

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELIZABETH DANIALS-KIRISITS
Plaintiff,

vs.

SECOND AMENDED
COMPLAINT
05-cv-0800S(Sr)

NEW YORK STATE UNIFIED COURT SYSTEM,
OFFICE OF COURT ADMINISTRATION,
Defendant.

Jury Trial Demanded

1. This is an action pursuant to 42 U.S.C. §§ 2000e, et seq., (Title VII) for discrimination based on sex and gender, and retaliation. Plaintiff also asserts pendent state law claims, including a state law claim of age-based discrimination.

JURISDICTION AND VENUE

2. Jurisdiction over Plaintiff's federal law claims is conferred upon this Court pursuant to 42 U.S.C. § 2000e-5, and 28 U.S.C. §§ 1331 and 1343; supplemental jurisdiction over Plaintiff's pendent state law claims is conferred by 28 U.S.C. § 1367.
3. Venue is properly laid within the Western District of New York pursuant to 28 U.S.C. § 1391(b) in that the Plaintiff lives in the Western District of New York, Defendant is located in the Western District of New York, and a substantial part of the acts or omissions giving rise to the claim occurred in the Western District of New York.

PARTIES

4. Plaintiff, ELIZABETH DANIELS-KIRISITS, is a woman, who was born on March 28,

1949.

5. Defendant NEW YORK STATE UNIFIED COURT SYSTEM OFFICE OF COURT ADMINISTRATION (“OCA”) is an employer within the meaning of the relevant statutes.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. Plaintiff DANIALS-KIRISITS has exhausted administrative remedies prerequisite to bringing this claim.
7. On April 21, 2005, Plaintiff filed a charge of discrimination with the Equal Employment Opportunities Commission (“EEOC”), which was assigned Charge No. 165-2005-00549, alleging that she was subjected to adverse job actions, including suspension.
8. The EEOC issued a Notice of Right to Sue on August 11, 2005.
9. Plaintiff filed the Complaint herein on November 7, 2005.
10. Plaintiff was discharged from her position with OCA on December 2, 2005.
11. On January 14, 2006, Plaintiff filed a charge of retaliation with the EEOC, which was assigned Charge No. 525-2006-00034, alleging that she was discharged from employment in retaliation for having filed Charge No. 165-2005-00549.
12. The EEOC issued a Notice of Right to Sue on March 22, 2006.
13. Plaintiff filed a Complaint alleging retaliation, that was assigned civil docket number 06-cv-367S(Sr), on June 2, 2006.
14. Case No. 06-cv-367S(Sr) was consolidated with the instant action on June 30, 2006.

FACTS

15. Plaintiff, ELIZABETH DANIALS KIRISITS, began working in Buffalo City Court as a CETA worker on June 16, 1975, and was hired by Defendant from a Civil Service list as

- a Court Clerk in 1981, and assigned to Buffalo City Court.
16. From 1981 until 1988, Plaintiff worked as a court clerk for a number of different Buffalo City Court judges.
 17. Plaintiff's performance met or exceeded all applicable standards for Court Clerks in Buffalo City Court from 1981 until 1988.
 18. In January 1988, Plaintiff was assigned to work as Court Clerk for Judge Anthony P. LoRusso.
 19. Plaintiff was reassigned to work as a Court Clerk for Judge LoRusso in January 1989.
 20. From January 1988 through early August, 1989, Judge LoRusso subjected Plaintiff to sexual harassment, in the form of unwelcome comments and touching of a sexual nature.
 21. Plaintiff complained informally to her supervisors in Buffalo City Court, filed a complaint with the Court's Gender Bias Committee, and filed a complaint with the New York State Division of Human Rights concerning Judge LoRusso's actions.
 22. In 1990, Plaintiff was interviewed by the New York State Commission on Judicial Conduct concerning Judge LoRusso.
 23. In March 1992, Judge LoRusso resigned from his position; in June 1992, he was formally removed.
 24. Plaintiff's claims against Judge LoRusso, the investigation of her claims and those of other female Court employees against LoRusso, and LoRusso's resignation were the subject of numerous articles printed in Buffalo area newspapers at the time.
 25. On information and belief, Plaintiff's actions in speaking out concerning the sexual harassment she endured at the hands of Judge LoRusso generated much hostility and resentment against her among certain Defendants' employees in the Buffalo area,

including supervisory employees.

