

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & KERRY CAMPBELL,
Complainants

v.

DOCKET NO. 02-BEM-03614

SUFFOLK UNIVERSITY
LAW SCHOOL,
Respondent

Appearances:

Marisa A. Campagna, Esquire for Kerry Campbell
Paul V. Lyons, Esquire for Suffolk University Law School

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about October 25, 2002, Kerry Campbell filed a complaint with this Commission charging Respondent, Suffolk University Law School with discrimination on the basis of her gender and pregnancy. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on March 20 and 21, 2006. After careful consideration of the entire record in this matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Suffolk University is an institute of higher education, located in Boston, Massachusetts and consisting of the College of Arts and Sciences, the School of Management and the Law School. Respondent, Suffolk University Law School, (“the Law School”) is an employer within the meaning of M.G.L.c.151B§1.

2. Complainant Kerry Campbell resides in Charlestown, MA. Complainant holds a B.S. from Boston College and M.A.s from Emerson College and Boston University. From 1991 to 1993, Complainant was employed by Boston University as manager of Alumni Programs. From 1993 to 1997 she was Director of Alumni Relations at New England College of Optometry and from 1997 until 1998 she was Assistant Director of Alumni Relations at Northeastern University School of Law.

3. In August 1998, the Law School hired Complainant as the Director of Alumni Relations. She was employed in this capacity until her termination on September 4, 2002.

4. At the time of Complainant’s hire, William Corbett was the Law School’s Acting Dean.

5. In November 1999, Robert Smith became Dean of the Law School, replacing Corbett. Robert Smith testified that his duties as Dean were to oversee both the academic and administrative components of the Law School. Smith was also involved in alumni relations and fund raising for the Law School and also worked within the entire University, dealing with organizations, recruiting students and representing the school at Law School events.

6. John Deliso is the Law School's Associate Dean. Deliso has worked at the Law School in various capacities over the past 30 years. Over time, Deliso has developed personal relationships with many Law School alumni and has participated in numerous alumni activities. Deliso served as the liaison between the Law School and Suffolk University's Development (fund-raising) Office regarding alumni relations issues.

7. Until the mid-1990's, there was no employee assigned solely to the Law School's alumni relations or development functions. Instead, these functions were preformed by employees of the Development Office, which was responsible for the entire university, not just the Law School.

8. In the mid-1990s, the Law School began a capital campaign to raise money to build a new Law School building on Tremont Street in Boston.

9. In 1994, Deborah MacFail, Director of Development for all of Suffolk University, was assigned the responsibility for fundraising for the Law School, as well as duties attendant to alumni relations events for the Law School. However, these duties proved to be too demanding for one person. As a result, in 1997, the Law School decided to create the position of Director of Alumni Relations solely for the Law School, in order for MacFail to concentrate on development for the Law School.

10. At the time of Complainant's hire until the fall of 2001, Marguerite Dennis was Vice-President of Development for all of Suffolk University, including the Law School.

11. The Law School expected its Director of Alumni Relations to work closely with MacFail, Dean Deliso and other Law School Administrators. By engaging in

“friend-raising”, the term used to describe courting alumni who might then make financial contributions to the Law School, the Director of Alumni Relations would further the Law School’s fund-raising efforts and help identify volunteers for other areas of the school.

12. In August 1998, Respondent hired Complainant as the Director of Alumni Relations. Complainant’s hours of work were Monday through Friday from 9:00 a.m. to 5:00 p.m. In addition, Complainant worked evenings and weekends as needed to attend meetings and to travel to and facilitate alumni events. Complainant received an annual salary of \$62,000.00 plus health insurance and pension benefits.

13. Complainant initially reported to both Acting Dean Corbett and to Marguerite Dennis, then Vice-President of Development. Complainant also worked with Associate Dean John Deliso throughout her employment.

14. Complainant’s duties included travel throughout New England, New York, Florida and California, locations where the Law School was developing Alumni chapters. During her first year of employment she met with Dean Corbett and Marguerite Dennis weekly and once monthly just with Corbett.

