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CONFERENCE REPORT

Sex Harassment

PLAINTIFF'S ATTORNEY ADVISES TOUGH STANCE AND EARLY PREPARATION IN HARASSMENT CASES

NEW ORLEANS – Plaintiffs' attorney should keep a data base of form motions at hand to respond quickly to defense tactics that delay sex harassment cases from moving forward, plaintiffs' attorney Carla D. Barboza advised March 1.

Speaking at a conference sponsored by the National Employment Lawyers Association, Barboza added that the plaintiff's attorney in a sex harassment case should do a comprehensive client screening to ensure the client can withstand the rigors of litigation. Screening should be so thorough that the plaintiff's attorney should be substantially ready for trial when the first deposition is taken, said Barboza, of the firm Barboza & Associates in Los Angeles.

"The hard part is dealing with the other side – the delays, the harassment," she said. "Fortunately, they're not very creative. Their defense will always be: "She brought it on herself; she's a slut; she's been married five times; she misperceives everything because she's the victim of past abuse."

In cases where past abuse is raised, Barboza said that plaintiff's counsel should respond that because of a history of abuse, the current harassment "hurts my client more than plaintiff B."

Sex harassment cases are so time-consuming and emotionally draining that Barboza recommended that attorneys should not "dabble" in such cases. Plaintiff's counsel should make sure someone with experience is trying the case. "There are so many pitfalls, you can only learn by doing," she said.

Following her presentation, Barboza told BNA that the attorney's role may be as much therapist as legal counsel to plaintiffs in sex harassment cases. "It's a long process of building trust," she explained. "You have to get her to talk about humiliating things she wouldn't tell her closest friends and family, and you're a stranger."

Screening Process is Critical

Before deciding whether to represent a sex harassment claimant, Barboza said that she makes sure the victim has "some kind of support system under her belt. You have to manage the client along the way. It's an intimate relationship. I tell them to tell me everything."

Since harassment cases often turn on credibility of the plaintiff versus the alleged harasser, Barboza said that what an attorney does before discovery will determine the end result. In screening, she tells potential clients that there can be "no secrets, no surprises."

“This is no easy task,” Barboza said. “I have to get the client to tell me the most humiliating and shameful experiences of her abuse.”

Once she takes a case, Barboza said, she is as “tenacious and passionate as I can be on every issue” raised by defendants during discovery.

“The more I practice law, the meaner and nastier I get because they’re mean and nasty,” she said, referring to defense counsel. Once a complaint is filed, “a flood of paper will come at you,” Barboza said.

She provided conference participants with sample forms of interrogatories, requests for documents, and motions to compel. These forms, she said, “you edit, get ready for your case. But, like I said, they’re not very creative, so you know what to expect.”

Tough Stance in Discovery Advised

“You need to come out slugging. Call out all the bogus objections at the beginning,” Barboza said of the discovery process. “They will say salary records, company policy on harassment are not relevant. Have a motion ready to compel release.”

She also advised plaintiffs’ counsel to be brief and not to file long discovery motions. “Just because [defense counsel] writes three pages doesn’t mean you have to,” she said. Attorneys who follow her advice usually will prevail in court because “you get a reputation of being no nonsense. They give you what you want.”

Sex harassment cases tend to “get big and bulky” and “tend to slow down.” To keep them moving, she advised plaintiff’s counsel to keep saying they are ready for trial. “You’re not going to get your trial date anyway,” she said. “It’s an attitude.”

Preparing for Plaintiff’s Deposition

Attorneys must be vigorous advocates for their clients in harassment cases, Barboza said. “They’ve already been abused... They don’t know what assertive is,” she said. Clients, she added, “watch everything. They want empowerment. You are their role model.”

In preparing for the plaintiff’s deposition, Barboza said that the attorney must teach the client how to answer questions by replying only to the question and not volunteering information. The plaintiff’s attorney should be tougher on the client in a mock deposition than anything the plaintiff is likely to encounter from defense counsel, she said.

“If you show your client knows what to do, they’re not going to go to trial,” Barboza said. “You will [then be able to] put the value on the case. You will decide. That’s where you wish to be in every case. You don’t want to be vulnerable.”



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SUPREME COURT WILL ULTIMATELY ADDRESS STATUS OF SAME-SEX CLAIMS, ATTORNEY SAYS

NEW ORLEANS—The U.S. Supreme Court ultimately will have to decide whether same-sex harass-