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Patricoff Suit

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten notes regarding Moye v. Patricoff. (1 page)	08/31/1995	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: 8289

FOLDER TITLE:

Patricoff Suit

2009-1006-F

vz97

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Stacy Ludwig

p.f. letter.

disregard

Mike Noble handling case

All assistance / need.



U.S. Department of Justice

JRR:MPlank:pam
35-16-4202

Washington, D.C. 20530

Telephone:
(202) 514-3716

AUG 31 1995

The Honorable Aloner Mikva
Counsel to the President
The White House
Washington, D.C. 20500

Re: Marquita N. Moye v. Alan Patricoff,
U.S.D.C. District of Columbia, Civil
Action No. 1:95CV01227

Dear Judge Mikva:

A copy of the summons and complaint in this new suit is enclosed. Responsibility for this case is delegated to the United States Attorney named below for direct handling.

Accordingly, please prepare a litigation report for this case at your earliest convenience and send it directly to the United States Attorney so that he\she may be able to respond within the time provided by the Federal Rules. Do not send a copy to this office. If there is unavoidable delay in making the report available, please inform the United States Attorney. The report should include a suggested answer to the complaint, a summary of the facts, issues, defenses, suggested motions, supporting affidavits where applicable, and legal authorities as well as four sets of relevant documents, one of which should be certified.

All further communications between your agency and the Department of Justice should pass directly between your office and the United States Attorney without copies to this office. Your office will be advised directly by the United States Attorney of any developments in the case as well as the final disposition. Copies of all final orders or judgments, favorable or adverse, will be forwarded by the United States Attorney to the Director of the Federal Programs Branch, Civil Division. Additionally, any appealable order or judgment adverse to the United States will be forwarded by the United States Attorney to the Appellate Staff of the Civil Division for review.

If it appears that this case presents novel or important questions of laws or policy which might make involvement by this office appropriate, prepare the litigation report in duplicate and send this office a copy. In your letter of transmittal please point out the reasons which justify this office retaining responsibility for this case.

Very truly yours,



MARY E. GOETTEN
Branch Director
Federal Programs Branch
Civil Division

Enclosure

cc: United States Attorney's Office
Civil Division
Judiciary Center Building
555 Fourth Street
Washington, D.C. 20001

United States District Court

FOR THE

DISTRICT OF COLUMBIA

MARQUITA N. MOYE
7019 Georgia Ave., N.W. #2
Washington, D.C. 20012

SUMMONS IN A CIVIL ACTION

Plaintiff,
v.

CASE NUMBER 1:95CV01227

ALAN PATRICOFF,
in his official capacity as
COMMISSIONER, THE WHITE HOUSE
CONFERENCE ON SMALL BUSINESS
1800 G Street, N.W. #250
Washington, D.C. 20006-4407,

JUDGE: Norma Holloway Johnson

DECK TYPE: EEOC

DATE STAMP: 06/29/95

Defendant.

TO: (Name and Address of Defendant)

Hon. Janet Reno, Esquire
United States Attorney General
United States Department of Justice
Constitution Ave., and 10th St., N.W.
Washington, D.C. 20530

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

John F. Karl, Jr., Esquire
McDonald & Karl
2100 Pennsylvania Ave., N.W.
Suite 675
Washington, D.C. 20037-3202

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON

CLERK

JUN 29 1995

DATE

Maureen Higgins
BY DEPUTY CLERK

United States District Court
for the District of Columbia
Office of the Clerk
333 Constitution Avenue, NW
Washington, DC 20001

Nancy M. Mayer-Whittington
Clerk

**NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE**

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in a delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to a trial of your case by a United States Magistrate Judge. By statute, 28 U.S.C. § 636(c), Fed.R.Civ.P. 73, and Local Rule 502, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Rule 206 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial.

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Attached is a copy of the "Consent to Proceed Before a United States Magistrate Judge for All Purposes" form. Your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned for all purposes to a Magistrate Judge.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARQUITA N. MOYE
7019 Georgia Ave., N.W. #2
Washington, D.C. 20012,

Plaintiff,

v.

ALAN PATRICOF,
In his official capacity as
COMMISSIONER, THE WHITE HOUSE
CONFERENCE ON SMALL BUSINESS
1800 G Street, N.W. #250
Washington, D.C. 20006-4407,

Defendant.

CASE NUMBER 1:95CV01227

JUDGE: Norma Holloway Johnson

DECK TYPE: EEOC

DATE STAMP: 06/29/95

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY
RELIEF ARISING FROM EMPLOYMENT DISCRIMINATION
ON THE BASIS OF RACE, COLOR, SEX AND DISABILITY**

I. INTRODUCTION

1. This is an individual action seeking declaratory and injunctive relief and back pay and compensatory damages for violations of the plaintiff's rights to equal employment opportunity under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e, et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 791 and 29 CFR § 1613.702, and the Americans With Disabilities Act, 42 U.S.C. §§ 12101, et seq.

2. Plaintiff contends that defendant has systematically and continuously violated her statutory rights while plaintiff was employed by the White House Conference for Small Business ("WHCSB"), by discriminating against her on the basis of her race, color, sex and disability.

II. JURISDICTION AND VENUE

3. Plaintiff is authorized to invoke the jurisdiction of this Court at this time under the provisions of 42 U.S.C. §§ 2000e, et seq. Plaintiff exhausted her Title VII administrative remedies under § 501 of the Rehabilitation Act. Plaintiff has a private cause of action under § 501 and § 505 of the Rehabilitation Act of 1973, as amended.

4. Venue is properly in the District of Columbia pursuant to § 706(f)(3) of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f), because Ms. Moye is a resident of the District of Columbia and resides at 7019 Georgia Avenue, N.W., Washington, D.C. At all times relevant Ms. Moye was employed by the WHCSB in Washington, D.C.

