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# HOSPITAL WORKS

## MEDIATION

Plaintiff P.D. Terrell

You were recently terminated as the director of development and community relations for the Good Neighbor Hospital, a reasonably large not-for-profit hospital that borders a low-income neighborhood on one side and a more upscale neighborhood on the other side.

You were hired a year ago by the hospital's former CEO and board of directors, who first came to you through an executive search firm. At the time, you were the development director for a smaller hospital in Memphis, Tennessee. However, you were born and raised in Cincinnati, where your mother still lives. Your mother had reached her mid-seventies, and you wanted to relocate to Cincinnati to look after her. You are 50, unmarried, and an only child. You know it may be rumored that you are gay. While you suppose that is technically true, it is irrelevant and old history. You had a few quiet same-sex relationships in your twenties and thirties, but since then you have preferred regular friendships with men and women and living alone. You are a very private person.

As luck would have it, the CEO who hired you was forced out by the Good Neighbor Hospital's board within 6 months after you arrived. Acting upon the strong recommendation by this former CEO (which proved his undoing), the hospital established a luxury service wing for maternity, cosmetic, and other elective surgery. Less wealthy patients (who could not afford to pay over and above insurance reimbursements) were admitted only to the older, less well-decorated maternity ward and obviously could not take advantage of cosmetic or elective surgery there. This rankled the lower-income neighborhood adjacent to the hospital, who claimed that the luxury wing had increased traffic congestion and late-night ambulance noise. (The original ambulance path had been rerouted to accommodate the building addition.) Community relations suffered, as did the hospital's bottom line, because many people opted to go to a different hospital for non-emergency procedures and wealthier patients hesitated to come to a facility in what was perceived as a rough neighborhood.

When you first arrived, you were horrified to learn just how strained relations had become. You didn't really know anyone, but the community seemed eager to resent you as much as they resented the hospital's recent moves. As is essential on any new job, you had to spend some time learning the systems of the hospital, learning the history of past fundraising and community relations in the past—what had worked and what hadn't. You joined the new CEO for lunch with the police chief and set up tours of the new facility, advertising them throughout the area. After a few attempts to have lunch with local city councilors were rebuffed, and you read the blazing editorials in the local paper, you even enrolled in an intensive course called "Dealing with an Angry Public," teaching negotiation techniques for situations like the one you walked into. You then worked feverishly on a strategic plan that would achieve "buy-in" from other important players in the hospital. You worked on that document nights and weekends to get it right. You were dismayed when the new CEO displayed little interest in it.



You knew you walked into a mess that would require a lot of time to turn around. Unfortunately, when the new CEO came in a few months ago, it only took him a few weeks to fire you. “We need new blood,” he was reported to have said at a hospital board meeting, “Community relations are a mess, and fundraising is down since P.D. got here.” He told you: “It just isn’t working out; community relations are bad, and your fundraising development efforts have been insufficient and ineffective.” When you protested, the CEO interrupted and said: “I understand it may not be entirely your fault, but you don’t seem to be equipped with the energy or temperament it takes to build community relations.” Within a month after your termination, he hired a new VP for development and community relations. A woman in her mid-30s, the new VP is a Cincinnati local who had run a not-for-profit housing and community development organization in the Price Hill area of Cincinnati.

You strongly believe that your gender played into the picture. As you explained to your lawyer, you heard that the new CEO had said he wanted “to project a softer image, more like Mom; a young, tireless Mom who would stay up all night with you to finish a school project.”

You see the CEO as a brash 37-year-old, who thinks anyone past 50 is ready for a rocking chair. You suspect discrimination based upon sexual orientation (though you don’t really want to make this an issue). You also believe there are some religious politics at work. You maintain no religious affiliation. At one point, one of the neighborhood groups on the more prosperous side of the hospital (led by a local, conservative minister) had refused to meet with you. That minister is on record as referring to gays and lesbians as blasphemers. More than one member of the hospital’s board are members of his church; you suspect they share the same views. Not so coincidentally, the new VP is a regular churchgoer. While she lives nearer to the University and attends church there, she is known to be of the same politically conservative and religious affiliation.

As soon as the new CEO came in and started questioning you, you thought about contacting a lawyer. One of your friends in town referred you to attorney, F. Hamilton, a partner in a mid-size law firm that specializes in employment litigation. Hamilton has a reputation as a master in front of a jury. You hadn’t yet called Hamilton when the CEO walked in and fired you.

After you were fired, as soon as you got home and were able to stop shaking with anger, you immediately called and met with attorney Hamilton and told the whole story. Hamilton asked you about other turnover since the new CEO arrived. You confirmed that there has been a great deal of management staff turnover since then. Younger (straight) staff who were not performing to the liking of the new CEO were called into a private meeting and given six months to “transition.” The CEO treated the hospital’s outside counsel and accountants the same way, calling them to task for past service he called unsatisfactory (based upon his review of the budget and the files). It may be significant that he fired the hospital’s outside counsel who was at least 55 but gave another chance to “shape up” to the accountant who appeared to be under 40.



Discrimination claims aside, you think that you have a contractual claim as well. When you negotiated the terms of your employment with the former CEO, he handwrote the essential terms in bullet point phrases on a piece of paper, initialed it, and handed it to you. After you both shook hands and had dinner together, you flew back to Memphis to give notice and start packing. Unfortunately, you haven't been able to find the handwritten paper in your moving boxes (some are still unpacked). But you are certain that the paper recorded notes of your agreement of a minimum three-year tenure, otherwise, you wouldn't have been willing to move. Your lawyer has indicated that if such a contract exists, at worst, termination would be permitted only for good cause, and you would be entitled to a buyout of the contract for termination under any circumstances within the three years. This wouldn't get you as much as the discrimination claim, but it's a fallback. Your lawyer wasn't inclined to raise the contract claim until you find the document, or at least until you give up on searching for it.

Your lawyer seems to think this is a strong case. Although you will admit that your community relations and fundraising work were not going as well as planned, this was due to actions taken by the former CEO. You were dealt a mess and were just starting the difficult job of cleaning it up and turning things around. You are convinced that the new CEO would have given you a chance if you were younger, female, straight, and a churchgoer (or some combination of these).

For that reason, your lawyer told you about plans to put a 2-million-dollar demand on the table on your behalf. Your salary and benefits package were valued at \$100,000 per year. After adding back pay, front pay for the next 15 years, emotional distress, and punitives, this seemed conservative to you. According to your lawyer, when making the demand to the defense counsel over the telephone, there was a long silence on the other end of the phone. The defense lawyer said, "I'll get back to you," Three days later, the defense lawyer called and suggested mediation.

After talking about it, you agreed to try mediation. While you're angry enough to take this to trial, an early, lucrative settlement would probably be best. You simply can't afford a bad reputation in Cincinnati. Your area of experience is in fundraising and community relations, where building good relationships and a good reputation is essential to success, no matter what institution you are working for. You do not want to return to Memphis (where you had built a career and a reputation) because you don't want to leave your mother alone here.

At base, you are angry and upset. Nothing like this has ever happened to you before. You would like nothing better than to punch out Watson, the CEO, and the entire hospital board. Right now, however, you need a job because you need income. You did not have large savings because you had recently purchased a condominium for your mother (and help her with monthly payments), and a small condominium for yourself. You were shocked to find how much higher housing prices are in Cincinnati than in Memphis. You have begun the tedious task of sending out resumes, but it is difficult to find an organization that will hire someone 50 years of age. The other problem, of course, is that no one knows you in Cincinnati, and any prospective employer will ask what went wrong at the Good Neighbor Hospital.



Your lawyer called a few weeks ago to tell you that your lawyer and defense counsel had agreed upon a mediator, a lawyer-mediator recommended to your lawyer by another well-regarded plaintiff's attorney, and acceptable to the defense. Your lawyer explained the mediation process very briefly and suggested that you give some real thought to what you would want to settle the case. He advised you that it would take 2 years until trial. "I'm with you all the way," your lawyer said, and since you're on a contingency plan (33%), you don't have to worry about fees—just some minor costs. "I won't get in the way of a settlement that works for you, but I won't push you to settle short." Your mediation is scheduled to begin shortly.