

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH SCOTT : CIVIL ACTION
 :
 v. :
 :
 :
 ROBERT YATES, Individually :
 and in his Official Capacity :
 as Director of Adult :
 Probation; JAMES HARKINS, :
 Individually and in his :
 Official Capacity as Director :
 of Accountability and :
 Integrity; and, CITY OF :
 PHILADELPHIA : No. 00-5024

MEMORANDUM ORDER

This action arises out of plaintiff's termination from her employment as a clerk-typist in the Philadelphia Adult Probation Department ("Probation Department"). Presently before the court is defendant City of Philadelphia's Motion to Dismiss. The pertinent facts as alleged by plaintiff are as follow.

Plaintiff was hired by the City in 1971 as a Clerk-Typist I. She later transferred to the Probation Department as a Clerk-Typist II. To accommodate an unspecified physical condition, plaintiff requested an ergonomic chair. Defendants Yates and Harkins requested that plaintiff sign a release for medical records and asked her to submit to an independent medical examination. Citing concerns for privacy, plaintiff refused to

sign the release form but did agree to submit to an examination.¹ Defendants denied plaintiff's request for the ergonomic chair due to cost and her refusal to sign the medical release.

Following the denial of her request, plaintiff filed a charge of discrimination against the First Judicial District with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC").² Two days later, plaintiff signed a medical release. Defendants, however, refused to accept the release.

After plaintiff filed the charge of discrimination, defendants Harkins and Yates subjected her to unwarranted scrutiny and criticism at work, and initiated an investigation into a medical leave previously authorized under FMLA.³ Plaintiff also alleges that her supervisor received a negative performance evaluation for his failure to take disciplinary action against her. These defendants also refused to give plaintiff access to computer training afforded to other similarly

¹ The examining physician was unable to determine whether the chair was needed without reviewing plaintiff's medical records.

² Plaintiff initially claimed that she was employed by the First Judicial District. In an amended complaint, she now states the City was her employer. This may reflect her subsequent awareness that the First Judicial District is not subject to suit under § 1983.

³ The investigation was purportedly based on an unwritten work rule requiring plaintiff to sign a medical release form.

situated secretaries. The lack of adequate computer training resulted in criticism of plaintiff's performance at a time she was subjected to increased production demands by defendant Yates.

Shortly thereafter, plaintiff was suspended from her employment for thirty days. When she returned, the defendants continued to subject plaintiff to close scrutiny. Defendants terminated plaintiff three weeks after her return for purported abuse of sick leave policy. In a subsequent hearing for unemployment compensation benefits, defendants claimed that plaintiff was discharged for refusing to sign a medical release form.

Plaintiff asserts claims against defendant Yates, individually and as Supervisor of Clerk-Typists of the Probation Department, and defendant Harkins, individually and as Director of Accountability and Integrity of the Probation Department, under 42 U.S.C. § 1983 for retaliation for her exercise of the First Amendment right to speech and under the PHRA, 43 Pa. C.S.A. § 955(d), for retaliating against her for filing a discrimination charge with the PHRC. She also asserts a claim against defendants Yates and Harkins for conspiring to deprive her of her First Amendment right to speech in violation of 42 U.S.C. § 1985(3). Plaintiff seeks to hold the City liable for these alleged violations on the ground that the City failed adequately to train and supervise the individual defendants regarding

impermissible employment discrimination and that their retaliation amounted to a policy, practice or custom of the City which deprived plaintiff of her rights.

Dismissal for failure to state a claim is appropriate when it clearly appears that plaintiff can prove no set of facts to support a claim which would entitle her to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A court may also consider matters of public record. See Churchill v. Star Enter., 183 F.3d 184, 190 n.5 (3d Cir. 1999). A court, however, need not credit conclusory allegations or legal conclusions in deciding a motion to dismiss. See General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 333 (3d Cir. 2001); Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). A claim may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

The City's motion is predicated on plaintiff's allegations that she, Mr. Yates and Mr. Harkins at the pertinent time all held positions in the Probation Department which is

indisputably a department of the Criminal Trial Division of the First Judicial District of Pennsylvania.⁴ The City asserts that the Probation Department is thus not an agency of Philadelphia.

The Pennsylvania Constitution provides:

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, and such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system."

Pa. Const. art. V, § 1. The counties are required by state law to provide goods, services, and accommodations for the courts within their judicial districts, and must pay the salaries of judges and support personnel. See 42 Pa. C.S.A. §§ 3544, 3722.⁵ Nevertheless, all agencies of the unified state judicial system are part of the Commonwealth government and thus are state rather than local agencies. See Callahan v. City of Philadelphia, 207 F.3d 668, 672 (3d Cir. 1999) (holding Warrant Division of First

⁴ The Probation Department is managed by a Chief Probation Officer (currently two co-Chiefs) who, along with subordinate staff, is appointed by the Administrative Judge of the Trial Division and reports to the Court Administrator.

⁵ In the last reported fiscal year, the City provided \$8.1 million to fund the Probation Department. The Commonwealth provided \$5.1 million.

Judicial District is part of unified state judicial system and distinct from City).⁶

The relevant inquiry is not whether an agency is funded locally, but whether it is "independent of the Commonwealth" and "can be regarded as having significant autonomy from the Pennsylvania Supreme Court." Id. at 673. Plaintiff has suggested no basis on which one could reasonably hold that the Probation Department, but not the Warrant Division, of the First Judicial District is a City agency.

ACCORDINGLY, this day of December 2001, upon consideration of defendant City of Philadelphia's Motion to Dismiss (Doc. #14) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and plaintiff's claims against the City are dismissed.

BY THE COURT:

JAY C. WALDMAN, J.

⁶ That the City may have been treated as an employer for unemployment compensation purposes would not change the character of the Probation Department or its relationship to the Commonwealth. As the party responsible for securing salaries and benefits, the City would logically be accorded standing in an administrative proceeding involving a claim for benefits.