

## Instructions

## Introduction

This casefile arises from an employment discrimination claim initiated by a recently graduated lawyer at a firm who has encountered explicit and implicit bias issues.

The case file is designed to be used for either first year or upper-level writing classes. There are two specific assignments provided here, which can be used individually or in combination. The first assignment requires students to draft an internal office memorandum assessing the viability of one of the client's claims pre-discovery. The second assignment requires students to draft a brief in support of a partial motion for summary judgment.

This case file affords legal writing professors not only an opportunity to teach important legal writing skills, in the context of a realistic case where students can readily identify with the client, but also an opportunity to weave important discussions of diversity, equity, and inclusion organically into a legal writing course.

Under ABA Standard 303, all accredited law schools must provide education on bias, cross-cultural competency, and racism twice during each law student's career. This case file provides opportunities to discuss the importance of diversity, equity, and inclusion at the same time as teaching writing skills—emphasizing that diversity, equity, and inclusion are as important as other practical skills. Discussing diversity, equity, and inclusion in the context of this case file allows for a truly immersive integration of these concepts, rather than “tokenizing” these discussions in trainings that occur outside the context of substantive course work.

## Summary of the case file

This case file is designed so that all students in the case are associates at a plaintiff's side law firm that handles employment cases.

The case file begins with an intake memorandum, drafted by one of the firm's paralegals.<sup>1</sup> This intake memo outlines the basic facts as known to the client, Nneka Zabu. Zabu was a first-year associate at Evans and Atwater LLC, a large law firm. While at the firm, she experienced the following conduct:

- During orientation, when Zabu attempted to introduce herself, she was interrupted by one of the partners. The partner declared that Zabu's first name sounded too much like the word "naked" and suggested Zabu go by the easier-to-pronounce nickname "Nicky." Zabu was also called "hon" by a male partner.
- Zabu and the only other female associate in her practice group were excluded from pitching to a lucrative prospective client, Stoll Brothers Construction Group because partners believed the client would be more receptive to a pitch by male attorneys. When the client retained the firm, those male attorneys handled the new client's matters. Handling these matters brought positive acclaim to the male attorneys. Matters previously handled by the male attorneys were offloaded to Zabu, and the clients associated with these re-assigned matters were sometimes unhappy.
- A guest speaker was invited by the firm to address social etiquette. The speaker proclaimed that women should wear skirts rather than pants in court. The speaker also deemed curly hair "unprofessional."
- On her annual review, an anonymous commenter expressed concern that Zabu did not show sufficient enthusiasm for client successes.
- Zabu received a substantially smaller discretionary bonus of \$10,000 as compared to a similarly situated male associate in her practice group who worked fewer hours but was awarded a \$20,000 bonus.

After Zabu complained about the conduct, she experienced and filed a discrimination complaint with the Equal Employment Opportunity Commission, and was involuntarily transferred to a different practice group. She ultimately resigned.

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<sup>1</sup> This and other documents in the case file are dated as though the client first consulted with the law firm in the late summer of 2023. A professor can use the case file with the current dates or update them to align with the dates of a legal writing course. They are designed ideally for a legal writing course occurring in the fall semester, in which case only the years need to be updated.

The case file invites the students to consider the impact of a variety of conduct, from microaggressions to more overtly discriminatory conduct. Topics of discussion can include, but are not limited to:

- Gender-based microaggressions such as being interrupted or ignored while speaking;
- Name-based microaggressions such as having a name mispronounced or being given an unwanted anglicized nickname;
- The short- and long-term impacts of being passed over for important work assignments;
- Outdated social norms surrounding grooming and dress;
- Organizational culture and the degree to which diffusion of responsibility and lack of transparency can prevent a culture of inclusion; and
- Pay inequality.

The writing assignments in the casefile themselves invite students to grapple with these issues. Professors can also weave these issues into discussions about the general process of informative and persuasive writing.

## Using the Internal Research Memo Assignment

Based on the intake memorandum, it appears that the client has at least three potential employment discrimination claims under Title VII: (1) a claim for disparate treatment discrimination; (2) a claim for a hostile work environment; and (3) a claim for retaliation. Students can be asked to research any of these claims, in whole or in part, and to provide an objective internal memorandum assessing the viability of such a claim.

The assignment can be an open universe assignment, requiring the students to conduct research, or a closed universe assignment where the authority is provided by the professor.

The students can be instructed about the particular jurisdiction where the complaint will be filed, and this jurisdiction can be real or fictional. If the case file is used year after year, the professor can simply change the jurisdiction each year and students will be unable to adopt wholesale the work production of students using the same case file in prior years.

If the case is to be filed in a fictional jurisdiction, the only binding authority will be Title VII, the EEOC's regulations, and Supreme Court cases. If the case is filed in a specific real jurisdiction, circuit court decisions from that jurisdiction will be binding as well.

The example assignment provided in the materials was a closed universe assignment where the complaint would be filed in the United States District Court for the District of Columbia. Students were asked to evaluate only whether the client's facts were likely to support the "severe or pervasive" element of a hostile work environment claim. The first four cases provided are the four major Supreme Court cases addressing the element. The remaining cases are an assortment of cases from different circuits, some where similar conduct was deemed severe or pervasive and other where similar conduct was not. Any assortment of circuit court cases could be used.

Nothing other than the intake memo and the assignment need be provided in advance of this assignment. The students are evaluating the viability of claims pre-discovery and should not receive additional case file materials until after this assignment is complete. If this is the only assignment being provided from the case file, no other material need ever be given to the students.

A grading rubric is provided, with suggested point values for various components of the internal research memo. The point values can be adjusted to the professor's preference.

## Using the Brief in Support of the Partial Motion for Summary Judgment Assignment

Before assigning the motion for summary judgment, students should be provided with the pleadings and discovery. This includes:

- The complaint;
- The answer;
- Defendant's responses to interrogatories;
- Defendant's production of documents;
- Defendant's responses to requests for admissions; and
- Two deposition transcripts.

Based on the answer and discovery responses, Evans and Atwater admit all of the elements of a retaliation claim except for causation. This narrows the legal issues such that students can draft a motion addressing only this element. Given the many ways causation can be proven, there is still ample argument for students to make even if the first two elements are unchallenged. Part of the test of this assignment is for students to discover that the first two elements are admitted and to determine how to use those admissions in their briefs.

Title VII caselaw articulated a variety of different methods through which an employee can prove causation. These methods include: direct evidence of discriminatory animus; suspicious timing between protected activity and an adverse employment action; and inconsistent or changing pretextual explanations. Discovery in this case file provides sufficient support for students to argue causation using each of these methods.

Like the prior assignment, the assignment can be an open universe assignment, requiring the students to conduct research, or a closed universe assignment where the authority is provided by the professor.

The students can be instructed about the particular jurisdiction where the complaint will be filed, and this jurisdiction can be real or fictional.

If the case is to be filed in a fictional jurisdiction, the only binding authority will be Title VII, the EEOC's regulations, and Supreme Court cases. If the case is filed in a specific real jurisdiction, circuit court decisions from that jurisdiction will be binding as well.

Students can be tasked with drafting the entire motion package or with drafting only the brief in support of the motion for partial summary judgment. In the event that students are only drafting the brief, a "shell" motion package is provided that gives students a proposed order, motion, and certificate of service.

The example assignment provided in the materials was a closed universe assignment where the complaint was be filed in the United States District Court for the District of Columbia. If the case is situated elsewhere, the professor will need to amend the case captions on all the pleadings and discovery to reflect that jurisdiction instead.

A grading rubric is provided, with suggested point values for various components of the brief. The point values can be adjusted to the professor's preference.

## Intake Memorandum



# MEMO

**To: File**

**From: Joseph Cohen, paralegal**

**Date: August 18, 2023**

**Subject: Intake with new client**

Today I met with a potential new client, Nneka Zabu<sup>1</sup>, who is interested in pursuing an employment discrimination case against her former employer, the law firm of Evans and Atwater, LLC. The following facts were gleaned during our initial intake interview.

Zabu was born and raised in Waverly Virginia. She excelled in academics, graduating as the valedictorian of her class at Parkway High School. Parkway is a diverse public school with approximately 70% minority students, including Zabu who identifies as an African American female.

Based on her achievement, Zabu was awarded a scholarship to attend Howard University outside of Washington, D.C. Although moving to a larger city was a bit of a culture shock, Zabu loved Howard. She majored in political science and was an editor for the student newspaper. While researching an article for the paper, she became interested in criminal justice reform. Motivated by this interest, Zabu decided to attend law school with the hopes of one day becoming a public defender.

Zabu applied to law schools in the Washington D.C. area, ultimately attending Georgetown University Law Center. She found the student body at Georgetown Law to be large and diverse. Zabu did well in all her classes. She was a managing editor of the American Criminal Law Review. She spent her first summer working as an intern at the Sussex County Virginia public defender's office. During her second summer, she interned with a judge for the Superior Court of the District of Columbia.

Although Zabu's interest in public interest never waned, she had taken out a significant amount of students loans to attend law school and she felt pressure to

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<sup>1</sup> Ms. Zabu pronounces her first name "n AI - k uh."

take a high paying job after graduation to pay back those loans. As a result, in the spring of her 3L year she interviewed with a number of large law firms in

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Washington D.C. Among other firms she interviewed with was Evans and Atwater, LLC.

Evans and Atwater is a large law firm with approximately 500 lawyers in 10 offices across the country. Although its headquarters are in Manhattan, New York it has large offices in other cities, including Washington, D.C. The firm has a variety of both litigation and corporate practices.

Zabu knew little about the firm before interviewing, other than that the firm had a prestigious reputation. During the interview process, she met with two associates and three partners. One associate, Mark Soloman, was an African American man in his first year with the firm. The other, Shruti Pandi, was a Southeast Asian woman in her third year with the firm. All three of the partners were Caucasian men. The interviews were professional and cordial. Zabu was particularly impressed by her conversations with Soloman and Pandi. Both seemed happy and professed that they hoped to stay at Evans and Atwater for their entire careers. Zabu accepted the offer to join Evans and Atwater.

By the time Zabu joined the firm on September 6, 2021, Soloman and Pandi had left the firm. Zabu was assigned to the construction litigation practice group. In that group were three partners—Richard Wilson, Joseph Schott, and Robert Campbell. All three were Caucasian men. There were three other associates in the group—Gregory Black, a mid-level associate; Marta Perez, another mid-level associate; and Chase Huntley, who joined the firm at the same time as Zabu. Black and Huntley were Caucasian men. Perez was a Hispanic female.

The entire practice group met for orientation on the first day. Wilson, who chaired the practice group, spent an hour talking about the firm's cases and the manner in which work was assigned. Typical cases were staffed with a partner, a senior associate, and an entry-level associate. On larger cases, sometimes additional partners and associates would join the team.

After the presentation, everyone went around the room introducing themselves. Zabu was last to go. She stood and began by saying "My name is Nneka Zabu and I'm from Waverly Virginia—" before she could finish her sentence, Wilson interrupted her, asking her to repeat her first name. Zabu complied. Wilson frowned a bit and shook his head. "Nneka sounds too much like 'naked,'" he said. "You don't want people looking at you and thinking that! Why don't we call you 'Nicky'?" Zabu was not expecting to be given a nickname and didn't know what to say. No one else had been given one during their introductions. But she didn't protest. "Go on

Nicky,” Wilson urged “continue your introduction.”

