

STATE OF NORTH CAROLINA

File No. 15CV007454

15 CVS

Wake County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff

Kenneth L. Bryant

Address

418 Sneaking Creek Drive

City, State, Zip

Hayesville, NC 28904

VERSUS

Name Of Defendant(s)

NC PRN et al

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Scott S. Whitaker

387 Zion Church Road

Rockingham, NC 28379

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

John Kirby

2501 Blue Ridge Road, Suite 250

Raleigh, NC 27607

Date Issued

JUN 04 2015

Time

10

☒ AM
☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM
☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- ☐ Other manner of service (specify)

- ☐ Defendant WAS NOT served for the following reason.

Service Fee Paid	Signature Of Deputy Sheriff Making Return
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\$

Date Received	Name Of Sheriff (Type Or Print)
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Date Of Return	County Of Sheriff
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15CV007454

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

15 CVS

2015 JUN -4 A 10:26

KENNETH L. BRYANT,
Plaintiff

WAKE COUNTY, C.S.C.

BY

v.

COMPLAINT
(COMP)

NC PRN, an unincorporated association,
SCOTT L. WHITAKER, WADE D.
HAMPTON JR., and JOHN DOES 1-40
Defendants

(JURY TRIAL DEMANDED)

NOW COMES the Plaintiff, by and through the undersigned counsel, and as his
Complaint against the Defendants, alleges the following:

1. The Plaintiff is a citizen and resident of Clay County, North Carolina.
2. The Defendant NC PRN is an unincorporated association composed of the individual Defendants and those persons identified in Paragraph 10, who are members of NC PRN and are located throughout North Carolina, South Carolina, Tennessee, Virginia, West Virginia and Washington, D.C. The majority of these members are in the State of North Carolina, including two members who are residents of Wake County, North Carolina.
3. The Defendant Scott L. Whitaker, KF4DBW, is a citizen and resident of Richmond County, North Carolina.
4. The Defendant Wade D. Hampton Jr., K4ITL, is a citizen and resident of Wake County, North Carolina.
5. The individual Defendants are repeater trustees who operate, own, maintain and/or control a network of repeaters that are used for the NC PRN network to allow amateur

radio communications in the States of North Carolina, South Carolina, Tennessee, Virginia, West Virginia and Washington, D.C.

6. John Does 1-40 are yet unidentified members of NC PRN, including but not limited to some or all of those persons identified in Paragraph 10 of this Complaint, who participated in and consented to the acts of NC PRN described herein; the Plaintiff reserves the right to amend this Complaint to identify these persons at the appropriate time.

7. A repeater is a privately owned radio station under the control of a technician or higher class FCC amateur radio licensee. A repeater in the amateur service is an amateur station that simultaneously retransmits the transmission of another amateur station on a different channel or channels usually to increase the range of other amateur stations.

8. The Defendants own and operate linking equipment (computer software/hardware device) that enables the repeaters to operate as a network, and these devices do not come under the jurisdiction of the FCC.

9. NC PRN is operated as a team effort by the Defendant repeater trustees, and at all times the NC PRN appeared to be acting, and in writing alleged to be acting, under the full authority and consent of the repeater trustees and under the color of authority of the repeater trustees.

10. NC PRN is composed of the individual Defendants and Stephen P. Brown Jr., K1LNX; Joseph C. Meighan III, KB4REC; Stuart R. Whitmire, WB4JGI; William D. Burden III, WB4YNF; Marvin K. Hoffman, WA4NC; Ralph T. Bartlett, W4ZO; Stephen M. Koone, KA4YMY; Fessenden Amateur Radio Society (licensee, Richard D. Marlin, K4OBX); David T. Robinson, N4DTR; Charlotte Metro Amateur Group (licensee Stephen M. Koon, KA4YMZ); John R. Giffin, KB4CTS; Ryan W. Avery, NC4RA; Martin W. Harris, Jr., W4FOT; Jerry S.

Parham, KE4FHH; Thomas W. Talbert Jr., W4SNA; Philip M. Crump, KG4BCC; Defendant Outer Banks Repeater Association (licensee, Andrew S. Darling, W4PCN); Marty L. Norris, W4MLN; James F. Boehner, N2ZZ; Scheart Repeater Club (licensee Charles W. Miller, WR4SC); Charles S. Davis, N4UHF; Matthew P. Littleton, KN4SWB; Marcus W. O'Connor, KK4WTI; Gray L. Fulk, WX4F; Fieldcomm Association (licensee James H Lovelady Jr.); Richmond Amateur Communications Society (licensee David W Kiefer, W4RAT); Samuel L. Simmons, K4MJO; Gregory H. Faust, WR4CV; Alvin E. Crane Jr., W4VSP; Alexander Graham Bell Pioneer Repeater Association (licensee Robert L. Spindle Jr., W3AGB).

11. Operating an amateur ("ham") radio requires technical knowledge and proficiency.

12. The Plaintiff became a member of NC PRN as an amateur radio operator and was granted full authority to use the NC PRN network, including the ability to receive and send radio communications with the NC PRN network which enabled the Plaintiff to communicate with persons around the world.

13. In February 2015, NC PRN, suddenly and without warning, withdrew the Plaintiff's privileges in the NC PRN network and banned the Plaintiff for life from using the NC PRN network.

14. In addition, the NC PRN instructed the Plaintiff not to use the local repeaters on the NC PRN network.

15. On February 6, 2015, the Plaintiff contacted NC PRN to inquire as to why he did not have access to the network.

16. On February 6, 2015, a person or persons responding only as "The PRN Team" stated that the Plaintiff had allegedly been observed using the NC PRN system to sell radios and radio-related products allegedly in violation of FCC regulation 97.113(3).

17. On February 6, 2015, the Plaintiff contacted NC PRN and requested that his privileges be restored and explained his use of the NC PRN network.

18. Approximately five weeks later the Plaintiff had received no response to his prior inquiry, and at this time the Plaintiff sent a follow-up email to NC PRN asking again to resolve the matter.

19. Approximately seven weeks after the Plaintiff's initial inquiry from February 6, 2015, NC PRN responded and refused to reinstate the Plaintiff with NC PRN; the Plaintiff was still not given an opportunity to present his version of events and he was not provided with any evidence nor the names of the individual(s) allegedly accusing him of violating said FCC regulation.

20. The Plaintiff implored NC PRN to discuss the matter over the telephone and to meet with him but NC PRN refused to discuss the matter over the telephone and refused to meet the Plaintiff in person despite being at the same venue.

21. The person or persons purportedly acting on behalf of NC PRN failed to identify themselves and would only sign email communications as "The PRN Team."

22. The Plaintiff's ejection from the NC PRN network was widely known because members of NC PRN could no longer communicate with the Plaintiff via the NC PRN system.

23. The Plaintiff is a very well-known individual in DMR (Digital Mobile Radio), and he routinely speaks around the country on DMR.

24. Most of the Plaintiff's contacts in the field of amateur radio around the world have noticed that the plaintiff is no longer reachable by radio by virtue of the Defendants' banning the Plaintiff from the network.

25. FCC regulation 97.113(3) in fact prohibits "Communications in which the station licensee or control operator has a pecuniary interest," and contains several exceptions, including "(ii) An amateur operator may notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis."

26. This Defendants' aforementioned allegation that the Plaintiff violated 97.113(3) is wholly false.

27. The Defendant NC PRN failed to report any alleged violations of FCC regulations to the FCC.

28. Overwhelmingly the conversations regarding radio equipment were unsolicited by the Plaintiff and in the vast majority of instances the Plaintiff cited FCC Rule 97.113(3) and asked to remove the conversation from the airwaves in order to comply with FCC regulations.

29. The Plaintiff sells radio equipment to other amateur radio operators at cost, and in fact the Plaintiff's sales to amateur operators operates at a loss.

30. The Plaintiff has donated thousands of dollars in time and equipment to amateur radio clubs and by conducting and financially supporting DMR education outreach nationally and at amateur radio trade shows ("hamfests") around the country.

31. The Defendants banned the Plaintiff from the NC PRN network based on their erroneous interpretation of federal regulatory law, without providing the Plaintiff with any opportunity to rebut these allegations.

32. The Defendants banned the Plaintiff from the NC PRN network based on hearsay and based on unsubstantiated allegations without providing the Plaintiff an opportunity to respond to said allegations.

33. Upon information and belief, other persons who are and/or who have been members of NC PRN have violated NC PRN's rules and protocols and/or FCC regulations and have not been banned from participation in the NC PRN network.

34. The Defendants have unlawfully discriminated against the Plaintiff.

35. The Plaintiff was denied any due process prior to the Defendants' banning the Plaintiff from participation in the NC PRN network.

