

Supreme Court allows lawsuit against 4JDC judges, law clerk

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The state Supreme Court gave the green light Wednesday to a Monroe businessman's lawsuit against Fourth Judicial District Court officials, including five judges and a law clerk, who are accused of tampering with court filings and concealing the activity.

The Supreme Court's June 26 ruling in *Stanley R. Palowsky III and others v. Allyson Campbell and others* represented a major development in the case because it was the final judgment on a series of appeals that began nearly four years ago.

In his July 2015 lawsuit, Stanley Palowsky III, of Monroe, alleged that law clerk Allyson Campbell [concealed or destroyed](#) court documents he filed in a separate lawsuit against his former business partner, Brandon Cork. Palowsky also sued Fourth Judicial District Court judges Fred Amman, Wilson Rambo, Carl Sharp, Stephens Winters, and retired Judge Benjamin "Ben" Jones, who now serves as the court administrator. Palowsky claimed the judges knew about Campbell's activities and worked with her to cover up the acts.

In his comments to *The Ouachita Citizen*, Covington attorney Joseph "Joe" Ward III, who represents Palowsky along with Monroe attorney Sedic Banks, referred to a U.S. Supreme Court case, *Forrester v. White*, that allowed state judges to be sued for decisions involving the demotion or termination of an employee.

"I believe the Louisiana Supreme Court correctly applied the law set forth by the United States Supreme Court in the *Forrester* case," Ward said. "Beyond that I have no comment and refer you to the briefs we filed and the court's opinion."

Palowsky's lawsuit failed to advance in district court after retired Judge Jerome "Jerry" Barbera III, of Thibodeaux, dismissed the lawsuit [in November 2015](#). At that time, Barbera ruled that Campbell and the five defendant judges could not be sued because they enjoyed judicial immunity. The legal concept of judicial immunity protects judges from civil claims, or having to pay civil damages, based on any actions they undertook in a judicial capacity.

Barbera was appointed to *Palowsky v. Campbell* in a Supreme Court order signed by Supreme Court Justice Marcus Clark, of West Monroe. Clark has since recused from the case. Campbell, the law clerk, worked for Clark when he served on the Fourth Judicial District Court bench.

The *Palowsky v. Campbell* case progressed through a convoluted appeals process that involved the [recusal of the Second Circuit Court of Appeal](#) and two hearings before the [First Circuit Court of Appeal](#) in Baton Rouge, including an [unusual en banc, or full court, hearing](#) at the First Circuit.

Ultimately, the First Circuit [ruled last spring](#) that Palowsky could sue Campbell for civil damages but not the judges. The judges were the only court officials entitled to judicial immunity in *Palowsky v. Campbell*, according to the First Circuit.

The Supreme Court overturned the First Circuit's decision.

“Considering the highly unusual and specific facts of this case, the court of appeal erred in finding the judges were entitled to absolute judicial immunity,” stated the Supreme Court's ruling.

The Ouachita Citizen reached out to Monroe attorney Jon Guice, who represents the judges, for a comment but did not receive a response.

Though the Supreme Court reversed the First Circuit's decision as it pertained to the judges, the Supreme Court upheld the First Circuit's ruling that Palowsky could pursue his lawsuit against Campbell.

Monroe attorney Brian Crawford, who represents Campbell, said he and his client would not have further comment about the Supreme Court's ruling until they could more fully digest the matter.

“I do not know what her position will be with seeking a rehearing, so I really can't comment about that until I visit with her and co-counsel about the next step,” Crawford said.

“If the case moves forward, so be it,” Crawford added.

Administrative vs judicial act

The Supreme Court's order on Wednesday was a per curiam order, meaning the ruling was issued by the whole court instead of by select judges. The Supreme Court [heard oral arguments](#) in *Palowsky v. Campbell* in March.

The crux of oral arguments before the Supreme Court was whether the judges' alleged cover-up was an administrative act or a judicial, or adjudicative, act.

Palowsky argued the five defendant judges could not claim judicial immunity because their acts were administrative: they were supervising a court employee. Meanwhile, Campbell and the five defendant judges argued the alleged acts, if proven, were undertaken in a judicial capacity inside the courthouse.

