

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

LARRY PROBST,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
THE CATHOLIC DIOCESE OF)	
KANSAS CITY – ST. JOSEPH)	
)	
Defendant.)	

AMENDED COMPLAINT WITH JURY DEMAND

For Plaintiff Larry Probst’s causes of action against Defendants The Catholic Diocese of Kansas City – St. Joseph, Plaintiff states and alleges:

JURISDICTION AND VENUE

1. This cause of action is for legal and equitable relief under the Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et seq., as amended.
2. Plaintiff is an individual and resident of Kansas City, Missouri.
3. Defendant The Catholic Diocese of Kansas City- St. Joseph (“Diocese”), is a not-for profit institution in the State of Missouri and existing under the laws of the State of Missouri, with its principal place of business located at 20 West 9th Street, Kansas City, Missouri, and it has been doing business in this Judicial District at all times alleged herein.
4. Defendant Diocese is an employer within the meaning of the Title VII.
5. Jurisdiction over the subject matter exists pursuant to 42 U.S.C. §2000(e) et seq., the Civil Rights Act of 1964, as amended (“Title VII”) and 28 U.S.C. §1331.
6. The unlawful employment practices alleged in this Complaint were committed within this Judicial District, specifically, within Jackson County, Missouri.

7. Venue is proper pursuant to 28 U.S.C. §1391(b) as Defendant is subject to the personal jurisdiction of this Court and a substantial part of the events and omissions giving rise to these claims occurred within the Western District of Missouri.

8. Plaintiff filed a timely charge of discrimination based on sex and retaliation with the Equal Employment Opportunity Commission ("EEOC").

9. Plaintiff has been issued a Notice of Right to Sue from the EEOC on or about December 19, 2011.

10. All conditions precedent have been met prior to the filing of this Complaint.

FACTS COMMON TO ALL COUNTS

11. Defendant Diocese is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(e) *et seq.*

12. Plaintiff Larry Probst is an adult male, and is a member of a protected class based on his gender.

13. Plaintiff Larry Probst is protected from retaliation for reporting and opposing unlawful employment practices.

14. Beginning in approximately 1999 or 2000, on an intermittent basis, and then in 2007 on a more regular, permanent, part-time basis, Defendant Diocese employed Larry Probst to work as an assistant to the Archivist at the Chancery office for the Diocese.

15. At all times Plaintiff was qualified for his employment position as an Assistant to the Archivist and he consistently met or exceeded his performance expectations for his job.

16. Plaintiff's immediate supervisor was the Reverend Charles Michael Coleman ("Coleman"). Coleman a priest in the Chancery office of the Diocese and is the Archivist for the Diocese.

17. Father Robert Cameron is a priest in the Chancery office of the Diocese with whom Plaintiff worked.

18. In 2010, Fr. Coleman befriended Michael St. George ("St. George"), who later became employed by the diocese for data entry services.

19. The Diocese, through Father Coleman hired St. George, with the approval of Information Technology Director Julie Creech, to enter data from the sacramental records into the Diocesan "Parish-Soft" computer system.

20. Both Fathers Cameron and Coleman fawned over Plaintiff's co-worker, St. George, in the presence of plaintiff.

21. Plaintiff was subjected to a sexually hostile work environment when St. George made sexual advances toward him.

22. Fr. Robert Cameron and others would talk to Fr. Coleman about St. George in sexually suggestive ways, in the presence of Plaintiff.

23. Beginning in approximately the spring of 2010 and continuing through June 30, 2011, Plaintiff was subjected to unwanted and unwelcome sexual harassment from his supervisory priests and from St. George.

24. The unwanted and unwelcome sexual harassment included, but is not limited to, the following:

- a. Sexually offensive comments from St. George such as “I don’t date someone with a hatchet wound,” referring to a girlfriend of a co-worker.
- b. Sexually offensive comments from St, George about removing pornography from his computer desktop before he could allow a Parish Soft technician access to his computer.
- c. Sexually offensive advances and gestures from St. George such as arching up and grabbing his crotch while riding in a vehicle with Plaintiff at the request of Father Coleman.
- d. Sexually offensive comments from Father Coleman, such as about games men play where the loser has to “service” the other men under the table.
- e. Sexually offensive comments from Father Cameron such as that St. George could “cum in my hand.”

25. Plaintiff’s co-worker, St. George, would use the Diocesan computer in the Archives for personal web-email that was inappropriate and offensive to Plaintiff. Sexually explicit web email messages were left on the Diocesan Archives computer by St. George.

26. The web-email was open and obvious to anyone who entered the Archives, and consisted of offensive messages such as “A Big Fat Cock” and how a guy liked having sex in the bathroom.

