

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

Civil Action No. 18-cv-02593

MICKEY HOWARD

Plaintiff,

v.

THE CITY AND COUNTY OF DENVER, COLORADO

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Mickey Howard, by and through his counsel, Rebecca Wallace and Mark Silverstein of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, respectfully alleges for his Complaint and Jury Demand as follows:

INTRODUCTION

1. In the City and County of Denver (Denver), when a judge sets a monetary bond, Denver will release the defendant upon payment of that bond *only* if the defendant also pays a \$50 bond fee. That means that even if the defendant can pay the monetary bond, Denver will not release the defendant if he cannot also pay the additional bond fee. Plaintiff Mickey Howard was a victim of this practice. In June of this year, he was arrested for alleged violations of municipal ordinances. The Denver judge set a \$10 cash bond for his release, a sum Mr. Howard could pay. Mr. Howard could not, however, pay the additional \$50 bond fee that Denver's policy required as an additional condition of his release. As a result, Mr. Howard spent four additional

nights in jail until the Colorado Freedom Fund, a non-profit bail fund, paid the required fee and secured his release. While out on bond, Mr. Howard fulfilled all obligations related to his case, and Denver ultimately dismissed all of the charges against him. Mr. Howard brings this case to seek compensation and to spur Denver to end the oppressive and irrational practices described herein.

JURISDICTION AND VENUE

2. This civil rights action is authorized and instituted pursuant to 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. § 1331.

3. The events or omissions giving rise to the claims herein occurred in the District of Colorado, and at all relevant times the parties reside in the District. Venue is therefore proper under 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Mickey Howard is a resident of Colorado.

5. Defendant, the City and County of Denver, Colorado, is a political subdivision of the State of Colorado.

FACTUAL ALLEGATIONS

Denver's bond fee

6. A Denver ordinance establishes a \$50 bond fee. Section 14-34 of the Denver Municipal Code states: "It shall be the duty of the judge or any officer or court clerk designated by the judge taking any such bond to assess and collect therefore a fee of fifty dollars (\$50.00) for each bond taken."

7. The ordinance provides that the bond fee is to be collected as provided in Section 14-11, which directs that the fees are payable to the Denver Manager of Finance and are to be credited to Denver's general fund.

8. Denver assesses the bond fee for all pretrial monetary bonds.

9. While not required by the Denver ordinance, pursuant to Denver's policy and practice, the bond fee:

- a. is non-refundable regardless of the outcome of the criminal case or the defendant's compliance with bond conditions;
- b. must be paid at the time the monetary bond is posted;¹ and
- c. results in the defendant's continued pretrial detention when left unpaid, even if the defendant has the means to post the monetary bond set by the court.

10. Denver commonly charges many other fees to criminal defendants, including, when applicable, court costs, a public defender fee, and pretrial supervision fees. Upon information and belief, inability to pay these fees does not cause the defendant to be jailed. Instead, Denver generally bills the defendant for these fees after release. If the defendant fails to pay by a specified time, Denver sends these debts to collections but does not jail the defendant for nonpayment.² Denver selected only one fee – the bond fee – for mandatory payment in order for a defendant to secure release from jail.

¹ See <https://www.denvercountycourt.org/posting-bond/>.

² Since March 2009, Denver has contracted with Integral Recoveries to collect outstanding court-related debts, with a high rate of return. From 2009 through 2012, Integral Recoveries "helped the Court recover over \$9.7 million, or 39 percent of funds it was referred," a rate that "exceeded the Court's expectations." See Office of the Auditor *Denver County Court Accounting Practices, Performance Audit* (October 2013), at page 17, available at:

11. The predictable and inevitable result of Denver’s policy is that some individuals with low monetary bonds and limited resources, such as Mr. Howard, will be detained in jail pretrial solely because they are too poor to pay the \$50 fee.

Denver’s booking fee

12. A Denver ordinance permits Denver to collect a \$30 booking fee for “committing and discharging convicted inmates to and from the county jail.” D.R.M.C. § 53-514.³

13. Colorado law requires that the fee “shall be refunded to any prisoner who is not convicted.” C.R.S. § 30-1-104(n). Denver does not automatically refund the fee to defendants who are not convicted, like Mr. Howard. Instead, Denver requires the defendant to request return of the fee and to submit paperwork supporting that request.

14. The Denver Sheriff’s Office takes the \$30 booking fee from whatever cash that new arrestees have when they are booked into the jail. The Sheriff’s Office makes no exceptions, even when taking the money may prevent a defendant from paying for food or a hotel room upon release, or when taking the money from a defendant like Mr. Howard may cause him to remain in jail pretrial because he becomes unable to post bond or pay the bond fee.

15. This is true despite promises that sheriffs made when the statute authorizing booking fees was enacted. The executive director of the Sheriff’s Association promised that “the fees will not be paid by the mentally ill or indigent; rather, they will be collected from those who

https://www.denvergov.org/content/dam/denvergov/Portals/741/documents/Audits_2013/Denver_County_Court_Accounting_Practices_Audit_Report_10-17-13.pdf.

³ A Colorado statute authorizes Colorado counties to collect this booking fee. See C.R.S. § 30-1-104(n).

can and should pay.” Another sheriff assured: “We would never take money from someone ... if that money was going to be available for them to bond out and leave,”⁴

16. The predictable and inevitable result of Denver’s policy to take the \$30 booking fee from defendants’ money at the time of booking is that some individuals with low monetary bonds and limited resources, such as Mr. Howard, will be detained in jail pretrial solely because Denver took the funds that would have been utilized to pay the monetary bond and/or the \$50 bond fee.

Plaintiff Mickey Howard

17. On June 9, 2018, Denver arrested Mr. Howard and booked him into jail on municipal charges related to an alleged incident that took place five months earlier.

18. The next day, Mr. Howard appeared before the Denver County Court. Mr. Howard entered a plea of not guilty.

19. At the hearing, after considering Mr. Howard’s history, the court set a very low monetary bond – a \$10 cash bond. Upon payment of that \$10, and signing an agreement to submit to GPS monitoring, Mr. Howard was entitled to release from jail.

20. Mr. Howard was ready, willing and able to pay the \$10 bond and agree to GPS monitoring.

21. Denver, however, refused to release Mr. Howard on the conditions set by the court. Instead, pursuant to Denver’s policy and practice, it required Mr. Howard to pay an additional \$50 bond fee in order to be released.

⁴ See <https://www.denverpost.com/2005/07/11/county-jails-booking-fees-cause-clamor>.

22. Mr. Howard entered the jail with \$64.24 on his person. He was confident in his ability to make the monetary bond set by the court and was willing to submit to GPS monitoring. Thus, he fully expected to bond out on the day bond was set by the court.

23. Upon his return to jail from court, Mr. Howard indicated to a jail employee that he wished to post bond from the money he had when he was booked into the jail.

24. The jail employee informed Mr. Howard that he had insufficient funds, because Mr. Howard had to pay a \$50 bond fee in addition to the \$10 bond in order to secure his release.

25. At the time Mr. Howard was booked into jail, he had sufficient money to pay the total \$60 due. However, by the time the judge set bond, Denver had depleted his account. Pursuant to Denver's policy and practice, on the day Mr. Howard was booked, Denver took \$30 from Mr. Howard's funds as a "booking fee." Thus, when Mr. Howard tried to bond out, his original \$64 had been depleted to only \$34, which was insufficient to cover Denver's \$50 bond fee.

26. The \$64.24 in Mr. Howard's pocket when he was booked into jail was all the money he had in the world. Mr. Howard has long struggled with extremely unstable housing and has sometimes been homeless. He has no bank account and only intermittent employment as a temporary laborer. He had no friends or family to bond him out. Thus, Mr. Howard faced the reality that he could spend months behind bars awaiting trial, solely because of his poverty.

27. However, on June 14, four nights after Mr. Howard's bond was set, the Colorado Freedom Fund paid the bond fee for Mr. Howard as part of a Juneteenth/Father's Day Bail Out initiative. The Denver Post wrote about the initiative and highlighted Mr. Howard's story.⁵

28. Mr. Howard was released that same day. The Denver Post story included the following photo of Mr. Howard upon his release hugging Elisabeth Epps from the Colorado Freedom Fund:



29. Mr. Howard was damaged by the Defendant's unconstitutional conduct. First and foremost, he was wrongfully deprived of his liberty. Additionally, as is often the case for pretrial defendants held in jail because of poverty, the jail stay caused substantial collateral consequences. The jail stay cost Mr. Howard his temporary housing and his temporary job.

30. After his release, Mr. Howard complied with GPS monitoring and appeared at every scheduled court appearance.

31. On August 8, 2018, when Mr. Howard appeared for his jury trial alongside the municipal public defender, all charges were dismissed on motion of the prosecution.

⁵ See Denver Post, "In anticipation of Father's Day, community activists bail black men out of jail," June 16, 2018, available at: <https://www.denverpost.com/2018/06/16/fathers-day-bail-out/>.

32. If not for the Colorado Freedom Fund, Mr. Howard would have likely languished in jail for almost two months, until August 8, 2018, the dismissal date.

33. Despite this dismissal, Mr. Howard's compliance with his conditions of bond, and the money already paid to Denver for the privilege of being arrested and bonding out, Denver is seeking additional significant amounts of money from Mr. Howard related to his now-dismissed criminal case.

34. Denver seeks a \$504 payment for Mr. Howard's GPS monitoring. Absent payment, Denver's practice is to send such debts to collections.

35. Additionally, two days after the case was dismissed, on August 10, 2018, Denver assessed a \$25 public defender fee against Mr. Howard. On September 10, precisely one month after the public defender fee was assessed, Denver added a \$50 failure-to-pay fee to Mr. Howard's bill, as well as a \$30 collection fee. Denver sent this \$105 "debt" to collections. Thus, Denver now seeks \$105 from Mr. Howard for a public defender fee that was originally \$25.

