

**United States District Court, District of Massachusetts**

**Bench Bar Conference, October 22, 2015**

**Mediation Program Hypothetical**

Claire, age 30, a recent graduate of Oxbridge Business School with a B.S. in Finance, joined the Providence Consulting Group as a Junior Associate in 2013. Her starting annual salary was \$95,000. She was one of 3 women in a class of 25 Junior Associates hired that year. PCG is an elite firm that works with top corporate and government clients around the world. Associates work long hours and travel frequently. PCG sponsors employee retreats such as box seats at football games, monthly formal dinners and an annual elk hunting trip to Alaska. Spouses and partners are never welcome at these events. Associates are given performance evaluations based metrics and are ranked against other members of their hiring class and awarded an annual bonus based on merit and the sole discretion of their supervisor. Associates are promoted as a class from Junior Associates to Senior Associates after two years, and to Junior Director two years after that. Many Junior and Senior Associates burn out and leave voluntarily. At the end of 2013, Claire received an excellent evaluation.

Claire directly reported to Francis, a Senior Director, during her entire tenure at PCG. In the first year Claire was unhappy with the male-centric culture of the firm and was not enthusiastic about attending PCG's social events. Claire was ranked in the bottom half of the associates but was promoted to Senior Associate with her class and received an average bonus after her second year. At the end of the second year, Claire was the only female associate remaining from her class.

Shortly after her promotion, Claire and Francis began a clandestine intimate relationship. After the relationship began, Claire's performance evaluations became much more positive and she rose into the top half of associates based on metrics. Their relationship was well known within their working group, but was not common knowledge outside of the working group or elsewhere in the company.

PCG had a policy addressing "Nepotism and Personal Relationships in the Workplace. Neither Francis nor Claire followed the policy. It provided in pertinent part:

Conflict of interest also exists when there is a consensual romantic or sexual relationship in the context of employment supervision or evaluation. Therefore, no supervisor may influence, directly or indirectly, salary, promotion, performance appraisals, work assignments or other working

conditions for an employee with whom such a relationship exists.

Supervisors involved in a consensual romantic or sexual relationship, in the context of supervision, must discuss the matter on a confidential basis with their own supervisor or Human Resources to assess the implications for the workplace and make arrangements to ensure that employment-related decisions are made in an appropriate and unbiased setting. Although both employees involved in a consensual relationship are individually responsible for disclosure, a supervisor's failure to report such a relationship will be regarded as a serious lapse in the management of the workplace and grounds for appropriate disciplinary action, including termination. A supervisor must be regarded as trustworthy and fair. It is important to understand that, even when arrangements have been made to minimize conflicts of interest regarding particular employment-related decisions, it is necessarily more difficult for a supervisor to be fair when a close relationship exists with an employee.

Disruption to the workplace can be particularly acute when a sexual or romantic relationship involving a supervisor is known to exist but cannot be discussed openly.

Supervisors should also understand that even in a consenting relationship there are substantial risks of charges of sexual harassment or favoritism when supervision is involved.

In 2014, Claire, Francis and 2 other male associates from Claire's class were assigned to a large project with Fleet Bank that did not go well. Fleet Bank terminated the contract, resulting in millions of lost revenue for PCG. After six months and around the same time that Fleet terminated, Claire ended the relationship with Francis. In her next performance evaluation, Claire was ranked in the bottom half of associates. The other two associates from Claire's class on the Fleet Bank project were ranked even lower than Claire. However, Claire was the only associate from her class not awarded a bonus, nor was she promoted to Junior Director. Claire became depressed and started to see a therapist who gave her anti-anxiety medication. In January, Francis called Claire into his office and fired her, stating that her performance on the Fleet Bank project was substandard and that she was terminated immediately.

Claire began looking for a job immediately and for about 4 months she applied to dozens of online postings, networked, and even solicited the assistance of various recruiters. During that time, she received just one job offer from a company called Mountain Consulting for a similar position but making only \$75,000. She turned down

the position not only because of the salary but because Mountain Consulting was well known in the industry to be a terrible place to work with long hours and there was a recent and unfavorable article in the national news about the culture and work environment at Mountain Consulting. The firm also had a poor reputation for not respecting their employees, being competitive, having a high turn-over rate, and having a limited chance of promotion. Defeated and unable to find a job, Claire decided to take advantage of the down time and took an 8 week trip traveling through South East Asia photographing the countryside. Once she returned, four of her photos were published in national magazines. As compensation, she received \$250 per photograph, for a total of \$1,000. Claire found employment after several months of travel. She has the same title she had before but her new company, which is a competitor of PCB and equally as prestigious, does not promote people to partner as quickly as PCG did. Her new position pays more (\$105,000 per year). In fact, it's an ideal place to work and was Claire's top choice when she was interviewing in 2013 but she was not offered a position in 2013.

Claire believed she was terminated because she ended the relationship with Francis. She filed suit against Francis and PCG for sexual discrimination, alleging that she was fired for breaking up with her boss, and that she was deliberately not promoted because of her gender. Two other male associates who had also worked on the Fleet Bank project and had lower performance evaluations were promoted with the class and awarded a bonus. Since filing suit, two other female former PCG employees came forward stating that they too were passed over for promotion after having ended intimate relationships with their PCG superiors. During her interview with her attorney, Claire mentioned many sleepless nights. Although she stopped therapy when she was fired because she could no longer afford it, after she returned from SouthEast Asia, she resumed therapy but her therapist did not prescribe any medications for depression or anxiety and suggested mediation and yoga. Prior to the order of the court directing mediation, the company offered Claire \$115,000 in cash, equal to one year of salary which she rejected.