Although unsettled, Zabu pulled herself together and told the group where she was from and where she had gone to school. Then she sat down. Perez shot her a sympathetic look.

The first few months at the firm were fine. She grew accustomed to being called “Nicky” by Wilson. Others in the practice group called her “Nneka.”

Zabu was staffed on a few cases with each of the three partners. Although Schott was very “type A” and Campbell was considerably more disorganized, she learned to adjust her workflow in an effort to work well with each of them. Campbell tended to refer to her as “hon,” which Zabu found grating. Otherwise, she found all three partners agreeable to work for.

The same was true of the more senior associates. On some of the cases Zabu worked with Black. On others she worked with Perez. She found both Black and Perez to be good mentors who made an effort to help integrate her into the practice group and the firm.

The practice group held monthly meetings for all members. During these meetings the partners would discuss upcoming case developments as well as new business the group hoped to solicit.

One client the firm had long coveted was Stoll Brothers Construction Group. Stoll was one of the largest commercial contractors in the northeast corridor and had traditionally referred work to another large law firm. Recently, there had been rumors that Stoll was unhappy with the representation and was looking to switch firms.

On March 16, 2022, Zabu attended the monthly practice group meeting. The primary topic of discussion was putting together a proposal to Stoll to take over its business. A member of the firm’s marketing department sat in on the meeting. From the outset, the partners agreed that Wilson should be proposed as the partner who would take responsibility for the cases. After all, he was the chair of the practice group. He was also the most senior and experienced of the three partners.

The discussion then turned to which associates to propose. Wilson said “I think it’s got to be the boys.” Schott nodded his head, agreeing “I think so. We don’t have much choice.” “Yes,” added Campbell, “The girls just aren’t what Stoll is going to be looking for.” Zabu sat quietly as the partners spent the rest of the meeting discussing with Black and Huntley what they each needed to do as part of the proposal.

Later that day, Zabu went to Perez's office. "Did that just happen?" Zabu asked Perez. "Did what happen?" Perez asked. "Did we just get passed over for pitching to this big new client because we're women?" Zabu asked. Perez sighed. "You've got to grow a little thicker skin," she said. "The law in general is a boy's club. You just have to get used to the fact that things aren't always fair."

After a successful meeting with Stoll's in-house counsel, Stoll decided to transfer its pending litigation to Evans and Atwater. This necessitated that many of the cases Black and Huntley had been handling be transferred to Perez and Zabu. This was the first time Zabu saw Huntley's work product. She and Huntley were friendly and sometimes discussed work, but she had never seen anything he had written before. She was a bit surprised at how sloppy some of it was.

Some of the firm's clients were unhappy that their cases were being reassigned. A few complained that they preferred Black and Huntley to Perez and Zabu. All the clients eventually handled the re-assignment.

Overall, the Stoll business was a boom for the firm. Not only did the work generate significant fees but several of the cases were newsworthy. Wilson was interviewed for several news articles about the cases. These articles attracted other new clients. When these new matters came in, Wilson assigned Black and Huntley to work on them.

On a bi-monthly basis, the firm invited guest speakers to present to all of the firm's associates. These guest speakers were not affiliated with the firm but. Speakers were selected by the firm's hiring committee, which did not involve any member of the construction practice group. The presentations were optional, although most associates attended them. One speaker presented on professional development. Another presented on good timekeeping practices. Zabu generally found the presentations interesting and useful.

In July, 2022, the presenter addressed social etiquette. Among other tips she suggested female associates wear skirt suits rather than pant suits when appearing in court. The presenter also suggested that associates reconsider having curly hair, which the presenter deemed "unprofessional." Zabu could not fathom what was unprofessional about curly hair. She wore her hair natural, in a short afro. Zabu never chemically straightened her hair and had worn it that way since high school. No one had ever commented negatively about it to her. Though the presenter did not specifically direct her comment to female associates, Zabu felt as though the comment was aimed at the women in the audience.

After the presentation, Zabu met with Jodi Fillipo who worked in the firm's human resources department. Zabu told Fillipo about the speaker's comments. Fillipo agreed the comments sounded unhelpful and she made a note that the firm

should not invite that speaker again. Zabu also told Fillipo about being called “Nicky” by Wilson and “Hon” by Campbell. Zabu told Fillipo that she did not want to be called by either nickname. Fillipo agreed to address the matter with both partners.

Zabu never learned whether anyone spoke with Wilson or Campbell. Each continued to call Zabu by the same nickname as before she reported the issue to Fillipo.

Zabu worked hard in 2022 and had many good outcomes for clients in the cases she handled. She did not get much direct client interaction and rarely left the office, but she did draft numerous contracts and engaged in written motion practice in her cases. Overall she ended the year feeling positive about her efforts.

At the end of the year, each associate was provided with an annual review, administered by the firm’s human resources department. The HR department reached out to every partner the associate had worked for as well as some of the clients who the associate had done work for soliciting comments. All the feedback gathered was then filtered by HR and compiled into a single document which was shared with the associate. The feedback in that document was anonymous, the associate was not told who had provided which comments.

During 2022, Zabu had received positive feedback from all the partners she worked for. Other than a few clients who were grumpy about their cases being reassigned to her after the firm secured the Stoll business, she had never received a complaint from any client either.

Zabu had her annual review on January 3, 2023. To Zabu’s surprise, the feedback shared with her from HR was not uniformly positive. One comment in particular stood out to Zabu. The comment was that she needed to “show more enthusiasm” for client successes. Zabu was puzzled. She certainly was pleased when clients prevailed in cases she handled. No client or partner had ever mentioned any lack of enthusiasm to her. Aside from this one comment, the other comments were generally favorable. In particular, Zabu was praised for her legal writing skills and for being a team player.

Each year, Evans and Atwater awarded bonuses to any associate who worked over 1950 hours in the year. The amount of bonus depended on various factors include the associate’s experience level, the associate’s annual review, and the overall number of hours the associate had worked. In 2022, Zabu had worked 2250 hours. Huntley had worked 2210 hours. Zabu received a bonus of \$10,000. Huntley received a bonus of \$20,000.

Zabu only learned of the difference because Huntley mentioned his bonus to her over lunch on January 16, 2023. Zabu expressed surprise over the amount, to which Huntley responded “I’ve been working for one of the group’s most important clients, Stoll, so I am sure that’s part of why my bonus was so generous.”

Zabu began to feel as though she was being treated unfairly by Evans and Atwater. On January 25, 2023, she contacted a counselor with the Equal Employment Opportunity Commission. She then filed a formal complaint on February 8, 2023, alleging two claims—one for sex discrimination and one for a hostile work environment based on sex and race. On February 28, 2023, Zabu elected to engage in mediation and her complaint was disclosed to Evans and Atwater.

While the matter was pending, on March 31, 2023, Beth Speed, the firm’s hiring partner, called Zabu in for a meeting. “You’re clearly unhappy in the construction group,” Speed said. Zabu disagreed, explaining “I really enjoy the work and the clients, I just feel that I’m not being treated the same as my male counterparts and that the environment is challenging.” Speed replied, “We have a solution for that problem. If you’ll agree to drop your EEOC complaint we’d be happy to transfer you to the firm’s health law group. The pay is exactly the same.”

Zabu considered the offer. That group was chaired by a female partner, Kathleen Browning. But unlike her construction law practice which was a mix of transactional and litigation work, the health law group exclusively handled regulatory matters. It also appeared difficult to earn a bonus in the health law group. To the best of Zabu’s knowledge, that group rarely had sufficient work for associates to bank enough hours to be eligible for a bonus.

“I’d rather not,” Zabu explained, “I really do enjoy my current practice.” “Understood,” said Speed. “Keep the offer in mind,” she added.

A few days later, Zabu reached out to Browning to discuss the health law group. Browning was surprised to hear from Zabu. “We’re pretty slow right now,” Browning admitted. “I don’t know that I have enough work for another associate.”

On April 20, 2023, Zabu logged into her email. The very first email was from Speed. According to the email, Zabu was being re-assigned to the health law group. The email cited two reasons for the re-assignment: (1) the health law group’s need for an associate with strong writing skill; and (2) an overload of work in the group.

To Zabu’s knowledge, no other associates were being re-assigned. She reached back out to Browning via email to ask whether the health law group was busy. Browning replied “no, we’re still pretty slow.”

Frustrated with the email, Zabu tendered her resignation from Evans and Atwater on April 24, 2023. On April 27, 2023, she amended her EEOC complaint to add a third claim for retaliation, alleging that the re-assignment was reprisal for having filed the original EEOC complaint. The EEOC accepted this third claim for investigation.

On August 1, 2023, Zabu received a Notice of Right to Sue from the EEOC. She immediately scheduled a meeting with our office to see whether we would be interested in handling her case.

Internal Office Memorandum Assignment



# MEMO

**To: Associate**

**From: Partner**

**Date: September 9, 2023**

**Subject: Research Memo Assignment**

As you know, the firm has agreed to represent Nneka Zabu in a civil lawsuit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”). Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.

Among other claims, we contemplate asserting a claim for a racially and sexually hostile work environment. In our jurisdiction the elements of a Title VII claim for hostile work environment are: (1) unwelcome conduct; (2) that is based on a protected status; (3) which is severe or pervasive; and (4) which is imputable to the employer.

We are concerned whether the conduct described by Zabu is sufficiently severe or pervasive to meet the Title VII standard. Please draft a memo for our internal use stating whether Zabu’s version of events meets the third element of a hostile work environment claim.

The paralegal for this case has conducted initial research and indicated the following authorities are likely to be useful in drafting this memo.

- *Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998)
- *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)
- *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993)
- *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)
- *Ford v. Jackson Nat’l Life Ins. Co.*, 45 F.4th 1202 (10th Cir. 2022)
- *Chinery v. Am. Airlines*, 778 F. App’x 142 (3d Cir. 2019)
- *Parker v. Reema Consulting Servs.*, 915 F.3d 297 (4th Cir. 2019)
- *Maldonado-Cátala v. Municipality of Naranjito*, 876 F.3d 1 (1st Cir. 2017)
- *Zarza v. Tallahassee Hous. Auth.*, 686 F. App’x 747 (11th Cir. 2017)
- *Henry v. Corpcar Servs. Hous., Ltd.*, 625 F. App’x 607 (5th Cir. 2015)
- *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537 (2d Cir. 2010)
- *Ejikeme v. Violet*, 307 F. App’x 944 (6th Cir. 2009)
- *Davison v. City of Lone Jack*, 121 F. App’x 671 (8th Cir. 2005)

- *Woods v. Champion Chevrolet*, 35 F. App'x 453 (9th Cir. 2002)
- *Rodgers v. Western-Southern Life Ins. Co.*, 12 F.3d 668, 674 (7th Cir. 1993)

Aside from Title VII and its regulations (which you may cite), do not cite any additional cases or authority in your memo. Limit your analysis to this authority.

Although the firm is considering whether there are other viable claims to allege in the complaint (and some of the cases address other types of claims), do not in your memo address any claim other than one for a hostile work environment based on race and sex.

