

From: Caryn Devins
Sent: Monday, November 26, 2018 9:33 AM
To: Amaal Scroggins
CC: Nancy Dunham
Subject: Fw: status of EDR claim

**Strickland v. US
Trial Ex.
145**

Good morning Amaal and Nancy,

I hope you had a nice holiday weekend. I have concerns about the EDR process in my case that I am hoping we might be able to discuss by phone?

I have not been able to get James Ishida as EDR Coordinator to answer basic procedural questions, such as when my request to disqualify the Federal Defender will be decided, or who is responsible for making recommendations and decisions based on the investigative report. and I have repeatedly been given inconsistent deadlines and information about the status of my EDR claim.

From the beginning, I asked James for another option to pursue counseling because I was not comfortable negotiating directly with the Federal Defender, the subject of my complaint. James did not give me any option except to send a list of "demands," as he called them, so that he could give them to the Federal Defender. I believe this situation could have been resolved at an earlier stage if, for example, James had offered to negotiate a transfer from the Charlotte office on my behalf. However, he refused to work with me to engage in counseling as I understand it, that is, attempting to resolve the situation at the lowest level possible. This is not to mention his demonstrated bias and apparent predisposition to reject my retaliation claims (see emails below).

It appeared that James was not willing to consider a different approach until the wrongful conduct investigation (which, I only recently learned, was also apparently serving as a preliminary investigation under Chapter X), was concluded. However, even though Heather did not finish her report until last week and there has still been no ruling on my disqualification request, counseling is set to expire on November 29, 2018, and James refuses to allow an extension. James has repeatedly told me that counseling cannot be extended a second time, which I cannot find a textual basis for anywhere in the EDR Plan. To the contrary, my reading of the Plan is that the Chief Judge may extend *any* of the deadlines for good cause. This morning, I requested an extension directly from Chief Judge Gregory, and I copied James as a courtesy. In response, James interjected and asserted, once again, that counseling cannot be extended under the Fourth Circuit EDR Plan. Thus, it appears that counseling has been forfeited because the preliminary investigation has consumed nearly the entire counseling period.

In addition, it appears that the scope of the wrongful conduct investigation never changed from its initial scope, which was limited to sexual harassment. When I last spoke with Heather, after her interviews and investigation had already concluded, she stated that she was not investigating any retaliation claims against the Federal Defender. She said she believed she was supposed to investigate Tony's "mishandling" of the situation only (I'm not sure what that means) and that a separate investigation would need to be opened into any claims of retaliation.

In the meantime, I have informed James, Chief Judge Gregory, and Heather that I would like the Fourth Circuit to assist me in finding a placement elsewhere in the Fourth Circuit because my relationships with the Federal Defender and my colleagues have been irreparably damaged and I no longer feel welcome in that environment. I did not want to leave my position at the Federal Defender Office, which I considered my dream

002178

job, but at this point I have been constructively discharged. I consider James' lack of engagement as EDR Coordinator to be a major contributing factor in this decision. Although he has now offered to send my resume to other Federal Defender offices in the Fourth Circuit to ask their hiring availability, it is exceedingly unlikely that anything will be resolved before Thursday, when counseling expires.

I do not intend to resign my position until I have obtained a satisfactory resolution, and it appears that I will be forced to file for mediation. At this point, I believe the process has failed completely

From: [REDACTED] PII [REDACTED] @ca4.uscourts.gov [REDACTED] PII [REDACTED] @ca4.uscourts.gov>
Sent: Wednesday, November 21, 2018 4:59 PM
To: Caryn Devins
Cc: [REDACTED] PII [REDACTED] @ca4.uscourts.gov
Subject: Re: status of EDR claim

Dear Caryn,

I'd be happy to meet with you in Richmond on either November 27 or 28. (I have a mild preference for and more time on Wednesday, November 28.) I, however, cannot authorize your travel. You'll have to seek authorization from Tony Martinez, and perhaps others in the District.

I'm sorry that circumstances have you contemplating leaving the FPD Office in NC-WD. We will do what we can to facilitate a resolution in the EDR matter.

Let me know your travel plans. In the interim, best wishes on a safe and happy Thanksgiving.

James

James N. Ishida
Circuit Executive
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 617
Richmond, VA 23217-3517

[REDACTED] PII [REDACTED]
[REDACTED] PII [REDACTED] @ca4.uscourts.gov

From: Caryn Devins [REDACTED] PII [REDACTED] @ca4.uscourts.gov
To: [REDACTED] PII [REDACTED] @ca4.uscourts.gov [REDACTED] PII [REDACTED] @ca4.uscourts.gov>
Cc: [REDACTED] PII [REDACTED] @ca4.uscourts.gov [REDACTED] PII [REDACTED] @ca4.uscourts.gov>
Date: 11/21/2018 02:05 PM
Subject: Re: status of EDR claim

Dear James,

Thank you for your email and for your offer to meet via teleconference. I would be willing to drive to

002179

Richmond to meet with you in person, if that is considered work travel.

