

## United States District Court, Northern District of Illinois

<b>Name of Assigned Judge or Magistrate Judge</b>	Joan B. Gottschall	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	03 C 6062	<b>DATE</b>	9/20/2004
<b>CASE TITLE</b>	EEOC vs. Hamilton Communications Group		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

Defendant's Motion to Dismiss

**DOCKET ENTRY:**

(1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_ . Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing set for 10/27/04 at 9:30 AM.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).

(10)  [Other docket entry] Enter Order. Defendant's motion to dismiss [7-1] is denied. Status set for Wednesday October 27, 2004 at 9:30 AM.

(11)  [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	<p style="font-size: 2em; font-weight: bold;">2003 SEP 28 9:30 AM</p> <p style="font-size: 1.5em; font-weight: bold;">2004 SEP 28 9:30 AM</p> <p>Date/time received in central Clerk's Office</p>	<p style="text-align: center;">number of notices</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p style="font-size: 1.5em; font-weight: bold;">SEP 28 2004</p> <p style="font-size: 0.8em;">date docketed</p> </div> <p style="text-align: center;">GNA docketing deputy initials</p> <p style="text-align: center;">date mailed notice</p> <p style="text-align: center;">mailing deputy initials</p>	<p><b>Document Number</b></p> <div style="font-size: 3em; font-weight: bold; margin-top: 20px;">13</div>
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p style="font-size: 2em; font-weight: bold;">2003</p> </div> <p style="font-size: 0.8em;">courtroom deputy's initials</p>			

In separate complaints, the Equal Employment Opportunity Commission and intervenor-plaintiff Leslie A. Jones have sued Jones's former employer, Hamilton Communications Group ("Hamilton"), under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a for sexual harassment and retaliation. Hamilton has moved to dismiss both complaints pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim by which relief can be granted. Hamilton argues that (1) the EEOC has not pled sufficient facts to place Hamilton on notice of the nature of its claim and (2) Jones has pled herself out of court by pleading facts reflecting that the alleged misconduct was too isolated and "tepid" to support a harassment claim. For the reasons stated below, Hamilton's motion to dismiss is denied.

The purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits of the lawsuit. *Triad Assocs. v. Chicago Housing Auth.*, 892 F.2d 583, 586 (7<sup>th</sup> Cir. 1990). The federal notice pleading standard requires only that a complaint give a "short and plain statement showing that the plaintiff is entitled to relief, the purpose of which is to give the defendant notice of the claims [brought against it] and the grounds they rest upon." *Thompson v. Illinois Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7<sup>th</sup> Cir. 2002) (citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993)). For purposes of reviewing this motion, the court must take the plaintiff's well-pled allegations as true and all inferences must be construed in her favor. *Thompson*, 300 F.3d at 753.

Hamilton argues that the EEOC fails to plead sufficient supporting facts to state a discrimination claim under Title VII or Section 1981. The EEOC's complaint alleges that Hamilton (a) discriminated against Jones and a class of female employees on the basis of their sex by subjecting them to sexual harassment, (b) failed to correct the sexual harassment when the employees complained, and (c) subjected them to constructive discharge. It alleges further that Hamilton retaliated against Jones after she complained of the harassment by altering the terms and conditions of her employment and then firing her. Those allegations, while sparse, are sufficient to state a claim under the minimum pleading requirements of Fed.R.Civ.P. 8(a). In employment discrimination cases, "neither the EEOC rules . . . nor the notice pleading requirements mandate a detailed elaboration of the events underlying the plaintiff's claim." *Flannery v. Recording Indus. Assoc. of Am.*, 354 F.3d 632, 639 (7<sup>th</sup> Cir. 2004). A complaint need only state the bare minimum of facts to put the defendant on notice of the claim so that an answer can be filed. *Id.* at 639. As the Seventh Circuit has noted in the context of a racial discrimination action, "'I was turned down for a job because of my race' is all a complaint has to say." *Bennett v. Schmidt*, 153 F.3d 516, 518 (7<sup>th</sup> Cir. 1998). The standard for gender discrimination is no different. Hamilton's motion to dismiss the EEOC's complaint is, therefore, denied.

As for Jones's complaint, Hamilton argues that Jones has pled herself out of court by pleading facts establishing that the alleged harassment was not severe or pervasive enough to be actionable under Title VII or Section 1981. Jones alleges that (1) In April 2001, her supervisor, Jim Lee, made "comments" of a sexual nature about a co-worker, and (2) Lee "made comments to Jones that she looked 'hot.'" Hamilton argues that the alleged conduct is insufficient to support a harassment claim. However, the precise number of comments at issue and the circumstances surrounding the described incidents are unknown. It is possible that discovery will reveal that Jones's complaint is based solely on isolated and innocuous, albeit improper, behavior. If that proves to be the case, Hamilton may challenge Jones's discrimination claim at summary judgment. However, the court will not evaluate the factual basis of Jones's claim on a motion to dismiss.

Hamilton also contends that Jones' retaliation claim must be dismissed because she has failed to plead that she suffered an adverse employment action. That is not the case. Jones alleges that, because she opposed Lee's harassing conduct, Hamilton demanded that Jones accept a transfer to another position and, when she refused the transfer, Hamilton terminated her. Termination is the quintessential adverse employment action. Moreover, depending on the terms and conditions of the offered position, Hamilton's efforts to transfer Jones may also qualify as an adverse employment action. Hamilton's motion to dismiss Jones's retaliation claim is, therefore, denied.