

## An Old “SNL” Skit, A New Court Decision, and How Rumors Can Lead to Sexual Harassment Liability

For those of you old enough to remember (and young enough to search YouTube), when Saturday Night Live was in its early heyday, one of its most popular skits was “Point/Counterpoint” starring Dan Aykroyd and Jane Curtin. During this satire on news commentary, Mr. Aykroyd would start his “counterpoint” with “Jane, you ignorant slut,” a phrase that drew laughs in the 70s, but may not be so well received -- even in jest -- today. And, as we will see from a recent court decision discussed below, when sophomoric name-calling leads to the actual spread of rumors in the workplace, liability for sexual harassment can attach.

On February 8, 2019, the Fourth Circuit Court of Appeals handed down its decision in the case of *Parker v. Reema Consulting Services, Inc.* The plaintiff alleged that she worked for the defendant at its warehouse facility in Sterling, Virginia. Over the course of her employment, plaintiff was promoted six times, ultimately becoming Assistant Operations Manager in March 2016. Shortly after receiving this last promotion, plaintiff became the subject of malicious rumors that she had sex with a high-ranking manager in order to obtain her promotions.

Rather than quelling the rumors, supervisors allegedly helped spread them. The result was plaintiff being met with open resentment and disrespect by co-workers. After plaintiff complained, the hostility escalated with plaintiff being subjected to ostracism, overt nastiness, a false complaint against her, and ultimately termination.

The district court granted the defendant’s motion to dismiss plaintiff’s hostile environment and retaliation claims. The district court found that the spreading of rumors was offensive and violated the plaintiff’s dignity. But, the district court held that the rumors themselves were not based on plaintiff’s *gender* but rather on a false statement about plaintiff’s *conduct*. Because the district court found that the alleged hostile environment was not gender based, it dismissed plaintiff’s claims.

The Fourth Circuit reversed, holding that when viewed in the totality of the circumstances, the rumors could indeed be deemed to be gender based:

As alleged, the rumor was that Parker, a female subordinate, had sex with her male superior to obtain promotion, implying that Parker used her womanhood, rather than her merit, to obtain from a man, so seduced, a promotion. She plausibly invokes a deeply rooted perception – one that unfortunately still persists – that generally women, not men, use sex to achieve success. And with this double standard, women, but not men, are susceptible to being labeled “sluts” or worse, prostitutes selling their bodies for gain.

This raises the rhetorical question: how many men would ostracize another man for sleeping with the female boss? As stereotypes go, the male office “slut” would be far more likely to receive high fives than workplace exclusion and hostility. It is within this framework of common experience that the Fourth Circuit concluded:

In short, because traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior stubbornly persist in our society and these stereotypes may cause superiors and coworkers to treat women in the workplace differently than men, it is plausibly alleged that Parker suffered harassment because she was a woman. (internal quotations omitted).

The Fourth Circuit's opinion of course has particular resonance in the #MeToo era. One of the critical issues that is at the forefront of the current cultural shift is that while it takes decades to build a company's strong reputation, it only takes a nanosecond to tear it down through a viral story on social media. At this stage in the proceeding in the *Parker* case, we do not know whether the facts as alleged are in fact true. But the case ought to serve as a reminder that rumors are a cancer in the workplace, one that must be bitterly fought.

A well-presented sexual harassment training program should include a discussion about how rumors can form the basis of a hostile environment claim. The *Parker* case deserves a place on a PowerPoint slide to remind the entire workplace that there is no place for false and mean-spirited rumors in the employer's place of business, and that the spreading of such rumors will have severe consequences.

If you have any questions about this Information Memo, please contact [Howard M. Miller](#) any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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