Internal Office Memorandum Grading Rubric

# Legal Writing 1

## Internal Memo Assignment Grading Rubric

	Exemplary	Competent	Developing
<p>Question presented (1 point available)</p> <p>_____ points out of 1</p>	<p>1 point out of 1</p> <ul style="list-style-type: none"> <li>Clearly states the legal issue, prevailing law, and facts</li> </ul>	<p>0.5 points out of 1</p> <ul style="list-style-type: none"> <li>Includes legal issue but is missing or unclear as to the facts and the law</li> </ul>	<p>0 points out of 1</p> <ul style="list-style-type: none"> <li>Is unclear as to the legal issue or is misstating the legal issue</li> </ul>
<p>Short answer (1 points available)</p> <p>_____ points out of 1</p>	<p>1 point out of 1</p> <ul style="list-style-type: none"> <li>Contains a direct answer to the question</li> <li>Provides a brief but complete explanation</li> </ul>	<p>0.5 points out of 1</p> <ul style="list-style-type: none"> <li>Direct answer to the question is unclear or does not match the analysis in the memo</li> <li>Explanation is either incomplete or unduly detailed</li> </ul>	<p>0 points out of 1</p> <ul style="list-style-type: none"> <li>No direct answer to the question</li> <li>Lacks explanation or explanation is contradictory to the analysis in the memo</li> </ul>
<p>Facts (3 points available)</p> <p>_____ points out of 3</p>	<p>3 points out of 3</p> <ul style="list-style-type: none"> <li>Includes all material facts</li> <li>Contains no immaterial facts</li> <li>Contains only facts, no arguments, inferences, or conclusions</li> <li>Has a logical organization</li> <li>Is written in a narrative style</li> </ul>	<p>1.5-2.5 points out of 3</p> <ul style="list-style-type: none"> <li>Omits a few material facts</li> <li>Includes some immaterial facts</li> <li>Contains a few arguments, inferences, or conclusions</li> <li>Organization is reasonably logical</li> <li>Largely follows a narrative style</li> </ul>	<p>0-1 points out of 3</p> <ul style="list-style-type: none"> <li>Omits numerous material facts</li> <li>Includes numerous immaterial facts</li> <li>Contains numerous arguments, inferences, or conclusions</li> <li>Lacks a logical organization</li> <li>Lacks a narrative style</li> </ul>
<p>Structure (3 points available)</p> <p>_____ points out of 3</p>	<p>3 points out of 3</p> <ul style="list-style-type: none"> <li>Umbrella section contains necessary background and a clear roadmap</li> <li>Sections of the discussion are well organized (with headings as appropriate)</li> <li>Thesis sentences are used throughout</li> <li>Transitions are used throughout</li> </ul>	<p>1.5-2 points out of 3</p> <ul style="list-style-type: none"> <li>Umbrella section is present but could guide the reader more effectively</li> <li>Some sections of the discussion are jumbled</li> <li>Missing some thesis sentences</li> <li>Missing some transitions</li> </ul>	<p>0-1 points out of 3</p> <ul style="list-style-type: none"> <li>Umbrella section is absent or wholly ineffective</li> <li>All or nearly all sections are jumbled</li> <li>Missing all or nearly all thesis sentences</li> <li>Missing all or nearly all transitions</li> </ul>
<p>Content (4 points available)</p> <p>_____ points out of 4</p>	<p>3-4 points out of 4</p> <ul style="list-style-type: none"> <li>Well explained, contains everything the reader needs to understand the analysis</li> <li>Uses deductive reasoning</li> <li>Synthesizes cases</li> <li>Selects effective authority to support conclusions</li> <li>Explains the reasons for rules</li> <li>Shows how the analysis applies to the client's fact pattern</li> </ul>	<p>2-2.5 points out of 4</p> <ul style="list-style-type: none"> <li>Generally well explained but omits some things the reader needs to understand the analysis</li> <li>Uses a mix of inductive and deductive reasoning</li> <li>Cases are not all well synthesized</li> <li>Authority could be better utilized to support conclusions</li> <li>A mix of complete and incomplete analysis</li> <li>A mix of effective and ineffective application</li> </ul>	<p>0-1.5 points out of 4</p> <ul style="list-style-type: none"> <li>Not well explained, the reader would have to do significant work to understand the analysis</li> <li>Largely uses inductive reasoning</li> <li>Largely fails to synthesize cases</li> <li>Ineffective selection and use of authority</li> <li>Lacks sufficient explanation throughout</li> <li>Lacks sufficient application throughout</li> </ul>
<p>Writing style (4 points available)</p> <p>_____ points out of 4</p>	<p>3-4 points out of 4</p> <ul style="list-style-type: none"> <li>Uses CREARC structure without omitting necessary sections</li> <li>Effective word choice, phrasing, and grammar</li> </ul>	<p>2-2.5 points out of 4</p> <ul style="list-style-type: none"> <li>CREARC structure is generally correct</li> <li>Some ineffective word choice, phrasing, and grammar but largely well written</li> </ul>	<p>0-1.5 points out of 4</p> <ul style="list-style-type: none"> <li>CREARC structure is absent</li> <li>Significant use of ineffective word choice, phrasing, and grammar</li> </ul>
<p>Formatting, editing, and bluebooking (4 points available)</p> <p>_____ points out of 4</p>	<p>3-4 points out of 4</p> <ul style="list-style-type: none"> <li>Properly formatted with all the required sections</li> <li>No typos or errors, including in citation format</li> </ul>	<p>2-2.5 points out of 4</p> <ul style="list-style-type: none"> <li>Generally formatted like a memo but missing some sections or with content that belongs in a different section</li> <li>Minimal typos and/or errors, including in citation format</li> </ul>	<p>0-1.5 points out of 4</p> <ul style="list-style-type: none"> <li>Improperly formatted, missing a significant number of sections, or with a significant amount of content in the wrong section</li> <li>Numerous typos and/or errors, including in citation format</li> </ul>

\_\_\_\_\_ points out of 20

## Complaint

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

COMPLAINT

Plaintiff, Nneka Zabu files this complaint against Defendant Evans and Atwater, LLC, and in support thereof, avers as follows:

**JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

1. The United States District Court for the District of Columbia has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Plaintiff's claims arise under federal law.

2. The United States District Court for the District of Columbia has personal jurisdiction over the Defendant as the firm operates in the district and the events giving rise to the claims in this case occurred in the District of Columbia.

3. Venue is properly laid in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because the Defendant conducts business in this judicial district, and because the events giving rise to the claims in this case occurred in the District of Columbia.

4. The Plaintiff has properly exhausted her administrative remedies by filing a timely Complaint of Employment Discrimination with the Equal Employment Opportunity Commission (“EEOC”), and by filing the instant lawsuit within ninety (90) days of the final agency decision having been issued.

## FACTS

5. The Plaintiff is an African American female.

6. She was hired as a first-year associate in the Defendant’s District of Columbia office on September 6, 2021.

7. At the time she was hired, the Plaintiff was assigned to work in the firm’s construction litigation practice group.

8. This practice group was led by three Caucasian male partners: Richard Wilson, Joseph Schott, and Robert Campbell.

9. The practice group had four associates assigned to the group. Zebu and Chase Huntley were both first-year associates in 2021. In fact, they started working for the firm on the same day.

10. The group had two mid-level associates, Gregory Black and Marta Perez.

11. Black and Huntley were Caucasian men.

12. Perez was a Hispanic female.

13. On the Plaintiff’s first day at the firm, she was given an unwanted nickname by Wilson. During her introduction in front of the practice group, Wilson

interrupted the Plaintiff and suggested the Plaintiff be called “Nicky” because her name was hard to pronounce and sounded too much like the word “naked.”

14. During her tenure at the firm, Wilson called the Plaintiff “Nicky.” Another partner called her “hon.”

15. The Plaintiff complained about the nicknames to human resources at the firm. The nickname use continued.

16. A few months later, the Plaintiff was excluded from important client development activities.

17. On March 16, 2022, the practice group met to discuss a proposal to a prospective client. Stoll Brothers. Wilson suggested only “the boys” be included in the proposal. Schott and Campbell agreed. Campbell noted that “girls” weren’t what the prospective client would want.

18. Wilson, Black, and Huntley were the only practice group members included in the proposal.

19. When the proposal was successful, lucrative new work flowing to the firm from Stoll Brothers was assigned to Black and Huntley. Existing work assigned to Black and Huntley was transferred to Perez and the Plaintiff. Clients whose work were transferred were, at times, upset. Some complained about their files having been transferred to Perez and the Plaintiff.

20. Working on the Stoll Brothers cases improved the notoriety and subsequent client development prospects for Wilson, Black, and Huntley. Perez and the Plaintiff were shut out of these benefits.



21. Working for Stoll Brothers may have also resulted in Huntley being awarded a higher year-end bonus than the Plaintiff, who was not permitted to work for this firm client.

22. In July 2022, the firm invited a guest speaker to address the firm's associates. The speaker made several outdated and offensive comments.

23. Female associates were told to wear skirts rather than pants to court.

24. Curly hair was deemed unprofessional.

25. The plaintiff felt the comments were gendered and reported her concerns to human resources.

26. The Plaintiff performed well in 2022.

27. During her annual review on January 3, 2023, the Plaintiff was unfairly criticized.

28. She had never previously received criticism from the firm's partners or any complaints from the firm's clients.

29. An anonymous commentator noted she needed to show more "enthusiasm" for client successes.

30. In all other respects her review was positive.

31. The Plaintiff was eligible for a bonus for her work in 2022. She had worked 2250 hours. She was given a bonus of \$10,000.

32. Huntley, who was equal in seniority, worked 2210 hours. He was given a bonus of \$20,000.

33. On January 25, 2023, the Plaintiff contacted an EEOC counselor.

34. On February 8, 2023, the Plaintiff filed a formal complaint for sex discrimination and hostile work environment based on sex and race.

35. During this time period, the Plaintiff's EEOC contact and complaint were kept confidential.

36. During this time period, there was no discussion of changing the Plaintiff's practice group assignment.

37. On February 28, 2023, the Plaintiff elected to engage in mediation and her complaint was disclosed to the firm.

38. Approximately a month later, on March 31, 2023, the firm suggested the Plaintiff change practice groups to the health law group. She refused.

39. On April 20, 2023, after notifying the firm that she did not want to change practice groups, the Plaintiff was notified by email that she had been transferred to the health law practice group.

40. The proffered reason for the transfer was that there was a need for an associate in the health law group due to its workload.

41. This proffered reason was pretext, the health law group was slow.

42. The Plaintiff was the only associate assigned to a new practice group.

43. The Plaintiff was constructively discharged.

44. She resigned on April 24, 2023.

45. On April 27, 2023 the Plaintiff amended her EEOC complaint to add a claim for retaliation.

COUNT I  
Sex Discrimination

46. The Plaintiff incorporates her prior allegations.
47. The Plaintiff was excluded from client development activities.
48. The Plaintiff was paid less than a similarly situated male employee.
49. These actions constitute discrimination on the basis of sex.
50. The discrimination was pervasive and regular.
51. The discrimination negatively affected the Plaintiff.
52. The discrimination would have negatively affected any reasonable employee under these circumstances.
53. The Defendant is responsible for the discrimination.

