# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No.

# Michelle Bonnette,

Plaintiff,

# v.

**Colorado Judicial Department, Fourth Judicial District Probation Department**

and

# Ellen Walker, Chief Probation Officer,

in her official capacity,

Defendants.

# COMPLAINT

COMES NOW Plaintiff, Michelle Bonnette, and for her Complaint against the Defendants, alleges the following:

# Introduction

1. This is a proceeding for reinstatement and damages to redress violations of Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), 29 U.S.C. § 701, *et seq.*, against Defendant Colorado Judicial Department, Fourth Judicial District Probation Department (“Probation”).
2. This action also states claims against Ellen Walker, the Chief Probation Officer for the Fourth Judicial District in her official capacity, for prospective relief under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, pursuant to *Ex Parte Young*.
3. Defendants discriminated against Plaintiff on the basis of her disability, resulting in a failure to accommodate and the unlawful termination of Plaintiff’s employment.

# Jurisdiction

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 to enforce the provisions of the ADA and Rehab Act.

# Venue

1. The employment actions described below were committed in the State of Colorado.
2. Venue is proper in the United States District Court for the District of Colorado under 28

U.S.C. § 1391(b).

# Exhaustion of Administrative Remedies

1. Plaintiff exhausted her administrative remedies under the ADA.
2. Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) on September 30, 2016.
3. Defendant filed a Position Statement with the EEOC in response to Plaintiff’s Charge of Discrimination.
4. Plaintiff received a Right to Sue letter from the United States Department of Justice Civil Rights Division on October 26, 2017.
5. Plaintiff filed this Complaint within 90 days of her receipt of the Right to Sue letter.
6. Plaintiff is not required to exhaust her Section 504 claims.

# Parties

1. Michelle Bonnette is a natural person who was formerly employed by Defendant as a Probation Officer.
2. Probation is part of the Colorado Judicial Branch, established by Article VI of the Colorado Constitution.
3. Probation’s mission is to improve the quality of probation services in the Fourth Judicial District.
4. The Office of the State Court Administrator supports the management of the Division of Probation Services.
5. The Division of Probation Services is managed by Mr. Mike Garcia, Director.
6. Ellen Walker is the Chief Probation Officer for the Fourth Judicial District Probation Department.
7. The Colorado Judicial Branch receives federal funds for its operations.
8. The 2018 Colorado Judicial Branch Budget Request states that in Fiscal Year 2015-2016 the Colorado Judicial Branch received $6,769,556.00 in Federal Funds.
9. For Fiscal Year 2016-2017 the Colorado Judicial Branch had $4,425,000 in Federal Funds appropriated.
10. The Division of Probation Services receives federal funds for its operations.
11. For Fiscal Year 2015-2016 the Division of Probation Services received $2,681,757.00 in Federal Funds.
12. For Fiscal Year 2016-2017 the Division of Probation Services had $2,800,000 in Federal Funds appropriated.
13. On good faith and belief the Fourth Judicial District Probation Department received a portion of the Federal Funds allocated to the Division of Probation Services during the course of Mrs. Bonnette’s employment.