I have been reflecting on this situation and discussing potential next steps with my family. 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. I would appreciate the Fourth Circuit's assistance in transitioning me out of Mr. Martinez's office. I will continue to think about potential solutions and I hope to discuss them with you next week.

I appreciate your time and efforts, and I hope you have a happy Thanksgiving.

Sincerely,

Caryn

From: [REDACTED] PII @ca4.uscourts.gov <[REDACTED] PII @ca4.uscourts.gov>
Sent: Monday, November 19, 2018 9:14 AM
To: Caryn Devins
Cc: [REDACTED] PII @ca4.uscourts.gov
Subject: Re: status of EDR claim

Dear Caryn,

While I'd be happy to return to Charlotte to meet with you again, I don't have any time between now and the expiration of the counseling period on November 29. I've got two work trips planned between now and then, and we do have the Thanksgiving holiday, which I had planned to spend in New York. Finally, I still haven't received the investigatory report, but I do expect it any day now.

So let me suggest this. If you'd still like to meet, we can set up a conference telephone or Skype call for November 27-28. I'll be in Richmond, and I would have had the chance to study the report. To make the call fruitful, I'll again suggest that you consider specifically what it is that you want. For example, reiterating that you want a safe workplace free from harassment isn't helpful because Mr. Martinez already believes that he's done and is doing all he can to provide such a workplace for you.

Please let me know how you'd like to proceed.

Best regards,

James

James N. Ishida
Circuit Executive
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 617
Richmond, VA 23217-3517

[REDACTED] PII
[REDACTED] PII @ca4.uscourts.gov

On Nov 16, 2018, at 11:31 AM, Caryn Devins [REDACTED] PII > wrote:

002180

Dear James,

I agree that we should meet in person to discuss these issues. What is your availability?

Respectfully,

Caryn

From: [REDACTED] PII [REDACTED]@ca4.uscourts.gov <[REDACTED] PII [REDACTED]@ca4.uscourts.gov>

Sent: Wednesday, November 14, 2018 4:01 PM

To: Caryn Devins

Cc: [REDACTED] PII [REDACTED]@ca4.uscourts.gov; [REDACTED] PII [REDACTED]@ca4.uscourts.gov

Subject: Re: status of EDR claim

Dear Caryn,

This is probably a better discussion in person rather than by email. Suffice it to say, I am aware that Mr Martinez has allowed you to telework, removed you from the chain of command so that you have no reporting obligations with the person in question, and taken other steps to avoid contact with the accused. I'm also aware that Mr Martinez attempted to accommodate your relocation to Asheville, but I understand that there literally is no space in that office. So, as I understand, there have been a number of measures that have been taken to ensure your safety.

But again if you still feel that you are not in a safe environment, then we need to know that and precisely what you would like to see to feel safe so that we can present that to Mr Martinez for consideration.

As for your career advancement, Heather has been tasked with investigating your allegations that your rights were violated by alleged discriminatory actions by the FPD Office. But in order to help facilitate a possible settlement, it would be helpful to understand what career advancements you feel that you're entitled to but were denied.

Finally, I am the counselor in the Chapter X proceeding, as specified in the Circuit's EDR Plan. Ms Beam's investigatory report will be submitted to me. My intent going forward, and the purpose of the counseling phase, is "to assist the employee in achieving an early resolution of the matter, if possible." However, in order to facilitate a possible settlement, I need to know what you specifically want and hope to gain from this process.

I expect to receive the investigatory report sometime this week. I will be studying Heather's findings and recommendations and will be considering them and appropriate next steps, including distribution of the report.

Pls let me know if you have any other questions.

Best regards,

James

James N. Ishida
Circuit Executive
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 617
Richmond, VA 23217-3517

002181

PII
PII

@ca4.uscourts.gov

On Nov 13, 2018, at 1:55 PM, Caryn Devins <PII> wrote:

Dear James,

Thank you for clarifying the current conditions for counseling under Chapter X and that Ms. Heather Beam's investigation is serving as a joint investigation for Chapters IX and X.

To help me better understand your positions, can you identify the steps taken by the Federal Defender to protect me from further harassment and to ensure my safety in the office as they have been described to you? I am only familiar with his rejection of a transfer from the First Assistant's duty station and his asserted authority to require me to return to that work environment at the impending conclusion of the Chapter IX process. Similarly, can you identify the steps taken by the Federal Defender to address my concerns about career advancement? I am familiar with the administrative reclassification of my job title with no consideration for a raise in total salary or formal progression of duties, the elimination of my locality adjustment, and the failure to interview me for a newly created "Appellate" AFD position that I was discouraged from applying for, among other events described in my official grievance. Without more information regarding the steps taken by the Federal Defender since our last conversations, can you understand why I do not view these measures as an attempt at resolution, but instead as evidence of actionable retaliation by the Federal Defender and support for my disqualification request? In this context, can you tell me how to renew the consideration of my disqualification request prior to the end of the counseling period?

