

November 2021

Welcome In-House Counsel and Colleagues:

We are glad that you are able to join us for Wyatt's 2021 litigation seminar, *Cultivating Successful Litigation Strategies*. The seminar topics were selected based on feedback received from prior programs. We hope you find the presentations informative and that they help you succeed as you confront litigation challenges in the work you perform every day.

There will be an opportunity for questions at the conclusion of each presentation. You're also welcome to follow up with me or a member of Wyatt's litigation team any time we may be of assistance.

Best regards,

WYATT, TARRANT & COMBS, LLP



Byron E. Leet



WYATT

cultivating successful
litigation strategies

Thursday, November 11, 2021

Agenda

- 8:00 AM** **Registration and Networking Breakfast**
- 8:25 AM** **Welcome** – Byron Leet
- 8:30 AM** **Employment Law Update: Managing the Workplace in the COVID Era** – Sharon Gold and Joe Stennis
- 9:15 AM** **FCPA Hydra: Enforcement Actions, Civil Litigation, Compliance Policies, and More . . . at the Same Time!** - Matt Palmer-Ball
- 10:00 AM** **Networking Break**
- 10:30 AM** **Your Company's Been Sued, Now What? Best Practices for Managing Effective Litigation Strategies With Outside Counsel** – Julie Laemmle Watts and Jordan White
- 11:15 AM** **The Good, the Bad, and the Ugly of Mediation** - Byron Leet and Corky Coryell
- 12:00 PM** **Lunch**
- 12:30 PM** **Ethics Topics for In-House Counsel** – David Calhoun and Sean Williamson
- 1:30 PM** **Closing Remarks** – Byron Leet



EMPLOYMENT LAW UPDATE

MANAGING THE WORKPLACE IN THE COVID ERA

PRESENTED BY: SHARON GOLD AND JOE STENNIS



Covid-19 Litigation Trends

- 76 lawsuits filed in Kentucky that relate to COVID-19
- Employment:
 - Many Retaliation/Whistleblower claims based on workplace safety concerns (public policy claims)
 - ADA/KCRA accommodation claims regarding masks and working from home
 - Some FFCRA suits
 - Reduction in force was age or race-based
- General Litigation:
 - Several lawsuits against universities and colleges regarding lack of in person instruction
 - Breach of contract





What can we learn from these litigation trends with regard to employment claims?



Retaliation Claims – Wrongful Discharge

- Most-filed claims concerning COVID right now.
- If an employee makes a verbal or written complaint about safety protocols, document it, thoroughly investigate it (just as you would if it were a harassment complaint), and address the deficiencies if there are any. Discuss the findings with the employee.
- Guard against retaliation for employees making workplace safety complaints.



Requests for Accommodation – Masks

- Utilize the Interactive Process as you would for any other request for accommodation.
- You can request medical documentation if the request concerns a medical reason the employee cannot wear a mask.
- Is there a feasible alternative employee is proposing? Does the alternative provide the same safety measures as a mask?
- Does this employee have contact with others? Is the employee vaccinated? Can the employee social distance? Can the employee wear a shield?
- Is this an undue hardship on the employer?



Requests for Accommodation - Leave



- The amount and/or length of leave required (for example, four months, three days per week, six days per month, four to six days of intermittent leave for one month, four to six days of intermittent leave each month for six months, leave required indefinitely, or leave without a specified or estimated end date);
- The frequency of the leave (for example, three days per week, three days per month, every Thursday);
- Whether there is any flexibility with respect to the days on which leave is taken (for example, whether treatment normally provided on a Monday could be provided on some other day during the week);



- Whether the need for intermittent leave on specific dates is predictable or unpredictable (for example, the specific day that an employee needs leave because of a seizure is unpredictable; intermittent leave to obtain chemotherapy is predictable);
- The impact of the employee's absence on coworkers and on whether specific job duties are being performed in an appropriate and timely manner (for example, only one coworker has the skills of the employee on leave and the job duties involved must be performed under a contract with a specific completion date, making it impossible for the employer to provide the amount of leave requested without over-burdening the coworker, failing to fulfill the contract, or incurring significant overtime costs); and
- The impact on the employer's operations and its ability to serve customers/clients appropriately and in a timely manner, which takes into account, for example, the size of the employer.



Requests for Accommodation - Working From Home



Interactive Process

- Identify and review the essential job functions of the position;
- consider limitations of the disability that make it difficult to do the job in the workplace;
- assess whether some or all of the functions can be performed at home and whether a part-time telecommuting schedule is feasible;
- determine whether any technology or equipment is necessary to perform the job remotely (for example, a computer or technological support); and



- consider whether other accommodations exist that enable the employee to work full-time in the workplace.
- Do not deny a request to work remotely as a reasonable accommodation solely because a job involves some contact and coordination with other employees if the employee can:
 - conduct meetings effectively by telephone; and
 - exchange information quickly through email.



- Do not remove any essential job duties to permit an employee to work remotely but consider reassigning some minor job duties or marginal functions if they cannot be performed outside the workplace and are the only obstacle to permitting an employee to work remotely.
- Include onsite attendance in the position's job description if it is an essential function of the job.
- Do not deny a disabled employee's request to telecommute as unreasonable or as imposing undue hardship if employees without disabilities in the same job are permitted to telecommute.



Remote Working – Best Practices

Telecommuting Policy and/or Agreement

- Sets forth which positions are eligible
- Refers employees to ADA policy for accommodations
- Sets forth procedure for requesting telecommuting
- Details employee responsibilities and expectations (such as work hours, timekeeping, accessibility, secure remote access procedures, and work expenses)



Telecommuting Agreement/Policy cont.

- Sets out employer responsibilities (for example, technical support, equipment, and expense reimbursement)
- Designates the employee's specific job duties, work area, and break times to avoid liability for injuries that are not work-related
- Reminds employees that they are expected to comply with all employer policies, including electronic communications policies;
- Include at-will language and ability to change the terms of telecommuting at employer's sole discretion; and
- Notes, if applicable, that permissions to telecommute are provided only during governmental orders necessitating remote work (such as during the 2020 COVID-19 pandemic).



Wage and Hour Concerns

- Make sure non exempt employees are recording all time.
- Forbid working outside of normal hours, but still pay for those hours.
- If you know an employee has worked outside of hours but did not record, then pay the hours.



Electronic Communications Policy

Make sure employee knows that employer can monitor computers and history to see when employee is working or not and, thus, no reasonable expectation of privacy.



Confidential information

- Requiring remote employees to use secure remote access procedures like a Virtual Private Network (VPN); and
- training remote employees on information security policies and practices, such as protecting information from being viewed or accessed by others, restricting information that can be stored on personal devices, updating software, and disposing of sensitive documents.



Reductions in Force

- If severance is offered, remember that the Older Workers Benefit Protection Act requires 45 day review period, 7 day revocation, specific release language, and a chart that lists the class, unit or group covered by this program, eligibility factors for this program (eg. reason used for determining who is chosen, titles and ages of the employees who were in the group who were chosen and not chosen for reduction).
- Best practice is to do an age, gender, and race analysis before and after reduction to see if there is a disparate impact whether or not you provide severance.
- Make sure the reason for selection of certain employees is supported by documentation.



VACCINES



ADA

- Employer may require an individual with a disability to be vaccinated if the requirement applies to all employees or is a job-related standard consistent with business necessity.
- If an employee with a disability cannot comply, the employer must demonstrate that the individual would pose a “direct threat” to the health or safety of the employee or others.
- “Direct Threat” - “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation.



Direct Threat

To determine whether an employee is a direct threat, an employer must make an individualized assessment of the employee’s ability to safely perform the essential functions of the job.

1. the duration of the risk;
2. the nature and severity of the potential harm;
3. the likelihood that the potential harm will occur; and
4. the imminence of the potential harm.



Direct Threat

Factors to consider:

- Type of work environment
- Whether the employee works alone or with others
- Whether the employee works inside or outside
- Available ventilation
- Frequency and duration of direct interaction with others



Direct Threat

Factors to consider:

- Number of partially or fully vaccinated individuals already in the workplace
- Whether other employees are wearing masks or undergoing routine screening testing;
- Space available for social distancing
- Level of community spread



Reasonable Accommodations

- If an employee with a disability who is not vaccinated would pose a direct threat, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat.
- Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, reassigning the employee to a vacant position in a different workspace, or periodic COVID testing.



Best Practices

- Employers with a mandatory vaccination policy should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis.
- Information about employee's COVID-19 vaccination is confidential medical information under the ADA and should be stored separately from personnel files.
- Treat long-COVID as potential disability -- guidance to be issued.



Religious Exemptions



- Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship.
- A religious practice may be sincerely held by an individual even if newly adopted, not consistently observed, or different from the commonly followed tenets of the individual's religion.
- Anti-vaccination beliefs that are motivated by fear of the health effects of the vaccine, or suspicion around the underlying science or are simply motivated by personal preference are not religiously motivated.



Religious Exemptions

- Assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice, or observance.
- If an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.





Religious Exemption Attestation for Covid-19 Vaccine

Based upon your religious exemption request, we ask that you complete the below attestation. This will help to validate your understanding of the ubiquity of fetal cell use in the testing and development of common medicines and consumer products and support your claim of a "sincerely held belief."

The following is a list of common medicines that have used fetal cells in their testing, research, and/or development. This is a commonly used and available, but not all-inclusive list of every day medicines that fall into the same category as the COVID-19 vaccine in their use of fetal cell lines:

Tylenol	Ibuprofen	Benadryl	Claritin
Pepto Bismol	Maalox	Sudafed	Zoloft
Aspirin	Simvastatin	Albuterol	Suphedrine
Tums	Ex-Lax	Preparation H	Prilosec OTC
Lipitor	Zocor	Enbrel	Azithromycin
Senokot	Zostavax	MMR Vaccine	Varilrix
Motrin	Tylenol Cold & Flu	Acetaminophen	Havrix

I truthfully acknowledge and affirm that my sincerely held religious belief is consistent and true and I do not use or will not use any of the medications listed as examples or any other medication (prescription, vaccine, or over the counter medication) that has used fetal cell lines in their development and/or testing.

