

## FROM THE COURTS

## Federal Court: State Judge is Immune From Claims He Sexually Harassed Private Contractor

by Allison Dunn

After previously concluding Maine state court Judge Charles F. Budd Jr. had qualified immunity from a sexual harassment lawsuit filed against him by a privately-employed drug court counselor, a federal court has further rejected the plaintiff's attempt to show that the jurist had supervisory authority over her.

Samantha Pike, a licensed alcohol and drug counselor employed by Wellsprings Inc., a treatment center contracted with the Maine Treatment Recovery Court, accused Budd of making unwelcome sexual advances as they attended the National Association of Drug Court Professionals Conference in Nashville, Tennessee in July 2022, according to court documents.

Pike spent approximately 16 to 25 hours per month working with the Penobscot County Adult Drug Treatment program, which was overseen by Budd, according to a lawsuit filed in federal court, which also included allegations brought by a second woman, Natasha Irving, the district attorney for Maine's Sixth Prosecutorial District, who accused Budd of propositioning her to sleep with him in his hotel room at the same conference within minutes of meeting him.

Budd, represented by Melissa A. Hewey of Drummond Woodsum in Portland, Maine, disputed the allegations and whether they rose to the level of violations of the Fourteenth Amendment Equal Protection Clause. Budd also argued that he was entitled to qualified immunity.

In June, U.S. District Judge Lance E. Walker of the District of Maine agreed and granted Budd's motion to dismiss. Walker concluded that Irving failed to state a claim upon which relief could be granted. As for Pike's allegations, Walker found that the "viability of a constitutional claim" may not yet be established in the circuit.

"I conclude, reluctantly, that the law is not clearly established that a state official who verbally pursues a sexual relationship with an employee of a private company violates the Fourteenth Amendment Equal Protection Clause, even if the verbal pursuit qualifies as workplace sexual harassment for purposes of a motion to dismiss. For those reasons, Defendant's Motion to Dismiss will be granted," Walker wrote in the June order.

In response, Pike sought relief from Walker's judgment in order to file an amended complaint to provide additional details as to how Budd exercised supervisory authority over her, "including his authority to remove her from the drug treatment team and wipe about a substantial share of her job responsibilities—and to approve or disapprove her absences," the plaintiff argued.

"[T]he Court based its conclusion on Mrs. Pike's status as a private contractor, concluding it was not clearly established that a state official who verbally pursues a sexual relationship with an employee of a private company violates the Fourteenth Amendment Equal Protection Clause. ... This was mistaken. To counsel's knowledge, no circuit has suggested that the clearly established rule that state-official supervisors may not sexually harass their subordinates gives way to an exemption when the victim is a private employee. The test

turns on the defendant official's authority—not the victim's status as a private or public employee," Pike's counsel, Laura White, of White & Quinlan, wrote in the motion for relief, citing the U.S. Court of Appeals for the 10th Circuit's 1999 opinion in *Johnson v. Martin*, in which held that "precedent clearly established that 'a public employee could be held liable for using governmental authority to sexually harass a nonemployee' even though the closest cases all involved alleged sexual harassment against public employees."

In *Ebelt v. County of Ogemaw*, a 2002 Eastern District of Michigan opinion, the court recognized there is "no basis for a holding that a state-official supervisor may sexually harass a subordinate simply because a private company cuts her paycheck," White further cited. *Ebelt* involved a privately-employed janitor in a county workplace who sued a group of state employees for sexual harassment and retaliation under Section 1983.

White quoted the *Ebelt* court's finding that "no decision on this matter within this Circuit has explicitly left open the question of whether independent contractors somehow receive less protection from their supervisors."

"The same is true here: nothing in the First Circuit's caselaw indicates that it grants state contracts less protection than the state employees they work alongside," White wrote.

But in a new ruling issued Wednesday, Walker maintained his stance, denying Pike's request, after looking more closely at Budd's alleged "supervisory authority over Pike's employment."

"I remain persuaded that, notwithstanding Plaintiff's desire to plead additional 'facts' in an effort to characterize a judge as the supervisor of everyone whose work brings them to the courthouse, that contention is, at best, subject to debate and, consequently, Defendant is shielded by qualified immunity," Walker wrote.

"Indeed, many if not most judges would regard professionals such as counselors to be like other private professionals who work in the courthouse (e.g., attorneys), on approximately symmetrical footing from an employment standpoint who plainly are not subordinates subject to their supervisory oversight," Walker continued. "It is not obvious to me from the authority filed over several installments that apparent supervisory authority, if such a thing exists, rooted exclusively in a subjective belief that a judge's authority is without end, is the equivalent of a judge's actual legal supervisory role over employment subordinates, necessary to support the beginnings of a constitutional claim."