5. Defendant is an executive agency, department, or instrumentality of the federal government, subject to the laws of the United States of America.

III. THE PARTIES

6. Plaintiff is an African-American female citizen of the United States who was employed by the WHCSB from May 14, 1994 to

October 14, 1994. Ms. Moyer advised the defendant that she had a disability in that she has cerebral palsy. Plaintiff is a "qualified handicapped individual" as defined by the Rehabilitation Act of 1973, 29 U.S.C. § 791, 29 CFR § 1613.702, and the Americans with Disabilities Act of 1989, 42 U.S.C. §§ 12111. Ms. Moyer received a B.A. degree from the George Washington University in 1989. Ms. Moyer graduated from the University of Pittsburgh Law School in 1992. Ms. Moyer is a member of the Bar of Pennsylvania.

7. Defendant, Alan Patricof, is the Commissioner of the WHCSB and, as such, he has ultimate responsibility for the WHCSB's policies and practices. The WHCSB is required under § 501 of the Rehabilitation Act to take affirmative action to ensure equal employment opportunities for qualified handicapped individuals.

IV. BACKGROUND FACTS

8. At all relevant times, Ms. Moyer was employed as a Writer/Researcher in the Issues Department of the WHCSB earning an annual salary of \$27,500. The position of Writer/Researcher requires excellent writing skills, policy/issue research capability, and strong oral and verbal communication skills. The job description for Writer/Researcher does not state any requirements that the incumbent must type.

9. One of Ms. Moyer's primary duties as Writer/Researcher was to prepare written reports in an objective and comprehensive manner based on second party records, within time specific parameters. Ms. Moyer also traveled on occasion to state conferences.

10. Ms. Moye was fully aware of her job duties and she advised Ms. Helene Colvin, her supervisor, during her initial interview for the position that she was capable of performing the tasks despite her disability. During her interview for the position, Ms. Colvin did not mention any time restraints imposed on completing the state reports. At this time, Ms. Moye informed Ms. Colvin that she could type only 20 words per minute. Ms. Colvin stated that her typing speed would not be a problem.

A. Change In Job Requirements

11. When Ms. Moye began her duties as a Writer/Researcher, there already existed a large backlog of state reports in the Issues Department.

12. To eliminate some of the backlog, Ms. Moye frequently made requests to her supervisor, Ms. Colvin, that she receive additional support to help type the information from the state reports into the computer. On many occasions throughout July, August and September, 1994, Ms. Moye requested the assistant of an unpaid student intern to help with the typing. It was common practice by many departments of the WHCSB to employ interns to help with the additional workload. However, Ms. Moye's requests were refused.

13. On August 9, a staff meeting was held for the Issues Department. Mr. Mark Schultz, the Executive Director of WHCSB, directed the meeting. He noted that a backlog in the Issues Department had accrued and to help eliminate this backlog, the

content of the state reports were to be reduced.

14. During the meeting, the staff was informed that they were now required to complete the state reports in three days to eliminate the departmental backlog. This represented a 60% time reduction from the original seven day deadline mandate.

15. At the meeting, Ms. Moye and a co-worker, Linda Kwoun, asked Mr. Schultz if they could receive the assistance of an intern to help type information of the state reports into the computer. Again, the request was not acted upon, although all other departments enjoyed the assistance of at least one intern.

1. Failure to Make Reasonable Accommodations

16. Ms. Moye was quick to identify the problems associated with the backlog of state reports in the Issues Department and communicated these concerns to her supervisor, Ms. Colvin.

17. Specifically, there were three areas of concern that attributed to the backlog of state reports: one, malfunctioning equipment; two, unclear, unorganized and incomplete background information provided on state reports; and three, the unreasonable amount of typing required to input information of the state reports into the computers coupled with Ms. Moye's physical incapability to type fast enough to produce the state reports in the appropriate time period.

18. Ms. Moye's computer malfunctioned in late June, causing reports to be deleted several times. Although this was immediately brought to the attention of her supervisor, defendant failed to

repair her computer for several weeks.

19. Defendant refused to provide information used to produce the reports in an easily usable format or in a manner that facilitated expeditious reporting. Consequently, defendant's action hampered Ms. Moyer's ability to process reports. Ms. Moyer brought this to the attention of her supervisor. On several occasions, Ms. Moyer suggested alternatives to gather and collect the information to facilitate the processing of the state reports.

20. In order for the state reports to be processed within the time frame requested, Ms. Moyer was required to type information into the computer. As a result of her cerebral palsy, she was prevented from typing at a fast pace. Although she informed Ms. Colvin when she was hired that she could only type 20 words per minute, clearly this was not fast enough to keep up the demanding pace required of her to complete the state reports in the reduced time period.

21. Despite Ms. Moyer's efforts in communicating these problems to Ms. Colvin, defendant, failed to accommodate her concerns. Defendant refused to supply Ms. Moyer with an intern to help process the state reports, and her computer remained unfixed for weeks.

22. On September 9, 1994, Ms. Moyer received a performance evaluation from Ms. Colvin. The overall rating she received was "2," equivalent to "marginally successful" and her bonus was withheld. The evaluation focused on her attitude, professionalism and ability to produce the reports in a timely manner. Although

the evaluation stated that Ms. Moyer's "job performance has been consistent and thorough" and her "writing skills and research have produced very fine product," the only fault noted was her inability to produce the state reports on time: "the downside of [her] performance was a matter of time sensitivity." This was the first time Ms. Moyer was informed of the necessity to produce the state reports in a more timely manner. The evaluation also stated that her attitude and professionalism in the workplace was unacceptable.