I also truthfully affirm that I will abide by the vaccine accommodation requirements and understand that failure to abide by the accommodation requirements will subject me to disciplinary action up to and including termination of employment for failure to adhere to the required infection prevention standards for unvaccinated employees. The following is the list of accommodation requirements for a religious exemption for an unvaccinated employee:

- Signed Attestation confirming sincerely held belief
- Subject to periodic Covid-19 testing
- Possible reassignment to another position to mitigate risk to patients and staff

Print Name

Signature

Date

What Constitutes Reasonable Accommodation

- Testing
- Masking
- Social Distancing
- Leave?
- Working from home?



Undue Hardship

- Undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.
- Examples of burdens on business that are more than minimal (or an "undue hardship") include: violating a seniority system; causing a lack of necessary staffing; jeopardizing security or health; or costing the employer more than a minimal amount.
- Infrequent payment of overtime to employees who substitute shifts is not considered an undue hardship.
- Customer preference or co-worker disgruntlement does not justify denying a religious accommodation.



Federal COVID-19 Action Plan

- Employers with > 100 employees
- Federal Contractors
- Federal Employees
- Healthcare Employees
- Head Start Employees



What is an ETS???

- Generally speaking, OSHA's rule making process typically takes between eight to ten years before a standard is issued.
- ETS – the process is A LOT shorter
 - Can bypass much of the formal rulemaking process that is typically required.
 - Upon promulgation of the ETS, OSHA is required to begin the full rulemaking process for a permanent standard.
- ETS is valid until a permanent standard is promulgated via the normal rulemaking process under the OSH Act.



ETS Requirements

- Pursuant to § 6(c)(1), 29 U.S.C. § 655(c)(1) of the OSH Act, an ETS can take "immediate effect" if:
 - (A) employees are exposed to **grave danger** from exposure to **substances or agents** determined to be toxic or physically harmful or from new hazards; and
 - (B) the ETS is necessary to protect employees from such danger(s).



OSHA's Emergency Temporary Standard for Employers with > 100 employees

- (154 pages long)
- Filed in the Office of the Federal Register on **November 4, 2021**
- Became “effective” when published on **November 5, 2021**
- By **December 5, 2021** – vaccine mandate policy or for unvaccinated, a policy that complies with ETS's testing and masking standards
- Written comments to be submitted by **December 6, 2021**
- COVID-19 testing for unvaccinated employees who come to work to start **January 4, 2022**
- Will be in effect at least six months from the November 5th publication date



Whose included in the 100?

- Employees covered under the mandate – 100 or more workers as of November 5, 2021.
- States that have their own OSHA State plans (like Kentucky) – state and local government employers are covered, which would include state and local school systems.
- Employees are counted on a company-wide basis, not just a single location.
- Employees from staffing or temporary agency – are employees of the agency (and not the host employer).
- Remote workers – included in the count to qualify but standards don't apply.
- Outdoor workers – part of the count but standards don't apply.



ETS N/A to who?

ETS does NOT apply to:

- Federal contractor workplaces covered under the Task Force Guidance (which has its own legal challenges)
- Healthcare employer that provides healthcare services and/or healthcare support services subject to the requirements of OSHA's Healthcare ETS issued in June of 2021; and
- Employees of covered employers:
 - Who do not report to a workplace where other individuals such as coworkers or customers are present;
 - While working from home; or
 - Who work exclusively outdoors.



ETS Requirements

- Employers under the ETS can require employees to either get vaccinated **or** if chose to stay unvaccinated, get weekly COVID-19 testing and wear masks
- Vaccine mandate – employees who do not comply can be disciplined, including discharge
 - Employers can opt to implement a mandatory vaccine policy for only part of its workforce (i.e. retail employees) while giving other employees a choice.



ETS Requirements

- Unvaccinated employees must be tested weekly at a minimum
 - Employees must provide notice of a positive COVID-19 test and must stay out of the workplace until all return to work criteria are satisfied
 - Must wear face covering indoors and/or in a vehicle with another person for work purposes
 - Face covering must be two or more layers of fabric that do not let light pass through and can be a mask or neck gaiter with no gaps or openings.
 - A face shield will not suffice



ETS Requirements

- Policy should include:
 - Requirements for vaccination and/or testing
 - Any applicable exclusions from the policy
 - Information on how vaccination status will be determined and collected
 - Paid and sick leave time availability for *both* vaccination and recovery
 - Procedures for notification of positive COVID-19 tests and removal from the workplace
 - Information about vaccine safety and efficacy
 - Disciplinary action that will occur for employees that do not comply.
 - Also include deadlines for vaccination and submitting proof of vaccination as well as the procedures for enforcement



ETS Requirements

- Paid time off – “reasonable time” must be provided
 - Up to four hours of paid time to receive *each* vaccination dose
 - Cannot require employees to use their sick or vacation leave to receive a vaccination
 - Must provide reasonable time and paid leave to recover from vaccine side effects
 - Cannot require employees to use their vacation time for recovery
 - who choose to be vaccinated.



ETS Requirements

- Paid time off – “reasonable time” must be provided
 - If an employee does not have sick leave left, employers cannot require employees to accrue negative sick leave or borrow against future paid sick leave
 - Can set a reasonable cap for paid sick leave for recovery
 - Employers who do not choose to require vaccination must still provide their employees paid time off for receiving vaccinations and recovery for employees who choose to be vaccinated.



ETS Requirements

- Proof of vaccination is required
- Employees must provide a copy of their vaccination card
 - Employee's name
 - Type of vaccine administered
 - Dates administered
 - Name of the health care professional or site administering the vaccine
 - Employees must require employees to submit a physical copy of a vaccination card or a digital copy of the card, which may be a photograph.
 - Employers maintain a physical record of an employee's vaccination status
 - **Both** employees and employers are subject to penalties for knowingly submitting false documentation.



ETS Requirements

- Required testing for unvaccinated employees
 - Tests with specimens that are processed by a laboratory, proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by an employer are acceptable.
 - Over-the-Counter (OTC) test are acceptable if the test is not both self-administered **and** self-read unless observed by an employer or an authorized telehealth proctor.
 - If an employee previously tested positive for COVID, he or she cannot be required to undergo testing again for 90 days following a positive test and must wear face coverings during this time.
 - And if an employee has received all doses of a vaccine (not including booster doses) by the date the testing requirement of the ETS is effective, the employee does not have to undergo weekly testing.



ETS Requirements

- Payment of the weekly testing is up to the employer's discretion **unless** employer is required to do so under a CBA, and/or other law or regulation



ETS Requirements

- Employers must maintain records of the vaccination status of each employee and of each COVID-19 test result while the ETS is in effect.
- A roster of employees and their vaccination status, noting whether an employee is:
 - Fully vaccinated, partially vaccinated, or unvaccinated
 - Whether he or she is not vaccinated due to a medical or religious accommodation
 - Acceptable proof of the employee's vaccination status has yet to be provided
- Vaccination records and the vaccination roster must be treated as confidential medical information and maintained separately from other personnel records.



ETS Exemptions

- Employees for whom a vaccine is medically contraindicated, or a delay in vaccination is required, are exempt from the ETS.
- Employees entitled to a reasonable accommodation due to a disability or sincerely-held religious belief are also exempt.
- Employees generally who are not vaccinated must still comply with testing and masking requirements, even if they are exempt (possible exception: testing conflicts with an employee's sincerely held religious belief, practice, or observance then a reasonable accommodation).



ETS Resources

- A summary of the ETS: <https://www.osha.gov/sites/default/files/publications/OSHA4162.pdf>.
- A list of Frequently Asked Questions about the ETS: <https://www.osha.gov/coronavirus/ets2/faqs>.
- A Fact Sheet about the COVID-19 Vaccination and Testing ETS is available here: <https://www.osha.gov/sites/default/files/publications/OSHA4161.pdf>.
- The full ETS: <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23643.pdf>.



Challenges to ETS

- ETSs definitely have a mixed (and unfavorable) legal track record
- From 1971-1983, of the 9 ETS's issued, 6 were challenged and only 1 was upheld
- 5th Circuit Court of Appeals has stayed the ETS
 - Texas, Louisiana, Mississippi, South Carolina, Utah



Challenges to ETS

- Multiple other “state coalitions” and private employers are filing similar lawsuits in Circuits all over the country challenging enforcement of the ETS.
 - 6th Cir. – Kentucky, Idaho, Kansas, Ohio, Oklahoma, Tennessee, and West Virginia
 - 8th Cir. – Missouri, Arizona, Nebraska, Montana, Arkansas, Iowa, North and South Dakota, Alaska, New Hampshire, and Wyoming
 - 11th Cir. – Florida, Alabama, and Georgia



So what is an Employer to do now that the ETS is being legally challenged?

- Ignore it based on the 5th Cir.'s Stay Order?
- Comply?
- Potential litigation of this issue will take time to work its way through the Courts, or maybe not!
- Be a prudent and proactive employer
- There are deadlines



Federal Contractors

- Applies to contracts entered into or renewed **after October 15, 2021**.
- Includes employees in contractor/subcontractor workplaces who do not work on the federal contract.
- Applies to employees that share workplaces or come into contact with contractor employees in common areas such as lobbies, elevators, stairwells, conference rooms, kitchens or garages.
- Must be fully vaccinated by **January 4, 2022** (was December 8, 2021 initially) unless entitled to accommodation because of a disability or a sincerely held religious belief.
- Contractor must review documentation (which can be a photo or digital copy) to prove vaccination status.
- No longer a testing option.



Federal Contractors

- Masking and social distancing requirements in covered contractor workplaces.
- Strongly encouraged to incorporate clause into preexisting contracts and contracts that are not covered.
- Still need vaccination even if prior Covid-19 infection
- Applies to outdoor workplaces.
- Remote workers must be vaccinated, but their residence is not considered a covered contractor workplace subject to the masking and social distancing requirements.
- EO supersedes any contrary state/local law and OSHA ETS.



Legal Challenges to the Federal Contactor Mandate

- As of November 1st, eleven states have sued the United States Government over the vaccine mandate for federal contractors.
- Challenges the mandate on constitutional grounds and violates federal procurement laws.
- Courts thus far have largely upheld vaccination requirements imposed by employers, universities, states, and cities.
- The EEOC and Department of Justice have already concluded employer mandates are acceptable.



Healthcare Employees - 86 FR 61555

- Effective Date of “emergency regulation” – **November 5, 2021** Healthcare facilities that receive federal funding under Medicare or Medicaid must be vaccinated, subject to exemptions for religious or medical reasons.
- Expanded from long-term care facilities to cover most health care settings, including but not limited to hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies.



