

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DR. MARIE AQUILINO, PH.D.,)
)
 Plaintiff,)
)
vs.)
)
UNIVERSITY OF KANSAS,)
)
 Defendant.)
_____)

COMPLAINT

The plaintiff, Dr. Marie Aquilino, Ph.D., for her claim for relief against the defendant states and alleges the following:

JURISDICTION AND VENUE

1. This is an employment discrimination case arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII").

2. The plaintiff, Dr. Aquilino, is a female, who was formerly employed by the University of Kansas as an assistant professor of history of art.

3. The defendant, the University of Kansas, is a state-supported educational institution, whose main campus is located in Lawrence, Kansas. The defendant is an "employer" within the meaning of Title VII.

4. This court has subject matter jurisdiction over the plaintiff's claims pursuant to 28 U.S.C. § 1331, since these claims arise under federal statutory law.

5. On or about September 16, 1998, Dr. Aquilino filed a timely charge with the Equal Employment Opportunity Commission (EEOC), charge number 28D980929, alleging discrimination based on her sex or gender. On March 3, 1999, the EEOC mailed a "right-to-sue" letter to Dr. Aquilino. This lawsuit was filed within 90 days of Dr. Aquilino's receipt of the "right-to-sue" letter from the EEOC.

6. All of the unlawful acts and practices set forth below were committed within the State of Kansas, and venue is proper in this court pursuant to 28 U.S.C. § 1391(b)-(c).

GENERAL ALLEGATIONS

7. Dr. Aquilino commenced her employment with the University of Kansas in August of 1991 in a tenure-track position in the Department of Art History. Faculty members at the University are evaluated on a yearly basis in three areas or categories: research (40%), teaching (40%), and service (20%). These same three categories are also used to decide promotion and the granting of permanent tenure.

8. The rules and regulations of the University provide that, after a probationary period not to exceed seven or sometimes eight years, faculty members shall be considered for promotion and the granting of permanent tenure. Consequently, all untenured faculty members undergo a mandatory review for promotion and tenure during the sixth or seventh year of their employment with the University.

9. Untenured faculty members also undergo a pre-tenure review during the third year of their employment with the University, in order to assess their likelihood of receiving tenure when the final review takes place. This pre-tenure review is separate from, but related to, the annual evaluation process which all faculty members undergo.

10. Dr. Aquilino received her pre-tenure review in March of 1994. The written review contained the following summary:

In summary, your performance as a teacher shows great promise but there is a problem of perception that you are inaccessible and unsympathetic. Your research and service are appropriate for this stage of your career and meet our exceptions.

11. Dr. Aquilino discussed her pre-tenure review with the then-department chair, Dr. Edmund Eglinski. Dr. Aquilino was told by Dr. Eglinski that she had a "personality problem" which could severely impede her candidacy for tenure. When Dr. Aquilino asked how to address this problem, Dr. Eglinski advised her to "smile more", to "soften her manner", and to "act more like David [a male colleague]." Dr. Aquilino considered these statements to be sexist, and she complained to the Dean of the College, Dr. James Muyskins. Following Dr. Aquilino's complaint, Dr. Eglinski received a letter from the College Committee on Promotion and Tenure, expressing its concerns regarding the pre-tenure review process as it pertained to Dr. Aquilino.

12. In April of 1994, Dr. Aquilino received her annual

evaluation for the 1993-1994 academic year. In her annual evaluation for 1993-1994, Dr. Aquilino was rated outstanding in the area of research, and superior in the areas of teaching and service. In her annual evaluations for the previous two academic years (1991-1992 and 1992-1993), Dr. Aquilino had also received ratings of either outstanding or superior/very good in the areas of research, teaching, and service.

13. Following her pre-tenure review in the spring of 1994, Dr. Aquilino continued to receive ratings of outstanding in the area of research for the next three academic years (1994-1995, 1995-1996, and 1996-1997). During a part of this time, Dr. Aquilino received research fellowships from the Hall Center at the University of Kansas, and from the J. Paul Getty Foundation. The latter fellowship was a prestigious grant, awarded to only twelve scholars selected from an international pool of over two hundred applicants. Also during these three academic years, Dr. Aquilino continued to receive ratings of superior/very good in the areas of teaching and service. The overall evaluations received by Dr. Aquilino during these three academic years are exemplified by the following statement contained in the 1994-1995 annual evaluation from Dr. Eglinski:

It is a pleasure to observe your growth as a teacher, scholar, and member of the university community over the past years. You clearly have assumed a responsible and productive role on the faculty.