The Supreme Court affirmed Palowsky's argument that the defendants could not claim judicial immunity. To reach that decision, the high court employed the standard judicial practice of accepting the lawsuit's allegations as true to determine whether a plaintiff has pled a cause of action, or reason to sue.

“Accepting the facts as alleged in the petition as true for purposes of the exception of no cause of action, we find plaintiff's allegations regarding the judges' supervision and investigation of the

law clerk's activities arise in the context of the judges' administrative functions, rather than in the course of their judicial or adjudicative capacities," stated the Supreme Court's ruling.

The Supreme Court offered a qualification to its ruling, though, in an apparent nod to the ruling's potential implications for future legal challenges of judicial immunity.

"In reaching this conclusion, we emphasize that we express no opinion on whether plaintiff can prove these allegations," stated the Supreme Court's ruling. "Moreover, our opinion today should not be read as undermining or eroding the strong principles of absolute judicial immunity which are firmly established in our jurisprudence. Rather, we merely hold that under the narrow and specific parameters of plaintiff's petition, plaintiff has alleged sufficient facts to state a cause of action against the judges."

Three justices dissent from majority opinion

Though the per curiam order denied judicial immunity to the judges and the law clerk, three Supreme Court justices dissented from the majority opinion and provided written reasons.

Supreme Court Chief Justice Bernette Johnson's written reasons for dissent echoed the First Circuit's ruling last year: the law clerk is not entitled to judicial immunity but the judges are.

That would be the case because the five defendant judges' acts in Palowsky v. Campbell should be viewed as part of their judicial function, Johnson argued. If Palowsky experienced a problem with the judges, he should take it up with the appeal court or Judiciary Commission, according to Johnson. The Judiciary Commission exists under the Supreme Court's administration to investigate any complaints of misconduct against judges and recommend disciplinary actions, if needed.

"As such, I find the judges are not subject to civil liability for their actions, but the plaintiff would have recourse to seek review of the judges' actions in the underlying case from the court of appeal and this court, or by filing a complaint with the Judiciary Commission regarding the judges' actions," Johnson wrote.

The Judiciary Commission screens all its activities and decisions from the public.

Now-retired Supreme Court Justice Greg Guidry also voiced dissent from the majority ruling, writing a nine-page opinion that viewed many of Palowsky's allegations as irrelevant. According to Guidry, Palowsky only had legal standing to sue the defendants based on the allegations they interfered in the lawsuit against Palowsky's former business partner. That meant the defendants' actions were taken in a judicial capacity and qualified for protection under judicial immunity, Guidry argued.

Echoing opinions from federal [appellate court judges](#) in related litigation, Guidry said the court officials could not be sued though they could become subject to criminal charges, if Palowsky's allegations were true.

“My views regarding the broad scope of judicial immunity and its application to these facts in no way indicates that I wish to turn a blind eye to Mr. Palowsky’s allegations,” Guidry wrote. “Every litigant in any court of law is entitled to justice dispensed by a fair and impartial judiciary. If these defendants failed Mr. Palowsky in that regard, they may be subjected to other discipline, including potential criminal charges for destruction of public records. But I cannot say that the allegations for which Mr. Palowsky has standing, as ill-considered and distasteful as they may be, justify the erosion of judicial immunity, which has been recognized by state and federal courts for more than a century.”

The U.S. Senate confirmed Guidry as a U.S. District Court Judge for the Eastern District of Louisiana earlier this month. Guidry's vote on the *Palowsky v. Campbell* matter was taken during his last day as a justice at the Supreme Court.

Supreme Court Justice Scott Crichton said he agreed with the majority’s opinion that the court officials’ alleged actions were “outrageous,” but Crichton opposed the majority’s decision to allow Palowsky to sue the judges.

“However, in my view, the per curiam conflicts with the established principle of judicial immunity, which is based in over 150 years of federal and state jurisprudence and is foundational to the rule of law,” Crichton wrote. “It also risks eroding the independence of the judiciary and could adversely affect the public interest, including the paramount interest of protection of the public and the impartial administration of justice.”

Crichton said he wrote separate reasons from Guidry simply to clarify that judicial immunity was not a “get out of jail free” card for Campbell or the five defendant judges.