27. Plaintiff also knew that St. George accessed Facebook and Youtube videos on the Diocesan computer.

28. Plaintiff was subjected to these pervasive sexually offensive graphic pornographic texts left open on a Diocesan computer.

29. The sexual harassment to which Plaintiff was subjected occurred on a continuing and on-going basis over the course of the last year of Plaintiff's employment.

30. In approximately the summer/fall of 2010, Plaintiff reported the repeated and pervasive, sexually offensive email by St. George to Fr. Coleman. Coleman seemed only to be concerned that the email be deleted so that St. George would not be fired.

31. In January or February 2011, Plaintiff complained to the Diocesan communications director, Rebecca Summers, about the sexually offensive advances, comments and materials.

32. In February 2011, Plaintiff complained to Monsignor Blacet, a Diocesan official, about Fr. Coleman, that Fr. Coleman had hired a worker who was acting inappropriately with diocesan resources, about the sexually explicit emails, and that Coleman was facilitating the co-worker's sexually offensive conduct toward Plaintiff.

33. In March 2011, Plaintiff complained to Phil Luebbert, a Diocesan priest, about his co-worker and the sexually offensive comments and materials.

34. In March 2011, the Diocese's Chief Financial Officer, Dave Malanowski, told Plaintiff, when Plaintiff was commenting about St. George's role with respect to the move of the Chancery offices, that he did "not want to get into relational issues" between Coleman and St. George.

35. On March 18, 2011, Plaintiff met with the Chancellor of the Diocese, Bradley Offutt, and he reported being consistently and repeatedly subjected to a sexually hostile work environment by St. George, that St. George made sexual advances toward him, that he was using the computer in the Archives to receive personal and sexually offensive emails.

36. Plaintiff told Offutt that he reported the offending behavior to Fr. Coleman and that the behavior was overlooked, tolerated or sanctioned by Fr. Coleman in favor of St. George.

37. On several occasions during this meeting, Offutt attempted to discourage Plaintiff from going forward with an internal complaint and told Plaintiff that he could lose his job if he chose to follow through with his complaint.

38. Plaintiff persevered in making his complaint for a hostile work environment and provided Offutt with a copy of a computer “screen capture” of his co-worker, St. George’s email that was left open on the Archive computer.

39. Chancellor Offutt placed the computer “screen capture” in an envelope which he then sealed and forwarded to Rhonda Stucinski, Diocesan Human Resources Director, and Julie Creech, Diocesan Management Information Services Director.

40. After Plaintiff made the reports and complaints of sexual harassment and discrimination, he was ostracized at work by co-workers and priests in the Chancery office.

41. After plaintiff made the reports and complaints about St. George viewing sexually offensive emails on the computer in the Archives, the Diocese created a new log-in exclusively for St. George on the computer that allowed St. George protected access to the computer.

42. In May 2011, Plaintiff was informed that his position was to be eliminated on June 30, 2011 due to an alleged lack of funding.

43. On June 30, 2011, Defendant Diocese terminated the employment of Larry Probst.

44. The Diocese hired a female employee to work part-time in the Archives beginning on July 1, 2011.

45. Defendant discharged Plaintiff on the basis of his sex, male, for the purported reason that there were no funds for his position. Plaintiff believes that the true motivating reasons behind his termination were based on his sex or retaliation and that Defendant's stated reason is a pretext.

46. Plaintiff availed himself of corrective opportunities in that he promptly reported the sexual and harassment to his superiors in the Diocese.

47. Defendant failed to reasonably investigate Plaintiff's complaint regarding the sexual harassment and hostile work environment.

48. Defendant's corrective or preventive opportunities regarding Plaintiff's complaint of the sexual harassment were unreasonable or inadequate as Defendant failed to correct the harassment.

49. Defendant's policy against discrimination and harassment and its procedures or mechanisms for handling discrimination claims are inadequate or ineffective.

50. As a result of complaining about sexual discrimination, advances and harassment, Plaintiff was ostracized, ignored or excluded from work events, and isolated from co-workers and diocesan employees.

51. Plaintiff was retaliated against for complaining about the sexual discrimination, advances and harassment.

52. Plaintiff's employment was terminated as a result of his complaint about the hostile and offensive work environment and in retaliation for his complaint.

53. Plaintiff was replaced by a less qualified, female employee after he was terminated.

54. Plaintiff is now suffering and will continue to suffer irreparable harm and injury from Defendant's policies, practices, customs and usages.

COUNT I - SEXUAL HARASSMENT

55. Plaintiff incorporates the above and foregoing paragraphs as though fully set forth herein.

56. Commencing in 2010 and continuing through June 2011, Plaintiff was subjected to actionable sexual harassment as set forth in the preceding paragraphs.