15. Complainant testified that her focus for the first year was building alumni chapters, and acclimating to university, colleges and alumni, getting to know alumni board members and setting up events. Complainant set up regional representatives and reunion committees. She also worked to try to increase the involvement of volunteers. Complainant testified that she set up alumni chapters throughout New England, as well as chapters in Washington D. C., New York, and Los Angeles.

16. During this first year, Complainant implemented a program of designating class agents who contacted and recruited former classmates in an effort to increase the level of involvement of alumni in school activities. Through Complainant's activities, the number of class agents increased by 340%.

17. In addition, Complainant established four new regional alumni chapters with over 25 alumni volunteers, initiated reunion committees with 24 alumni volunteers and increased attendance at alumni events by 23%.

18. In addition to meeting with Corbett and Dennis, Complainant met with Dean Deliso when coordinating events and preparing calendars. Complainant testified that it was difficult to report to two people. Moreover, she had difficulties with Deliso, who resented Complainant's reporting to Suffolk University's Development Office as well as the Law School. He complained about this to her from the beginning of her employment.

19. After Smith became Dean of the Law School in November 1999, Complainant began reporting to him and continued to report to Marguerite Dennis. Complainant testified that she set up events such as networking night and the alumni dinner, working with Smith and Deliso to make sure that the dates were acceptable, and then attending to the details of the events. She stated that she traveled at least a dozen times a year and never gave up traveling throughout her employment.

20. Complainant received yearly written performance appraisals from both supervisors that were largely positive. A June 2000 performance appraisal of Complainant by Marguerite Dennis was largely positive, although it stated that Complainant "should collaborate" and that she needed improvement in that aspect of her job. (Ex.5) A performance appraisal by Dean Smith around the same time stated that he

asked her to work more closely with other departments and discussed her having a physical presence in the Law School building. (Ex.6)

21. Dean Smith testified that Complainant's external work with alumni and events was excellent, but he was concerned about Complainant's relationships with Deliso, MacFail and Dennis, believing her collaboration with them was inadequate. Smith testified that Complainant told him of her concern that Deliso referred groups to her asking her to fund events that were not contained in her budget. In addition, Complainant had conflicts with MacFail, with whom she failed to share information about potential donors. Smith also testified that Marguerite Dennis complained to him that Complainant was not a team player. I credit his testimony.

22. In 2000, Complainant became pregnant with her first child and took a 3 ½ month maternity leave from September 18, 2000 to early January 2001. Complainant testified that at the start of her leave, she communicated with her office by telephone several times daily but did so less frequently as her leave progressed.

23. Upon returning to work in January 2001, Complainant worked a reduced schedule of 30 hours-per-week over four days as agreed to by Smith¹, and she moved into an office at the new Law School building located at 120 Tremont Street.

24. Dean Smith testified that following the terrorist attacks of September 11, 2001, students from the Middle East began withdrawing from Suffolk University's undergraduate school. At that time, Suffolk University Administrators decided that Marguerite Dennis would henceforth devote all of her time to enrollment and the

¹ Complainant testified that Smith suggested the reduced schedule. However, Smith testified that Complainant requested the change and he agreed to it. I credit Smith's version of events as I find it far more likely that Complainant would have sought the reduced schedule after having a baby.

University would hire an assistant dean to replace her. Dennis thus left her position as Vice President of Development in the fall of 2001.

25. In October 2001, a meeting was held among officers and deans concerning how to handle alumni development. It was decided that while Suffolk University attempted to fill Dennis' position, Complainant, MacFail and Peter Szeidler, who was responsible for planned giving at the University, would all temporarily report directly to Dean Deliso.

26. Smith testified that problems with Complainant's performance did not become serious until after this change. According to Smith, Complainant was not pleased with reporting directly to Deliso and when Deliso called meetings with Complainant, Szeidler and MacFail, Complainant often refused to attend. I credit this testimony.

