

CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

MARLA GROTHOFF,
Plaintiff,

vs.

Case No. ~~04CV 169234~~

JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri,
in his individual and official capacity,
Defendant.

**Petition for Damages and Other Relief for Violation of the
Americans with Disabilities Act and the Rehabilitation Act of 1973**

Plaintiff, Marla Grothoff, for her Petition for Damages and Other Relief for Violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973, states the following:

Allegations Common to All Counts

1. Plaintiff is a resident of Boone County, Missouri, and a United States citizen.
2. Defendant is the Attorney General of the State of Missouri. Defendant is sued both personally as an individual and in his official capacity as the Missouri Attorney General.
3. Plaintiff's first cause of action (Count I) is a claim seeking damages and other relief against Defendant for discrimination in violation of the Americans with Disabilities Act of 1990 [hereafter "ADA"], 42 U.S.C. §§ 12101 – 12217.
4. Plaintiff's second cause of action (Count II) is a claim seeking damages and other relief against Defendant for discrimination in violation of the Rehabilitation Act of 1973, §504 [hereafter "§ 504" or "Section 504"], 29 U.S.C. § 794.
5. At all times relevant herein, Defendant, in his official capacity, has been an employer as defined by the ADA. In his individual capacity, Defendant has acted as an agent for the Office of the Attorney General of Missouri, making ultimate decisions regarding Plaintiff's employment status as more fully described herein.
6. Defendant, as the Attorney General of the State of Missouri, in his official capacity, is the state-wide elected official of that office, which at all times relevant herein received federal funds for a variety of programs. These include, but are not limited to, federal funding of Missouri's participation in the "Title IV-D" program, 42 U.S.C. §§ 651-669b, including money paid directly to Defendant for funding of attorneys to enforce child support obligations in Missouri – the same job that Plaintiff performed prior to being effectively terminated by Defendant as more fully set forth herein. Defendant, in his official capacity, also

- receives federal funding to administer programs to enforce the rights of handicapped individuals. As such, Defendant is subject to suit under Section 504.
7. As both federal and state courts have concurrent jurisdiction over actions filed pursuant to the ADA and Section 504, this court has subject matter jurisdiction.
 8. Venue is proper in that Plaintiff claims the Defendant engaged in a violation of the ADA in Boone County, Missouri; and that Plaintiff would have worked in Boone County, Missouri, but for the Defendant's violation of the ADA. 42 U.S.C. § 2000e-5 f(3).
 9. At all times relevant herein, Plaintiff has been a qualified individual with a disability and a disabled person as defined by the ADA and Section 504, who has a physical impairment that substantially limits a major life activity, who has a record of such impairment and is regarded or treated by other persons, including the Defendant, as having such an impairment.
 10. Plaintiff is a quadriplegic, with limited use of her hands.
 11. Plaintiff is an attorney, licensed to practice in Missouri.
 12. In 1988, after graduating from law school and being admitted to practice in Missouri, Plaintiff began employment with the State of Missouri, Department of Social Services. She worked as an attorney.
 13. From 1998 until May 2003, Plaintiff was legal counsel for the Department of Social Services, Division of Child Support Enforcement [hereafter "DCSE"].
 14. While assigned to the DCSE, Plaintiff performed most of her duties from her office located in Columbia, Boone County, Missouri.
 15. In the spring of 2003, the Department of Social Services entered into a cooperative agreement with the Office of the Attorney General to transfer all of the DCSE staff attorney positions (including Plaintiff's) to the Attorney General's office.
 16. In the transfer of these positions, Defendant required all DCSE staff attorneys to apply for positions as assistant attorneys general. The vast majority of the DCSE staff attorneys who applied were hired by Defendant, and for these people, the transition from performing IV-D duties as DCSE counsel to performing IV-D duties as assistant attorneys general was virtually seamless.
 17. In a letter dated May 30, 2003, Defendant determined "not to offer [Plaintiff] a position" in the Attorney General's office, effectively terminating her employment with the State of Missouri.
 18. For more than 15 years, the Missouri Department of Social Services had made reasonable accommodation for Plaintiff's employment, as she practiced law for the benefit of the State of Missouri, while living life as a quadriplegic.
 19. In effectively discharging Plaintiff and refusing to further employ her, Defendant failed to make reasonable employment accommodations for Plaintiff's disability, and Defendant discriminated against Plaintiff in violation of the ADA and Section 504, specifically because of Plaintiff's disability.