57. The harassment was based on sex.

58. The sexual advances and harassment were offensive to Plaintiff and to a reasonable person.

59. The sexual advances and harassment created a hostile and offensive environment for Plaintiff as an employee of the Diocese.

60. Plaintiff suffered tangible employment action as a result of the unlawful sexual harassment, specifically the loss of certain work privileges, promotions and responsibilities, emotional distress, mental anguish and ultimately the loss of his employment.

61. Defendant Diocese failed to exercise reasonable care to prevent sexual harassment.

62. Defendant Diocese failed to exercise reasonable care to correct sexual harassment reported to it.

63. Defendant failed to adequately investigate Plaintiff's complaints.

64. Defendant's preventive or corrective opportunities, to the extent they existed, failed to protect Plaintiff from a hostile and offensive workplace.

65. Defendant's preventive or corrective opportunities, to the extent they existed, failed to protect Plaintiff from retaliation.

66. As a direct and proximate result of the sexual harassment and retaliation to which Plaintiff was subjected and Defendant's failure to prevent the sexual harassment and to take appropriate corrective action, Plaintiff suffered past and future economic loss, including wages and benefits, severe mental anguish requiring hospitalization, pain and suffering, inconvenience, humiliation and loss of enjoyment of life.

67. Defendant's acts were willful, wanton and malicious and in reckless disregard for Plaintiff's rights thereby entitling Plaintiff to punitive damages against Defendant.

WHEREFORE, Plaintiff prays for Judgment on Count I against Defendant Diocese for back pay, front pay in lieu of reinstatement, other past and future economic loss, including benefits, interest, compensatory and punitive damages, and reasonable attorney fees against Defendant, and for such other and further relief as the Court deems just, fair and proper.

COUNT II- SEX DISCRIMINATION

68. Plaintiff incorporates the above and foregoing paragraphs as though fully set forth herein.

69. Plaintiff was qualified to perform the duties of the Archivist's assistant.

70. Despite his qualifications and experience, Plaintiff was denied equal employment opportunities due to his sex when the Diocese terminated his employment.

71. Plaintiff was denied equal employment opportunities due to his sex when the Diocese replaced Plaintiff with a female employee with lesser qualifications in his position.

72. Defendant's actions constitute an intentional and purposeful course, pattern and practice by Defendant of discrimination on the basis of sex in violation of Title VII.

73. As a result of Defendant's above-stated actions, Plaintiff was deprived of income in the form of wages and benefits, because of his sex in amounts to be proven at trial.

74. As a proximate result of Defendant's discriminatory and wrongful acts, Plaintiff has suffered, in addition to back pay and front pay, other past and future economic loss, mental and emotional pain, humiliation, distress and anguish.

75. Defendant acted and continues to act with reckless disregard to Plaintiff's rights such that Plaintiff is entitled to punitive damages to punish Defendant and to serve as a warning to others not to engage in similar discriminatory conduct.

WHEREFORE, Plaintiff prays for Judgment on Count II against Defendant Diocese for back pay, front pay in lieu of reinstatement, other past and future economic loss, including benefits, interest, compensatory and punitive damages, and reasonable attorney fees against Defendant, and for such other and further relief as the Court deems just, fair and proper.

COUNT III -- RETALIATION

76. Plaintiff incorporates the above and foregoing paragraphs as though fully set forth herein.

77. Plaintiff reported the sexual discrimination and harassment.

78. After reporting the discrimination and harassment, Defendant failed to protect Plaintiff from retaliation that included, but was not limited to, being ostracized and harassed by his co-workers and supervisory priests, excluded from communications about meetings,

deadlines, supervisory absences, and critical timelines and events related to the move of the Diocesan offices.

79. After Plaintiff complained about the discrimination and harassment, Defendant retaliated and terminated Plaintiff's employment.

80. As a direct and proximate result of the unlawful retaliation to which Plaintiff was subjected, Plaintiff suffered past and future economic loss, including pay and benefits, mental anguish, pain and suffering, inconvenience, humiliation and loss of enjoyment of life.

81. Defendant's acts were willful, wanton and malicious and in reckless disregard for Plaintiff's rights thereby entitling Plaintiff to punitive damages against Defendant.

WHEREFORE, Plaintiff prays for Judgment on Count III against Defendant Diocese for back pay, front pay in lieu of reinstatement, other past and future economic loss, including benefits, interest, compensatory and punitive damages, and reasonable attorney fees against Defendant, and for such other and further relief as the Court deems just, fair and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable by law.

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