

**MEMORANDUM TO CLERK
FOR INSTITUTING CIVIL ACTION**

To the Circuit Clerk of Kanawha County, West Virginia

Civil Action No.: 14-CV-85
JUDGE WEBSTER

FILED
2014 APR - 7 PM 4:08

MELINDA HEISS and GEORGE HEISS
Michael T. Clifford (WVSB No.: 750)
723 Kanawha Boulevard East
Suite 1200, Union Building
Charleston, WV 25301
304-720-7660 tel.
304-720-7753 fax

Plaintiffs,

v.

**ALBERT BRAY CARY JR., individually,
And WEST VIRGINIA MEDIA HOLDINGS LLC**
A Delaware corporation

Defendants.

	<u>Days to Answer</u>	<u>Type of Service</u>
ALBERT CARY JR.	20	Personal
WEST VIRGINIA MEDIA HOLDINGS LLC	30	SOS

Please issue summons in the above styled action as indicated.
Original and ____ copies of complaint furnished herewith.

PYMT Type K
Rcpt # 514817 \$155 \$135
Iss. Sum. + 4 cc No Sum. Iss
 Ret. to Atty. \$20cm X
 Mailed CM/RM \$5 clk X
 Mailed to sos w/ck#
 Sent to _____ w/ck# _____

I. TYPE OF CASE

TORTS	OTHER	CIVIL
Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
<input checked="" type="checkbox"/> Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other: Petition For Writ of Habeas Corpus
Tort	Appeal of Administrative Agency	Appeal / Domestic

II. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (Month/Year): _____ /

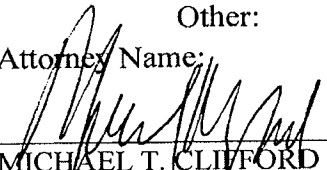
DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES NO

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other:

Attorney Name:

Representing: Plaintiff


 MICHAEL T. CLIFFORD WVSB# 750
 RICHELLE K. GARLOW WVSB# 9662
 Attorney at Law

4/7/2014
 DATE

723 Kanawha Boulevard East
 Union Building, Suite 1200
 Charleston, WV 25301 (304) 720-7660 (304) 720-7753 fax

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MELINDA HEISS and
GEORGE HEISS,

Plaintiffs,

v.

Civil Action No. 14-C-685

ALBERT BRAY CARY, JR., individually,
and
WEST VIRGINIA MEDIA HOLDINGS, LLC
a Delaware corporation,

Defendants.

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COMPLAINT

To: The Honorable Judge of said Court:

Your Plaintiffs, for their Complaint, respectfully allege as follows:

COUNT ONE: THE PARTIES

1. Your Plaintiffs are, and at all relevant times were, residents and citizens of Kanawha County, West Virginia.
2. The Defendant, Albert Bray Cary, Jr. (hereinafter referred to as "Cary") is a resident of Sandyville, in Jackson County, West Virginia, but maintains his principal place of business at 350 Quarrier Street, Charleston Town Center Mall, Charleston, West Virginia, 25301.
3. The Defendant, West Virginia Media Holdings, LLC, (hereinafter referred to as "WVMH") is a company organized under the laws of the State of Delaware, but is authorized to do business, and is actually doing business, in the State of West Virginia.

COUNT TWO: JURISDICTION AND VENUE

4. All of the allegations contained in Count One are incorporated herein by reference as if set forth in their entirety.
5. The events complained of herein sound in tort and were committed by the Defendant, Cary,

against your Plaintiffs, at the offices of WOWK-TV, which is owned by the Defendant, WVMH, of which Cary is the Chief Executive Officer.

6. This Honorable Court has personal jurisdiction of these parties, subject matter jurisdiction over the events herein complained of, and venue has been properly established.

COUNT THREE: UNLAWFUL RESTRAINT

- 7.. All of the allegations contained in Counts One and Two are incorporated herein by reference as if set forth in their entirety.
8. On or about the 9th day of April, 2012, Your Plaintiff, Melinda Heiss, was contractor of Portamedic and went to the offices of WOWK-TV, at approximately 8:00 a.m., for a pre-arranged appointment to conduct a physical examination of Defendant Cary who was seeking to purchase a life insurance policy.
9. Your Plaintiff, Melinda Heiss, and Defendant Cary went into a small office where she obtained his signatures on various permissions, took his vital signs and drew a vial of blood.
10. Thereafter, Defendant Cary became hostile and refused to answer any further questions, explaining that he had "...he had already provided that information..." to the insurance agent.
11. Your Plaintiff, Melinda Heiss, explained to Defendant Cary that the insurance agent was the "insurance professional" and that she was the "medical professional" and that her company, Portamedic, had certain protocols and procedures that she had to follow in order to properly conduct the examination.
12. Despite the Plaintiff's explanations, Defendant Cary refused to answer any more questions and became very hostile and belligerent toward Your Plaintiff.
13. As a result of Defendant Cary's lack of cooperation, Your Plaintiff began to pack up her

EKG equipment and was preparing to discontinue the examination.

14. At this point, Defendant Cary stood in front of the closed office door and told Your Plaintiff that she was "...not going anywhere..." until she gave him back the vial of blood, and refused to allow her to leave the office.
15. Defendant Cary's conduct of refusing to allow Your Plaintiff to leave the office constitutes an unlawful restraint as defined and prohibited by Chapter Sixty-One, Article Two, Section Fourteen-g (§61-2-14g) of the Code of West Virginia, 1931, as amended (hereinafter referred to as the "Code").

COUNT FOUR: BATTERY

16. All of the allegations contained in Counts One, Two and Three are incorporated herein by reference as if set forth in their entirety.
17. Your Plaintiff, Melinda Heiss, had never before encountered such a situation and called the offices of Portamedic for instructions.
18. While Your Plaintiff, Melinda Heiss, was on her personal cell phone talking with the secretary at Portamedic, Defendant Cary grabbed the phone from her hand, pulling hair out of her head
19. Defendant Cary's conduct of grabbing Your Plaintiff's cell phone and pulling hair from her head constitutes battery as that term is defined and prohibited by Code §61-2-9[c].

COUNT FIVE: BATTERY

20. All of the allegations contained in Counts One, Two, Three and Four are incorporated herein by reference as if set forth in their entirety.
21. While Defendant Cary was occupied with the phone call, Your Plaintiff, Melinda Heiss, was

able to slip past him and make her way to the exit door.

22. She placed her medical bags into her automobile and sought re-entry to WOWK-TV in order to retrieve her cell phone.
23. She asked a young man near the entrance door to get her cell phone from Defendant Cary.
24. At this point, Defendant Cary came running toward her and shoved another phone in her face, telling her to talk to his insurance agent.
25. When she began telling the agent what had happened, Defendant Cary again grabbed the phone from her hand pulling additional hair from her head and screamed into the phone, "...there was no lock on that door."
- 26.. Defendant Cary's conduct of grabbing the phone from Your Plaintiff's hand and pulling hair from her head constitutes battery as that term is defined and prohibited by Code §61-2-9[c].

COUNT SIX: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

27. All of the allegations contained in Counts One, Two, Three, Four and Five are incorporated herein by reference as if set forth in their entirety.
28. The insurance agent pleaded with Your Plaintiff, Melinda Heiss, to finish the physical examination or, at the very least, get a urine sample.
29. She agreed to gather the urine sample but said she would not finish the remainder of the medical examination.
30. She returned to her car, obtained a urine collection cup, and gave it to Defendant Cary.
31. Rather than retreating to the men's restroom, Defendant Cary went inside of an office, urinated in the cup, and returned with his trousers visibly unzipped and was very rude and insulting when he gave Your Plaintiff, Melinda Heiss, the sample.