COUNT II  
Hostile Work Environment Based on Sex and Race

54. The Plaintiff incorporates her prior allegations.
55. During the entirety of the time she was at the firm, the Plaintiff was subjected to a series of microaggressions.
56. These microaggressions related to the Plaintiff's sex, which was female, and the Plaintiff's race, which was African American.
57. These microaggressions, taken in total, culminated in the Plaintiff's constructive discharge from the firm.
58. The Plaintiff was subjected to a hostile work environment based on race and sex.
59. The conduct the Plaintiff received was unwelcome.

60. The conduct was based on the Plaintiff's protected characteristics.

61. The conduct affected the Plaintiff's terms and conditions of employment.

62. The conduct was severe or pervasive.

63. The Defendant is responsible for the hostile work environment.

### COUNT III Retaliation

64. The Plaintiff incorporates her prior allegations.

65. The Plaintiff was forceable transferred from her practice group as reprisal for having filed an EEOC complaint.

66. The Plaintiff engaged in protected activity by filing her EEOC complaint.

67. The Defendant took adverse action against her.

68. There was a causal connection between the protected activity and the adverse action.

69. The Defendant is responsible for the retaliation.

WHEREFORE, the Plaintiff seeks judgment in her favor and against the Defendant in the form of backpay and benefits, compensatory damages, front pay, prejudgment interests, attorneys fees and costs, and any other relief allowed by law.

DATED: October 2, 2023

RESPECTFULLY SUBMITTED

Nancy A. Willhauer  
/s Nancy A. Willhauer  
The Bluepoint Law Firm, PC  
555 Main Street  
Wildcat City, Diamond 55555  
(555) 555-5555  
NWillhauer@BLF.com

Answer

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

ANSWER

Defendant Evans and Atwater, LLC, answers the Plaintiff, Nneka Zabu's complaint as follows:

JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES

1. Admits.
2. Admits in part, denies in part. Denies the Plaintiff's characterization of events. Admits that the court has personal jurisdiction over the Defendant.
3. Admits in part, denies in part. Denies the Plaintiff's characterization of events. Admits that venue is proper.
4. Admits.

FACTS

5. Admits.
6. Admits.
7. Admits.

8. Admits.

9. Admits.

10. Admits.

11. Admits.

12. Admits.

13. Admits in part, denies in part. Admits that, at times, individuals working for the firm called the Plaintiff and others by nicknames. Admits some firm employees called the Plaintiff "Nicky." Denies any suggested racial or sexual animus in the use of nicknames. By way of further responses, the Plaintiff did not immediately voice any objection to the use of the nickname and the use of this nickname was not intended to be hurtful.

14. Admits.

15. Admits in part, denies in part. Admits that the Plaintiff notified human resources that she had been called by two nicknames. The Defendant denies as stated the remainder of the allegations in this paragraph. By way of further response, the Plaintiff waited for months to complain about the use of nicknames and did not discuss the use of nicknames with the people who were actually using those nicknames.

16. Denies.

17. Admits that the meeting occurred. Denies, based on lack of information, what specifically was said at this meeting.

18. Admits.



19. Admits.

20. Admits in part, denies in part. Admits that working on the Stoll Brothers cases improved the notoriety and subsequent client development prospects for Wilson, Black, and Huntley. Denies that Perez and the Plaintiff were shut out of these benefits. By way of further response, Perez and the Plaintiff had other opportunities provided to them while working for the firm.

21. Denies.

22. Admits in part, denies in part.

23. Admits that there was a guest speaker. Admits she commented about the appearance of female attorneys. Denies the characterization of her comments.

24. Admits.

25. Admits.

26. Admits in part, denies in part. Admits that the Plaintiff reported concerns. Denies the Plaintiff's subjective characterization of the comments.

27. Admits.

28. Denies.

29. Denies. By way of further response, some firm clients were unhappy with how the Plaintiff initially handled the transition when she began working on their existing cases. These clients reported that the Plaintiff seemed resentful to be taking on their cases.

30. Admits.

31. Admits.

32. Admits.

33. Admits. By way of further response, bonuses are subjectively awarded and are decided by the partners for whom each associate works.

34. Admits.

35. Admits.

36. Admits.

37. Admits.

38. Admits.

39. Admits. By way of further response, the suggestion was made in an effort to separate the Plaintiff from having to work for firm partners she alleged discriminated against her and created a hostile work environment.

40. Admits in part, denies in part. Admits that the Plaintiff was notified by email that she would be transferred and that she was transferred. Denies that the Plaintiff unequivocally communicated her refusal to transfer practice groups prior to April 20, 2023. By way of further response, the firm believed the Plaintiff was still considering this option.

41. Admits. By way of further response, the Plaintiff's excellent written skills also rendered her an excellent candidate for the health law group.

42. Denies.

43. Admits.

44. Denies. By way of further response, the Plaintiff resigned, quitting her job.

45. Admits.

COUNT I  
Sex Discrimination

46. The Defendant incorporates its prior responses as though set forth at length herein.

47. Denies. These allegations constitute conclusions of law to which no response is required.

48. Denies. These allegations constitute conclusions of law to which no response is required.

49. Denies. These allegations constitute conclusions of law to which no response is required.

50. Denies. These allegations constitute conclusions of law to which no response is required.

51. Denies. These allegations constitute conclusions of law to which no response is required.

52. Denies. These allegations constitute conclusions of law to which no response is required.

53. Denies. These allegations constitute conclusions of law to which no response is required.

COUNT II  
Hostile Work Environment Based on Sex and Race

54. The Defendant incorporates its prior responses as though set forth at length herein.

55. Denies. These allegations constitute conclusions of law to which no response is required.

56. Denies. These allegations constitute conclusions of law to which no response is required.

57. Denies. These allegations constitute conclusions of law to which no response is required.

58. Denies. These allegations constitute conclusions of law to which no response is required.

59. Denies. These allegations constitute conclusions of law to which no response is required.

60. Denies. These allegations constitute conclusions of law to which no response is required.

61. Denies. These allegations constitute conclusions of law to which no response is required.

62. Denies. These allegations constitute conclusions of law to which no response is required.

63. Denies. These allegations constitute conclusions of law to which no response is required.

COUNT III  
Retaliation

64. The Defendant incorporates its prior responses as though set forth at length herein.

65. Denies. These allegations constitute conclusions of law to which no response is required.

66. Denies. These allegations constitute conclusions of law to which no response is required.

67. Denies. These allegations constitute conclusions of law to which no response is required.

68. Denies. These allegations constitute conclusions of law to which no response is required.

69. Denies. These allegations constitute conclusions of law to which no response is required.

WHEREFORE, the Defendant seeks judgment in its favor and against the Plaintiff and asks the Court award it attorney's fees and costs as the prevailing party.

DATED: October 20, 2023

RESPECTFULLY SUBMITTED

Margaret Collier  
/s Margaret Collier  
Collier, Smith, and Wiley, LLC  
21 South Gate Road  
Wildcat City, Diamond 55555  
(555) 555-1111  
MaggieColliers@CollierLaw.com

## Defendant's Discovery Responses

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

The Defendant's Objections and Responses to the Plaintiff's Interrogatories

The undersigned responds to the interrogatories served by the Plaintiff Nneka Zabu, as follows:

**INTERROGATORIES**

**1. Describe how bonuses are awarded at Evans and Atwater, LLC.**

The firm offers two bonuses. One is a profit-sharing bonus. At the end of the year, each practice group's profits are calculated. Five percent of those profits are available to be distributed amongst the practice group's associates as a bonus. The partners in each practice group decide the bonus amount to be awarded to each associate within that group. Practice groups are encouraged but not required to utilize objective measures to award bonuses. Suggested objective measures include: the overall number of hours worked by the associate; the overall amount billed by the associate; the complexity of the work performed; the billables received by the firm attributable to that associate; and whether the associate engaged in successful client development efforts.

Any associate who does not received a profit-sharing bonus automatically receives a flat-rate bonus. The amount of this bonus is determined by the firm's compensation team which is comprised of a partner from each practice group. The flat rate bonus is non-discretionary. All associates receive the same amount for this bonus.

**2. Explain why Chase Huntley was awarded a larger bonus in 2023 than Nneka Zabu.**

Huntley was awarded a larger bonus to recognize his substantial contributions to client development efforts. Huntley was part of the team that successfully lured Stoll Brothers Construction Group to the firm. Although Zabu's work throughout the year was good, she did not participate in the same volume of client development efforts. She worked slightly more hours than Huntley during 2022 but those additional hours did not benefit the firm as much as Huntley's efforts in securing the Stoll Brothers Construction Group

**3. Who contributed comments that were incorporated into Zabu's performance review in 2023.**

Richard Wilson, Joseph Schott, and Robert Campbell.

**4. State the profits earned by the firm's construction law group in 2023.**

Approximately \$1.5 million.

**5. State the profits earned by the firm's health law group in 2023.**

Approximately \$675,000.

**6. State the number of attorneys who were assigned to the firm's construction law group in 2022. Indicate how many are associates eligible for a profit-sharing bonus and what bonuses were awarded in 2023. Provide the gender and race of each associate.**

There are seven attorneys assigned to the group. Three are partners. The group's four associates were eligible for a bonus in 2022. Bonuses were awarded as follows:

<u>Name</u>	<u>Years of practice</u>	<u>Hours billed in 2022</u>	<u>Bonus awarded</u>	<u>Gender/Race</u>
Zabu	1	2250	\$10,000	Female African American
Huntley	1	2210	\$20,000	Male Caucasian
Black	4	1975	\$30,000	Male Caucasian
Perez	5	2200	\$15,000	Female Hispanic



7. **State the number of attorneys assigned to the firm’s health law group in 2022. Indicate how many are associates eligible for a profit-sharing bonus and what bonuses were awarded in 2023. Provide the gender and race of each associate.**

There are eight attorneys assigned to the group. Six are partners. The group’s two associates were not eligible for a bonus in 2022 under the firm’s profit-sharing bonus structure because they did not bill sufficient hours. They did receive the flat-rate bonus provided to all associates who do not receive a profit-sharing bonus. Bonuses were awarded as follows:

<u>Name</u>	<u>Years of practice</u>	<u>Hours billed in 2022</u>	<u>Bonus awarded</u>	<u>Gender/Race</u>
Beckett	6	1890	\$500	Female African American
Shistler	6	1750	\$500	Asian Female

8. **When did Evans and Atwater, LLC become aware that Plaintiff Nneka Zabur had filed a discrimination complaint with the Equal Employment Opportunity Commission (“EEOC”)? Describe how the firm became aware.**

Answering defendant became aware that Plaintiff Nneka Zabur had filed a discrimination complaint with the EEOC when the firm’s hiring partner, Beth Speed, was contacted by an EEOC mediator on February 28, 2023. At that time the mediator explained that there was a pending complaint and that Zabur was interested in mediation. Speed requested a copy of the complaint, which the EEOC provided to her on March 2, 2023.

