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Ex-NY Court Aide Opposes Dismissal Of Sex Abuse Suit

By **Christine DeRosa**

Law360 (January 12, 2024, 3:52 PM EST) -- A former state Supreme Court judge's secretary who sued the New York state court system claiming state court personnel failed to act when she complained of sexual abuse and harassment by the judge has opposed a motion to dismiss, stating the argument that she was a judicial appointee distinct from an employee "verges on the nonsensical."

Rebecca Klymn, secretary for former Supreme Court Justice Matthew Rosenbaum from her hiring in 2005 until he resigned in 2019, claims that she was sexually harassed by the judge and that nothing was done to help her when she complained.

In a memorandum in opposition to the defendants' motion to dismiss filed on Tuesday, Klymn belittled **the New York Office of Court Administration's argument** that it cannot be held liable for alleged violations of the New York State Human Rights Law because it lacked control over her employment.

Klymn argued that the state's human rights law defines "employer" as including all employers in the state and that the state is considered the employer of "any employee or official, including any elected official, of the New York state executive, legislature, or judiciary, including persons serving in any judicial capacity, and persons serving on the staff of any elected official."

The law also says a city, county, town, village or other subdivision of the state is considered the employer of any employee or official of the locality's executive, legislature or judiciary.

Klymn says the human rights law shows a clear intent to include a person serving on the staff of an elected official within its protections and that if the New York Legislature intended to include an exemption for personal staff of elected officials or judicial officials, it could have done so. She said the language was added in 2022 but was deemed to be in full effect "on and after the effective date of chapter 161 of the laws of 2019."

Apart from the human rights law, Klymn cited facts of her relationship with the Unified Court System and the Office of Court Administration that she said should result in the court's finding that an employment relationship exists.

Klymn said that when she was hired, she met with a Unified Court System representative who conducted her on-boarding process and arranged for her to be assigned a Unified Court System photo identification card, which she needed to access her work stations before and after Dec. 31, 2019.

She was also told she was eligible to join the New York State Retirement System, which she did, and was issued a New York State Unified Court System Employee Handbook that said Klymn was a state employee. Additionally, Klymn said she had access to the defendants' intranet, which was available only to employees, was required to attend training sessions for Unified Court System employees and participated in the Seventh Judicial District Administrative Judge's Task Force Mentor Program, which was available only to employees.

She added that the defendants controlled her work hours and that when Rosenbaum resigned, she was promoted and was not required to apply for the job as a new hire, among other examples.

Klymn said she had also met with the then head of human resources at Monroe County Supreme Court in 2007 to complain about Rosenbaum's actions but was told that if she was seeking to file a complaint, the head would have no choice but to fire Klymn.

This move convinced Klymn that the defendants had the power to end her employment, according to the filing, whether the human resources head actually believed they had that power.

Lindy Korn, who represents Klymn, told Law360 Pulse on Friday that Klymn suffered tremendously because of the alleged hostile work environment.

"She, in essence, worked in a workplace where there were no effective policies," Korn said. "There was no one who was willing to take her complaint and listen to it and investigate it, all the things that the policy mandates. It seems as though, because it was against a powerful judge, the policies didn't apply. The facts of this case are egregious, and to try to say at this point in time, that she was not an employee, honestly, it belies the factual history as we've laid it out in our reply brief."

Korn, who was also speaking on behalf of her co-counsel, Anna Marie Richmond, added that Klymn was "retaliated against in the worst way" by being threatened with termination if she filed a complaint.

"That is the opposite of what the policies mandate, and it's shocking that in this day and age, she would be afforded none of the legal protections that were owed her," Korn said.

The state court case names the Monroe County Supreme Court, the state's Unified Court System, the Office of Court Administration and the Office of the Managing Inspector General for Bias Matters.

Klymn filed a federal complaint against Rosenbaum and other defendants in 2021, which is pending in the Western District of New York. The federal complaint accuses state actors and individual defendants, including Rosenbaum, of violating federal and state law.

Counsel for the defendants did not immediately respond to a request for comment on Friday.

Klymn is represented by Lindy Korn of the Law Office of Lindy Korn, and Anna Marie Richmond.

The state court defendants are represented by Pedro Morales of the New York State Office of Court Administration.

The case is Klymn v. Supreme Court et al., case number 812347/2023, in the Supreme Court of the State of New York, County of Erie.

–Additional reporting by Lynn LaRowe. Editing by Peter Rozovsky.