



Profile: Menaka Fernando

Taking sexual-harassment cases to a new level for lower-wage earners

BY STEPHEN ELLISON

There's no doubt the #MeToo movement has marked a historic and perhaps ground-breaking era for women in Hollywood and other high-profile industries. Now, Menaka Fernando and her fellow employment lawyers are hoping it shines a bright enough light on an all-too-common issue they had been dealing with long before Harvey Weinstein was called to the carpet.

Fernando, a partner with Outten & Golden in San Francisco, specializing in sexual harassment cases, said she is indeed seeing her cases involving restaurant workers, hotel workers and other low-wage earners receive higher-value settlements on the heels of the #MeToo movement. More important, her clients, who have been subjected to sexual harassment for years, if not decades, finally are getting a semblance of justice, she said.

"With the #MeToo movement, we've had a lot of calls about sexual harassment, and it also kind of changed my practice and my firm's practice and the way sexual harassment cases can be portrayed as far as the settlement value," Fernando said. "My focus was let's represent these folks in a big way and really, if we're going to settle these cases, they need to be big-value settlements because they need to be valued in a similar way to all these celebrity cases.

"Kind of using that momentum, that tactic, I was able to settle a lot of cases for far more than we would have pre-#MeToo, based on what they were earning," she continued. "Because a lot of employers are not wanting to be the next headline, (sexual harassment cases) are being wrapped up as part of this whole movement, and I think that will continue. I feel a responsibility, that we need to give a voice to these folks who are lower-wage workers in industries that have been experiencing sexual harassment for a very



Fernando

long time. We have this window of opportunity where people are paying attention to it. We need to make sure we're representing a broad spectrum of the workforce."

While Fernando's focus recently has been on sexual harassment, she practices employment law across the board, representing clients in discrimination, retaliation, wrongful termination, family leave and wage claims cases.

Representing individuals in cases against their employers is a weighty responsibility, Fernando said, and she couldn't emphasize enough that with her, the client comes first. It's a very trying process for anyone to go through, and she wants to know her client is OK and is ready to go to battle with her.

"I've learned over the years to really listen to a client's objectives," Fernando explained. "A lot of attorneys work with a one-size-fits-all process. But the more involved I've become, the more I've learned to listen to a client and learn what the client's objective is, to try to approach every case in a very client-centric way. I want to make it clear from the start that this is a partnership – it's not I tell you what to do and you say yes. I want your input, I want you to be involved in the discovery process, I want you to tell me how this impacts you, and I want you to tell me if your objectives have changed. That's just a question that doesn't get asked very often."

Outside of taking care of the client and making sure their needs are met, Fernando strives to be the most prepared person in the room. She knows all too well the reality of being a younger, female lawyer and some of the disadvantages that come with it. Earlier in her career, she learned to compensate for that by being more prepared than anyone else.

Now that she's much more experienced, that hasn't changed because she still wants to feel she's the most prepared. More important, Fernando wants to know she's doing justice to the courage her client had to stand up for themselves in one of most difficult situations of their lives.

"I think the point that's missed is that the last thing my clients want is to have me in their lives, to have to go to an attorney to file a case for them against their employer," she said. "It takes a lot of courage to decide that they're going to do this because what they went through was so horrible, they don't want anyone else to go through it. I sort of take that leap of faith very seriously, that they're willing to trust me with their case and their lives. I always want to be that voice and do justice to the trust they put in me."

From journalism to activism

Fernando, a native of Sri Lanka, attended UCLA for her undergrad studies, which at first took a hard charge at journalism. She served as editor of the nationally recognized Daily Bruin student newspaper and was aspiring to an internship, and eventually a career, with a big newspaper or other media organization, she said.

Activism, however, began to consume much of her time, and after she graduated, Fernando started traveling. She worked a stint with the United Nations then went back to her homeland in southern Asia, where she worked for a



peace and justice organization for about six months. That's when she started thinking about doing more in that capacity.

"To make more changes in the world, I needed to go back and get more education," she recalled. "So, I thought, 'Do I go to law school? Do I get a masters? What do I do?' Once I came back, I worked at a civil rights law firm in Venice, California, as a paralegal. They were doing a lot of great work on civil rights cases and employment cases. That got me hooked. I was able to see cases go to trial, and I was able to see the direct personal impact you could have as a lawyer, practicing in this area of the law."

