

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMIKA FOSTER,
PLAINTIFF,

v.

MARY FREE BED REHABILITATION
HOSPITAL,
DEFENDANT.

GAFKAY & DAFOE, PLC
BY: JULIE A. GAFKAY (P53680)
Attorney for Plaintiff
175 S. Main Street
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“DEMAND FOR JURY TRIAL”

There is no other civil action between the parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between the parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

PLAINTIFF’S COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, Timika Foster, by and through her attorney, GAFKAY & DAFOE, PLC, by Julie A. Gafkay and files this Complaint against Defendant, Mary Free Bed Rehabilitation Hospital, as follows:

1. Plaintiff, Timika Foster (hereinafter "Plaintiff"), is a citizen of the United States and resides in the State of Arizona.
2. Defendant, Mary Free Bed Rehabilitation Hospital (hereinafter "Defendant") is a non-profit corporation located in the County of Kent, State of Michigan.
3. This is a civil action brought pursuant to Federal claims under 42 U.S.C. §1981 and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000, *et seq.* for racial discrimination.
4. Plaintiff also asserts State claims against Defendant under the Michigan Elliott-Larsen Civil Rights Act and a common law tort claim for intentional infliction of emotional distress.
5. This Court has federal question jurisdiction under 28 U.S.C. §1331 and supplemental jurisdiction over Plaintiff's State claims under 28 U.S.C. §1367, and diversity jurisdiction under 28 U.S.C. §1332.

RELEVANT FACTS

6. Plaintiff is African-American.
7. Plaintiff has worked for Defendant as a nurse for approximately 13 years.
8. In or about October of 2011, Plaintiff was told by her supervisor, Dorothy, she was not to care for a particular patient because, "no Black employees were allowed to care for the said patient."

9. Plaintiff complained to the Director of Nursing (DON) about the race discrimination and the DON's response was, "what do you want me to do about it."
10. Plaintiff also complained to Bruce Brassler, the VP of Clinical Services, who had the same response.
11. Plaintiff was precluded from caring for the said patient even if the patient's call light was on or a beeper in the patient's room went off for the sole reason that she is African-American.
12. Plaintiff felt harassed, humiliated and discriminated against as a result of the assignment of the said patient based on race.
13. In or about February of 2012, Plaintiff applied for the position of Nursing Supervisor.
14. Plaintiff was well-qualified for the Nursing Supervisor position. She has a Masters degree and has worked in nursing for many years.
15. Despite Plaintiff's superior qualifications, Plaintiff was denied the promotion which was given to a Caucasian applicant with only an Associate's degree in nursing and no prior rehabilitation experience.
16. Plaintiff believed the decision, not to promote her, was based, at least in part, on her race and, therefore, made a complaint regarding the failure to be promoted and racial discrimination.
17. A motivating factor for Plaintiff not being promoted is because of her race and complaints of racial discrimination.
18. Plaintiff has suffered damages as result of the above.

**COUNT I - 42 USC §1981 RACE DISCRIMINATION CLAIM AGAINST
DEFENDANT WITH REGARD TO DENIAL OF ENJOYMENT OF ALL
BENEFITS, PRIVILEGES, TERMS AND CONDITIONS OF
EMPLOYMENT**

19. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

20. Plaintiff is African-American.

21. Defendant intentionally discriminated against African-American employees, including Plaintiff, when it required that no African-American employees care for a certain Caucasian patient in or about October of 2011.

22. The said racial discrimination related to Plaintiff's employment with Defendant and she was denied the enjoyment of all benefits, privileges, terms and conditions of that employment relationship because of her race.

23. Accordingly, Plaintiff hereby asserts a 42 U.S.C. 1981 claim against Defendant.

24. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiff's rights, Plaintiff has suffered and sustained reassignment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

**COUNT II - 42 USC §1981 RACE DISCRIMINATION AND
RETALIATION CLAIM AGAINST DEFENDANT WITH REGARD TO
FAILURE TO PROMOTE**

25. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

26. Plaintiff complained of race discrimination by Defendant.
27. Defendant was aware of Plaintiff's complaint of race discrimination.
28. Plaintiff applied for a promotion to Nursing Supervisor in February of 2012, and was denied.
29. A motivating factor for Plaintiff's denial of promotion opportunities was her complaint of race discrimination.
30. A motivating factor for Plaintiff's denial of promotion opportunities is her race.
31. Accordingly, Plaintiff hereby asserts a 42 U.S.C. 1981 claim against Defendant with regard to failure to be promoted to Nursing Supervisor.
32. As a direct and proximate result of Defendant's aforesaid violations of Plaintiff's rights, Plaintiff has suffered and sustained past and future wage loss, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

COUNT III - MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT
RACE DISCRIMINATION CLAIM AGAINST DEFENDANT AS TO
DENIAL OF BENEFITS, PRIVILEGES, TERMS AND CONDITIONS
OF EMPLOYMENT

33. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

34. At all material times, Plaintiff was an employee, and Defendant was her employer, covered by and within the meaning of the Michigan Elliott-Larsen Civil Rights Act, MCL §37.2101, *et seq.*

35. Plaintiff is African-American.

36. Defendant intentionally discriminated against African-American employees, including Plaintiff, when it required that no African-American employees care for a certain Caucasian patient in or about October of 2011.

