

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SHERRIE L. MOORE)	
)	PLAINTIFF
V.)	
)	Civil Action No.: 1:10-CV-00586-LG-JMR
ALLEN, COBB, HOOD &)	
ATKINSON, P.A.)	DEFENDANT
)	

ANSWER OF DEFENDANT

NOW COMES the Defendant in the above styled and numbered cause, by and through its counsel, and for Answer to the Complaint, says as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against the Defendant.

SECOND DEFENSE

Insofar as any alleged claim or cause of action or any portion thereof was not contained in any charge of discrimination required by law to be filed with the Equal Employment Opportunity Commission within the time prescribed by 42 U.S.C. § 2000e-5(e), which said statute is pled as a defense and as a statute of limitations, the instant action should be dismissed. Additionally, the Defendant says that insofar as Plaintiff did not commence any such action within the time prescribed by 42 U.S.C. § 2000e-5(f), this action is untimely and should be dismissed.

THIRD DEFENSE

Answering further and affirmatively, Defendant says that Plaintiff was not an employee within the meaning of Title VII of *The Civil Rights Act of 1964*, as amended, but rather an

employer, and thus not entitled to any relief against Defendant.

FOURTH DEFENSE

Answering further and in the alternative, Defendant says that Plaintiff did not serve as a member of Defendant for a fixed term but rather under an oral agreement to serve for an indefinite term all at the will and pleasure of Defendant.

FIFTH DEFENSE

Answering still further, and in any event, Defendant says that Plaintiff's termination was based upon the reasonable and just belief of Defendant of improper conduct on the part of the Plaintiff, including, but not limited to, actions and conduct on the part of the Plaintiff, which in the opinion of Defendant, destroyed the trust inherent in the necessary working relationship of the Defendant law firm and as a result, it was the sincere, genuine and good faith belief of Defendant that the relationship between Plaintiff and Defendant was irrevocably broken and beyond repair. As a result thereof, Defendant believes and still believes that its actions were proper and justified by the exercise by proper management and discretion. Answering still further and affirmatively, Defendant says that no actions taken with respect to Plaintiff were in any way based upon alleged sex discrimination and alleged retaliation for any alleged conduct and actions on the part of the Plaintiff and additionally, Defendant affirmatively avers that there has been no fiduciary relationship in existence or, in any event, denies any breach of same.

SIXTH DEFENSE

Answering further, while Plaintiff is not entitled to any relief against Defendant and while no recovery may be had against Defendant for each and all the reasons contained in this Answer and for the reason that Defendant has not violated any law in any manner whatsoever, in any event, Defendant says that as a matter of law, Plaintiff may not seek punitive damages

against the Defendant and moreover, and in any event, the same may not be recovered for the following reasons: a) to the extent the Complaint seeks punitive or exemplary damages, the Complaint violates Defendant's right to protection against excessive fines as prohibited by the Eighth Amendment to the United States Constitution and Section 28 of the Mississippi Constitution; b) to the extent the Complaint seeks punitive or exemplary damages, the Complaint violates Defendant's right to substantive and procedural due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and in Section 14 of the Mississippi Constitution; c) the scheme of punitive damages as implemented in Mississippi violates Defendant's right to equal protection under the laws as guaranteed by the Fourteenth Amendment to the United States Constitution; and d) to the extent the Complaint seeks punitive damages, thereby subjecting Defendant to criminal sanctions through punitive damages, the burden of proof required to impose such damages should be beyond reasonable doubt and should also be in accordance with the requirements and protections of the Fourth, Fifth, Sixth and Eighth Amendments to the United States Constitution and in accordance with the applicable sections of the Constitution of the State of Mississippi, including, but not limited to, Sections 14, 17, 26 and 28.

SEVENTH DEFENSE

Answering further, Defendant says that Plaintiff is not entitled to any relief and no recovery may be had against Defendant for each and all the reasons contained in this Answer and for the reason that Defendant has not violated Title VII of *The Civil Rights Act of 1964* or any other federal or state law. Answering further, Defendant says there can be no recovery of any damages or any related expenses or fees for the reason that all actions of the Defendant were in good faith and predicated upon the basis of reasonable and just grounds for the belief that its

actions did not and do not constitute a violation of any law.