9. **Who at Evans and Atwater, LLC was aware of Plaintiff Nneka Zabur’s EEOC complaint? On what date did each individual become aware?**

Once the complaint was received by Speed, it was reviewed with the three individuals identified as responsible management officials, specifically Wilson, Schott, and Campbell. All three were provided with a copy of the complaint on March 2, 2023.

10. **Who was responsible for the decision to transfer Plaintiff Nneka Zabur to the health law group?**

The decision was made by Speed after consultation with Wilson, Schott, Campbell, and the chair of the health law group, Kathleen Browning.

11. **On what date did discussions about transferring Plaintiff Nneka Zabur to the health law group begin?**

Discussions began on March 2, 2023.

**12. On what date did the firm decide to transfer transferring Plaintiff Nneka Zabur to the health law group?**

The decision was made on March 20, 2023.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

VERIFICATION

I certify that I have read the preceding interrogatories and have answered them fully and completely to the best of my ability pursuant to the dictates of Federal Rule of Civil Procedure 33.

/s/ Beth Speed  
Hiring Partner, Evans and Atwater LLC

Date: October 31, 2023

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

The Defendant's Objections and Responses to the Plaintiff's Requests for Admission

The undersigned responds to the requests for admission served by the Plaintiff Nneka Zabau, as follows:

**REQUESTS FOR ADMISSION**

- 1. Admit that Nneka Zabau was employed by Evans and Atwater, LLC from September 6, 2021 to April 24, 2023.**

Admitted.

- 2. Admit that from September 6, 2021 to April 20, 2023, Zabau was a member of the firm's construction law practice group.**

Admitted.

- 3. Admit that in 2022 the firm's construction law practice group earned profits of approximately \$1.5 million but the firm's health law practice group earned profits of only approximately \$675,000.**

Admitted.

- 4. Admit that historically the firm's construction law practice group earned larger profits than its health law practice group.**

Admitted in part, denied in part. Since 2011 the firm's construction law practice group earned larger profits than its health law practice group. Prior to that time the practice groups both earned approximately equal profits.

- 5. Admit that the firm's profit-sharing bonus system more highly compensates associates in practice groups that earn larger profits.**

Admitted.

- 6. Admit that associates at the firm are only eligible for a profit-sharing bonus if they work a minimum of 1950 hours per year.**

Admitted.

- 7. Admit that in 2022 neither associate in the health law practice group worked sufficient hours to qualify for a profit-sharing bonus.**

Admitted.

- 8. Admit that transfer to the health law practice group from the construction law practice group is an adverse employment action.**

Admitted.

- 9. Admit that Zabu engaged in protected activity by contacting an EEOC counselor and filing a formal EEOC complaint.**

Admitted.

- 10. Admit that the firm transferred Zabu to the health law practice group as retaliation for her protected activity.**

Denied. She was transferred due to the firm's needs.

/s/ Beth Speed  
Hiring Partner, Evans and Atwater LLC

Date: November 10, 2023

<h2 style="margin: 0;">CHARGE OF DISCRIMINATION</h2> <p style="margin: 0; font-size: small;">This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>		Charge Presented To: _____ Agency(ies) Charge No(s): _____
_____ and EEOC <i>State or local Agency, if any</i>		
Name <i>(indicate Mr., Ms., Mrs., Miss, Mx., Dr., Hon., Rev., etc.)</i> Nneka Zabur	Home Phone (555) 222-1111	Year of Birth 1996
Street Address, City State and ZIP Code 749 South Rouet Road, Arlington VA 55555		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. <i>(If more than two, list under PARTICULARS below.)</i>		
Name Evans and Atwater, LLC	Responsible management officials: Richard Wilson, Joseph Scott, Robert Campbell	No. Employees, Members Over 500
Phone No. (555) 444-6666		
Street Address, City State and ZIP Code 21 First Street, Washington D.C. 44444		
Name	No. Employees, Members	Phone No.
Street Address, City, State and ZIP Code		
DISCRIMINATION BASED ON Sex discrimination Hostile work environment (sex and race)	DATE(S) DISCRIMINATION TOOK PLACE Earliest 9/6/21 Latest 1/3/23	
THE PARTICULARS ARE <i>(If additional paper is needed, attach extra sheet(s))</i> :  I am an African American female. I was called by unwanted nicknames based on sex and race, including being called "Nicky" by partner Richard Wilson when he could not pronounce my name and declared it sounded too close to the word "naked" and "Hon" by partner Robert Campbell. I was denied an opportunity to pitch to a potential firm client, Stoll Brothers Construction Group. The stated reason was that this potential client would prefer having male attorneys work on cases for the client. I was not subsequently staffed on cases for this client once the client retained the firm. This hindered my client development efforts and led to me being assigned less desirable work. Male associates worked for Stoll Brothers and their existing cases were transferred to me, displeasing those clients who, in turn, took their dissatisfaction out on me. I was not given many opportunities for client interaction and I had few out of the office experiences offered to me. A guest speaker made derogatory comments at a firm-wide presentation to associates. She advised women to wear skirts to court rather than pants. She also said curly hair is unprofessional. I reported these comments and the nicknames to human resources. The nicknames did not stop after my report. During my annual review I received an anonymous comment that I needed to show more enthusiasm for client successes. No such feedback had ever been provided to me prior to the review. I received a smaller bonus than a male associate in my group of the same seniority. He worked 2210 hours and was awarded \$20,000. I worked 2250 hours and was awarded \$10,000. I am still employed at the firm and fear reprisal. I wish to proceed anonymously at this time.		
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – <i>When necessary for State and Local Agency Requirements</i>	
I declare under penalty of perjury that the above is true and correct.  _____ Date	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  _____ SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <i>(month, day, year)</i>	
2/8/23 _____ Date	Nneka Zabur _____ Charging Party Signature	



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DISMISSAL AND NOTICE OF RIGHTS**

To: **Nneka Zabau**

**749 S. Rouet Rd.  
Arlington VA 55555**

*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

**123-555-6789**

**William Cash,  
Investigator**

**(555) 333-9999**

**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state) Conciliation unsuccessful

**- NOTICE OF SUIT RIGHTS -**

*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

**William A. Cash, Jr.  
Area Office Director**

8/1/23

*(Date Mailed)*





From: William A. Cash, Jr.  
To: Elizabeth Speed  
Formal Complaint Filed Against Evans and Atwater, LLC  
2/28/23 9:03am

Good morning,

My name is William A. Cash Jr. and I am investigator with the EEOC. I am writing to notify you that your firm is the subject of a complaint for employment discrimination. The employee, Nneka Zabu, has elected to engage in mediation. I am reaching out to gauge your interest in this form of resolution. I can be reached at the below phone number. Thank you.

William Cash  
(555) 333-9999



From: Elizabeth Speed  
To: William A. Cash, Jr.  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
2/28/23 9:29am

Mr. Cash,

I appreciate you reaching out to me about this. The firm was unaware there was a complaint but we're happy to try to resolve it. Before I can commit to mediation, I'd like to see a copy of the complaint so I can discuss it with those involved. Can you please provide me with a copy? Thank you.

Beth





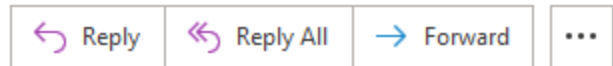
From: William A. Cash, Jr.  
To: Elizabeth Speed  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
3/2/23 1:39 pm

Beth,

Attached is the complaint. When you have determined how you wish to proceed, please let me know.

William Cash  
(555) 333-9999

<b>CHARGE OF DISCRIMINATION</b> This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To:	Agency(ies) Charge No(s):
_____ and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs., Miss, Mx., Dr., Hon., Rev., etc.) Nneka Zabu		Home Phone (555) 222-1111	Year of Birth 1996
Street Address, City State and ZIP Code 749 South Rowet Road, Arlington VA 55555			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name Evans and Atwater, LLC		Responsible management officials: Richard Wilson, Joseph Scott, Robert Campbell	No. Employees, Members Over 500
Phone No. (555) 444-6666			
Street Address, City State and ZIP Code 21 First Street, Washington D.C. 44444			
Name		No. Employees, Members	Phone No.
Street Address, City, State and ZIP Code			
DISCRIMINATION BASED ON Sex discrimination Hostile work environment (sex and race)		DATE(S) DISCRIMINATION TOOK PLACE Earliest 9/6/21                      Latest 1/3/23	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):  I am an African American female. I was called by unwanted nicknames based on sex and race, including being called "Nicky" by partner Richard Wilson when he could not pronounce my name and declared it sounded too close to the word "naked" and "Hon" by partner Robert Campbell. I was denied an opportunity to pitch to a potential firm client, Stoll Brothers Construction Group. The stated reason was that this potential client would prefer having male attorneys work on cases for the client. I was not subsequently staffed on cases for this client once the client retained the firm. This hindered my client development efforts and led to me being assigned less desirable work. Male associates worked for Stoll Brothers and their existing cases were transferred to me, displeasing those clients who, in turn, took their dissatisfaction out on me. I was not given many opportunities for client interaction and I had few out of the office experiences offered to me. A guest speaker made derogatory comments at a firm-wide presentation to associates. She advised women to wear skirts to court rather than pants. She also said curly hair is unprofessional. I reported these comments and the nicknames to human resources. The nicknames did not stop after my report. During my annual review I received an anonymous comment that I needed to show more enthusiasm for client successes. No such feedback had ever been provided to me prior to the review. I received a smaller bonus than a male associate in my group of the same seniority. He worked 2210 hours and was awarded \$20,000. I worked 2250 hours and was awarded \$10,000. I am still employed at the firm and fear reprisal. I wish to proceed anonymously at this time.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
2/8/23 _____ Date                      Charging Party Signature		SIGNATURE OF COMPLAINANT	
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	



From: Elizabeth Speed  
To: Richard Wilson, Robert Campbell, Joseph Schott  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
3/2/23 1:41pm

Rick, Bob, and Joe,

Please see the attached complaint, which appears to relate to an associate in your group. She is requesting mediation through the EEOC. Can you please review the complaint and let me know your thoughts about whether mediation makes sense or not? She's still working with your group, so there could be some sensitivity about how this is handled. Mediation could involve dragging other members of the group into this matter. Keep that in mind.

