

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SHERON MONTREY,

Plaintiff,

v.

CIVIL ACTION NO. 3:07-cv-476

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

ANSWER

Defendants Tammy Estep and Marilyn Hill, by counsel, herein submit their Answer to the allegations of the Complaint, and state as follows.

1. These Defendants admit the allegations of ¶ 1 of the Complaint.
2. These Defendants admit the allegations of ¶ 2 of the Complaint.
3. Estep admits she was the Superintendent of the Pocahontas Correctional Center (“Pocahontas”) with a general responsibility over the prison’s operations. She directly supervised Hill, and had secondary supervisory responsibility over the employees who worked under Hill, to include Defendant Bobby Brown. Estep was responsible to implement Virginia Department of Corrections (“VDOC”) policies at Pocahontas and also had the responsibility to develop policies for implementation at the institution. Estep was also responsible for the training of the staff who worked at Pocahontas, though she generally did not do the training herself. Estep had a responsibility to implement VDOC policies relative to the prohibition of sexual contact between employees and staff. She is uncertain as to what is meant by “customs and practices” regarding sexual contact and conduct between staff and prisoners.

4. Hill admits that she is a Virginia resident and at relevant times was employed as the Major and Chief of Security at Pocahontas. She directly supervised the Lieutenants who worked at Pocahontas, as well as treatment, medical and food service staff. The Lieutenants in turn provided the direct supervision to lower ranking security staff. She helped to enforce VDOC policies at the institution, supervised Defendant Brown, and made sure Brown received required training. She also is uncertain as to what is meant by “customs and practices” regarding sexual contact and conduct between staff and prisoners.

5. These Defendants believe Defendant Brown to be a Virginia resident. He was at all relevant times a Lieutenant at Pocahontas. He supervised lower ranking correctional security staff. These Defendants are uncertain what is meant by “customs and practices” regarding sexual contact and conduct between staff and prisoners. VDOC policy prohibits all sexual contact between staff and prisoners. Brown did delegate work assignments to inmates, and he exercised supervisory responsibility over Montrey while she worked on a work crew he supervised.

6. These Defendants admit having a special relationship with VDOC prisoners. Their legal duties encompassed providing a safe environment based upon the information known to them. A safe environment included being safe from any sexual contact with staff.

7. These Defendants admit the allegations of ¶ 7 of the Complaint.

8. The question whether Montrey has given legally sufficient notice of exhaustion of administrative remedies is at this time neither admitted nor denied. If an admission or denial is required, then these Defendants deny the allegations of ¶ 8 of the Complaint.

9. No response is required to the allegations of ¶ 9 of the Complaint.

10. Montrey was confined at Pocahontas from June 18, 2003, to October 5, 2005.

11. These Defendants admit that Montrey worked under the direct supervision of Brown. They have no knowledge of the remainder of the allegations of ¶ 11 of the Complaint, and accordingly neither admit nor deny the same. If a response is required, then they deny the remaining allegations of this paragraph.

12-20. The allegations of ¶¶ 12-20 of the Complaint primarily concern personal interactions between Montrey and Brown. Other than as is explained below, these Defendants have no knowledge of the specifics of these allegations, and accordingly neither admit nor deny the same. If a response is required, then the allegations are denied. Brown has admitted to impregnating Montrey, and a paternity test has confirmed his admission. The precise nature of the sexual relationship between Brown and Montrey is unknown to these Defendants. Montrey at one point in time indicated that the relationship was consensual. In no event, however, did Brown or Montrey have any legal right to engage in a sexual relationship.

21. These Defendants deny that Montrey could not report Brown's sexual contact(s) with her to other Pocahontas employees. Virginia Code § 18.2-64.2 provides a criminal penalty for VDOC employees who carnally know a prisoner without the use of force, threat or intimidation. Thus, from the standpoint of the criminal law, a prisoner could consent to a sexual relationship with a corrections employee, and these Defendants accordingly deny Montrey's allegation to the contrary.