Healthcare Employees - 86 FR 61555

- Applies to clinical staff and to contractors, volunteers, and staff who are not involved in direct patient care.
- Must establish a policy ensuring all eligible staff have received the first of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by **December 5, 2021**.
- Deadline to be fully vaccinated – **January 4, 2022**.



Head Start Facilities

- Teachers and staff in Head Start or Early Head Start facilities will be required to be vaccinated unless they need accommodations for religious or medical reasons.
- Department of Health and Human Services (HHS) were to initiate rule making in October.



Employer Mandates

- EEOC Guidance: The federal EEO laws do not prevent an employer from requiring all employees **physically entering the workplace** to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA. **EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws***.
- Guidance is silent on whether an employer can require remote workers to be vaccinated.
- Must allow reasonable accommodations under the ADA and under Title VII for sincerely held religious beliefs.



Legal Challenges to Employer Mandates

- ***Beckerich, et al. v. St. Elizabeth Med. Ctr., et al.*, 2:21-cv-105-DLB-EBA**
 - Policy required employees to either receive vaccine or submit request for medical or religious exemption.
 - Denied preliminary injunction from enforcing vaccine mandate.
 - Could not demonstrate likelihood of success on constitutional, ADA or Title VII claims.
 - No irreparable harm because not being forcibly vaccinated and monetary damages were available if employment was wrongly terminated.
 - Public interest weighed in favor of vaccination requirement (*Jacobson v. Massachusetts*—state allowed to require forcible vaccinations for smallpox at pain of imprisonment).



QUESTIONS



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FCPA HYDRA: ENFORCEMENT ACTIONS, CIVIL LITIGATION, COMPLIANCE POLICIES, AND MORE . . . AT THE SAME TIME!

PRESENTED BY: MATTHEW R. PALMER-BALL



What is the FCPA and why should you care about it?



- The FCPA prohibits American companies, individuals, and their agents from:
 - Bribing, or attempting to bribe, foreign government officials, political parties, or political candidates for a business purpose
 - Fraudulent accounting and internal controls procedures
- Violations arise in a wide range of activities across all industries
- Robust government enforcement
 - Whistleblowers
 - Growing enforcement team
 - Costly investigations and stiff penalties
- Related civil actions



FCPA Bribery Provisions

[15 U.S.C. §§ 78DD-1 – 78DD-3]



Overview

- Bribers
- Bribees
- Bribes
- Mens Rea
- Statute of Limitations
- Exceptions



Bribers

- Issuers – publicly-traded U.S. companies
- Domestic concerns
 - U.S. citizens, nationals, and residents
 - U.S. non-public organizations, e.g. corporations, partnerships, sole proprietorships, etc.
- Foreign nationals on U.S. soil



Bribees

- Foreign government officials – any officer, employee, or person acting on behalf of:
 - Foreign government agency or instrumentality
 - Public international organization
 - Foreign political party
 - Candidate for foreign office
- Applies to positions both high and low
- Quasi-government firms



Bribes

- Payments (and offers and promises to pay)
 - Any thing of value
 - No de minimis exception
- For a business purpose
 - Influencing an official act or decision
 - Securing an improper advantage
 - Obtaining, retaining, or directing business



- Mens rea – “corruptly”
- Statute of limitations – 5 years
 - Beware of on-going schemes and conspiracy liability
- Exceptions
 - Routine government action – expediting or facilitating payments
 - Reasonable, bona fide expenses to promote/demonstrate products or to execute a contract with a foreign government
 - Permissible under foreign laws



FCPA Accounting Provisions

[15 U.S.C. § 78M]



- Apply to Issuers and their employees
- Books and Records Requirement – issuers must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets
- Internal Controls Requirement – issuers must devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - Transactions are in accordance with management’s authorization
 - Transactions are recorded as necessary to prepare financial statements in conformity with GAAP and to maintain accountability of assets
 - Access to assets is in accordance with management’s authorization
 - Audits are done at reasonable intervals with appropriate action for discrepancies



- Prohibited
 - Falsifying any book, record, or account
 - Circumventing, or failing to implement, a system of internal accounting controls
- Mens rea – “knowingly”
- Statute of limitations – 6 years



Dealing with FCPA Violations



Genesis of Investigations

- Investigations typically arise in two scenarios:
 - Internal reporting or audits
 - Government subpoena/request
- Differences/Similarities between the two
 - Control over investigation
 - Whether, when, and what to self-report
 - Impact of strong compliance policy



Typical Investigation Lifecycle and Tips

- Internal report or government subpoena/notice
- Engage counsel (beware distinction of compliance functions)
 - Engage government
- Constant evaluation going forward:
 - Remedial actions
 - Reportable events (for corporations)
 - Civil exposure
- Internal preservation notice
- Document collection and review
- Top-down interview plan – sometimes multiple rounds
- Identifying conflicts for employees and supplying counsel
- Expanded second-wave review?
- Self-report or mandatory reporting
- Productions and proffers to government



Internal Resolutions – Should You Self-Report?

- Strength of evidence that there was a violation?
- Statute of limitations?
- Weighing risk:
 - Likelihood of whistleblower?
 - Are you on notice of other possible violations?
 - Comparing costs:
 - Self-report: cooperating with government investigation + reduced penalties + civil litigation
 - Whistleblower: cooperating with government investigation + increased penalties + civil litigation



Government Resolutions

- Possible resolutions
 - Declination
 - Non-prosecution agreement
 - Deferred prosecution agreement
 - Prosecution – trial or plea
 - Fines
 - Disgorgement
 - Debarment
 - Monitorship
 - Corporations – disclosures to investors
- Government's mitigating factors
 - Timely self reporting
 - Remedial action
 - Cooperation and providing information
 - Can reduce fines [U.S.S.G. §§ 8C2.5 and 8C4.1]
 - Government motion for a reduction in sentence [U.S.S.G. § 5K1.1]



Do You Need an Anti-Bribery and Anti-Corruption Compliance Policy?

- Yes.
 - Prevent internal waste
 - Increased likelihood of control
 - Learning about violations internally
 - Steering investigation/disclosure
 - Limit criminal/regulatory exposure
 - Preventing violations
 - Mitigation



Benefits from Government

- More favorable charging decisions
- Reduced fines
- Decreased likelihood of monitor



Benefits from Government (cont.)

- Morgan Stanley (2012) – executive in Singapore guilty of accounting violation as part of bribery scheme in China
 - Company not charged because of rigorous compliance program:
 - Internal controls meant to ensure accountability for assets and to prevent bribes
 - Regular updates to internal policies to reflect regulatory developments and specific risks
 - Frequent training for employees (7 trainings and 35 reminders over 6 years)
 - Regular monitoring and auditing of transactions



Designing a Policy

- What does government look for in a compliance policy?
[Justice Manual § 9-28.800]
 - “Is the corporation’s compliance program well designed?”
 - “Is the program being applied earnestly and in good faith?”
 - “Does the corporation’s compliance program work?”



Designing a Policy (cont.)

- Effective compliance programs
 - Accurately assess risk – tailored to company, industry, and geography
 - Meaningful – meant to actually prevent bribery and hold violators accountable
 - Internal reporting capability
 - Oversight, auditing
 - Investigative capability
 - Regular updates to policy and training for employees
 - Support from the highest levels
 - Apply policies to third-party agents and partners
 - Designed by people who truly know your business





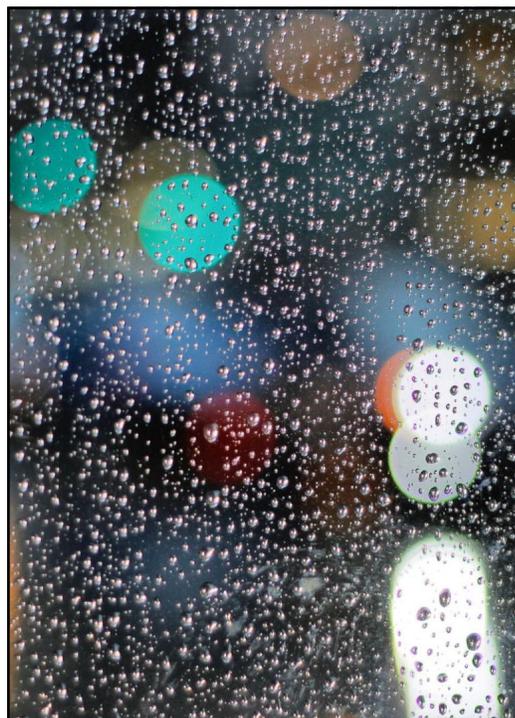
Follow-on Civil Law Suits



- No FCPA private cause of action
- Securities fraud actions by shareholders
 - Timing of disclosures
 - Effectiveness of compliance policy
- Fraud/contractual claims by transactional partners
 - M&A – due diligence and indemnification



Dealing with FCPA Violations



QUESTIONS



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YOUR COMPANY'S BEEN SUED, NOW WHAT?

BEST PRACTICES FOR MANAGING EFFECTIVE LITIGATION STRATEGIES WITH OUTSIDE COUNSEL

PRESENTED BY: JULIE LAEMMLE WATTS AND JORDAN M. WHITE



Who are we and what do we do?