14. In the fall of 1997, Dr. Aquilino came up for the mandatory review for promotion and tenure. A male faculty member in the same department, Dr. David Cateforis, also came up for the mandatory review. Nominations for promotion and tenure normally originate with the department.

15. Dr. Aquilino's academic achievements were equal to, or greater than, than the academic achievements of Dr. Cateforis, especially in the area of research. Nevertheless, the Department of Art History voted to recommend Dr. Cateforis for promotion and tenure, but not to recommend Dr. Aquilino for promotion and tenure. The ostensible reason given by the chair of the department to Dr. Aquilino in explaining the action of the department was the following:

The vote of the tenured faculty on your candidacy reflects their judgment that your record in neither teaching, research or service meets the expectations for promotion with tenure to Associate Professor.

16. The department's recommendation to grant promotion and tenure to Dr. Cateforis, but to deny promotion and tenure to Dr. Aquilino, was followed by the College and University Committees on Promotion and Tenure, and ultimately by the Chancellor of the University, Dr. Robert Hemenway. Only the Chancellor has the authority to grant promotion and tenure to faculty members. As a result of the Chancellor's decision to deny promotion and tenure to Dr. Aquilino, her tenure-track employment with the University terminated on May 16, 1999.

17. In late March of 1999, Dr. Aquilino requested an ad hoc appointment to the graduate faculty, without pay, in order to continue to supervise her three remaining Ph.D. students. Ad hoc appointments to the graduate faculty are routinely granted to non-tenure-track faculty members, in order to allow them to continue their supervision of graduate students.

18. On April 2, 1999, the Department of Art History voted not to grant Dr. Aquilino an ad hoc appointment to the graduate faculty. This refusal was virtually unprecedented within the Department and within the University.

COUNT I: DISPARATE TREATMENT IN VIOLATION OF TITLE VII

19. All of the above paragraphs numbered 1-18 are incorporated herein as though fully set forth in Count I.

20. The University of Kansas, through its agents and employees, has intentionally discriminated against Dr. Aquilino because of her sex, in violation of Title VII. Specifically, the University has discriminated against Dr. Annett by denying her promotion and tenure in 1997, while granting promotion and tenure to male faculty members with equal, or lesser, qualifications than Dr. Aquilino.

21. As a result of the University's discriminatory actions against Dr. Aquilino, she has sustained damages in the form of back pay, front pay, and compensatory damages as defined in 42 U.S.C. § 1981a.

WHEREFORE, Dr. Aquilino prays for an injunction against the University of Kansas, enjoining the University and its employees from engaging in unlawful employment practices, and ordering the University to grant Dr. Aquilino promotion and tenure. In addition, or in the alternative, Dr. Aquilino prays for judgment against the University of Kansas for damages in excess of \$100,000.00, consisting of back pay, front pay, compensatory damages, pre-judgment interest, attorneys fees and litigation costs.

COUNT II: RETALIATION IN VIOLATION OF TITLE VII

22. All of the above paragraphs numbered 1-18 are incorporated herein as though fully set forth in Count II.

23. The University of Kansas, through its agents and employees, has intentionally retaliated against Dr. Aquilino for opposing unlawful employment practices, and for participating in proceedings under Title VII. Specifically, the University has retaliated against Dr. Aquilino by refusing to grant her an ad hoc appointment to the graduate faculty through the Department of Art History.

24. As a result of the University's retaliatory actions against Dr. Aquilino, she has sustained damages in the form of compensatory damages as defined in 42 U.S.C. § 1981a.

WHEREFORE, Dr. Aquilino prays for an injunction against the University of Kansas, enjoining the University and its employees from engaging in unlawful employment practices, and ordering the

University to grant Dr. Aquilino an ad hoc appointment to the graduate faculty through the Department of Art History. In addition, Dr. Aquilino prays for judgment against the University of Kansas for compensatory damages, attorneys fees and litigation costs.

REQUEST FOR TRIAL BY JURY

Pursuant to Fed.R.Civ.Pro. 38, the plaintiff requests a trial by jury on all claims triable to a jury.

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ATTORNEYS FOR PLAINTIFF

DESIGNATION OF PLACE OF TRIAL

Plaintiff requests that Kansas City, Kansas, be designated as the place of trial in the above captioned matter.

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