Sexual Harassment Experienced by Lawyers

Tuesday, March 20, 5:30-7:30 p.m.

Presenters:  Heidi Machen, Esq., Machen Law, San Francisco

&

Kenneth D. Martinson, Esq., San Bruno
Mini-opening: (2005-2012) and Burden of Proof.

Causes of Action:

1. Acme Law Firm Discriminated against Plaintiff b/c of her gender by failing to promote her and/or by terminating her employment;

2. Acme Law Firm Retaliated against her by failing to promote her b/c she complained abt. Gender bias at the firm;

3. Failed to take all rsbl steps to prevent gender discrim.

4. Retaliated by terminating empmt b/c complaint about gender bias or b/c filed lawsuit.
Men were promoted ahead of women. Chu generated more $ than junior partners of similar tenure who were promoted and allowed to serve on board.

Ideas coming from women were quickly dismissed; women were invisible/excluded. Not seated at the table – literally. Al Gore dinner and all men ski trip: “women kill the buzz.”

Women who experienced sexual harassment received little support.

- Ms. Chu complained about Partner Ajit Nazre, mngmt encouraged her to “marry him” or at least have one-on-one lunch to discuss & Nazre was promoted;
- After she ended their relationship, he excluded her from impt. emails, mtgs.
- Co.’s reprimand of him was to deduct $22K from his paycheck but no strong desire to reprimand him until multiple allegations were confirmed involving other women;
- His office moved to her corridor & in same division: problem? Solution: move Chu.
Testimony:

- HR expert
  - Contradictory perf evals saying Chu was “too bold” and “too quiet”
  - Approp. Conversations, e.g. porn star tours at Playboy Mansion?
  - Will also talk about appropriate versus inappropriate gifts:
    - Valentines Day gift of “Book of Longing” poetry from Senior Partner;
    - One-on-one dinner invite from same Senior Partner.

- Co-workers
  - Men: “women kill the buzz”
  - Women: some will back up Ms. Chu’s version of events. When one woman complained of a partner answering hotel room in bathrobe.
Plaintiff’s case, concluded

- Defense may argue that it has more women than its competitors, but... 
- Defense may argue that Chu had every advantage, but... 
- Look at the timing, look at the decision-making look at the retaliation.
  - Timing of advancement of female co-worker;
  - Advocacy of women only when it was convenient.
Simply no excuse for discriminatory violations of the law.
Worth: $16 million.
Defendant’s Case

- Chu was given every advantage:
  - $567,000 year pay was higher than some more senior men;
  - Manson, Chairman attorney, was her mentor;
  - Allowed to move freely between transactions and litigation dept.

- Relationship with Nazre was consensual, no sex harassment claim.

- Termination had nothing to do with her complaints or that she filed a lawsuit but rather with her own inability to move forward w/ the firm. (look to perf reviews, inability to work well with others, “entitled,” “not a team player”)

Acme Law compares well in its industry:
- Large ratio of women in leadership, including managing partners from whom you will hear.
- High pay scale for women – more than half a million a year for Junior Partner Chu.
- Emails show Chu expected to be fired and she accepted her severance package valued at $400,000 even though she didn’t get the full amount because she got a better paid job w/in one year.
- Was Chu really motivated by a search for justice?
  - Husband Buddy Fletcher filed for bankruptcy in 2012.
Questions Pre-Verdict Announcement

- Poll for verdict. What facts most imp. to you?
- 1. Why no Sexual Harassment claim?
- 2. Is Eva Chu a sympathetic Plaintiff? Why or why not?
- 3. What abt. Acme’s argmt that its #’s are better than most?
- 4. Was P outnumbered by circling of wagons?
- 5. Was P’s race a factor?
- 6. Contrasting neg perf evals as “too bold” and “too quiet?”
Defense Verdict
  10-2 in favor of Acme on first 3 claims;
  9-3 in favor of Acme on 4th claim of retaliation.

Surprised by outcome?

How could Chu have been more convincing?

Was the world simply “not ready?” Did jury expect Chu to just “suck it up,” at her high level?

Did consensual romantic relationship hurt her credibility? Is this just a double standard?
Current Events Really do Shape How Law is Made.

Some developments over the years:

1994 Case that started it all: Baker & McKenzie rainmaker sued by inept secretary who won $ 7.1 Million verdict. Right around time Sexual Harassment policies being implemented.


ABA asks “Why Are Women Leaving the Law?”
I. California Fair Pay Act 2015
   A. Sen. Hannah Beth Jackson – inspired by Farmers Insurance case
   B. Req’s co’s pay EE’s equally for “substantially similar” work
e.g. “housekeeper” v. “janitor”

II. CA Pay Inquiry Ban (AB 168) (focus on seemingly neutral policies that may perpetuate salary disparity)
   A. Effective Jan. 1, 2018
   B. Prohibited from relying on or asking for prior salary history
      (only allowed if voluntary and not prompted)
   C. If publically avail, okay, but can’t be sole reason for setting salary.
   D. If asked, must provide pay scale for position.
San Francisco Pay Equity

- Effective July 1, 2018
- Prohibits ER’s reg’d to do biz in SF from inquiring abt. salary history from people applying for job within city.
- ER’s may not consider salary history in hiring or salary decisions (but, if voluntarily disclosed, ER may consider).
- Cannot release salary history of current or former EE to prospective ER w/out written consent.
- Posting reqmt. and small monetary penalties.
Calif. FEHA’s expansive protections against harassment and retaliation include contractors and, also, unpaid interns and volunteers (2015 law).

DFEH harassment guide issued May 2, 2017
- Components for effective program;
- How to conduct fair investigation;
- Maintaining impartiality & testing credibility during investigation;
- Setting proper burden of proof.

Calif. DOL has increased authority in retaliation:
- Unilateral investigation w/out complaints.
- Petition for injunction; issue citations; obt. atty fees.
Sexual Harassment – several proposed bills, and more to come:

- Extend the SOL on all FEHA empt harassmt and discrim cases from 1 to 3 years (AB 1870, Reyes).
- Limit use of forced arbitration in harassment cases (AB 3081, Gonzalez).
- Prevent secret settlmts in harassmt cases (SB 820, Leyva).
- Req record retention for 10 yrs in instances of sex harassmt (AB 1867, Reyes).