

## Cerabino: Constitution doesn't protect firefighter's affair at work, court rules

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Does a person's First Amendment right of association include the right to have an extramarital affair with a subordinate in the workplace?

This is not an idle question, but the heart of a federal lawsuit waged by a Palm Beach County firefighter who claimed he was wrongly fired over his romance with a female firefighter he supervised in his station.

This week, a federal appellate court in Atlanta ruled that former county fire-rescue Capt. Randolph Starling's relationship with Carolyn Smith — whom he later married — was not a constitutionally protected affair.

Hierarchy first priority, court writes

"We conclude that (Palm Beach County) did not violate the Constitution because the county's interest in discouraging extramarital association between supervisors and subordinates is so critical to the effective functioning of the fire department that it outweighs the firefighter's interest in extramarital association with a subordinate, even if we assume *arguendo* that the First Amendment protects extramarital association as fundamental right."

The justices affirmed the dismissal of Starling's complaint by U.S. District Judge Daniel T.K. Hurley, who characterized the couple's relationship as "an initially adulterous relationship between a superior and subordinate employee in a quasi-military employment hierarchy."

Starling arranged to have Smith transferred to his fire station while he was separated but not divorced from his wife. His supervisor, Ken Fisher, said in a sworn statement that he counseled Starling about having a personal relationship with Smith.

"We had a conversation about the fact that dating somebody that you were supervising and taking that relationship to another level and being married was a dangerous situation to be in and could have consequences," Fisher said.

Romance leads to demotion, firing

A few months after Starling's wife filed for divorce, Starling moved into Smith's house. Starling complained to his union about Fisher's interference with his relationship, and that began a downward spiral of Starling's career, leading to a double-demotion and eventual firing.

Starling's lawyer, Isidro Garcia, sued Fisher and the county, claiming that Starling had been written up for contrived offenses as a way to punish him for a relationship that was a guaranteed right.

"It is beyond dispute that a relationship that is naturally progressing and culminates in a legal marriage between a man and a woman is entitled to the highest constitutional protection under the First Amendment," Garcia wrote.

The justices, however, expressed a more qualified view:

"We have afforded public employers greater latitude to burden an employee's rights, particularly when the exercise of that right impacts discipline, morale, harmony, uniformity, and trust in the ranks," the court wrote.

The justices cited claims that Starling's special attention to Smith and their "late-night associations" had threatened

the harmony of their shift.

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