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Court says ex-Oakton C.C. cop can't press defamation claim vs school over 'problem employee' flyer

By [Elizabeth Alt](#) | Jul 7, 2017



CHICAGO — A federal judge has granted a partial win to Oakton Community College, saying a former Oakton campus police officer can't press her case the college defamed her when it included her photograph on a flyer for a seminar about "problem employees" that began circulating after her termination.

On May 11, U.S. District Judge Sharon Johnson Coleman granted Oakton's request to dismiss that portion of plaintiff Joan Nebel's complaint against the school because the court already found the flyer was not accountable for defamation per se.

Nebel worked for the school from 2002 until 2015, when she was fired. She alleged her termination was retaliation for her bringing gender discrimination complaints to her bosses, and she claimed that those statements were statutorily protected.

Nebel also cited defamation, claiming flyers placed around campus used her photo to advertise for a seminar on “Problem Employees and the games they play.” Nebel sued both Oakton and individual defendant Gerald Modory, the department’s training officer, whom she claimed made discriminatory comments and actions against her and allegedly altered the flyer to include her photo.

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In the 2016 opinion, Coleman held that Nebel did not have a case against Modory because she failed to state a claim for defamation per se, quoting the U.S. Supreme Court’s ruling that a statement that may reasonably be innocently interpreted when considered in context cannot be actionable per se. Without the use of extrinsic facts, the lack of connection between the unnamed photograph and the seminar topic leaves the possibility of innocent construction, the judge said.

Oakton then moved for summary judgment, arguing there is no genuine issue of material fact on Nebel’s defamation claim because the court already found that the flyer does not constitute actionable defamation.

Nebel responded that the motion should be denied, because Oakton neither joined Modory’s motion to dismiss nor has discovery been completed. Coleman noted Nebel did not dispute any facts or give any possible evidence that might be collected from discovery to make an issue for a jury. Nebel relied on earlier arguments in opposition to Modory’s motion to dismiss, which were found unpersuasive on a lower standard of review by the court.

In the decision, Coleman said that because the court finds that the statements in context are reasonably capable of an innocent construction and there is no dispute of fact, the motion to dismiss was granted.

According to online federal court records, Nebel and Oakton are engaged in settlement discussions to conclude her remaining allegations.

Nebel is represented in the action by attorney Jessica Judith Fayerman, of Fayerman Law LLC, of Chicago.

Oakton is defended by the firm of Robbins, Schwartz, Nicholas, Lifton & Taylor Ltd., of Chicago.



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