

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

COLLEEN SIMON, )  
 )  
 3836 Forest Ave )  
 Kansas City, MO 64109 )  
 )  
*Plaintiff,* )  
 )  
 v. )  
 )  
 MOST REVEREND ROBERT W. FINN, DD, )  
 )  
 Serve: )  
 Most Rev. Robert W. Finn, DD )  
 20 West Ninth Street )  
 Kansas City, MO 64105 )  
 )  
 and )  
 )  
 CATHOLIC DIOCESE OF KANSAS CITY- )  
 ST. JOSEPH )  
 )  
 Serve: )  
 Most Rev. Robert W. Finn, DD )  
 20 West Ninth Street )  
 Kansas City, MO 64105 )  
 )  
*Defendants.* )

Case No. \_\_\_\_\_  
 Division \_\_\_\_\_  
 Case Type: Other Tort

**PETITION**

Plaintiff Colleen Simon states the following on personal knowledge as to her own acts and on information and belief following reasonable investigation as to all other matters.

## **PARTIES**

1. Plaintiff Colleen Simon worked for the Catholic Diocese of Kansas City-St. Joseph. She resides in Kansas City, Jackson County, Missouri, and is a citizen of Missouri.

2. Defendant Most Reverend Robert W. Finn, DD, is the Bishop of the Catholic Diocese of Kansas City-St. Joseph. He resides in Kansas City, Jackson County, Missouri, and is a citizen of Missouri.

3. Defendant Catholic Diocese of Kansas City-St. Joseph is a Missouri corporation which constitutes the Roman Catholic Church in portions of western Missouri, including Jackson County. The Diocese operates numerous parishes, including St. Francis Xavier Catholic Church, and the Diocese employed Plaintiff Colleen Simon.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction under Mo. Const. art. V, § 14, and RSMo § 478.070. No federal court has subject matter jurisdiction. The claims here arise under Missouri law, and the Plaintiff shares Missouri citizenship with one or more Defendants. Further, this case is nonremovable because one or more Defendants is a citizen of the forum state.

5. This Court has personal jurisdiction as all Defendants are residents and domiciliaries of this state, and in connection with the acts forming the basis of this action, made contracts and committed tortious acts within this state.

6. Venue is proper, as this action alleges a tort and the Plaintiff was first injured in Jackson County, Missouri.

## FACTS

7. Colleen Simon is an experienced religious service worker, dedicated to helping the poor of Kansas City. She started working for Defendant Catholic Diocese of Kansas City-St. Joseph in 2012 as an Executive Secretary at St. James parish, in Kansas City.

8. Ms. Simon is a proud mother of two sons. She is also a lesbian and is the proud wife of Rev. Donna Simon, who is the Pastor at St. Mark Hope and Peace Lutheran Church in Kansas City. They married legally in Iowa on May 19, 2012. All of these facts about her biography were known to agents of the Diocese at all times when they hired and employed her.

9. While working at St. James, Ms. Simon saw a posting from the Diocese that St. Francis Xavier Catholic Church was seeking qualified applicants for their Director of Social Ministry position.

10. Colleen Simon spoke with M.M., the Director of Religious Education at St. Francis Xavier, on the phone and said, "I don't want to apply for the job if my application isn't going to be considered. I am a lesbian and I know that could be an issue." She received a voicemail back from M.M., who said, "Go ahead and apply. I've spoken to [the first Pastor] and it won't be a problem."

11. Ms. Simon applied, successfully passed the phone interview and was interviewed in person for the job on May 21, 2013, from 4 to 8pm, in the Romero Room at St. Francis Xavier Church. She was interviewed by the first Pastor, who was acting within the scope of his employment by the Diocese. M.M. was also present, and she was acting

in the scope of her employment as an employee of the Diocese. Also involved in the process were parishioners De. F., Da. F., R.O., and others.

12. Following the group interview, Ms. Simon was escorted to the first floor office of J.H., her predecessor in the position.

13. After the dinner, Ms. Simon went upstairs and spoke with the first Pastor one-to-one. Ms. Simon shared with the first Pastor that she was married to Rev. Donna Simon – a visible social justice leader and pastor in Kansas City who is open and public about her sexual orientation and fights poverty in a public way.

14. Ms. Simon also stated to the first Pastor that both she and Donna worked on Troost Corridor issues, were well known in the community, and were known to be an open, out, married couple in the community. She spoke about her marriage in Iowa to Donna and made it clear that it was a legal marriage under Iowa law.

15. The first Pastor was nonplussed, and expressed no objection to Ms. Simon's sexual orientation or her relationship with Donna.

