



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

03

ANDREW M. CUOMO
Attorney General

Phone: 212-416-6035

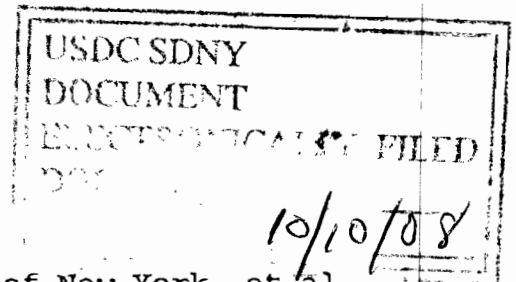
LESLIE G. LEACH
Executive Deputy Attorney General
Division of State Counsel

JUNE DUFFY
Assistant Attorney General in Charge
Litigation Bureau

October 3, 2008

By Fax

Honorable Shira A. Scheindlin
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007



Re: Anderson v. State of New York, et al.
07 Civ. 9599 (SAS) (AJP)

REQUEST FOR PRE-MOTION CONFERENCE

Dear Judge Scheindlin:

A. Preliminary Statement

This letter is submitted on behalf of defendants to request a pre-motion conference in this employment termination matter, looking toward a motion for summary judgment which defendants wish to file. Discovery has been completed.¹ A conference is scheduled before your Honor on October 17, 2008 (4:30 p.m.), and defendants respectfully request that the Court treat that appearance as a pre-motion conference unless your Honor determines that a motion schedule can now be set and the conference be deferred.

At the most recent conference before him, Magistrate Judge Peck stated that a motion for summary judgment could be in

¹ Magistrate Judge Peck has determined to permit a brief deposition by defendants of plaintiff's economic damages expert, during such period as would be encompassed by the contemplated motion for summary judgment.

October 3, 2008

-2-

prospect, subject to your Honor's determination under the pre-motion conference procedure. Magistrate Judge Peck directed an October 30, 2008 date for such a contemplated motion and counsel for plaintiff requested four weeks to respond. After that Court appearance, however, discovery was extended for a few days to accommodate a deposition newly noticed by plaintiff. Further, not all deposition transcripts have as yet been received. On that basis, we have discussed with plaintiff's counsel our applying to your Honor for the setting of a November 7 filing date - a date for which we now apply through this letter - and counsel has expressed consent.²

B. Plaintiff's Claims

Plaintiff sues State related public entities and three individuals pursuant to Title VII, Section 1983, and the New York anti-discrimination statute. She alleges that as a lawyer employed by the First Judicial Department handling attorney disciplinary matters, she was: made subject to a hostile work environment; and was fired - due to her mixed racial background as well as in retaliation for complaints she made about discrimination and corrupt activity by management in the disciplinary office. Claims pertaining to alleged race-based discrimination and denial of a termination hearing are also made under a collective bargaining agreement.

C. Projected Summary Judgment Motion

On the discrimination claims, defendants would expect to show that plaintiff has not demonstrated either a hostile work environment or firing due to discriminatory motive based on race. Two of the individual defendants were involved in plaintiff's hiring and would be entitled to a good actor inference. Evidence of discriminatory intent on their part is wholly void. Plaintiff's effort to elicit evidence of racial animus on the part of the third individual defendant has fallen far short, as based on surmise and conjecture. The motion for summary judgment would show a fully valid basis for plaintiff's firing as determined by Court management. After ample opportunity for correcting her conduct, plaintiff did not adhere to directives and counseling from the Court requiring that she repair her relationship with her supervisor.

² I have a short trial scheduled to commence on October 14, 2008 (McDow v. Rosado, 05 Civ. 9787 (RJH)), impacting on the progress of work at present.

October 3, 2008

-3-

On the retaliation claims, much of the analysis will focus on whether the speech plaintiff claims she engaged in addressed a matter of public concern, together with the question whether the alleged speech was tantamount to that of a private citizen rather than comprising comment wrapped up in plaintiff's personal grievances as an employee. This question presents an issue of law for the Court to determine and a motion for summary judgment presents an excellent opportunity for doing so. See Ruotolo v. City of New York, 514 F.3d 184, 189 (2d Cir. 2008).

On the contract claims, defendants would expect to show that the collective bargaining agreement does not engender discrimination claims beyond what already exist in the Federal and State statutory authority. Nor did plaintiff's job category have attached to it the right to a formal dismissal hearing.

Given these various factors and others to be presented, defendants respectfully request that the Court set a schedule for a summary judgment motion on their part. We are available to follow up in such manner as the Court may direct.

Respectfully submitted,



LEE ALAN ADLERSTEIN
Assistant Attorney General

cc. Hon. Andrew J. Peck (by fax)
Jonathan A. Beranbaum, Esq. (by fax)

A pre-motion conference has been scheduled for October 30, 2008, at 3:00 pm, at which time a briefing schedule for defendants' motion for summary judgment will be entered. Judge Peck's previous Order directing defendants to file their motion for summary judgment by Oct. 30, 2008 is hereby superseded. Plaintiff is directed to respond to this letter by Oct. 24, 2008.

So Ordered:

Date: October 9, 2008