23. As a result of this performance evaluation, Ms. Moyer was put on administrative notice, and was given two weeks in which to improve in the noted areas of concern.

24. During the meeting with Ms. Colvin on September 9, 1994, to discuss her performance appraisal, Ms. Moyer again asked for the assistance of an intern to help type the reports on the computer. This request was also denied.

25. On September 12, 1994, Ms. Moyer formally responded to her performance evaluation by writing a memorandum to Ms. Colvin. In the memorandum, Ms. Moyer explained that her physical disability did not prevent her from doing her job, however, it did prevent her from typing quickly enough to produce the state reports in the reduced time period of three days. She also explained that she could produce the state reports within five days by working overtime and on the weekends. Finally, Ms. Moyer in her memorandum requested that "she be allotted extra time for typing, or . . . receive assistance with typing on a consistent basis."

26. Ms. Colvin met with Ms. Moyer on September 12, 1994, to

address the issues Ms. Moye raised in her memorandum. Ms. Colvin did not react favorably to Ms. Moye's request for assistance. Instead, Ms. Colvin told Ms. Moye: "During your interview, you said you could do this job. Now you are saying that you cannot do this job."

27. Ms. Moye explained to Ms. Colvin during their meeting that she was not saying she could not do her job, rather, she only requested assistance to help meet the demands of the reduced production deadline. Ms. Moye again emphasized that she was physically incapable of typing fast enough to produce the reports in three days.

28. During the meeting on September 12, 1994, Ms. Colvin refused to provide Ms. Moye with any explanation as to why the production deadline was reduced from seven to three days for the completion of state reports.

29. Ms. Moye's September 12, 1994, memorandum addressed to Ms. Colvin outlined some of the difficulties she faced as a person with cerebral palsy and also restated these physical difficulties she faced during their meeting. Ms. Colvin refused to make any accommodations to Ms. Moye's concerns and problems. Instead, Ms. Colvin complained in writing that Ms. Moye was to improve her "surly, unfriendly, and defensive" attitude in the workplace. Ms. Colvin suggested Ms. Moye "refrain from comparing [her] work circumstance with those of [her] colleagues."

30. In response to Ms. Moye's explanation as to why she had trouble speaking like the average person as a result of her

disability, Ms. Colvin did not take this physical disability into consideration in her evaluation. Instead, Ms. Colvin, in her written memorandum, warned: "watch the tone and level of your voice when speaking."

31. As to Ms. Moyer's requests for additional time or support staff to complete the reports, Ms. Colvin only reiterated the requirement to "produce the state reports ASAP."

32. At no time did defendant offer to make reasonable accommodations for plaintiff's disability and related symptoms, as required by 29 CFR § 613.704. Defendant refused to make any accommodations which would have enabled Ms. Moyer to continue to work as a Writer/Researcher.

33. On September 13, 1994, Ms. Gurden Briegel, a co-worker, offered Ms. Moyer the assistance of an intern, David, after he had completed all of the assignments she had given him. Ms. Moyer welcomed the extra help and used the intern's assistance as often as he was available during his three day work week. However, the few hours per week that the intern was available did not alleviate the backlog of work.

34. On September 28, 1994, Ms. Colvin and Mr. Schultz met with Ms. Moyer to discuss Ms. Moyer's job performance evaluation. During the meeting, they communicated to Ms. Moyer that her performance had not improved to raise her total assessment above the "marginally successful" rating she received on her September 9th performance evaluation.

35. During the meeting, Ms. Colvin told Ms. Moyer that since

her job performance had not improved and still remained inadequate, she had no choice but to terminate her. Ms. Moye was then given a two week notice of termination, her last day of work to be October 14, 1994.

36. The reasons given by Ms. Colvin and Mr. Schultz for her termination was her physical inability to produce the state reports within the reduced time frame as her supervisor had mandated.

B. Preferential Treatment of Others

37. During the week of August 15-19, 1994, Mr. Doug Lauen, another co-worker in the Issues Department, wrote the modified version of the state reports in three days. However, Ms. Colvin returned his state report to him because it was inadequately written to meet the reduced content requirements that had been established. Mr. Lauen was not reprimanded for his inability to adequately prepare the state report. Instead, Ms. Colvin only instructed Mr. Lauen to rewrite the state report. Mr. Lauen does not have any physical impairments.

C. Pattern and Practice of Discrimination

38. Throughout Ms. Moye's employment with the WHCSB, derogatory and discriminatory remarks were made to her on the basis of her race, color, sex and physical disability.

39. On May 27, 1994, co-worker Ms. Kwoun asked Ms. Moye "can you travel."

40. Nicholas Friendly, another co-worker, questioned whether

it was a prudent decision for Ms. Colvin to hire Ms. Moyer because he believed Ms. Moyer was not capable of travelling.

41. Another basis provided for Ms. Moyer's termination was her inappropriate office behavior. Mr. Schultz confirmed that this issue was part of the reason for Ms. Moyer's dismissal as he told her "you are still just at a 25% in attitude and professionalism, and a 50% for duties and responsibilities, which gives you an overall rating of a 2."

42. Ms. Moyer was singled out for her informal behavior at the WHCSB, and was labelled as being "inappropriate." Yet other employees were not cited for their informal manner and dress. Indeed, Ms. Colvin stated during her meeting with Ms. Moyer that "the office decorum of the WHCSB is extremely loose."

43. Ms. Moyer was singled out among her peers to adopt a professional standard and conduct above and beyond that which was required of her peers. Ms. Colvin's September 12, 1994 memorandum advised: "Maintain proper office decorum, despite how others around you might behave." Ms. Moyer's performance evaluation stated: "There remains a need to be mindful of appropriate and inappropriate office behavior, and the distinction between personal and professional friendships."

