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Article of the week from *Missouri Lawyers Weekly*:



Sex Harassment Charges Hit Dept. Of Corrections HR Official Admits 'Systemic Problems'

By Anne C. Vitale

Sexual harassment of female workers is pervasive throughout the Missouri Department of Corrections, according to testimony given in recent litigation.

A human resource officer for the Department admitted "systemic problems" with pornography in the work and supervisors who discourage women from making complaints.

Attorney Brendan Donelon, who settled a harassment case for a corrections worker in October, said there "blue code" among employees — "which means you don't report fellow officers for this type of conduct or pay the price.

"The ones working there are just plain scared. If you make waves, your life could literally be in danger," Donelon said, since guards count on each other for protection from inmates.

"If you piss off your supervisor, or buck the system, someone may not come as quickly when you radio for help," Donelon said, of Kansas City. "Former female employees were much more willing to share their stories because they no longer have to fear for their well being."

Donelon's client received \$82,500 in the Oct. 29 settlement of the lawsuit, which was reported in the November issue.

In another case, Kansas City attorney Kristi Kingston represented a woman who claimed that her supervisor, prison superintendent — harassed her for over four years. That case settled on Oct. 26 for \$75,000, after a federal judge had sanctioned the Department \$31,000 for discovery violations.

Kingston said, "I believe that the number of lawsuits filed against the Department of Corrections will only increase if the Department continues to fail to send a message to its employees that sexual harassment in the workplace will not be tolerated."

A report on the Oct. 26 settlement in *Franklin v. Missouri Department of Corrections* appeared in the November issue.

Sexual Harassment

In Kingston's case, Carroll Franklin, 55, was a caseworker for the Missouri Department of Corrections at the Chillicothe Correctional Center in Chillicothe, Mo. James Washington was the superintendent over the entire correctional facility — first in the chain of command over the associate superintendent, functional unit manager and caseworkers. Washington also provided oversight for Franklin in her capacity as Institutional Grievance Officer at the facility.

Between September 1997 and October 2001, Franklin claimed that she was subjected to a hostile and offensive work environment created by Washington's repeated and continually intensifying sexual overtures and propositions. For instance, she claimed that Washington's offensive conduct included requests for sexual comments about Franklin's breasts, offers to buy her meals and gifts, comments about his sexual life and "needs," and comments to Franklin and other employees that he could "[have sex] with you today, and first tomorrow."

Franklin further claimed that in October 2001, Washington offered to ensure that she received a promotion to a functional unit manager position if she would have sex with him. Franklin maintained that because she rejected Washington's advances, she was denied the promotion.

In June 2002, Franklin claimed that she was again denied a promotion after reporting Washington's sexual harassment and filing a discrimination charge with the EEOC. She filed suit in February 2003.

Kingston said the Department argued that Washington is not a "supervisor" since it maintains that only G Lombardi, Director of Adult Institutions, has the ultimate authority to promote and discipline employees at Franklin's level. The department also maintained that the sexual harassment was not unwelcome and the harassment did not rise to the level of a "hostile and offensive work environment."

Kingston said the Department further argued that it proved its affirmative defense as a matter of law. Specifically, she said the Department argued, "(a) that the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

Sanctions

According to a court order issued in September, the Department responded in an interrogatory that Franklin had not been the subject of any work-related "complaints or deficiencies." When asked to identify specific information regarding any "claimed violation" of the Department's sexual harassment policy made by Washington or other employees at the facility, the order revealed that the Department objected that the interrogatory was "overly broad" and "unduly burdensome," and that the requested information was "confidential and not discoverable."

Similarly, the order stated that the Department objected to a request for specific information regarding whether Franklin "participated in any conduct of a sexual nature" as being "overly broad and unduly burdensome." However, the order said the Department replied with a general statement that it "knows plaintiff to have engaged regularly in the exchange of sexually laced banter, jokes, innuendo, comments, and the like throughout the course of her employment at Chillicothe."

While cross-examining Franklin at trial, the order said that Assistant Missouri Attorney General Virginia Murray asked Franklin whether she had been "counseled" by a supervisor for having placed a "nudist brochure" on a worker's desk. Murray then asked if Franklin had been sent to sexual harassment training. "Both the timing of the question and the manner in which Murray asked it implied to the jury ... that Franklin had been sent to sexual harassment training as a result of the adult brochure incident," the order stated.

Kingston said that when she approached the bench to object to this line of questioning, Judge Nanette Larson determined that the Department had a duty to supplement the interrogatories to which it had objected and she declared a mistrial. Kingston subsequently sought and received \$31,572 in sanctions for attorneys' fees and costs against both the Department and Murray for the discovery omissions. She said the court also ordered the Department and Murray to pay an additional \$4,646 in sanctions for jury costs from the trial.

At the conclusion of retrial in late August, the jury returned a \$10,000 verdict in favor of Franklin on her h work environment claim, but returned a defense verdict on her two failure to promote claims. After Frankl a claim for attorneys' fees and costs of over \$149,000, the parties agreed to fully discharge all obligations the \$75,000 settlement.

Murray and another attorney from the Missouri attorney general's office declined to comment for this stor

'Systemic Problem'

In July 2003, a female corrections officer at the Crossroads Correctional Facility in Cameron, Mo., filed a sexual harassment lawsuit against the Department. In her lawsuit, Alysia Dale claimed that she was subj verbal and physical harassment by her supervisor over a two-year period. A report on the Oct. 29 settler *Dale v. Missouri Department of Corrections* appeared in the Nov. 8 issue.

According to Dale's attorney, Brendan J. Donelon of Kansas City, human resource officer Bill Johnson ha investigated three other harassment allegations at Crossroads within two years of Dale's complaint. John who oversees Department human resources for one-third of the state, acknowledged in a deposition that "systemic problems" may exist at Crossroads regarding pornography in the workplace and employees be discouraged from reporting harassment complaints.

However, Donelon said the Department's complaint, investigation and punishment process is "inherently Despite being "the only guy in the process educated and trained" on harassment issues, he said Johnson appears to have "absolutely no authority" to act on the harassing behavior he discovers.

"He cannot even make recommendations for punishments," Donelon said. "All he can do is investigate, s whether policies have been broken, point out systemic problems, and make recommendations for training

Beyond that, Donelon said, George Lombardi, who oversees the entire Department's HR functions from I in Jefferson City, is the only person who can take action against a harasser. And he said Lombardi "relies upon the word and report" from superintendents.

"In our case, Johnson's conclusions regarding Dale's harassment were in turn misrepresented by the superintendent in his report to Lombardi," Donelon said. "So, you can see how the problem is not being addressed."

Kingston pointed out other flaws in the system. "The sexual harassment policy produced in our case had been updated since April 1, 1993, and the policy was fundamentally flawed in that it provided no anti-reta provision." Rather, she said the policy discouraged sexual harassment complaints by stating, "Employee: file false claims of harassment should be aware that discipline will be taken, up to and including terminati

She said the Department's sexual harassment policy also states: "Supervisors are responsible for being ; what is happening in the workplace, and must take preventative measurers to avoid harassment. Supervi have a legal duty for taking corrective action in cases of sexual harassment, and a departmental respons taking corrective action in cases of other harassment."

Despite this policy, she said Jennifer Miller — the associate superintendent at the Chillicothe Corrections during Washington's tenure as superintendent — "never reported to the Department any of the inappropri sexual remarks she had personally heard Washington make at work."

Donelon predicted more legal battles on the horizon. "I would not be surprised if additional lawsuits occur said. "The system is just begging this to occur."



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