27. According to Smith, in September or October 2001, he attempted to conduct a meeting with the Alumni Outreach Group that included MacFail, Szeidler, Deliso, Complainant and others, to discuss reunion plans. Smith cancelled the meeting when Complainant failed to attend, as her presence was essential for a discussion about the reunion. In the fall of 2001, Complainant missed a meeting of the alumni magazine, where her attendance was important because the magazine included profiles of alumni and featured upcoming alumni events. I credit Smith's testimony regarding these performance issues.

28. Smith and Deliso testified that in the fall of 2001, Complainant failed to consult Smith before scheduling an alumni event that conflicted with a Jewish holiday. This event had to be rescheduled after the invitations were issued. Smith stated that

because he is the host of the event, the invitations came from him. Smith and Deliso were unhappy about this incident. I credit their testimony.

29. Smith testified that after her first maternity leave, Complainant told him that it would be difficult for her to travel because she was breastfeeding. He disputed Complainant's testimony that she never stopped traveling during her employment and stated that Complainant did not travel after returning from her first maternity leave and did not attend alumni events in California or Florida in the spring 2001. Smith had to make arrangements for someone else to cover for Complainant at out of state alumni events. I credit his testimony.

30. On December 3, 2001, Dean Smith invited Complainant to lunch to discuss work-related matters. Complainant testified that at this meeting, Smith informed her that Suffolk University planned to reorganize the development staff; however, she did not believe that the restructuring would affect her position. She stated that because she and Smith had a good rapport during this meeting, she revealed to him that she was pregnant with her second child, due in May 2002 and that her pregnancy was considered "high risk."

31. Smith testified that at this lunch meeting he began to express his concerns about Complainant's lack of cooperation and failure to share information with others. Complainant began to cry and told him that she was pregnant and having related difficulties. Smith stated that upon hearing the news of Complainant's troubled pregnancy, he discontinued his discussion about her performance problems and never fully aired his concerns. The discussion instead became focused on Complainant's condition. I credit Smith's testimony regarding this meeting.

32. Smith testified that after this meeting, Complainant continued to have problems working with MacFail, Szedler and Deliso. Both Complainant and Smith testified that she told him that the others had once verbally attacked her at a meeting, and as a result, she would not meet with them alone in the future. I credit his testimony.

33. Smith testified that by late February or early March 2002, he decided that Complainant should be terminated, because the person in her position would be required to report to Deliso on a permanent basis and she was unwilling to work with Deliso as her supervisor. He also believed that Complainant had demonstrated an unwillingness to work as a team with other University administrators, particularly MacFail. I credit his testimony.

34. In an e-mail to a consultant dated February 28, 2002, Smith stated his thoughts about the restructuring of the University's Development Office. He explained that there should continue to be a Director of Alumni Relations and a major gifts officer (the new name for MacFail's position) dedicated to the Law School, who would report to him through Deliso. Smith wrote that that he had been discussing with Judy Minardi, the University's Human Resources Director, terminating the current personnel, Complainant, MacFail and Szeidler and possible severance arrangements for them.² (Ex.R-2)

35. Judy Minardi testified that Dean Smith telephoned her in March 2002 regarding planned changes in the advancement area, told her that Complainant was not the "right fit," and that he wanted to speak with her about terminating Complainant's employment. Smith told Minardi that his reasons for the decision were that Complainant had poor working relationships with Deliso and MacFail, individuals with whom she

² MacFail voluntarily left Suffolk for personal reasons in February 2003.

would be required to work directly in the future. Minardi and Smith decided that because Complainant was experiencing problems with her pregnancy, it would be more considerate to postpone the termination until after Complainant delivered her baby. Minardi stated that Complainant never asked for work accommodations in 2002 and gave no indication to Human Resources that she was having a difficult or complicated pregnancy or that she required travel restrictions. I credit their testimony.

36. Complainant testified she worked up until April 24, 2002, preparing for the Law School's Annual Alumni Dinner scheduled for the following day, had her baby on April 25, and began her second maternity leave, with a scheduled return date of August 25th, 2002.

