

Tips for Clients and keeping them out of trouble

© **Victoria L. Herring**

September 15, 2005

You're sitting in your office, quietly working on a brief when the call comes in. A young woman is on the phone, obviously shy and scared. She tells you she believes she has been sexually harassed at work and isn't sure what to do about it and wants to know her what she can and should do. Fortunately, after getting her name and putting her at ease, when you ask her the first question (*who's the employer?*) there is no conflict, and when you ask her the second question (*when did this happen?*), it was just a little over a week ago. So, you arrange for her to come into your office to give you the full story, being prepared to either consider taking the case or seeing to it that she is referred to another lawyer or the agency which can help her, instead.

When the young woman comes in you pull out your interview checklist or form (whatever it is you use to make sure you don't forget to ask the obvious, such as "was your job application filled out as accurately and truthful as possible?") and put her at ease with some niceties and non-threatening observations, so she will start to feel comfortable with you. She outlines all the details of the incidents and you're sure she has a case worthy of filing a complaint with the state or federal commission (or both, of course). She's getting ready to leave and says to you: "Well then, if we file this complaint on Friday, what happens then?" And she looks to you for guidance on how to run the rest of her life. What do you do?

Perhaps the first thing you will do is explain to her, if you haven't already, the process the complaint will go through even before any suit is brought in court. Having done that, then, you need to get her to understand this is just a part of her life and it should not consume all of her life.

You need to let her know not to make this complaint her life's work, to live her life as best and fully as she can for herself, her family, her friends and community, and not to become consumed and obsessed with the facts which brought her to file. That is easier said than done for her, since there is a certain amount of empowerment that comes from taking a stand and finding an advocate to fight for you in the trenches. But, clients do have to live their lives and not allow the court or agency docket to control. You'll have to remind her about this, but it will pay dividends when she is open to settlement at a reasonable amount or when she is ready to go to trial as a victim of discrimination, but not as a vindictive plaintiff, so angry a jury won't like or trust her.

Part of living one's life also allows her to fulfill the legal mandate to mitigate damages. If she leaves the employment, moves on and finds another job or fills her life with something else equally valuable. That's one less hurdle she and you will face as you complete the answers to interrogatories or prepare for trial.

After this counsel, however, it is essential to address the real world effects of making a complaint and to warn her of what will no doubt happen. Before filing anything, your client has to know the ramifications of doing so, so he or she can decide if it's worth taking that step. This warning also will serve to educate the client about what to say and who to say it to (or not), and who she can call upon as witnesses down the road.

I'm fond of telling clients who sit and fume about all the injustice done to them or people trying to harm them, "just because you think they're out to get you doesn't mean you're paranoid", which usually elicits a hearty laugh. But clients need to realize that very often there is a consequence to filing a complaint of discrimination; it's illegal, but it's also predictable that someone in the employer's organization will take it upon him or herself to "teach that gal a lesson" and will do something to penalize her for having the temerity to enforce her rights.

Obviously, retaliation is wrong, and smart defense lawyers and employers do what they can to prevent it from happening. But it is human nature to want to respond to a blow struck against you, whether justified or not, and the person or company which receives a discrimination complaint isn't going to feel very cheerful about it.