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Boston Defense Attys Welcome Friendlier DOJ Under Rollins

By **Chris Villani**

Law360 (July 26, 2021, 9:16 PM EDT) -- Local Boston defense attorneys hailed the Biden administration's selection of Suffolk County District Attorney Rachael Rollins as Massachusetts' next U.S. attorney, saying the progressive prosecutor has the potential to curb excessive white collar sentences and bring about "seismic change" to the high-profile office.

If confirmed by the U.S. Senate, the former federal prosecutor would replace Trump appointee Andrew Lelling, who led the office through major white collar prosecutions like the "Varsity Blues" college admissions scandal and took an aggressive approach to immigration, drug and gun cases.

Defense attorneys said Rollins will likely shift away from such cases and devote even more resources to prosecuting traditional white collar crimes. She'll also have the chance to bring her criminal justice reform agenda to the federal level, including by reining in harsh sentencing recommendations and discouraging U.S. Immigration and Customs Enforcement from taking people into custody in federal courthouses.

"I think there is a pretty broad belief that white collar sentences have really gotten out of hand," said Quinn Emanuel Urquhart & Sullivan LLP partner Bill Weinreb, who served as acting U.S. attorney before Lelling's nomination. "I would love to see some reform energy being put into reining those in."

Weinreb said he was an early supporter of Rollins when she ran for district attorney in 2018. During that campaign, she said she would not prosecute low-level offenses, such as shoplifting or drug possession. Those types of crimes are not in the purview of a federal prosecutor, but Weinreb said her reform agenda could manifest itself in other ways.

"She may be focused more on the higher reaches of the DOJ, where U.S. attorneys often have an influence by sitting on the attorney general's advisor counsel and having a big say on policy matters," he said.

The contrasts between Rollins and Lelling are stark. The office under Lelling pressed for lengthy prison terms to the point of seeing considerable pushback from the bench, whereas Rollins has espoused decarceration and alternatives to locking people up.

Lelling had no issue with immigrants being taken into custody in federal courthouses. Rollins, citing the chilling effect it can have on cases, sued the Trump administration and sought to end civil arrests by ICE in state courthouses. She and another Boston-area DA dropped the case this year when the Biden Administration changed the policy.

William Fick of Fick & Marx LLP said Rollins also has the ability to effect change by not bringing cases that are better left to the state courts.

"One of the most controversial areas is the tendency of federal prosecutors to take low-level gun or drug cases, thereby exposing the defendants to much harsher penalties," Fick said. "I think a better balance can be struck in the charging decisions."

Rollins' outspoken persona may be curtailed a bit, given the constraints on what a U.S. attorney can publicly say as opposed to an elected district attorney, Weinreb added.

"I do think you'll see a different public voice once she is confirmed," he said.

Nixon Peabody LLP partner Robert Fisher, who worked with Rollins at the U.S. Attorney's Office, said Rollins will still find ways to lend her voice to the causes she believes in, whether it's criminal justice reform or immigration policy.

"As Suffolk County DA, there is no one above you except the voters," Fisher said. "But I think she'll still have a platform, though it may not be appearing on news shows as a politician."

It's unclear how Rollins will handle the case of state court Judge Shelly Joseph, who is being prosecuted for letting an immigrant evade ICE custody. She has a pretrial appeal pending before the First Circuit.

Fick, who called the prosecution of Judge Joseph an overreach, said he hoped Rollins would consider dropping the case, but added that Justice Department officials in Washington, D.C., may have the final say.

"That will be an important test case to gauge how much power and authority she will have to make real change," Fick said.

Defense attorneys will also be watching how Rollins handles prosecutions under the DOJ's China Initiative, including a case filed in the waning days of the Trump administration against an MIT engineering professor accused of hiding his ties to Chinese organizations and funding sources while applying for grants from the U.S. Department of Energy.

Last week, the government dropped five visa fraud suits against Chinese researchers, a possible sign of shifting priorities from the top.

Boston attorney Martin G. Weinberg of Martin Weinberg Law PC acknowledged that Rollins will have less leeway in her new post, with policy being set in Washington, D.C., but she still represents a marked change relative to Lelling.

"Ms. Rollins, once confirmed, will have broad latitude in making changes in an array of pivotal issues to the defense bar, including more open-file discovery and sentencing policies both pre- and post-trial, that will distinguish the next four years from historic local practices," Weinberg said. "It is time for seismic change."

Todd & Weld LLP founding partner Howard Cooper told Law360 that President Biden made an "excellent choice" in nominating Rollins.

"Her nomination presents an opportunity for real criminal justice reform in this district and the prospect of more thoughtful and nuanced prosecutorial decisions," said Cooper, who has blasted the Judge Joseph prosecution as "draconian" and the former administration for an "unjust federal policy that lands disproportionately on poor immigrants."

Carol Rose, the executive director of the ACLU of Massachusetts, said in a statement that the group looks forward to working with Rollins if she is confirmed and highlighted policies Rollins brought to the DA's office that the ACLU saw as positive developments.

"As Suffolk County district attorney, Rachael Rollins has demonstrated what a difference a DA makes," Rose said. "From moving to dismiss thousands of cases tainted by Massachusetts' drug lab scandals to declining to prosecute several low-level offenses, she has prioritized racial justice and fairness in our legal system."

In a statement, a spokesman for Rollins at the DA's office said she is "incredibly humbled by the great honor of being nominated by President

Biden to be U.S. Attorney for the District of Massachusetts" and "remains focused on doing the hard work of keeping the residents of Suffolk County safe."

Without offering a prediction on the outcome of the confirmation process, Weinreb said Rollins may draw added scrutiny from certain senators.

"Given the partisan divide in Washington these days, it seems like everybody's confirmation is close," he said. "I don't think she will be an exception to that, given how outspoken she has been on some hot-button issues."

"Unfortunately, some of the things she has said and done may well present a target of opportunity for Republicans who want to make some noise and make a stand," Fick added. "We are all going to hold our breath to see how that process goes."

--Editing by Steven Edelstone.

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