Julie Laemmle Watts



Jordan M. White



You've Been Served

- Demand Letter
- Complaint
 - Temporary restraining order and/or preliminary injunction
- Litigation Hold Letter
 - Identify, secure, preserve, and collect data, documents, and physical evidence



Retention of Counsel and Strategy Development

- Determine Merits of Matter
- Selecting Counsel
 - What is the legal work that needs to be done?
 - Highly complex or more routine?
 - Does it require expertise that might justify higher rates?
- ASAP: Time is of the Essence
 - Responsive pleading to be filed within 20 days (CR 12.01)



Outline the Relationship Upfront

- Engagement Letters
- Fee/Expense Discussion
- Budget
- Staffing the Case
- Status Reports/Updates
- Communication
 - At the outset, during the engagement, after the assignment is over
- Public Relations



Responding to the Complaint

- Pre-Answer Motions
 - Issues of Fact vs. Issues of Law
 - What grounds? See CR 12.02
 - Do we need evidence outside of the Complaint?
- Motions for More Definite Statements
- Motions to Strike (CR 12.06)
- Answers and Affirmative Defenses (CR 8.03)
 - Amendments (CR 15.01)
- Counterclaims: compulsory or permissive? (CR 13.01 & CR 13.02)
- Cross-claims or third party claims (CR 13.07 & CR 14.01)



Potential for Early Resolution

- Is the Fight Worth the Price?
 - Nuisance value compared to defense costs
- Intangible Reasons
 - Image and goodwill
 - Sensitive subject matter
 - Publicity



Entering the Discovery Phase of the Litigation

- Posturing Case for Desired Outcome
- Higher Stakes = More Expensive Discovery
- Written Discovery
 - Interrogatories (CR 33)
 - Requests for Admission (CR 33.01)
 - Requests for Production of Documents (CR 34)
- Document Production
 - Traditional
 - Electronic



ESI: Electronically Stored Information

- Types of Data
 - Application data (word processors, spreadsheet programs)
 - Personal Digital Devices (cell phones, PDAs)
 - Messaging Systems (e-mail, calendar entries, voice mail, IM)
 - Internet/Intranet/Extranet
 - Organization-Specific Applications (ask your IT)
- Storage Databases
 - Cloud/Online Storage (hard drives)
 - Local Repositories
 - Removable Media (magnetic disks, CDs, flash memory data storage, removable hard drives)



ESI: Electronically Stored Information (cont.)

- Backup Tapes
 - Unstructured: ad hoc copying of custodian-selected files
 - Structured: predictable target of data on predictable timeframe
- Retention Policies
- Metadata



Witnesses

- Fact Witnesses
 - Within company
 - Associated with the plaintiff
- Expert Witnesses
- Consulting Experts



Depositions

- Five W's
 1. Who to depose?
 2. What information do we need to elicit?
 3. When to depose?
 4. Where to depose?
 5. Why depose?
- Corporate Representative Request (CR 30.02)
- Preparation of Deponents



Dispositive Motion

- Is this a summary judgment case?
 - Full or partial?
- Timing of when to file
 - Typically, the last off-ramp before trial
 - One of the best pieces of mediation leverage (makes a plaintiff consider a \$0)
- What evidence do we need to support our legal theories?
 - Planning and preparation will start way before the deadline, as discovery efforts will target what we need to support our legal arguments
 - Admissions, ROG answers, documents produced, depositions
 - Affidavits (CR 56.05)



Mediation

- Settlement dominates outcomes of civil litigation in the United States
 - 97-98% of civil cases are settled or dismissed without a trial
- Serious settlement research
 - Analysis of venire
 - Jury verdict research
 - Plaintiff's counsel
 - Judicial tendencies
 - Damages analysis
- For mediation to be meaningful and successful, both parties must be well informed
 - The days of "gotcha" are gone



QUESTIONS



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The Good, the Bad, and Avoiding the Ugly of Mediation

Byron Leet and Corky Coryell

The Mediation Process

- Non-adversarial process in which a neutral third party encourages and assists disputing parties reach a mutually acceptable agreement.
- The earliest attempts at legislation relating to mediation in the United States occurred in the late 1970's/early 1980's.
- By the 1990's mediation was gaining tremendous popularity in the United States.
- Today it is the most likely setting for litigation advocacy and persuasion.

The Good

It works.

- More than 95% of civil cases settle prior to trial.
- Fewer than 1% of all federal civil cases ever go to trial.
- Most settlements are accomplished through mediation.
- Today virtually every case is going to mediation, at least around here, because courts require it before setting a matter for trial.
- In federal court that typically means before the Magistrate Judge. In state court the mediator is a former Judge or attorney who has been formally trained in mediation.
- Federal judges in the Western District have different preferences for when they refer cases to mediation. For example, some refer cases before summary judgment but others only refer them closer to trial.
- In order to become a mediator in Kentucky and qualify for the Roster of Court-Approved Mediators the person must obtain 40 hours of training and 15 hours of experience.

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Potential cost savings

Speed

Predictability

Confidentiality

- This allows for ex parte communications with the mediator that can be helpful.

Just two years ago the Kentucky Court of Appeals reaffirmed that the mediation process is confidential and constitutes settlement negotiations for purposes of Rule 408 of the Kentucky Rules of Evidence. *White v. Bank of America, N.A.*, 2019 WL 5681188 (Ky. App. Nov. 1, 2019). In *Mosley v. Arch Specialty Insurance Co.*, 626 S.W.3d 579 (Ky. 2021), the Kentucky Supreme Court held that mediation conduct is not even admissible as proof of an insurer's bad faith.

Finality

The Bad

Not all mediators are created equal.

- A good mediator has credibility, experience, rapport with the plaintiff (and/or plaintiff's counsel), willingness to work, candor, good energy, and high level of optimism.
- Some mediators merely carry numbers back and forth.
- Are there pro-plaintiff and pro-defense mediators?

Cost savings might be diminished by the lack of availability of a local effective mediator.

The parties and counsel may not be willing to compromise and recognize the weaknesses in their respective positions, and a mediator cannot force them to.

Significant preparation is still necessary – so it isn't cheap.

Avoiding the Ugly (An unsuccessful or Counterproductive Mediation)

Be thoughtful about timing.

- Should you suggest mediation early in the case (i.e., before it is mandated by the Court) or wait?
- Is discovery really necessary for the parties to evaluate their respective positions (i.e., does the dispute turn on disputed facts or just an interpretation of law)?
- You will know more about the case if you take discovery, but at a cost. And perhaps knowing more will not be helpful.
- Are there business considerations or other reasons for avoiding protracted litigation?

Plan the logistics.

- Should the mediation be live or conducted by Zoom or some other virtual technology?
- If live, where will it be held?
- Who will attend?
- Must be an ultimate decision-maker; cannot promise to call someone during the mediation.

In *Kentucky Farm Bureau Mutual Insurance Co. v. Wright*, 136 S.W.3d 455 (Ky. 2004), the Kentucky Supreme Court recognized that “if mediation is to accomplish its intended purpose, and if the mediation conference is to be the main event, there must be participation by persons possessed of immediate decision-making authority.” The mediation process is “irreparably harmed” if the persons in attendance do not have authority to settle the case.

Be prepared.

- Read the settlement conference order or mediator’s requirements carefully and comply with requirements.

- Carefully consider what you should say in your written mediation statement and what documents you provide to the mediator.
- Do not send too much; 5 page limit is a good target.
- At least one federal magistrate in the Western District stresses that the statement is confidential; candor is encouraged.

What authority will you bring?

- Review with your outside counsel and the ultimate decision-makers in advance of mediation.
- Don't give case valuation a half-hearted effort; although you can always reevaluate the case and follow up with an increased offer, the momentum of mediation will be lost.

Prepare to confront anchoring bias – cognitive bias where decisions are influenced by a reference point or “anchor.”

Or said another way – the tendency to pay too much attention to the first information we receive (even when it is totally irrelevant).

Persons tend to cling to one set of beliefs and often it is the first information we learn.

- Your grandparents recall the price of gas.
- So you react differently when the current price is \$2.50.

Example when guessing the price of an unfamiliar item and using your Social Security number as an anchor.

- Behavioral economics study in 1974 by Tversky and Kahneman.
- Anchoring effect is caused by uncertainty.

You are trying throughout mediation to anchor the plaintiff to a lower number; he is doing the opposite.

Psychological studies show starting higher tends to result in higher settlements.

People are sensitive to the relative value of comparables rather than absolute value. For example, comparing your case to other punitive awards.

There are advantages, therefore, to going first.

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- Plaintiff's lawyers know this.
- Push back against "high" anchor early and unequivocally.

Be practical.

- Think about whether or not you should make an opening statement and consider the content and tone of the statement if you do.
- An opening statement may just irritate the opposing party and cause them to shut down before the process even gets started.
- The mediator may spend the next hour calming everyone down.
- For this reason some mediators dispense with the opening statements or opening session.
- But is there a reason to "send a message?"

Be realistic.

- Don't play games; what is the point of that.
- But what to do when the plaintiff plays games.
- Help the mediator help your side.
- We never know for sure what they tell the other side, but we must give them the ammunition to make our case for us.

Trust the mediator's instincts.

- Don't undermine the mediator either with your own client or the adversary.

Don't give up if mediation is unsuccessful.

- Be flexible based on what you learned.
- Revisit settlement, perhaps as discovery helps or hurts.
- Many mediators will agree to follow up.



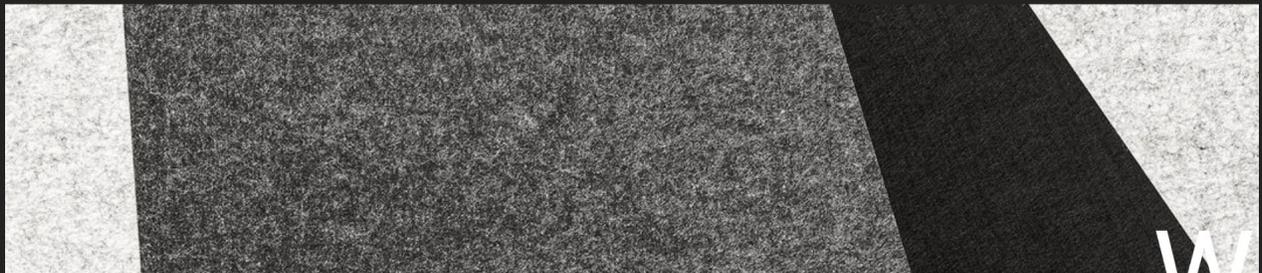
ETHICS TOPICS FOR IN-HOUSE COUNSEL

PRESENTED BY:

DAVID CALHOUN AND SEAN WILLIAMSON



The Model Rules/Kentucky Rules of Professional Conduct were not drafted with the role of in-house counsel in mind, so there are arguably more “gray areas.”



Post Enron & Worldcom

- In-house counsel increasingly became seen as gatekeepers responsible for preventing corporate misconduct.
- Changes were made to Rule 1.13 to curb corporate fraud and illegal acts.



Rule 1.13 Organization as Client

- Who is counsel's client? Who is not?
 - Whose confidences are protected, and from whom?
 - Potential for conflicts
 - Implicates Rule 1.7 – concurrent conflicts
 - Implicates Rules 4.3 – dealing with unrepresented persons
- Potential for malpractice?



