

Jones v. Clinton



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- A. 12(c) motion
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Cast of Characters



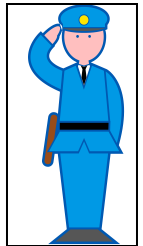
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Judge Wright



D1



D2

**Gilbert Davis &
Joseph Cammarata**

Robert Bennett

THE PRESS

**Richard Porter,
Jerome Marcus &
George Conway –
a.k.a. “the elves”**

THE PUBLIC

I. The Complaint

What are the elements of Jones's claims against Clinton?

1. 42 U.S.C. § 1983:

[color of law] + [deprivation of federal right]

[equal protection]

[due process]

[gender discrimination]

[arbitrary deprivation
of liberty and property]

[based on gender] + [sex. advances] + ([q.p.q.] or ([causing] + [hostile env.]))

Statute of Limitations Issue

Sexual harassment under Title VII: S/L already expired

28 U.S.C. §§ 1983, 1985: S/L based on closest state law claim = 3 years

I. The Complaint

What are the elements of Jones's claims against Clinton?

2. 42 U.S.C. § 1985:

[conspiracy] + [to deprive] + [acts in furtherance] + [causing] + [deprivation]

I. The Complaint

What are the elements of Jones's claims against Clinton?

3. State law IIED (state law)

[intent] + [extreme and outrageous conduct] + [causing] + [severe distress]

I. The Complaint

What are the elements of Jones's claims against Clinton?

4. Defamation (state law)

[3d party communication] + [causing] + [harm to reputation]

I. The Complaint

- Who do you think played bigger role in drafting the complaint, Davis and Cammarata or “the elves”?

I. The Complaint

- Aren't there some legal advantages to drafting a detailed complaint?

Doesn't it force D to admit or deny with more detail?

Doesn't it expand the scope of discovery?

NO!

II. Motions Testing the Complaint

- Leaving aside the due process issue in Count I, was Judge Wright correct in denying the 12(c) motion with respect to Counts I, II, and III?

II. Motions Testing the Complaint

- Was Judge Wright correct in granting the 12(c) motion with respect to Count IV?

II. Motions Testing the Complaint

- Jones: “You made defamatory statements!”
- Clinton: “Even if my statements were defamatory, I made them in connection with possible litigation, and therefore they are privileged!”

FRCP 8(d): “Effect of Failure to Deny.

Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.”

II. Motions Testing the Complaint

- Has Jones admitted or denied that Clinton's statements were made in connection with possible litigation?

II. Motions Testing the Complaint

- What were Clinton's other options right after he received the complaint?

II. Motions Testing the Complaint

- How would Clinton have initiated a Rule 11 motion?

II. Motions Testing the Complaint

- What would have been the risks if it had been denied?

II. Motions Testing the Complaint

- What was Clinton's strongest argument for Rule 11 sanctions?

FRCP 11(b)(1): “[The filing] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

Letter from Cammarata and Davis to Jones, Aug. 19, 1997 (encouraging Jones to settle at this point, rather than proceed to discovery):

“You are in the best posture now to increase your financial gain from outside sources. If you decide not to settle, you will have to eventually turn over the Affidavit, and you will have to describe the distinguishing characteristics in discovery. It will be leaked by someone, as these things seem always to be, even if there is a protective order. There will be no value left to your revealing this information to any other entity.”

II. Motions Testing the Complaint

- Assuming the Petition Clause creates a right to access the courts to resolve “objectively reasonable” private claims irrespective of purpose, does Rule 11(b)(1) exceed the Court’s authority under the Rules Enabling Act?

II. Motions Testing the Complaint

- If an 11(b)(1) attack against Jones would have run afoul of the Petition Clause, is there any situation in which 11(b)(1) could be used? Should the Rule be scrapped entirely?

FRCP 11(b)(1): “[The filing] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

Statement by White House Counsel Lloyd Cutler to Robert Bennett:

“The win is getting it beyond the [1996] election.
Nothing else matters.”

II. Motions Testing the Complaint

- What about Rule 11 as a whole. Does it affect substantive rights in violation of the Rules Enabling Act? (FKC 44/Q13.)

**Cooter & Gell v. Hartmarx Corp., 496 U.S. 384,
393 (1990):**

The central purpose of Rule 11 “is to deter baseless filings in district court and thus, consistent with the Rules Enabling Act’s grant of authority, streamline the administration of procedure of the federal courts.”