# General Allegations

1. All previous allegations are incorporated herein.
2. Mrs. Bonnette worked as an employee of Probation as a Probation Officer beginning on November 1, 2015.
3. Probation and Ellen Walker terminated Mrs. Bonnette’s employment on August 5, 2016.
4. Mrs. Bonnette volunteered as a Deputy Probation officer for approximately eight months prior to her offer of employment in October, 2015.
5. At all times relevant to this Complaint Mrs. Bonnette suffered from Autism Spectrum Disorder.
6. Autism Spectrum Disorder is a medical condition that impacts how a person perceives and socializes with other people.
7. Autism Spectrum Disorder is listed in the Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-V).
8. Individuals with Autism Spectrum Disorder have difficulty recognizing or interpreting non-verbal communication cues such as facial expressions, body language, and tone of voice.
9. Individuals with Autism Spectrum Disorder may approach social interactions in a passive, aggressive, or disruptive manner.
10. Individuals with Autism Spectrum Disorder may not understand directions given to them or questions asked of them.
11. Individuals with Autism Spectrum Disorder may speak with an abnormal tone or rhythm.
12. Individuals with Autism Spectrum Disorder may not express their emotions and appear unaware of other people’s emotions.
13. Individuals with Autism Spectrum Disorder may have trouble adapting when a routine changes.
14. The Center for Disease Control (“CDC”) defines Autism Spectrum Disorder as a “developmental disability that can cause significant social, communication and behavioral challenges.”
15. The CDC defines “developmental disability” as “a group of conditions due to an impairment in physical, learning, language, or behavior areas.”
16. Mrs. Bonnette underwent a diagnostic evaluation by a Licensed Professional Counselor.
17. The Licensed Professional Counselor who evaluated Mrs. Bonnette wrote a document titled “Diagnostic Impression – Need for Accommodations in the Workplace” (“Diagnostic Impression”) on June 24, 2016.
18. The Diagnostic Impression states that Mrs. Bonnette meets the DSM-V criteria for Autism Spectrum Disorder.
19. The Diagnostic Impression states that, “Ms. Bonnette shows the patterns of deficits in areas of social perception, maintenance of reciprocity in relationships, awareness and interpretation of social cues and tonal qualities, and development of realistic interpersonal expectations that are characteristic of the disorder. In this context, others may perceive her social interaction as blunt, rude, or even aggressive. They may view her as cold and unempathetic, or indifferent to others' concerns or reactions. They may feel that she does not grasp obvious priorities or key points during interaction, or that she is overly demanding of attention. Others may feel that her communication is odd or idiosyncratic, difficult to understand.”
20. The Diagnostic Impression further states that, “She also shows the types of cognitive and behavioral abnormalities common in Autism Spectrum Disorder, including difficulties understanding and applying general rules and principles, overly concrete thought processes, difficulties considering things from multiple perspectives, and difficulties with changes in routines or expectations.”
21. The Diagnostic Impression concludes that, “In addition, she exhibits the abnormal sensitivity to sensory and other types of stimulation that are common in autism. What others may regard as normal or even minimal levels of environmental, social, or emotional stimulation may cause disruption in areas of her performance, and she may withdraw in response. Others may perceive her behavior in this context as avoidant, exaggerated, or manipulative.”
22. The Diagnostic Impression classifies Mrs. Bonnette’s Autism Spectrum Disorder as “chronic and permanent.”
23. At all times relevant to this Complaint Probation knew that Mrs. Bonnette had a diagnosis of Autism Spectrum Disorder.
24. Mrs. Bonnette’s supervisor, Mr. Wade Whitlock, knew of Mrs. Bonnette’s Autism Spectrum Disorder from the time Mrs. Bonnette worked as a volunteer.
25. In February, 2016 Mrs. Bonnette contacted her supervisor about reasonable accommodations under the ADA.
26. Mr. Kurt Heisler, Senior Human Resources Analyst, sent Mrs. Bonnette an email with the subject line “ADA Information” on February 4, 2016.
27. Mr. Heisler’s email stated that he was aware of Mrs. Bonnette possibly requiring reasonable accommodations under the ADA.
28. At the time Mrs. Bonnette declined to participate in the reasonable accommodation process because she was performing well in her job.
29. In spite of her Autism Spectrum Disorder diagnosis, Mrs. Bonnette performed well as a Probation Officer.
30. In December, 2015 Mrs. Bonnette received a Completed Evaluation Report (“2015 Evaluation Report”) performed by her supervisor.
31. The 2015 Evaluation Report graded Mrs. Bonnette as either a 3 (“Meets Expectations”) or a 6 (“Meritorious”) in every category evaluated, including all of the essential functions of Mrs. Bonnette’s Probation Officer position.
32. On March 18, 2016 Mrs. Bonnette received a Supervisor Report (“2016 Supervisor Report”) evaluating her job performance.
33. The 2016 Supervisor Report graded Mrs. Bonnette as “Meeting Expectations” in every area of performance evaluated, including “Behavior.”
34. On April 11, 2016 Mrs. Bonnette received a Factor Report (“2016 Factor Report”) that graded Mrs. Bonnette’s job performance in sixteen different areas of performance, including Professionalism and Teamwork.
35. The 2016 Factor Report graded Mrs. Bonnette as either “Meets Expectations” or “Meritorious” in all sixteen categories.
36. On June 9, 2016 Mrs. Bonnette received a written “Kudos” for “being open to feedback and possibilities!”
37. In spite of Mrs. Bonnette’s strong job performance, Probation began to hold Mrs.

Bonnette’s interpersonal communication skills against her for purposes of disciplinary actions

and performance evaluations.