16. Ms. Simon also spoke with the first Pastor about an article in the *National Catholic Reporter* about an allegedly gay teacher at a Jesuit school who had just been fired elsewhere in the country. The first Pastor reassured her that she was safe.

17. Soon after, Ms. Simon was offered the job by the first Pastor on behalf of the Diocese. She was told that it was a unanimous decision by the interviewing committee, staff, and the first Pastor himself. The first Pastor is an honorable man, and this Petition does not question him as a person. This Petition focuses on actions made on behalf of the Diocese in his official capacity.

18. While considering the offer, Ms. Simon received a call from M.M., who encouraged her to accept the job.

19. Ms. Simon later accepted the job, and became the Director for Social Ministries.

20. Ms. Simon started to work, and she immediately began tackling the challenges facing the food pantry. She increased donations through creative measures, like tours and discussion groups, and implemented a successful plan to raise awareness of poverty and secure in-kind donations to replace St. Francis Xavier's aging supplies and machinery.

21. At various times, Ms. Simon's wife, Donna, stopped by the office to drop things by, and Ms. Simon introduced her to volunteers and co-workers.

22. In September 2013, Ms. Simon organized a tour of the food pantry and placed flyers on the freezers stating how much it would cost to replace each one. She persuaded members of the parish to donate new freezers and other critical materials.

23. Ms. Simon got many new volunteers involved in the food pantry, including several from Visitation Parish and Rockhurst University. The volunteers showed their pride in various ways, such as wearing red shirts to church on the same day, and organizing and attending two musical fundraisers.

24. In addition to her work inside the food pantry, Ms. Simon took pride in driving food directly to people who found it hard to get to the food pantry.

25. Parishioners from St. Francis Xavier and Visitation, as well as community food drives, supplemented the foods received from Harvesters and the U.S. Department of

Agriculture. Monetary contributions from parishioners covered the payment of items purchased from Harvesters, as well as emergency assistance awards. Ms. Simon was in charge of the allocation of emergency funds for the medical needs, transportation needs and utility assistance needs of the families in the community that came to St. Francis Xavier for help.

26. During her tenure at St. Francis Xavier, Ms. Simon also expanded the church's poverty services by implementing a program called "Giving the Basics," which addresses the gap between food stamps coverage and basic needs that food stamps do not cover. Ms. Simon started working on this program in September 2013, and diligently worked on it until it was implemented in early 2014.

27. At some point in 2013, the first Pastor announced that he was moving on to a new ministry outside Kansas City.

28. In December 2013, Ms. Simon received an oral performance review from the first Pastor. He told her that she had met his expectations and that he wanted her to continue to learn as much as possible.

29. Soon, the new Pastor arrived and took over the administration of St. Francis Xavier on behalf of the Diocese.

30. On January 17, 2014, Ms. Simon had a meeting with the new Pastor in her office. She said, "Look, I know that we want to talk about the ministry and the food pantry, but I want to share something personal first that I understand [the first Pastor] hasn't shared with you."

31. The new Pastor said, "Okay."

32. Then Ms. Simon said, “I need to let you know that I’m a lesbian, I’m married. My wife is the pastor at St. Mark Hope and Peace Lutheran Church. [The first Pastor] knew this when he hired me. I’m letting you know this so that it won’t be a surprise if it comes up later.” She also said, “If this is going to be a problem, I need to know so that I can find another job.”

33. The new Pastor looked surprised. He said, “Oh, okay. It’s okay.” Ms. Simon trusted him and expected that her employment would continue as it had the prior six months.

34. Then, Ms. Simon said, referring to her wife Donna, “I’d like you to meet her sometime.”

35. The new Pastor agreed. Ms. Simon invited him to meet Donna at the Troost Alliance. The new Pastor attended on January 22, and met Donna Simon, who was introduced as Colleen’s wife. The new Pastor gave Donna Simon a hug.

36. Ms. Simon needed to have secure and stable employment, especially because she is in remission from cancer and needs employer-provided health insurance in order to cover her continuing check-ups and, were the cancer to return, to cover her care. If her employment was not secure at the Diocese, she needed to start looking for new employment.

37. As 2014 went on, Ms. Simon kept doing her work, with no indications of any problems. She grew more secure and confident in her position at St. Francis Xavier.

38. At some point early in his tenure, the new Pastor changed Ms. Simon’s position from “Director for Social Ministries,” to “Pastoral Associate for Justice and Life.”