A notice of appeal regarding Walker's dismissal was filed last month. White told Law.com Thursday that attorneys with Public Justice, a nonprofit legal advocacy organization that takes on purveyors of corporate corruption, sexual abusers and harassers, and polluters of the environment, will be leading that task.

"No one should have to go through the sexual harassment Samantha experienced just to earn a living," said Sean Ouellette, a staff attorney on the case. "And we don't think the Constitution allows it: the Equal Protection Clause protects all workers equally. We look forward to arguing the case on appeal."

**Allison Dunn is a reporter on ALM's Rapid Response desk. Contact her at [aldunn@alm.com](mailto:aldunn@alm.com). On X: @AllisonDWrites.**



## CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL MEETING** on **September 13, 2023 beginning at 6:00 PM** to consider a six (6) month moratorium on the processing of all applications and permits for proposed development in connection to Section 166.04151(7) of the Florida Statutes ("Live Local Act"). The City Council will consider this item for **SECOND READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

### ORDINANCE No. 2023-24

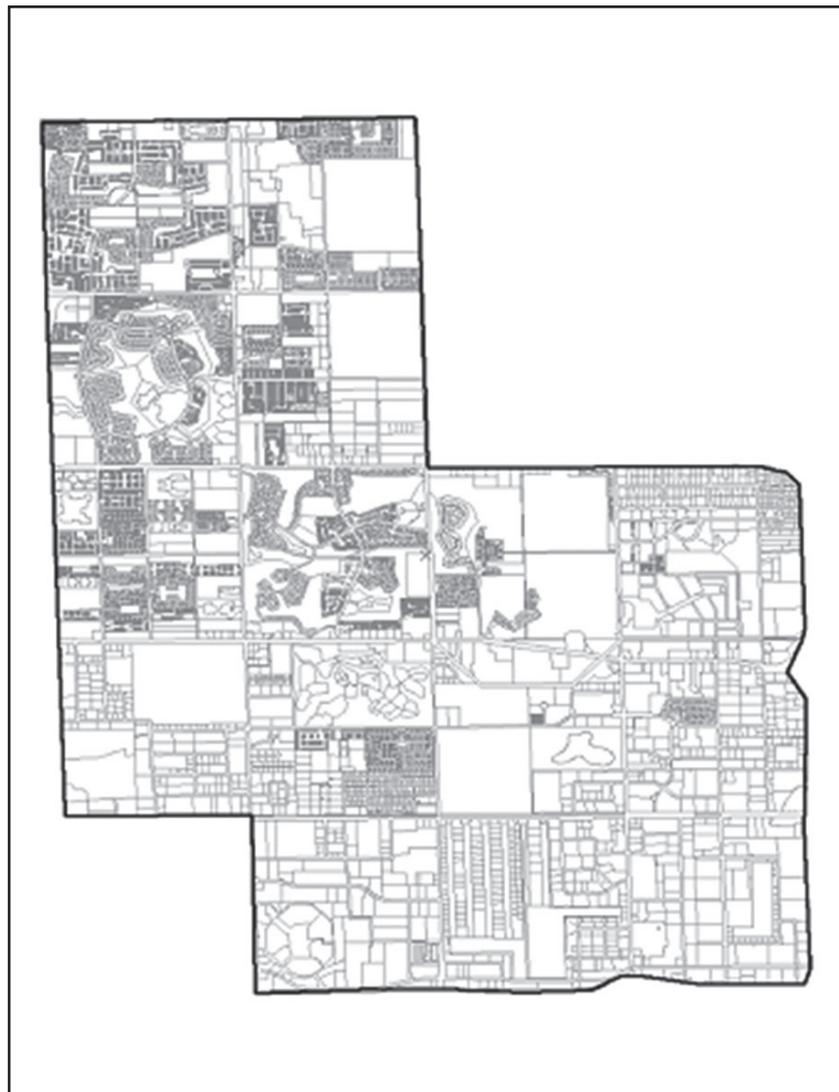
**AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, ESTABLISHING A SIX (6) MONTH MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND CONSIDERATION OF ALL APPLICATIONS FOR DEVELOPMENT ORDERS, DEVELOPMENT PERMITS, BUILDING PERMITS AND ZONING APPROVALS FOR PROPOSED DEVELOPMENT(S) AUTHORIZED UNDER SUBSECTION (7) OF SECTION 166.04151, FLORIDA STATUTES, FOR PROPERTY LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF DORAL, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE**

**HEARING NO.:** 23-08-DOR-06

**APPLICANT:** City of Doral

**REQUEST:** The Mayor and City Councilmembers are requesting the establishment of a six-month moratorium on the acceptance, processing, and consideration of all applications for development orders, development permits, building permits and zoning approvals for proposed development(s) authorized under subsection (7) of section 166.04151, Florida Statutes.

### Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC  
City Clerk  
City of Doral

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