumbreas*  
Bernadine D. Lumbreas

Clerk of the District Court

Electronically signed on 10/24/2019 02:55:57 PM

**Documents to be served with the Summons:**

PLE: Petition Petition

FLEESON, GOOING, COULSON & KITCH, L.L.C.  
1900 Epic Center, 301 N. Main  
Wichita, Kansas 67202  
Telephone: (316) 267-7361  
Fax: (316) 267-1754  
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IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

JUSTIN RAPP	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. _____
	)	
CITY OF WICHITA, KANSAS	)	
	)	
Defendant.	)	
_____	)	

**PETITION**

COMES NOW the plaintiff, Justin Rapp, and for his cause of action against the defendant, City of Wichita, Kansas, alleges and states as follows:

1. Plaintiff is a citizen and resident of Sedgwick County, Kansas.
2. Defendant City of Wichita, Kansas (“the City”) is a municipality wholly situated in Sedgwick County, Kansas, duly organized under the Constitution and laws of the State of Kansas.
3. Service of process can be affected on the City by serving the City of Wichita Mayor, Jeff Longwell, at 455 N Main, 1<sup>st</sup> Floor, Wichita, Kansas 67202.

4. All other remedies available to plaintiff have been exhausted prior to the filing of this suit, including administrative remedies/investigations and the grievance procedure set forth in the Memorandum of Agreement by and between the City of Wichita and the Fraternal Order of Police Lodge #5, Wichita, Kansas, Inc. (the “Collective Bargaining Agreement”).

5. This Court has jurisdiction over the parties and is the proper venue for this action.

6. This is a contract-based action between plaintiff and his employer. It is not an action under the Kansas Tort Claims Act.

### **FACTUAL BACKGROUND**

7. Plaintiff has been employed by the City as an officer in the Department since 2010 and continues to be so employed.

8. On December 28, 2017, in the course and scope of his employment with the City, plaintiff discharged his firearm. The shooting resulted in the death of a civilian. These unfortunate events occurring on December 28, 2017 are hereinafter referred to as “the incident.”

9. Pursuant to the Wichita Police Department Policy Manual (“the Manual”), following the incident, a use of deadly force investigation and an administrative review were initiated, and plaintiff was placed on restricted duty.

10. The City required plaintiff to obtain a medical clearance, which he obtained in January of 2018.

11. By January 7, 2018, plaintiff had completed everything requested of him by the City and had been medically cleared to return to regular duty with the Department. However, plaintiff remained on restricted duty.

12. Plaintiff at all times fully complied and cooperated with all investigations and reviews.

13. On or about April 12, 2018, Sedgwick County District Attorney Marc Bennett issued a 42-page report on the incident which concluded that plaintiff acted in a reasonable manner in the defense of other officers present at the scene of the incident, and, accordingly, that no criminal charges would be forthcoming against plaintiff.

14. On or before May 11, 2018, the City's internal investigation of the incident was finally complete.

15. The City's internal investigation exonerated plaintiff from any wrongdoing related to the incident.

16. There were no findings at any time that plaintiff violated any Department policies or procedures.

17. For reasons unknown, the City again required plaintiff to obtain medical clearance to return to full duty. He was again examined, and again medically cleared in May of 2018.

18. Despite the fact that the investigations had concluded without any finding of wrongdoing, and despite the fact that he was medically cleared to return to full duty on two separate occasions, the City continued to deny plaintiff the opportunity to return to regular duty and instead kept him on restricted duty. The City's actions in doing so constituted a de facto suspension.

19. For the next several months plaintiff repeatedly requested to be returned to regular duty and was repeatedly led to believe that he would be, only to be repeatedly told that he needed to wait.

20. Finally, on October 30, 2018, *more than ten months* after the incident, and nearly six months after the investigations had concluded, the City allowed plaintiff to return to regular duty.

21. For years prior to the incident, plaintiff worked a part-time job as a security officer with the approval of the City (the “primary off-duty job”).

22. Following the incident, the City prohibited plaintiff from working his primary off-duty job.

23. In the months following the investigations, plaintiff repeatedly requested authorization to resume his primary off-duty job and was repeatedly led to believe that he would receive such authorization, only to be repeatedly told that he needed to wait.

24. On November 4, 2018, the City authorized plaintiff to work an off-duty, part-time job. However, he was not authorized to work in his primary off-duty job which he had held for years. Rather, he was forced to seek and obtain a different off-duty job (the “secondary off-duty job”).

25. Plaintiff earned significantly less money at the secondary off-duty job than he had at his primarily off-duty job.

26. On April 2, 2019, *more than fifteen months* after the incident, the City finally allowed plaintiff to return to his primary off-duty job.

27. From January 7, 2018 to November 4, 2018, plaintiff suffered a loss of income in the amount of \$21,300 as a direct result of the City’s decision to prohibit him from working his primary off-duty job.

28. From November 4, 2018 to April 2, 2019, plaintiff suffered a loss of income in the amount of \$10,150 as a direct result of the City’s decision to prohibit plaintiff from working his primary off-duty job.

29. The City's treatment of plaintiff following the incident, and, more specifically, following the conclusion of the investigation which exonerated him, constituted de facto disciplinary action.

30. Under Section 2(O) the Collective Bargaining Agreement, if major disciplinary action is imposed pending an investigation of misconduct, and the employee is later exonerated, "the disciplinary action shall be revoked and the employee shall receive all rank, pay, and benefits lost as a result of the disciplinary action."

#### **COUNT I – BREACH OF CONTRACT**

31. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein, and further states:

32. At all times relevant, the employment relationship between plaintiff and the City was governed by the Manual and, as such, the Manual governs the contractual duties of both parties in their employment relationship.

33. The Collective Bargaining Agreement is also a contract which binds the City and also binds plaintiff, as a member of the Fraternal Order of Police Lodge #5.

34. The City violated the following provisions of the Manual in relation to its treatment of plaintiff following the incident:

a. Policy 223.01 because of the City's failure to return plaintiff to his regular job following his medical release;

b. Policy 901.05(E) because of the City's failure to complete its investigation in a reasonable amount of time;

c. Regulation 2 because the City effectively imposed disciplinary action against plaintiff without finding that he had violated any Department policies or regulations;

d. Regulation 3.1701 because the City prohibited plaintiff from working his off-duty job despite the fact that he satisfied all conditions upon which Department officers must satisfy to work such jobs.

35. The City violated Art. 13, Sec. 2, Part O of the Collective Bargaining Agreement by refusing to compensate plaintiff for the pay and benefits he lost as a result of the City's de facto disciplinary action against him.

36. Plaintiff suffered damages as a result of the City breaching its contractual obligations, including \$31,450 in lost wages alone.

WHEREFORE, plaintiff requests judgment against defendant in the amount of \$31,450, plus interest to the maximum extent allowed by law, and the costs of this action.

FLEESON, GOOING, COULSON & KITCH, LLC

By /s/ Sylvia B. Penner

Sylvia B. Penner - #21640

*Attorneys for Plaintiff*