44. None of these directives were imposed on any of Ms. Moyer's white colleagues. Furthermore, Ms. Colvin was hardly the model of decorum. In communicating with members of her staff, Ms. Colvin routinely yelled in the office corridors and used profane language.

45. Ms. Moye was often treated poorly and rudely by other white non-disabled colleagues in the office. When she confronted her peers as to the reasons why they treated her in a derogatory, offensive and rude manner, she was accused of being "curt and rude in conversations with others." Ms. Moye's white non-disabled colleagues were not reprimanded for their behavior.

46. Similarly, white males in the office of WHCSB were not reprimanded for their inappropriate office behavior. John Doorlay, a white male co-worker, was not required to behave in a manner consistent with Ms. Colvin's mandates imposed on Ms. Moye. Instead, he engaged in inappropriate behavior by using profane language, providing curt and rude answers to questions, and initiating arguments with other members of the staff. Mr. Doorlay was never reprimanded for any of his actions.

D. Exhaustion of Administrative Remedies

47. On November 21, 1994, Ms. Moye filed a formal complaint of discrimination with her employer. More than 180 days have passed since she filed this complaint process. To the best of her knowledge, no investigation was ever completed.

COUNT I (INTENTIONAL DISCRIMINATION AND FAILURE TO TAKE AFFIRMATIVE ACTION AND MAKE REASONABLE ACCOMMODATION IN EMPLOYMENT ON THE BASIS OF HANDICAP)

48. Plaintiff repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 47 above.

49. Defendant intentionally discriminated against Ms. Moye because of her disability. Defendant failed to accommodate plaintiff's disability as required by law.

50. Appropriate accommodations were feasible and would not have imposed undue hardship on the defendants. Ms. Colvin and Mr. Schultz regularly assigned interns to other sections of the Commission to alleviate the work load, yet refused plaintiff's requests for assistance in typing the state reports, which was unduly burdensome and oppressive to plaintiff because of her disability.

51. Ms. Moye's supervisors further refused and failed to accommodate her disability by denying her assistance that other co-workers received who were not disabled.

52. As a direct result of defendant's failure to accommodate plaintiff's need for assistance in typing the state reports, plaintiff was unable to perform her duties.

53. As a direct result of said unlawful discrimination practiced by the defendants, plaintiff experienced ridicule among her peers, and suffered emotional pain, anguish and damages as a result thereof.

54. After plaintiff made reasonable efforts to identify the problems and communicated her physical limitations associated with her disability to the defendant and made suggestions as to how the defendant could work with her to eliminate these problems, defendant wrongfully and without reason refused to accommodate her requests.

55. Defendant's actions prevented Ms. Moye from performing her responsibilities and she was judged on the basis of her physical disabilities as opposed to her abilities.

56. The violations alleged above and the continuing discriminatory and unlawful employment practices and conditions herein mentioned are the result of personnel policies and practices implemented and carried out by supervisors who exercised authority over plaintiff and who were acting as agents for defendant within the scope or course of their employment.

57. As a result of the discriminatory termination of plaintiff's employment at the WHCSB, plaintiff incurred damage to her economic and emotional well-being, her mental and physical health, reputation, and professional development, all to her great loss and detriment.

58. Defendant's discriminatory and unlawful treatment of plaintiff unreasonably interfered with her performance of her work assignments and destroyed her ability to support and properly care for herself.

59. The actions taken by defendant against plaintiff were done with actual or constructive knowledge of her supervisors. All levels of defendant's management acquiesced and/or ratified the acts of discrimination and failure to take affirmative action to accommodate plaintiff's disability. Defendant intentionally engaged in these unlawful employment practices.

60. The acts committed by defendants were deliberate, intentional, outrageous and calculated to cause emotional distress.

Plaintiff, as a direct result of defendant's actions, experienced great emotional distress, embarrassment, humiliation, loss of self-esteem, psychological injuries and stress.

61. Defendant's actions in refusing to permit plaintiff to resume her employment and refusing to make reasonable accommodations to her disability constitute employment discrimination against a qualified disability person, in violation of § 501 of the Rehabilitation Act of 1973 (29 U.S.C § 791) and the Americans With Disabilities Act of 1989 (42 U.S.C. § 12101).

**COUNT II
(INTENTIONAL DISCRIMINATION ON THE BASIS OF RACE, COLOR, AND SEX)**

62. Plaintiff repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 61 above.

63. Defendant intentionally discriminated against Ms. Moye because of her race, color, and sex.

V. RELIEF REQUESTED

WHEREFORE, plaintiff Marquita N. Moye respectfully requests the Court grant the following relief:

A. Declare the WHCSB's policies and practices described above to be in violation of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1989.

B. Enjoin the WHCSB from engaging in employment practices and procedures that operate to discriminate on the basis of race, color, and sex.

C. Issue a Permanent Injunction requiring defendant to rescind the termination of Marquita Moye's employment.

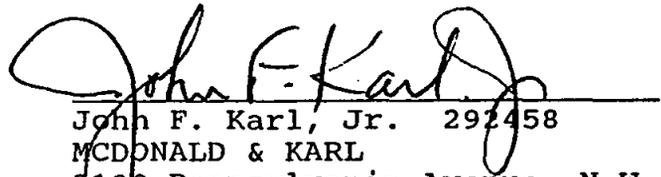
D. Award the plaintiff back pay, benefits of employment, including accumulated sick and annual leave, step increases, bonuses and benefits in an amount to be determined at trial plus pre-trial and post-trial interest.

E. Award the plaintiff compensatory damages in the amount of \$200,000 for emotional distress, embarrassment, humiliation, and mental anguish.

