

Oliveri – Civil Procedure I Exam – Fall 2014

ESSAYS

Paula (P) has been a loan officer in the home mortgage department of the Columbia, MO branch of Delta Bank (D) for 6 years. An opportunity for promotion comes up – to department manager – which she applies for. She feels confident that she is a good candidate because her performance reviews have all been good. Plus, Delta Bank usually promotes from within each branch and Paula is the most experienced loan officer in the Columbia branch’s home mortgage department. Finally, she has completed a management training program through a local community college, which she thinks will give her a leg up. Paula is therefore surprised to learn that a candidate has been brought in from Delta Bank’s Jefferson City branch and given the promotion. Paula is black. The person who received the promotion, Walter White (W), is white.

Paula contacts a Lawyer who agrees to take her case and files suit under Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment. The complaint seeks back pay, damages for emotional distress, and an injunction ordering that she be hired into the department manager position and that Walter White be moved back to a loan officer position.

QUESTION 1

In discovery, Paula asks for her own personnel file, the personnel file of Walter White, and the personnel files of every other candidate considered for the promotion. Personnel files at Delta Bank are quite extensive – they contain all performance reviews, internal correspondence, salary information, health insurance and benefits packages, and the employee’s initial application for employment (which, because this is a bank, includes criminal background and credit checks). She also asks for all documents pertaining to all promotion decisions at any of Delta Bank’s 20 branches, going back 10 years.

You are the lawyer for Delta Bank. What objections, if any, will you make to these requests? Specify the grounds for these objections and provide the arguments in support.

QUESTION 2

After six months, news of the lawsuit gets out and people start to contact Paula’s Lawyer. One caller, Adam (A), says he is black and was passed over for a promotion at the Kirksville branch last year, in favor of a white male candidate who was brought in from a different branch. He asks the Lawyer if there is any way that he can join in Paula’s lawsuit. Lawyer also gets an angry call from Walter White, who is outraged by the lawsuit and threatens to “get involved”.

You are a paralegal who works for Paula’s Lawyer. Write a short memo explaining the various ways that Adam and Walter might become part of the lawsuit. Include in your memo an assessment of how likely it is that any of these ways will be successful and why.

QUESTION 3

(Assume that Adam has changed his mind about being part of the lawsuit.) During discovery it comes out that Walter had 8 years of experience as a loan officer in the home mortgage department at the Jefferson City branch, plus 2 years of experience as a commercial loan officer before that. His performance reviews were all good. This evidence is uncontroverted, as is the evidence that Paula puts forward regarding her qualifications. No direct evidence is provided of discrimination on the part of the six bank officials who made the promotion decision. All stated in their depositions that they made the decision to promote Walter because of his qualifications. At the close of discovery, Delta Bank's lawyer moves for summary judgment.

You are the judge's clerk. Write her a memo on the subject of whether she should grant summary judgment. Be sure to reference all applicable legal standards.