1. In mid-May 2016, Ms. Bonnette’s supervisor casually stated to Mrs. Bonnette that a co- worker perceived an email she wrote as “written a little strongly and he was very upset.”
2. Mrs. Bonnette’s supervisor also described a separate email as “strong” due to its use of capital letters and bold font.
3. Mrs. Bonnette’s supervisor verbally counseled her about the “tone” of her emails.
4. After Probation explained to Ms. Bonnette why co-workers were allegedly upset by the emails, Ms. Bonnette contacted Human Resources to disclose her disability and discuss reasonable accommodations under the ADA.
5. On May 12, 2016 Mrs. Bonnette sent an email with the subject line “Question about ADA” to Mr. Kurt Heisler.
6. Mrs. Bonnette requested to speak to Mr. Heisler about her Autism Spectrum Disorder and “protections” that Mrs. Bonnette could potentially pursue under the ADA.
7. Mr. Heisler agreed to meet with Mrs. Bonnette during the week of May 23, 2016 to discuss her ADA questions.
8. On May 16, 2016 Mr. Heisler emailed Mrs. Bonnette to reschedule the meeting for the week of June 6, 2016 as Mr. Heisler was going to be out of the office during the during the week of May 23, 2016.
9. Mr. Heisler and Mrs. Bonnette rescheduled their meeting regarding her need for ADA reasonable accommodations to June 6, 2016.
10. Mr. Heisler missed the June 6, 2016 meeting.
11. On June 23, 2016 Defendant again evaluated Mrs. Bonnette with a Quarterly Progress

Report (“2016 Quarterly Progress Report”).

1. The 2016 Quarterly Progress Report evaluated Mrs. Bonnette as “Meeting Expectations” in every area but “Ability.”
2. The 2016 Quarterly Progress Report rated Mrs. Bonnette as “Improvement Needed” in “Ability.”
3. Mrs. Bonnette’s supervisors gave her this rating based upon her “interactions” with staff, which they characterized as competitive, defensive, and confrontational.
4. The comments accompanying this rating state that, “Michelle is already very knowledgeable in regarding victim's rights and the notification program. However, this supervisor believes adaptability is what Michelle struggles the most with. Change seems difficult for Michelle, and this has made her transition into this organization less than smooth. Michelle's passion is sometimes perceived as impatience. While often unintended, Michelle has found it difficult to avoid conflict with some in the department.”
5. Mrs. Bonnette’s supervisors had a meeting with her on June 23, 2016 to discuss the 2016 Quarterly Progress Report.
6. In the June 23, 2016 meeting Mrs. Bonnette’s supervisors, including Ellen Walker, told Mrs. Bonnette that it was unlikely that Probation would certify and retain her as an employee.
7. As of June 23, 2016 Mr. Heisler still had not met with Mrs. Bonnette to discuss her questions about the ADA.
8. As trouble adapting to change and interpersonal communication difficulties are manifestations of Autism Spectrum Disorder, Mrs. Bonnette again informed Probation during this meeting of her diagnosis to respond to the allegation.
9. Probation gave Mrs. Bonnette a deadline of September 1, 2016 to correct the issues identified in the 2016 Quarterly Progress Report.
10. On June 27, 2016 Mrs. Bonnette provided Probation with a copy of the Diagnostic Impression in order to request reasonable accommodations for her disability.
11. Regarding reasonable accommodations, the Diagnostic Impression stated that, “Ms.

Bonnette has a number of areas of strength. Her overall level of intelligence is high. She has a strong work ethic, and her task orientation is good. She has some insight into her disorder and its effects, and she is open to feedback or instruction from others. She is capable of empathy, and sincerely wishes to cooperate and interact appropriately with her supervisors, coworkers, and members of the public. The accommodations that will support her success in the workplace are therefore not extensive, and they are unlikely to be disruptive to her employer or co-workers.”

1. The Diagnostic Impression listed several potential accommodations as follows: “Examples of reasonable accommodations include concrete presentations of social and performance expectations; highly specific behavioral recommendations for meeting standards or for resolving problems; frequent and behaviorally specific feedback about task performance and social interaction; advance notice of changes in routines and increased time to adapt to them; presentation of the rationale for expected social and vocational priorities whenever possible; requests for her to paraphrase or repeat important information; re-assurance that she may express her needs for clarification or repetition without penalty; avoidance of interpreting her blunt or abrupt manner as hostile or aggressive; requests that she describe her emotions, mood, or intentions if they are not immediately clear; allowing her to take brief breaks from environmental or social stimulation when she is reaching her limits of tolerating or processing it.”
2. On June 24, 2016 Mrs. Bonnette also sent a follow up email to Mr. Heisler regarding her need for ADA reasonable accommodations.
3. Mrs. Bonnette’s June 24 email stated that, “I was hoping to hear back from you regarding my request to speak to you about protections under ADA. It has now been brought to my attention that behaviors associated with my different ability (disability) are the very reasons I have received an unfavorable evaluation. My job performance is not in any way in question; just the perceived behaviors. It is imperative at this time that I speak with Human Resources as I have been given a deadline to change these behaviors by September 1st or face termination.”
4. Mr. Heisler responded on June 24, 2016 and apologized for missing the June 6, 2016 meeting.
5. Mr. Heisler and Mrs. Bonnette then met on June 27, 2016.
6. During the June 26, 2017 meeting Mrs. Bonnette provided Mr. Heisler with the Diagnostic Impression and explained her need for a reasonable accommodation in light of the May, 2016 emails and the 2016 Quarterly Progress Report.
7. On June 27, 2016 Mrs. Bonnette sent an email to her supervisors, including Ellen Walker, discussing “the challenges that I have experienced with the social aspects of Autism Spectrum . .

. .”

1. After June 27, 2016 Probation supervisors began writing memos on a regular basis documenting their interactions with Mrs. Bonnette.
2. Human Resources did not respond to Ms. Bonnette regarding the Diagnostic Impression or her request for reasonable accommodations until July 14, 2016, nearly three weeks later.
3. On July 14, 2016 Probation asked Mrs. Bonnette to then complete specific ADA forms

provided by Probation before certification of her disability could be made.

1. Mr. Heisler stated that Probation could not consider Mrs. Bonnette’s request for a reasonable accommodation until she filled out the enclosed ADA forms.
2. Mrs. Bonnette completed and returned the forms to Human Resources on July 28, 2016.
3. The July 28 ADA paperwork identified Mrs. Bonnette’s disability and the resulting

limitations that it entails, including “difficulties in areas of social perception and interaction; difficulties understanding and applying general principles; ‘black and white’ thinking; difficulties with changes in routine.”

1. The ADA paperwork further explained that Mrs. Bonnette’s Autism Spectrum Disorder caused “problems in interactions with supervisors and co-workers, not specific functions.”
2. The ADA paperwork also stated that Mrs. Bonnette did not struggle with the specific functions of her job and would be able to perform all functions with the requested reasonable accommodations.
3. The ADA paperwork again presented the needed accommodations.
4. On August 1, 2016 Mr. Heisler asked Mrs. Bonnette to meet with him later that week.
5. Mrs. Bonnette scheduled a meeting for Friday, August 5, 2016.
6. At that time, Mrs. Bonnette believed that the parties would discuss her ADA request for a reasonable accommodation.
7. On August 3, 2016 Ellen Walker sent an email to Mr. Heisler stating that, “Please let me know when the ADA piece is through legal, I would like to plan to release her on Friday.”
8. The next Friday was August 5, 2016.
9. Mrs. Bonnette attended the meeting on August 5, 2016.
10. Ellen Walker terminated her employment in the August 5, 2016 meeting.
11. Ellen Walker wrote and signed a termination letter dated August 5, 2016.
12. The letter’s stated reason for the termination of Mrs. Bonnette’s employment was Mrs.

Bonnette’s “tone, delivery, argumentative manner and inappropriate language” when communicating.

1. Probation did not identify any reason other than Mrs. Bonnette’s interpersonal communications with management and staff as a reason for the termination of Mrs. Bonnette’s employment.
2. The termination of Mrs. Bonnette’s employment was caused solely by Mrs. Bonnette’s disability.