Can you also inform me of which individuals will receive the Chapter IX investigator's factual report, including who will receive the report for the purpose of making recommendations based on its content? Similarly, who will make final decisions based on that individual's recommendations and how will I be informed of those decisions? Finally, can you please clarify and confirm that you, not Heather, are the counselor for purposes of Chapter X?

Thank You,

Caryn

From: PII @ca4.uscourts.gov <PII @ca4.uscourts.gov>
Sent: Monday, November 12, 2018 9:01 PM
To: Caryn Devins
Cc: PII @ca4.uscourts.gov; PII @ca4.uscourts.gov
Subject: Re: status of EDR claim

Dear Caryn,

Thank you for your message. Let me address the issues you raise separately.

First, you are correct in that the two proceedings — the Complaint for Wrongful Conduct under Chapter IX and Request for Counseling under Chapter X — are separate proceedings. The link between the two is the investigation that is being conducted by Heather Beam. Because both proceedings share essentially the same set of facts, I ordered a joint investigation for both. But you are correct, the Chapter IX report of wrongful conduct and Chapter X request for counseling are two separate, distinct proceedings.

Second, you are correct in that the counseling period ends on November 29. Since we had agreed earlier to an extension of the counseling period, this is the last extension that can be granted. In other words, counseling ends on November 29.

Third, I think you've correctly identified the difficulties in resolving this matter. As we'd discussed earlier, I had asked that you articulate precisely what it is that you're looking for in terms of your numbers 1 and 2

002182

below. As you know, Tony Martinez has taken numerous steps to protect your safety in the office. He has also proposed a number of career moves that he had hoped would address your concerns about career advancements. But he's also not sure what other things you have in mind, and he's also not sure if you still have safety concerns. So that's why I had encouraged you to think about what is it that you want and to identify what things are still deficient because we need those to have further discussions with Mr Martinez.

So, for example, you had asked for "the ability to work in an environment free of harassment and retaliation[.]" Mr Martinez has implemented a number of safety measures designed to protect you from further harassment. There have been discussions between you and Mr Martinez, which have been helpful and productive, but there still seems to be lingering issues. And I'm not sure Mr Martinez is aware of them. So unless he and I know specifically your concerns about the current work environment, we're not in a position to help address the deficiencies.

So, again, Caryn I would encourage you to think about and let me know what is it that you want and what are your present concerns with the current workplace so that I can present them to Mr Martinez for his response.

The counseling period is coming to an end. I'm more than happy to raise your concerns with Mr Martinez, but I do need to know what you want so that I can present them to him to start the discussion.

I'll be in South Carolina this week attending several Fourth Circuit conferences, but I can make myself available if you have any questions.

Many thanks,

James

James N. Ishida
Circuit Executive
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 617
Richmond, VA 23217-3517

PII

PII

[\[redacted\]@ca4.uscourts.gov](mailto:[redacted]@ca4.uscourts.gov)

On Nov 12, 2018, at 5:18 PM, Caryn Devins <[redacted] PII > wrote:

Dear James,

I have questions about the status of my request for counseling under Chapter X. At this point, my request for counseling under Chapter X appears to be temporally and procedurally linked to the ongoing wrongful conduct investigation under Chapter IX, but I believed that those were separate proceedings under the EDR Plan? My concern is that it seems possible, if not likely, that the counseling period will expire before the wrongful conduct investigation and subsequent actions on Heather's factual report are concluded and shared with me? Stated differently, have we been unable to pursue a resolution of this matter at the most informal level available because the wrongful conduct investigation under Chapter IX is now serving as precondition to counseling under Chapter X?

Under these circumstances, what is the status of counseling? My understanding is that the counseling period ends on November 29. In my request for counseling, I identified the following remedies: (1) the ability to work in an environment free of harassment and retaliation and (2) professional advancement based on merit. I have put pen to paper too many times to count since our last meeting, but I am unable to come up with a proposed solution on my own that would achieve these goals. The problem I keep encountering is, how can these remedies be achieved without action by others, outside of my control? In other words, if I initiate the formulation of the ultimate remedy about how I can do my job, safely and effectively, as a precondition to counseling, then this dilemma seems inextricably linked to my request for disqualification. Put simply, I do not see how I can negotiate a remedy with an individual who retaliated against me for raising concerns of sexual harassment?

Thank you for considering these questions.

Best regards,

Caryn