Beth



<b>CHARGE OF DISCRIMINATION</b> This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To:	Agency(ies) Charge No(s):
_____ and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs., Miss, Mx., Dr., Hon., Rev., etc.) Nneka Zabu	Home Phone (555) 222-1111	Year of Birth 1996	
Street Address, City State and ZIP Code 749 South Rowet Road, Arlington VA 55555			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name Evans and Atwater, LLC	Responsible management officials: Richard Wilson, Joseph Scott, Robert Campbell	No. Employees, Members Over 500	Phone No. (555) 444-6666
Street Address, City State and ZIP Code 21 First Street, Washington D.C. 44444			
Name	No. Employees, Members	Phone No.	
Street Address, City, State and ZIP Code			
DISCRIMINATION BASED ON Sex discrimination Hostile work environment (sex and race)		DATE(S) DISCRIMINATION TOOK PLACE Earliest 9/6/21 Latest 1/3/23	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):  I am an African American female. I was called by unwanted nicknames based on sex and race, including being called "Nicky" by partner Richard Wilson when he could not pronounce my name and declared it sounded too close to the word "naked" and "Hon" by partner Robert Campbell. I was denied an opportunity to pitch to a potential firm client, Stoll Brothers Construction Group. The stated reason was that this potential client would prefer having male attorneys work on cases for the client. I was not subsequently staffed on cases for this client once the client retained the firm. This hindered my client development efforts and led to me being assigned less desirable work. Male associates worked for Stoll Brothers and their existing cases were transferred to me, displeasing those clients who, in turn, took their dissatisfaction out on me. I was not given many opportunities for client interaction and I had few out of the office experiences offered to me. A guest speaker made derogatory comments at a firm-wide presentation to associates. She advised women to wear skirts to court rather than pants. She also said curly hair is unprofessional. I reported these comments and the nicknames to human resources. The nicknames did not stop after my report. During my annual review I received an anonymous comment that I needed to show more enthusiasm for client successes. No such feedback had ever been provided to me prior to the review. I received a smaller bonus than a male associate in my group of the same seniority. He worked 2210 hour and was awarded \$20,000. I worked 2250 hours and was awarded \$10,000. I am still employed at the firm and fear reprisal. I wish to proceed anonymously at this time.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
2/8/23 _____ Date Charging Party Signature		SIGNATURE OF COMPLAINANT  _____ SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	



From: Richard Wilson  
To: Robert Campbell, Joseph Schott  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
3/2/23 1:49pm

Conference room in 10?



From: Joseph Schott  
To: Richard Wilson, Robert Campbell  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
3/2/23 1:50pm

Give me 15.





From: Robert Campbell  
To: Joseph Schott, Richard Wilson  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
3/2/23 1:51pm

OK



From: Richard Wilson  
To: Elizabeth Speed  
CC: Robert Campbell, Joseph Schott  
Transfer of Employee  
3/2/23 2:42pm

Bob, Joe, and I met to discuss the issues with Nicky, the employee who filed the EEOC complaint. We're not really interested in mediating things with her. We just don't see that being fruitful. The truth is, we've been sensing she's a bad fit for the group for some time now. She seems to only want to work on the more glamorous cases and was very resentful when our largest client, Stoll Brothers, preferred to have other associates staffed on their matters. She also doesn't really seem to love the fast-paced nature of litigation. She's not great on her feet and hasn't want to handle any hearings or parts of trials. She might be a better fit for the health law group, frankly. They seem to have a slower pace and she might enjoy the more regulatory nature of their practice. It's not that she's unwanted in our group, but she's just not an ideal fit. Is there any way we could transfer her to that group? That seems like a win win for all involved, and maybe will resolve the issue?



From: Elizabeth Speed  
To: Nneka Zabu  
Meeting  
3/31/23 10:32am

Nneka,

If you're not busy his afternoon, could you stop in? I have an idea to float.

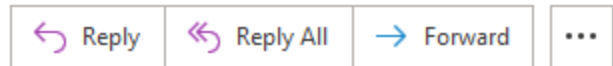
Beth





From: Nneka Zabu  
To: Elizabeth Speed  
Re: Meeting  
3/31/23 11:45am

Sure Beth, coming right down



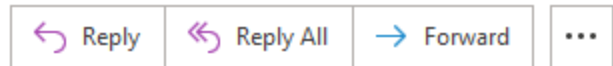
From: Elizabeth Speed  
To: Kathleen Browning  
Need for another associate  
3/31/23 4:09pm

Katie,

I had an idea I wanted to run by you. We have a terrific associate in the construction law group, Nneka Zabu, and she wants to switch practice groups. They'll be sad to see her go—she's a hard worker, great writer, and well liked, but it just seems like she doesn't love the fast pace of their work. Do you have a need for her?

Beth





From: Elizabeth Speed  
To: William A. Cash, Jr.  
Re: Formal Complaint Filed Against Evans and Atwater, LLC  
4/11/23 2:04pm

Mr. Cash,

The firm is not interested in mediation. We appear to have an internal resolution to the issues and are working things out with Ms. Zabu.

Beth





From: Kathleen Browning  
To: Elizabeth Speed  
Re: Need for another associate  
4/11/23 3:55pm

Beth,

Nneka reached out to me to chat about this. You know I think the world of her. She's a superstar and I would love to have her in the group. But I'll tell you the same thing I told her; I don't know that we have the volume to support another associate. We're pretty slow and neither Wendy Beckett or Amy Shistler had enough hours for profit-sharing last year. If we pick up steam and need help I would have Nneka on the top of my list but I hate to bring her here only to have her struggling to make her hours. I'm wondering what is prompting the discussion of transfer now, this is the first I'm hearing of it.

Katie



From: Elizabeth Speed  
To: Richard Wilson  
Re: Transfer of Employee  
4/11/23 4:32pm

Rick,

I spoke to Nneka and Katie about the possibility of a transfer to the health law group. It doesn't seem like they're busy enough to justify it.

Beth







From: Richard Wilson  
To: Elizabeth Speed  
Re: Transfer of Employee  
4/11/23 4:34pm

Just make it happen Beth



From: Elizabeth Speed  
To: Nneka Zabu  
Meeting  
4/20/23 7:31am

Ms. Zabu,

Effective immediately you are re-assigned to the health law group. They need an associate with strong writing skills and they have an overload of work. Please reach out to Ms. Browning about new case assignments. Mr. Wilson will handle re-assignment of your existing cases.

Beth





## **E&A News You Can Use April 2022**

### ***Reeling in a Big Fish***

**Congrats are in order to Construction Law Practice Group Chair Richard Wilson. With the assistance of associates Greg Black and Chase Huntley, he landed Stoll Brothers Construction Group as the firm's newest client. SBC is one of the largest commercial contractors on the East Coast with major projects in Boston, Philadelphia, and Washington DC.**



### ***Birthdays***

**April 5- Allison Frank**

**April 7- Mary-Anne Jenkins**

**April 22- Joe Schott**

**April 30- Steve Winchester, III**

**Look out for "Fun Friday" birthday celebrations!**

### ***Golf Outing 2022***



**Reminder to start thinking now about your scrambles for the golf outing! Prizes to the top three teams**

### ***Associate Guest Speaker Series***

- **April 13- Public Speaking 101**
- **April 27- The Art of Negotiation**
- **May 11- Timekeeping**
- **May 25- Client development**
- **June 8- Legal Writing**
- **June 22- Deposition Skills**
- **July 6- Social Etiquette**
- **July 20- Arbitration Basics**
- **August 10- First Impressions**
- **August 24- Pro Bono**

### ***Associate of the Month***

Mark Finley, Boston

Granted summary judgment in a major antitrust case.

**WAY TO GO MARK!**



## Deposition Transcripts

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLUMBIA

3  
4 NNEKA ZABU : Civil Action No. 23-0000  
5 :  
6 Plaintiff, :  
7 :  
8 v. :  
9 :  
10 EVANS AND ATWATER, LLC, :  
11 :  
12 Defendant. :

13  
14  
15 Oral deposition of Richard Wilson,  
16 taken November 1, 2023 at 4:00p.m.  
17 at 14 S. Broad Street, Suite 1500,  
18 Washington, D.C. 55555.

19 Commencing at 4:10 p.m., before Alex M. Birmingham,  
20 Certified Court Reporter and Notary Public.

21 APPEARANCES:  
22 Nancy A. Willhauer, Esq.: Counsel for Plaintiff  
23 Margaret Collier, Esq.: Counsel for Defendant  
24  
25  
26

1 Examination by Nancy A. Willhauer.

2 Ms. Willhauer: Do we have an agreement about groundrules?

3 Ms. Collier: I am fine with taking all the depositions in this case pursuant to the federal rules. I would like  
4 to have this witness read and sign the transcript. I would like all my witnesses to.

5 Ms. Willhauer: That's fine. We have that agreement.

6 Q. Good afternoon. What is your name?

7 A. Richard Wilson.

8 Q. How do you spell your last name?

9 A. W-I-L-S-O-N. Wilson.

10 Q. Where do you work?

11 A. Evans and Atwater.

12 Q. Tell me what you know about this case.

13 A. I am are the alleged discriminator in an employment discrimination case filed by my former employee,  
14 Nneka Zabau. She quit after being transferred to the health law practice group. I understand she is upset  
15 about what happened, but no one at the firm wished her any ill will and the transfer was done in an effort  
16 to place her in a group that needed her skills and would be a better fit for her.

17 Q. What did you do to prepare for this deposition?

18 A. I met with the firm's attorney.

19 Q. What else did you do?

20 A. I collected documents and gave them to that attorney.

21 Q. What documents?

22 A. Emails. A copy of the EEOC complaint. That's it.

23 Q. Did you review them for this deposition?

24 A. Only with the attorney.

25 Q. What did the attorney tell you to prepare for this deposition?

26 Ms. Collier: Objection, privilege. Rick, do not answer that question.

27 Q. Did you speak with anyone else at the firm about this deposition?

28 A. I spoke with Beth Speed.

29 Q. I want to start by asking you a little bit about your background. Where did you go to school?

1 A. I graduated from Wildcat University with a bachelor's of science degree in mechanical engineering and  
2 then I went to Dragontown Law for my J.D.

3 Q. When did you first start working for Evans and Atwater?

4 A. In 2003.

5 Q. At which office?

6 A. The one in Washington D.C.

7 Q. What is your current title?

8 A. I'm a partner of the construction law practice group.

9 Q. When did you first meet the plaintiff?

10 A. On September 6, 2021 when she started with the firm.

11 Q. Did you interview her?

12 A. No. I'm not involved in hiring.

13 Q. Did you call her a nickname the first time you met her?

14 A. I did. She has a hard to pronounce name. I thought she would be embarrassed with people stumbling  
15 over it. So I asked if I could call her "Nicky."

16 Q. You asked?

17 A. She didn't tell me not to call her that. She never complained to me.

18 Q. Did anyone else ever discuss this with you?

19 A. No.

20 Q. Did anyone else use nicknames?

21 A. Bob calls everyone "hon."

22 Q. Everyone?

23 A. Well, not the guys. He calls all the girls "hon."

24 Q. How was work assigned?

25 Ms. Collier: Objection, vague. Do you mean in the construction law practice group?

26 Q. No speaking objections Ms. Collier. Thank you. Mr. Wilson, if you understand the question, you can  
27 answer.

28 A. Each practice group divides the work up as it sees fit.

29 Q. How did you assign work in your group?

1 A. We tried to staff each case with one mid level and one entry level associate plus a partner or two. It  
2 was pretty ad hoc. We just tried to staff cases in a way that made sense.

3 Q. Was there a meeting to discuss pitching to Stoll Brothers Construction group?

4 A. Yes.

5 Q. Were you there?

6 A. Yes.

7 Q. Tell me what you remember about that meeting.

8 A. It was in March. Someone from marketing was there. I was going to be the partner on the pitch. I knew  
9 the Vice President of Stoll. We went to college together. So that was a no brainer. And then we just had  
10 to decide who else to put on the pitch. We discussed every associate and landed on Greg Black and  
11 Chase Huntley.