37. The said racial discrimination related to Plaintiff's employment with Defendant and she was denied the enjoyment of all benefits, privileges, terms and conditions of that employment relationship because of her race.

38. Accordingly, Plaintiff hereby asserts a claim for race discrimination against Defendant pursuant to the Michigan Elliott-Larsen Civil Rights Act.

39. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiff's rights, Plaintiff has suffered and sustained reassignment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, and damages to reputation.

COUNT IV - MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT
RACE DISCRIMINATION AND RETALIATION CLAIM AGAINST
DEFENDANT WITH REGARD TO FAILURE TO PROMOTE

40. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

41. Plaintiff complained of race discrimination by Defendant.

42. Defendant was aware of Plaintiff's complaint of race discrimination.

43. Plaintiff applied for a promotion to Nursing Supervisor in February of 2012 and was denied.

44. A motivating factor for Plaintiff's denial of promotion was her complaint of race discrimination.

45. A motivating factor for Plaintiff's denial of promotion is her race.

46. Accordingly, Plaintiff hereby asserts a race discrimination and retaliation claim against Defendant under the Michigan Elliott-Larsen Civil Rights Act with regard to the failure to be promoted to Nursing Supervisor.

47. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiff's rights, Plaintiff has suffered and sustained past and future wage loss, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, and damages to reputation.

**COUNT V - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
OF PLAINTIFF BY DEFENDANT**

48. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

49. Defendant's conduct as outlined above was intentional.

50. Defendant's conduct as outlined above was extreme, outrageous, and of such character as not to be tolerated by a civilized society.

51. Defendant's conduct as outlined above was for an ulterior motive or purpose.

52. Defendant's conduct resulted in severe and serious emotional distress.

53. As a direct and proximate result of Defendant's conduct, Plaintiff has been damaged in the manner outlined above.

COUNT VI - TITLE VI OF THE CIVIL RIGHTS ACT OF 1964,

42 U.S.C. §2000d to 2000d-7

54. Plaintiff hereby re-alleges and incorporates by reference the above paragraphs.

55. Defendant is the recipient of federal financial assistance from the United States Department of Health and Human Services.

56. Defendant discriminated against Plaintiff on the basis of race.

57. The discrimination was intentional.

58. That as a direct and proximate result of Defendant's aforesaid violations of Plaintiff's rights, Plaintiff has suffered and sustained reassignment, emotional distress and mental anguish, past and future injuries to feelings including extreme embarrassment and humiliation, past and future outrage, damages to reputation, and whatever punitive damages are recoverable herein.

59. Plaintiff requests that this Court enter judgment against Defendant for the following relief:

1. An award to Plaintiff of compensatory damages sufficient to compensate her for mental anguish and emotional distress, embarrassment and humiliation, and damage to her professional reputation as a result of Defendant's actions.

2. An award of past and future wages as a result of Defendant's failure to promote Plaintiff.
3. An award to Plaintiff of punitive damages against Defendant as a result of the reckless indifference with which it violated Plaintiff's rights under the law.
4. An award to Plaintiff of the costs and disbursements of this action, including reasonable attorney fees pursuant to statute.
5. An award to Plaintiff of other and additional legal and/or equitable relief to which she may be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, hereby demands a Trial by Jury in the above-entitled matter.

Respectfully submitted,

Dated: 12/19/2013

GAFKAY & DAFOE, PLC

s/Julie A. Gafkay_____

JULIE A. GAFKAY (P53680)

Attorney for Plaintiff

175 S. Main Street

Frankenmuth, Michigan 48734

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SUMMONS IN A CIVIL ACTION
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Case No.
Hon.

v. TO:
ADDRESS:

A lawsuit has been filed against you.

PLAINTIFF OR PLAINTIFF'S ATTORNEY NAME AND ADDRESS

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within _____ days after service of this summons on you (not counting the day you received it). If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the Court.

TRACEY CORDES, CLERK OF COURT

The Court has offices in the following locations:

- 399 Federal Building, 110 Michigan St., NW, Grand Rapids, MI 49503
- P.O. Box 698, 229 Federal Building, Marquette, MI 49855
- 107 Federal Building, 410 W. Michigan Ave., Kalamazoo, MI 49007
- 113 Federal Building, 315 W. Allegan, Lansing, MI 48933

By: Deputy Clerk Date

PROOF OF SERVICE

This summons for _____ was received by me on _____.
(name of individual and title, if any) (date)

I personally served the summons on the individual at _____
on _____.
(place where served) (date)

I left the summons at the individual's residence or usual place of abode with _____, a person
(name)
of suitable age and discretion who resides there, on _____, and mailed a copy to the individual's last known address.
(date)

I served the summons on _____, who is designated by law to accept service
(name of individual)
of process on behalf of _____ on _____.
(name of organization) (date)

I returned the summons unexecuted because _____.

Other *(specify)* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under the penalty of perjury that this information is true.

Date: _____

Server's signature

Additional information regarding attempted service, etc.:

Server's printed name and title

Server's address