Evelyn Johnson's Testimony for the Citizens' Forum on Judicial Accountability

Sponsored By National Judicial Conduct and Disability Law Project (NJCDLP) Conference — May 12-16, 2008

I. 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, but in retaliation for filing a continuing-intentional discrimination and disparate treatment complaint due to non promotion for more than six years, while newly-hired employees were promoted one- to three- times beginning their second, third, and fifth year of employment with SAO. I believe the NJCDLP selected my testimony because of my case background, facts, overwhelming evidence on all allegations of egregious conduct, abuse of power and authority of judiciary officials in their official capacity, without accountability of their wrongful actions, and this case presents a significant federal question that has imperative public importance requiring the need for legislative action and judicial reform of the U.S. justice system.

I spent the last 14-½ years of my federal employment with SAO, with no record of unsatisfactory performance, character and attitude deficiencies, adverse employment issues, but 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. In 1998, 1999, and 2000, three of the support staffs took early retirement, which precipitated the hiring of new support staffs. The last 3-½ years (1999-2003) of my employment with SAO, I became the HR coordinator, single-handedly performed the administrative duties in recruiting and personnel, and the personnel liaison between SAO and AO, including other duties, without added compensation. In the spring of 2001, the SAO underwent unprecedented resignations of more than two-thirds of staff attorneys on board due to management and work-related issues, and overall low office morale. The court issued an office self-study mandate to resolve employment issues. All SAO employees participated, excluding the head of the office, the senior staff attorney, which resulted in major office reorganization.

The SAO promoted several staff attorneys to supervising attorneys, hired more line staff attorneys, and added two high-paying positions. One of the positions was a recruiting manager position. Although I applied for the position, my application was the only application not considered for the position, which I had been performing administrative recruiting duties and personnel, with no added compensation for more than three years. The SAO then gave blanket promotions to seven support staffs, *excluding me*. The SAO manipulated the system by *creating exaggerated and false position descriptions (PDs) because the duties listed on each employees' new PD has not been performed by those employees, but for the AO's approval of the promotions*.

The SAO hired an outside female candidate for the recruiting manager position, who did not meet the minimum requirements listed on the vacancy announcement, and was paid almost twice as much as my salary. The SAO asked me to train this person about everything involved in recruiting and personnel administration in the judiciary, including training another support staff, who was included in the blanket promotions and was given a PD, identical to my PD. These new employees took over the duties I performed single-handedly for 3-½ years without added compensation, when I was unlawfully fired due to my filing of the complaint. *The other position, personnel manager position, which was approved by the court during the reorganization, was the only position arbitrarily not filled so I could not apply*.

II. On March 1, 2002, I discovered the blanket promotions of seven recently hired support staffs when the new organization chart was placed in each employees' mailbox, showing their new grades and titles. Although I pursued the promised full promotion beginning in 1996, the SAO gave me reasonable believable explanation that I "had already received the full promotion" when the judiciary switched to a different salary pay plan in February 1996. I finally realized and recognized the motive,

nature of conduct, and intent of my non promotion was none other than discriminatory because there was no plausible explanation of my non promotion for more than six years, while other support staffs were promoted up to three times beginning 1998 through 2002, and the recent occurring events and major changes in the SAO. I filed the 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.

III. Ten days after filing of the complaint, I was subjected to continuing retaliatory actions, through the retaliatory termination of my employment without good cause. I filed a timely amended complaint due to numerous violations of federal employment statutes, among other things, engaging in a wide-range unlawful personnel practice; hostile work environment; work harassment through computer tampering impeding my work; FMLA; abuse of power and authority affecting my compensation, terms, and conditions of employment; Constitutional right of due process violation; and violation of other federally protected statutes under CAA of 1995. I started receiving unnecessary mundane e-mails and subjected me to account hourly-daily activities at work, while no other support staffs was asked to do. While I never had employment issues in that office since January 1989, I was subjected to written reprimand memos, everything I did was scrutinized, which seemed that I could not do anything right at that office anymore. I was asked to fully train the newly-hired recruiting manager the bulk of my duties and responsibilities in federal judiciary recruiting and personnel, and to train the new support staff ministerial clerical duties. I also began having daily computer problems, specifically when connecting to the judiciary internet server and when printing judiciary forms. I never had daily occurrence of computer issues before the filling of the complaint, and no one else in the office was experiencing regular computer issues but me. This prevented me from doing my job since computer technicians were always trouble shooting my computer and printer that would not work properly. 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 gave me more grief, demanded I need to return to work, while most of my duties and responsibilities were distributed to two newly-hired employees. When I returned to work, the sick leave I asked was charged to annual leave. Another newly-hired employee experiencing same personal hardship was charged sick leave contravening internal rules on leave usage applied to me. A newly-hired staff attorney, who had not accumulated any annual or sick leave, asked for time off due to personal hardship of her family member. The SAO asked me to send a memo to all personnel court-wide for leave contribution donation on behalf of this employee, while she was not entitled to receive the employment benefit as a temporary employee under court rules. This employee received 420 hours of annual leave contribution donation. After she exhausted the leave donated for her use, she resigned approximately ten months from the time she started work with the SAO. After filing of the complaint, employees avoided me, and my work environment became horrific and the most emotionally traumatic place to be, while I dealt with this employment dispute, constant scrutiny of my presence in that office, and the trauma of dealing with my mother's death. I had remained professional in the remaining days of my employment there, and the most humiliating aspect of my employment life came when less than sixty (60) days of the discharge of the 2002 complaint, I was handed the letter of involuntary termination of my employment without cause, but in retaliation to the filing of the complaint.