36. In sum, as of today, Denver is seeking \$609 from Mr. Howard related to a fully dismissed municipal case, despite Mr. Howard's full compliance with all bond conditions.

Denver's irrational policies caused Mr. Howard's unconstitutional loss of liberty.

37. The court ordered Mr. Howard's release upon his payment of \$10 and his submission to GPS monitoring. During all relevant times, Mr. Howard was willing and able to meet the bond conditions set by the court.

38. However, due to two Denver policies and practices, Mr. Howard remained behind bars solely because of his poverty:

- a. **Policy 1:** When the court sets a monetary bond, Denver will refuse to release any defendant unable to pay a \$50 bond fee, even if that defendant can meet all bond terms set by the court; and
- b. **Policy 2:** Denver takes an indigent inmate's money as a booking fee at the time of booking even when doing so will predictably serve to detain some defendants in jail.

39. These policies, separately and together, were a moving force behind Mr. Howard's illegal detention. If Denver had not had a policy to detain defendants unable to pay the \$50 bond fee, Mr. Howard would have been timely released. Even with this unconstitutional policy in place, if Denver had not had a policy to take defendants' money as a booking fee, without exception, at the time of booking, Mr. Howard would have been timely released.

40. These policies represent a deliberate choice by Denver to follow a course of action made from among various alternatives. The alternatives to these policies are obvious and ones that Denver already follows in related contexts. Regarding the bond fee, for indigent defendants, Denver could have simply billed the defendant after release and submitted the debt to collections upon nonpayment. Nothing in Denver's ordinance requires that a defendant must remain in jail because of inability to pay the bond fee. Indeed, any such ordinance would be flatly unconstitutional. Regarding the booking fee, Denver could simply wait to collect the fee at the time of release from the defendant's remaining money, if any, *after* the person has paid the bond amount and the bonding fee. There are many other, far fairer alternatives to jailing a defendant for inability to pay a fee, including waiving or lowering these fees for indigent defendants or imposing the fee only after there is a determination of guilt.

41. These alternatives would not only have prevented the unconstitutional wealth-based detention that occurred in Mr. Howard's case, they would also make fiscal sense. It costs Denver \$70.20 per day to house an inmate in the jail. Thus, each day Denver detains a defendant because of failure to pay the \$50 bonding fee or because Denver took \$30 from the defendant for the booking fee, Denver loses money. In Mr. Howard's case, Denver spent \$350 to detain him for five days because he could not pay a \$50 fee. This math underscores the irrationality of the policies at issue in this case.

42. While this case centers on Mr. Howard, it is virtually certain that other indigent defendants similarly situated to Mr. Howard have been subjected to pretrial detention due to the same Denver policies at issue in this lawsuit. Indeed, on September 20, 2018, Denver had 34 people detained in jail on a bond of \$100 or less, one on a mere \$10 bond.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 –14th Amendment
(Due Process and Equal Protection)

43. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

44. The Fourteenth Amendment to the U.S. Constitution prohibits jailing a person solely because of his inability to make a monetary payment.

45. Plaintiff has a liberty interest in his pretrial liberty. That liberty interest becomes even stronger once bail is set.

46. After bail was set, Defendant denied Plaintiff his pretrial liberty solely because he was unable to pay a fee.

47. The only legitimate governmental interests in restricting pretrial release are ensuring the defendant does not flee prosecution and does not pose a risk to the safety of others.

48. When a defendant can meet the requirements of release set by the court, Denver's policy of requiring the defendant to pay an additional \$50 fee in order to gain release is not rationally related, much less narrowly tailored, to achieve either of these governmental interests.

49. Denver's official policies and actual practices identified in paragraph 38 foreseeably caused the constitutional violations in this case and caused injury to Plaintiff.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment
(Substantive Due Process)

50. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

51. The Fourteenth Amendment to the U.S. Constitution prohibits Defendant from depriving a person of liberty without due process of law.

52. Plaintiff has a liberty interest in his pretrial liberty. That liberty interest becomes even stronger once bail is set.

53. Defendant denied Plaintiff his pretrial liberty after bail was set solely because he was unable to pay a fee.

54. The substantive arm of the Fourteenth Amendment requires the government have a constitutionally sufficient reason before its laws can interfere with the rights to life, liberty or property.

55. The substantive arm of the Fourteenth Amendment also prohibits arbitrary and oppressive government action.

56. The Denver policies identified in paragraph 38 and the deprivation of Mr. Howard's liberty that resulted from their application, reflect arbitrary and oppressive government action that furthered no legitimate government objective.

57. The constitutional violations in this case reflect an exercise of governmental power that truly shocks the conscience.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant, and grant:

- (a) Compensatory and consequential damages on all claims allowed by law in an amount to be determined at trial;
- (b) Attorneys' fees and the costs associated with this action on all claims allowed by law;
- (c) Pre- and post-judgment interest at the lawful rate; and
- (d) Any further relief that this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 10th day of October, 2018.

/s/ Rebecca Wallace
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