

UNITED STATES MARSHALS SERVICE

AFFIDAVIT

STATE OF VIRGINIA

CITY OF Falls Church

I, Marlene Wahowiak, make the following statement freely and voluntarily without promise or coercion to Patrick Anderson, who has been identified to me as an Equal Employment Opportunity (EEO) Investigator, United States Marshals Service, knowing that this statement may be used in evidence. I understand that the information is given without a pledge of confidentiality and that it may be shown to parties with a need to know. The following statement is made in response to the EEO Complaint of Discrimination filed by A. Ashley Tabaddor against the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) on November 29, 2012.

I have been advised that the claim accepted for investigation is as follows:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

I hereby solemnly swear or affirm:

National Origin

National Origin Discrimination The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

QUESTION #1: For the record, what is your full name and job title?

ANSWER: Marlene Mary Wahowiak, Associate General Counsel

QUESTION #2: Where were you employed at the time the complaint was filed? Please provide the name of the agency, division, and location. How long have you worked in your current position? How long have you worked for the agency?

ANSWER: I was on a detail to EOIR/OGC/ELR (since March 2012). I had been an Assistant Counsel at the Department of Justice's Office of Professional Responsibility (DOJ-OPR). I became permanent at EOIR/OGC/ELR in December 2012.

QUESTION #3: Who were your 1st and 2nd level supervisors? Please provide their names and job titles.

ANSWER: Jeff Rosenblum, then Chief of the ELR Unit. I assume my second level supervisor at EOIR would have been Juan Carlos Hunt, then the Acting General Counsel. I also had a supervisor at DOJ-OPR throughout 2012, Associate Counsel Neil Hurley.

QUESTION #4: What is your National Origin?

ANSWER: White/Polish American

QUESTION #5: To your knowledge, what is Judge Tabaddor's National Origin? When and how did you become aware of her National Origin?

ANSWER: I believe she's of Iranian origin. I do not recall when I became aware of that, or how.

QUESTION #6: Did you have a conversation with Mr. Jeffery Rosenblum regarding Judge Ashley Tabaddor? What was the extent of the conversation?

ANSWER: I recall one or more conversations concerning the fact that Judge Tabaddor had submitted numerous speaking requests. I also recall discussing that some of these requests, perhaps based upon the title of the events, appeared to be advocating on behalf of a particular immigration point of view *vis a vis* Iranians.

Mr. Rosenblum states that you looked up Judge Tabaddor on the internet (Google).

QUESTION #7: Did you look up Judge Tabaddor on the internet? Why did you find it necessary to do so? What information was obtained from the search?

ANSWER: Yes, I did. As part of my duties when serving as the Ethics Duty Attorney (a rotating position among the ELR attorneys) I had some concerns about an immigration judge/Department of Justice attorney appearing before groups at events which seemed to advocate a particular position. I believe I conducted the search after discussing these concerns with Mr. Rosenblum, and then Associate General Counsel Rena Scheinkman. Upon searching the internet by the judge's name and the word "Iran," based upon an email I wrote on August 22, 2012, my search led to 970 hits.

QUESTION #8: Based on the information obtained on the internet search, did you recommend that Judge Tabaddor disqualify herself from matters involving individuals from Iran due to her activity in the Iranian American community?

ANSWER: I have been advised by Agency counsel, and I concur, that any advice or recommendations I made are privileged.

QUESTION #9: What regulation did you follow or what guidance did you receive prior to making this search? Who provided the guidance? If from a policy, please provide a copy.

ANSWER: I simply entered "Ashley Tabaddor" and "Iran" and found 970 hits on the internet.

QUESTION #10: Over the past 2 years, how many other Immigration Judges have you researched using the internet? What was the reason for the search? What was their national origin?

ANSWER: I cannot speak for that entire period because I have only been at EOIR for one year.

The prior period is covered by my employment at the Office of Professional Responsibility.

Regarding my tenure at EOIR, I may have searched the names of judges whose names are in assignments/cases I am assigned, *e.g.*, disciplinary matters, but I cannot recall with any specificity. I do not know the national origin of immigration judges whose names come across my desk as subject of potential discipline.

QUESTION #11: Based on the information obtained in your search, what policy or directive was violated or could be perceived as being violated by Judge Tabaddor?

ANSWER: See Question #8.

QUESTION #12: Have you discussed the findings during your internet search with anyone other than Mr. Rosenblum? If so, who have you spoken with?

ANSWER: Rena Scheinkman. I likely spoke with Charles Smith, Nina Elliott and/or Matthew Bradley. All four are attorneys in ELR.

QUESTION #13: Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and there possible effect on her position as an Immigration Judge?

ANSWER: No.

QUESTION #14: To your knowledge, has Judge Tabaddor's work or personal association with members of the Iranian American community negatively affected her professional standing with the Agency? If so, please explain how?

ANSWER: I have no knowledge.

QUESTION #15: Do you have any documentation support your recommendation to have Judge Tabaddor recused from cases involving Iranian American citizens? If so, please provide a copy for the record?

ANSWER: See question #8.

QUESTION #16: Are you aware of the agency's anti-discrimination policy? Was your recommendation to Mr. Rosenblum based on Judge Tabaddor's National Origin (Iranian)?

ANSWER: Yes I know the policy and no, my recommendation was not based on her national origin. See Question #8.

QUESTION #17: In the past 2 years, how many Immigration Judges requests for personal speaking engagements have you provided a recommendation for? What was the national origin of the IJ?

ANSWER: Again, I have only been here for a year. I have handled dozens of speaking requests from other judges and I do not believe the issue of national origin ever has ever arisen in any of those requests.

QUESTION #18: In the past 2 years, how many requests for personal speaking engagements received from Judge Tabaddor have you been consulted? To your knowledge, how many times has Judge Tabaddor been informed that she could not use her official title during these engagements?

ANSWER: In the past year, I have had several/more than one from her. I believe she had a question with Charles Smith in this Office concerning the use of her title; please consult with him. My recollection is that, consistent with Agency practice, she has always been permitted to use her title with a disclaimer that she is appearing in her personal capacity.

QUESTION #19: To your knowledge, has Judge Tabaddor's requests to use her official title been denied based on her National Origin (Iranian American)?

ANSWER: I have no knowledge of this.

Race:

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

QUESTION #20: What is your race?

ANSWER: White.

QUESTION #21: To your knowledge, what is Judge Tabaddor's race? When and how did you become aware of her race?

ANSWER: See Question #5.

QUESTION #22: Have other staff members been required to recuse themselves from cases involving members of their prospective race? If so, who are they and what is their race? When did this action take place?

ANSWER: Not to my knowledge.

QUESTION #23: Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her race (Iranian American)?

ANSWER: I know of no order given to Judge Tabaddor to recuse herself on anything.

Religion

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs

QUESTION #24: For the record, what is your religion?

ANSWER: Roman Catholic.

QUESTION #25: To your knowledge, what is Judge Tabaddor's religion?

ANSWER: I do not recall ever knowing her religion.

QUESTION #26: At the time of the alleged discriminatory event, which is the basis of this complaint, were you aware of Judge Tabaddor's religious beliefs?

ANSWER: I do not recall ever knowing her religion.

QUESTION #27: Did Judge Tabaddor's religious belief factor into any decisions or recommendations made by you with regard to her personal appearance requests?

ANSWER: No and I do not recall ever knowing of her religion.

Reprisal

Reprisal discrimination makes it illegal to fire, demote, harass, or otherwise "retaliate" against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

QUESTION #28: For the record, do you have any prior EEO activity or have you express concerns to management regarding personnel policies of procedures?

ANSWER: I was interviewed in an EEO case several years ago involving an FBI agent whom I had investigated when I was an Assistant Counsel with the Office of Professional Responsibility.

QUESTION #29: To your knowledge, did Judge Tabaddor express opposition to the recusal order she received? Were any actions taken against Judge Tabaddor by you, based upon her opposition to the recusal order?

ANSWER: I do not know of any order being given to her on the matter of recusal. I recall learning that she objected to the ethics opinion recommending recusal.

QUESTION #30: Also, did Judge Tabaddor's opposition to the recusal factor into any decisions or recommendations made by you with regards to her personal appearance requests?

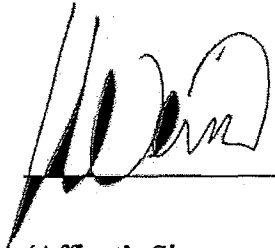
ANSWER: No.

QUESTION #31: Do you have anything else to add?

ANSWER: No.

OATH

I have read the above statement consisting of 7 pages, including this page. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that my statement is true, correct, and complete to the best of my knowledge, information and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to individuals with a right to know.

 3/25/13

(Affiant's Signature and date)

Signed before witness

ON THIS ___ DAY OF _____, 2013