37. Respondent hired Diane Schoenfeld to handle the duties of Complainant's position during her leave.

38. In the spring of 2002, Suffolk University hired Kathryn Battillo as the Vice President for Advancement to replace Marguerite Dennis in the Development Office. As part of the restructuring of the Development Office, Sziedler and three other employees in that office were terminated.

39. Complainant testified that she had no contact with Respondent during her second leave and corroborated Smith's testimony that he sent her several letters and made several phone calls to her requesting a meeting with her to discuss changes in the development office. Complainant called and left a message for Smith that she did not want to meet with him in person, but would be happy to talk to him on the telephone. Despite Smith's many overtures, Complainant never spoke with Smith in person or by telephone during her leave.

40. Smith stated that Respondent conducted a search for a candidate to fill Complainant's position during Complainant's second maternity leave. During this process, Smith interviewed candidates screened by Human Resources and made his final decision with the assistance of Kathryn Batillo. Diane Shoenfeld, who performed Complainant's duties during her second maternity leave, was hired to permanently replace Complainant.

41. Complainant testified that on September 4, 2002, the day she returned from her second maternity leave, she was instructed to go directly to Dean Smith's office, where she met with Smith and Judy Minardi. At the meeting, Smith told Complainant that the Development Office had been restructured and consequently this would be her last day of work. According to Complainant, Smith then told her that Respondent wanted someone who would work 35 hours per week and was willing to travel. Complainant testified that this "blew her away" because she had been willing to travel, and Smith never offered her the opportunity to increase her hours to full time. Smith and Minardi offered Complainant the opportunity to resign in lieu of termination, and gave her until the following Monday to decide. I do not credit Complainant's testimony that Smith told her she was terminated because of the Law School's wish to have the position be full time with travel requirements.

42. Smith's testimony regarding the discussion at this meeting was more credible than Complainant's. Smith testified that he explained to Complainant that he was terminating her employment because of her unwillingness to be supervised by Deliso and others with whom she had to collaborate to support alumni. Smith denied telling Complainant that he wanted someone to work five days a week and travel. He stated that

he offered Complainant the opportunity to represent to the Alumni Board and others that she was leaving Respondent by mutual agreement and proposed that she might want to tell the board that she was leaving because of the travel requirement and a desire not to work full-time. Minardi's testimony regarding this meeting essentially corroborated that of Smith; Minardi denied that Smith told Complainant he wanted someone to work five days a week and to travel. She confirmed that the reference to a full time job with travel related only to suggested reasons Complainant might state to the alumni board for her departure. I credit the testimony of Smith and Minardi as to how the discussion unfolded at this meeting.

43. Marguerite Dennis is currently Suffolk University's Vice-President for Enrollment and International Programs, a post she has held since September 2001. From December 1995 to September 2001, Dennis was Vice-President for Development and Enrollment. In that position she supervised all the alumni directors, conducted performance appraisals of Complainant and met monthly with the directors. Dennis testified that Complainant did a very good job of reaching out to alumni and involving them in events, that alumni events were better attended than before Complainant was hired and that new alumni chapters were formed during her tenure. Dennis also testified that Complainant had a very good relationship with the alumni board and with her assistant, Annamaria Meuller. I credit her testimony.

44. Dennis stated that she gave Complainant latitude to plan events and was not involved in the day-to-day management of events. She did not remember Complainant missing meetings nor or leaving meetings or events early. Dennis testified that staff members felt Complainant did not collaborate adequately and did not share sufficient

information about potential donors. Dennis testified that Complainant lacked team spirit and cited an occasion when she asked employees to help answer the telephone and Complainant adamantly refused to do so. I credit her testimony.

45. Dennis also testified that Complainant had difficulty working with MacFail, something Dennis attributed to a “personality clash” and different work styles. Dennis described MacFail as a professional who had the Law School’s best interests at heart, but who could at times be confrontational. I credit her testimony.