F. Award the plaintiff her costs and reasonable attorney's fees, plus pre-trial and post-trial interest.

G. Award such other relief which the Court may deem just, necessary, and proper.

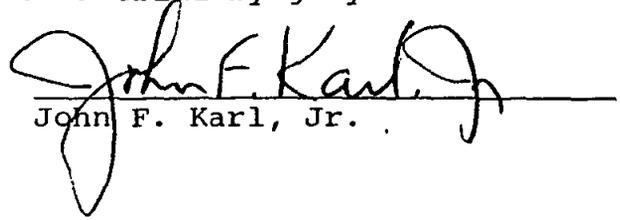
Respectfully submitted,


John F. Karl, Jr. 292458
MCDONALD & KARL
2100 Pennsylvania Avenue, N.W.
Suite 675
Washington, D.C. 20037-3202
(202) 293-3200

Counsel for Plaintiff

JURY DEMAND

Plaintiff respectfully requests a trial by jury.


John F. Karl, Jr.

Called Ludwig -

~~Called Yajen~~

Waiting for return
calls.

Kate Carr - called
62682

THE WHITE HOUSE
WASHINGTON

DATE: _____

TO:

FROM: White House Counsel
Room 125, OEOB, x6-7901

- FYI
- Appropriate Action
- Let's Discuss
- Per Our Conversation
- Per Your Request
- Please Return
- Other

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66683
Marilyn Jaeger
Deputy
Public Liaison



U.S. Department of Justice

*Jeff =
see memo*

United States Attorney

District of Columbia

Judiciary Center
555 Fourth St. N.W.
Washington, DC 20001

July 12, 1995

Honorable Abner J. Mikva
Counsel to the President
The White House
Second Floor-West Wing
1600 Pennsylvania Ave., N.W.,
Washington, D.C. 20500

Re: Marquita N. Moye v. Alan Patricoff
Civil Action No. 95-1227 NHJ

Dear Ms. Milkva:

On June 29, 1995, this office was served with a copy of the summons and complaint in the above-captioned case. Accordingly, we must answer, move, or otherwise respond to the complaint on or before August 28, 1995. The Federal Rules of Civil Procedure also require that the parties meet and confer no later than September 12, 1995 to discuss scheduling issues. Shortly after that deadline, the parties must exchange factual information and documents -- or "core discovery" -- pertaining to plaintiff's claims. Fed. R. Civ. P. 26(a).

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We assume that, pursuant to Rule 4(i) of the Federal Rules of Civil Procedure, your agency either has been, or shortly will be, served with a copy of the summons and complaint. Also, you may already have, or soon will have, received a request from the Department of Justice for a litigation report. It will expedite the handling of this case if, in addition to responding to the Department of Justice's request, you will, as soon as you are served or otherwise learn of the case, instruct the attorney to whom you assign it, to phone AUSA Stacy M. Ludwig (514-7147). This will enable your attorney and our Assistant to discuss how best to prepare to defend this action and any possible emergency matters which may arise in it.

Your cooperation, particularly in getting in touch with us as soon as possible after you are served, will greatly assist us in effectively defending your interests.

Very truly yours,

ERIC H. HOLDER, JR.
United States Attorney

Stacy M. Ludwig
By: STACY M. LUDWIG
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARQUITA N. MOYE
7019 Georgia Ave., N.W. #2
Washington, D.C. 20012,

Plaintiff,

v.

ALAN PATRICOF,
In his official capacity as
COMMISSIONER, THE WHITE HOUSE
CONFERENCE ON SMALL BUSINESS
1800 G Street, N.W. #250
Washington, D.C. 20006-4407,

Defendant.

CASE NUMBER 1:95CV01227

JUDGE: Norma Holloway Johnson

DECK TYPE: EEOC

DATE STAMP: 06/29/95

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY
RELIEF ARISING FROM EMPLOYMENT DISCRIMINATION
ON THE BASIS OF RACE, COLOR, SEX AND DISABILITY**

I. INTRODUCTION

1. This is an individual action seeking declaratory and injunctive relief and back pay and compensatory damages for violations of the plaintiff's rights to equal employment opportunity under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e, et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 791 and 29 CFR § 1613.702, and the Americans With Disabilities Act, 42 U.S.C. §§ 12101, et seq.

2. Plaintiff contends that defendant has systematically and continuously violated her statutory rights while plaintiff was employed by the White House Conference for Small Business ("WHCSB"), by discriminating against her on the basis of her race, color, sex and disability.

II. JURISDICTION AND VENUE

3. Plaintiff is authorized to invoke the jurisdiction of this Court at this time under the provisions of 42 U.S.C. §§ 2000e, et seq. Plaintiff exhausted her Title VII administrative remedies under § 501 of the Rehabilitation Act. Plaintiff has a private cause of action under § 501 and § 505 of the Rehabilitation Act of 1973, as amended.

4. Venue is properly in the District of Columbia pursuant to § 706(f)(3) of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f), because Ms. Moye is a resident of the District of Columbia and resides at 7019 Georgia Avenue, N.W., Washington, D.C. At all times relevant Ms. Moye was employed by the WHCSB in Washington, D.C.

5. Defendant is an executive agency, department, or instrumentality of the federal government, subject to the laws of the United States of America.

III. THE PARTIES

6. Plaintiff is an African-American female citizen of the United States who was employed by the WHCSB from May 14, 1994 to

October 14, 1994. Ms. Moyer advised the defendant that she had a disability in that she has cerebral palsy. Plaintiff is a "qualified handicapped individual" as defined by the Rehabilitation Act of 1973, 29 U.S.C. § 791, 29 CFR § 1613.702, and the Americans with Disabilities Act of 1989, 42 U.S.C. §§ 12111. Ms. Moyer received a B.A. degree from the George Washington University in 1989. Ms. Moyer graduated from the University of Pittsburgh Law School in 1992. Ms. Moyer is a member of the Bar of Pennsylvania.

