

OFFICE AFFAIRS

When love leads to litigation

Love, romance and extra marital affairs are all part of life in the workplace. Two employees meet and get involved with varying consequences. Although polls show a majority of Americans believe extra -marital affairs are wrong, employers typically resist making such judgments. Just 12 percent of 391 companies surveyed by the American Management Association have written guidelines on office dating. One chief reason for turning away at such problems is to avoid liability in situations where a married person is fired for having the relationship but the unmarried coworker remains employed. Those situations, according to experts in the field, can create lawsuits for discrimination by the married, terminated employee. Thus, an environment has taken shape in corporate America where employees are often on left on their own to decide. Some workers in the 1990's tried to advance so-called third party sexual harassment litigation, claiming they had missed out on promotions or raises because a superior favored an office lover. The Courts have generally backed away from imposing damages in these situations as the worker's injuries are not severe enough to warrant damages.

What happens, however, when a senior partner at a large, national law firm enters into an extra marital relationship with the wife of a client? What happens when the law firm is accused with knowing that this relationship has been ongoing and has done nothing to arrest the situation? .

This is the scenario that recently occurred in the case of Sam Seay v. Baker, Donelson, in Jackson Circuit Court in Jackson, Mississippi. In this case, the President and Chief operating officer of one of the nation's largest law firms, William Reed, has recently has been accused of having an affair with Sam Seay's wife. Seay was allegedly a client of Baker during this relationship.

What makes this case unusual is the allegation in Seay's complaint linking the Baker law firm to the controversy. Ordinarily, these extra marital affairs would be treated as a purely private matter. Here, Seay has chartered new legal ground by attempting to create liability on behalf of the firm. In the complaint, Seay alleges that Reed was having an affair with his wife for many years with full knowledge and support of the firm. In the complaint, Seay further alleges that Baker breached its fiduciary responsibilities by failing to supervise Reed by preventing him from having sexual relations with Seay's wife, Rebecca. Ultimately, the affair led to the dissolution of the Seay's marriage. The complaint goes on to allege that Baker used information about Seay gained as a result of the lawyer/client relationship to "facilitate the seduction of Rebecca Seay" by Reed.

In response to this suit, Reed has resigned his position as managing director of Baker and takes fully responsibility for his actions. Baker, however, denies any connection to the relationship. Seay claims that the Baker firm took advantage of the professional relationship and thus created a conflict of interest. Under the ABA model rules of professional conduct, a conflict of interest exists where there is a material risk that the representation of a client will be limited by a lawyer's personal interests. Beyond warning managers not to become involved with employees or, in this case, the spouse of a client, as Baker could have done, employers are caught between protecting the reputation of the company and invading the manager's privacy.

The net result-companies must have guidelines if not stricter guidelines in order to establish the parameters of these acts. Companies should employ those guidelines or policies that establish that any consensual relationship is between an employee and a client must be disclosed to the company immediately. Although a company may not be exposed to an extra marital affair between two consenting adults only when the theory of negligent supervision is applied to the situation does the potential for potential problems arise. Negligent supervision, however, has not been recognized by any court so far as applying to extramarital office romances. This is what makes the Seay Case so unique.

The case is in the middle of discovery with a deposition of Seay scheduled by Baker in the coming weeks. We will follow this case accordingly and let you know its progress.