26. On November 4, 1993, Plaintiff filed a claim in US District Court for the Western District of New York alleging *inter alia*, discrimination on the basis of sex and retaliatory treatment by Defendant OCA and Mr. LoRusso, which was assigned civil docket number 93-cv-0875S.
27. Civil action 93-cv-875S was settled on December 24, 1997.
28. In the late winter of 1997-1998 Plaintiff filed a new claim with Defendant's Gender Bias Committee concerning harassment she suffered from her co-workers.
29. Defendant's Gender Bias Committee ruled against Plaintiff in 1998.
30. In 1999, Plaintiff applied for promotion to Chief Deputy Clerk of the City Court.
31. At the time of her application, Plaintiff was fully qualified for the position of Chief Deputy Clerk, and had never been the subject of a complaint by any judge or member of the public.
32. On information and belief, Plaintiff was the choice the incoming Chief Clerk of City Court for the position of Chief Deputy Clerk.
33. Defendant, acting through then-Executive Assistant Harold J. Brand, Jr., refused to promote Plaintiff to the position.
34. The Chief Deputy position was awarded to Mary Ellen Florian, whom Plaintiff had trained.
35. At the time, Ms. Florian was seven years younger than Plaintiff.
36. On information and belief, the Defendant refused to promote Plaintiff solely because of illegal discrimination on the basis of Plaintiff's age, and in retaliation for Plaintiff's complaints of sexual harassment against former Judge LoRusso.

37. After she was appointed Chief Deputy, Ms. Florian harassed Plaintiff by humiliating Plaintiff in front of co-workers, by micro-managing Plaintiff's performance of very simple tasks, and by browbeating Plaintiff publicly for imaginary violations of Defendant's time and leave policy.
38. Ms. Florian also denied Plaintiff overtime opportunities in violation of the seniority clauses of the Union contract, and Ms. Thomas approved the denials.
39. Plaintiff was required to provide additional training to Ms. Florian after Ms. Florian was appointed to the position of Chief Deputy.
40. Between 1998 and 2002, Plaintiff filed numerous complaints of gender bias and harassment to the Defendant's gender bias committee, Harold Brand, individual judges who served on the gender bias committee, and Chief Judge Doyle.
41. All of Plaintiff's complaints were forwarded to Harold Brand pursuant to the direction of Alice Chapman, who was in charge of Defendant's state-wide gender bias committee.
42. Mr. Brand continuously refused to or correct the conditions of which Plaintiff complained, and instead covered up and ignored Plaintiff's complaints.
43. In March 2004, Plaintiff filed a union grievance concerning the discriminatory treatment she was receiving.
44. The grievance was denied by Mr. Brand.
45. After each complaint she made, the harassment Plaintiff suffered intensified.
46. Ms. Florian transferred to an OCA position in Niagara Falls in 2003.
47. Plaintiff again applied for the position of Chief Deputy, and was again not awarded the position in 2003.
48. Instead the position was awarded to Kim Delmont, who was less qualified for the

position than Plaintiff, and who did not apply until after the deadline.

49. On information and belief, Ms. Delmont was approximately 45 years old at the time of her appointment as Chief Deputy Clerk.
50. On information and belief, Ms. Delmont was a protégé of Judge Frank Sedita, who was a close friend of former Judge LoRusso, and the uncle of Joseph Sedita, who represented former Judge LoRusso before the Judicial Conduct Commission.
51. On information and belief, the Defendant refused to promote Plaintiff in retaliation for Plaintiff's complaints against Judge LoRusso, and her subsequent opposition to illegal discrimination in the City Court, and because of her age (54 at the time).
52. On information and belief, from the date of her appointment as Chief Deputy Clerk, Ms. Delmont engaged in a campaign to isolate, ostracize, undermine, discredit, and ultimately discharge Plaintiff from employment, all in retaliation for Plaintiff's complaints against former Judge LoRusso.
53. Prior to Ms. Delmont's appointment, Plaintiff had an excellent work record for her more than 28 years' employment in the City Court.
54. From January 2004 to March 2005, Ms. Delmont, and other employees of Defendant pursued the retaliatory campaign against Plaintiff by engaging in the following actions:
 - a. In January 2004, Ms. Delmont threatened to have Plaintiff arrested after Plaintiff removed her personal property from an office within the courthouse;
 - b. In March of 2004, Ms. Delmont falsely accused Plaintiff of threatening to murder another employee, and otherwise portrayed Plaintiff as violent and irrational to Plaintiff's co-workers and supervisors;
 - c. In November 2004 Ms. Delmont barred Plaintiff from access to the Court supply

room;

- d. In December 2004, Plaintiff was denied information about the renovation schedule for the courthouse, which resulted in her being isolated in an empty room without computer access;
 - e. Between January and February of 2004, Ms. Delmont and Chief Clerk Sharon Thomas attempted to coerce Plaintiff into providing damaging information about another court employee who was also Plaintiff's housemate on five separate occasions;
 - f. After Plaintiff refused to provide the information, Ms. Delmont treated her with hostility and disrespect in the presence of other court employees;
 - g. From March 2004 to February 2005, Plaintiff was required to work in the records room, in addition to her duties as a judge's clerk, although similarly situated male court clerks were not required to work in the records room;
 - h. In March 2004, Ms. Delmont yelled at Plaintiff, telling her that she was crazy and bothered everyone;
 - i. Ms. Delmont warned a number of employees to stay away from Plaintiff;
 - j. In January 2005, Ms. Delmont and Ms. Thomas met with Judge Keane, to whom Plaintiff was assigned as a court clerk in to engage the Judge's assistance in an effort to force Plaintiff to retire.
55. The tactics employed by Ms. Delmont were nearly identical to the efforts in which former Judge LoRusso engaged in 1990-1992 in an effort to discredit Plaintiff after she published her accusations against him..
56. In August 2004, Plaintiff filed a claim of hostile work environment with the New York

Office of the Inspector General against Chief Clerk Sharon Thomas, Chief Deputy Clerk Kim Delmont and some of the other court clerks.

57. In August 2004, Administrative Judge Townsend refused Plaintiff's request for an administrative leave from work during the investigation.
58. Also in August 2004, Plaintiff was told by Marie Villari, Assistant to Harold Brand, that Defendant was attempting to transfer Plaintiff out of City Court.
59. Ms. Delmont created false documentation of unfounded allegations of poor performance by Plaintiff over an eighteen month period, which she then presented at a performance evaluation in February 2005.
60. This negative evaluation was the first negative performance evaluation Plaintiff had received in her 30 years of employment, and it was prepared and served in violation of the collective bargaining agreement's provisions concerning notice, opportunity to correct, and timeliness.
61. On February 18, 2005, Plaintiff was escorted out of the courthouse by armed deputies, acting at Ms. Delmont's direction.
62. On February 22, 2005, Supervising Court Deputy H. McCarthy Gipson and Executive Assistant Andrew Isenberg served disciplinary papers on Plaintiff at her home, based on a fabricated incident of misconduct, and also served papers barring her from all courthouses, and required her to surrender her court identification badge.
63. Plaintiff was placed on administrative leave.
64. Plaintiff filed a grievance challenging the unfounded poor performance evaluation.
65. Defendant's agent Judith Rattner denied the appeal.
66. On November 7, 2005, Plaintiff was charged with misconduct, and served with a notice

of recommended termination.

67. Plaintiff was formally discharged from her position with OCA by Judge Jan Plumadore on December 2, 2005.
68. Plaintiff was replaced by a white male.
69. The Office of the Inspector General never formally ruled against Plaintiff, but after six separate requests for a ruling (four from Plaintiff's Union and two from Plaintiff herself) advised Plaintiff during a telephone call that her discharge from employment was the "decision;"
70. On information and belief, Plaintiff was discharged in retaliation for her efforts to oppose illegal discrimination from 1990 to 2005.
71. As a result of her discharge from employment, Plaintiff lost substantial benefits from her New York State pension to which she would have been entitled had she continued to work until age 70.
72. Plaintiff also was unable to pay her home mortgage, was unable to meet her bills and expenses, and was forced to cash in her life insurance policies, her individual retirement account, and other investments, to support herself and her son.
73. After Plaintiff was discharged from employment, Defendant continued to engage in retaliatory harassment, including, but not limited to the following:
 - a. interfering with Plaintiff's right to collect unemployment insurance;
 - b. interfering with Plaintiff's right to collect Social Security disability benefits;
 - c. causing an inordinate delay in judicial proceedings involving Plaintiff in Small Claims Court;
 - d. subjecting to repeated harassing anonymous telephone calls during three separate

sustained periods: for six weeks during the course of the Administrative Hearing on her disciplinary charges in the Autumn of 2005, for three weeks beginning January 23, 2006 while her challenge to the denial of unemployment benefits was pending, and for six weeks after Plaintiff served the original complaint in this action upon the named defendants;

- e. attempting to intimidate and harass Plaintiff by threatening her with unjustified arrest;
- f. attempting to intimidate and harass Plaintiff by acts of reckless and dangerous driving.

74. On information and belief, the actions referenced in p 73, were undertaken by Defendant in an effort to intimidate Plaintiff from pursuing her claims of unlawful discrimination.

75. On information and belief, Defendant has attempted to intimidate Plaintiff's witnesses in this matter, including, but not limited to Abdul Abdallah, Nancy Runfolo and Shirley Wagstaff, in an effort to discourage them from testifying on her behalf in this matter.