7. Defendant, Alan Patricof, is the Commissioner of the WHCSB and, as such, he has ultimate responsibility for the WHCSB's policies and practices. The WHCSB is required under § 501 of the Rehabilitation Act to take affirmative action to ensure equal employment opportunities for qualified handicapped individuals.

IV. BACKGROUND FACTS

8. At all relevant times, Ms. Moyer was employed as a Writer/Researcher in the Issues Department of the WHCSB earning an annual salary of \$27,500. The position of Writer/Researcher requires excellent writing skills, policy/issue research capability, and strong oral and verbal communication skills. The job description for Writer/Researcher does not state any requirements that the incumbent must type.

9. One of Ms. Moyer's primary duties as Writer/Researcher was to prepare written reports in an objective and comprehensive manner based on second party records, within time specific parameters. Ms. Moyer also traveled on occasion to state conferences.

10. Ms. Moyer was fully aware of her job duties and she advised Ms. Helene Colvin, her supervisor, during her initial interview for the position that she was capable of performing the tasks despite her disability. During her interview for the position, Ms. Colvin did not mention any time restraints imposed on completing the state reports. At this time, Ms. Moyer informed Ms. Colvin that she could type only 20 words per minute. Ms. Colvin stated that her typing speed would not be a problem.

A. Change In Job Requirements

11. When Ms. Moyer began her duties as a Writer/Researcher, there already existed a large backlog of state reports in the Issues Department.

12. To eliminate some of the backlog, Ms. Moyer frequently made requests to her supervisor, Ms. Colvin, that she receive additional support to help type the information from the state reports into the computer. On many occasions throughout July, August and September, 1994, Ms. Moyer requested the assistant of an unpaid student intern to help with the typing. It was common practice by many departments of the WHCSB to employ interns to help with the additional workload. However, Ms. Moyer's requests were refused.

13. On August 9, a staff meeting was held for the Issues Department. Mr. Mark Schultz, the Executive Director of WHCSB, directed the meeting. He noted that a backlog in the Issues Department had accrued and to help eliminate this backlog, the

content of the state reports were to be reduced.

14. During the meeting, the staff was informed that they were now required to complete the state reports in three days to eliminate the departmental backlog. This represented a 60% time reduction from the original seven day deadline mandate.

15. At the meeting, Ms. Moye and a co-worker, Linda Kwoun, asked Mr. Schultz if they could receive the assistance of an intern to help type information of the state reports into the computer. Again, the request was not acted upon, although all other departments enjoyed the assistance of at least one intern.

1. Failure to Make Reasonable Accommodations

16. Ms. Moye was quick to identify the problems associated with the backlog of state reports in the Issues Department and communicated these concerns to her supervisor, Ms. Colvin.

17. Specifically, there were three areas of concern that attributed to the backlog of state reports: one, malfunctioning equipment; two, unclear, unorganized and incomplete background information provided on state reports; and three, the unreasonable amount of typing required to input information of the state reports into the computers coupled with Ms. Moye's physical incapability to type fast enough to produce the state reports in the appropriate time period.

18. Ms. Moye's computer malfunctioned in late June, causing reports to be deleted several times. Although this was immediately brought to the attention of her supervisor, defendant failed to

repair her computer for several weeks.

19. Defendant refused to provide information used to produce the reports in an easily usable format or in a manner that facilitated expeditious reporting. Consequently, defendant's action hampered Ms. Moye's ability to process reports. Ms. Moye brought this to the attention of her supervisor. On several occasions, Ms. Moye suggested alternatives to gather and collect the information to facilitate the processing of the state reports.

20. In order for the state reports to be processed within the time frame requested, Ms. Moye was required to type information into the computer. As a result of her cerebral palsy, she was prevented from typing at a fast pace. Although she informed Ms. Colvin when she was hired that she could only type 20 words per minute, clearly this was not fast enough to keep up the demanding pace required of her to complete the state reports in the reduced time period.

21. Despite Ms. Moye's efforts in communicating these problems to Ms. Colvin, defendant, failed to accommodate her concerns. Defendant refused to supply Ms. Moye with an intern to help process the state reports, and her computer remained unfixed for weeks.

22. On September 9, 1994, Ms. Moye received a performance evaluation from Ms. Colvin. The overall rating she received was "2," equivalent to "marginally successful" and her bonus was withheld. The evaluation focused on her attitude, professionalism and ability to produce the reports in a timely manner. Although

the evaluation stated that Ms. Moye's "job performance has been consistent and thorough" and her "writing skills and research have produced very fine product," the only fault noted was her inability to produce the state reports on time: "the downside of [her] performance was a matter of time sensitivity." This was the first time Ms. Moye was informed of the necessity to produce the state reports in a more timely manner. The evaluation also stated that her attitude and professionalism in the workplace was unacceptable.

23. As a result of this performance evaluation, Ms. Moye was put on administrative notice, and was given two weeks in which to improve in the noted areas of concern.

24. During the meeting with Ms. Colvin on September 9, 1994, to discuss her performance appraisal, Ms. Moye again asked for the assistance of an intern to help type the reports on the computer. This request was also denied.

25. On September 12, 1994, Ms. Moye formally responded to her performance evaluation by writing a memorandum to Ms. Colvin. In the memorandum, Ms. Moye explained that her physical disability did not prevent her from doing her job, however, it did prevent her from typing quickly enough to produce the state reports in the reduced time period of three days. She also explained that she could produce the state reports within five days by working overtime and on the weekends. Finally, Ms. Moye in her memorandum requested that "she be allotted extra time for typing, or . . . receive assistance with typing on a consistent basis."