“... nor should this dissent be construed to condone the disturbing allegations against the rogue law clerk and the judges,” Crichton wrote. “The defendants may therefore still face significant repercussions for their disgraceful conduct. However, in my view, those repercussions cannot include civil liability.”

In contrast to those Supreme Court justices voicing dissent, some justices voiced further support for allowing Palowsky to sue the judges. In his written reasons concurring with the majority opinion, Supreme Court Justice John Weimer said the court officials’ alleged acts narrowly avoided being shielded under judicial immunity. The only reason the alleged acts were not judicial in nature was because the alleged destruction of court documents “essentially severed a connection between herself and a judicial function,” according to Weimer.

“The alleged destruction and concealment of documents essentially would have precluded judicial work,” Weimer wrote. “If a court is a metaphorical temple of justice, the allegations here are essentially that the clerk’s alleged destruction and concealment of documents closed the door to one litigant, allowing only the prayers of the other litigant to reach the decision makers inside.”

Payroll fraud question

Weimer and Guidry were the only justices to dispute the relevance of Palowsky's allegation that Campbell committed public payroll fraud. Alleged payroll fraud was not relevant to the businessman's cause of action against Campbell and the judges, they said.

The Ouachita Citizen [began investigating allegations](#) that Campbell committed public payroll fraud in early 2015. At that time, the state Legislative Auditor released an audit of the Fourth Judicial District Court's finances that showed a court employee was possibly paid for hours they did not work during the fiscal year beginning July 1, 2013 and ending June 30, 2014.

Later, *The Ouachita Citizen* discovered that Fourth Judicial District Court administrators questioned 12 days on which Campbell claimed to have worked between Jan. 14, 2014 to April 2014. On some of those days, Campbell was paid for working seven hours on the same days that she also went to doctor appointments, played tennis, and flew from New York to Monroe.

The matter led to [an investigation of Campbell](#) for misconduct in 2015. The investigation was conducted by Louisiana State Police and the state Office of Inspector General.

State Police and the Inspector General's office questioned Campbell about the matter in [a recorded interview](#) in January 2016. When asked about why she recorded seven hours of work on a day when she was flying to Monroe from New York, Campbell told investigators her time sheets were "more of an estimate." Campbell said she didn't know "why I was or was not there" on certain days.

Later, [Inspector General Stephen Street](#) and [state Attorney General Jeff Landry](#) each concluded there was not enough evidence to sustain a lasting conviction of Campbell for public payroll fraud.

Many of the details surrounding Campbell's alleged public payroll fraud were included in Palowsky's lawsuit.

"Mr. Palowsky's additional allegations, such as payroll fraud, are concerns of the public at large but do not state a claim that is particular to Mr. Palowsky," Guidry wrote.

In his written reasons, Weimer also challenged Palowsky's argument that Campbell's alleged payroll fraud was part of a pattern of misconduct and helped form a cause of action.

"A cause of action in favor of Mr. Palowsky for payroll fraud is simply non-existent; Mr. Palowsky alleges no harm came to him personally from the alleged payroll fraud," Weimer wrote.

One voice on the Supreme Court disagreed with Guidry and Weimer's position: Retired Judge Michael Kirby, who was assigned to serve as an ad hoc, or special purpose, justice during the *Palowsky v. Campbell* hearing in March.

Kirby's opinion concurring with the per curiam order pointed out that the state Code of Judicial Conduct "clearly recognizes the dichotomy" between judicial and administrative acts. Kirby was referring to the Code of Judicial Conduct's "Administrative Responsibilities" section that places the acts of court staff and officials under a judge's administration.

“A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties,” stated the Code of Judicial Conduct.

That meant Palowsky's allegations against Campbell – whether destroying court documents or committing public payroll fraud – were legitimate aspects of his cause of action against the judges, according to Kirby.

“Plaintiff’s litany of her alleged past malefactions is not to assert a claim for damages resulting from them, but rather to demonstrate the length of time over which the alleged excesses occurred thereby suggesting her employers, who simply happen to have been judges, failed to properly supervise their employee,” Kirby wrote.

Unless Campbell committed the alleged destruction of court documents at the direction of a judge to assist a judicial act, she could not claim judicial immunity, according to Kirby.

Ouachita Citizen reporter Johnny Gunter contributed to this news report.