12 Q. Why?

13 A. We thought they were what Stoll would want.

14 Q. Why?

15 A. I don't know. It just seemed right.

16 Q. Was there any discussion of sex or gender?

17 A. I didn't bring that up. But yeah, someone did. I think maybe Joe. Nneka never asked to be on the pitch.

18 Q. Was the pitch successful? Did you get the work?

19 Ms. Collier: Objection, compound.

20 A. Yes.

21 Q. Who was assigned to that book of business?

22 A. Myself, Greg, and Chase.

23 Q. Why?

24 A. By that point, Stoll was comfortable with us.

25 Q. Were you involved in selecting guest speakers for the firm?

26 A. No.

27 Q. Are you involved in calculating bonuses?

28 A. For the construction law practice group, yes.

29 Q. Why did the plaintiff receive a smaller bonus than Chase Huntley?



1 A. We felt the work he did for Stoll was more complex than the work she did on her cases. The Stoll  
2 cases made the paper. Those cases not only brought in a lot of money but really raised the practice  
3 group's profile. And he worked hard. We wanted to reward him.

4 Q. When did you first learn the plaintiff had filed a complaint with the EEOC.

5 A. I don't remember exactly. Spring of 2023.

6 Q. How did you learn about it?

7 A. I got an email from Beth.

8 Q. Beth Speed?

9 A. Yes.

10 Q. If that email is dated March 2, 2023, does that seem right?

11 A. Yes.

12 Ms. Collier: Can we take a break?

13 Ms. Willhauer: Sure.

14 [at this point counsel went off the record until 4:58pm]

15 Q. We're back on the record. What did you do on the break?

16 A. Spoke with counsel.

17 Q. Were you involved in discussions about the plaintiff switching practice groups?

18 A. Yes.

19 Q. When were those discussions?

20 A. I don't remember.

21 Q. Were they before or after you learned about the EEOC complaint?

22 A. After.

23 Q. Had you ever discussed with anyone the possibility of the plaintiff transferring out of the construction  
24 law practice group before learning she contacted the EEOC?

25 A. No.

26 Q. Who decided to transfer the plaintiff?

27 A. Beth Speed.

28 Q. Did you have any input in the decision?

1 A. I let her know I thought it was a good idea and that since it seemed to make sense, it was probably  
2 best that we just get it done. But in the end of the day it was Beth's decision, not mine.

3 Q. What was your understanding of why she was transferred?

4 A. She wasn't a good fit for our group and the health law group really needed her help.

5 Q. Did you ever talk with anyone in another group about the transfer or their workload?

6 A. No.

7 Q. Were any other construction law associates considered for re-assignment?

8 A. No.

9 Q. Were any other associates re-assigned?

10 A. No.

11 Q. Did you ever learn that other groups were slow at the time the plaintiff was transferred?

12 A. Someone might have mentioned that to me, but work ebbs and flows. And frankly, it seemed like  
13 Nneka didn't want to have as fast paced an environment as we have in the construction law group. I  
14 thought she'd enjoy a slightly slower pace. The real estate group tends to be a little less fast paced. It  
15 seemed like a good fit.

16 Q. You thought she was going to be re-assigned to the real estate group?

17 A. Yeah, isn't that were she was going to be transferred?

18 Q. The health law group.

19 A. Same difference.

20 Q. Was the health law group busy at the time the transfer was discussed?

21 A. You'd have to ask someone in that group.

22 Q. Did you discuss the transfer with my client?

23 A. No.

24 Q. Why not?

25 A. Beth was handling that.

26 Q. What did you and Beth discuss about the transfer?

27 A. It was suggested and then it was up to Beth to make it happen/

28 Q. What do you mean "make it happen?"

29 A. The paperwork end of things. All the human resources stuff.

1 Q. Was it your decision to transfer my client?  
2 A. Ultimately no, Beth could overrule me. I had input.  
3 Q. Did you hire a replacement for the plaintiff?  
4 A. The firm did.  
5 Q. Who was the replacement?  
6 A. Alex Mortley.  
7 Q. Is that a man or a woman? And what race?  
8 A. A man. He's White.  
9 Ms. Collier: That's all I have at this time. Thank you.  
10 Ms. Willhauer: Nothing more from me.  
11 (Deposition concluded at 5:25 p.m.)

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLUMBIA

3  
4 NNEKA ZABU : Civil Action No. 23-0000  
5 :  
6 Plaintiff, :  
7 :  
8 v. :  
9 :  
10 EVANS AND ATWATER, LLC, :  
11 :  
12 Defendant. :

13  
14  
15 Oral deposition of Nneka Zabu,  
16 taken November 2, 2023 at 9:30a.m.  
17 at 555 Main Street,  
18 Wildcat City, Diamond 55555.

19 Commencing at 9:32 a.m., before Alex M. Birmingham,  
20 Certified Court Reporter and Notary Public.

21 APPEARANCES:  
22 Nancy A. Willhauer, Esq.: Counsel for Plaintiff  
23 Margaret Collier, Esq.: Counsel for Defendant  
24  
25  
26

1 Examination by Margaret Collier.

2 Ms. Collier: Same groundrules as yesterday?

3 Ms. Willhauer: Yes, that's fine.

4 Q. Good afternoon. What is your name?

5 A. Nneka Zabu.

6 Q. I know it's somewhat obvious sitting here in the room together, but so we have it for the record, what is

7 your race and sex?

8 A. African American or black. Female.

9 Q. Where do you work?

10 A. I'm currently out of work but I'm looking.

11 Q. Where did you last work?

12 A. For the law firm of Evans and Atwater. In their Washington D.C. office.

13 Q. When were you hired?

14 A. September 6, 2021.

15 Q. What group at the firm were you assigned to?

16 A. Construction litigation.

17 Q. Who were the partners in this group?

18 A. Richard Wilson, Joseph Schott, and Robert Campbell.

19 Q. What race and sex are they, if you know?

20 A. I believe them to be Caucasian or white men.

21 Q. At the time you were hired, what associates were in the group and what were their sexes and races?

22 Ms. Willhauer: Objection, compound.

23 Q. What associates were in the group when you were hired?

24 A. Chase Huntley, a first year associate. And two mid-level associates—Gregory Black and Marta Perez.

25 Q. What were their sexes?

26 A. Chase and Greg are men. Marta is a woman.

27 Q. What were their races?

1 A. Chase and Greg are white or Caucasian. Marta is Hispanic. Her family is from Mexico but she was  
2 born in Pennsylvania.

3 Q. You have a claim in this case for discrimination. Describe in your own words what happened that you  
4 believe is discriminatory.

5 A. Where do I start. From the very first meeting at the firm I was given a nickname I didn't want. Rick  
6 called me "Nicky" because he couldn't pronounce my name.

7 Q. Rick is Richard Wilson.

8 A. Yes.

9 Q. Is that all?

10 A. No. I also got called "hon," and none of the male associates were called that. There was a pretty  
11 insensitive guest speaker who made some gendered and racial comments to the associates. But more  
12 importantly I was excluded from a big pitch to a major new client—Stoll Brothers. Rick said only men  
13 could be involved in the pitch and then when the client came to the firm, only the male associates got to  
14 work for the client.

15 Q. How did this impact you?

16 A. It meant I had to take over work from the male associates, it excluded me from working for that major  
17 client, and I believe it impacted my bonus.

18 Q. Why do you think that?

19 A. Chase got a bigger bonus than me at the end of 2022 and the only difference between our work was  
20 that I worked more hours and he worked for Stoll Brothers. We were otherwise the same, we were both  
21 first year associates.

22 Q. How much did you earn as a bonus?

23 A. \$10,000.

24 Q. How much did he earn?

25 A. He told me he earned \$20,000.

26 Q. Was your work ever criticized that year?

27 A. Substantively? No. But I got an anonymous comment on my review that I should show more  
28 enthusiasm or smile more, something like that.

29 Q. What did you do after learning about the bonus and your review?

30 A. I filed a discrimination complaint with the EEOC.

31 Q. When?

1 A. February 8, 2023. I was told it would remain confidential unless I asked for mediation.

2 Q. Did you ever ask for mediation?

3 A. I did.

4 Q. When?

5 A. February 28, 2023.

6 Q. Did you like the work in the construction law group?

7 A. Yes, very much.

8 Q. Did you like the pace?

9 A. Yes, I asked for more work and for more hands on client experiences and out of office experiences.

10 But the partners never gave any to me. It felt like Chase and Greg were the “golden boys” of the group

11 and they got all the best opportunities.

12 Q. Did you ever think about asking to transfer groups?

13 A. Never.

14 Q. Was transferring ever proposed to you?

15 A. Yes. Beth Speed asked if I want to move to the health law group.

16 Q. When did she ask that?

17 A. Around March 31, 2023.

18 Q. What was your response?

19 A. I said I didn’t want to move groups.

20 Q. Why?

21 A. The health law group was slow and there was no chance I’d earn a bonus in that group. Plus it just

22 wasn’t as good of a group. The health law group at the firm was very small and didn’t handle major cases.

23 So I said “no,” and then I was transferred there anyway.

24 Q. When did you learn about the transfer?

25 A. April 20, 2023, via email.

26 Q. What did the email say?

27 Ms. Willhauer: Objection, hearsay.

28 Q. What did it say?

1 A. That I was being transferred because the health law group needed another associate due to its  
2 workload. Except I knew that wasn't true. They were slow. I felt like I would never get a fair shake at  
3 Evans and Atwater, so after that I resigned and amended my EEOC complaint.

4 Q. When did you resign?

5 A. Four days after I got that email.

6 Q. When did you amend your complaint?

7 A. Three days later.

8 Ms. Collier: Thank you for your time.

9 Ms. Willhauer: I don't have any questions

10 (Deposition concluded at 11:07 a.m.)



Partial Motion for Summary Judgment Assignment

# MEMO

**To: Associate**

**From: Partner**

**Date: November 13, 2023**

**Subject: Partial Motion for Summary Judgment Assignment**

As you know, the firm represents Nneka Zabu in a civil lawsuit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”). We have filed three claims under Title VII: discrimination, hostile work environment, and retaliation.

Discovery is now closed in this case, and we believe there is no dispute of material fact as to the retaliation claim. To establish retaliation under Title VII, a plaintiff must show that (1) the plaintiff engaged in a protected activity, (2) the plaintiff suffered an adverse employment action, and (3) there was a causal link between the protected activity and the adverse employment action.

Another associate at the firm has conducted initial research and indicated the following authorities are likely to be useful in drafting this memo.

- Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338 (2013)
- Staub v. Proctor Hosp., 562 U.S. 411, 418-22 (2011)
- Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53 (2006)
- Clark Cty. Sch. Dist. v. Breeden, 532 U.S. 268 (2001)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973)
- Brian Xiong v. Bd. of Regents of the Univ. of Wis. Sys., 62 F.4th 350 (7th Cir. 2023)
- Laurent-Workman v. Wormuth, 54 F.4th 201 (4th Cir. 2022)
- Roberts v. Glenn Indus. Grp., Inc., 998 F.3d 111 (4th Cir. 2021)
- Carvalho-Grevious v. Delaware State University, 851 F.3d 249 (3d Cir. 2017)
- Foster v. Mt. Coal Co., LLC, 830 F.3d 1178 (10th Cir. 2016)
- Foster v. Univ. of Md.-E. Shore, 787 F.3d 243, 248-52 (4th Cir. 2015)
- Ward v. MBNA America, 570 Fed.Appx 143 (3d Cir. 2014)
- Saridakis v. S. Broward Hosp. Dist., 468 F. App’x 926 (11th Cir. 2012)
- Ponce v. Billington, 679 F.3d 840, 846 (D.C. Cir. 2012)

- Henry v. Wyeth Pharm., 616 F.3d 134, 148 (2d Cir. 2010)
- Smith v. Xerox Corp, 602 F.3d 320 (5th Cir. 2010)
- Hennagir v. Utah Dep't of Corr., 587 F.3d 1255, 1267 (10th Cir. 2009)
- Stephens v. Erickson, 569 F.3d 779, 788 (7th Cir. 2009)
- Quiles-Quiles v. Henderson, 439 F.3d 1, 8-9 (1st Cir. 2006)
- Rochon v. Gonzales, 438 F.3d 1211(D.C. Cir. 2006)
- Porter v. Dept. of Corrections, 419 F.3d 885 (9th Cir. App. 2005)
- Gee v. Principi, 289 F.3d 342, 346 (5th Cir. 2002)
- Johnson v. University of Cincinnati, 215 F.3d 561, (10th Cir. App. 2000)
- McClendon v. Sugars, 108 F.3d 789, (7th Cir. App. 1997)
- Hossaini v. W. Mo. Med. Ctr., 97 F.3d 1085, 1089 (8th Cir. 1996)
- Shirley v. Chrysler First, Inc., 970 F.2d 39 (5th Cir. 1992)
- Furey v. Mnuchin, 334 F. Supp. 3d 148, 168 (D.D.C. 2018)
- Joyner v. City of Atlanta, 2018 WL 1442931 (N.D. Ga. Feb. 23, 2018)
- Coleman v. Home Health Res. Inc., 269 F. Supp. 3d 935 (D. Ariz. 2017)
- Propp v. Counterpart Int'l, 39 A.3d 856 (D. D.C. 2012)
- Devera v. Adams, 874 F. Supp. 17 (D.D.C. 1995)
- Castle v. Bentsen, 867 F. Supp. 1 (D.D.C. 1994)

Aside from Title VII and its regulations (both of which you may cite) and Rule 56 of the Federal Rules of Civil Procedure (which you may also cite), do not cite any additional cases or authority in your memo. Limit your argument to this authority. You need not (not should you attempt to) cite all the provided cases. You should use the authority that you believe best supports your argument.

Although we have two other pending claims in this case, we are not moving for summary judgment on these two claims. Do not in your memo address any claim other than the retaliation claim.

The other associate working on this case has drafted parts of the motion package (a proposed order, motion for summary judgment, and certificate of service). Do not alter any portion of the motion package provided to you. Simply add your brief in support of the motion for summary judgment to what has already been drafted. Your brief in support of the motion for summary judgment may not exceed 12 pages.

Motion for Summary Judgment Motion Package  
(Other than Brief in Support of the Motion)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

**ORDER**

AND NOW this \_\_\_ day of \_\_\_\_\_, 2023, upon consideration of the Plaintiff's Motion for Partial Summary Judgment, and any opposition thereto, it is ORDERED that the motion to consolidate is GRANTED. Judgment is entered in favor of the Plaintiff on Count III of the complaint.

BY THE COURT:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

**PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

Plaintiff Nneka Zabu moves for summary judgment on Count III of her complaint pursuant to Federal Rule of Civil Procedure 56. There is no genuine dispute as to any material fact necessary to prove the Plaintiff's retaliation claim and she is entitled to judgment as a matter of law on this claim.

Dated: December 15, 2023

RESPECTFULLY SUBMITTED

/s Nancy A. Willhauer

Nancy A. Willhauer  
The Bluepoint Law Firm, PC  
555 Main Street  
Wildcat City, Diamond 55555  
(555) 555-5555  
NWillhauer@BLF.com

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NNEKA ZABU,

Plaintiff,

v.

EVANS AND ATWATER, LLC,

Defendant.

Civil Action No. 23-0000

*Jury trial demanded*

**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

Dated: December 15, 2023

RESPECTFULLY SUBMITTED

/s Nancy A. Willhauer

Nancy A. Willhauer

The Bluepoint Law Firm, PC

555 Main Street

Wildcat City, Diamond 55555

(555) 555-5555

NWillhauer@BLF.com

**CERTIFICATE OF SERVICE**

I certify that on this date I caused a copy of the Plaintiff's Partial Motion for Summary Judgment, Proposed Order, and Brief in Support to be filed with the Clerk of Court and I caused a copy of the foregoing documents to be sent by first-class, U.S. mail, postage paid to:

Margaret Collier  
Collier, Smith, and Wiley, LLC  
21 South Gate Road  
Wildcat City, Diamond 55555

Dated: December 15, 2023

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Brief in Support of the Motion for Partial Summary Judgment Grading  
Rubric

Legal Writing 1  
Brief in Support of the Motion for Summary  
Judgment Assignment Grading Rubric

	Exemplary	Competent	Developing
<p>Introduction (2 points available)</p> <p>_____ points out of 2</p>	<p>2 points out of 2</p> <ul style="list-style-type: none"> <li>Contains a persuasive theme and theory</li> <li>Orients the reader to the facts</li> </ul>	<p>1.5 points out of 2</p> <ul style="list-style-type: none"> <li>Unclear or unpersuasive theme and/or theory</li> <li>Assumes an intimate knowledge of the facts the reader would not have</li> </ul>	<p>0-1 points out of 2</p> <ul style="list-style-type: none"> <li>Missing both theme and theory</li> <li>Incorrectly states facts or is entirely missing key facts</li> </ul>
<p>Statement of the facts (7 points available)</p> <p>_____ points out of 7</p>	<p>5.5-7 points out of 7</p> <ul style="list-style-type: none"> <li>Contains all necessary facts and no unnecessary ones</li> <li>Each fact is supported by record evidence</li> <li>Evidence is used persuasively, demonstrate a lack of dispute</li> </ul>	<p>2.5-5 points out of 7</p> <ul style="list-style-type: none"> <li>Contains some necessary facts but is missing others</li> <li>Contains some unnecessary facts</li> <li>Some facts are unsupported by record evidence</li> <li>Some missed opportunity to show a lack of dispute by pointing to the opponent's admissions or evidence</li> <li>Some reliance on pleadings rather than evidence</li> </ul>	<p>0-2 points out of 7</p> <ul style="list-style-type: none"> <li>Missing most or all of the key facts</li> <li>Contains many unnecessary facts</li> <li>Facts are largely or completely lacking adequate evidentiary support</li> <li>Numerous missed opportunities or completely missed opportunities to show a lack of dispute by pointing to the opponent's admissions or evidence</li> <li>Significant reliance on pleadings rather than evidence</li> </ul>
<p>Argument (15 points available)</p> <p>_____ points out of 15</p>	<p>10.5-15 points out of 15</p> <ul style="list-style-type: none"> <li>Well explained, contains everything the reader needs to understand the analysis</li> <li>Uses deductive reasoning</li> <li>Synthesizes cases</li> <li>Selects effective authority to support conclusions</li> <li>Sufficient authority</li> <li>Explains the reasons for rules</li> <li>Shows how the analysis applies to the client's fact pattern</li> <li>Is persuasive without being unethical</li> </ul>	<p>5.5-10 points out of 15</p> <ul style="list-style-type: none"> <li>Generally well explained but omits some things the reader needs to understand the analysis</li> <li>Uses a mix of inductive and deductive reasoning</li> <li>Cases are not all well synthesized</li> <li>Authority could be better utilized to support conclusions</li> <li>Missing some sufficient authority</li> <li>A mix of complete and incomplete analysis</li> <li>A mix of effective and ineffective application</li> <li>Is persuasive in some areas and unpersuasive in others</li> </ul>	<p>0-5 points out of 15</p> <ul style="list-style-type: none"> <li>Not well explained, the reader would have to do significant work to understand the analysis</li> <li>Largely uses inductive reasoning</li> <li>Largely fails to synthesize cases</li> <li>Ineffective selection and use of authority</li> <li>Insufficient authority</li> <li>Lacks sufficient explanation throughout</li> <li>Lacks sufficient application throughout</li> <li>Objective writing style</li> </ul>
<p>Conclusion (1 point available)</p> <p>_____ points out of 1</p>	<p>1 point out of 1</p> <ul style="list-style-type: none"> <li>Brief</li> <li>Specific</li> <li>Matches the proposed order</li> </ul>	<p>0.5 point out of 1</p> <ul style="list-style-type: none"> <li>Wordy</li> <li>General</li> <li>Asks for relief not sought in the order</li> </ul>	<p>0 points out of 1</p> <ul style="list-style-type: none"> <li>Missing entirely or does not match the argument in the brief or in the proposed order</li> <li>Ambiguous as to the relief sought</li> </ul>
<p>Structure (5 points available)</p> <p>_____ points out of 5</p>	<p>4-5 points out of 5</p> <ul style="list-style-type: none"> <li>Umbrella sections contain necessary background and a clear roadmap</li> <li>Sections of the argument are well organized (with argumentative headings as appropriate)</li> <li>Thesis sentences are used throughout</li> <li>Transitions are used throughout</li> </ul>	<p>2-3.5 points out of 5</p> <ul style="list-style-type: none"> <li>Umbrella section are present but could guide the reader more effectively</li> <li>Some sections of the argument are jumbled</li> <li>Missing some thesis sentences</li> <li>Missing some transitions</li> </ul>	<p>0-1.5 points out of 5</p> <ul style="list-style-type: none"> <li>Umbrella sections are absent or wholly ineffective</li> <li>All or nearly all sections are jumbled</li> <li>Missing all or nearly all thesis sentences</li> <li>Missing all or nearly all transitions</li> </ul>
<p>Writing style (5 points available)</p> <p>_____ points out of 5</p>	<p>4-5 points out of 5</p> <ul style="list-style-type: none"> <li>Uses CREARC structure without omitting necessary sections</li> <li>Effective word choice, phrasing, and grammar</li> </ul>	<p>2-3.5 points out of 5</p> <ul style="list-style-type: none"> <li>CREARC structure is generally correct</li> <li>Some ineffective word choice, phrasing, and grammar but largely well written</li> </ul>	<p>0-1.5 points out of 5</p> <ul style="list-style-type: none"> <li>CREARC structure is absent</li> <li>Significant use of ineffective word choice, phrasing, and grammar</li> </ul>
<p>Formatting, editing, and bluebooking (10 points available)</p> <p>_____ points out of 10</p>	<p>7.5-10 points out of 10</p> <ul style="list-style-type: none"> <li>Properly formatted with all the required sections</li> <li>No typos or errors, including in citation format</li> </ul>	<p>3.5-7 points out of 10</p> <ul style="list-style-type: none"> <li>Generally formatted like a memo but missing some sections or with content that belongs in a different section</li> <li>Minimal typos and/or errors, including in citation format</li> </ul>	<p>0-3 points out of 10</p> <ul style="list-style-type: none"> <li>Improperly formatted, missing a significant number of sections, or with a significant amount of content in the wrong section</li> <li>Numerous typos and/or errors, including in citation format</li> </ul>

\_\_\_\_\_ points out of 45