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## Dolphins' Martin Faces Limited Legal Options If He Presses Bullying Claims

Miami Dolphins offensive lineman Jonathan Martin is at the center of what arguably is the most famous workplace bullying incident of all time.

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Miami Dolphins offensive lineman Jonathan Martin's legal options are limited if he decides to press his claims of bullying and hostile work environment, South Florida employment attorneys say.

Martin is at the center of what arguably is the most famous workplace bullying incident of all time.

The most egregious behavior was blamed on fellow lineman Richie Incognito. But evidence of Martin's bullying at the hands of teammates grew last week when his attorney, David Cromwell, an Atlanta partner at Gordon & Rees, released a voice mail from another player threatening to sexually assault Martin's sister.

The offensive tackle walked off the team Oct. 28 following a dining room prank at the team's training center in Davie.

It then was learned the second-year player from Stanford University was the subject of months of harassing texts and voice mail from Incognito, who was once voted the dirtiest player in football in the "Sporting News." Incognito, known for voicing racial epithets on the field, was convicted in 2004 of misdemeanor assault at a party and was accused of bullying a teammate in college.

Martin hired Cornwell last week to advise him how to handle the ongoing NFL and player's union investigations of his allegations, according to Fox Sports. Cornwell is the partner in the sports, media and entertainment practice at Gordon & Rees.

"Jonathan endured harassment that went far beyond the traditional locker-room hazing," Cornwell said in a statement released late Thursday. "This is a textbook reaction of victims of bullying."

But what are Martin's litigation options? Not many, say South Florida labor and employment attorneys and bullying experts.

"Bullying in the workplace is perfectly legal. You had two bills in the Florida Legislature last session that went nowhere," said Gary Namie, director of the Workplace Bullying Institute in Bellingham, Wash. "The legality of bullying is what keeps it going."

Labor and employment attorneys say Martin's case might fall into workplace protections against racial discrimination because one of Incognito's messages started, "Hey, wassup, you half n----- piece of s----" and went on to threaten violence.

Martin is of mixed-race descent. The Dolphins suspended Incognito indefinitely once the text and voice mails were provided to the team by Martin.

"The Dolphins do not have to provide a stress-free work environment. They just have to provide a work environment that doesn't violate either Title VII or the Florida Civil Rights Act," said Miami attorney Marc Brandes, a partner at Kurkin Brandes.

"There are no bullying statutes or case law that protect adults. Mr. Martin would have to rely upon traditional civil rights laws," said attorney Reginald Clyne, a partner at Lydecker Diaz in Miami.

### **Workplace Bullies**

He noted a decision by the U.S. Court of Appeals for the Eleventh Circuit in 1999 that defined acceptable and unacceptable workplace behavior, finding workplace banter did not rise to the level of harassment in *Medoza v. Borden*.

"The court makes a distinction between workplaces and uses football analogy of a coach patting a player on the butt as acceptable but the same coach patting his secretary on the butt in the back room as not perhaps being acceptable," Clyne said.

Several Dolphins, including those of color, came to Incognito's defense, which would seem to make a race-based claim tougher. On the other hand, NFL Hall of Fame player Warren Sapp said last week he was called the N-word by Incognito during a game several years ago.

Incognito's off-field behavior also has drawn attention. A 2012 police report said he harassed a black volunteer at Fins Weekend Golf Tournament by touching her inappropriately with a golf club and emptying bottles of water in her face. The volunteer told a Miami television station she couldn't talk about the incident because she had signed a confidentiality agreement, indicating a private settlement.

The incident indicates the Dolphins likely were aware of Incognito's boorish and possibly racist behavior yet still allowed him to be a team leader.

"Mr. Martin is going to have to prove he was harassed as a member of a protected group, in this case African-Americans," Brandes said. "But this is going to be an uphill battle."

He noted Martin could sue Incognito under a state law banning prejudice while committing an offense, in this case threats.

"It's a criminal statute that has a civil remedy," he said. "If Martin can prove he had been coerced or threatened in violation of the statute, he can get treble damages plus attorney fees."

Fort Lauderdale labor and employment attorney Donna Ballman has made it a mission to shed light on workplace bullying. She wrote an article for AOL on the subject shortly before Martin walked out.

"Just like playground bullies, workplace bullies target the weak and different," she said.

In most workplaces, bullying targets tend to be disabled, pregnant, minorities or older employees. But an NFL locker room may be the only place in America where a top-flight education is open to ridicule.

### **'Textbook Reaction'**

Martin has been called "soft" by NFL players.

Cromwell's statement said his client is anything but soft, playing for a college program renowned for its "smash-mouth" style. "Despite these efforts, the taunting continued. Beyond the well-publicized voice mail with its racial epithet, Jonathan endured a malicious physical attack on him by a teammate and daily vulgar comments," the attorney said. Cromwell said his client tried to befriend the bullies in hopes of ending the torment.

"This is a textbook reaction of victims of bullying," Cromwell said.

Without condoning the behavior, Ballman welcomes the attention Martin's departure has generated.

"I'm really sorry for what happened to the player, but I'm really glad it happened in such a public way," she said. "It is bringing workplace bullying to the forefront and it will bring to our attention the fact that we need some workplace anti-bullying laws."

The team faces some liability risk of its own. Coaches reportedly asked Incognito to toughen up Martin after he missed a voluntary workout last spring.

For the 4-4 Dolphins, the saga has led to speculation grows that head coach Joe Philbin's job is at risk. Other teams, such as the Seattle Seahawks, have no-hazing policies, Namie noted.

The NFL has appointed New York criminal defense attorney Ted Wells to investigate possible misconduct as evidence mounts that Incognito's bullying days go back to when he played at the University of Nebraska.

"The Dolphins should have some concern," Brandes said. "If the Dolphins are asking one of their employees to toughen up this guy but didn't monitor it or didn't care except for what the results were on the football field, they may be responsible."

The results haven't been that great. The Dolphins offensive line allowed 35 sacks going into Monday's game with Tampa Bay — the most in the NFL this season.

Miami sports attorney Christopher Lyons said Philbin will have trouble coming up with plausible deniability since the Dolphins appeared on HBO's television series "Hard Knocks" last season and Philbin was caught on camera as a control freak.

"He was so meticulous," Lyons said. "He knew everything that was going on. It's going to be very hard for him to answer, 'How did you not know this was going on?' for it was pretty well-known Martin was getting this treatment."

Philbin has said he was unaware of the situation until Martin walked off the team.

### **Blaming the victim**

"What happens in bullying is we get into a lot of blame the victim," Ballman said.

Former Dolphins lineman Lydon Murtha said Martin "did not seem to want to be one of the group." New York Giants safety Antrel Rolle said Martin was at fault for allowing himself to be bullied.

If Martin does pursue a litigation, he can forget about his football career, Lyons said.

"It would be like committing professional suicide," he said. "He would be unlikely to play for the Dolphins, and what NFL team would want a type of player who would sue players or the team?"

As long as the Dolphins keep paying Martin's \$600,000 salary, Lyons said the offensive lineman wouldn't want to sue.

But Brandes said Martin, the son of two Harvard graduates, might not care about financial damages if he files a lawsuit, aiming instead for a loftier goal.

"He may be doing it for a result, a change in policy in the NFL and perhaps all of sports," he said.