

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 Crystel Menefee,)
)
 Applicant for Intervention,)
)
 vs.)
)
 THE NEW MEXICO DEPARTMENT)
 OF PUBLIC SAFETY,)
)
 Defendant.)

Robert J. [Signature]
CLERK OF COURT

CIV. 00 1656 JP/RLP

UNOPPOSED MOTION TO INTERVENE

The applicant for intervention, Crystel Menefee (“Menefee”), by and through her undersigned attorneys, moves to intervene as a party in this lawsuit pursuant to Rules 24(a)(1) and 24(b) of the Federal Rules of Civil Procedure and 42 U.S.C. § 2000e-5(f). A copy of the proposed Complaint in Intervention is attached hereto as Exhibit A. As grounds, Menefee states that 42 U.S.C. § 2000e-5(f) confers upon her an unconditional right to intervene in this matter, and that Menefee’s claims against the defendant and the main action have common questions of fact and law.

The United States of America is not opposed to the Motion, but takes no position concerning the retaliation claim asserted in the proposed Complaint in Intervention.

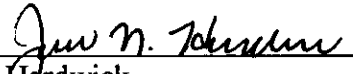
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The New Mexico Department of Public Safety is not opposed to the Motion; provided Menefee stipulates to an order of dismissal with prejudice of United State District Court for the District of New Mexico Cause No. CIV 01-226 RLP upon entry of an Order Allowing Intervention in this case. Menefee has agreed to the proposed stipulation; provided such dismissal shall not preclude the filing of the Complaint in Intervention attached hereto as Exhibit A.

WHEREFORE, Menefee requests the Court enter an Order allowing her to intervene in this lawsuit, and to file her proposed Complaint in Intervention.

Respectfully submitted,
SOMMER, FOX, UDALL,
OTHMER & HARDWICK, P.A.

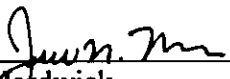
By:



Jack N. Hardwick
P.O. Box 1984
Santa Fe, New Mexico 87504-1984
(505) 982-4676

Certificate of Service

I certify that a copy of the foregoing was mailed to Ellen S. Casey, P.O. Box 2068, Santa Fe, New Mexico 87504-2068, and Larry G. Ward and Claire Gregory, United States Department of Justice, Civil Rights Division, P.O. Box 65968, Washington, D.C. 20035-5968 on this 29 day of March 2001.



Jack N. Hardwick

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 Crystel Menefee,)
)
 Intervener,)
)
 vs.) CIV. 00 1656 JP
)
 THE NEW MEXICO DEPARTMENT)
 OF PUBLIC SAFETY,)
)
 Defendant.)

COMPLAINT IN INTERVENTION

The intervener, Crystel Menefee, by and through her undersigned attorneys, states her complaint as follows:

1. This action is brought to recover damages pursuant to Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, et seq.
2. The, Crystel Menefee (“Menefee”), is a resident of Santa Fe County, New Mexico.
3. The defendant New Mexico Department of Public Safety (“DPS”) is a governmental agency of the state of New Mexico created pursuant to the laws of the State of New Mexico.
4. The DPS is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer within the meaning of 42 U.S.C. § 2000e(b).
5. This Court has jurisdiction of the subject matter of this action and the parties to this cause.
6. Menefee has been employed by the DPS since 1988.

EXHIBIT A

7. Beginning in 1988, and continuing through the present, the DPS has discriminated against Menefee on the basis of her sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), by, among other things:

A. Subjecting Menefee to sexual harassment during her employment which created an intimidating, hostile or offensive work environment which adversely affected the terms, conditions and privileges of Menefee's employment.

B. Refusing to promote Menefee to a position for which she was qualified.

C. Failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Menefee.

8. On or about August 28, 1997, Menefee filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) in which she alleged that the DPS had discriminated against her on the basis of her sex in violation of Title VII of the Civil Right Act , as amended. The EEOC docketed the charge as EEOC Charge No. 390971118.

9. Following the filing of the August 28, 1997, Charge of Discrimination, the DPS retaliated against Menefee for having filed a Charge of Discrimination. Among other things, on May 26, 1998, the DPS initiated an internal affairs investigation against Menefee in which it was alleged that Menefee had engaged in conduct unbecoming an officer because she had removed an sexually offensive poster from a bulletin board without the permission of the officer who had posted the material. As a result of the initiation of the internal affairs investigation, Menefee was precluded from consideration for promotion to the rank of Lieutenant.

10. On or about May 26, 1998, Menefee filed a Charge of Discrimination with the EEOC in which she alleged that the DPS retaliated against her in violation of Title VII of the Civil

Right Act , as amended for having filed her August 28, 1997, Charge of Discrimination. The EEOC docketed the charge as EEOC Charge No. 390980643.