39. In April 2014, a newspaper reporter for the Kansas City Star wrote to Ms. Simon, asking if she could do an interview for a story she was writing about the Troost community.

40. Ms. Simon directed the reporter to the new Pastor, who then directed the reporter back to Ms. Simon.

41. Ms. Simon spoke with the reporter about her work at the food pantry. The reporter also spoke with Ms. Simon's wife, Donna Simon, about her anti-poverty work on Troost.

42. On Wednesday, April 30, 2014, an article in the *Kansas City Star's 816 Magazine* by the reporter titled, "Trusting in Troost," came out. It discussed many of the people involved in community activism and human development issues in the Troost corridor. It mentioned Colleen Simon as Donna Simon's spouse. The story featured a photograph of Colleen Simon working in the food pantry. The caption reads: "Colleen Simon, pastoral associate for justice and life at St. Francis Xavier, is married to Donna Simon, the pastor at St. Mark." [sic] "Colleen Simon works at St. Francis Xavier's food pantry helping families in the neighborhood get enough to eat."

43. Since Ms. Simon had been reassured that her position was secure, she did not believe that this article would subject her to termination.

44. Ms. Simon received an email from the new Pastor stating that he was unhappy that this information appeared in the article. But later, the new Pastor led Ms. Simon to believe that this would not impact her job.

45. Simultaneously, on information and belief, the new Pastor called the reporter on or about April 30, and questioned her about what Ms. Simon had told her about her marriage to Donna Simon and/or her sexuality. On information and belief, the new Pastor also asked the reporter if she was a Catholic, and when the reporter answered that she was not, the new Pastor stated to her that she didn't know what she had done.

46. On Friday, May 9, 2014, the new Pastor called Ms. Simon to a meeting in his office. M.M. was also present at the meeting. There was a letter in front of the new Pastor that Ms. Simon noticed was on Diocesan letterhead.

47. The new Pastor informed Ms. Simon that the Bishop's office had contacted him by phone and then followed up with a letter after having received a copy of the reporter's article in the mail.

48. The new Pastor stated that now that Ms. Simon's marital status was public, he had no choice but to ask her to submit a letter of resignation.

49. After that, Ms. Simon asked the new Pastor if she could continue to perform the technical aspects of her position, such as data entry and food collection and distribution for the pantry. The new Pastor said that would not be possible. The meeting adjourned and Ms. Simon had the weekend to consider whether to resign or be terminated. She returned to work the next week.

50. On Tuesday, May 13, Ms. Simon informed the new Pastor that after consideration of the discussion the previous Friday, she had decided not to submit a letter of resignation, as she had done nothing wrong. Ms. Simon explained to the new Pastor that he might want to wait until Wednesday, May 14, to terminate her. She had a frozen

food donation coming in that afternoon from Rockhurst University, and a USDA commodity delivery that was going to be delivered on Wednesday that needed to be received, entered into the MAAC system, and stored properly. The new Pastor agreed to allow her to perform her food pantry duties until the shipments were received and handled.

51. Ms. Simon was terminated from her employment the afternoon of Wednesday, May 14, 2014.

52. Ms. Simon sent a proper request for a letter of dismissal, or “service letter,” under RSMo 290.140, to the Diocese.

53. The Diocese sent a response, which inaccurately states the dates of her employment, stating that she began work on July 1, 2013, at St. Francis Xavier, when in fact she also had worked for the Diocese as an Executive Secretary at St. James Parish from 2012 until she went to St. Francis Xavier.

54. The letter does not describe the character of her work, e.g., satisfactory, unsatisfactory, etc.

55. The letter states the following:

The reason for your involuntary separation of employment was based upon an irreconcilable conflict between the laws, discipline, and teaching of the Catholic Church and your relationship – formalized by an act of marriage in Iowa – to a person of the same sex. Such conduct contradicts Church laws, discipline, and teaching and the diocesan Policy on Ethics and Integrity in Ministry.

56. Ms. Simon has continued to express her desire simply to have her job back, but on June 8, 2014, the new Pastor announced a replacement for Ms. Simon. The new Pastor stated reasons that this replacement was a strong candidate, and mentioned that she

“was married here at sfx” in a description of her background/qualifications. Since same-sex marriage has not been declared legal in Missouri, and since the Catholic Church does not yet recognize same sex marriage, Ms. Simon never had the option of getting married at St. Francis Xavier.

57. Bishop Finn and the Diocese have never once offered Ms. Simon any assistance in finding new employment, nor have they offered any assistance or support in dealing with long-term joblessness or lack of long-term medical coverage.

