

# Third Circuit Revives Harassment Suit Against Susquehanna County

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A former part-time secretary for the Susquehanna Department of Veterans Affairs may pursue sexual harassment and discrimination claims against the county and her ex-boss, even though she never reported the former boss's alleged unwanted sexual advances toward her, a federal appeals court has ruled.

The U.S. Court of Appeals for the Third Circuit on July 3 ruled that the plaintiff did not have to pursue remedies established by Susquehanna County in order to prosecute a claim.

Third Circuit Judges Marjorie Rendell, Joseph Greenaway Jr. and Julio Fuentes overturned a decision by U.S. District Judge Robert Mariani of the Middle District of Pennsylvania, sitting in Harrisburg, who dismissed the lawsuit filed by plaintiff Sheri Minarsky.

Mariani had ruled that Susquehanna County had an adequate policy in place to deal with sexual harassment complaints, and that Minarsky had failed to take advantage of that policy.

Rendell, writing for the Third Circuit, noted Minarsky's explanation that she feared termination if she complained about the alleged actions of her supervisor, Thomas Yadlosky, at a time when she needed the income to pay for her child's medical bills.

In her complaint, Minarsky claims Yadlosky repeatedly kissed her, made sexual advances toward her, and demanded to know where she was when she was away from the office.

Because of his behavior toward other women, Yadlosky eventually was reprimanded, and then fired, even though Minarsky never made a formal complaint to the county supervisors, according to the decision.

In a footnote, Rendell noted that companies and government agencies have, over the years, adopted policies aimed at addressing sexual harassment in the workplace, but added that those efforts may not be enough.

"There may be a certain fallacy that underlies the notion that reporting sexual misconduct will end it," she said.

Mariani had based his ruling on two 1998 U.S. Supreme Court rulings: *Faragher*

*v. Boca Raton* and *Burlington Industries v. Ellerth*. In those rulings, the court said employers generally would be shielded from liability in sexual harassment and discrimination cases if they had policies and corrective procedures in place.

But Rendell said that standard may no longer be sufficient.

"The cornerstone of this analysis is reasonableness: the reasonableness of the employer's preventive and corrective measures, and the reasonableness of the employee's efforts (or lack thereof) to report misconduct and avoid further harm," Rendell said.

In this case, Rendell said, there was enough of a dispute that the issue should not have been decided on summary judgment.

"Was the policy in place effective? Knowing of [Yadlosky's] behavior ... should someone have ensured that she was not being victimized? Was his termination not so much a reflection of the policy's effectiveness, but rather, did it evidence the county's exasperation, much like the straw that broke the camel's back?" Rendell said.

"We do not answer these questions, but conclude that there exists enough of a dispute of material facts as to whether

the county 'exercised reasonable care to prevent and correct promptly any sexually harassing behavior,'" Rendell said, quoting *Faragher*.

"Here, Minarsky identified instances where asserting herself rendered her work conditions even more hostile," Rendell said. "Presented with these facts, a reasonable jury could find that Minarsky's fear of aggravating her work environment was sufficiently specific, rather than simply a generalized, unsubstantiated fear."

Minarsky eventually quit her job, even after Yadlosky was fired, the court noted.

Minarsky's attorney, David Koller, said he welcomed the ruling.

"She's brave for pursuing this," said Koller, who heads a firm in Philadelphia. "This is a significant ruling for victims of sexual harassment. The county did have a policy in place, but it wasn't effective."

Dana Zlotucha of Kreder Brooks Hailstone in Scranton represented Susquehanna County. Gerald Hanchulak, who heads a firm in Clarks Summit, represented Yadlosky. Neither returned a call seeking comment.

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