11. On September 15, 1998, the EEOC issued a Determination letter in which it stated, among other things, that there is reasonable cause to believe that the DPS discriminated against Menefee in violation of Title VII of the Civil Rights Act, as amended, on the basis of her sex, as Menefee alleged in EEOC Charge No. 390971118.

12. On October 15, 1998, the EEOC issued a Determination in which it stated, among other things, that there is reasonable cause to believe that the DPS retaliated against Menefee, in violation of the Title VII of the Civil Rights Act, as amended, for having filed her August 28, 1997 Charge of Discrimination, as Menefee alleged in EEOC Charge No. 390980643.

13. On November 17, 1998, the EEOC referred EEOC Charge No. 390971118 and EEOC Charge No. 390980643 to the United States Department of Justice (“DOJ”) for review.

14. On November 22, 2000, the DOJ filed suit against the DPS in United States District Court for the District of New Mexico, alleging that the DPS has violated Title VII of the Civil Right Act, as amended, as Menefee alleged in EEOC Charge No. 390971118. That lawsuit is docketed as Cause No. 00-1656 JP.

15. On December 6, 2000, the DOJ issued a Notice of Right to Sue to Menefee, which Menefee received on December 13, 2000. A true and correct copy of the Notice of Right to Sue is attached hereto as Exhibit A.

16. Pursuant to 42 U.S.C. § 2000e-5(f), Menefee is entitled to file suit to recover relief under Title VII of the Civil Rights Act of 1964, as amended, for violations of 42 U.S.C. § 2000e-2(a), as more particularly set forth in EEOC Charge No. 390980643.

17. Pursuant to 42 U.S.C. § 2000e-5(f), Menefee is entitled to intervene in Cause No. 00-1656 JP to recover relief under Title VII of the Civil Rights Act of 1964, as amended, for violations of 42 U.S.C. § 2000e-2(a), as more particularly set forth in EEOC Charge No. 390971118.

18. Menefee has exhausted her administrative remedies, and satisfied all jurisdictional conditions precedent to maintaining this action.

19. Since the filing of EEOC Charge No. 390971118 and EEOC Charge No. 390980643, the DPS has continued to discriminate against Menefee on the basis of her sex, and has continued to retaliate against her for having filed Charges of Discrimination. Most recently DPS transferred Menefee from her position in Internal Affairs to a previously non-existent position, with no know job responsibilities. By doing so, the DPS intends to isolate Menefee.

20. As a direct and proximate result of the conduct of DPS, Menefee has been constructively discharged from her employment. Although she remains employed as of the date of the filing of this Complaint, the conditions of her employment are so unreasonable that any person in her position would reasonably be expected to resign.

21. As a direct and proximate result of DPS's unlawful discrimination and retaliation, Menefee has suffered injuries and damages, including, without limitation, damages for past and future lost earnings, retirement benefits, medical benefits, and deferred compensation benefits, past and future emotional distress and suffering, and past and future medical expenses.

WHEREFORE, Menefee requests an award of compensatory damages in an amount to be proven at trial, an award of attorneys' fees and expenses, and such other and further relief as is just and proper, pursuant to and within the statutory limitations of Section 102 of the Civil Rights

Act of 1991, 42 U.S.C. § 1981a.

Respectfully submitted,
SOMMER, FOX, UDALL,
OTHMER & HARDWICK, P.A.

By:

Jack N. Hardwick
P.O. Box 1984
Santa Fe, New Mexico 87504-1984
(505) 982-4676

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Jack N. Hardwick



Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

BLL:WBF:mdw
DJ 170-49-168

RECEIVED

DEC 13 2000

SOMMER LAW FIRM

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
TDD# 1-800-578-5404

Crystal Menefee
c/o Jack N. Hardwick, Esq.
Sommer, Fox, Udall, Othmer
& Hardwick, P.A.
Attorneys at Law
200 West Marcy street, #129
P.O. Box 1984
Santa Fe, New Mexico 87504-1984

DEC 6 2000

Re: Crystal Menefee v. Department of Public Safety,
New Mexico State Police, EEOC No. 390-98-0643

Dear Ms. Menefee:

By this letter we are giving you notice of your right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., on the above-referenced charge. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

Therefore, you should consult an attorney of your own choosing at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC, or apply to the appropriate court, since that court may appoint an attorney in appropriate circumstances under Title VII.

We are returning the files in this matter to EEOC's Albuquerque District Office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please feel free to address your inquiry to: Georgia M. Marchbanks, Enforcement Manager, EEOC, 505 Marquette N.W., Suite 900, Albuquerque, New Mexico 87102.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

By:

William B. Fenton
Deputy Chief
Employment Litigation Section

EXHIBIT A