Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change

Hearing before the Subcommittee on Courts, Intellectual Property, and the Internet

Testimony of Caryn Devins Strickland

Thursday, March 17, 2022

Chairman Johnson, Ranking Member Issa, and members of this Subcommittee, thank you for the opportunity to testify today. My name is Caryn Devins Strickland, and I am a former assistant federal public defender who was forced to resign because judiciary officials failed to protect me from sexual harassment or provide a fair process to review my claims. I diligently pursued remedies under the judiciary's Employment Dispute Resolution Plan ("EDR Plan") that would allow me to work free of sex discrimination. But the EDR Plan failed to provide a fair process, meaningful review of my claim, or remedies to stop the harassment. Through the EDR process, judiciary officials facilitated and aggravated the hostile work environment, which became so intolerable that I was forced to resign and lose my career as a federal public defender.

I. Background

I graduated *summa cum laude*, *Phi Beta Kappa*, from the University of Vermont, and *magna cum laude*, *Order of the Coif*, from Duke University School of Law, where I served as an editor of the Duke Law Journal. After law school, I

served as a judicial law clerk for a state supreme court chief justice, a federal district judge, and a circuit judge on the Second Circuit Court of Appeals. I then held a Supreme Court Fellowship in a placement at the Administrative Office of the U.S. Courts ("AO"). In that role, I worked on a number of projects to support the federal courts and the Judicial Conference of the United States. I wrote a law review article on a topic of interest to the federal courts, and presented my research at Judicial Conference committee meetings. As a fellowship alumna, I was invited to assist the Office of the Counselor to the Chief Justice with recruiting other judicial law clerks for the fellowship program, including in the Second and Fourth Circuits.

After the Supreme Court Fellowship, I began work as a federal public defender in the Federal Defender Office for the Western District of North Carolina ("FDO") in August 2017. Starting in law school, my dream job was to be a federal public defender, based on my interest in federal criminal law and my desire to help vulnerable clients navigate the criminal justice system. I was also inspired by the experiences of other Supreme Court fellows with similar credentials who have since gone on to illustrious careers in public service, using the fellowship as a springboard. My mentors and supervisors at high levels of the judiciary during my fellowship year strongly supported and encouraged my ambitions to become a federal public defender.

II. Workplace Discrimination

Initially, I hesitated to accept the employment offer because that office had a troubled reputation. A federal judge in the district had publicly testified about its myriad problems, including a federal investigation for embezzlement by an administrative officer, the embezzlement being "kept from the judges" for a "long period of time until after the investigation was done," employees being "afraid that they'll be fired" for coming forward, the office's "unsatisfactory representation for our district," and the overall "need[]" for "a change." Testimony of Hon. Max O. Cogburn, Ad Hoc Committee to Review the Criminal Justice Act at 14, 33, 34 (Jan. 11–12, 2016), *available at* https://tinyurl.com/y3bjugxy. Shortly before I began employment, the district judges converted the office from an independent community defender office to a federal defender office to make the office more accountable to the judiciary. *Id*. at 33. I believed that the new incoming Defender would serve as a change agent to bring needed reforms to the office.