IV. The federal courts and the judicial agency, the AO, deliberately violated the law, intentionally deceived and misrepresented permanent-status and tenured U.S. courts employees' rights and protections of federal employment, skirted responsibility and accountability through unconscionable legal maneuvers or gamesmanship and technicalities.

A. 1. Eleventh Circuit U.S. Court of Appeals Dismissal of Initial 2002 EEO/EDR Complaint in March 2003. After the dismissal, I petitioned the court's judicial council for review of the dismissal of the complaint. The circuit executive's office sent me an order, on behalf of the court's judicial council, with *all council members' names listed on the order*, dismissing my petition. The following day,

I received a letter from the same office stating that *I replace the order I received the day before with the attached order, exactly same language, but the judicial council members' names were removed*.

2. Dismissal of the Adverse Personnel Action of Involuntary Termination in October 2003. Facts and allegations here were fully documented substantiating all federal employment violations alleged, and were admitted in court at the initial filing of the complaint, and throughout the entire processes of this employment dispute. The preponderant evidence I submitted was never considered, never given an appropriate and impartial judicial review, never adjudicated, and this federal employment dispute remains unresolved for more than six years.

3. Dismissal of Retaliatory Termination Complaint Filed Due to the Filing of the 2002 EEO/EDR Complaint, in December 2003. The SAO counsel told my counsel there would be a "telephone conference" with the judge. My counsel was summoned to proceed to the judge's chambers when she found out that the *scheduled "telephone conference" became the "actual hearing***,**" with the respondent, her counsel, the EDR coordinator as the SAO witness, and a court transcriber were present. 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,* supported by her certified letter of December 12, 2003, to the magistrate judge. The scheduling of the "telephone conference" happened during the Thanksgiving holiday and the last week of November 2003. My counsel was unable to get in touch with me due to a scheduled mammogram test, other hospital visits due to questionable results, and finally, *a positive result of breast cancer***.** While I dealt with the life-threatening disease news, ***not appropriately notified of the "hearing," the magistrate judge proceeded with the hearing without my presence, and ultimately, the SAO, the employing office/respondent, DECIDED FOR ME that my presence was not necessary at the hearing***. *The case was dismissed as untimely filed, while the burden lied on the opposing party. It is significant to note that I filed the complaint 18 days before the deadline, with my documentation to contact the retained counsel on anything regarding the case*. Because of retained counsels' transition from Washington, D.C. to Atlanta, there was a lapse of a couple of days. My counsel asked the EDR coordinator for a copy of the EDR Plan, but he argued that she should have asked me for the copy of the Plan, which was given to me in *January 1989*. ***The respondents persuaded the judge to dismiss the case as untimely, without my presence to rebut SAO's argument that I filed this action 18 days before the deadline***, evidenced by the EEO/EDR form I faxed to the clerk's office with a note to contact the retained counsel, but the EDR coordinator failed to notify the retained counsel in Washington, D.C.

B. Dismissal of the Appeal Petition with the Merit Systems Protection Board (Board) in July 2004. The case was dismissed for lack of jurisdiction while it was before the full Board. The AO persuaded the MSPB Board that U.S. *"court employees do not work for the AO, the court system is under the judiciary, the federal agency, 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 absolutely intentional misrepresentation and deception of U.S. courts employees' employment rights and protections, by *judiciary rules definition of "agency"and "employing office." Under the judiciary rules, U.S. courts fall under the definition of "employing office," and the AO, is the only employing "agency" in the judiciary*, which has the oversight jurisdiction over its employing offices, evidenced by copies of Federal Judiciary Rules and Procedures, U.S. Code sections, and other federal statutes I provided throughout the processes of this case. As a former federal employee of both executive and judiciary branches of the federal government, I acquired knowledge and experience in personnel administration. As the HR coordinator and the personnel liaison between SAO and the AO, I have thorough knowledge of judiciary personnel responsibilities, which involved processing personnel actions on appointment of new employees, departing employees, promotion actions, transfers, payroll, and employee benefits. It is noteworthy to mention that, when a federal

employee has been converted into a permanent position with more than three years of service, he/she automatically acquired 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. ***There was no credence to the AO and the Board's contention that "U.S. courts employees have no federal employment rights and protections of employment because [they] are employed under 'excepted service' in the judicial branch and are not covered by any merit or civil service system."***