20. Plaintiff filed a timely charge of discrimination against Defendant with the United States Equal Employment Opportunity Commission (EEOC), and was issued a notice of right to file suit, dated July 13, 2004, thereby exhausting her administrative remedies. A copy of the "right to sue" letter from the EEOC is attached hereto as "Exhibit A."

Count I: ADA

For Count I, Plaintiff incorporates the above *Allegations Common to All Counts*, and additionally states:

21. Defendant's acts of discrimination in violation of the ADA have caused Plaintiff to suffer substantial compensatory damages, including lost income, future lost income, emotional pain, emotional suffering, inconvenience, mental anguish, loss of enjoyment of life and loss of quality of life in amounts in excess of \$75,000 exclusive of interest and costs.
22. Plaintiff requests an order from the court reinstating her position as an attorney charged with handling IV-D matters for the State of Missouri, as an assistant attorney general, with back pay and restoration of all employment benefits that Plaintiff would have received had Defendant not violated the ADA in effectively terminating her because of her disability.
23. Defendant intentionally discriminated against Plaintiff, has acted with malice or with reckless indifference to Plaintiff's rights under the ADA.
24. Plaintiff is entitled to an award of actual damages and compensatory damages.
25. Plaintiff is entitled to an award of punitive damages against Defendant because Defendant intentionally discriminated against Plaintiff in violation of the ADA.
26. Plaintiff is entitled to an award of her reasonable attorney fees and costs incurred.

WHEREFORE, on Count I, Plaintiff prays the court enter judgment against Defendant in such amount as will reasonably compensate her for her compensatory and actual damages, for reinstatement as more fully set forth above, for judgment against Defendant representing punitive damages, for an award of her reasonable attorney fees, for her costs incurred, and for such other relief as deemed just and proper under the circumstances.

Count II: Section 504

For Count II, Plaintiff incorporates the above *Allegations Common to All Counts*, and additionally states:

27. Defendant's acts of discrimination in violation of Section 504 have caused Plaintiff to suffer substantial compensatory damages, including lost income, future lost income, emotional pain, emotional suffering, inconvenience, mental anguish, loss of enjoyment of life and loss of quality of life in amounts in excess of \$75,000 exclusive of interest and costs.
28. Plaintiff requests an order from the court reinstating her position as an attorney charged with handling IV-D matters for the State of Missouri, as an assistant attorney general, with back pay and restoration of all employment benefits that

Plaintiff would have received had Defendant not violated Section 504 in effectively terminating her because of her disability.

29. Defendant intentionally discriminated against Plaintiff, has acted with malice or with reckless indifference to Plaintiff's rights under Section 504.
30. Plaintiff is entitled to an award of actual damages and compensatory damages.
31. Plaintiff is entitled to an award of punitive damages against Defendant because Defendant intentionally discriminated against Plaintiff in violation of the ADA.
32. Plaintiff is entitled to an award of her reasonable attorney fees and costs incurred.

WHEREFORE, on Count II, Plaintiff prays the court enter judgment against Defendant in such amount as will reasonably compensate her for her compensatory and actual damages, for reinstatement as more fully set forth above, for judgment against Defendant representing punitive damages, for an award of her reasonable attorney fees, for her costs incurred, and for such other relief as deemed just and proper under the circumstances.

Demand for Jury Trial

Plaintiff demands a jury trial for all issues and relief requested herein.

BY: 

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ATTORNEY FOR PLAINTIFF

DISMISSAL AND NOTICE OF RIGHTS

To: Ms. Marla Grothoff
4307 Fall River Drive
Columbia, MO 65203

From: St. Louis District Office
Robert A. Young Bldg
1222 Spruce Street
Saint Louis, MO 63103

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No. 28E-2004-00505
EEOC Representative Kenneth E. Waters, Investigator
Telephone No. (314) 539-7900

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
While reasonable efforts were made to locate you, we were not able to do so.
You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission
Kenneth E. Waters for

Lynn Y. Bruner,
District Director

JUL 13 2004

(Date Mailed)

Enclosure(s)

cc: Mr. James McAdams
Chief Counsel, Litigation Division
Attorney General Of Missouri
P.O. Box 899
Jefferson City, MO 65102

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