46. John Deliso has worked at Respondent for over 30 years in various capacities. Deliso testified that in 1994 he began to focus on Alumni relations, largely because of Respondent’s plan to build a new law school. Deliso explained that an institution must build alumni relations before asking for gifts, as people tend to donate to institutions with which they have relationships. Deliso was acquainted with large numbers of alumni, and during the years from 1994 to 1998, he was involved in building alumni chapters.

47. Deliso testified that, at first, he had a good working relationship with Complainant. However, as time went on, he believed that Complainant was not pulling her weight and was not focused on the job. According to Deliso, Complainant “ran her own show” and was autonomous. He stated that Complainant developed a reputation for coming in late and leaving early and others commented on her poor work habits. As an example, he stated that Complainant would go for a run at mid-day and then use the shower in the faculty suite. After complaints from faculty members, Complainant then began using the showers in the Dean’s suite. Deliso stated that, in his view, this conduct was “not particularly professional.” I credit his testimony that Complainant’s behavior was viewed as unprofessional.

48. Deliso also stated that Complainant had a poor attitude and that she did not view herself as a team player, as evidenced by the fact that she failed to attend important meetings. I credit this testimony. He stated that alumni involvement in the Law School did not increase appreciably after Complainant was hired, and although there were more alumni events, from a 25 year perspective not much was accomplished by Complainant. I do not credit this portion of Deliso's testimony as it contradicts the evidence that Complainant was successful at building alumni involvement.

49. Deliso testified that prior to Dean Smith's lunch with Complainant in December 2001, he discussed with Smith his dissatisfaction with her performance and was aware of Smith's plan to terminate Complainant's employment. I credit this testimony.

50. Deborah MacFail was employed by Suffolk University from 1994 to 2003 as Director of Development for the entire University. She left her employment at Suffolk for personal reasons. MacFail was hired to enhance the annual fund and assist with the planning of the capital campaign. MacFail worked closely with Dean Deliso and was involved in the search committee that hired Complainant, who was her peer. MacFail testified that in the fall of 1998, shortly after Complainant's employment began, she offered to assist Complainant in managing a large alumni event at a downtown hotel. She testified that Complainant arrived late to this event. I credit her testimony.

51. According to MacFail, Complainant was not building the alumni program as successfully as had been anticipated and MacFail claimed to have received feedback from others at the Law School expressing both concern and frustration with Complainant. MacFail testified that it was difficult to obtain lists of alumni from Complainant that

MacFail needed to accomplish her development goals, which involved contacting alumni for donations. I credit her testimony.

52. MacFail stated that Complainant's office was next door to hers at the new Law School building. She stated that Complainant typically came to work ½ hour to an hour late, that her attitude was "negative," and that she kept her door shut a good portion of the time. MacFail testified that working with Complainant was challenging and uncomfortable and that she sometimes e-mailed or telephoned Complainant rather than go next door to talk to her. MacFail also noticed that there was tension between Complainant and Dean Deliso. She stated that at times when Deliso attempted to reach Complainant she would not respond or would not have the information he sought. I credit her testimony.

53. MacFail testified that on one occasion she traveled to San Francisco for an alumni reception with Complainant, Smith and Deliso. She stated that they arranged to meet early to prepare for the meeting; however, Complainant arrived 20 to 30 minutes late and told the others that she had been out running. I credit her testimony.

III. CONCLUSIONS OF LAW

M.G.L. Chapter 151B §4 ¶1 makes it an unlawful practice to discharge an employee because of her sex. "Pregnancy and childbirth are sex-linked characteristics and any actions of an employer which unduly burden an employee because of her pregnancy or the requirement of a maternity leave are considered sex discrimination." School Committee of Braintree v. MCAD, 377 Mass. 424, 430 (1979); Massachusetts

Electric Co. v. MCAD, 375 Mass. 160, 167 (1978); Carmichael v. Wynn & Wynn, 17 MDLR 1641, 1650 (1995); see also, Gowen-Esdaile v. Franklin Publishing Co., 6 MDLR 1258(1984) (termination of complainant during troubled pregnancy because of fears of further absences and coverage during leave deemed unlawful sex discrimination). Further, M.G.L.c. 151B§4¶11A makes it unlawful for an employer to refuse to restore a female employee to employment following a maternity leave under M.G.L.c.149§105D.