Rule 1.13 Organization as Client

- Reporting up
- Reporting out
- Naturally implicates Rule 2.1 – Advisor
- Naturally implicates Rule 1.1 – Competence



Rule 2.1 – Advisor

“In representing a client, a lawyer shall exercise *independent* professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”



Rule 1.1 – Competence

- Understanding Rule 1.13 and the other rules it implicates:
 - Identifying conflicts and avoiding or curing them
 - Avoiding inadvertent representation of constituents
 - Preserving client confidences and protecting the attorney-client privilege
- Competence requires in-house counsel to understand how to, and act to, safeguard client's confidential and privileged information.
- Claims of privilege based on communications with in-house counsel tend to receive more scrutiny.



Conflicts and Confidences

Rule 1.7 Conflict of interest: current clients.

Rule 1.9 Duties to former clients.



Rule 1.6 – Confidentiality of Information

(a) a lawyer shall not reveal **information relating to the representation of a client** unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Paragraph (b) enumerates 4 exceptions:

1. to prevent reasonably certain death or substantial bodily harm;
2. to secure legal advice about the lawyer's compliance with the Rules;
3. to establish a claim or defense on behalf of the lawyer in a controversy with a client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved...;
4. to comply with other law or court order.



But Rule 1.13(c) (the 'reporting out' provision) adds another exception to Rule 1.6(b)'s exceptions. Rule 1.13(c) works in conjunction with 1.13(b) (the 'reporting up' provision).

(c) Except as provided in (d), if,

1. despite the lawyer's efforts in accordance with paragraph (b), the highest authority insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
2. the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but if and only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.





Reporting Out: Does it make every in-house counsel a potential 'whistleblower'?



Rule 1.13 contains something of an anti-retaliation provision. It doesn't specify a remedy or right to relief but ...

Rule 1.13(f)

“A lawyer who reasonably believes that he or she has been discharged because of the lawyer’s actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure *that the organization’s highest authority is informed of the lawyer’s discharge or withdrawal.*”



Attorney-client privilege is an evidentiary concept.

Narrower than Rule 1.6 confidentiality

Privilege

- Communication between client and counsel;
- Made in confidence;
- To facilitate the rendition of legal service.



Work product/trial preparation materials. Not the same as privilege, but also an evidentiary concept.

- Materials prepared by counsel (or at counsel's direction) in anticipation of litigation or trial.
- Protection may be overcome by showing of "substantial need."
- Trial preparation materials that reflect the mental impressions and legal conclusions of counsel have a higher degree of protection.



Safeguarding Privileged and Work Product Materials

- Clearly label protected materials as “privileged and confidential” or “trial preparation material;”
- Segregate business advice from legal advice in written communications;
- Set out the legal purpose of your communication at the beginning of the document;
- Limit distribution/recipients to those who need to know;
- Train your business partners:
 - Not every communication with counsel will be privileged - must be in furtherance of seeking legal advice.
 - Facts aren't privileged.
 - Some things should not be put in writing.



Hypotheticals



Scenario #1

Attorney is in-house counsel for ManuCo, which is engaged in a contract dispute with Supply Corp. The presidents for the respective companies decide to meet for a negotiation before litigation is filed. During the meeting, ManuCo's president calls Attorney into the meeting room to explain the company's legal position. No lawyer is present for Supply Corp., but Attorney is aware that Supply Corp. maintains its own in-house legal department.

What should Attorney do?



Scenario #2

ManuCo has received a bill from Supply Corp. ManuCo's president believes the bill is excessive. The president asks Attorney to call the accounting department of Supply Corp. to dispute the bill because "it will mean more coming from an attorney." Attorney is aware that Supply Corp. maintains its own in-house legal department.

What should Attorney do?



Scenario #3

Attorney was recently hired as in-house counsel for BrandCo. BrandCo has recently been served with process in a wage-and-hour class action lawsuit. Attorney has been asked to interview “Manager” who, based on allegations in the Complaint, is likely a key witness. During the interview, Attorney says to Manager, “BrandCo has asked me to interview you concerning the allegations in the plaintiff’s complaint. As a BrandCo employee, your communications with me are privileged, and you should not reveal our discussions.”



Scenario #3 (cont.)

In the interview, Manager reveals that the timekeeping procedures of his business unit are inconsistent with BrandCo policy. Attorney reports this to higher management, and Manager is subsequently fired based on Manager’s admission during the interview.

Was Attorney’s approach to the interview problematic?



Upjohn warning to an organization's constituent:

- I represent the company only, not you personally;
- I am interviewing you to gather facts in order to provide legal advice to company concerning: (in the previous scenario -- a wage-and-hour lawsuit recently filed against the company that involves allegations about your business unit);



Upjohn warning to an organization's constituent:

- Your communications with me, as the company's counsel, are protected by attorney-client privilege, but the privilege belongs solely to the company, not you, and company may elect to reveal our discussion to third-parties at its sole discretion, including authorities, and without notice to you; and
- You should keep this conversation confidential to protect the company's privilege. With the exception of your own counsel, you should not reveal the substance of this conversation to any third party, including other employees or persons outside the company.



If Attorney has concluded before the interview that company's interests and the constituent's interests are adverse then add:

- It appears that your interests and the company's interests with regard to this matter may conflict or diverge. Consequently, I cannot represent you or give you legal advice. You may wish to consult your own legal counsel before we discuss this matter. Do you wish to do so before we proceed?



Scenario #4

As BrandCo's in-house counsel, Attorney provides an *Upjohn* warning at the start of the interview with Manager, but because Attorney did not perceive there to be any conflict of interest, Attorney did not include a caution about a conflict or explicitly indicate that he couldn't give Manager legal advice. During the interview Manager's statements indicated his unit's practices were consistent with BrandCo's policies to ensure wage-and-hour compliance. Three months later, the Plaintiffs in the lawsuit request and notice Manager's deposition. BrandCo then decides that Attorney will defend Manager at his deposition.



Scenario #4

On the way to his deposition, Manager discloses to Attorney that his statements during the initial interview were false. Attorney responds, “If you tell the truth in your deposition, everything will work out.” Attorney proceeds to defend the deposition, and Manager’s testimony indicates his unit was not compliant with BrandCo’s policies. BrandCo subsequently fires Manager over the noncompliance and false statements to Attorney during the investigation.

Did Attorney act appropriately?



Rule 1.7 Conflict of interest: current *clients*

Rule 1.7(a) – “[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”



Avoid unintended joint representation of organization and constituents, which may lead to Rule 1.7(a) conflicts:

Rule 1.13(f):

In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.



Comment 10 to Rule 1.13:

“There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that *the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.*”



**Comment 10 ties in with Rule 4.3
Dealing with unrepresented persons:**

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. ***The lawyer shall not give legal advice to an unrepresented person.*** The lawyer may suggest that the unrepresented person secure counsel.

The implication: If you give a person legal advice, you have undertaken to represent that person.



Malpractice

Yanez v. Plummer, 164 Cal. Rptr. 3d 309 (Ct. App. 2013) (in-house counsel sued for malpractice after failing to appropriately respond to conflict in joint representation of employee witness of workplace accident).

Dinger v. Allfirst Financial, Inc., 82 F. App'x 261 (3d Cir. 2003) (in-house counsel sued for malpractice after advising corporate officers on the deadline to exercise their stock options).

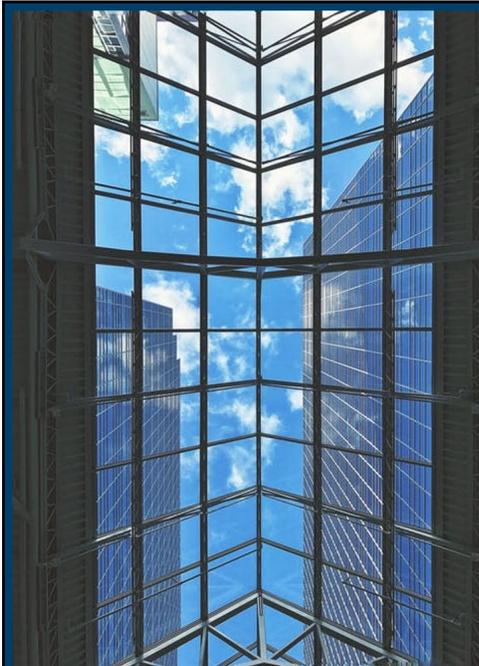


Scenario #5

Two years ago, Attorney worked as outside counsel for BossCo in the sale of an industrial property to ChemCo. During the transaction, BossCo became aware of environmental contamination on the property, which was caused by a prior owner. BossCo was not required to disclose the contamination in the sale.

Since the transaction, Attorney left BossCo and was hired as in-house counsel for DevCo. DevCo is now interested in buying the same property from ChemCo.

How does Attorney's knowledge of the undisclosed contamination impact your representation?



Material Limitation Conflicts and Duties to Former Clients



Rule 1.7 Conflict of interest: Current Clients

Rule 1.7(a) – “[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. *there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*”



Rule 1.9 Duties to Former Clients

Rule 1.9(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

1. use information relating to the representation of the former client to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.



Scenario #6

As in-house counsel for DrugCo, Attorney was involved in the sale of a portfolio of pharmaceuticals to PharmaCorp. The purchase agreement obligated DrugCo to indemnify PharmaCorp in connection with liabilities resulting from unknown, long-term side effects.

Three years later, Attorney has moved to an in-house position at PharmaCorp. A class action lawsuit has been filed against PharmaCorp alleging that one of the drugs acquired from DrugCo caused heart defects in cases of long-term use.



Scenario #6 (cont.)

Should Attorney be involved in the class action against PharmaCorp?

Should Attorney be involved in PharmaCorp's indemnity action against DrugCo?



Rule 1.9

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
 - 1. whose interests are materially adverse to that person; and
 - 2. about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.



Rule 1.9 (cont.)

- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - 1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - 2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.



Disqualification

Dynamic 3D Geosolutions LLC v. Schlumberger Ltd., 837 F.3d 1280 (Fed. Cir. 2016) (in-house counsel analyzed patent infringement liability for client's product; in-house counsel then moved to a different in-house position where she was involved in her new client's acquisition of the patent at issue and infringement litigation against her former client, resulting in disqualification of new client's legal department and outside counsel).