That kind of sealed Fernando's fate when it came to law school. She moved up to San Francisco to attend UC Hastings College of the Law, and even there, she was kind of exploring her options in terms of what area of law she wanted to focus on.

"I was always committed to social justice work, public interest work, and I think it comes from my immigrant background that I always wanted to be a voice for the underdog," she explained. "But I still wasn't sure exactly what scope that would take. I thought maybe international human rights, doing refugee immigrant rights work. Or I thought maybe public defense might be a good option."

Fernando ended up working in the Los Angeles and San Francisco public defender's offices, still thinking about different options. She graduated from Hastings in 2010 in the midst of the U.S. economic crisis, a time when law firms were basically dissolving, and jobs that many of her classmates thought were secure were now vanishing. Fortunately for Fernando, she was able to get work as a contract attorney at the same firm where she worked as a paralegal, Schonbrun DeSimone, and the experience she got there was invaluable, she said.

When an associate position opened up about six months later, the firm hired her.

"That's kind of where my career started," Fernando said. "I was working

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with one partner, Jim DeSimone, who did about 50-50 police misconduct and employment cases. I just dove right in, doing discovery, defending depositions, arguing discovery motions, mediation, trial. I basically saw every aspect of litigation from intake to trial and even some of the appeal process. My two and a half years there was really good experience right out of law school. I learned a lot and still kind of carry the hard work and the dedication and cause to the clients that I learned from the attorneys at that firm."

Fernando then returned to the San Francisco Bay Area to work at The Dolan firm, which was mainly personal injury but also had an employment department, and all she did was employment cases. That's where she really honed her skills as a plaintiffs' employment lawyer and really fell in love with employment law, she said.

Client first

Today, Fernando is known as a crusader of sorts, lobbying and testifying before the California Legislature to change employment laws. She is the co-chair of the California Employment Lawyers Association and has worked on bills to strengthen the state's anti-discrimination and harassment laws. Her passion for doing what's right in the name of her client truly is unmistakable.

"A lot of it is playing this counsel role, where you have to talk through your

client's bad days," Fernando said. "We do have to wear a lot of different hats and kind of tailor our representation to just listening to our clients, understand the pain they're going through and navigate a tough situation. Employment is so central to someone's life – it's kind of the glue that keeps it all together. And once that goes away, you really see the domino effect of how that can impact other relationships, mental health, sense of self-worth, confidence, well-being and the ability to go out to the job market and get another job. You see how somebody's life can be impacted by some injustice or unlawful conduct or harassment at the workplace."

In contrast with personal injury cases, plaintiffs' employment law cases can be about a person's career and something that happened over several years at their workplace, Fernando said. An employment lawyer looks into someone's life in a much more personal way and learns a lot of things about a person's life through where they've been working: their background; people they work with, including who reports to them and who they report to; higher level employees, including executives; and a company's culture. The scope of the facts in a given case is much larger than in most personal injury cases, she said.

"I compare it to family law in that at one point your client's relationship with the company was good, presumably, because otherwise they wouldn't have started working at this place," Fernando said. "There was a level of trust and professionalism and collaboration and good will. But along the way, that disintegrated for a variety of reasons, and now they're in a place where an injustice has been done. There's a lot of personal pain because these are people you thought you had a good relationship with and you trusted, and now you feel betrayed."

Motherhood and quality time

These days, Fernando spends most of her non-working time being a mother to her 15-month-old son. Working from home



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these days during the coronavirus crisis that has gripped the entire world, she has counted herself fortunate to be spending days with him or at least around him as opposed to missing the whole day.

“He keeps me busy, keeps me on my toes when I’m not working, and even when I am working,” Fernando said. “I love being a mom. As much as I can, I try to spend quality time with my son and husband because I see how fast he’s growing and how fast time is passing. Every moment is precious.

“I have been spending a lot of time with him lately,” she continued. “My husband and I take shifts, and my mother-in-law is able to help out every once in a while; we’re lucky that way. It has its challenges, working from home in this environment with kids, but I don’t have complaints because I know I have it much better than a lot

of people. It just requires more juggling and communication with my husband, but we’re making it work and getting along just fine.”

On the subject of advice for younger lawyers, Fernando kept it short and to the point: Chase your passion.

“That’s what’s going to take them through their career,” she said. “Money is only going to take them so far. I think when you’re putting in the hours, especially as a young lawyer, what’s going to make it worth it at the end of the day is knowing you’re following your passion.”

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