

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 29, 2021

Lyle W. Cayce
Clerk

No. 19-20752

AUDREY K. MILLER,

Plaintiff—Appellant,

versus

SAM HOUSTON STATE UNIVERSITY; TEXAS STATE UNIVERSITY
SYSTEM,

Defendants—Appellees,

CONSOLIDATED WITH

No. 19-20753

AUDREY K. MILLER,

Plaintiff—Appellant,

versus

UNIVERSITY OF HOUSTON SYSTEM; UNIVERSITY OF HOUSTON
DOWNTOWN,

Defendants—Appellees.

No. 19-20752
c/w No. 19-20753

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:15-CV-2824
USDC No. 4:15-CV-2927

Before JOLLY, SOUTHWICK, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

A litigant has the fundamental right to fairness in every proceeding. Fairness is upheld by avoiding even the appearance of partiality. *See, e.g., Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). When a judge's actions stand at odds with these basic notions, we must act or suffer the loss of public confidence in our judicial system. "[J]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954).

Audrey Miller sued Sam Houston State University (SHSU) and Texas State University System (TSUS) under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et. seq.*, and the Equal Pay Act, 29 U.S.C. § 206(d), alleging sex discrimination, retaliation, and a hostile work environment. A week later, Miller filed a separate action against the University of Houston Downtown (UHD) and the University of Houston System (UHS), also under Title VII, alleging that UHD's denial of employment constituted retaliation.¹

From the outset of these suits, the district judge's actions evinced a prejudgment of Miller's claims. At the beginning of the Initial Case Management Conference, the judge dismissed *sua sponte* Miller's claims against TSUS and UHS, countenancing no discussion regarding the dismissal. Later in the same conference, the judge responded to the parties'

¹ There are thirty-seven public universities in Texas; thirty-four universities belong to one of six state university systems. SHSU is a component of TSUS, and UHD belongs to UHS.

No. 19-20752
c/w No. 19-20753

opposition to consolidating Miller's two cases by telling Miller's counsel, "*I will get credit for closing two cases when I crush you. . . . How will that look on your record?*"

And things went downhill from there. The court summarily denied Miller's subsequent motion for reconsideration, denied Miller's repeated requests for leave to take discovery (including depositions of material witnesses), and eventually granted summary judgment in favor of SHSU and UHD, dismissing all claims. Miller now appeals the district court's rulings and asks for her cases to be reassigned on remand. Mindful of the fundamental right to fairness in every proceeding—both in fact, and in appearance, we REVERSE, REMAND, and direct that these cases be REASSIGNED to a new district judge for further proceedings.

I.

A.

Miller joined SHSU as a tenure-track Assistant Professor of Psychology in the University's Clinical Psychology Doctoral Program ("Clindoc Program") in the Department of Psychology and Philosophy in August 2007. In this position, Miller supervised students in the Clindoc Program, taught practicum courses, and served on students' dissertation and thesis committees. According to SHSU, Miller was "lacking in collaborative and attentive generosity towards her colleagues." She complained about her heavy workload, which she believed to be disproportionate compared to that of her colleagues. Miller also disagreed with other members of the faculty while serving on dissertation and thesis committees. She was removed from one committee due to her inflexibility and voluntarily offered to step down from another due to conflicts with other committee members. Miller contends these disagreements were retaliatory because of her sex and the complaints that she raised concerning her clinical workload.

No. 19-20752
c/w No. 19-20753

Despite these issues, Miller applied for tenure at SHSU in late 2012. But her reviewers recommended that Miller's tenure and promotion be denied due to her lack of collegiality. SHSU informed Miller of its decision to deny tenure on March 27, 2013.

Thereafter, Miller filed charges of sex discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission. She then utilized the Texas Public Information Act to obtain voluminous documentation from SHSU. A few months later, SHSU denied Miller a merit-based salary increase for the 2013-2014 academic year. Miller filed a formal grievance with SHSU, based on the same allegations as her EEOC charge (i.e., that her tenure decision was adversely affected by sex discrimination and retaliation). Miller's employment with SHSU ended on May 31, 2014.

B.

After learning of her tenure denial at SHSU, Miller applied for one of three open faculty positions at UHD. On March 17, 2014, she interviewed with the UHD search committee, as well as Department Chair Jeffery Jackson, Dean DoVeanna Fulton, and Provost Edward Hugetz. During the interview, search committee members asked Miller why SHSU denied her tenure. Miller responded that she "believed [she] had been denied tenure because [she] was a woman and because [she] had raised concerns about the mistreatment of women in the department at SHSU prior to applying for tenure." Following the interview, the committee rated Miller as the second highest candidate for a position.

On April 4, 2014, the UHD search chair emailed Department Chair Jackson and Dean Fulton and stated that the search committee was interested in extending offers to three candidates, including Miller. That same day, the search chair asked Miller if she would allow UHD to contact her SHSU

No. 19-20752
c/w No. 19-20753

Department Chair, Christopher Wilson. Miller obliged but advised the search chair that Wilson was one of the individuals about whom she had complained at SHSU.

On April 7, Department Chair Jackson sent an email to the search chair. He stated that while Dean Fulton seemed agreeable to the committee's recommendations, Fulton wanted to follow up with Miller's supervisors at SHSU. The search chair responded that she was "worried [SHSU Department Chair Wilson would] have to be very careful [] discussing [Miller's] tenure denial because of the legal issues we [have] discussed." Later that day, Jackson called Wilson to inquire into SHSU's decision to deny Miller tenure and promotion.

What was said during the phone call is nowhere in the record. But after Department Chair Jackson's call with Department Chair Wilson, UHD reversed course from the search committee's previous recommendation, deciding not to extend Miller an offer of employment. On April 29, Miller emailed the UHD search chair regarding the status of her UHD application. The search chair responded that the position had been filled: "The final employment decision was complicated and involved the search committee, department chair, dean, and provost."

In the end, UHD filled all three open positions with candidates who scored lower on UHD's hiring metrics than Miller. According to Dean Fulton, UHD's decision not to hire Miller was "based entirely on [] concerns regarding [] Miller's teaching and service due to her tenure denial at SHSU." The dean further stated that she was never "made aware that [] Miller had filed a charge of discrimination or other complaint against SHSU with any federal or state authorities." Miller later filed complaints against UHD with the EEOC and the Texas Workforce Commission.



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.