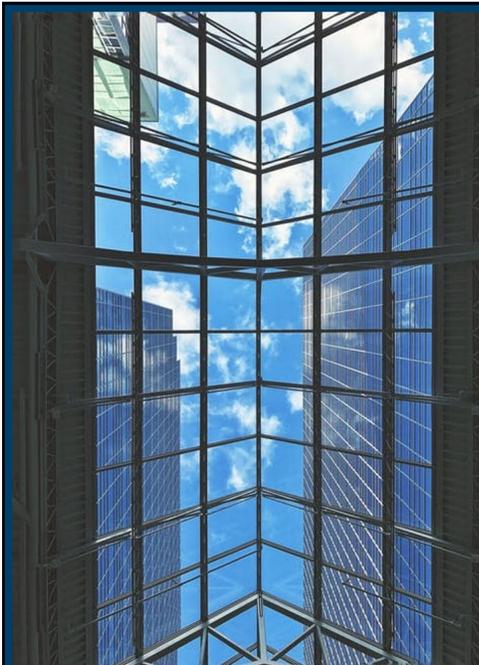


Scenario #7

As General Counsel of Tech Corp., a publicly traded corporation, Attorney has a close working relationship with Tech Corp.'s CEO. Attorney has recently learned that the CEO directed the CFO not to book significant expenses to give the appearance of higher corporate profits in an upcoming public disclosure.

What should Attorney do?





'Reporting Up'



Rule 1.13(b)

“If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.”



Scenario #8

Attorney informs Tech Corp.'s Board of Directors of the CEO's actions aimed at manipulation of the profit numbers. The Board, however, decides to take no action.

What should Attorney do?



Rule 1.13(c)

“[I]f, (1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.”





Withdrawing From Representation



Rule 1.16 Declining or terminating representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation if:

1. *the representation will result in* violation of the Rules of Professional Conduct or other law;
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 2. the client persists in a course of conduct *involving the lawyer's services* that the lawyer reasonably believes is criminal or fraudulent; or
 3. the client has *used the lawyer's services to perpetrate* a crime or fraud; or
 4. the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement....



QUESTIONS



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PRACTICES AND INDUSTRIES

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Product Liability
Tort & Insurance Defense

Byron Leet is Co-Chair of the Firm's Litigation & Dispute Resolution Service Team, and a former member of the Firm's Executive Committee. Byron has 30 years of experience in state and federal court handling jury trials, bench trials, and injunction hearings in several states. Byron has been praised by clients and peers alike. "Byron Leet is incredibly quick on his feet," according to a peer who adds: "Judges and juries like and trust him. He also deftly handles a range of corporate and consumer litigation." "He is bright, confident and sure on his feet, impressing peers with his work in the healthcare and financial sectors." *Chambers USA America's Leading Lawyers for Business. Benchmark Litigation* said Byron is "roundly praised by fellow litigators."

REPRESENTATIVE MATTERS

- *McFarland v. Jefferson County Board of Education, et al.*, 330 F. Supp.2d 834 (W.D. Ky. 2004), *aff'd*, 416 F.3d 513 (6th Cir. 2005), *rev'd*, 127 S.Ct. 2738 (2007) – lead trial counsel defending the Jefferson County, Kentucky public school system in litigation challenging the constitutionality of the student assignment plan for some 95,000 students in the school district.
- *Atria Senior Living Group, Inc. v. Best Western International, Inc.*, 2009 WL 3756994 (W.D. Ky. 2009) – successful defense of national hotel chain at injunction stage in trademark infringement action.
- *Rally Concepts v. Republican National Committee, et al.* – lead counsel representing defendant accused of copyright infringement in a case involving a famous political campaign logo; jury verdict for defense.
- Lead counsel representing a number of national banks in defense of lender liability actions and counterclaims which were dismissed at summary judgment stage or tried successfully to a jury.
- *Levin v. Secretary Masten Childers*, 101 F.3d 44 (6th Cir. 1996) – lead counsel defending the Secretary of the Kentucky Cabinet for Human Resources in a civil rights action alleging the Secretary improperly suspended a physician for suspicion of Medicaid fraud.
- *Conco, Inc. v. Lockheed Martin Ordnance Systems, Inc.* – lead counsel representing an Army defense contractor in defense of multi-million dollar contract and tort claims asserted by a Government subcontractor.
- Representation of distillery in trademark infringement action involving competing bourbon advertising campaigns.
- *Commonwealth of Kentucky v. Zach Caldwell*, Perry County, Kentucky Circuit Court – co-counsel in a two week murder trial in the mountains of Eastern Kentucky.

- *Muhammad Ali v. Walter Cuff*, Jefferson County, Kentucky Circuit Court – representation of Muhammad Ali in litigation regarding ownership of a robe worn by Ali while fighting under the name Cassius Clay.
- *Arsenault v. PNC Mortgage Corp. of America*, 2002 WL 509402 (6th Cir. 2002) – lead counsel in defense of a putative class action challenging bank refinance solicitation letters.
- *Architecture Plus, Inc. v. Cicely Lambert and Commonwealth of Kentucky, Department of Treasury v. Commonwealth of Kentucky, Finance and Administration Cabinet* – lead counsel representing the Chief Justice of the Kentucky Supreme Court in two challenges to his actions as head of the Court of Justice.
- Representation of targets and witnesses before federal grand juries investigating various criminal law violations.
- Representation of the manufacturer of a coal truck in a wrongful death action arising from an accident at a Kentucky coal mine.
- Lead counsel in numerous corporate shareholder disputes at both the trial and appellate levels.

EDUCATION

J.D., Vanderbilt University, 1983

- Member of the National Moot Court team

B.A., *cum laude*, University of Louisville, 1980

ADMISSIONS

Kentucky

HONORS

- *Woodward/White's The Best Lawyers in America*® in the areas of Bet-the-Company Litigation, Commercial Litigation, Banking & Finance Litigation, and Intellectual Property Litigation, 2006-2021, and Education Law and Personal Injury Litigation – Defendants, 2016-2021
- *Best Lawyers*® 2021 Louisville Education Law “Lawyer of the Year”
- *Best Lawyers*® 2016, 2020 Louisville Bet-the-Company Litigation “Lawyer of the Year”
- *Best Lawyers*® 2014 Louisville Litigation-Intellectual Property “Lawyer of the Year”
- *Best Lawyers*® 2013 Louisville Litigation-Banking & Finance “Lawyer of the Year”
- Recognized as a Litigation Star by *Benchmark Litigation 2017 – 2019*

- Recognized as a Local Litigation Star by *Benchmark Litigation 2013*
- *Recognized among the Top 50 Kentucky Super Lawyers®*, 2015 – 2018
- Recognized by his peers in *Kentucky Super Lawyers®* 2007-2021
- Highest Professional AV Rating by *Martindale-Hubbell Law Directory*
- *Chambers USA: America's Leading Lawyers for Business*, Commercial Litigation
- Recognized as one of the "Top Lawyers" in the areas of Bet-the-company Litigation (2014), Business Law (2014), Business Litigation (2013), General Litigation (2013), and Personal Injury Law-Defense (2014) by *Louisville Magazine*

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Louisville and Kentucky Bar Associations
- Louisville Bar Foundation, Inc., President 2015
- Defense Research Institute
- Federalist Society, Louisville Lawyers Chapter



Sharon L. Gold

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PRACTICES AND INDUSTRIES

Employment Practices Liability Insurance
Non-Competition, Business Information, and Trade Secret Protection
Litigation & Dispute Resolution
Labor & Employment

Sharon Gold is a member of the Firm's Litigation & Dispute Resolution Service Team. She concentrates her practice in the area of labor and employment and commercial litigation.

Ms. Gold has experience defending employers in a variety of lawsuits, both at the administrative and civil complaint level, including defense of claims brought pursuant to the: FLSA, FMLA, Title VII, 42 U.S.C. § 1981, ERISA litigation, ADA, ADEA, Kentucky Civil Rights Act, Kentucky Wage and Hour Act, and common law claims such as breach of contract, Intentional Infliction of Emotional Distress, Defamation, Negligent Supervision, among others. She has defended and prosecuted several appeals for employers and corporations before both the Kentucky Court of Appeals and the Sixth Circuit.

As leader of the Firm's Employment Litigation (EPLI) team, Ms. Gold has experience defending employment claims as panel counsel for Employment Practices Liability Insurance claims. She knows the value of early assessment, efficient staffing, following reporting guidelines and vigorous defense of employment claims for insureds.

Ms. Gold also frequently advises parties about and drafts non-competition agreements and has experience with litigation involving non-competition agreements. She also conducts in-house training, reviews handbooks and counsels employers on ways to minimize lawsuits on the front-end.

Ms. Gold recently authored a chapter entitled *Complying with Ever-Changing Employment Laws, Regulations, and EEOC Guidance* in the book, *Inside the Minds: The Impact of Recent Regulatory Developments in Employment Law*. She is a frequent lecturer on employment law issues and has presented at several national employment law conferences.

Ms. Gold has also defended corporations and small businesses in commercial litigation suits involving breach of contract, personal injury, commercial torts, partnership disputes, lender liability and product liability.

REPRESENTATIVE MATTERS

- Represented a city in a religious discrimination lawsuit brought by a former employee. Obtained summary judgment dismissal after discovery.
- Obtained summary judgment dismissal for employer in a race discrimination suit.

- Represented private college on labor and employment matter involving dismissal of professor. After jury trial, obtained defense verdict for client.
- Obtained early summary judgment and dismissal of civil rights suit against medical provider brought by a former employee alleging wrongful discharge.
- Attained voluntary dismissal of \$750,000 federal civil rights case involving state and federal employment claims after favorable plaintiff's deposition.
- Successfully defended small employer before the Sixth Circuit in appeal concerning complex removal issues and the constitutionality of the small employer defense under the Kentucky Civil Rights Act.
- Obtained early dismissals of ERISA litigation matters for major corporate client.
- Obtained early dismissal of majority of claims against an employer in a case removed to federal court that was brought by a former employee claiming federal and state civil rights violations.
- Obtained favorable rulings in motions in limine prior to trial in KCRA suit brought in state court, facilitating favorable settlement for employer.
- Achieved dismissal of KCHR charge after full investigation for client in charge brought by former employee alleging discrimination under the KCRA and Title VII.
- Obtained dismissals of unemployment appeals for employers before the Kentucky Office of Employment and Training.
- Obtained dismissal of lender liability lawsuit alleging statutory penalties.

EDUCATION

J.D., *magna cum laude*, University of Kentucky College of Law

- Selected to the Order of the Coif
- Notes Editor for the *Kentucky Law Journal*
- Recipient of the Peter Perlman Scholarship
- Recipient of Oxeman Award for Writing, 2004

B.A., *cum laude*, University of Kentucky, 1997 (English)

ADMISSIONS

- United States District Courts for the Eastern and Western Districts of Kentucky
- United States Court of Appeals for the Sixth Circuit

PROFESSIONAL EXPERIENCE

Law Clerk to the Honorable Joseph M. Hood, then Chief United States District Judge of the E.D. Ky., 2004-2006

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Kentucky Bar Association, Labor and Employment Section
- Fayette County Bar Association, Women Law Association Section
- Federal Bar Association, Litigation and Labor and Employment Sections, Member of the Federal Rules of Procedure and Trial Practice Subcommittee
- Central Kentucky American Inn of Court Barrister, 2013-present

CIVIC INVOLVEMENT

- Leadership Lexington, 2016
- Central Kentucky Youth Orchestra, Member, Board of Directors, Diversity and Personnel Committees, 2011-2013
- Fayette County Bar Association, Women Law Section Mentor, 2012-present
- Kentucky Legal Education Opportunity Mentor, 2011
- LexArts Workplace Giving Coordinator, 2009-2010
- Class Fund Raiser, University of Kentucky College of Law, 2004-2005
- Board of Directors, Kentucky Law Journal, 2005-2006
- Victim Advocate, YWCA Spouse Abuse Center, 1997

PUBLICATIONS

- *Final Rule Clarifying Independent Contractor Classification Published Today, Effective March 8, 2021.* Wyatt Employment Law Report, January, 2021.
- *DOL Releases Final Rule Updating the Regular Rate and Basic Rate Requirements Effective January 15, 2020.* Wyatt Employment Law Report, January, 2020.
- *Complying with Ever-Changing Employment Laws, Regulations, and EEOC Guidance, Inside the Minds: The Impact of Recent Regulatory Developments in Employment Law,* January 2015

PRESENTATIONS

- “Social Media Networking Sites and Employment Related Decisions” at the Kentucky Non Profit Leadership Forum, Lexington, KY, October 2017
- “Employment Law Update” at Wyatt’s Financial Institutions Seminar, Lexington, KY, October 2017
- “It’s a Zoo in Here: The Law of Animals in School” at UK’s Education Law Conference, September 2017
- “Emerging Claims in Employment Law: Focus on Pay Equity,” at the KY SHRM Conference, Louisville, KY, August 2017

- “New Kentucky Legislation” at Wyatt’s In-House Counsel Institute, June 2017
- “Employment Law Update” at Wyatt’s Employment Law Seminar, May 2017
- “Spotlight on Pay Equity: Examining the Rise in Compensation Discrimination Claims and the Impact on EPLI” at The American Conference Institute’s EPLI Conference, New York, NY, January 2017
- “Trending Employment and Wage & Hour Claims: What They Are and How to Avoid Them” at Wyatt’s In-House Counsel Litigation Institute, November 2016
- “Avoiding the Pitfalls of State and Local Wage & Hour Laws” at the American Conference Institute’s 27th National Forum on Wage & Hour Claims and Class Actions, New York, NY, June 2016
- “FLSA Overtime Update” at the Bluegrass Compensation Association meeting, Lexington, KY, June 2016
- “Employment and Wage and Hour Update: A Busy Year for the DOL and the EEOC” at Wyatt’s Employment Law Seminar at Keeneland, April 2016
- “The DOL’s Busy Year: Raising the Salary Minimum for the FLSA and Cracking Down on Independent Contractors” at the KBA’s 26th Annual Issues for Corporate House Counsel Seminar, Louisville, KY, March 2016
- “Pregnancy Discrimination Claims and the Intersection of the ADA/FMLA; Providing Accommodations; Pregnancy Complications as a Disability; Recent Guidelines by the EEOC on Pregnancy Discrimination,” at American Conference Institute’s 24th National Conference on Employment Practices Liability Insurance, New York, NY, January 2016
- “Employment and Wage and Hour Update” at the Kentucky Home Care Association Fall Conference, November 2015
- “Exempt vs. Non-Exempt Employees” at the Lexington Employee Benefits Council, November 2015
- “A Tale of Two Companies: Strategies for Preventing Unfair Competition” at Wyatt’s In-House Counsel Institute, June 2015
- “Employment Law Update,” at Wyatt’s 12th Annual Financial Institutions Seminar,” at Keeneland October 2015
- “Defending and Managing the Latest Off-the-Clock Claims Involving the Use of Smartphones/Mobile Devices Outside of Scheduled Hours and Working Remotely” at the American Conference Institute’s 24th National Forum on Wage & Hour Claims and Class Actions, New York, NY, May 2015
- “What to Expect When Your Employee is Expecting,” at Wyatt’s Employment Law Seminar at Keeneland, April 2015
- “Pregnancy Discrimination Claims,” at the American Conference Institute’s 22nd National Conference on Employment Practices Liability Insurance, New York, NY, March 2015
- “Best Practices for Avoiding (or Dealing with) Retaliation Claims,” at Wyatt’s Employment Law Seminar at Keeneland, April 2014

- Co-presenter of “The Triangular Relationship of Carriers, Insureds, and Defense Counsel: Ensuring Ethical Conduct in the Management, Litigation, and Settlement of EPL Claims” at the American Conference Institute’s 20th National Conference on Employment Practices Liability Insurance (“EPLI”), New York, NY, January 2014
- “Military Family Leave: Employers’ Responsibilities Under the FMLA and USERRA” at the 15th Annual Human Resources Labor & Employment Series at the Indiana University Southeast, October 2013
- Co-presenter of “Employment Law Update 2013” at Wyatt’s Employment Law Seminar for HR Professionals and In-House Attorneys at Churchill Downs, April 2013
- Participant at the “HR on Trial” at Kentucky Chapter of Society for Human Resource Management 2012 Conference, Louisville, KY, September 2012
- “Wage and Hour Update” at Wyatt’s Employment Law Seminar for HR Professionals and In-House Attorneys at Keeneland, April 2012
- “Advising Clients on Lawful Termination Procedures – How NOT To Become a Defendant” at the National Business Institute, Lexington, KY, December 2007



R. Joseph Stennis, Jr.

Senior Associate

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PRACTICES AND INDUSTRIES

Labor & Employment
Litigation & Dispute Resolution
Construction

R. Joseph (“Joe”) Stennis, Jr. is a member of Wyatt’s Litigation & Dispute Resolution Service Team. Joe’s primary practice area is employment law, where he defends employers against discrimination claims filed by current or former employees with either an agency (i.e. Equal Employment Opportunity Commission, Kentucky Commission on Human Rights, etc.) and/or actions filed in state/federal court. Joe has successfully defended his clients on multiple occasions against various employment claims which include (but are not limited to): wrongful termination; wage & hour (state and federal); employment based torts; ADA discrimination; ADEA discrimination; ERISA litigation; claims of discrimination pursuant to Title VII; and claims of discrimination pursuant to the Kentucky Civil Rights Act. Joe has also been very successful in drafting and enforcing employee executed arbitration agreements in state and federal court actions that led to securing reasonable settlements in many, if not all, instances.

Whether it be aggressively negotiating a reasonable settlement during a mediation, or obtaining a successful judgment in court, Joe’s focus is always what is in the best interest of his clients to resolve an employment dispute as efficiently and effectively as possible. He finds it very helpful and beneficial to treat each case with the upmost importance and urgency. Additionally, Joe also has spoken on various employment topics and written several articles. For example, he has presented on: how to address sexual harassment in the workplace; unconscious bias; the importance of engaging early on with the interactive process for an employee who has (or alleges to have) a disability; and EEOC updates and guidance to name a few.

In addition to his employment law practice, Joe frequently represents healthcare facilities in defending against medical malpractice claims. He also handles construction litigation matters. Lastly, Joe frequently defends companies and organizations against premises liability claims.

REPRESENTATIVE MATTERS

- Motion for Summary Judgment granted, Jefferson Circuit Court, regarding plaintiff’s race discrimination, racially hostile work environment, and retaliation claims.
- Motion for Summary Judgment granted, U.S. Western District of Kentucky, regarding plaintiff’s due process, defamation and invasion of privacy claims.
- Motion to Dismiss granted, Knox Circuit Court, regarding plaintiff’s wrongful termination and vicarious liability claims (affirmed on Appeal).
- Motion for Summary Judgment granted, Jefferson Circuit Court, regarding plaintiff’s failure to promote claims.

- Motion to Dismiss granted regarding plaintiff's age and religious discrimination claims under the Kentucky Civil Rights Act as well as breach of an employment contract allegation (affirmed on Appeal).
- Motion to Compel Arbitration granted, U.S. Western District of Kentucky, which contributed significantly to reaching settlement of plaintiffs' employment discrimination claims.
- Settled FLSA Wage and Hour claim filed in the U.S. Western District of Kentucky prior to certification of class action phase.
- Second chaired quasi-arbitration hearings for local public school district.
- Motion to Dismiss granted, Jefferson Circuit Court, regarding Plaintiff's work injury claims. Dismissed on "exclusive remedy" grounds.