22. Brown's influence at Pocahontas was co-extensive with his position as a supervisor. Without a better understanding of what is meant by "considerable influence," these Defendants can neither admit nor deny the allegation that Brown had considerable influence at the prison. Defendant Hill neither admits nor denies that Brown and Estep were personal

friends. Defendant Estep denies that she and Brown were personal friends. Both of these Defendants were acquainted with Brown, in the sense that they worked with him.

23. These Defendants do not know the status of Montrey's subjective mental state, and accordingly neither admit nor deny her stated fears. If a response is required, then they deny the concerns she expresses in ¶ 23 of the Complaint. These Defendants acknowledge that Brown had some ability to affect Montrey's job status, and hence the level of her inmate income. They also acknowledge that Brown had an indirect ability to influence her security level and the rate at which she earned good time credits. They have no reason, however, to believe that he did this, or threatened to do this.

24. These Defendants can neither admit nor deny the allegations of ¶ 24 of the Complaint. If a response is required, then they deny the allegations.

25. Upon information and belief, these Defendants deny the allegations relative to Donald Dyer either being aware of any alleged sexual harassment of Montrey by Brown or his having accordingly attempted to arrange a job change for Montrey. They thus deny the allegation that Brown acted to prevent any such job change, or that they ratified such a decision.

26-27. These Defendants can neither admit nor deny the allegations of ¶¶ 26-27 of the Complaint. If a response is required, then they deny the allegations.

28. These Defendants deny the allegations of ¶ 28 of the Complaint, with the caveat that they have no knowledge that any sexual relationship between Montrey and Brown was common knowledge among the inmate population.

29. These Defendants deny the allegations of ¶ 29 of the Complaint.

30. These Defendants deny that inmate Joan Carter ("Carter") sent to Estep any letter complaining about Brown. They admit that a letter such as is described in the Complaint was

sent in 2004 to a member of the VDOC Internal Affairs Unit. After an investigation at the institutional level, it was determined that the allegations were unfounded. Certain inmates Carter had identified as having knowledge of what Carter had written denied such knowledge and demonstrated hostility toward Carter. Carter accordingly was placed into segregated confinement for her own protection and transferred to an institution she requested.

31. The Carter letter described in ¶ 30 of the Complaint was directed to Estep for investigation. It is true that no member of the Internal Affairs Unit himself or herself conducted an investigation at the time. These Defendants are not personally aware whether some member of the Internal Affairs Unit interviewed Carter after the relationship between Brown and Montrey had been exposed. No action was taken in 2004 to discipline Brown, as Estep's investigation of the Carter letter caused her to conclude that the allegations in the letter were unfounded.

32. These Defendants deny the allegations of ¶ 32 of the Complaint and explain as follows. There had been some rumors of Brown coming to work with an odor of alcohol about him, and both Estep and Hill personally investigated the rumors. They made a point of visiting Brown on his shift, even though his shift did not coincide with either Estep's or Hill's regular shifts. Their interactions with Brown did not suggest any indicia of his being under the influence of alcohol.

33. As a Lieutenant, Brown had access to any part of the facility. There were some areas where he would not have been permitted to go without a female employee going along with him. These Defendants do not know whether Brown and Montrey sat together for hours in Montrey's dormitory, and accordingly neither admit nor deny the allegations to that effect. If a response is required, then they deny the allegations. These Defendants had no knowledge of Brown, Montrey and two other prisoners identified at ¶ 33 of the Complaint having had picnics,

unsupervised or otherwise. They neither admit nor deny that any such picnics took place. If a response is required, then they deny that the picnics described at ¶ 33 of the Complaint occurred.

34. These Defendants have no knowledge of the allegations contained in ¶ 34 of the Complaint, and accordingly neither admit nor deny the allegations. If a response is required then they deny the allegations.