C. Dismissal of the Petition Appealed Through the U.S. Court of Appeals for the Federal Circuit in April 2005. I petitioned timely in November 2004, the Board's dismissal of complaint for lack of jurisdiction with the Federal Circuit Court of Appeals. Asserted in my petition 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, while the AO and the Board argued who should be the proper respondent. On its motion, the AO stated, *"The respondent [AO] and the board agree that the MSPB's dismissal of Ms. Johnson's appeal for lack of jurisdiction is not a final order or decision on the merits of the underlying personnel action."* (Emphasis). In response to the Federal Circuit Court's order, the Board haphazardly filed an informal brief *without* addressing the merits of the case as ordered by the court, nonetheless rehashed the Board's order of July 2004, and once again dismissed the appeal for lack of jurisdiction in December 2004. After the supposedly reviews, *I received an UNOFFICIAL, unsigned, and undocketed court order, evidenced by the lack of court official stamp that it was received and docketed in the Clerk's Office, which affirmed and essentially transposed the MSPB Board's decision, dismissing the petition for lack of jurisdiction*. The court order was fraudulently issued to me, and the decision was based on falsity.

D. Dismissal of the Petition for an Extraordinary Writ of Mandamus and/or Prohibition with the U.S. Supreme Court in January 2006. As a last resort, because the case was never given the opportunity for an impartial and appropriate judicial review to substantiate the legality of all allegations, never adjudicated, which compromised and jeopardized my entitlement to vested federal employment benefits and retirement, and because adequate relief cannot be obtained in any other court, I filed the petition, docketed as case number 05-509, In Re Evelyn Johnson, Petitioner. The writ will be in aid of the Court's appellate jurisdiction over U.S. appellate courts, and that the courts below had decided a significant federal question that has imperative public importance, especially to the tenured federal employees of the U.S. courts. *The U.S. Solicitor General (representing the respondent/SAO) sent the SAO and me a Waiver on November 7, 2005, stating, "The Government hereby waives its right to file a response to the petition in this case, unless requested to do by the court."* On December 7, 2005, the docket indicated "DISTRIBUTED for Conference of January 6, 2006." *On January 9, 2006, I received another UNOFFICIAL and undocketed two-sentence letter, evidenced by the lack of Court OFFICIAL received-stamp from the Clerk's Office*, 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." The letter was signed under the signature-stamp of the Clerk of Court. This letter was sent to me only. Neither the U.S. Solicitor General nor the respondent (SAO or AO) received a copy of this letter.*

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CLOSING STATEMENT

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Critical Information Through Telephone Communication with the U.S. Supreme Court Clerk's Office Personnel

I. Pattern in the Disposition. ***Due to the pattern in the disposition of this legitimate federal employment complaint, I sent letters specifically addressed to the Chief Justice, and Justice Breyer, under Subject, Chairman, Committee on Judiciary Ethical Complaint Act of 1980.*** After more than one month of receiving no response or confirmation that my letters were received by the addressees, I called the U.S. Supreme Court Clerk's Office to confirm if the packets I mailed were received by the recipients. The U.S. Post Office tracking numbers confirmed that both packets were received, signed, and delivered in the Clerk's Office. While I wanted to talk to someone in the Clerk's Office to confirm that the packets were delivered to the recipients, I was given the run-around by the Clerk's Office personnel, with no one to confirm that the packets I mailed were delivered to the recipients. I called Justice Breyer's chambers and was able to talk to one of his staff, "A." "A" asserted that they *"had no record of any correspondence coming from you*." "A," however, informed me that she *"will make some phone calls in the Court to find out where the packet was delivered since it was confirmed that the Court received the packet and [she] will call [me] back.*" Ten days after I had spoken with "A," she still had not returned my call. *I called "A" once again, and her response to me was,* ***"I had not seen the packet addressed to Justice Breyer because it was intercepted in the Clerk's Office."*** The envelope containing the letter and other documentation addressed to the Chief Justice was addressed to the Public Information Officer, with large *"Confidential*" written outside the envelope, including the ones addressed to Justice Breyer. While I called that office as well, the Public Information Officer refused to talk to me. In my communication with "A," she confirmed that any letters, packets addressed specifically to a particular justice were delivered to the chambers *unopened*. The same rule of mail delivery applies to the Eleventh Circuit Court judges. The fundamental question was why was the U.S. Supreme Court Clerk's Office ***intercepting my correspondence*** to the justices while I was trying to resolve major federal judiciary employment violation with catastrophic injury, which affected my entire life, compensation, terms, and conditions of my employment without due cause?

