

Profile of a **POPULAR** Advocate:  
*Evelyn Johnson*



I am Evelyn Johnson, of Douglasville, Georgia, a former federal judiciary career-tenured employee of 22+ years of the Administrative Office of the U.S. Courts (AO), employing agency, and the Eleventh Circuit U.S. Court of Appeals, Staff Attorneys' Office (SAO), Atlanta, Georgia, employing office, who was fired without good cause, in retaliation for filing a good faith intentional discrimination and disparate treatment complaint. My case background, facts, the inconsistencies between what federal law requires and AO conduct especially for my pursuing legal remedies, and lack of relief presents a significant federal question of public importance requiring the need for legislative action, probing, and some reform of the U.S. justice system.

Prior to my filing the complaint, my file reflected only records of excellent work reviews, including work records from other federal agencies. I was one of five SAO senior administrative support staffs, when I transferred without-a-break in service to the judiciary in January 1989. Between 1998 and 2001, retirements, resignations, and reorganizations created several openings for higher paying positions at which level I had been performing at lower pay and for which I had been training other less experienced and sometimes outside employees.

In March 2002, I discovered the blanket promotions of seven recently hired support staff members in the new organizational chart showing their pay grades and titles. Although I pursued available if not actually promised promotions beginning in 1996, the SAO gave me a then reasonably believable explanation that I "had already received the full promotion" when the judiciary switched to a different salary pay plan in February 1996.

There was no really good explanation for non-promotion based on my performance and experience, and I finally realized and recognized the motive, nature of conduct, and intent of my non promotion was none other than discriminatory. I filed an intentional discrimination and disparate treatment complaint under Title VII of the Civil Rights Act of 1964, as amended in 1991, on the basis of race, ethnic origin (Filipino and only Asian throughout my tenure with SAO), color, age, and sex, under the employing agency's (AO) EEO/EDR Plan, something I was legally allowed to do. I initially filed an Equal Opportunity Commission (EEOC) complaint as I had to pursue administrative remedies before I could sue in federal district court.

Ten days after filing the Title VII EEOC complaint, I started to be subjected to continuing retaliatory action, which would culminate in retaliatory termination of employment without good cause. I filed a timely amended complaint due to numerous violations of federal employment statutes such as engaging in unlawful personnel practices; hostile work environment; computer tampering impeding my work; FMLA (sick leave) problems; and other violations of law. I started receiving unnecessary mundane emails subjecting me to account for hourly-daily activities at work which other support staff were not asked to do. I never had employment issues in that office since January 1989, but only after filing my complaint was I subjected to written reprimand memos, everything I did was scrutinized, which made it seem I could not do anything right at that office anymore.

In April 2002, soon after I filed the complaint, my mother, who lived in California, suffered a stroke and eventually died in May 2002. When

I asked for sick leave due to my mother's sickness, the SAO demanded that I return to work. When I returned to work, the sick leave I asked for was charged to annual leave, something that didn't happen to others similarly situated. The most humiliating aspect of my employment life came when less than sixty (60) days of the discharge of the 2002 EEOC complaint, I was handed the letter of involuntary termination of my employment without cause, but undoubtedly in retaliation for filing of the complaint.

I should note at the outset that there were two complaints filed for various adverse employment actions. The Title VII discrimination complaint was initially filed with EEOC which then went to the federal district court and then to the U. S. Court of Appeals for the 11th Circuit. Another complaint for retaliatory firing was filed with the Merit System Protection Board which then went to the U. S. Court of Appeals for the Federal Circuit.

The dismissal of my Title VII complaint took place under strange circumstances. The SAO counsel told my counsel there would be a "telephone conference" with the judge. My counsel was then summoned to proceed to the judge's chambers when she found out that the scheduled "telephone conference" became the "actual hearing". My counsel was absolutely ambushed and was unprepared when the chief magistrate judge proceeded with the hearing, without appropriate notice to my counsel or to me. This "telephone conference" happened during the Thanksgiving holiday of 2003 when my counsel was unable to get in touch with me due to scheduled mammogram testing which gave a positive result of breast cancer. While I dealt with the life-threatening disease news, the magistrate judge decided my presence was not needed, and the case was dismissed as untimely filed even though I filed it some 18 days before the deadline. Appeal to the 11th Circuit was unavailing.

My MSPB complaint for retaliatory discharge was also dismissed as AO persuaded the MSPB Board that U.S. "court employees do not work for the AO, the court system is under the judiciary, the AO is a separate agency within the judiciary, and that judiciary employees were under excepted service and not competitive service under the executive branch." This was a misrepresentation. As a former federal executive and judicial employee, I am well aware that an employee with more than three years of service acquires status and tenure, could move around for promotion or lateral transfer in all branches of the federal government regardless of the federal employee's type of service, i.e., excepted or competitive, without losing any time of service and entitlement to federal employment benefits. The AO's and MSPB's contention that my employment was some kind of "excepted service" is false.

I timely petitioned in November 2004 the Merit System Protection Board's dismissal of complaint for lack of jurisdiction with the Federal Circuit Court of Appeals. Asserted in my petition was that this case was never given an opportunity for an appropriate and impartial judicial review. An appellate Federal Circuit Court judge issued an order to the Board to review the case on its merits to which the Board haphazardly filed an informal brief without addressing the merits of the case as ordered by the court. The Court of Appeals for the Federal Circuit nonetheless rehashed the Board's order of July 2004, and once again dismissed the appeal for lack of jurisdiction in December 2004.

As a last resort, I filed a Petition for Writ of Mandamus in the United States Supreme Court as a significant federal question of imperative public importance regarding tenured federal employees of the U.S. courts needed resolution. I received another UNOFFICIAL and undocketed two-sentence letter stating, "The Court today entered the following order in the above-entitled case: The Petition for a writ of mandamus and/or prohibition is denied."

And maybe the point of this lengthy narrative is that the Administrative Office and other agencies working with the U. S. Courts should be held to a higher standard of conduct than other federal agencies rightfully sued for discrimination and retaliation in those courts and that those very courts should accord some sort of remedy when that happens. It seems incomprehensible that with both the discrimination complaint and the wrongful termination complaint neither EEOC nor MSPB would have jurisdiction and the federal district court and the 11Th Circuit would affirm one dismissal and the Federal Circuit affirm the other.