58. Ms. Simon applied for Missouri unemployment benefits, but has been denied as the Diocese is a religious employer and has not paid into the system.

59. Ms. Simon now brings this case to hold the Diocese accountable for its representation that she could be who she is, and serve the needy through St. Francis Xavier’s food pantry, without fear of losing her job.

## **COUNT I**

### **FRAUD (against both Defendants)**

60. Ms. Simon incorporates each and every foregoing and succeeding paragraph of this Petition as if fully set forth here.

61. Before accepting her employment at St. Francis Xavier, and again after the new Pastor assumed his duties as Pastor, Plaintiff Colleen Simon informed the Diocese’s agents that she was a lesbian and was married to another woman. She asked whether this would be a problem in her employment, and she was assured by the Diocese’s agents – specifically, the Pastors – that it would not impact her employment.

62. The Diocese's actions and representations were material to Ms. Simon, as they played a determining role in her choice to continue building her career at St. Francis Xavier, instead of taking her career elsewhere.

63. The Diocese's representation was false, as Ms. Simon in fact was not secure in her employment due to her marriage and sexual orientation.

64. The Diocese was aware, and alternatively acted in reckless disregard of the fact, that Ms. Simon would not be secure in her employment due to her sexual orientation and marriage to another woman.

65. The Diocese intended for Ms. Simon to continue rendering service to the Diocese by leading her into the belief that her sexual orientation and marriage to another woman would not impact her employment.

66. Ms. Simon reasonably believed that the Diocese's representations were accurate.

67. Ms. Simon relied on the Diocese's representations, and had a right to do so because as a prospective and current employee of the Diocese, she had the right to trust that her employer was telling her the truth.

68. As a consequent and proximate result of the Diocese's actions, Ms. Simon has suffered damages.

69. On information and belief, Defendant Most Rev. Robert W. Finn, DD, aided, abetted, incited, and/or compelled the actions of the Diocese, and participated in the ordering of her termination.

70. The Defendants have acted in reckless disregard of Ms. Simon's rights and/or with evil motive, justifying an award of punitive damages.

71. Ms. Simon respectfully prays that this Court adjudge Defendants jointly and severally liable for fraud, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

**COUNT II**

**VIOLATION OF THE MISSOURI SERVICE LETTER LAW,  
RSMo 290.140  
(against Defendant Diocese only)**

72. Ms. Simon incorporates each and every foregoing and succeeding paragraph of this Petition as if fully set forth here.

73. Ms. Simon properly requested a letter of dismissal, or "service letter," from the Diocese, under RSMo 290.140.

74. The Diocese is an employer covered by the Service Letter Law, as it is a corporation doing business in this state and employing seven or more persons in this state.

75. Ms. Simon is an employee entitled to request a service letter, in that she was employed by the Diocese for at least 90 days before her discharge.

76. The Diocese failed to issue a proper and compliant service letter. The letter it sent is deficient, including but not limited to the fact that it does not characterize Ms. Simon's service (e.g., satisfactory or unsatisfactory) and does not state the correct positions, dates of employment, and nature of service, in that it contains no mention of her service for the Diocese while employed at St. James Parish.

77. This is tantamount to failure to issue the service letter.

78. In addition, the Diocese was not truthful as to the reason for Ms. Simon's termination.

79. The Diocese has acted in reckless disregard of Ms. Simon's rights and/or with evil motive, justifying an award of punitive damages.

80. Ms. Simon respectfully prays that this Court adjudge Defendant Catholic Diocese of Kansas City-St. Joseph liable for violation of the Missouri Service Letter Law, and grant all relief allowed under the law, as set forth in the Prayer in this Petition.

### **JURY DEMAND**

Ms. Simon respectfully demands a jury trial on all issues so triable.

### **PRAYER FOR RELIEF**

Ms. Simon respectfully prays that this Court grant her the following relief in an amount that is fair and reasonable, and which is believed to exceed the \$25,000 threshold for exclusive Circuit Court jurisdiction:

1. All economic loss, including unpaid wages and fringe benefits;
2. Nominal and/or statutory damages for violation of the Missouri Service Letter Law;
3. Other actual damages, including damages for garden-variety emotional distress;
4. Punitive damages;
5. Pre-judgment and post-judgment interest at the maximum rate permitted by law;
6. Declaratory and injunctive relief;

7. The costs of this action;
8. Any reasonable attorney's fees allowed by law; and
9. Any other and further legal and/or equitable relief that this Court deems just and proper.

Dated: July 17, 2014

Respectfully submitted,

KEENAN LAW FIRM, LLC

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