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Cooley Wins DOJ Settlement Over Judge's Iranian-American Ties

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An Iranian-American immigration judge who challenged a U.S. Justice Department order that she recuse herself from cases involving Iranian nationals has struck a deal that looks an awful lot like a government capitulation. Under a settlement announced Wednesday, the DOJ agreed to lift its order and to pay the judge and her attorneys at Cooley \$200,000.

In the summer of 2012, Judge A. Ashley Tabaddor's routine request for permission to attend a White House roundtable honoring prominent Iranian-Americans was flagged for review by Jeffrey Rosenblum, the general counsel at the DOJ's Executive Office for Immigration Review. Rosenblum, in issuing an approval, said that given Tabaddor's public profile in the Iranian-American community, she should recuse herself from immigration matters involving Iranian nationals.

After Tabaddor asked for an explanation a month later, the advisory was elevated to an order "to avoid any appearance problems." In subsequent correspondence, Rosenblum told Tabaddor that the order wasn't subject to review. (Unlike Article I or Article III judges, immigration judges are under the control of the DOJ.)

Tabaddor reached out to Ali Mojdehi (pictured right), a Cooley bankruptcy partner whom she had known for years through the Los Angeles chapter of the Iranian-American Bar Association. Mojdehi was shocked by the recusal order, and he offered to take her case on a pro bono basis. Three months later, with help from Mojdehi's team, which included four Cooley associates, Janet Gertz, Allison Rego, Erin Trenda, and Jon Cieslak, Tabaddor sued the DOJ before the Equal Employment Opportunity Commission.



The EEOC [found no discrimination](#) in dismissing the case this past May. But Mojdehi said the agency's investigators had turned up a smoking gun: A Justice Department official who was the acting ethics officer at the time had testified in an EEOC affidavit that that he had not been consulted as required—and that if he had, he would have concluded that the order was discriminatory.

The next step was to take the case to federal court. Tabaddor filed suit in U.S. district court in Los Angeles in August 2014, alleging that the government had violated her First Amendment rights and Title VII civil rights.

The Cooley team cited a handful of similar cases in which Article III federal judges had deflected recusal pressure. In the 1994 criminal case against the 1993 World Trade Center bombing suspect Ibrahim El-Gabrouny, for example, former U.S. District Judge Michael Mukasey (now at Debevoise & Plimpton), a Jew, refused a motion by the defense to step aside, warning that the demand for his recusal would “disqualify not only an obscure district judge such as the author of this opinion, but also Justices Brandeis and Frankfurter... each having been both a Jew and a Zionist.”

In its motion to dismiss, the government countered that the court didn’t have jurisdiction over Tabaddor’s constitutional claims, asserting that the claims were precluded by the Civil Service Reform Act. The government also argued that Tabaddor hadn’t fully exhausted her options at the EEOC.

During a hearing this past March on the government’s motion, Mojdehi said, U.S. District Judge George Wu asked the government’s lawyer if there had ever been another instance of a blanket recusal of a judge of a certain racial or ethnic group or religion because the judge had participated in community activities involving that group or religion. The government lawyer said he did not know of any.

“Then [the judge] said, ‘you know, this case needs to be settled,’” Mojdehi recalled.

In [the settlement](#) announced Wednesday, the DOJ agreed to drop the recusal order, acknowledging that there was no finding of any bias on the judge’s part. Significantly, the DOJ agreed to review the application of the ethics rule that had been used against Tabaddor. The government also agreed to pay Tabaddor \$200,000, including \$192,400 for her attorneys at Cooley and \$5,800 in damages to the judge.

According to Cooley’s Mojdehi, the case involved a recusal of unprecedented breadth. Given the government’s misguided actions and the implications for other judges, Mojdehi said, the payment both fees and damages pursuant to the settlement “is symbolically important.”

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