

MARTIN'S LEGAL OPTIONS LIMITED IN DOLPHIN CASE

By CURT ANDERSON

MIAMI (AP) — The legal options for offensive lineman Jonathan Martin may be limited under workplace discrimination and harassment laws because an NFL-ordered investigation found that neither Miami Dolphins coach Joe Philbin nor the Miami Dolphins' top executives knew about the bullying he endured, labor law experts say.

Martin told Ted Wells, the investigator appointed by the NFL, that he never reported repeated harassment at the hands of fellow lineman Richie Incognito and two others. Wells found that Martin "did his best to honor" an unwritten "Judas" code against snitching on fellow players.

Because his employer was apparently unaware of the problems, it would be more difficult for Martin to win a workplace harassment lawsuit against the team, said Miami labor attorney Michael Landen. And in some cases, Martin seemed to go along in a bid to fit in.

"He seemed to participate and he didn't report it to anyone at the Dolphins. When he did report it, the Dolphins took immediate action by suspending Incognito," Landen said Wednesday. "They have some strength to their case because they did have procedures in place and upon reporting it they took immediate action."

Indeed, the Wells report found the Dolphins had clear, written policies against workplace harassment or discrimination and that Philbin "embraced this philosophy and frequently reminded the team to be respectful" throughout the season. The team's policy said harassment included "jokes, comments and antics; generalizations and put-downs; pornographic or suggestive literature and language." And the policy extended to texts and emails.

The report also found basis to believe allegations that the Dolphins management encouraged Incognito's actions in an effort to "toughen up" the 6-foot-5, 312-pound Martin. Incognito and others, the report said, threatened to rape Martin's sister, called him a long list of racial slurs and bullied him for not being "black enough," among other things.

Incognito's attorney has denied that his client or any other Dolphins' offensive linemen bullied Martin.

If Martin did pursue legal action, University of Miami law professor David Abraham said the remedies are limited. Workers in discrimination and harassment cases frequently seek reinstatement to their jobs and back pay, he said. In Martin's case, the Dolphins continued to honor their contract with him after he abruptly left the team in October.

"There is no issue of back pay, because the Dolphins did not withhold any of his contracted salary," Abraham said. But, he added, there's clear evidence of harassment. "When you leave your job, that's a pretty clear

demonstration of a hostile workplace."

Getting a job back on the football field is another matter. Martin told Wells he hopes to play in the NFL again, but it's an open question whether the Dolphins would welcome him back given the controversy over the bullying case. **Landen said Martin could negotiate a financial settlement with the Dolphins in return for his release, making him a free agent who could sign with any other team.**

Simply releasing him could be viewed as employer retaliation, he added.

"If the Dolphins cut Martin, they better be able to demonstrate it's because of inabilities on the field or their actions are really going to be under the microscope," Landen said. "That could expose them to some liability."

Martin's attorney, David Cornwell, did not immediately respond to an email seeking comment.

Just as long-term mental problems by former players focused renewed attention on concussions in the NFL, Abraham predicted the Martin case would lead the league to adopt more stringent policies against similar locker room antics despite football's status as a gladiator-like sport. Simply ignoring harassment as the expected product of a tough-guy atmosphere isn't going to cut it, he said.

"The league is going to have to come down on egregious talk and it's going to come down on the roughness of the way players treat each other in the name of building team spirit," Abraham said.