EIGHTH DEFENSE

Answering further, Defendant says Plaintiff has failed to mitigate her alleged damages and/or alternatively any interim earnings received by Plaintiff are a setoff to any award of backpay.

NINTH DEFENSE

Answering further and affirmatively, Defendant says that although it denies Plaintiff has any valid cause of action against Defendant under Title VII of *The Civil Rights Act of 1964*, as amended, any claims by the Plaintiff for compensatory and/or punitive damages pursuant to said Title VII, are limited by the provisions of 42 U.S.C. § 1981a(b).

TENTH DEFENSE

Answering further, Defendant says that no recovery may be had by Plaintiff based upon a claim of breach of fiduciary duty as alleged and pled in the Complaint to the extent that any such claims are barred by § 15-1-49(1) of the Mississippi Code of 1972, which said statute is pled as a defense and as a statute of limitations.

ELEVENTH DEFENSE

Without waiving the aforementioned defenses but reaffirming and realleging the same and specifically reserving all benefits and advantages which may be had to the many errors, uncertainties, imperfections and insufficiencies of the Complaint, Defendant specifically answers the allegations of the Complaint and says:

I.

The Defendant denies each and every allegation of the first grammatical paragraph of the Complaint except Defendant admits that Plaintiff has filed this action against Defendant, but

answering further, says that Plaintiff has no cause of action and thus demands strict proof of the same.

II.

The Defendant denies each and every allegation of Paragraph numbered 1 of the Complaint and demands strict proof of all the same except Defendant admits that Plaintiff has filed this action in this forum but again denies that Plaintiff has any valid cause of action.

III.

The Defendant denies each and every allegation of Paragraph numbered 2 of the Complaint and demands strict proof of all the same, except Defendant admits that venue is properly fixed in this district.

IV.

The Defendant denies each and every allegation of Paragraph numbered 3 of the Complaint and demands strict proof of all the same.

V.

The Defendant admits the allegations of Paragraph numbered 4 of the Complaint.

VI.

The Defendant admits the allegations of Paragraph numbered 5 of the Complaint.

VII.

The Defendant admits the allegations of Paragraph numbered 6 of the Complaint.

VIII.

The Defendant admits the allegations of Paragraph numbered 7 of the Complaint.

IX.

The Defendant denies each and every allegation of Paragraph numbered 8 of the

Complaint and demands strict proof of all the same, except Defendant admits that at the time of Plaintiff's termination, Defendant did not have any employees who were African-American or any other minority.

X.

The Defendant denies each and every allegation of Paragraph numbered 9 of the Complaint and demands strict proof of all the same.

XI.

The Defendant denies each and every allegation of Paragraph numbered 10 of the Complaint as the same is stated and demands strict proof of all the same.

XII.

The Defendant denies each and every allegation of Paragraph numbered 11 of the Complaint and demands strict proof of all the same.

XIII.

The Defendant denies each and every allegation of Paragraph numbered 12 of the Complaint and demands strict proof of all the same, except Defendant admits that Plaintiff was given the option to resign or be terminated.

XIV.

The Defendant denies each and every allegation of Paragraph numbered 13 of the Complaint and demands strict proof of all the same, except Defendant admits that Stephen Dummer has been a member of the bar only three years and remained employed by Defendant after Plaintiff was terminated.

XV.

The Defendant denies each and every allegation of Paragraph numbered 14 of the

Complaint and demands strict proof of all the same, except Defendant admits that in the past, Plaintiff had been a productive lawyer with Defendant and admits that as of the end of 2009, Plaintiff received a bonus larger than any other member of the Defendant.

XVI.

The Defendant denies each and every allegation of Paragraph numbered 15 of the Complaint and demands strict proof of all the same, except Defendant admits that Plaintiff during her tenure was active in the firm's governance and actively participated in the hiring of lawyers and non-lawyers.

XVII.

The Defendant denies each and every allegation of Paragraph numbered 16 of the Complaint, except Defendant admits that Defendant maintained an insurance policy on Plaintiff in the face amount of \$400,000.

