

Legal Ethics

Aug. 31, 2023, 6:59 AM; Updated: Aug. 31, 2023, 8:17 AM

# Prosecutor Snared in Massachusetts Drug Lab Case Disbarred (1)

By Allie Reed

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- Three former assistant attorneys general disciplined
- More than 24,000 convictions in 16,500 cases dismissed

A Massachusetts prosecutor was disbarred Thursday after her failure to disclose exculpatory evidence in a drug theft case sowed major doubt in the criminal justice system.

Anne Kaczmarek is the first former member of the Massachusetts attorney general's office to ever be disbarred. Her behavior may have impacted thousands of defendants who were convicted on drug charges.

John Verner, a former state prosecutor who supervised Kaczmarek, was publicly reprimanded. Kris Foster, a more junior former prosecutor, was suspended for one year and one day.

"The harm that resulted from the combined misconduct of Verner, Foster, and Kaczmarek cannot be overstated," the Supreme Judicial court said in an opinion, continuing that "many criminal defendants were found guilty, admitted to sufficient facts, or pleaded guilty because of the AGO's failure to turn over exculpatory evidence."

"Thousands of defendants, who otherwise would have been eligible for relief at an earlier date, remained incarcerated during this time," the justices said.

Almost 25,000 drug convictions in nearly 16,500 cases were dismissed after the Supreme Judicial Court found they were tainted by ex-chemist Sonja Farak's drug theft and tampering, in addition to the prosecutor's misconduct. The court dropped convictions for every drug case Farak was involved in at the lab, as well as any case tested at the lab between 2009 and 2013.

## Withheld Evidence

The ex-chemist's job at the Massachusetts drug lab in Amherst was to evaluate whether substances the state seized were illegal drugs.

At some point, Farak started tampering with the drug samples and using them herself. She was arrested in 2013.

The point at which Farak began tampering with evidence would become crucial for thousands of criminal defendants whose samples were tested by Farak, the state's Office of Bar Counsel told the court.

The attorney general's office obtained evidence that traced Farak's misconduct back to 2011—further than the District Attorney's office previously knew—and failed to disclose that evidence in a timely manner.

### **Varying Accountability**

While each attorney's "misconduct caused great harm, both to the criminal defendants whose cases were corrupted by Farak's tampering and to the public's perception of the criminal justice system," their accountability for the office's misconduct varies, the justices agreed.

Kaczmarek "bore the most responsibility" because she was in charge of Farak's investigation and prosecution, and still failed to disclose exculpatory evidence and lied about it repeatedly, the opinion said.

"Although they are not entirely unprecedented, there are few disciplinary cases in Massachusetts against prosecutors," the opinion said. "In reviewing these cases, we have come across none that is comparable to the facts we have here."

The justices adopted the Board of Bar Overseer's recommendation to disbar Kaczmarek because of her "intentional and egregious misconduct," misleading statements, and lack of remorse or admission that she made mistakes, as well as the significant harm her behavior caused thousands of criminal defendants.

Verner, Kaczmarek's supervisor, assigned the case to her, and failed to follow up with Kaczmarek about whether she had disclosed the exculpatory evidence.

He was chief of the criminal bureau at the attorney general's office, and managed more than 100 people, according to the opinion.

The Supreme Judicial Court typically gives substantial deference to the Massachusetts Board of Bar Overseers, which had recommended a three-month suspension for Verner.

"Kaczmarek was Verner's subordinate, and Verner knew her to be an experienced prosecutor who had demonstrated her competence during her work" on a previous case related to the drug lab scandal, the opinion said. His reliance on Kaczmarek's false representations that she had turned over exculpatory information was "reasonable and in good faith," the opinion said.

Verner's misconduct was "limited to failing to follow up with her as to whether she had disclosed all such information," so the justices concluded that "anything more severe than a public reprimand would be inappropriate," the opinion said.

"We are pleased that the SJC agreed with John's position that a public reprimand was appropriate," his attorneys Patrick Hanley and Thomas Butters, from Butters Brazilian LLP, said in a statement.

Foster, a newer lawyer, helped Kaczmarek with discovery requests. In doing so, she failed to ensure the attorney general's office had reviewed a case file containing exculpatory evidence.

The Board of Bar Overseers argued Foster's lack of experience mitigated some of her behavior.

The Supreme Judicial Court disagreed. "Foster's lack of experience in responding to subpoenas does little to mitigate misconduct based largely on her competence and diligence; more is expected of a fifth-year attorney," the opinion said.

The justices also found the less experienced attorney more culpable for relying on Kaczmarek's misstatements than Verner, the supervisor.

"Foster was making affirmative representations in court filings, on which she signed her name. It should have been abundantly clear to Foster that it was her responsibility to verify the truth of her own representations," the opinion said.

Her lack of honesty, remorse, and awareness of her wrongdoing also influenced her sanction.

The case is *In re Foster*, Mass., No. SJC-13360, opinion 8/31/23.

(Updated with additional reporting throughout.)

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