In order to prove pregnancy/maternity leave discrimination, Complainant must first establish a prima facie case. The complainant may prove a claim of discrimination by presenting direct evidence of discrimination or by utilizing the three-stage order of proof articulated in both federal and state court decisions. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wheelock College v. MCAD, 371 Mass. 130 (1976). I conclude that Complainant has established a prima facie case of discrimination based on her pregnancy/maternity leave. Complainant has established that upon returning from her second maternity leave, Smith terminated her employment.

Once Complainant has established a prima facie case of discrimination, the burden of production shifts to Respondent to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for its action. Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000).

Once Respondent has articulated legitimate, non-discriminatory reasons for its conduct, Complainant must show that Respondent's reasons are a pretext for unlawful discrimination. A fact finder may, but need not, infer that an employer is covering up a discriminatory intent, motive or state of mind if one or more of the reasons identified by

the employer are false. Lipchitz v. Raytheon Company, 434 Mass. 493, 498, 507 (2001). The employee need not disprove all of the non-discriminatory reasons proffered by the employer for its decision-making, only that “discriminatory animus was a material and important ingredient in the decision making calculus.” Chief Justice for Administration and Management of the Trial Court v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 735 (2003). The Law School has articulated numerous examples of problems with Complainant’s performance to support its articulated nondiscriminatory reasons for terminating Complainant’s employment. It asserted that Complainant was unable to work cooperatively with Dean Deliso and others with whom she was required to closely collaborate. By all accounts, Complainant’s unwillingness to work cooperatively with Dean Deliso and others was evident from the outset of her employment with Respondent and pre-dated her pregnancies. The fact that a restructuring of Suffolk University’s Office of Development required her to report to Deliso was problematic for the Law School as evidenced by Complainant’s ongoing unwillingness to meet with or cooperate with Deliso. Respondent has established by credible evidence that Complainant and Deliso did not get along throughout her employment. Moreover, Dennis and MacFail testified that Complainant did not get along with MacFail, and failed to adequately share information with her that was necessary to MacFail’s fund raising responsibilities. Deliso and MacFail testified to Complainant’s poor work habits, including missing meetings and excessive tardiness.

Furthermore, there was evidence that Dean Smith had become dissatisfied with Complainant’s performance in the fall of 2001, and planned to discuss Complainant’s job

performance issues at lunch on December 4, 2001. However, he put off that discussion after Complainant informed him of her second pregnancy during the lunch.

Dean Smith testified credibly that in early 2002, he came to the decision to terminate Complainant's employment. His testimony is supported by an e-mail message he sent to a consultant wherein he discussed the termination of Complainant and others, some of whom were terminated around the same time as Complainant, as part of the restructuring effort.

In addition, despite receiving several calls and letters from Smith, Complainant avoided contact with him during her second maternity leave. From this unusual conduct I conclude that Complainant knew her job was in jeopardy and was merely postponing the inevitable. The Law School has met its burden of production, thus requiring Complainant to prove by a preponderance of the evidence that its reasons were a pretext for unlawful discrimination. To do this Complainant must prove that Respondent acted with discriminatory intent, motive or state of mind.

I conclude that Complainant has failed to establish that the Law School's reasons for terminating her employment were a pretext for unlawful discrimination based on pregnancy or maternity leave. She acknowledged that she did not get along with Deliso from the outset of her employment and she did not credibly refute the Law School's reasons for terminating her employment. I conclude that the timing of her termination on the day she returned from leave is insufficient to demonstrate discriminatory intent, given the facts and circumstances of this case. For the reasons stated above, I conclude that Respondent did not engage in unlawful discrimination.

IV. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that this matter be dismissed.

This constitutes the final order of the Hearing Commissioner. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, THIS 26th DAY OF OCTOBER, 2006.

JUDITH E. KAPLAN
Hearing Officer