

SMITH MULLIN, P.C.
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Attorneys for Plaintiff

VALISHA DESIR,

Plaintiff,

v.

JOHN F. RUSSO, JR.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO.: OCN-L-

Civil Action

COMPLAINT AND JURY DEMAND

VALISHA DESIR, residing at 10 Marine Place, Town of Highlands, County of Monmouth, State of New Jersey, by way of Complaint, says:

NATURE OF THIS ACTION

1. This is an action brought by Plaintiff to remedy illegal discrimination and retaliation in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD").

PARTIES

2. During all times relevant to this Complaint, Plaintiff Valisha Desir (hereinafter, "Plaintiff" or "Ms. Desir") was an employee of the State of New Jersey and the Judiciary of the State of New Jersey (hereinafter, "State" or "the Judiciary") as the term "employee" is defined by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. ("LAD").

3. Ms. Desir is an African-American female of Haitian descent.

4. The State of New Jersey (hereinafter "the State," "State of New Jersey") authorizes and controls the Judiciary of the State of New Jersey, and their Judges and employees

pursuant to N.J. Const. 1947, Art. VII, §§II, par. 2; N.J.S.A. 40A:9-94; and other New Jersey Statutes, Administrative Codes and Rules.

5. The Judiciary of the State of New Jersey (hereinafter “the Judiciary” or “Defendant”) is a governmental unit of the State of New Jersey.

6. Defendant John F. Russo, Jr. was an employee of the State and the Judiciary. At all times relevant hereto, Defendant Russo was Judge of the Superior Court in the Ocean County Vicinage of the Judiciary and was the Plaintiff’s supervisor.

7. At all times relevant hereto, the Defendant Russo was the Plaintiff’s employer as that term is defined by the LAD.

VENUE

8. Pursuant to Rule 4:3-2(a), venue is proper in Ocean County because the cause of action arose in Ocean County.

COUNT ONE

(Discrimination In Violation of the LAD)

9. On December 23, 2015, Defendant Russo was sworn in as a Superior Court Judge for a seven (7) year term. Defendant Russo was assigned to the Family Division in the Ocean Vicinage.

10. Thereafter, Defendant Russo engaged in a pattern of conduct which exhibited his inability to manage stress and anger, and he sexually harassed the Plaintiff and others. As described herein, Defendant Russo’s misconduct pre-dated the Plaintiff’s employment - yet the State and the Judiciary failed to take any prompt and effective remedial measures to end Defendant Russo’s misconduct and to protect the Plaintiff from sexual harassment.

11. During his first year on the Bench, Defendant Russo had four Law Clerks. Two of the four Law Clerks left or were fired at the request of Defendant Russo. These Law Clerks made similar complaints about Defendant Russo: he made impossible demands upon his Law Clerks; he expected them to work unreasonable hours; he would become angry and demeaning if he was dissatisfied with their work; he was personally offensive to his Law Clerks.

12. Based on Defendant Russo's misconduct, after his third Law Clerk quit in October 2016, Judge Marlene L. Ford, the Assignment Judge of the Ocean County Vicinage, admonished Defendant Russo and noted that his conduct was creating a "potential hostile work environment" and "exposing him and the Judiciary to potential liability."

13. One glaring example of Defendant Russo's misconduct was his very abusive cross examination of a woman who claimed that she was the victim of a sexual assault in a domestic violence matter. Defendant Russo verbally abused this witness, asking her, among other things, if she took any steps to avoid being assaulted, including fighting back, running away, calling the police or "keeping her legs closed." This statement is patently offensive and discriminatory, and would be perceived as patently offensive and discriminatory to a reasonable woman.

14. In January, 2017, Plaintiff was hired as Defendant Russo's Law Clerk. Thereafter, as described herein, Plaintiff was subjected to sexual harassment and a hostile work environment by Defendant Russo.

15. Just as he had done to his two prior Law Clerks, Defendant Russo harassed and abused Plaintiff by, among other things: making impossible demands on her; expecting her to work unreasonably long hours; being verbally abusive to her; and being hypercritical of her work

to the point of belittling her. Plaintiff later described her work environment as being a “nightmare.”

