

Diversity Dialogue: Rosemary Garland-Scott, 3/16/21

John Caher:

Welcome to Amici, news and insight from the New York Courts.

I'm John Caher. In today's diversity dialogue segment, we're proud to feature Rosemary Garland-Scott, who wears three hats in overseeing ethics standards in the courts.

As a court system's special counsel for ethics, she is responsible for developing and conducting ethics training programs and for overseeing all aspects of the operations of the Judicial Campaign Ethics Center.

In addition, she oversees nonjudicial ethics and provides ethics advice to the courts more than 15,000 nonjudicial employees. And she serves as staff counsel on the advisory committee for judicial ethics. Previously, she was chief of staff at the New York state judicial Institute.

Ms. Garland-Scott began her legal career as an assistant law clerk to the honorable Paul G. Feinman, now an associate judge of the New York State Court of Appeals. And she was later Principal Appellate Court Attorney in the Appellate Division, First Department.

She earned her bachelor's degree in Business Administration and Management, with minors in Economics and International Business, from Northwood University. And she earned a Master of Business Administration from Long Island University, C.W. Post. She earned her law degree at Touro Law Center.

Rosemary, thank you for your time today. We know where you went to school, we know where you work, but let's take a couple of steps back to the beginning. Where did you grow up? What is your cultural heritage?

Ms. Garland-Scott:

Thank you, John, for the opportunity to talk with you about the work of the Court System's Ethics Department.

My family and I are immigrants from the Bahamas. My formative years were spent there. And while I was still a rather young child, my family immigrated to South Florida in search of better opportunities for themselves and their seven children, of which I am the third eldest.

My siblings and I were all raised in a fairly strict Caribbean Christian home. My father was more of a tough disciplinarian while my mother was always soft spoken, but equally impactful. I love the distinct nature of the Bahamian culture and look forward to every opportunity to visit.

One very unique aspect of Bahamian culture is a festive parade known as “junkanoo.” It is a music and dance form that originated in the Bahamas during slavery and has remained essentially unchanged to this day.

John Caher: What would you like other Americans to know about the Bahamas — what it is, and where it is, and what life is like there?

Ms. Garland-Scott: Well, the Bahamas is a Caribbean Island. It's approximately 21 square miles long. It's not a very big Island but it has, like I said, a very distinct culture. It's a great place to live. I enjoy it. I travel there very frequently. I just love the culture. It's a wonderful place.

The interesting thing about the Bahamas is it really has two major industries, and those are tourism and banking. Banking and finance is a very big industry there. So it's actually one of the wealthier Caribbean islands.

John Caher: That's fascinating. I didn't realize it was that small. And for an Island that tiny, it has really had quite a significant impact and continues to have a significant impact both culturally and economically!

Ms. Garland-Scott: Yes, yes. The Bahamas itself is made up of over 700 islands. But many of those are smaller islands that are uninhabited. The main Island is Nassau. It's the capital of The Bahamas and it's the place where everything pretty much happens.

John Caher: Who are your heroes or role models or most important early influences?

Ms. Garland-Scott: Oh, undoubtedly, my mother tops the list as a role model in my life. At an early age, she instilled in my siblings and me the importance of working hard and developing good character and moral values. She always emphasized that there was no substitute for treating everyone with compassion, kindness and respect, regardless of who they are. She also taught me to never view adversity as a negative. She would often say that it is in the challenging times that a person develops true character and finds their inner strength.

As for my heroes, proudly they are, and always have been, Dr. Martin Luther King, Jr. Congressman John Lewis, James Farmer, and the many incredibly brave women and men of the Civil Rights Movement who fought long and hard for social justice in an effort to achieve equal rights under the law. Their dedication and commitment to social change have resulted in the Black people of this great nation overcoming significant obstacles, including the abolishment of separate but equal laws and the

denial of their constitutional right to vote. I just believe that these individuals, their tireless work, and amazing courage to advance the rights of an oppressed people, despite incredible suffering, cannot be discounted, and, in my opinion, makes them heroes in every sense of the word.

John Caher: Now, much of what you just mentioned involves the law, legal challenges. You are well on your way to a career in business with your undergraduate and graduate degrees. What was it that steered you toward the law?

Ms. Garland-Scott: Yes, I was on a defined career path, in the pharmaceutical industry. I worked as a contract analyst for a few years. I performed data analysis sales trending and forecasting for one of the largest pharmaceutical companies in the world. And it involved lots of formulas and calculations, but I enjoyed the work very much.

However, after experiencing a life change, I realized that I had actually gotten off course and reminded myself that being a lawyer was one of my initial goals that I had set at a fairly young age. So, with that goal at the forefront of my mind, I decided to quit my job and attend law school on a full-time basis. And the rest is history.

John Caher: Now, you spent most or maybe even all of your legal career in the courts. How did you end up in the court system, and why do you stay?

Ms. Garland-Scott: Well shortly after graduating law school, I learned that Judge Paul Feinman, who had been a justice of the New York State Supreme Court, and now sits on the Court of Appeals, was in search of an assistant law clerk which, at the time, was a rather new role in the court system. So, I applied and within a day or two, the judge called and offered me the position. It was a fantastic opportunity to work really closely with a judge who I had heard nothing but good things about, and his staff, and sit in on trials, conference cases, and to learn various aspects of the law.

Now, I stayed in the court system because I truly enjoyed the work. And in late 2010, I believe it was, I accepted a position as a court attorney in the Appellate Division, First Department, where I embraced the opportunity to gain rapid exposure to a wide range of legal issues and areas of law. In the roles that I've had thus far, in a few different areas of the court system, including my current position, I've had the opportunity to work with some truly motivated people who put forth just 110% every day and they make working with them just a joy. So, that was my reason for staying.

John Caher: And that's a great reason. Let's fast forward to the present. What is the Judicial Campaign Ethics Center, and how did you come to have a position with it?

Ms. Garland-Scott: Well, in 2004 the Unified Court System established the Judicial Campaign Ethics Center, which is referred to as the JCEC, and the JCEC has several roles. First, it serves as a liaison to a subcommittee of the Advisory Committee for Judicial Ethics. And in this role, it issues quick and reliable responses to judicial candidates who have ethics questions related to their campaign. And second, the JCEC provides campaign ethics training programs to judicial candidates.

Now, initially, we also had another component to that, which was voter information. We sought to provide information to voters on the judicial candidates, but that is no longer an aspect of the JCEC. Nevertheless, in its role, as liaison to the Judicial Campaign Ethics Subcommittee, the JCEC provides judicial candidates with these responses, just to help them avoid actionable misconduct and help them ensure that candidates act in a way that will maintain public confidence in the judiciary.

If a judge or a candidate wants a formal response, these responses are not published, so they only pertain to the particular candidate who submitted the inquiry. And so only that particular candidate's actions taken in connection with that specific campaign will receive the protection of the Commission on Judicial Conduct.

By a written agreement with the Commission, a candidate who makes an inquiry and subsequently conforms his conduct during that window period is presumed to have acted properly for purposes of any subsequent investigation.

The JCEC is only authorized to answer inquiries from a candidate about his or her own proposed conduct and will not answer questions about the conduct of the candidate's opponents or inquiries from third parties. Nor will it answer inquiries about past conduct. So, if a candidate wants to say, "Hey, I've engaged in this particular conduct, is this acceptable? Is this ethically permissible?" we're not authorized to do that because the whole idea is to prevent them from engaging in conduct that might be prohibited by the rules.

As for how I came to the position, well, that's really quick. There was a job posting, I applied for it, and after a panel interview, was offered the opportunity.

John Caher: Well, that's very simple. Now, let me give you a hypothetical. Let's say you have a judicial election, and as you well know, New York has a hodgepodge of elected and appointed judges. Let's say there's a judicial election. Let's say there is an incumbent judge, someone who's already a judge, and there is someone who is not a judge. Are the judicial ethics rules equally applicable to, in that context, someone who is a judge and someone who is not, but would like to be a judge?

Ms. Garland-Scott: No. Generally, the rules governing judicial conduct prohibit sitting judges from participating in political activity. However, if the judge is seeking re-election to, or election to a higher judicial office, the rule prohibiting political activity does not apply. In that case, the judge or the non-judge candidate may personally participate in his or her own election campaign, but subject to certain limitations. For example, judicial candidates may attend politically sponsored events and may appear at these gatherings with other candidates, even if some of these candidates are candidates for nonjudicial office. Now, while the candidates for nonjudicial office are not subject to the court ethics rules for candidates and their limitations, the Committee has cautioned that a judicial candidate may not be involved in a joint fundraiser with the nonjudicial candidate.

John Caher: That sounds all kind of complicated. What are the most common and what are the most difficult queries that you get on judicial ethics?

Ms. Garland-Scott: Well, the most common issues in judicial ethics are perhaps inquiries involving disqualification, and whether a judge may serve in a particular extrajudicial capacity. I believe the more difficult inquiries are those where specific precedents have not yet been established, there is an odd nuance to the factual circumstances, or the committee members have varying perspectives on how the matter should be handled. As for judicial campaign ethics, under campaign ethics rules a judicial candidate may personally participate in the campaign. However, the most common questions tend to relate to their attendance at fundraisers.

John Caher: I see. Are there any issues that have arisen in the context of social media that have changed the game a little bit?

Ms. Garland-Scott: There's always a danger, I believe, in social media. What is permissible? What's not permissible? There's a danger in putting too much information out there. The Advisory Committee on Judicial Ethics has examined the propriety of social media use and has generally advised that judges may use social media but cautions them to exercise an appropriate degree of discretion in doing so. And so, judges are permitted to express a position on social media, but they must ensure

that any advocacy does not create an appearance of impropriety. And they must be aware of the risks presented by approving or reposting others' comments.

And for judges, in particular, they must be aware of not commenting on any pending or impending cases. We have a couple of opinions on the use of Facebook and more recently Twitter. Judicial candidates may permit their campaign committees to "like" certain posts on Facebook and follow other candidates on Twitter. But as a result of the Coronavirus pandemic and the state-imposed guidelines on social distancing, the Advisory Committee on Judicial Ethics issued an advisory opinion fairly recently, actually late last year, which permits candidates to attend virtual political fundraising events during their window period. In other words, candidates may now use social media for a judicial campaign fundraising, something we would never have imagined would be ethically permissible.

John Caher: Sure. Now let's pivot to nonjudicial ethics. What sort of issues do you deal with most often in that context?

Ms. Garland-Scott: The vast majority of inquiries that come through the nonjudicial ethics helpline involve the issue of whether a nonjudicial employee may engage in a certain outside activity that may or may not meet the requirements of "dual employment."

Nonjudicial ethics has an established advisory panel that reviews every inquiry by nonjudicial employees and considers numerous factors, including the existence of any potential conflicts of interest. These are the things that could give someone looking from the outside the wrong perspective of what's happening in the court. In nonjudicial ethics however, we don't issue written opinions. However, like all other areas of ethics, the inquiries that come in are highly confidential in nature. So, anyone wanting to contact nonjudicial ethics should feel free to do so. They may also do so on an anonymous basis.

John Caher: I understand. Now, do you have enforcement powers? If someone is behaving unethically, do you have a recourse?

Ms. Garland-Scott: Well, for nonjudicial employees, those matters are generally referred to the Office of the Inspector General, who is authorized to investigate allegations of employee misconduct. The Judicial Campaign Ethics Center's authority is really limited to providing ethics advice to candidates, so it's not charged with enforcing ethics violations.

We find that candidates are often disappointed and frustrated by the fact that we're not a disciplinary arm, especially those seeking immediate redress for let's say their opponent's perceived violations for campaign ethics rules. But as to whether there is recourse, we typically advise candidates that if they reasonably believe that their opponent may have violated campaign ethics rules, that they may choose to bring the matter to their opponent's attention and perhaps share some relevant advisory opinions on the matter.

Oftentimes, candidates do not intentionally violate these rules, but rather possible violations may be the result of their lack of knowledge or misunderstanding of the applicable campaign ethics rules. Alternatively, if the perceived violation was committed by a sitting judge, the matter may be brought to the attention of the Commission on Judicial Conduct. If the allegedly improper conduct was committed by a non-judge candidate who is an attorney, then the candidate may choose to file a complaint with the Attorney Grievance Committee. So, you see there is actually some recourse.

John Caher: Oh, I see. I see. Let me change gears a little bit. Last year, Jeh Johnson released a report commissioned by the Chief Judge, that indicates the court system has a long way to go in achieving racial equality. Is there a role in that for the ethics counsel?

Ms. Garland-Scott: Yes. Let me start by saying Jeh Johnson's report was enlightening to many people, to the extent it detailed a serious lack of racial equality within the court system. However, for many people of color, the findings were an unfortunate acknowledgement of conditions that many believe long existed.

In early January, the Franklin H. Williams Commission held a town hall meeting entitled, "Dismantling Systemic Racism in the Court." And it was disheartening to learn that Secretary Johnson's recent reports were not unlike those same issues that were identified in a previous investigation of systemic racism in the courts about 30 years prior. So, yes, we certainly have a long way to go in achieving racial equality. However, I do believe we can all do our part in the court system to achieve this endeavor.

Whether it involves providing training, mentoring or diverse hiring panels, we all have to do our part to make sure that we are bringing about the much-needed change in that area. As ethics counsel, I am available to any areas of the court that would like to put something together. I'm open to working with the commission, I sit on hiring panels to ensure that diversity is being considered even at the very basic level,

nd mentoring other court employees who are looking to advance, looking for opportunities to advance. So that's pretty much what I can do or what I believe I'm able to do in my role as ethics counsel.

John Caher: And since this is Women's History Month, let me ask you the same question with regard to sexual harassment. Are there any special rules or trainings on that topic?

Ms. Garland-Scott: The issue of sexual harassment in the workplace is widespread and has received significant media attention over the past few years, and we see this ongoing public dialogue about sexual harassment and progressive changes in how the issue is viewed. But the ethics department does not have any specific rules or training for court employees on sexual harassment. I believe the Human Resources Department is tasked with providing this important training for new employees and also for new supervisors.

John Caher: I understand. And since this is a Diversity Dialogue interview, let's wrap it up with this question: From your perspective, from what you've seen, from what you've experienced, is the court system genuinely committed to diversity?

Ms. Garland-Scott: I believe the court system is committed to diversity. I think it's apparent from the Chief Judge's Excellence Initiative. In her leadership role, she has stated in no uncertain terms that the court system embraces diversity, equity and inclusion as core values, essential to the judiciary's mission to deliver fair and timely justice, and to recruit and retain a workforce that reflects the state's rich diversity.

I also believe that the mission of the Franklin H. Williams Judicial Commission to promote ethnic fairness in the courts, and the stated goals of the court's Office of Diversity and Inclusion also reflect the court system's commitment to diversity. However, I do believe that despite this commitment, we must remain cognizant that there is much work to be done, and I do remain hopeful that it can be done.

John Caher: I remain equally hopeful. And Rosemary, thank you so much for your time. And thank you so much for your service to the courts and to the people of the State of New York.