II. Overwhelming Conflict of Interest. For more than six years that I have been dealing with this case, including dealing with life-threatening disease of breast cancer and its treatments, the AO and SAO's actions, fraudulent and illegal behavior, including those involved in sabotaging this non frivolous, meritorious, and legal federal employment case were reprehensible, which undermined the fundamental principles of the U.S. justice system. Under the federal statute, the ***AO***, the judiciary agency, does not only ***provide administrative and personnel oversight responsibility*** to U.S. courts' employees nationwide, but also ***to personnel of the U.S. Supreme Court. Violations of federal employment laws apply to all federal agencies, including the AO, the only federal agency in the judiciary.*** The AO's oversight responsibility over its employing offices, such as the SAO, extends to reporting federal employment violations to the Judicial Conference of the U.S., chaired by the Chief Justice of the U.S. Supreme Court. Employing offices were to report federal employment violations to the AO annually, which was also part of my responsibility when I prepared annual EDR reports, submitted to the court's circuit executive office, before I was unlawfully fired. Such violations should be then reported by the AO Director to the Judicial Conference toward the end of each fiscal year, and ultimately, the report is submitted to the U.S. Congress.

The fact was that this case was improperly and inappropriately handled because of the unique circumstances generated by the employing office, the judicial agency, and the MSPB Board through collusion and obstruction of justice, denial of due process,

knowingly outrageous conduct, judicial discretion, abuse of power and misconduct of judiciary officials to avoid accountability, which adversely affected this lawful federal judicial employment dispute. The question is who do you go to when judiciary officials and judges break the law? What does one do when a legitimate and meritorious equal protection complaint, in any way affected the administration of justice or subverted confidence in the judicial process, refusing to follow or apply the law equally and fairly to ordinary federal judicial employees? The EDR proceedings held on this case at the Eleventh Circuit were nothing but for formality appearances. The employing office was accused of, and proved by preponderant evidence, of engaging in grossly and egregious, unprofessional, unethical conduct, deliberately subjected me to emotional torment and retaliatory actions, intimidation, work harassment, creating a hostile work environment, and ultimately retaliatory termination without good cause, and against my will. Although the enormity, nature of conduct, and unlawful federal personnel actions of respondents were so vile, willful, and egregious, the federal judiciary agency refused take accountability of its officials' wrongful and unlawful actions.

The judicial agency cannot continue to deliberately deceive and misrepresent the rights and protections of employment of U.S. courts' employees because U.S. courts' employees do not physically work at the AO building in Washington, D.C. The judicial agency's unscrupulous conduct of railroading the judicial system and conspiring to prevent accountability of judiciary officials' intentional wrongdoing must cease. It is absolutely unfair, unethical, and unlawful for the judicial agency (AO) to protect the unlawful actions of judiciary officials to prevent accountability, while violating the fundamental rights and protections of employment of ordinary U.S. courts' employees, who tirelessly work behind the scenes, supporting the function and mission of U.S. courts nationwide and in the society. This is an absolute miscarriage of justice. I respectfully appeal to the panel that it is imperative for the legislature to revisit H.R. 5219 and S 2678, two bills passed by both sides of Congress "to amend Title 28 of the United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary," which were referred to the Committee on the Judiciary on April 27, 2006, must be signed into law to effectively protect judiciary employment rights, without the inherent conflicting responsibilities of the judicial agency in managing, processing, and adjudicating meritorious, legitimate, and lawful judicial employment dispute.

It is my undeniable right as a U.S. citizen under the due process and equal protection of law, federal employment rights and protections' statute, and as an aggrieved former employee within the meaning of Title VII of the Civil Rights Acts of 1964 and 1991, and other activities protected under Title VII and the EDR/EEO plan, which provides remedies regarding compensations, terms, conditions, or privileges of employment at the various and numerous adverse employment actions directed to me intentionally, and on a continuing basis, several provisions of the Acts entitle me to relief. Furthermore, pursuant to the Federal Employees Retirement System, I am entitled to receive my federal employment entitlement to retirement and its corresponding benefits under the provisions of Minimum Retirement Age (MRA) beginning **July 1, 2007,** which were all stripped when I was unlawfully fired in 2003. While I am statutorily entitled to receive my retirement annuity beginning July 1, 2007, I am unable to receive my lawful, vested entitlement to retirement, which the AO is unlawfully withholding. Pending legal employment issues against the judicial agency and its effect on my employment status, and in the absence of a legitimate court order, this case requires legislative action in order to resolve this judicial employment dispute. I respectfully request the legislature to introduce an appropriate bill to reclaim the rights, privileges, and protections of all federal tenured judiciary employees, specifically U.S. courts' employees. Thank you so much for your kind assistance regarding this matter.

Respectfully submitted,

Evelyn Johnson