32. Defendant Cary's conduct throughout this entire episode, as set forth, in all Counts, above, was willful, wanton, grossly reckless and indifferent as to its effects on the plaintiff Melinda Heiss, and was further rude, crude, belligerent, insulting, provoking and caused Your Plaintiff, Melinda Heiss, to fear for her physical safety.
33. Defendant's Cary's conduct, as set forth above, caused Your Plaintiff, Melinda Heiss, to suffer severe emotional distress.
34. As a direct and proximate result of Defendant Cary's outrageous conduct, Your Plaintiff, Melinda Heiss, suffered such severe emotional distress that she quit her job because she was no longer able to perform her duties as a registered nurse.
35. As a direct and proximate result of Defendants Cary's outrageous conduct, Your Plaintiff, Melinda Heiss, sought the services of a psychiatrist who diagnosed her to be suffering from posttraumatic stress disorder.
36. As a direct and proximate result of Defendant Cary's outrageous conduct Your Plaintiff, Melinda Heiss, became depressed and despondent, unable to perform even everyday, ordinary chores around her own home.
37. As a direct and proximate result of Defendant Cary's outrageous conduct, Your Plaintiff, Melinda Heiss, suffered a lack of enjoyment of life.

COUNT SEVEN: LOSS OF CONSORTIUM

38. All of the allegations contained in Counts One, Two, Three, Four, Five and Six are incorporated herein by reference as if set forth in their entirety.
39. As a direct and proximate result of Defendant Cary's outrageous conduct toward Your Plaintiff, Melinda Heiss, Your Plaintiff, George Heiss, suffered a loss of consortium with his

wife because of her depression and despondency and experienced, first, great anger (toward Defendant Cary) and, then, great sadness because of his wife's continued suffering.

COUNT EIGHT: VICARIOUS LIABILITY OF DEFENDANT WVMH

40. All of the allegations contained in Counts One, Two, Three, Four, Five, Six and Seven are incorporated herein by reference as if set forth in their entirety.
41. The Defendant, Cary, is the Chief Executive Officer of the Defendant, WVMH.
42. All of the events complained of herein took place in the offices of WOWK-TV, at 350 Quarrier Street, Charleston, Kanawha County, West Virginia, 25301, which is wholly owned and operated by the Defendant, WVMH.
43. Defendant WVMH had an affirmative duty to implement and administer policies and procedures for dealing with persons visiting its offices, and to train, supervise and oversee its employees, including Cary, in following those policies and procedures.
44. Because Defendant Cary is the Chief Executive Officer of the Defendant, WVMH, it is vicariously liable for Cary's outrageous conduct toward Your Plaintiffs.

COUNT NINE: PUNITIVE DAMAGES

45. All of the allegations contained in Counts One, Two, Three, Four, Five, Six, Seven and Eight are incorporated herein by reference as if set forth in their entirety.
46. The actions of the Defendant, Cary, were purposeful and intentional, willful, wanton, grossly reckless and indifferent as to its effects on the plaintiff Melinda Heiss, and was further rude, crude, belligerent, insulting, provoking and caused Your Plaintiff, Melinda Heiss, to fear for her physical safety, and were so outrageous and offensive as to shock one's sense of common decency and give rise to a claim for punitive damages.


47. Because Defendant Cary is the Chief Executive Officer of the Defendant, WVMH, it is vicariously liable for Cary's conduct toward Your Plaintiffs.

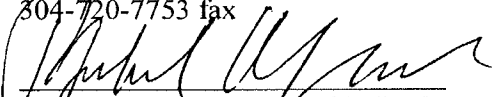
PRAYER

WHEREFORE, plaintiffs pray for damages in such amounts as to a jury will adequately compensate them for the injuries and damages sustained in amounts in excess of the jurisdictional amounts of this court, punitive damages to punish the defendants and deter future abusive conduct of this nature, court costs and counsel fees, and all such other and further relief as the nature of their case may require and as in duty bound they shall ever pray.

PLAINTIFFS DEMAND A JURY TRIAL.

**MELINDA HEISS
GEORGE HEISS
By counsel**


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