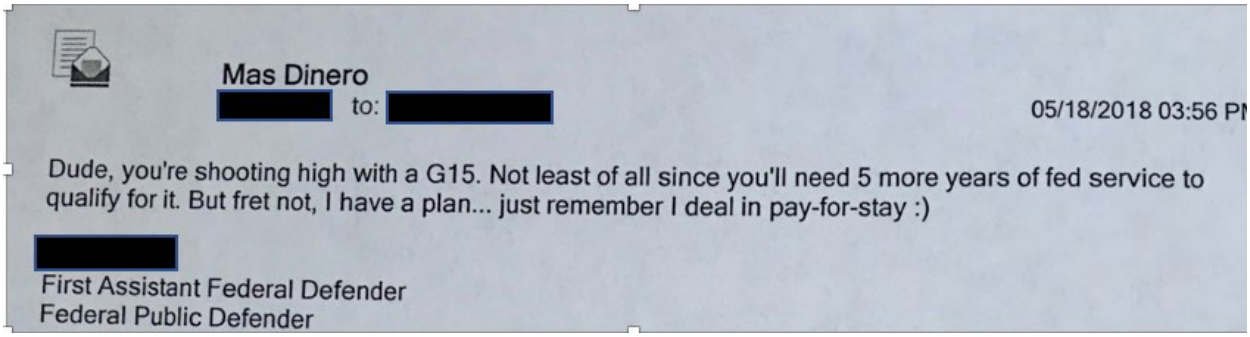
But upon joining the office, I saw its leaders foster a workplace culture where discrimination, harassment, and retaliation were casually accepted. For example, a "Team Leader" who supervised employees, including me, routinely compared his Black clients to "dogs" that could be trained and repeatedly called an intellectually disabled client a "retard" during an all-staff meeting. Employees joked about a Black federal prosecutor's *rapping* to the jury. The toxic workplace

culture also encouraged homophobia and sexism. For example, the FDO's administrative officer made jokes that a gay male employee was "like a girl." Another employee was subjected to homophobic rumors, including that he exchanged sexual favors with prison guards. Employees continued to spread rumors about his "dildo collection" many months after he left the office. The Defender himself described women in crude and derogatory language. Women were belittled, not taken seriously as professionals, and targeted for abusive behavior. Examples were made of employees who complained of mistreatment, through retaliation ranging from vicious and false rumors to disciplinary actions and firings.

From the start, the First Assistant, who had control over the FDO's operations and supervisory authority over trial units, singled me out to be his mentee, assigned me almost exclusively to his cases, and targeted me for unwelcome attention. Coworkers described him as "lustful," "fixated," "sexually attracted," and "wanting" me in "not such a professional way." One coworker stated, "Thank God the attorneys don't have the ability to really undress you with their eyes. Or you wouldn't be dressed at work." After Judge Kozinski of the Ninth Circuit retired following allegations of sexual misconduct, the First Assistant gloated to me that the process for bringing sexual harassment complaints in the judiciary is useless. He said he was personally aware of a complaint against a

judge that, according to him, was appealed all the way to the "top" and went nowhere.

As I approached one year at the FDO, I was widely praised by both my colleagues and the judges before whom I appeared for my excellent work performance, and I anticipated a highly positive performance review. The Defender told me that the First Assistant would be my "mentor" in charge of my advancement, even though the FDO had no formal mentoring program. In May 2018, I told the First Assistant that I planned to request a promotion for which I qualified based on my years of experience, federal service, and education, and, eventually, a "duty station" transfer to the FDO's other office location. In response, he became visibly agitated and emotional. He then said, "don't worry, we're going to take care of you." Later that day, he sent me an email titled "Mas Dinero" (Spanish for "More Money").



Mas Dinero

[redacted] to: [redacted] 05/18/2018 03:56 PM

Dude, you're shooting high with a G15. Not least of all since you'll need 5 more years of fed service to qualify for it. But fret not, I have a plan... just remember I deal in pay-for-stay :)

[redacted]
First Assistant Federal Defender
Federal Public Defender

The First Assistant's claim that I needed more years of service to qualify for a promotion was plainly false, as was his improper assertion that he could help me skirt such a requirement. In the context of his excessive interest in me, I viewed

his email as quid-pro-quo sexual harassment in which he proposed a "deal" to "pay" for his inappropriate advances.

From there, the First Assistant's unwelcome advances only intensified. He repeatedly and persistently pressured me to see him outside of the office alone. He asked me out for drinks, "mentoring" sessions, and out-of-office meetings. When I tried to distance myself, he aggressively interfered with my job duties, reminded me of his control over my job, threatened disciplinary action, and called me "manipulative" and "deceitful" for seeking trial experience that would allow me to work outside his control. When the Defender assigned me as second chair on a trial, the First Assistant shook with anger that the work pulled me away from him. He would physically lurk in hallways waiting to corner me.

