

The Washington Post

Politics

Chief Justice Roberts says courts will examine protections against sexual harassment

By Robert Barnes December 31 at 6:00 PM

Chief Justice John G. Roberts Jr. announced an initiative Sunday to ensure there are proper procedures in place to protect law clerks and other court employees from sexual harassment, saying it is clear that the federal judiciary “is not immune” from a widespread problem.

The statement, in Roberts’s 2017 State of the Judiciary Report , follows the retirement last month of Judge Alex Kozinski, of the U.S. Court of Appeals for the 9th Circuit. The influential 67-year-old judge stepped down after two reports in The Washington Post detailed allegations he had subjected former law clerks and other women to inappropriate sexual behavior.

“Events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear that the judicial branch is not immune,” Roberts wrote.

“The judiciary will begin 2018 by undertaking a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee.”

Just days after Kozinski’s Dec. 18 retirement, Roberts directed James Duff, director of the Administrative Office of U.S. Courts, to put together a working group to examine the issue. CNN reported at the time that Duff will report back by May 1.

A group of nearly 700 former and current law clerks also sent Roberts a letter requesting action and asking that he highlight the concern in his annual report on the state of the federal judiciary.

“I have great confidence in the men and women who comprise our judiciary,” Roberts wrote. “I am sure that the overwhelming number have no tolerance for harassment and share the view that victims must have clear and immediate recourse to effective remedies.”

Of particular concern has been the relationships between judges and their law clerks — usually recent law school graduates whose careers are significantly boosted by a year working with a federal judge, particularly on one of the 12 courts of appeal.

An appeals court judge usually has four clerks and a secretary, and the chambers operate independently and under a strict code of confidentiality. Some of the clerks who eventually talked to The Post about their experiences with Kozinski had wondered whether that confidentiality meant they could not report their experiences.

There is a natural reluctance to complain about a judge instrumental to their futures, the clerks said, and it was even unclear as to whom such reports would be directed.

The letter from the clerks asked Roberts and other court officials to examine “the risk that these confidentiality principles can be used to shield, if not enable, harassment,” according to a copy published by the HuffPost.

In his report, Roberts said he expected the working group “to consider whether changes are needed in our codes of conduct, our guidance to employees — including law clerks — on issues of confidentiality and reporting of instances of misconduct, our educational programs, and our rules for investigating and processing misconduct complaints.”

One suggestion from the clerks was a national reporting system that would allow a court employee to report harassment incidents by a judge or other court official, or to report witnessing such an incident.

The Post reports on Kozinski swiftly ended the more than three-decade tenure of the Ronald Reagan-nominee, whose clerks have regularly gone on to clerk for the Supreme Court. Kozinski’s conservative-libertarian opinions, especially on issues of criminal procedure, were widely quoted.

The Post reported Dec. 8 that six women, former clerks or more junior staffers known as externs, alleged that Kozinski had subjected them to a range of inappropriate sexual conduct or comments.

Heidi Bond, who clerked for Kozinski from 2006 to 2007, said Kozinski once called her into his chambers and showed her pornography on his computer, unrelated to any case they were working on. He asked whether she found it arousing.

In an initial statement to The Post, Kozinski said he would “never intentionally do anything to offend anyone and it is

regrettable that a handful have been offended by something I may have said or done.”

Later, the California-based judge, who like all federal judges had a lifetime appointment, told the Los Angeles Times, “If this is all they are able to dredge up after 35 years, I am not too worried.”


But other former clerks, law professors and even journalists wrote or spoke about their experiences with Kozinski, with some saying it was an “open secret” that female law clerks had to be careful about interactions with him.

The Post reported more allegations in a second story, and the chief judge for the 9th Circuit asked Roberts to assign to another court an investigation of the charges. Roberts did so, but days later Kozinski announced his retirement. That almost surely ends the investigation.

Roberts did not mention Kozinski by name in the year-end report, and the announcement about the review of procedures was a two-paragraph addendum to his main message. It was about how federal courts had remained open and handled business following hurricanes that devastated Puerto Rico, the Virgin Islands, Texas and Florida.

“Court emergency preparedness is not headline news, even on a slow news day,” Roberts acknowledged. “But it is important to assure the public that the courts are doing their part to anticipate and prepare for emergency response to people in need.”

58 Comments

Robert Barnes has been a Washington Post reporter and editor since 1987. He has covered the Supreme Court since November 2006.  Follow @scotusreporter

Sign in to join the conversation

A year in comments on The Washington Post:

Here's a collection of comments from some of the year's most noteworthy discussions.

[Read more](#)