16. After two weeks of working with Defendant Russo, he routinely yelled at her. On one occasion, Defendant Russo admonished Plaintiff in an elevated voice, falsely claiming that he was “never wrong” and that she [Plaintiff] needed to do her job better. Defendant Russo often yelled at the Plaintiff and her co-workers, and, during her tenure with him, Defendant Russo had stark and unpredictable mood swings.

17. Defendant Russo made it impossible for the Plaintiff to complete her work, often demanding that she watch him while he was on the bench for no legitimate reason. As a result, Plaintiff was unable to complete her work which often required her to work into the evening.

18. Defendant Russo would also abuse and demean the Plaintiff by, among other things: snapping his fingers at her and demeaning her career aspirations. On one occasion, Plaintiff told Defendant Russo that her “dream job” was to be the Attorney General. Defendant Russo ridiculed this goal, stating that Plaintiff would never be the Attorney General.

19. Defendant Russo also made racially discriminatory comments to Plaintiff such as telling Plaintiff that she had behavioral issues that she needed to correct because he [Defendant Russo] did not want to see her become an “angry woman.” Plaintiff reasonably perceived this comment to mean an “angry black woman,” a classic racial stereotype which Plaintiff found to be discriminatory and offensive.

20. Defendant Russo also sexually harassed Plaintiff by, among other things: regularly invading her personal space in a way which made her uncomfortable, i.e., placing himself in unusually close physical proximity to her. Plaintiff told Defendant Russo to stop this

offensive behavior because it made her uncomfortable. Despite Plaintiff's protestation, Defendant Russo did not stop this behavior. Defendant Russo continued to harass the Plaintiff and, in order to stop Defendant Russo from doing so, Plaintiff positioned chairs around her desk in order to create a physical barrier between she and Defendant Russo.

21. On another occasion, Defendant Russo summoned Plaintiff to his office. Plaintiff entered, and stood at the corner of Defendant Russo's desk, approximately five feet from where Defendant Russo was sitting. At that time, Plaintiff observed that Defendant Russo was sitting with his legs spread wide open. Defendant Russo asked Plaintiff several times to approach him even though Plaintiff could easily see and hear what Defendant Russo was saying to her. Plaintiff repeatedly refused to move closer to Defendant Russo. As a result, Defendant Russo became irate, and stated to Plaintiff "well then get out of here, just leave." Defendant Russo did not give Plaintiff any assignment or direction before he demanded that she leave his office.

22. Approximately two weeks after she began working for Defendant Russo, Plaintiff sent an email to Judge Ford, in which she [Plaintiff] expressed her satisfaction with her assignment, and complimented Defendant Russo as a mentor. Later, when asked about the email, Plaintiff told Judge Ford that she only sent that email because Defendant Russo ordered her to send it.

23. Plaintiff was fearful of reporting Defendant Russo's conduct because she feared retaliation. Defendant Russo repeatedly told Plaintiff about his political connections, his ability to "ruin" careers and his expertise in retaliation. Defendant Russo, a former Mayor of Toms River, told Plaintiff that he was very involved in politics and that he was responsible for forcing the resignation of former Governor McGreevey.

24. Defendant Russo also told Plaintiff that he was successful in ruining the life and career of his ex-wife, Karen Russo, who is the mother of Defendant Russo's son. In reference to his contested guardianship proceeding, Defendant Russo told Plaintiff that he had been successful in damaging his ex-wife's teaching career.

25. Defendant Russo's statements had the effect of exerting control over the Plaintiff, who believed that Defendant Russo was capable of ruining people's careers and reputation, especially hers.

26. Defendant Russo also made discriminatory statements about Plaintiff and her family. For example, Defendant Russo, who knew that Plaintiff was of Haitian descent, asked Plaintiff offensive questions, such as: did all of the children in her family have the same father and were Plaintiff's parents still married. Defendant Russo also asked Plaintiff how she felt about being "colonized" when he learned that she was from Haiti. Plaintiff was embarrassed and humiliated by Defendant Russo's discriminatory comments.

