

Amicus Brief in *Jane Roe v. United States et al.* (4th Cir.)

Amicus Brief on Behalf of Current and Former Employees of the Federal Judiciary Who Have Experienced or Witnessed Harassment or Discrimination

Over the last three and a half years, the media has published numerous accounts of [harassment](#) and [discrimination](#) within the federal judiciary, and several individuals who have experienced such harassment and discrimination have told their stories publicly. Despite the national attention on this issue, the approximately 30,000 employees of the judiciary still lack many basic employment protections. Instead, judiciary employees are [subject to opaque internal employment dispute resolution \(EDR\) procedures](#) that leave many without adequate protections to report harassment, much less seek redress. These procedures apply not only to full-time employees of the federal judiciary but also to all federal public defenders, judicial law clerks, externs, and most employees within the Administrative Office of the United States Courts.

In March 2020, an Assistant Federal Public Defender under the pseudonym Jane Roe [challenged the judiciary's EDR procedures in federal court for the first time](#), arguing that these procedures deprived her of her constitutional rights to due process and equal protection. On December 30, 2020, the district court dismissed all of Roe's claims. Roe is now appealing, and we are working to develop amicus support for her appeal.

Our team is drafting an amicus brief on behalf of current and former employees of the federal judiciary who have experienced or witnessed employment harassment and discrimination—whether sexual or of any other nature. The brief will allow these employees to share their experiences. Amici may identify themselves by name, by current job, or anonymously, and any experiences shared will be disaggregated from any identifying information provided unless otherwise discussed and approved. This approach will illustrate the human consequences of the current, broken system.¹ In providing these perspectives to the appellate court, we do not intend to condemn or shame the federal judiciary and its many efforts to reform the system. Instead, we hope to demonstrate—to the court and to any other interested parties—the widespread and pernicious nature of this problem and the need for accountability and redress.

If you or anyone you know is a current or former employee of the federal judiciary who has experienced or witnessed harassment, please fill out [this form](#).² Please find the FAQs below, along with brief summaries of the *Jane Roe* case and the current EDR procedures.

¹ An example of the power of this type of amicus brief is the *June Medical* [amicus brief filed on behalf of 368 attorneys who had abortions](#).

² Available at: <https://forms.gle/augLunCCPUrTtjC39>.

You may also reach out to JaneRoeAmicus@keker.com for more information about the brief. In your email, please provide your name, contact information, state, and professional affiliation with the federal judiciary, and a member of the team from Kecker, Van Nest & Peters LLP will follow up. Please fill out the form or reach out by **May 14, 2021** if you would like to participate or learn more about participating in the brief.

Please note that although the information you provide by form or email is presumed confidential and we will take all reasonable efforts to protect it, submission of the form or receipt of an email does not create an attorney-client relationship. Once your identity has been verified, we may ask you for more information. At that point, if appropriate, we will discuss with you whether to mutually agree that we will represent you and form an attorney-client relationship.

FAQs

Can I participate in this amicus brief if I wish to sign anonymously?

Yes. We understand that experiences of harassment and discrimination are highly sensitive, especially for those who are still employed by or working with individuals who perpetrated or facilitated these experiences. For this reason, we expect that some number of signatories to this brief will want to sign anonymously, though we hope to provide as much context as they are comfortable with about the nature of their employment. In order to sign, however, you will need to disclose your identity to us.

Lastly, while we rigorously guard our clients' confidences, please note that client identities are not necessarily protected by attorney-client privilege. Nevertheless, we will only disclose anonymous signatories' identities if compelled to do so by a court of law.

Do I need to be an attorney to sign this brief?

No. The only requirement is that you are a current or former employee of the judiciary who either experienced or witnessed harassment or discrimination.

If you use my narrative, will you identify me as its author?

Unless otherwise discussed and expressly approved, we will only describe lawyers or other current or former judiciary employees by generic role and will not link individual narratives to specific signatories, named or anonymous. We will follow the same convention used in the *June Medical* amicus brief (link below)—e.g., “One Amicus, a public defender, recounted...”; “Another Amicus, a partner at a large law firm, described her experience . . .”.

Will I need to disclose my employment affiliation and the details of my experience(s) to participate in the brief?

Should you decide to participate, as counsel to the amici for this brief, we will need as many details about your experience as you are willing to share. But we will work together to identify which details, if any, you are comfortable disclosing in the brief, as well as how and to what extent you would like to be identified.

How will my story be used for this brief?

We will ask you to submit a written testimonial about your experience. Excerpts from selected testimonials will be used throughout the brief to demonstrate the myriad ways judiciary employees experience harassment and discrimination in the workplace; why they may or may not choose to report these experiences and go

through the dispute resolution process; the different ways this process can play out; and how judiciary employees' experiences with harassment, discrimination, and the dispute resolution process impact their personal and professional lives and futures. While we will likely not be able to excerpt every single story, they will all inform the final brief. Even if we do not use the details of your specific experience in the final brief, you may still have the opportunity to sign the brief.

Can I choose to participate in the brief without sending you details about my experience or without having my testimonial quoted in the brief?

We will only include details of a signatory's experience if they are comfortable sharing them. That said, as counsel to the amici for this brief, we will need to understand the contours of your experience before determining whether it makes sense for you to sign the brief.

Will you edit my personal testimonial if you include it in the brief?

Our goal is to share the signatories' experiences in their own voices to the extent possible. To that end, we will generally edit testimonials only for length or to correct typos and grammatical errors. If necessary, we may paraphrase or summarize portions of your testimonial. You will have a chance to review a near-final draft of the brief and decide whether to opt out of the process at that point.

Will my testimonial or personal information be used for anything beyond this brief?

Keker, Van Nest & Peters will not use your testimonial or personal information for purposes beyond the filing of this brief, and will make all reasonable efforts to maintain the confidentiality of the information that you share, except to the extent your testimonial is included or described in the brief. Again, all signatories will have the opportunity to review a near-final version of the brief before it is filed, and will be able to make a final decision about whether to participate and sign the brief.

Will any information I share remain confidential?

We know that confidentiality will be a top priority for many potential participants, and we will make all reasonable efforts to protect the confidentiality of any information you do not wish to publicly disclose. We will share the information you provide only to the degree you specify (you will be asked to indicate whether you are willing to disclose the information in your testimonial in the brief, as well as how you would like to be identified, if at all). While we will make reasonable efforts to safeguard your information, unforeseen circumstances can arise and we cannot make absolute guarantees of confidentiality.

If I submit the form, do I have an attorney-client relationship with Keeker, Van Nest & Peters?

No. Although the information you provide by form or email is presumed confidential and we will take all reasonable efforts to protect it, submission of the form or receipt of an email does not create an attorney-client relationship. Once your identity has been verified, we will ask for more information about your experience and proceed from there.

I experienced harassment as an extern, volunteer, or temporary employee of the judiciary. Can I participate in this brief?

Yes. All judiciary employees, even temporary employees or volunteers, are entitled to a work environment free from harassment and discrimination, as well as redress when necessary.

I have not experienced harassment or discrimination in the judiciary, but I may know someone who has. What can I do?

While you will not be able to be a signatory on this amicus brief, you may share these materials with anyone you think may be eligible and interested in participating as amici.

When is the brief due?

The brief must be filed with the Fourth Circuit Court of Appeals on or before July 6, 2021.

If I want to get a sense of what this amicus brief will look like, where can I find the amicus brief that was previously filed in *June Medical Services LLC, et al. v. Gee*, Nos. 18-1323 and 18-1460 (Dec. 2019) on behalf of 368 lawyers who exercised their constitutional right to have an abortion?

That amicus brief can be found at this link:

https://www.supremecourt.gov/DocketPDF/18/18-1323/124111/20191202154936069_18-1323%2018-1460_Amicus%20Brief.pdf

Jane Roe v. United States, et al., No. 1:20-cv-00066-WGY (W.D.N.C.)

Jane Roe is former assistant federal public defender. On March 3, 2020, Roe filed a complaint in the Western District of North Carolina alleging that she experienced sexual harassment, retaliation, and sex discrimination while working in the Federal Public Defender's Office.³ Soon after she began working at the Federal Public Defender's Office, Roe alleges a senior attorney in the office began harassing her by making sexual comments, stalking her, and sending an email suggesting a quid pro quo arrangement. Roe alleges that she reported this behavior to the Federal Public Defender and eventually filed a complaint under the employment dispute resolution ("EDR") process, which was mishandled at every turn. Ultimately, Roe decided to look for a new job. Her complaint names various federal entities and officials as defendants and brings claims for violations of her rights to due process and equal protection, conspiracy to violate her civil rights, and neglect to prevent conspiracy to violate her civil rights.

On December 30, 2020, the district court dismissed Roe's complaint with prejudice.⁴ As to the defendants Roe had sued in their official capacity, the court dismissed her claims on grounds of sovereign immunity. As to the defendants Roe had sued in their individual capacity, the court held that Roe had failed to state constitutional or statutory claims.

On March 29, 2021, Roe filed a notice of appeal.⁵

³ *Roe*, No. 1:20-cv-00066-WGY at ECF No. 1.

⁴ *Id.* at ECF No. 102.

⁵ *Id.* at ECF No. 107.

Current Procedures for Reporting Misconduct in the Federal Judiciary

The federal judiciary has over 30,000 employees who keep the courts running. The judiciary also employs over 3,700 lawyers, investigators, paralegals, and support personnel in the federal defender organizations and over 1,000 people in the Administrative Office of the U.S. Courts. Nevertheless, employees of the federal judiciary do not have access to many of the workplace protections available to other employees through federal law—the Americans with Disabilities Act, Title VII, and more.

Employees of the federal judiciary can report misconduct via three mechanisms. First, if an employee's claims of harassment or discrimination involve misconduct by a federal judge, the employee can file a formal complaint under the Judicial Conduct and Disability Act. Second, most employees can report any misconduct or harassment through the informal or formal procedures outlined in each court's Employment Dispute Resolution ("EDR") Plans. Third, certain employees of the Administrative Office can file complaints under the Fair Employment Practices System ("FEPS") Plan. No employee can access all three avenues.

Over the last three years, the federal judiciary has taken significant steps to strengthen these reporting procedures; however, as many advocates have noted, these changes are not enough to encourage reporting and ensure redress. Many employees do not feel comfortable reporting because of a fear of retaliation. When employees do report, they typically find that the process is opaque, varies from court to court, and contains significant barriers to a full and fair proceeding. Many employees do not find that reporting leads to a just resolution; instead, these employees frequently leave their positions with a lack of trust in the system.

The authors of this brief hope to provide the court with the perspective of current and former employees who have faced discrimination and harassment as employees of the federal judiciary. Many of these employees attempted to report through the formal processes outlined above; none felt that the procedures were fair or adequate. In providing these perspectives to the court, the authors of this brief do not intend to condemn or shame the federal judiciary and its many efforts to reform the system. The authors themselves previously served as law clerks in the federal judiciary and found their clerkships to be formative and enriching experiences. They hope that this brief will show the need for accountability and redress for those whose experiences are not the same.