

Federal Court Rejects Finding of Sexual Harassment

A female employee in the office of the Dean of the Grady College of Journalism and Mass Communication at the University of Georgia made a claim of sexual harassment against the Dean of the College. The claim arose from two comments made by the Dean to the employee. In the first comment, the Dean asked the employee to tell him what color his eyes were. The second comment was made at an after-hours, off campus, university-related function. The Dean complimented the plaintiff's dress and said that it showed off her "assets." The Dean admitted making both comments, but denied that either comment had any sexual implication or connotation. The University of Georgia found that the two comments violated the University's sexual harassment policy by creating a hostile work environment for the complaining employee.

Prior to the finding of sexual harassment by the University, the Dean had accepted an offer to step down as Dean, returning to the teaching faculty at a reduced salary. After the finding of sexual harassment, the Dean filed suit in federal court demanding that a Writ of Mandamus be issued to officials of the University of Georgia, demanding that any findings that he was guilty of sexual harassment be removed from the records of the University. The federal court found in favor of the Dean and ordered the University to rescind, recant, and expunge any records indicating that the Dean was guilty of sexual harassment. *Soloski v. Adams*, N.D. Ga., No. 1:06-CV-3043-MHS (Mar. 2, 2009).

The court noted that the University of Georgia's policy on sexual harassment makes reference to Title VII of the Civil Rights Act of 1964. The federal judge then held that the University's office of legal affairs had failed to apply the appropriate legal standard during its investigation of the sexual harassment claims against the Dean. As a result, the University's investigation of the claim was found to have been arbitrary, capricious, unreasonable, and a gross abuse of discretion. The University argued that its policy on sexual harassment was broader than the prevailing legal sexual harassment legal decisions. The Court rejected this argument, stating that the University could not make its policy broader than Title VII if it references Title VII in its policy. Because of this reference, the Court reasoned that both parties, the accuser and the accused, were entitled to assume that questioned conduct would be judged in accordance with the relevant judicial determinations concerning liability under that law.

Turning to the Dean's actions, the Court held that his comment about his eyes was simply not sexual in nature, and the comment about the employee's dress and "assets," could not possibly give rise to a finding that the Dean was guilty of sexual harassment for creating a hostile work environment. A single comment of this nature, made away from the work place, was legally insufficient to create a hostile work environment.

This case illustrates that sexual harassment claims have to be handled with great care. Obviously, such claims of sexual harassment cannot be dismissed or ignored by a public university – institutional liability to the victim may result. On the other hand, a university cannot be too quick to find sexual harassment present when the facts do not warrant that conclusion. That course of action may also land the University in court in a suit brought by the accused employee, as happened in *Soloski*.