# First Cause of Action (Rehabilitation Act - Failure to Accommodate)

1. Plaintiff realleges all prior paragraphs and incorporates them herein.
2. Plaintiff asserts this claim against Defendant Colorado Judicial Department, Fourth Judicial District Probation Department (“Probation”).
3. Probation is a program or activity that receives federal financial assistance.
4. Probation is subject to the provisions of the Rehabilitation Act of 1973.
5. Plaintiff is a qualified individual with a disability, specifically Autism Spectrum Disorder.
6. Autism Spectrum Disorder is a mental impairment.
7. Autism Spectrum Disorder substantially limits Plaintiff in the following major life activities: learning, concentrating, thinking, communicating, interacting with others, and the operation of brain functions.
8. Plaintiff has a record of a disability.
9. Plaintiff was fully qualified for her position.
10. Plaintiff was able to perform the essential functions of her job, with or without reasonable accommodations, as documented by her reviews, reports, the Diagnostic Impression, and completed ADA paperwork.
11. Plaintiff requested a reasonable accommodation of her disability no later than June 27, 2016 when she provided Probation with a copy of the Diagnostic Impression that documented her disability, the need for reasonable accommodations, and listed several potential reasonable accommodations.
12. Probation failed to engage in the interactive process with Plaintiff regarding her requested reasonable accommodations.
13. Probation failed to provide Plaintiff with a reasonable accommodation at any time after her request for a reasonable accommodation.
14. Probation’s acts and omissions violated Plaintiff’s rights under the Rehabilitation Act.
15. Probation acted with malice and with reckless disregard for Plaintiff’s federally protected right to reasonable accommodations in the workplace.
16. Plaintiff has suffered damages, including lost wages and compensatory damages,

emotional distress, reputational injuries, and has incurred attorneys’ fees and costs as a result of Probation’s discriminatory conduct.

# Second Cause of Action

**(Rehabilitation Act – Discriminatory Termination of Employment)**

1. Plaintiff realleges all prior paragraphs and incorporates them herein.
2. Plaintiff asserts this claim against Defendant Colorado Judicial Department, Fourth

Judicial District Probation Department (“Probation”).

1. Probation knew that Plaintiff suffered from a disability: Autism Spectrum Disorder.
2. Probation knew that Plaintiff’s disability caused “difficulties with changes in routines or expectations.”
3. Probation negatively evaluated Mrs. Bonnette’s job performance on June 23, 2016 because of “struggles” with “adaptability.”
4. Probation knew that Plaintiff’s disability caused “deficits in areas of social perception, maintenance of reciprocity in relationships, awareness and interpretation of social cues and tonal qualities, and development of realistic interpersonal expectations that are characteristic of the disorder” and that her social interactions may come across as “blunt, rude, or aggressive” because of her disability.
5. Probation counseled Plaintiff for the “tone” of her emails in May, 2016.
6. Probation terminated Plaintiff’s employment on August 5, 2016 for failing to interact with management and staff in a civil, courteous, and respectful manner.
7. Plaintiff’s difficulties in communications were caused her disability.
8. Probation knew that Plaintiff’s difficulties in communications were caused her disability.
9. Plaintiff did not act in an egregious manner.
10. Plaintiff did not act in a criminal manner.
11. Probation terminated Plaintiff’s employment solely because of her disability.
12. Probation’s acts and omissions violated Plaintiff’s rights under the Rehabilitation Act.
13. Probation acted with malice and with reckless disregard for Plaintiff’s federally protected right not to be terminated because of her status as a qualified individual with a disability.
14. Plaintiff has suffered damages, including lost wages and compensatory damages,

emotional distress, reputational injuries, and has incurred attorneys’ fees and costs as a result of Probation’s discriminatory conduct.

# Third Cause of Action

**(ADA – Discriminatory Termination of Employment)**

1. Plaintiff realleges all prior paragraphs and incorporates them herein.
2. Plaintiff asserts this claim against Ellen Walker in her official capacity as the Chief Probation Officer of the Fourth Judicial District pursuant to *Ex Parte Young.*
3. Plaintiff has exhausted her administrative remedies.
4. Ellen Walker terminated Plaintiff’s employment because of her disability in violation of the ADA.
5. Ellen Walker has denied Plaintiff employment in violation of the Americans with Disabilities Act on an ongoing and continuous basis since August 5, 2016.
6. Plaintiff seeks reinstatement and other appropriate prospective relief.

# Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief:

* 1. Reinstatement;
  2. Nominal damages;
  3. Back pay, including loss of benefits and seniority, or front pay in lieu of reinstatement;
  4. Nonpecuniary and compensatory damages, including damages for emotional distress and consequential damages;
  5. Pre- and post-judgment interest at the highest rate allowed by law;
  6. Costs and reasonable attorneys fees; and
  7. All other legal or equitable relief to which Plaintiff is entitled.

# Jury Demand

**Plaintiff requests this matter be tried by a jury.**

Respectfully submitted this 24th day of January, 2018.

CORNISH & DELL’OLIO, P.C.

s/ Bradley J. Sherman Bradley J. Sherman, # 39452

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