XVIII.

The Defendant denies each and every allegation of Paragraph numbered 17 of the Complaint and demands strict proof of all the same, except Defendant admits that Plaintiff filed a charge of discrimination with the EEOC as Exhibit A to the Complaint and received a Notice of Right to Sue as Exhibit B. Answering further and affirmatively, the Defendant denies each and every allegation contained and set forth in the charge of discrimination set forth as Exhibit A to the Complaint.

XIX.

The Defendant, with respect to Paragraph numbered 18, incorporates by reference hereto, its Answer and responses to Paragraphs 1 through 17 of the Complaint.

XX.

The Defendant denies each and every allegation of Paragraphs numbered 19 and 20 of the Complaint and demands strict proof of all the same.

XXI.

In response to Paragraph numbered 21, Defendant incorporates by reference hereto, its Answer and responses to Paragraphs 1 through 20 of this Complaint.

XXII.

The Defendant denies each and every allegation of Paragraphs numbered 22 and 23 of the Complaint and demands strict proof of all the same.

XXIII.

With respect to Paragraph numbered 24 of the Complaint, the Defendant incorporates by reference hereto, its Answer and responses in Paragraphs 1 through 23 of the Complaint.

XXIV.

The Defendant denies each and every allegation of Paragraph numbered 25 of the Complaint and demands strict proof of all the same. Answering further and affirmatively, Defendant denies that a fiduciary relationship as such existed, and denies there was a duty of good faith and loyalty, but in any event, denies that it violated any law in any manner or respect whatsoever, and answering still further, says that in any event, it fulfilled all responsibilities which it may have had in the premises.

XXV.

The Defendant denies each and every allegation of Paragraphs numbered 26 and 27 of the Complaint and demands strict proof of all the same.

XXVI.

The Defendant denies each and every allegation of Paragraph denominated as "RELIEF" and all sub-paragraphs and grammatical paragraphs thereof and demands strict proof of all the same. Answering further, Defendant says that Plaintiff is not entitled to any relief prayed for in said Complaint.

TWELFTH DEFENSE

Answering further, Defendant says that Plaintiff did not engage in any protected activity whatsoever and thus cannot state a claim for retaliation under Title VII of *The Civil Rights Act of 1964*, as amended.

THIRTEENTH DEFENSE

Answering further and affirmatively, Defendant says that notwithstanding its denial that Plaintiff's sex or any other prohibited or illegal criteria played any role whatsoever in any of Defendant's alleged actions, decisions or inactions affecting Plaintiff, nevertheless, avers that even if such criteria were found to have been a factor (which Defendant denies), the same decisions, actions or inactions would have been made absent said factors and, therefore, Plaintiff in no event can recover in this action.

FOURTEENTH DEFENSE

Answering further, Defendant says it did not engage in any of the conduct alleged in the Complaint, has not subjected Plaintiff to any sexual discrimination or retaliation, nor has there been any breach of any alleged fiduciary duty and/or duty of good faith and loyalty. Answering still further, Defendant says that the Complaint filed herein is frivolous, unreasonable and/or groundless, totally and wholly without merit and filed and maintained in bad faith and as a result thereof, the same should be dismissed in its entirety and Defendant herein awarded its reasonable

attorney fees and costs incurred in the defense of this action.

NOW HAVING FULLY ANSWERED, Defendant prays to be dismissed with its costs and attorney fees.

RESPECTFULLY SUBMITTED

S/TAYLOR B. SMITH

TAYLOR B. SMITH (M.B. #7613)

MICHAEL S. HUDSON (M.B. #99412)

ATTORNEYS FOR DEFENDANT

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THE KULLMAN FIRM

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CERTIFICATE OF SERVICE

I, the undersigned, Taylor B. Smith, do hereby certify that I have this 9th day of January, 2011 electronically filed the foregoing **ANSWER OF DEFENDANT** with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

John L. Maxey, II, Esquire
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Attorney for Plaintiff

THIS, the 9th day of January, 2011.

S/TAYLOR B. SMITH

TAYLOR B. SMITH