I asked the Defender for help, but he dismissively told me to work it out with the First Assistant, and then removed me from the trial he assigned me, despite acknowledging my excellent performance and his understanding that I wanted to gain more trial experience. In July 2018, I notified the Defender that the First Assistant was behaving inappropriately and I was leaving work early every day to avoid being alone with him. The Defender responded by calling me in to meet with the First Assistant to discuss the matter. There, he compared my harassing supervisor's authority over me to a marriage, requiring "compromise"

where a couple must "meet in the middle." Days later, he assigned me to work even more closely under the First Assistant's supervision.

I sought guidance on both supervisors' conduct from the AO's Fair Employment Opportunity Officer, the civil rights office for the courts. She said the behavior I reported was "classic sexual harassment." She said I was "highly credible," but it would be less risky to find another job than seek redress through the EDR Plan, because the cards were "stacked" against a complainant and in favor of management. She encouraged me to call in sick to "protect myself."

The Fair Employment Opportunity Officer spoke with the AO's Chief of Defender Services, who advised the Defender to appropriately address the sexual harassment. Instead, the Defender angrily berated me and said he was being "blamed" and "attacked" for something that was not his "fault." He downplayed the harassment, saying, "but there was no physical contact."

Next, the Defender worked to control the complaint process to protect himself from liability. He contacted officials at the Fourth Circuit and the AO's Office of General Counsel. These officials decided that the Office of General Counsel, as management's representative, would take over the matter and limit any investigation of wrongful conduct to the First Assistant. I was prohibited from seeking any further guidance from the Fair Employment Opportunity Officer. The Circuit Executive, whom the EDR Plan designated as EDR Coordinator, criticized

me for engaging in protected activity, saying it was not "helpful" that I reported discrimination to the AO because "barriers go up" and "people are on guard."

After one year at the FDO, despite my recognized excellent work, I did not receive any performance evaluation and was not considered for a promotion for which I qualified. Instead, the Defender diminished my job duties and targeted me for discriminatory treatment that facilitated the First Assistant's continuing harassment. The Defender refused to remove the First Assistant from supervising me and allowed him to continue having input on my job duties, including my request to move to the appeals unit to get away from the harassment. He also attempted to drastically reduce my salary by stripping me of a locality adjustment to which I was entitled as a federal employee. In refusing to consider a promotion—even going to lengths to *backdate* a reclassification of my title to the day before I became eligible for a promotion—the Defender made good on the First Assistant's threat that if I didn't "pay" in the way he wanted, that is, sexually, I would not get the promotion or raise for which I qualified.

III. Judiciary Officials' Grossly Inadequate Response

Despite having been warned by a senior judiciary official that the cards would be stacked against me, I decided to pursue my rights under the EDR Plan to seek remedies allowing me to work safely. In September 2018, I filed a report of wrongful conduct against the Defender and the First Assistant under Chapter IX of

the 2013 Fourth Circuit EDR Plan,[1] which provided for investigation and disciplinary action. I also filed a claim under the "Dispute Resolution Procedures" of Chapter X of the Plan and, as required, initiated the proceeding with a formal "request for counseling." I requested "[a]n environment free of harassment, retaliation, and discrimination, the opportunity for merit-based advancement, and any other appropriate relief." The EDR Plan invited a request to disqualify an "employee or other person involved in a dispute," and I made a written request that the Chief Judge disqualify the Defender from exercising authority in the EDR process.

Over the next six months, the Circuit Executive, Chief Judge, and AO officials kept me on telework while making no meaningful efforts to stop the harassment so I could return to the office. This lengthy period of telework isolated me from my coworkers, who, led by a supervising Team Leader, openly mocked me and spread disparaging rumors. I was asked about my EDR case by a former employee, who told me he found out about it because "people talk." During a team meeting, my coworkers mocked and belittled me, joking: "Should we meet her at Waffle House?" Others added: "Where's Waldo?," to more chuckles and laughter.