EDUCATION

J.D., University of Louisville, Louis D. Brandeis School of Law, 2007

- Pirtle-Washer Moot Court Competition Winner
- *Journal of Law and Education*, 2007

M.B.A., University of Louisville, 2001 (Finance and Entrepreneurship)

B.S., University of Louisville, 1996, (Accounting)

ADMISSIONS

- Kentucky
- Wisconsin
- United States Western District of Kentucky
- United States Eastern District of Kentucky
- United States Western District of Wisconsin

HONORS

Recognized by his peers as a *Kentucky Super Lawyers®* Rising Star, 2013-2018

PROFESSIONAL EXPERIENCE

- Reinhart, Boerner, Van Deuren, s.c., Milwaukee, WI, Attorney
- Dinsmore & Shohl, LLP, Louisville, KY, Attorney
- Kentucky Supreme Court, Frankfort, KY, Judicial Law Clerk for the Honorable Chief Justice Joseph Lambert
- Fifth Third Bank KY, NA, Louisville, KY, Business Development Officer/Branch Manager/Investment Sales Representative

- Chase Bank KY, NA, Louisville, KY, Branch Manager/Investment Sales Representative

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Kentucky Bar Association
- Louisville Bar Association, Labor & Employment Section
- Louisville Black Lawyer's Association (Past President and Board Member)
- Legal Aid Society (former Board Member)

CIVIC INVOLVEMENT

- Community Foundation of Louisville, Development Stewardship Committee
- The Metropolitan Housing Coalition, former Board Member
- Ronald McDonald Charities of Kentucky, former Board Member
- Woods of St. Thomas, Pool Board, Board Member

PRESENTATIONS AND PUBLICATIONS

- "Unconscious Bias in the Workplace and How to Confront the Issue," 2021
- Wyatt Employment Law Seminar, 2021
- Payroll Professionals of Kentuckiana Employment Law Update, 2021
- Society for Human Resource Management Employment Law Update, 2021
- "Addressing Social Injustice: What Law Students Can Do To Get Involved," Brandeis School of Law, 2021
- "Nuts & Bolts of the EEOC," 25th Annual Conference for the Kentucky Association of School Human Resource Managers, 2019
- "Prescription for Trouble: Drug Testing in the Workplace," Kentucky Chamber of Commerce's Society for Human Resource Managers Conference, 2019
- "Matter of Pay Equity," Kentucky Chamber of Commerce's Society for Human Resource Management Conference, 2018
- Labor and Employment Update, Wyatt Employment Law Seminar, 2016 - 2018
- Employment Law Mock Trial, Kentucky Chamber of Commerce's Society for Human Resource Management Conference, 2015-2018
- Payroll Professional of Kentuckiana Employment Law Update, 2017
- "Protecting the Attorney-Client Privilege for In-House Counsel," Wyatt In-House Counsel Institute, November 2014
- Blog Article: "6th Circuit Rules an Employer Violated Title VII by Terminating its Transgender Employee," 2018
- Blog Article: "Student Athletes as Employees," 2014

- Blog Article: "Private Employees Can Assert Retaliation," 2014
- Business First Article: "Employers Beware! Top 5 Wage and Hour Pitfalls to Avoid," 2017
- Blog Article: "DOJ Drops Appeal on Obama Overtime Rule," 2017



Matthew R. Palmer-Ball

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PRACTICES AND INDUSTRIES

Litigation & Dispute Resolution
Appellate
Class Actions
White Collar Defense

Matt Palmer-Ball is a seasoned trial attorney and former federal prosecutor. He concentrates his practice in the areas of complex commercial litigation, white collar crime, and internal and government investigations. Prior to joining Wyatt, Matt served as a Trial Attorney with the U.S. Department of Justice's Public Integrity Section and as an Assistant U.S. Attorney for the District of Columbia. In those roles, he tried three dozen cases to verdict and conducted a broad range of sensitive investigations. He previously worked in private practice in Washington D.C., representing financial institutions, industrial corporations, and executives in a wide variety of civil, criminal, and regulatory matters. Matt began his legal career as a law clerk for the Honorable Boyce F. Martin, Jr., U.S. Court of Appeals for the Sixth Circuit.

EXPERIENCE

- Tried 11 jury trials and 25 bench trials to verdict, including all aspects of trial and pretrial and post-trial litigation.
- Conducted a broad range of sensitive grand jury investigations concerning bribery, fraud, insider trading, violent crime, and possession of illegal firearms and narcotics.
- Represented corporations and executives in connection with government investigations conducted by the U.S. Department of Justice, various U.S. Attorney's Offices, the U.S. Securities and Exchange Commission, FINRA, and various states attorneys general.
- Defended corporations in civil suits alleging civil fraud and violations of the False Claims Act.
- Represented clients in appeals in federal and state courts as well as regulatory review boards, including briefing and arguing appeal before the U.S. Court of Appeals for the Sixth Circuit.

EDUCATION

- J.D., Northwestern University School of Law, *cum laude*, 2009
- B.B.A., University of Notre Dame, *cum laude*, 2005

ADMISSIONS

- Kentucky
- District of Columbia

PROFESSIONAL EXPERIENCE

- Trial Attorney, Public Integrity Section, U.S. Department of Justice
- Assistant U.S. Attorney, U.S. Attorney's Office for the District of Columbia
- Associate, Katten Muchin Rosenman LLP, Washington, D.C.
- Associate, Schulte Roth and Zabel LLP, Washington, D.C.
- Law Clerk, Hon. Boyce F. Martin, Jr., U.S. Court of Appeals for the Sixth Circuit



Julie Laemmle Watts

Senior Associate

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How do you achieve success for clients?

*I achieve success for clients
by listening to their question
or concern, determining the
necessary scope of work, and
working efficiently to answer
the question or resolve the
situation.*

PRACTICES AND INDUSTRIES

Intellectual Property Protection & Litigation
Litigation & Dispute Resolution
Labor & Employment

Julie Laemmle Watts is a member of the Firm's Litigation & Dispute Resolution, Labor & Employment and Intellectual Property Protection & Litigation Service Teams. She concentrates her practice in the areas of commercial disputes, trademark and copyright transaction and litigation work, healthcare litigation and employment matters.

REPRESENTATIVE MATTERS

- Represents individuals and corporations in evaluating potential trade and service marks, prosecuting state and federal applications for trade and service marks and enforcing trademark rights against others
- Represents individuals and corporations in Trademark Trial and Appeal Board proceedings, including Oppositions and Cancellations
- Obtained summary judgment for county board of education in case involving disability discrimination, gender discrimination, retaliation and other employment-related violations
- Obtained partial dismissal in False Claims Act matter, successfully dismissing certain client defendants based on the corporate conspiracy doctrine
- Obtained summary judgment for brake manufacturer in product liability action
- Obtained summary judgment for correctional facility nurse in Eighth Amendment denial of medical treatment claim brought by inmate

EDUCATION

J.D., Indiana University Maurer School of Law

- *Indiana Journal of Law and Social Equality*, Senior Managing Editor
- Sherman Minton Court
- CALL award for excellence in transaction drafting, 2014

B.A., Saint Mary's College *magna cum laude*, (Mass Communication, minors in business administration and public relations)

- Excellence in Communication Award, 2011

ADMISSIONS

- Kentucky

- United States District Court for the Eastern District of Kentucky
- United States District Court for the Western District of Kentucky
- United States Court of Appeals for the Sixth Circuit
- United States District Court for the Northern District of Indiana

HONORS

- Recognized by *Best Lawyers*® as “Ones to Watch” in Commercial Litigation and Intellectual Property Law, 2021
- Recognized by her peers as a *Kentucky Super Lawyers*® Rising Star, 2021

PROFESSIONAL EXPERIENCE

Associate, Quintairos, Prieto, Wood & Boyer, P.A. (2014 – 2017); Long term healthcare defense; premises, product & professional liability defense

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Kentucky Bar Association
- Louisville Bar Association

CIVIC INVOLVEMENT

- Nativity Academy Associate Board, Member
- Fund for the Arts NeXt Ambassador Program, 2017-2018
- Community Catholic Center Mentoring Program, 2016-2018
- Indiana University Maurer School of Law Young Alumni Steering Committee, Member
- Junior League of Louisville, Member
- Saint Mary’s College Belles of the Last Decade, Member, 2012-2018; Co-Chair, 2016-2018

PUBLICATIONS

- Blog post, [EEOC Questions and Answers for Reopening Employers](#) (May 2020)
- Blog Post, [Flexibility for Unemployment Insurance Benefits Amid COVID-19 Outbreak](#) (March 2020)
- Blog post, [Changes to OSHA Electronic Submission Requirement Take Effect February 25](#) (February 2019)
- Blog post, [Stay Cool: Preventing Heat Illness in the Workplace](#) (August 2018)

- Blog post, [Recent Case Highlights the High Price of Trade Secret Misappropriation](#) (August 2018)
- Blog post, [PYRAT Rum and PIRATE PISS Beer Not Confusable, According to TTAB](#) (June 2018)
- Blog post, [Can Your Employees Bring Firearms to Work?](#) (March 2018)
- Blog post, [Where Wage Disparity Exists, Court Holds that Employers have Heavy Burden to Prove the Reason for Disparity](#) (February 2018)
- Blog post, [New EEO-1 Form on Hold Indefinitely](#) (September 2017)
- Note, *California's Conversion: A Ban on Minor Conversion Therapy and the Effect on Other States*, 2 Ind. J.L. & Soc. Equality (2013)
- Book Note, *Barbara Martin: Children at Play: Learning Gender in the Early Years*, 42 J. of Youth & Adol. 305 (2012)

PRESENTATIONS

"Protecting Your Competitive Edge: Tips and Tools for Successfully Guarding Your Company's Intellectual Property," co-presenter with Michelle Browning Coughlin, Wyatt, Tarrant and Combs In-House Counsel Litigation Seminar (November 2018)



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PRACTICES AND INDUSTRIES

Litigation & Dispute Resolution

Labor & Employment

Product Liability

Jordan White is a member of the Firm's Litigation & Dispute Resolution and Labor & Employment Service Teams. He focuses his practice on complex commercial disputes, creditors' rights litigation, products liability law and labor and employment issues.

REPRESENTATIVE MATTERS

- *Mayberry, et al. v. KKR & Co., L.P., et al.* The firm represents Blackstone Group L.P. and related entities in a derivative suit brought on behalf of the Kentucky Retirement System alleging breach of statutory and fiduciary duties, civil conspiracy and aiding and abetting breaches of fiduciary and statutory duties.
- *City of Murray, Ky. v. Robertson Inc. Bridge and Grading Division*, No. 5:17-cv-8, 2017 WL 5078941 (W.D. Ky. Nov. 3, 2017): Obtained order dismissing contractor's third party claims against engineering firm.
- *Hurley Holland v. LVNV Funding, LLC*, Case No. 5:16-cv-00069, 2016 WL 6156187 (W.D. Ky. Oct. 21, 2016): Obtained order dismissing plaintiff's FDCPA claims and compelling arbitration.
- Represent debt collectors, debt buyers, collection attorneys, and various financial services companies including defending single-plaintiff and class action lawsuits alleging violations of the FDCPA and FCRA in Kentucky state and federal courts.
- