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COMMENTARY

Ex-Public Defender's Sexual Harassment Claims Go to Trial Against Federal Judiciary

What if a complaint asserts that a federal judge or member of the judicial staff engaged in the misconduct? Surely that would be prohibited by fed law, right? How can those allegations, which impact upwards of 30,000 judicial employees, be addressed in such a way as to ensure confidence i the process and to protect an employee who believes he or she was discriminated against?

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Employment Law

By Jeffrey Campolongo and Scott M. Badami | January 19, 2024 at 09:43 AM

As all employment lawyers know, federal law (specifically Title VII of the Civil Rights Act of 1964) has protected most employees from unlawful workplace misconduct (including sexual harassment) for more than half a century. Our federal laws correctly provide a mechanism for employees to lodge discrimination complaints that ensure those claims are ultimately evaluated by a judge or jury of our peers. An imperfect system but still the best there is.

But what if a complaint asserts that a federal judge or member of the judicial staff engaged in the misconduct? Surely that would be prohibited by federal law, right? How can those allegations, which impact upward of 30,000 judicial employees, be addressed in such a way as to ensure confidence in the process and to protect an employee who believes he or she was discriminated against? In this circumstance, the typical federal anti-discrimination laws

will not provide an avenue because the judiciary and judicial employees were specifically exempted by Congress from those laws the judges otherwise review and enforce. So what is one to do?

A group of former federal judicial employees are trying to change that. Multiple former judicial employees have testified before Congress seeking support for the Judicial Accountability Act (JAA), which would provide judicial employees with additional protections. The former employees told stories of a system where cases are reviewed by other judges with little to no incentive to find against their friend and colleagues on the bench. Interestingly, the federal judiciary workplace conduct work group (appointed by and made up of members of the federal judiciary) has opposed the JAA—arguing that reforms in their current process are having a “positive effect,” with more proactive changes coming in the future. But when?

The judicial working group was formed in January 2018, following specific allegations of workplace misconduct and sexual harassment directed at certain federal judges that came to light around the time of the #MeToo movement. At that time, Chief Justice John Roberts acknowledged the “judicial branch is not immune” to allegations of harassment and misconduct. There were some judicial codes of conduct and procedural recommendations that were adopted a number of years ago, but the judiciary remains unwilling (at least to date) to go as far as those in Congress seeking to change federal law.

In the interim, at least one former judiciary employee sued. See *Strickland v. United States*, Case No. 20-66, Western District of North Carolina. Caryn Strickland, a former federal public defender who worked in the U.S. District Court for the Western District of North Carolina from 2017 through 2019, filed a complaint in 2020 asserting, among other claims, that workplace sexual harassment is protected by her constitutional equal protection and due process rights. Federal public defendants fall under the purview of the judiciary. Strickland also contended that the judicial policy then in place violated her rights by permitting deliberate indifference to her claims of workplace misconduct. Strickland claimed that she was stonewalled when she asked that the matters be investigated by the federal judiciary. She named several defendants, including Chief Judge Roger Gregory of the U.S. Court of Appeals for the Fourth Circuit, other court officials, and the federal judiciary.

Initially the matter was assigned to U.S. District Senior Judge William Young who dismissed Strickland’s claims. The case was revived when an appellate panel revived it last year, in part, concluding that the Fifth Amendment “secures a federal judiciary employee’s right to be free from sexual harassment in the workplace.” On remand, Strickland had an opportunity to conduct discovery, and, at one point it was ordered that Gregory sit for a three-hour deposition. Gregory was compelled to testify as it was purportedly his decision not to disqualify the federal defender charged with investigating Strickland’s claims even though he was accused of retaliation in connection with the allegations. Strickland was struck by what she believed to be the varying levels of cronyism within the judiciary.

Efforts to informally resolve Strickland's complaint failed and a different federal judge from Massachusetts (brought in to handle the case for conflict of interest purposes) conducted a nonjury trial over the last month to test whether Strickland had sufficiently demonstrated that the North Carolina judicial officials mishandled her complaint. Strickland asserted "quid pro quo" harassment based, in part, on an email sent by her then-direct supervisor, one J.P. Davis, in the public defender's office, specifically that Davis texted her that he had a salary "plan" for her and that she should "just remember I deal in pay for stay:)." Davis has denied the allegations and the Justice Department lawyer responsible for the case argued "none of the conduct was sexual or romantic in nature" and that any sexual harassment faced by Strickland was only in her mind. Strickland is seeking an award of at least $700,000 reflecting lost earnings. The judge indicated he would issue an opinion as soon as possible, noting the significance of the accusations and potential outcome.

As noted above, Strickland is one of a number of former federal judiciary employees who assert the current internal review system is "broken" and/or permits claims to be "stonewalled at every turn, as judiciary officials protect the perpetrators and punish the victims." One former law clerk testified to Congress that a federal judge fired her after she told him she was pregnant. After revealing her second pregnancy, the clerk claims the judge told her "while clerking may be a good 'mommy job' work still has to be done." Just 10 days later she was fired.

While the specific facts of these cases and claims obviously matter, the larger question remains: should not all federal judicial employees be protected from unlawful workplace misconduct and sexual harassment? That sure seems like a simple question.

Jeffrey Campolongo *is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.*

Scott M. Badami *represents clients in housing and employment matters in state and federal court as well as in arbitrations, mediations and agency proceedings. His office is in Blue Bell.*

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