

CHRISTIE A. CHRISTIE,
Complainant,

v.

**District Attorney, OFFICE OF THE
DISTRICT ATTORNEY OF FOND DU
LAC COUNTY,**
Respondent.

RULING ON MOTION
IN LIMINE

Case No. 96-0003-PC-ER

This is a complaint of discrimination on the basis of arrest record and sex in relation to what complainant has characterized as a forced resignation from her position as an Assistant District Attorney (ADA) in Fond du Lac County. On January 20, 1998, respondent filed a motion in limine requesting that the Commission prohibit complainant from offering evidence or argument at the hearing relating to alleged sex-based disparities in workload among ADAs in Fond du Lac County during and after her employment there. The parties were permitted to file briefs and the briefing schedule was completed on February 20, 1998.

The undisputed facts here are that complainant was arrested for operating a vehicle while intoxicated; that she was on call at the time and carrying an office beeper with her; that, subsequent to this arrest, she was given the choice of resigning or being terminated and she chose to resign; and that she contends that she was held to a different standard while carrying the beeper than ADAs Crowley and Mortier, both male.

Respondent argues in support of the motion that the evidence sought to be excluded is irrelevant to the hearing issues. However, one of these issues relates to whether complainant's suspension from and subsequent separation from her ADA position was motivated by her sex. One way complainant could show this would be to prove that she was treated differently than similarly situated males in regard to the

circumstances which led to her suspension and separation. Complainant contends that two such similarly situated males were ADAs Crowley and Mortier who were held to a different standard than she while they were assigned to carry the beeper. Evidence which could tend to buttress such a showing of differential treatment would be evidence that complainant was treated differently than ADAs Crowley and Mortier not only in regard to the standard to which she was held while carrying the beeper but also as to other terms and conditions of her employment, including caseload and performance expectations. As a result, evidence relating to the caseload and performance expectations imposed on ADAs Crowley and Mortier would be relevant here and the motion is denied as to this evidence. However, the caseloads carried by the other ADAs and by District Attorney Storm and the standards to which their job performances were held appear not only to be too tangential to the essence of complainant's contentions here to have reasonable probative value, but also to be cumulative to and repetitive of the evidence which complainant has represented she will be offering regarding ADAs Crowley and Mortier, and the motion is granted as to this evidence.

Complainant raises for the first time in her brief several alleged instances of being singled out by District Attorney Storm for unfair criticism or treatment, and contends these constitute further evidence of sex discrimination. Respondent argues that this evidence, too, would be irrelevant and should be excluded. As stated above, complainant, in order to prevail here, would have to show that she was treated differently than similarly situated males in regard to the circumstances leading to her suspension and termination; and that evidence showing that she was treated differently than similarly situated males in regard to other terms and conditions of her employment could be relevant. Consistent with this, evidence that complainant had a rocky relationship with her supervisor, standing alone, would not show discrimination; complainant would have to show, based on the allegations under consideration here, that her supervisor treated her differently than other similarly situated subordinates based on her sex. The only subordinates whom complainant has identified as similarly

situated in regard to the circumstance at issue here, i.e., the standard to which she was held while carrying the beeper, are ADAs Crowley and Mortier. If, for example, complainant could show that the extent of prosecutorial discretion accorded her by District Attorney Storm was different than that accorded ADAs Crowley and Mortier, who had levels of experience, prosecutorial track records, and areas of responsibility comparable to complainant's, this could support a conclusion that sex discrimination was playing a part in Storm's decisions relating to complainant. However, there is not enough information available to the Commission here to specifically articulate a limitation on evidence complainant may intend to introduce in regard to these other terms and conditions of her employment other than the limitation that comparisons to other ADAs should be limited to comparisons to ADAs Crowley and Mortier.

It should also be pointed out that evidence relating to the manner in which drunk driving arrests of employees were handled by other employers would also not have reasonable probative value here and would be excluded from the hearing record. In assessing whether differential treatment on some prohibited basis has occurred, what is examined is the individual decision-maker's treatment of similarly situated employees, not the treatment of the universe of employees by the universe of employers.

Finally, complainant states on page 12 of her brief in opposition to this motion in limine the following:

The Complainant was not forced to resign because of her arrest for operating a motor vehicle while intoxicated; the Complainant was forced to resign because she was female. It was the "flaw" of being female, not the intoxication, that resulted in the Complainant's forced resignation.

It is presumed from this that complainant no longer wishes to pursue her charge of arrest record discrimination and the hearing issue will be modified accordingly.

ORDER

The motion in limine is granted in part and denied in part, consistent with the above discussion. The hearing issue is modified to read as follows:

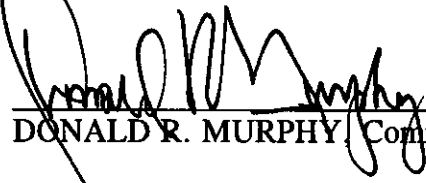
Whether complainant was discriminated against on the basis of sex when she was suspended from employment on February 20, 1995, and when her employment relationship with respondent ended on March 10, 1995.

Dated: February 25, 1998

STATE PERSONNEL COMMISSION

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LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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