

Linda Fowler: ADR Excels in Fashioning Alternative Remedies



After three years of suffering, Linda Fowler finally got the justice she deserved through effective litigation.

For well over a year, Linda Fowler was plagued by the sexual harassment of a male co-worker at the Federal Job Corp. in Oconoluftee National Park near Bryson City. Her female co-workers had warned her of the predatory environment to which women had been exposed for years, but Linda thought that she could “handle” the co-worker and otherwise not make waves. But in September of 2001, she reached her breaking point.

One night, Linda went to her supervisor’s office to get some trash bags. She had a cordial relationship with him, and it never occurred to her to be concerned that she was alone with him that night. He told Linda to follow him back to a supply cabinet in a darkened part of the office. Then the supervisor, who weighed perhaps 300 pounds, abruptly grabbed her, kissed her forcefully on the mouth and, while holding her by the neck with one hand, manually raped her with his other.

In the years that followed, Linda was exposed not to compassion, but to denial, scorn, and hostility by successive layers of management—all the way to the agency level in Washington, D.C. The actual harassers abruptly decided to retire a short time after the rape, essentially walking away unscathed. Linda waited in vain for vindication in the form of a final agency decision regarding her internal EEO charge. Although a decision is typically published on the heels of the internal investigation, the agency never issued one in Linda’s case.

In short, by the time suit was filed, Linda had lost faith that anyone in the federal government would acknowledge, much less offer sympathy for, the terrible events that had befallen her. All she wanted, Linda said repeatedly, was to be heard.

Linda’s bleak outlook changed soon after she filed her federal suit in Asheville at the end of 2003. After reading Linda’s Complaint, and apparently sensing the un-

derlying truth of her allegations of rape and subsequent mismanagement, Assistant U.S. Attorney Paul Taylor, a former Magistrate Judge turned Civil Chief of the District, invited Linda to mediate even before the first discovery missiles were launched. Counsel for the parties retained Sarah Kromer, an experienced employment litigator-cum-mediator with the Charlotte office of Moore & Van Allen. Most importantly of all, perhaps, Mr. Taylor selected the agency’s regional general counsel—at least one of whom was a woman familiar with the history of allegations of sexual harassment at the Job Corp. facility—as the agency representatives who would appear at the mediation.

Ms. Kromer, sensitive to Ms. Fowler’s feelings that no one had “heard” her, urged Linda to request anyone from the agency—individual harassers or managers—to come to the mediation to get an earful of Linda’s suffering. She also urged Linda to bring whomever she wanted to lend comfort in the course of the mediation.

What was clear even before the outset of mediation was that money was not the prime issue in the case. During the seven hours of mediation, the parties spent perhaps an hour discussing money. Instead, and to their immense credit, the agency representatives took a surprising tack by looking Linda in the eye and telling her how profoundly sorry they were for her ordeal. They assured Linda of their own horror at what had happened to her physically and about how management turned, at best, a cold eye toward her. They, too, were genuinely alarmed that something like this could occur in the federal government. They actually thanked her for having the courage to stand up and persist in her fight to be acknowledged. And they listened attentively and bore silent witness as Linda released three years of pain through the telling of her anguished story.

Linda Fowler was represented by Philip “P. J.” Roth of the Asheville firm of Marshall & Roth, PLLC. He concentrates his practice in civil rights. For more about this story, contact Roth at 828.281.2100 or proth_mr@charter.net.

Following that cathartic opening, the parties carved out ways to address Linda's emotional pain. Among them: Since Linda was still employed at the facility and distrusted local management, she would be given two separate off-site contacts whom she could call in the event she experienced further harassment or retaliation; attorney Taylor agreed to institute yearly anti-harassment seminars on the site, inviting Linda to participate in them to the extent she desired to share her ordeal with the

trainees; case pleadings would be placed in the two harassers' personnel files, effectively ending their eligibility for further federal employment; Linda would receive apology letters from regional counsel and upper management; and Linda, always interested in the welfare of "her girls" on center, procured a promise that the kids would be given harassment-awareness training upon their arrival at Job Corp.

Needless to say, the combined efforts of all of the participants at the mediation net-

ted a resolution that would have been unavailable in a courtroom and about which they could feel good. A thoroughly exhausted but grateful Linda was greeted by her family on the steps outside the federal courthouse in Asheville. To them, she could say: "They listened to me." Together, the parties did something still more constructive: they effected positive change for the female employees with whom Linda works and the young girls who are placed in the facility's care. ■

CALENDAR

December 3

Workplace Torts & Workers' Comp
The Friday Center, Chapel Hill

December 3

Insurance Law: Finding the Funds
Video Replays
Burlington, Lumberton, Wilmington

December 3

Medical Negligence: Preparing to Win
Video Replay
Greensboro

December 10

Medical Negligence: Preparing to Win
Video Replays
Jacksonville, Rocky Mount

December 10

Wrongful Death Seminar
Sheraton Four Seasons, Greensboro

December 10

Social Security Law: Are You Ready for the Changes?
Sheraton Four Seasons, Greensboro

December 10

Upheavals in the Law of Evidence
Video Replays
Greenville, Morganton

December 17

Insurance Law: Finding the Funds
Video Replays
Charlotte, Rocky Mount

December 17

Upheavals in the Law of Evidence
Video Replays
Burlington, Lumberton

January 6

Insurance Law: Finding the Funds
Video Replays
Hickory

January 7

Insurance Law: Finding the Funds
Video Replays
Greenville

January 7

Upheavals in the Law of Evidence
Video Replays
Charlotte, Greensboro

January 14

Death Penalty Seminar
Sheraton Hotel, Chapel Hill

January 14-15

Family Law Seminar: Retirement Benefits
Marriott Grande Dunes, Myrtle Beach

January 21

Disbursements 2005
Hawthorne Inn, Winston-Salem

January 28

Psychology of a Jury Trial
Sheraton Imperial, Research Triangle Park

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Nursing Home Litigation

Dealing with Colossus *with Jim Mathis*

Business Suits & Commercial Litigation

DWI Seminar

How to Try a Med Mal Case

MARCH

Workers' Comp Roundtable

Ethics for Legal Assistants

Mediation & Arbitration in Auto Torts Cases

APRIL

Liability Issues Using Experts

Land Condemnation Roundtable

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Capital College

Maximizing Damages When Representing the Elderly & Children

Issues with Hispanic/Latino Clients

MAY

Employment Law Seminar

Litigating Tractor Trailer Cases

JUNE

Legal Assistants Division Conference

Criminal Masters in Advocacy Seminar

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