

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted August 12, 2025*

Decided August 12, 2025

BeforeMICHAEL B. BRENNAN, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 25-1143

NICOLE FREELING,
*Plaintiff-Appellant,**v.*INDIANA DEPARTMENT OF
TRANSPORTATION, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:23-cv-00278-MPB-MJD

Matthew P. Brookman,
*Judge.***ORDER**

Nicole Freeling, a real estate broker who twice was turned down for a consulting position with the Indiana Department of Transportation (“INDOT”), appeals the summary judgment rejecting her claims of race discrimination. *See* 42 U.S.C. §§ 1983, 2000e-2. We affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Freeling sought to contract with INDOT on “relocation consulting” — assisting people who are displaced by eminent domain projects. Before Freeling could enter into a contract with INDOT, she had to meet the following “prequalification” application requirements as set forth in the INDOT Manual: a minimum score of 70% on an exam; demonstrated understanding of the federal programs and regulations governing relocation; demonstrated understanding of construction and complex highway right-of-way plans; a list of years’ experience in relocation work; and a list of performed relocation services that involved the relevant federal regulations.

Freeling passed the exam and in June 2022 submitted her prequalification application. She left blank the portion of the application covering work history, experience, and qualifications. An INDOT employee, John Leming, notified her that he denied her application because she did not specify her years of experience in relocation work or list performed relocation services that applied the relevant federal regulations.

In August 2022, Freeling submitted a second application that included information about her real estate experience. None of the listed experiences involved relocation projects. After Leming expressed concerns about Freeling’s lack of relevant experience to his supervisor, Crystal Weaver, they denied Freeling’s application.

Freeling, who is Black, sued INDOT, Leming, and Weaver, asserting that the agency’s failure to hire her discriminated against her based on race, in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, *see* 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964, *see id.* § 2000e-2. She also asserted a state-law claim of intentional infliction of emotional distress. The district court granted the defendants’ motion to dismiss the due process and state-law claims, as well as the equal protection claim against INDOT; this left only the Title VII claim against INDOT and the equal protection claim against Leming and Weaver, in their individual and official capacities.

The district court later granted the defendants’ motion for summary judgment. The court noted at the outset that Freeling could not sue state employees in their official capacity under § 1983 because a suit against a state actor is an improper § 1983 suit against the state. As for the individual-capacity equal-protection claim, the court concluded that the defendants presented nondiscriminatory reasons for not approving Freeling’s application—namely she failed to specify her years of experience in relocation work or list performed relocation services in accordance with the relevant federal regulations—and that Freeling had not provided evidence for a reasonable jury to find these reasons pretextual. Finally, the court explained that Freeling could not

bring a Title VII failure-to-hire claim against INDOT because her stated goal of contracting with the agency aligned more with the work of an independent contractor than an employee.

On appeal, Freeling first contends that the district court ignored evidence that she was a prospective INDOT employee, not an independent contractor. Employers may be liable under Title VII for failing to hire prospective employees because of their race. 42 U.S.C. § 2000e-3(a). To prove a prospective employment relationship, Freeling needed to establish that INDOT would have had sufficient control over her work (e.g., by showing that the agency would supervise her and manage her payment and benefits, *see Frey v. Coleman*, 903 F.3d 671, 676 (7th Cir. 2018)), and she points to INDOT's fee schedule and a section of the Manual outlining the duties of a relocation consultant. But neither document reveals that the agency had a prospective employment relationship with Freeling. In fact, the fee schedule expressly applies only to "contract assignments," not employees.

Next, Freeling challenges the district court's ruling regarding her equal protection claim and asserts that the district court disregarded an INDOT supervisor's statement to Leming that the agency had approved other applicants who did not meet the Manual's prequalification requirements. But to establish race discrimination under § 1983, Freeling needed to present evidence to permit a jury to find that her race caused an adverse action. *See Barnes v. Bd. of Trs. of Univ. of Ill.*, 946 F.3d 384, 389 (7th Cir. 2020). And Freeling cannot meet this standard. She submitted no evidence that Leming or Weaver approved a prequalification application from an applicant of a different race over hers. Nor for that matter did she present evidence to dispute that the defendants provided a legitimate nondiscriminatory rationale for denying her application—she did not comply with the Manual's requirement that applicants specify their years of experience in relocation work and list any performed relocation services under the relevant federal regulations.

Finally, Freeling challenges the district court's decision not to address her argument that the defendants violated discovery procedure. During discovery, Freeling requested documents from people who applied to be relocation consultants, but the defendants objected to her request as overly broad and irrelevant. After discovery closed, Freeling responded to the defendants' motion for summary judgment by contesting their objection. The district court declined to consider Freeling's discovery dispute because she failed first to confer with the defendants in good faith, as the local rules require. *See S.D. IND. LOC. R. 37-1*. This was an appropriate exercise of the court's

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discretion. District courts may require strict compliance with the local rules, *see Hinterberger v. City of Indianapolis*, 966 F.3d 523, 528 (7th Cir. 2020), and regardless, summary judgment “is not the time to complain about what transpired during discovery,” *MAO-MSO Recovery II, LLC v. State Farm Mut. Auto. Ins. Co.*, 994 F.3d 869, 877–78 (7th Cir. 2021).

AFFIRMED