26. Ms. Colvin met with Ms. Moye on September 12, 1994, to

address the issues Ms. Moyer raised in her memorandum. Ms. Colvin did not react favorably to Ms. Moyer's request for assistance. Instead, Ms. Colvin told Ms. Moyer: "During your interview, you said you could do this job. Now you are saying that you cannot do this job."

27. Ms. Moyer explained to Ms. Colvin during their meeting that she was not saying she could not do her job, rather, she only requested assistance to help meet the demands of the reduced production deadline. Ms. Moyer again emphasized that she was physically incapable of typing fast enough to produce the reports in three days.

28. During the meeting on September 12, 1994, Ms. Colvin refused to provide Ms. Moyer with any explanation as to why the production deadline was reduced from seven to three days for the completion of state reports.

29. Ms. Moyer's September 12, 1994, memorandum addressed to Ms. Colvin outlined some of the difficulties she faced as a person with cerebral palsy and also restated these physical difficulties she faced during their meeting. Ms. Colvin refused to make any accommodations to Ms. Moyer's concerns and problems. Instead, Ms. Colvin complained in writing that Ms. Moyer was to improve her "surly, unfriendly, and defensive" attitude in the workplace. Ms. Colvin suggested Ms. Moyer "refrain from comparing [her] work circumstance with those of [her] colleagues."

30. In response to Ms. Moyer's explanation as to why she had trouble speaking like the average person as a result of her

disability, Ms. Colvin did not take this physical disability into consideration in her evaluation. Instead, Ms. Colvin, in her written memorandum, warned: "watch the tone and level of your voice when speaking."

31. As to Ms. Moye's requests for additional time or support staff to complete the reports, Ms. Colvin only reiterated the requirement to "produce the state reports ASAP."

32. At no time did defendant offer to make reasonable accommodations for plaintiff's disability and related symptoms, as required by 29 CFR § 613.704. Defendant refused to make any accommodations which would have enabled Ms. Moye to continue to work as a Writer/Researcher.

33. On September 13, 1994, Ms. Gurden Briegel, a co-worker, offered Ms. Moye the assistance of an intern, David, after he had completed all of the assignments she had given him. Ms. Moye welcomed the extra help and used the intern's assistance as often as he was available during his three day work week. However, the few hours per week that the intern was available did not alleviate the backlog of work.

34. On September 28, 1994, Ms. Colvin and Mr. Schultz met with Ms. Moye to discuss Ms. Moye's job performance evaluation. During the meeting, they communicated to Ms. Moye that her performance had not improved to raise her total assessment above the "marginally successful" rating she received on her September 9th performance evaluation.

35. During the meeting, Ms. Colvin told Ms. Moye that since

her job performance had not improved and still remained inadequate, she had no choice but to terminate her. Ms. Moye was then given a two week notice of termination, her last day of work to be October 14, 1994.

36. The reasons given by Ms. Colvin and Mr. Schultz for her termination was her physical inability to produce the state reports within the reduced time frame as her supervisor had mandated.

B. Preferential Treatment of Others

37. During the week of August 15-19, 1994, Mr. Doug Lauen, another co-worker in the Issues Department, wrote the modified version of the state reports in three days. However, Ms. Colvin returned his state report to him because it was inadequately written to meet the reduced content requirements that had been established. Mr. Lauen was not reprimanded for his inability to adequately prepare the state report. Instead, Ms. Colvin only instructed Mr. Lauen to rewrite the state report. Mr. Lauen does not have any physical impairments.

C. Pattern and Practice of Discrimination

38. Throughout Ms. Moye's employment with the WHCSB, derogatory and discriminatory remarks were made to her on the basis of her race, color, sex and physical disability.

39. On May 27, 1994, co-worker Ms. Kwoun asked Ms. Moye "can you travel."

40. Nicholas Friendly, another co-worker, questioned whether

it was a prudent decision for Ms. Colvin to hire Ms. Moye because he believed Ms. Moye was not capable of travelling.

41. Another basis provided for Ms. Moye's termination was her inappropriate office behavior. Mr. Schultz confirmed that this issue was part of the reason for Ms. Moye's dismissal as he told her "you are still just at a 25% in attitude and professionalism, and a 50% for duties and responsibilities, which gives you an overall rating of a 2."

42. Ms. Moye was singled out for her informal behavior at the WHCSB, and was labelled as being "inappropriate." Yet other employees were not cited for their informal manner and dress. Indeed, Ms. Colvin stated during her meeting with Ms. Moye that "the office decorum of the WHCSB is extremely loose."

43. Ms. Moye was singled out among her peers to adopt a professional standard and conduct above and beyond that which was required of her peers. Ms. Colvin's September 12, 1994 memorandum advised: "Maintain proper office decorum, despite how others around you might behave." Ms. Moye's performance evaluation stated: "There remains a need to be mindful of appropriate and inappropriate office behavior, and the distinction between personal and professional friendships."

44. None of these directives were imposed on any of Ms. Moye's white colleagues. Furthermore, Ms. Colvin was hardly the model of decorum. In communicating with members of her staff, Ms. Colvin routinely yelled in the office corridors and used profane language.

45. Ms. Moye was often treated poorly and rudely by other white non-disabled colleagues in the office. When she confronted her peers as to the reasons why they treated her in a derogatory, offensive and rude manner, she was accused of being "curt and rude in conversations with others." Ms. Moye's white non-disabled colleagues were not reprimanded for their behavior.

46. Similarly, white males in the office of WHCSB were not reprimanded for their inappropriate office behavior. John Doorlay, a white male co-worker, was not required to behave in a manner consistent with Ms. Colvin's mandates imposed on Ms. Moye. Instead, he engaged in inappropriate behavior by using profane language, providing curt and rude answers to questions, and initiating arguments with other members of the staff. Mr. Doorlay was never reprimanded for any of his actions.

