



Be mindful of Cupid's poison arrow at the law firm

Office romance, particularly between partners and associates, can lead to more than just broken hearts

BY ANAYAT DURRANI

Will is a partner at the firm. Alicia is a third-year associate. The two are carrying on a discreet affair. But, Diane, a senior partner, is on to them. Diane sets up a meeting with an insurance broker and makes the entire firm watch a video on sexual harassment as a subtle warning to Will and Alicia on the risks of interoffice sex. Alicia eventually ends the affair and Will accepts. That's how it played out on the fictional legal drama *The Good Wife* on CBS. The message: having a relationship with a subordinate in the workplace, even if consensual, is risky business. Had the affair turned bitter, it could have been a costly lesson for the partner and the firm.

In real life, law firms and sexual harassment suits are not uncommon. Recently, a law firm partner who had a fling with his paralegal saw his personal life dissected in front of a California jury. The jury carefully combed over private text messages and instant messages exchanged between the two. The former law firm paralegal brought a sexual harassment and wrongful termination suit against her former boss. She claimed she felt pressured to have sex with her boss and was fired when she tried to end it. The ex-boss said the sexual relationship was consensual and that he did not fire her but that she left the job after he criticized her job performance. He also claimed she started telling people he was a sexual predator. The jury ended up ruling in the defense's favor, clearing the firm of wrongdoing and awarding the ex-boss

\$1.15 million in compensatory damages and \$100,000 in punitive damages on his defamation claim. The partner was lucky and dodged a bullet.

Workplace as the new singles bar

The workplace has replaced the singles bar and online matchmaking sites as the place for hookups. The long hours, working with others close in age, and those with similar interests often make conditions ripe for potential romance to bloom. Some eight million Americans date their co-workers each year, according to the San Francisco Chronicle. And, half get married or remain in long-term relationships.

Stephanie Losee, San Francisco-based co-author of *Office Mate*, helped pen a book about office romance. In her experience, she said she would not discourage consensual relationships among lawyers working in the same firm. Losee said one in five office romances ends in marriage.

"Contrary to its reputation, office romance is the last bastion of old-fashioned courting," said Losee. "You are in an atmosphere where you don't expect to date – one in which you are surrounded by people who have been vetted by Human Resources and with whom you have an enormous amount in common. You start out as friends. You get to know one another well before you even think about dating."



Losee

Peer-to-peer dating seems to work best. However, where things get tricky is when it comes to boss-subordinate relationships.

"Boss-subordinate relationships are the key reason employers fear office romance and the possible resultant sexual-harassment claims," said Losee. "When there is an imbalance of power between even consensual partners who work together, there is the potential for favoritism. Employers must do everything they can to avoid it."

Not all relationships cause problems at the workplace. But when relationships go sour, they carry the very real risk of pulling the company into claims and counterclaims of sexual harassment. This can be costly in terms of legal fees, but also damage office morale. This is typically only a potential problem when one lawyer is in a supervisory role to the other, such as a partner and associate, a senior associate and more junior associate, or paralegal and partner. These types of office romances can bring all kinds of disaster on a lawyer's career, not to mention public humiliation and emotional distress.

"I always tell people that if they're considering a relationship with a boss or subordinate, they have to understand that there will be a loss involved," said Losee. "One of you might lose your assignment, or even your job. Or you'll lose the relationship. There is much more at stake than in an office romance between peers."

Kate McGuinness, a lawyer who practiced in Southern California and spent



McGuinness

17 years at Biglaw, ten of them as a partner, says she personally discourages consensual relationships because of the many complications that can arise. McGuinness, an advocate for women and author of *Terminal Ambition* said, however, she would not go as far as recommending that firms formally prohibit them.

“Here’s one example of how complex these relationships can be: a married, very highly-regarded male partner started an affair with a female associate. Their relationship became an open secret inside the firm,” explains McGuinness.

“Eventually, after much agonizing, he left his wife. The associate felt she received unmerited criticisms in performance reviews that were motivated by male partners being influenced by their wives who were sympathetic to the deserted wife. Eventually to assuage her concerns, the male partner left the firm to its detriment.”

Law firm relationships can indeed be complex, such as a love triangle case between partners that made headlines in January 2012. A former partner at a major Boston law firm filed a lawsuit claiming that an affair between his wife (who is also a partner) and the firm’s managing partner cost him his job. Plaintiff husband said he had no choice but to leave because of the affair. A second plaintiff in the case, also a former partner of the firm, claims he lost clients that were “inextricably linked” to the plaintiff husband and that he also had no choice but to resign.