[1] The EDR Plan was amended again in 2018 and 2020, but my case arose under the 2013 EDR Plan.

During this period, judiciary officials failed to conduct an appropriate investigation. Despite his conflict of interest as an accused person and my request for his disqualification, the Defender was allowed to appoint the Investigator. The Investigator, a court employee, told me that my allegations of the Defender's violations of the EDR Plan were not being investigated because the EDR Coordinator/Circuit Executive excluded them from the investigation. The Investigator went periods of three to six weeks without providing me any updates on the investigation's progress. More than two months after the investigation opened, the report was sent back to be redone. My witnesses were never interviewed. The Investigator confessed she lacked training to make findings and conclusions, and yet, the EDR Coordinator asked her to make findings and conclusions. The Investigator said the EDR Coordinator, in consultation with the Chief Judge, would make final decisions, even though the EDR Plan did not give the EDR Coordinator that role.

After the investigation was completed, the EDR Coordinator told me that I would not be permitted see the investigation report or its findings because it would make it difficult to resolve the matter informally. He said that even if the investigation found wrongdoing, no disciplinary action would be taken until I ended the dispute resolution process—which, at this rate, could add months. By withholding the investigation's findings and then explicitly conditioning any

corrective action on concluding the EDR process, judiciary officials pressured me to resign to avoid further delaying accountability for those responsible for sex discrimination. I still have not seen the investigation report.

Meanwhile, the Chief Judge said he would not decide my request to disqualify the Defender until the investigation was complete. But the Investigator told me that my allegations against the Defender were not being investigated. The EDR Coordinator emphasized that the Chief Judge was "taken aback" by my request to disqualify the Defender, and said that if the Defender were disqualified, then "no one" could "represent" the employing office in the EDR process. After four months, the EDR Coordinator told me that the Chief Judge "intended to" deny my request to disqualify the Defender; the EDR Coordinator first said that the Chief Judge made the decision before the investigation report was complete, but later contradicted himself and said he made the decision afterward. I never received an explanation for the decision, nor clarification about when it actually occurred.

Because the Defender was not disqualified, I was forced to negotiate with the Defender, an accused party, acting on behalf of the employing office in the EDR process. When I repeatedly requested concrete steps to abate the continuing hostile work environment, the EDR Coordinator said: "Reiterating that you want a safe workplace free of harassment isn't helpful because [the Defender] already

believes he's done and is doing all he can to provide such a workplace for you." The Defender made clear that he would have me return to the First Assistant's duty station no matter the outcome of the EDR process. I therefore requested that the Fourth Circuit assist with a transfer to a different FDO in the circuit, where neither the Defender nor the First Assistant would have supervisory authority over me. I explained: "This situation has irreparably damaged my relationships with the Federal Defender and my colleagues, and I believe I am no longer welcome in that environment." Even after repeated requests, I was not transferred.

In January 2019, nearly five months after I filed my claim, I proceeded to mediation, a mandatory stage in the EDR dispute resolution process before I could request a hearing. The Fourth Circuit's Chief Circuit Mediator told me that the accused Defender was the "decision maker," but that he was from a "generation" that doesn't "get" sexual harassment, and if I proceeded to a final hearing, the presiding officer would not "micromanage" the Defender. The Mediator explained that, at times, the judiciary lacked statutory authority to implement remedies and that "you give up a lot" as a judiciary employee. Because the Defender was the "decision maker," neither mediation nor a hearing could produce a remedy that he resisted, and he was expected to resist because he didn't "get" sexual harassment.

In February 2019, I met with the new Judicial Integrity Officer, whom the AO had recently appointed "to provide counseling and assistance regarding

workplace conduct to all Judiciary employees."[2] She said that the way my complaint was being handled was unusual, and that the Circuit Executive should never be the EDR Coordinator because of inherent conflicts of interest. She said a presiding officer would not "meddle" in the FDO, and regardless of the hearing outcome, the presiding officer could not order remedies, because Article III judges did not have authority to "manage" a federal defender office. She called the issue "jurisdictional."

Having endured a hostile working environment for more than six months with no meaningful action on my complaints, having been subjected to a deeply biased and unfair EDR process, and having been told that a hearing officer would not order remedies even if I prevailed, I had no choice but to resign. I informed the Mediator that I was being constructively discharged. The Mediator, Chief Judge, and EDR Coordinator then worked to find me a Fourth Circuit clerkship to work in for a few months, even though I had previously clerked for a Second Circuit judge and two other judges, and the term clerkship was not comparable to my prior position and a devastating step backwards from my career goal of being a federal public defender. Given my observation of FDO leaders vindictively spreading false rumors about employees who complained of unlawful conduct, I accepted the

[2] Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States 7 (June 2018).

temporary clerkship in hopes of mitigating further attempts to ruin my reputation and career.

In June 2019, almost a *full year* after I first reported my concerns and several months after my constructive discharge, the EDR Coordinator informed me that "disciplinary action was taken last week as a result of your report of wrongful conduct." I was not told the investigation's findings or what corrective action was taken. I later learned during litigation only that the Chief Judge disciplined the Defender, and the Defender disciplined the First Assistant. Despite the apparent findings of wrongful conduct in violation of my rights, I was not offered the possibility of any remedies for wrongful conduct.

The events at the FDO severely damaged my career, while my male supervisors stayed in their positions.[3] After my clerkship ended, I tried but failed to secure employment comparable to my previous position. In seeking employment, I cannot provide references from my former office because my supervisors discriminated against me and spread false rumors about my sexual harassment complaint. I learned that my Team Leader spread rumors that I "made up" being sexually harassed so that I could work at a different duty station and that

[3] In April 2021, the Defender announced his intent to seek another four-year term as Defender. In August 2021, the Fourth Circuit posted a vacancy for his position. In January 2022, the Fourth Circuit announced the appointment of a new Defender, John G. Baker. Despite the Defender's non-reappointment, I have never been offered reinstatement.

coworkers spread rumors that I "lost." The North Carolina Board of Law Examiners flagged my EDR complaint as an area of concern and questioned me about it during my Character and Fitness interview for admission to the bar.

Although I continue to pursue indigent criminal defense work, I have been working in temporary and substantially lower-paying positions. Because judiciary officials' unlawful actions during the EDR process resulted in continuing reputational damage, it is unlikely that I will ever secure a position with terms and compensation comparable to the one I held before I was sexually harassed.

IV. Litigation Conduct

For over two years, I have been seeking remedies for the misconduct in federal court under the pseudonym Jane Roe. In March 2020, I filed suit alleging that officials of the FDO, Fourth Circuit, and federal judiciary violated my Constitutional Fifth Amendment equal protection right by subjecting me to sex discrimination and violated my Fifth Amendment due process right by denying me fair procedures for resolving my discrimination complaint. I requested a pseudonym because, as an attorney struggling to establish my career following my constructive discharge, I feared further retaliation and reprisal, both from the judiciary and the legal community at large. All judges in the Fourth Circuit were recused, so the case was subject to an intercircuit assignment.

Despite my hope that litigation might bring about the remedies and protections that I believe that I—along with all other employees of the federal judiciary—am entitled to, and that the judiciary's internal EDR process utterly failed to provide, the process has been rife with similar problems and inequalities. From the outset, an unknown judicial officer ordered the sealing of my *entire* case *sua sponte*. The sealing was a clear First Amendment violation, seemingly aimed at protecting Defendants by preventing disclosure of embarrassing information. The case was unsealed, without explanation, only after I filed a petition for a writ of mandamus in the Fourth Circuit.

Having refused to show me the investigation report in my EDR proceeding, Defendants have continued to withhold the investigation report from me and from the court. But they have quoted phrases from it in the litigation to support their position, including that I somehow "exploited" the "poor judgment and decisionmaking skills" of my male supervisors.

Defendants also violated the District Court's pseudonym order by exposing my true name and other personally identifying details including photos taken at my wedding. In response, the District Court judge failed to provide a transparent and public explanation of how he was handling the issue. Instead, he memorialized the correspondence between Defendants' counsel and the Clerk's office—some of which did not include my counsel—in sealed docket entries. He provided neither

notice nor explanation of why he was creating sealed docket entries regarding Defendants' violations of court orders, despite his obligation to do so under Fourth Circuit precedent. He unsealed the entries only after my counsel inquired about missing docket entry numbers.

The District Court judge dismissed my suit in its entirety, and the case is now pending on appeal. On appeal, I learned for the first time that blatant and disqualifying conflicts of interest had tainted the entire proceeding. Namely, Defendants participated in hand-selecting the judges for their own case, both in the district court and in the appeal, by virtue of their roles in the intercircuit assignment process, from which they failed to recuse themselves. Further, Defendants, including the Fourth Circuit's Chief Judge and Circuit Executive, knew the appellate panel's identity for six months during the briefing of the appeal before it was disclosed to me and the public. These blatant conflicts of interest and unfair favoring of one party over the other create a severe appearance of impropriety that is apparent to any reasonable observer. Moreover, Defendants displayed a shocking lack of candor about their conflicts of interest in the intercircuit assignment process and, to this day, have avoided a full and transparent disclosure of the intercircuit assignment records. Given the judiciary's strong interest in defending its procedures for handling workplace misconduct, the public

has every right to expect full procedural propriety in this case. Unfortunately, the judiciary defendants in my case have fallen far short of meeting that standard.

The judiciary's official position in the litigation is that because I am not covered by Title VII of the Civil Rights Act, I am not entitled to any review of my allegations in a federal court. If this position prevails, then my rights to be free from sexual harassment, sex discrimination, and retaliation under the EDR Plan that exist on paper will be fictional in practice. And even an EDR process that goes off the rails, as mine clearly did, will have no remedy or opportunity for meaningful review.

V. Conclusion

I diligently pursued my remedies for sex discrimination under the EDR Plan, but I was stonewalled at every turn. Judiciary officials failed to take the most basic steps to address the sexual harassment. The EDR process was deeply biased and unfair, and judiciary officials told me that a hearing officer would not order remedies even if I prevailed at a hearing. Now, the judiciary is fighting the possibility of any judicial review of the EDR process's failures by a federal court. And, as you know, the judiciary is also fighting the possibility of any legislation to provide judiciary employees, like me, the same statutory protections from discrimination that apply to every other federal employee. Thus, as the judiciary

would have it, judiciary employees would have absolutely no remedy for the right to be free from workplace sexual harassment and sex discrimination.

Although I have already suffered, and continue to fear, retaliation and reprisal, I have come forward publicly today because I was asked to testify, and I believe it is my responsibility to share my experience with you. I am giving up my pseudonym in order to bring the issues of unfair and biased internal procedures for handling sexual harassment in the judiciary to the attention of members of a co-equal branch of government, despite the fact that even having a pseudonym has not protected me from career damage. I hope you will see, from my experience and that of others, that there is no reason for the judiciary to receive exceptional treatment when it comes to the nation's civil rights laws. On the contrary, the judiciary's ongoing failure to enforce the protected rights of its employees undermines confidence in the integrity and legitimacy of the federal court system. It is deeply disturbing that the judiciary—the branch of government that Americans depend upon to uphold the rule of law and vindicate civil rights—has failed, and continues to fail, to afford those same basic civil rights protections to its own employees. By disproportionally impacting minorities, women, and other protected classes, this failure also fosters a perception that the judiciary does not value or enforce due process and equal protection under the law. There is simply

no reason to trust that the judiciary is uniquely capable of responsibly handling these matters internally, without oversight and transparency. Thank you.