76. On information and belief, such harassment has taken the form of direct threats to Ms. Runfolo, repeated arrests of Mr. Abdallah, interference with Ms. Wagstaff's military leave, and spreading a false rumor among City Court employees that Plaintiff accosted Judge Jeannette Ogden and the Buffalo Airport and began screaming at the judge.

FIRST CAUSE OF ACTION: Discrimination on the Basis of Gender in Violation of Title VII

77. Plaintiff repeats and realleges the allegations set forth in ¶¶ 1 through 72 as though fully set forth herein.

78. Defendant engaged in an ongoing pattern of discriminatory practices against Plaintiff,

including, without limitation, unwarranted criticism of her performance; interference with her ability to perform her duties, failure to promote, unfounded discipline and discharge.

79. Defendant's discriminatory actions against Plaintiff affected the status, terms, conditions, and privileges of her employment.
80. The acts complained of were perpetrated against Plaintiff because of her gender.
81. As a result of Defendants' actions, Plaintiff experienced loss of employment, loss of income, fear, anxiety, physical injury, severe humiliation, shame, embarrassment, emotional pain and suffering, and loss of enjoyment of life.

SECOND CAUSE OF ACTION: Discrimination on the Basis of Gender and Age in Violation of the New York State Human Rights Law

82. Plaintiff repeats and realleges the allegations set forth in ¶¶ 1 through 77 as though fully set forth herein.
83. Defendant engaged in an ongoing pattern of discriminatory practices against Plaintiff, including, without limitation, unwarranted criticism of her performance; interference with her ability to perform her duties, demotion and discharge.
84. Defendant's discriminatory actions against Plaintiff affected the status, terms, conditions, and privileges of her employment.
85. The acts complained of were perpetrated against Plaintiff because of her gender and her age.
86. As a result of Defendants' actions, Plaintiff experienced loss of employment, loss of income, fear, anxiety, physical injury, severe humiliation, shame, embarrassment, emotional pain and suffering, and loss of enjoyment of life.

THIRD CAUSE OF ACTION: Retaliatory Harassment in Violation of Title VII

87. Plaintiff repeats and realleges the allegations set forth in ¶¶ 1 through 82 as though fully set forth herein.
88. Plaintiff opposed illegal discrimination on the basis of sex by filing complaints with various governmental agencies in 1989, 1990, 1993, 1997 and 2004.
89. Defendant, acting through supervisors Brand, Thomas, Delmont, Isenberg and Townsend, engaged in retaliation against Plaintiff including failure to promote, falsely accusing her of misconduct, giving her unwarranted negative performance evaluations, and ultimately discharging her from employment.
90. As a result of Defendants' actions, Plaintiff experienced fear, anxiety, physical injury, severe humiliation, shame, embarrassment, emotional pain and suffering, loss of income, and loss of enjoyment of life.
91. After Plaintiff's discharge, Defendant has continued to engage in harassment and intimidation toward her and her witnesses, in an effort to discourage her from pursuing her claims against Defendant and an effort to discourage potential witnesses from testifying on her behalf.

FOURTH CAUSE OF ACTION: Retaliatory Harassment in Violation of the New York Human Rights Law

92. Plaintiff repeats and realleges the allegations set forth in ¶¶ 1 through 86 as though fully set forth herein.
93. Plaintiff opposed illegal discrimination on the basis of sex by filing complaints with various governmental agencies in 1989, 1990, 1993, 1997 and 2004.
94. Defendant, acting through supervisors Brand, Thomas, Delmont, Isenberg and

Townsend, engaged in retaliation against Plaintiff including failure to promote, falsely accusing her of misconduct, giving her unwarranted negative performance evaluations, and ultimately discharging her from employment.

95. After Plaintiff's discharge, Defendant has continued to engage in harassment and intimidation toward her and her witnesses, in an effort to discourage her from pursuing her claims against Defendant and an effort to discourage potential witnesses from testifying on her behalf.
96. As a result of Defendants' actions, Plaintiff experienced fear, anxiety, physical injury, severe humiliation, shame, embarrassment, emotional pain and suffering, loss of income and loss of enjoyment of life.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order

- a. Awarding Plaintiff damages for her lost income, including back pay, front pay, and lost benefits (including health insurance) in an amount to be determined by the Court;
- b. Awarding Plaintiff damages for her lost New York State pension benefits in an amount to be determined by the Court;
- c. Awarding Plaintiff the value of her lost life insurance policies, individual retirement account and other investments;
- d. Awarding Plaintiff compensatory damages for pain and suffering in the amount of \$5,000,000.00;
- e. Awarding Plaintiff attorney's fees and costs of this action; and
- f. Awarding such other and further relief as may be just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY OF ALL ISSUES TRIABLE BY A JURY.

Dated: November 6, 2007
Buffalo, New York

/S/ Anna Marie Richmond

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