The suit seeks damages for alleged constructive discharge and breach of fiduciary duty. A 19-page complaint states the plaintiff husband was excluded from events at the firm, lost a leadership position, and had his pay cut because of the affair. The managing partner and the plaintiff’s wife announced their relationship at a partner meeting in November and said they intended to divorce their spouses.

Partner-associate canoodling

A partner dating or having an affair with an associate is never a good idea. Employment lawyer, Ashley Brightwell, a partner at Alston & Bird in Atlanta, who has handled many sexual-harassment cases, told the *Wall Street Journal*, that a third of the cases come from a relationship that started consensual but “morphs into a bad break-up or something that’s no longer consensual.” She said that sometimes it starts as “intra-office flirtation” where one person thinks it is mutual and the other does not “or things progressed into it becoming unwelcome.” She cited two reasons why partner-associate dating is a big no-no. She said a partner controls the associate in relation to the work they get, their reviews, and salaries, and second, because of the perception among other associates and partners.

“Inter-office flings create all sorts of problems because they mix two different worlds – work and romance – that involve different relationships and different rules around what’s appropriate,” said Will Meyerhofer, a NY-based psychotherapist, former Sullivan & Cromwell lawyer and author of “Way Worse Than Being a Dentist.” There’s also the question of differing levels of power in the firm. A young associate dating a partner – well, it happens all the time, but that’s a wildly disparate relationship – the partner is often the same person who will be reviewing the associate on the work he/ she does.”

Indeed, in these types of relationships others in the firm may begin to question the value of the associate’s real skills, and the merit of any promotions or pay raises the associate receives. It also undermines the credibility of the partner. Then, of course there is the emotional stress should the office romance suddenly end. The former couple will have to deal with still having to work together, one of them having to take direction from the other, with the rest of the firm left in an uncomfortable environment.

Even if the romance is consensual between the boss and subordinate, other

employees could sue the employer for demonstrating favoritism or make hostile work environment claims. Or if one member of the former couple continues to pursue the other despite the break up, the employer could be found liable for sexual harassment.

“I think sexual harassment at law firms is a lot more common than people think – and frankly, any sexual harassment is too much sexual harassment,” said Meyerhofer. “In my own practice, as a psychotherapist – and former lawyer – seeing dozens of attorneys each week, I run into horrifying stories. What’s even more upsetting is the response from the firms. Typically, they play it down and all too often end up forcing out the attorney who complains.”

Sexual harassment defined

So what constitutes sexual harassment? Title VII of the Civil Rights Act of 1964 defines it as occurring “when one employee makes continued, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, to another employee against his or her wishes.”

“Sexual harassment can arise from one person’s unwelcome sexual advances to another or it can arise from working in a sexually charged environment,” explained McGuinness.

McGuinness said sexual harassment can occur without “sexual desire” from discrimination based on sex “if it places the victim in a disadvantageous working situation, regardless of the gender of either the victim or the harasser.” She said an example of this type of discrimination in a law firm would include excluding female attorneys from client “bonding” opportunities that take place at strip clubs.

McGuinness said it’s hard to quantify sexual harassment in law firms since it is something all involved are loathe to admit. She said women who experience sexual harassment tend to be more reluctant to complain.



“Young women are still programmed to be ‘good girls’ and not make waves, that if they go along, they will get along,” explained McGuinness. “Complaining about sexual harassment is not career enhancing. The complainer may suffer retaliation and backlash.”

Meyerhofer said he is often amazed at how female partners are often unsympathetic to female associates who launch complaints about harassment. “Law firms can often feel like frat houses – or men’s clubs. Men dominate the management, and make most of the decisions, and women are often helpless to communicate what it feels like from their perspective,” he said.

Types of harassment

The two common forms of sexual harassment are quid pro quo and hostile environment. Quid pro quo, Latin for “this for that” means for example, an employer guarantees a promotion in exchange for the subordinate delivering sexual favors. A hostile environment means employees being subject to a pattern of touching, dirty jokes, or lewd photos and supervisors taking no steps to stop it.

“I believe sexual harassment is common in law firms, especially larger firms where the harasser’s bad actions are less visible to his peers or supervisors,” said McGuinness. “Today’s digital environment provides new opportunities for harassment via e-mail, Twitter, text and transmission of suggestive/revealing digital images.”