35. These Defendants deny the allegations of ¶ 35 of the Complaint.

36. Estep was not physically working at the institution at the time described in ¶ 36 of the Complaint, and she thus has no knowledge of how it was reported that Montrey was pregnant. Hill, who was present during this time, denies that a report of the pregnancy was made by another inmate reporting the same to the medical department.

37. Again, Estep was not physically working at the institution when information came to light about Montrey's pregnancy, and she denies any involvement in the decisions made relative to what should be done in light of the revelation. Hill states that she, and not Estep, made an immediate decision that Montrey should be relocated to the Fluvanna Correctional Center for Women ("Fluvanna"). Upon information and belief Montrey was housed in administrative segregation for the first two days that she was at Fluvanna. Hill, however, was not involved with that decision.

38. See the response in ¶ 37 above. The transfer date was October 5, 2005.

39. These Defendants deny the allegations of ¶ 39 of the Complaint.

40. These Defendants do not know whether Montrey experienced a loss in income following her transfer to Fluvanna, and accordingly neither admit nor deny the allegation. If a response is required, then they deny the assertion.

41. These Defendants do not have knowledge of the allegations in ¶ 41 of the Complaint, and they accordingly neither admit nor deny the same. If a response is required, then they deny the allegations.

42. These Defendants are aware that Montrey gave birth to a child, though they are unaware of the date. They have no knowledge relative to the allegations about guardians for the child.

43. These Defendants are aware that Brown was criminally convicted. Brown's sentencing Order is the best source of information as to the precise crime of which he was convicted, and the punishment meted out. Neither Defendant is aware of the date of Brown's release from custody.

44. These Defendants are not aware of Warden Wheeler's actions as alleged in ¶ 44 of the Complaint, except that Hill does have an understanding that Warden Wheeler at least purported to extend the time within which Montrey might file a grievance. Whether Montrey ever properly exhausted her administrative remedies is something these Defendants do not know. If a response is required, then these Defendants deny that Montrey appropriately exhausted available administrative remedies.

45. These Defendants similarly are unaware as to whether Montrey on August 3, 2006, filed an Affidavit of Exhaustion.

46. Upon information and belief Montrey was released in March 2007, but on mandatory parole supervision, rather than as a result of having served the entirety of her sentence. These Defendants do not know where or with whom she resides.

47-53. (Count I). These Defendants deny that Montrey is entitled to any recovery from them for alleged violations of the Eighth Amendment's prohibition of cruel and unusual

punishments. They deny each and every allegation contained in ¶¶ 47-53 of the Complaint, other than the description in ¶ 51 of a prisoner's right constitutional right not to be subjected to cruel and unusual punishments, as the courts have defined the parameters of that right.

54-57. (Count II). These Defendants deny that the referenced constitutional provisions add anything to a prisoner's protection under the Eighth Amendment. They deny each and every allegation contained in ¶¶ 54-57 of the Complaint.

58-62. (Count III). These Defendants deny that allegations of a failure to supervise add anything to a prisoner's protections under the Eighth Amendment. They deny each and every allegation contained in ¶¶ 58-62 of the Complaint.

63-73. (Counts IV, V and VI). These Counts are not stated against either of these Defendants. If a response is nonetheless required, then these Defendants deny the allegations of ¶¶ 63-73 of the Complaint.

74-79. (Count VII). These Defendants are entitled in their personal capacities to the defense of sovereign immunity for state law claims of negligence. Beyond the issue of immunity, these Defendants deny the allegations of ¶¶ 74-79 of the Complaint.

80-84. (Count VII [sic]). These Defendants are entitled in their personal capacities to the defense of sovereign immunity for state law claims of negligence. They additionally deny that they can make employment decisions other than in their official capacities. They deny each and every allegation of ¶¶ 80-84 of the Complaint.

85. These Defendants deny that Montrey is entitled to any relief whatever against them.

Respectfully submitted,

TAMMY ESTEP & MARILYN HILL

By _____ /s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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And I hereby certify that I have mailed the document by United States mail to the following non-filing user:

N/A.

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