36. The Plaintiff has repeatedly contacted NC PRN to attempt to resolve this matter.

37. The conduct of the Defendants in banning the Plaintiff from the NC PRN network violated public policy because it was based on a private person's or private persons' interpretation of federal law without means for review by any judicial or quasi-judicial body.

38. The conduct of the Defendants in banning the Plaintiff from the NC PRN network violated public policy because it impeded and did not promote the use of amateur radio communications.

39. Public policy favors the use of amateur radio. See, e.g., Evans v. Board of County Comm'rs, 752 F. Supp. 973, 977 (D. Colo. 1990) ("the federal government's policy in the promotion of amateur radio service"); MacMillan v. Rocky River, 748 F. Supp. 1241, 1245 (N.D. Ohio 1990) (recognizing "the strong federal interest in promoting amateur radio operations"); Hotz v. Rich, 4 Cal. App. 4th 1048, 1057 (Cal. App. 1992) ("Although the subject is generally one for federal regulation, California also has an interest in the creation and preservation of a network of operators who may assist in emergency communications.").

40. The Plaintiff had a contractual right to due process. Pollock v. Crestview Country Clubassoc., 41 Kan. App. 2d 904, 205 P.3d 1283 (2009) ("The relationship between a social club and its members is one of contract.").

41. NC PRN has no written policies for expulsion of members from NC PRN and as such NC PRN impliedly represents that it will afford members due process prior to expelling members.

42. The Defendants had an implied duty of good faith and fair dealing toward the Plaintiff. Pollock v. Crestview Country Clubassoc., 41 Kan. App. 2d 904, 205 P.3d 1283 (2009).

43. The Defendants' actions violated the spirit of amateur radio, which is based on mentoring and fellowship.

44. The Defendants expelled the Plaintiff from NC PRN without conducting a thorough investigation and without exercising due diligence.

45. The expulsion of the Plaintiff from the NC PRN network harmed the Plaintiff personally, professionally and economically.

46. The Plaintiff was entitled to procedural due process prior to expulsion from the NC PRN network. Gaston Board Of Realtors, Inc. v. Harrison, 64 N.C. App. 29, 306 S.E.2d 809 (1983).

47. NC PRN is a quasi-public entity and as such must afford members due process prior to expulsion or censure. Salkin v. California Dental Assoc., 176 Cal. App. 3d 1118; 224 Cal. Rptr. 352 (1986).

48. The expulsion of the Plaintiff from NC PRN has adversely affected the Plaintiff's reputation as well as the commercial side of his radio operations.

49. NC PRN is the only entity providing a widespread network of repeater stations in North Carolina.

FIRST CLAIM FOR RELIEF

(INJUNCTIVE RELIEF)

50. The Plaintiff realleges and incorporates as if fully set forth herein his allegations in Paragraphs 1-49 of the Complaint.

51. The Defendants unlawfully banned the Plaintiff from NC PRN without affording the Plaintiff procedural due process.

52. The Plaintiff is entitled to an order from the Court directing the Defendants to reinstate the Plaintiff as a member of NC PRN with full rights to utilize the NC PRN network.

53. The Plaintiff is entitled an order from the Court prohibiting the Defendants from banning the Plaintiff from the NC PRN network in the absence of due process.

SECOND CLAIM FOR RELIEF

(DAMAGES)

54. The Plaintiff realleges and incorporates as if fully set forth herein his allegations in Paragraphs 1-53 of the Complaint.

55. The Plaintiff has been harmed by the actions of the Defendants as alleged herein.

56. The Plaintiff is entitled to damages from the Defendants.

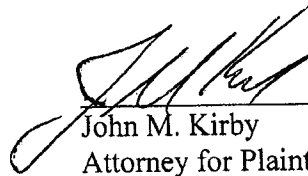
WHEREFORE, Plaintiff prays:

1. That the Court issue an Order directing the Defendants to reinstate the Plaintiff's membership in the NC PRN network;

2. That the Court issue an Order prohibiting the Defendants from banning the Plaintiff from the NC PRN network in the absence of due process afforded to the Plaintiff;

3. That the Plaintiff have and recover damages from the Defendants;
4. That all so triable be tried by a jury;
6. That the costs be taxed to Defendants; and
7. For any further relief as the Court deems just and proper.

This the 4th day of June, 2015.



John M. Kirby
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N.C. State Bar No.: 20014