Both men and women can be victims of sexual harassment. Sometimes the harassment is male-to-male. In a pending California case, a male associate filed suit alleging hostile work environment and sexual harassment for being pressured to talk about his feelings while sitting naked with other men, being forced to touch a wooden phallus, and take part in other sexually-related activities at a seminar he was told to go to by a firm partner.

And, in some cases the sexual harassment is female-to-female. A female

associate that was fired from a Delaware law firm filed suit for hostile work environment. The associate alleged that a female partner made inappropriate sexual remarks about her breasts and lips and called her “dirty hot,” pressured the associate to go to a sex-toy shop with her to buy her a vibrator, talked about how she liked having “foursomes” and telling her “if you were gay, I would do you.” The parties entered into a joint stipulation to dismiss the action with prejudice.

Joanna L. Grossman, associate professor of law at Hofstra Law School, explained in an article on the subject, that one of the most publicized sexual-harassment cases was lodged against one of the largest law firms in the world.

“In that case, a jury awarded a legal secretary more than \$6 million based on the conduct of a law firm partner (a long-standing harasser, as it turned out) who reached into her breast pocket to retrieve some M&M candies he had dropped there,” she wrote. Grossman said law firms must take the appropriate steps to “prevent and correct workplace harassment” or they will “risk devastating consequence.”

The majority of law firms acknowledge that they need to discuss and remind employees of sexual-harassment policies and keep an eye out for sexually harassing behavior. However, sexual-harassment claims are still on the rise, suggesting that firms and/or attorneys are not doing enough.

“Sexual harassers may be partners, associates or clients,” explained McGuinness. “However, liability will not attach to the law firm if the harasser is a co-worker or a client unless the firm was aware that the harassment was occurring.”

When sexual harassment occurs, typically an alleged victim has a private attorney examine whether the incident constitutes sexual harassment. Then the employee can pursue mediation, or file a lawsuit or complaint with the Equal Employment Opportunity Commission (EEOC), who then creates a public record trail. Victims can sue for money damages,

to get their job back, and to request the court make the employer update its practices to prevent future sexual harassment from occurring.

Some HR departments have practiced zero-tolerance policies that allow incidents of sexual harassment to be resolved quickly, without having to be reported to the EEOC. Employers sometimes choose to pay to resolve the issue rather than fight it out in the courtroom or the court of public opinion. Legal costs and damage control are big reasons why. According to the EEOC, in 2010, some 11,717 sexual harassment charges were brought, 83.6 percent from women, resulting in \$48.4 million in monetary benefits paid out to victims. The percentage of claims filed by men in 2010 increased from 15.9 percent to 16.4 percent, according to the EEOC.

“Law firms and other businesses routinely take preventive measures by requiring personnel to attend sensitivity or diversity training. Also law firms and other businesses often have written policies prohibiting harassment,” said McGuinness. “The Supreme Court has ruled that employers may be able to avoid liability or limit damages by establishing they exercised reasonable care to prevent and correct promptly any harassing behavior.”

Love contracts

Sometimes companies try to ward off potential sexual-harassment lawsuits by having dating co-workers sign a love contract. San Francisco lawyer Stephen Tedesco introduced the concept of the love contract. He told the San Francisco Chronicle that the contract, “lays the ground rules of an office romance” and couples that sign it “are confirming it is a consensual relationship and that if they break up, one will not harass the other.” Love contracts also ensure that if the relationship ends they will not allow the break up to adversely affect their duties or work environment. While some companies do use love contracts, not all think they are practical.



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“I personally feel that having employees sign formal ‘love contracts’ is rather silly. For one thing, it turns HR managers into the relationship police and injects the company into employees’ personal lives to an unnecessary degree,” said Dr. Marie G. McIntyre, a career coach who has worked with Home Depot, Prudential, BellSouth, and Panasonic.

Dr. McIntyre said love contracts raise the interesting question of how exactly HR would “handle married employees who are having a supposedly clandestine affair which is obvious to everyone.” She said affairs are even more problematic to deal with than other relationships and it

would be “somewhat awkward” trying to get those having the affair to actually sign a love contract. “And good luck getting a high-level executive to sign such a document,” she adds.

Dr. McIntyre said she does believe, however, that if two employees have a known romantic relationship, it would be a “very good idea to have a talk with them about how to keep their personal relationship from interfering with work.”

Or, they could take a cue from Diane (senior partner on *The Good Wife*) and have the couple sit uncomfortably through a sexual harassment seminar. It worked on *The Good Wife*. So far.



Durrani

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