

The Hurdles Facing Fla. Suit Targeting Prosecutor Authority

By **Andrea Keckley**

Law360 (July 19, 2024, 12:46 PM EDT) -- A Florida man serving time for investment fraud is arguing that the assistant U.S. attorneys on his case were not properly authorized to prosecute him, but the lawsuit could prove challenging as it gets to the heart of what allows federal prosecutors to do their jobs.

Michael Rivers maintained in his complaint filed in February in D.C. federal court that the prosecutors, Christopher LaForgia and Daniel Eckhart, lacked the statutorily required written authorization to serve as assistant U.S. attorneys. He is seeking more than \$51 million.

Experts speaking to Law360, however, doubt that this suit will grant Rivers the type of relief he's looking for.

"I start from the principle that it is unlikely that the thousands of AUSAs who are serving across the country currently and in the past are doing so unlawfully and without authority," former federal prosecutor Andrea Surratt, a partner at Crowell & Moring LLP, told Law360.

Rivers pled guilty in 2014 to wire fraud, money laundering and identity theft for making fraudulent statements to investors in his company and was sentenced to 204 months in prison, according to court documents. His efforts to withdraw his plea have been unsuccessful.

LaForgia and Eckhart entered their appearances in Rivers' case in 2013, according to Rivers' complaint.

"At that time, the attorney general had not signed the written authorization" for the two prosecutors — "or any other individuals associated with the case — to serve as AUSAs," he said. "Indeed, plaintiff sought these documents under the Freedom of Information Act and was told in no uncertain terms the documents did not exist."

This authorization must be signed by the attorney general or the AG's duly authorized representative, Rivers argued. He said this authorization differs from the standard SF-61 oath of office form "or any other boilerplate form associated with an individual's routine onboarding as a federal employee."

In a dismissal motion this month, Attorney General Merrick Garland attached the notifications of personnel action for both LaForgia and Eckhart. The 50-B forms cite Title 28, Section 542 of the U.S. Code, which provides that AUSAs are appointed by and may be removed by the attorney general.

"It seems like the government, at least, thinks that this form 50-B is what does the trick — again, citing

to the relevant statutory authority," Surratt said.

In fact, Fox Rothschild LLP partner Andrew M.J. Bernstein, a former New York Legal Aid Society criminal defense attorney, thinks that any valid form concerning a prosecutor's appointment by the attorney in charge of their office through the DOJ that shows valid employment is probably sufficient.

"If there's a particular form that wasn't filled out, it should be filled out," he told Law360. "It should be explained retroactively. But if you have the form they're referring to, plus anything else or something in lieu of that, that shows official appointment and employment, then I think that's sufficient."

Rivers' counsel, Philip Andonian of CalebAndonian PLLC, did not immediately respond to Law360's request for comment, but Andonian told Law360 in an email after filing the complaint in February: "The power to prosecute is one of the most significant features of our justice system. If it isn't carried out properly, the whole system is at risk. The proper procedure for authorizing a lawyer to represent the United States is essential, and this lawsuit seeks accountability for the government's failure to ensure that procedure was followed in Mr. Rivers' case."

About Rivers' case, Bernstein noted that buyer's remorse has a tendency to happen for defendants in money laundering cases.

"In these types of cases, people have a change of heart because they say, 'I didn't really know what was going on, so I want to take my plea back,'" he said.

Rivers is not asking in his civil suit for the court to overturn his conviction. He is, however, seeking no less than \$51,175,713, as well as attorney fees and "any such additional relief as the court deems just and proper."

"In this situation — where these are not rogue prosecutors, these are employees of the Department of Justice — if a piece of paper is not quite there, or there was an error that has been around for many years, it's not an error that overturns that conviction," Bernstein said. "It's simply an administrative mistake. It gets fixed."

In the meantime, Rivers remains in Bureau of Prisons custody at a halfway house in Florida, awaiting his release date in September 2026, according to court documents.

"I can't imagine this is going to be met with the kind of success that Mr. Rivers is seeking," Surratt said.

Rivers is represented by Philip Andonian of CalebAndonian PLLC.

Garland is represented by Assistant United States Attorney M. Jared Littman.

The case is Michael Rivers v. Merrick Garland, case number 1:24-cv-00510, in the U.S. District Court for the District of Columbia.

--Editing by Robert Rudinger.