

“The employees with whom contact is prohibited are those with speaking authority for the corporation who have managing authority sufficient to give them the right to speak for, and bind, the corporation. Employees who can commit the organization are those with authority to make decisions about the course of the litigation, such as when to initiate suit, and when to settle a pending case.” Id., at 357; (internal quotations and citations omitted).

“This interpretation... would prohibit ex parte contact only with those employees who exercise managerial responsibility in the matter, who are alleged to have committed the wrongful acts at issue in the litigation, or who have authority on behalf of the corporation to make decisions about the course of the litigation. This result... prohibits direct communication with those officials ... who have the legal power to bind the corporation in the matter, or who are responsible for implementing the advice of the corporation’s lawyer.. or whose own interests are directly at stake in a representation.” Id., at 357-358; (internal quotations and citations omitted).

This test, the SJC explained, is consistent with the purposes of the rule which are not to protect a corporate party from the revelations of prejudicial facts, but to protect the attorney-client relationship and prevent clients from making ill-advised statements without the counsel of their attorney. Id., at 358; (internal quotations and citation omitted).

“Prohibiting contact with all employees of a represented organization restricts informal contacts far more than is necessary to achieve these purposes. The interests of the organization are adequately protected by preventing contact with those employees empowered to make litigation decisions, and those employees whose actions or omissions are at issue in the case.” Id., at 358.

Argument:

Neither ***** (*****) or ***** (*****) were named as individual defendants in this suit or accused in any way (in the Complaint or during plaintiff’s deposition) of wrongdoing.

Nor is either of these individuals alleged or believed to have authority to direct the instant litigation on behalf of the defendant corporation or to bind it in any way.

***** and ***** are fact witnesses. Excerpts from the plaintiff’s deposition are appended hereto as Exhibit 4.

In essence, the following scenario is believed to be true and accurate:

- 1.) That ***** was advised not by the plaintiff initially, but by one or more of the plaintiff’s co-workers, of the alleged sexual harassment to which the plaintiff was publicly subjected by two of her superiors at ***** , Inc., one ***** and one *****;
- 2.) That ***** stated to the plaintiff that he, ***** , felt duty bound to report the matter to Human Resources and did so;

3.) That ***** had a near-physical confrontation with ***** ***** over the latter's cavalier attitude about the alleged sexual harassment;

4.) That ***** played no role whatsoever in the subsequent elimination of the plaintiff's job or in the rejection of her applications for ten different jobs within the defendant corporation.

5.) That ***** similarly played no role whatsoever in the subsequent elimination of the plaintiff's job or in the rejection of her applications for ten different jobs with the defendant corporation;

6.) That ***** was close to the plaintiff and had spoken about her situation to numerous other people at the defendant ***** , Inc.

The plaintiff's task of proving her case is made all the more difficult because all of the witnesses are or are believed to be still employed by the defendant corporation.

The plaintiff faces the task of proving that the person or persons who eliminated her then job and rejected all of her applications for new positions within the defendant corporation had knowledge that she had engaged in the protected activity of internally pursuing her complaint for sexual harassment.

It is imperative that plaintiff counsel be able to approach the foregoing individuals to see if they would be willing to speak privately to him.

Authority from this court to do will recognize "the need, largely by plaintiffs, to gather facts informally, unpolished or influenced by counsel for the corporate opposition." Id., at 364 (Cordy, J., concurring in part and dissenting in part).

As well, judicial economy will be advanced by the grant of said authority, as it might be determined whether or not it makes sense to go to the expense and trouble of deposing ***** and *****.

WHEREFORE, plaintiff respectfully prays for authority for her counsel to contact ***** and ***** to see if they would be willing to speak privately to him.

Respectfully submitted,
***** ***** ,
by her attorney:

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