

# EMPLOYMENT LAW360

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## IM Chats Get Cingular Off The Hook For Sex Bias

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A series of flirtatious Instant Messenger chats provided enough intimate details for a federal judge to write off allegations in a sexual discrimination suit brought by a former Cingular Wireless LLC temporary employee against the wireless company and her manager.

Judge Robert F. Kelly pored over the text of IM conversations between the former administrative assistant and her manager, concluding Tuesday that the two had clearly engaged in a "sexually flirtatious professional relationship" and that the assistant was not subjected to a hostile work environment.

The judge knocked down all of the claims Amy Kraus raised in her suit in the U.S. District Court for the Eastern District of Pennsylvania and granted summary judgment to Cingular, now known as **AT&T** Inc.; and engineering group manager Joseph Ruiz.

Kraus, who worked as a temporary assistant at Cingular's office in Bensalem from June to December 2004, had alleged that Ruiz created a hostile environment when he talked to her about a sexual dream involving her, but the judge said the IM discussions painted a different picture.

In the following unaltered conversation, Kraus' screen name is Amk257 and Ruiz's is jruizFSA2.

jruizFSA2: just wanted to know what you thought about my dream and conversation?

Amk257: well...it was totally flattering and um, i dunno kinda hot and surprising all at the same time

Amk257: but at the same time, your still very much my boss.

jruizFSA2: hot is what way?

Amk257: i guess in the, i can see where you're coming from, way..if that makes sense

Judge Kelly noted that "Kraus willingly discussed the sex dream with Ruiz, and even encouraged him to provide her with details. She also engaged in her own sexual banter by telling Ruiz that she had sexual thoughts about him."

In her testimony, Kraus testified that while she made flirtatious statements, they did not constitute "actual liking" and said Ruiz should have interpreted her flirtations as only complimentary.

"A reasonable person, viewing the totality of the situation, could not find that the IM conversation between Ruiz and Kraus constituted anything other than intersexual flirtation, which the Supreme Court has stated should not be mistaken with discriminatory conditions of employment," Judge Kelly stated.

Kraus had also accused Ruiz of making a number of sexual remarks to her and telling her he would help her find a permanent position at Cingular in exchange for sexual favors, but Judge Kelly found that the incidents were "at best sporadic and isolated incidents," and were not severe enough to rise to the level of a hostile work environment.

"Sexually charged comments, one sexually explicit phone call, banter about helping Kraus find a permanent job in exchange for sex, and an attempt to hug her do not show that the workplace was permeated with insults and discriminatory actions," Judge Kelly stated.

After granting summary judgment to the defendants on Kraus' hostile environment claim, the judge quickly rejected Kraus' eight additional counts, including claims of negligent failure to train, emotional distress and punitive damages.

The electronic evidence, which was initially produced by Kraus to help her case, offered a detailed log of conversations that ended up helping the defendants win the case, according to attorney Todd J. Shill, who represented Cingular and Ruiz.

"The instant messages showed that the conduct was welcome between two consenting adults and that it was not enough to arise to a hostile work environment. Without the instant messages, we could have had a different result," said Shill, an attorney with **Rhoads & Sinon** LLP.

Kraus, who had obtained the temporary position at Cingular in June 2004 through a staffing agency, cut her employment term short in early December 2004 as a result of the alleged harassment by Ruiz.

She submitted a sexual harassment complaint to Cingular, which conducted an investigation, but Ruiz was not subjected to disciplinary action.

She then filed a charge with the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission in May 2005. After receiving a right to sue letter, she filed the current suit in March 2006.

In addition to Cingular and Ruiz, the suit also targeted staffing agency Howroyd Wright Employment Agency Inc., which does business under the name AppleOne Employment Services. In October, Kraus voluntarily dismissed AppleOne from the

case.

An attorney for Kraus did not return a call seeking comment.

Amy Kraus is represented in this matter by the Pearce Law Firm. Cingular Wireless LLC is represented by Rhoads & Sinon LLP.

The case is Amy Kraus v. Howroyd-Wright Employment Agency Inc. et al, case number 2:06-cv-00975-rk, in the U.S. District Court for the Eastern District of Pennsylvania.

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