D. Exhaustion of Administrative Remedies

47. On November 21, 1994, Ms. Moye filed a formal complaint of discrimination with her employer. More than 180 days have passed since she filed this complaint process. To the best of her knowledge, no investigation was ever completed.

**COUNT I
(INTENTIONAL DISCRIMINATION AND FAILURE TO TAKE
AFFIRMATIVE ACTION AND MAKE REASONABLE ACCOMMODATION
IN EMPLOYMENT ON THE BASIS OF HANDICAP)**

48. Plaintiff repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 47 above.

49. Defendant intentionally discriminated against Ms. Moye because of her disability. Defendant failed to accommodate plaintiff's disability as required by law.

50. Appropriate accommodations were feasible and would not have imposed undue hardship on the defendants. Ms. Colvin and Mr. Schultz regularly assigned interns to other sections of the Commission to alleviate the work load, yet refused plaintiff's requests for assistance in typing the state reports, which was unduly burdensome and oppressive to plaintiff because of her disability.

51. Ms. Moye's supervisors further refused and failed to accommodate her disability by denying her assistance that other co-workers received who were not disabled.

52. As a direct result of defendant's failure to accommodate plaintiff's need for assistance in typing the state reports, plaintiff was unable to perform her duties.

53. As a direct result of said unlawful discrimination practiced by the defendants, plaintiff experienced ridicule among her peers, and suffered emotional pain, anguish and damages as a result thereof.

54. After plaintiff made reasonable efforts to identify the problems and communicated her physical limitations associated with her disability to the defendant and made suggestions as to how the defendant could work with her to eliminate these problems, defendant wrongfully and without reason refused to accommodate her requests.

55. Defendant's actions prevented Ms. Moya from performing her responsibilities and she was judged on the basis of her physical disabilities as opposed to her abilities.

56. The violations alleged above and the continuing discriminatory and unlawful employment practices and conditions herein mentioned are the result of personnel policies and practices implemented and carried out by supervisors who exercised authority over plaintiff and who were acting as agents for defendant within the scope or course of their employment.

57. As a result of the discriminatory termination of plaintiff's employment at the WHCSB, plaintiff incurred damage to her economic and emotional well-being, her mental and physical health, reputation, and professional development, all to her great loss and detriment.

58. Defendant's discriminatory and unlawful treatment of plaintiff unreasonably interfered with her performance of her work assignments and destroyed her ability to support and properly care for herself.

59. The actions taken by defendant against plaintiff were done with actual or constructive knowledge of her supervisors. All levels of defendant's management acquiesced and/or ratified the acts of discrimination and failure to take affirmative action to accommodate plaintiff's disability. Defendant intentionally engaged in these unlawful employment practices.

60. The acts committed by defendants were deliberate, intentional, outrageous and calculated to cause emotional distress.

Plaintiff, as a direct result of defendant's actions, experienced great emotional distress, embarrassment, humiliation, loss of self-esteem, psychological injuries and stress.

61. Defendant's actions in refusing to permit plaintiff to resume her employment and refusing to make reasonable accommodations to her disability constitute employment discrimination against a qualified disability person, in violation of § 501 of the Rehabilitation Act of 1973 (29 U.S.C § 791) and the Americans With Disabilities Act of 1989 (42 U.S.C. § 12101).

COUNT II
(INTENTIONAL DISCRIMINATION ON THE BASIS OF RACE, COLOR, AND SEX)

62. Plaintiff repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 61 above.

63. Defendant intentionally discriminated against Ms. Moye because of her race, color, and sex.

V. RELIEF REQUESTED

WHEREFORE, plaintiff Marquita N. Moye respectfully requests the Court grant the following relief:

A. Declare the WHCSB's policies and practices described above to be in violation of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1989.

B. Enjoin the WHCSB from engaging in employment practices and procedures that operate to discriminate on the basis of race, color, and sex.

C. Issue a Permanent Injunction requiring defendant to rescind the termination of Marquita Moye's employment.

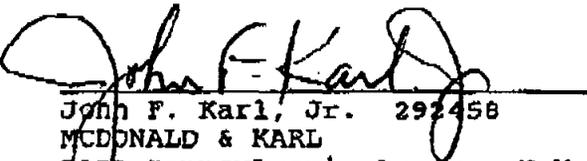
D. Award the plaintiff back pay, benefits of employment, including accumulated sick and annual leave, step increases, bonuses and benefits in an amount to be determined at trial plus pre-trial and post-trial interest.

E. Award the plaintiff compensatory damages in the amount of \$200,000 for emotional distress, embarrassment, humiliation, and mental anguish.

F. Award the plaintiff her costs and reasonable attorney's fees, plus pre-trial and post-trial interest.

G. Award such other relief which the Court may deem just, necessary, and proper.

Respectfully submitted,

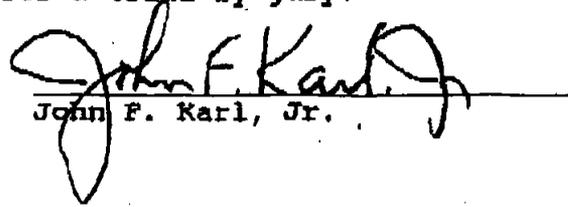


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Counsel for Plaintiff

JURY DEMAND

Plaintiff respectfully requests a trial by jury.


John F. Karl, Jr.

Suit apt head of (Commissioner)
WH Cont on Small Business
Title VII

Q - EEOC - who was point of contact
at this stage?

ANS - work thru general counsel.

Stacy Ludwig
DC

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