

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PEARL CISTRUNK,

Petitioner,

v.

LA PETITE ACADEMY,  
MARCY CONWAY and  
AMY JABOCAL,

Respondents.  
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OPINION and ORDER

07-C-170-C

On April 24, 2007, judgment was entered dismissing this case without prejudice because petitioner, who sought leave to proceed in forma pauperis, failed to provide proof of her indigency. Now, petitioner has submitted proof of indigency and has requested that judgment be vacated and her case reopened, explaining that she has been ill and was unable to submit her documents within the court's short timeline for doing so. Although this court does not grant extensions readily, in this case I find good cause to reopen the judgment entered in this case.

Petitioner has proven that she is unable to prepay the cost of filing her lawsuit. However, under 28 U.S.C. § 1915(e), leave to proceed in forma pauperis must be denied if

petitioner's action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. In addressing the complaint of any pro se litigant, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). Because it is possible to infer from petitioner's allegations that petitioner was subjected to racial and sexual harassment and was fired in retaliation for her complaints about the harassment, she has stated claims against her former employer under Title VII of the Civil Rights Act of 1964. Consequently, she will be granted leave to proceed on her claims that respondent La Petite Academy discriminated against her because of her race and gender and fired her in retaliation for her complaints about persistent racial and sexual harassment. Petitioner will be denied leave to proceed against respondents Marcy Conway and Amy Jabocal because individual supervisors cannot be sued under Title VII.

From petitioner's complaint and the documents attached to it, I draw the following facts.

#### FACTUAL ALLEGATIONS

Petitioner Pearl Cistrunk is a former daycare teacher for respondent La Petite Academy. Respondents Marcy Conway is the director of La Petite Academy. Respondent Amy Jabocal is the assistant director.

For some period prior to December 22, 2005, petitioner worked at respondent La Petite Academy, teaching a class of 8 to 10 year old children. For approximately one year, petitioner, who is an African American woman, was subjected to racially and sexually hostile comments from several of her white students. The students called her a “black bitch,” and made statements such as, “Glad I’m not black.” In addition, students made reference to her “cunt,” and frequently made comments about her breasts and “butt.” One student held a pencil in front of his penis and, as petitioner bent over to pick up trash, made a “humping” motion against her from behind.

Petitioner spoke repeatedly to the center’s administrators about the inappropriate racial and sexual remarks the students were making. The administrators ignored petitioner’s complaints, expressing concern that if they took action, students’ parents might remove them from the center, which would cause the center to lose income. Petitioner was forbidden from removing the disruptive students from her class.

Realizing that the administration would not do anything about their misbehavior, the students’ misconduct escalated. When petitioner confronted misbehaving students, they made comments such as, “I will put you in jail,” and “I will make you lose your job.”

In December 2005, respondents fired petitioner “because it was easier than fixing the problem.” Respondents contended that petitioner was fired because she used excessive discipline against students in her classroom. However, in unemployment-related

proceedings, the Department of Workforce Development found that petitioner had not been fired because of any misconduct on her part. An administrative law judge upheld the department's finding on appeal.

## DISCUSSION

Title VII of the Civil Rights Act of 1964 makes it “an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race.” 42 U.S.C. § 2000e-2(a)(1). Title VII authorizes suits against employers, not employees, United States Equal Employment Opportunity Commission v. AIC Sec. Investigations, Ltd., 55 F.3d 1276, 1281 (7th Cir. 1995); therefore, the Court of Appeals for the Seventh Circuit has held repeatedly that Title VII does not authorize suits filed against supervisors in their individual capacities. Williams v. Banning, 72 F.3d 552, 553-554 (7th Cir. 1995); Robinson v. Sappington, 351 F.3d 317, 332 n. 9 (7th Cir. 2003).

In this case, petitioner has sued both her former employer, respondent La Petite Academy, and her former supervisors, respondents Marcy Conway and Amy Jabocal. Because only respondent La Petite Academy is suable under Title VII, I will analyze petitioner's claims with respect to it only; petitioner's claims against respondents Conway

and Jabocal will be dismissed.

Petitioner contends that while she was employed as a teacher by respondent La Petite Academy, she was subjected to racial and sexual harassment and that she was fired because she complained about the harassment. Petitioner alleges that the children for whom respondent provided care created a hostile environment that her employer allowed to continue, even after she informed her supervisors of the children's overtly racial and sexually explicit comments. Although it remains to be seen whether petitioner will be able to prove her allegations, for now, she has done enough to state claims that respondent La Petite Academy violated her rights under Title VII by discriminating against her because of her race and gender and firing her in retaliation for her complaints about persistent racial and sexual harassment.

One final point. It is clear from petitioner's complaint that she struggles to write coherently. Her limited literacy may well be an obstacle to her pursuit of this lawsuit. Federal district courts are authorized by statute to appoint counsel for indigent litigants when "exceptional circumstances" justify such an appointment. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993)(quoting with approval Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)). The Court of Appeals for the Seventh Circuit will find such an appointment reasonable where the plaintiff's likely success on the merits would be substantially impaired by an inability to articulate her claims in light of the complexity of

the legal issues involved. Id. In other words, the test is, “given the difficulty of the case, [does] the plaintiff appear to be competent to try it h[erself] and, if not, would the presence of counsel [make] a difference in the outcome?” Id. The test is not whether a good lawyer would do a better job than the pro se litigant. Id. at 323; see also Luttrell v. Nickel, 129 F.3d 933, 936 (7th Cir. 1997).

Although I believe that petitioner may require help in prosecuting her lawsuit, before I may appoint a lawyer for her, she must make reasonable efforts to secure one on her own. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). A good starting point for petitioner’s search may be the Wisconsin State Bar Lawyer Referral and Information Service. Petitioner may contact the State Bar by calling (608) 257-4666. The referral service will be able to help petitioner find the names and phone numbers of lawyers whose practices include Title VII cases. If petitioner is unable to find a lawyer willing to represent her, she may ask the court to appoint a lawyer to represent her. Any such request should be accompanied by proof that petitioner has contacted at least three lawyers and that each refused to take her case.

#### ORDER

IT IS ORDERED that petitioner Pearl Cistrunk’s request to proceed in forma pauperis is

1. GRANTED with respect to her claims that respondent La Petite Academy violated her rights under Title VII by

- a) discriminating against her because of her race;
- b) discriminating against her because of her gender; and
- c) firing her in retaliation for her complaints about persistent racial and sexual

harassment.

2. DENIED with respect to her claims that respondents Marcy Conway and Amy Jabocal violated her rights under Title VII.

FURTHER, IT IS ORDERED that

3. Respondents Marcy Conway and Amy Jabocal are DISMISSED from this lawsuit.

4. Petitioner's complaint will be forwarded to the marshal's office for service on respondent La Petite Academy.

5. Petitioner should be aware of the requirement that she send each respondent a copy of every paper or document that she files with the court. Once respondent's attorney is known, petitioner should send one copy of all documents to the lawyers rather than to respondent directly. Petitioner should retain a copy of all documents for her own files. If petitioner does not have access to a photocopy machine, she may send out identical handwritten or typed copies of her documents. The court will disregard any papers or documents submitted by petitioner unless the court's copy shows that a copy has gone to

each respondent or to respondent's attorney, once he or she is known.

Entered this 3d day of May, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge