

Fight Heats Up Over Derailed Judgeship for Ex-CCRB Official

Mark Hamblett, *New York Law Journal*

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Attorney Tracy Catapano-Fox

The claim by fired Civilian Complaint Review Board executive director Tracy Catapano-Fox that the de Blasio administration derailed her chance for a judgeship in New York City out of retaliation is headed for summary judgment arguments and possibly a trial.

Even though Southern District [Judge Katherine Polk Failla](#) had given a magistrate judge the task of guiding settlement discussions between Catapano-Fox, New York City and CCRB Chairman Richard Emery, who Catapano-Fox sued after her dismissal from the job in 2014, a recent conference before Failla offered little promise of a deal.

Catapano-Fox claims she was ousted from her post at the police oversight board out of gender discrimination and retaliation for complaining about the CCRB's handling of complaints against New York City police officers on stop-and-frisk encounters, and for complaining that the CCRB allegedly concealed important stop-and-frisk statistics. She claimed the procedures for reviewing complaints and statistics adopted by Emery and the board would discriminate against minorities.

Catapano-Fox also charged sexual harassment by board member Bishop Mitchell Taylor against female employees and accused Taylor of retaliating against her for complaining about the alleged incidents. All of the allegations are denied by Taylor, Emery and the city and some were dismissed by Failla in 2015.

Emery, of Emery Celli Brinckerhoff & Abady, countered in court papers that Catapano-Fox, also an attorney, reneged on an understanding she would be replaced as executive director at the end of 2014 after less than two years on the job. The city argues there can be no retaliation because, within days of Emery's July 17, 2014, appointment as chairman by Mayor Bill de Blasio, Emery came right out and told Catapano-Fox he was going to seek a new executive director.

On Feb. 11, 2016, Catapano-Fox amended her lawsuit to add the charge that she was denied a judgeship out of retaliation for filing the lawsuit, and that the order came from the top at City Hall—de Blasio.

On Sept. 26, 2014, she notified the mayor's office and Emery that she had retained counsel to handle her anticipated claim of retaliation.

She was fired on Oct. 6, 2014, during a week in which four of the CCRB's 13 board members were replaced in what she charged was Emery's effort to "stack the board" to ensure her termination.

Catapano-Fox, the former chief clerk for the Queens County Courts, filed suit the day she was fired. At the time, she was being considered for a civil or criminal court judgeship by the Mayor's Advisory Committee on the Judiciary, chaired by retired Judge Carmen Beauchamp Ciparick.

She was told to expect an interview with both the subcommittee, and then the full committee.

Documents obtained in discovery included a note dated Oct. 9, 2014, from inside the judicial advisory committee indicating that her application was put on hold "per City Hall."

Catapano-Fox said she soon got a call from Desiree Kim, the executive director of the advisory committee, who told Catapano-Fox that, regardless of what she expected, she would no longer receive an interview.

Catapano-Fox said the retaliation was confirmed by the minutes of a subcommittee of the advisory committee held on Oct. 20, 2014 that stated her application was "put on *hold*" and not forwarded to the full committee "due to pending lawsuit."

Failla has been presiding over extended discovery disputes in *Catapano-Fox v. City of New York*, 14 Civ. 8036. The judge held a conference on Feb. 23 with Assistant Corporation Counsel Donna Canfield and Catapano-Fox's lawyer, Michael Willemin, senior associate at Wigdor LLP.

At the conference, Failla, who last year narrowed claims in the lawsuit ([NYLJ, June 16, 2015](#)), rejected Willemin's request that de Blasio be deposed.

Ciparick has already been deposed. At the Feb. 23 conference, Willemin told Failla that, at her deposition, Ciparick said it was her decision to put the Catapano-Fox application on hold.

Still to be deposed in the case is Henry Berger, special counsel to the mayor.

Failla urged the attorneys to get moving on the case and to try to reach a settlement before they file motions for summary judgment.

She referred the parties to Magistrate Judge Sarah Netburn, who is expected to meet with the parties for a settlement conference.

"We look forward to getting to a trial in this case," Willemin said Friday. "We can establish Ms. Catapano-Fox was retaliated against at the highest level for raising complaints about sexual harassment and unlawful conduct at the CCRB. The record is very clear that the filing of this lawsuit directly resulted in her application being put on hold."

Calls to the CCRB, Emery, the Mayor's Advisory Committee, Kim and Ciparick seeking comment were not returned.