27. By April, 2017, Defendant Russo's conduct had taken its toll on Plaintiff, and despite her fear of retaliation, she confided in a co-worker about Defendant Russo's misconduct. On April 10, 2017, Plaintiff met with Judge Ford and Judge Einbinder at which time she disclosed to both Judges the full extent of Defendant Russo's harassment and abuse.

28. On April 11, 2017, Plaintiff provided Judge Ford with a written memo, detailing other incidents of harassment and abuse by Defendant Russo. Plaintiff described another incident with Defendant Russo which occurred in the week of February 13, 2017. At that time, Defendant Russo told Plaintiff that his current wife was upset that Plaintiff was his Law Clerk. Defendant Russo told Plaintiff that he, his wife, and his wife's friend, had reviewed Plaintiff's

Facebook pages and Defendant Russo's wife told him that Plaintiff was too attractive to work with Defendant Russo. Defendant Russo then told Plaintiff that he would give his wife a pass to "cheat" on him, because she had been such a good mother to his son. Plaintiff believed that these comments were Defendant Russo's attempt to engage in *quid pro quo* sexual harassment.

29. That same day, April 11, 2017, at approximately 12:00 noon, Defendant Russo summoned Plaintiff into his Court Room. Defendant Russo was seated on his bench, and Plaintiff stood at the bottom step to the bench. As he had done on many occasions before, Defendant Russo demanded that Plaintiff come closer to him but Plaintiff refused to do so. Defendant Russo was holding a probation file, which was not assigned to Plaintiff and for which she had no responsibility. Defendant Russo asked Plaintiff if she had "screened" the file for him. Plaintiff responded, "no," at which time Defendant Russo became irate, and threw the file at Plaintiff in an aggressive manner, with the file landing on her hands. Plaintiff was extremely upset by this incident, and both Defendant Russo's Court Clerk and Secretary attempted to console Plaintiff.

30. On April 12, 2017, Plaintiff told Judge Ford that she could not continue to work with Defendant Russo. Thereafter, Plaintiff was transferred to Judge Ford's chambers and she completed her Judicial Clerkship on August 25, 2017.

31. As a result of Defendant's actions, Plaintiff has suffered and continues to suffer humiliation, pain, distress, loss of enjoyment of life, personal physical injury, damage to her career path, reputational damage, and loss of earning and other employment benefits.

WHEREFORE, cause having been shown, Plaintiff demands judgment against Defendant Russo and seeks the following relief:

- (a) Economic damages for career path losses;
- (b) Compensatory damages, including damages for pain and suffering;
- (c) Compensation for reputational damage;
- (d) Attorneys' fees and costs of suit;
- (e) Punitive damages; and
- (f) Such other relief as the Court may deem equitable and just.

SMITH MULLIN, P.C.

Attorneys for Plaintiff

Valisha Desir

BY: 

NEIL MULLIN (Id. 011891980)

Dated: March 7, 2019

JURY DEMAND

Plaintiff demands trial by jury with respect to all issues that are so triable.

SMITH MULLIN, P.C.

Attorneys for Plaintiff

BY: 

NEIL MULLIN (Id. 011891980)

Dated: March 7, 2019

TRIAL COUNSEL DESIGNATION

Neil Mullin, Esq. is hereby designated as trial counsel in this matter.

SMITH MULLIN, P.C.

Attorneys for Plaintiff

BY: 

NEIL MULLIN (Id. 011891980)

Dated: March 7, 2019

CERTIFICATION

Pursuant to New Jersey Court Rule 4:5-1, counsel for Plaintiff hereby certifies that to her knowledge, no matter related to this one is currently pending in either arbitration or litigation.

SMITH MULLIN, P.C.

Attorneys for Plaintiff

BY: 

NEIL MULLIN (Id. 011891980)

Dated: March 7, 2019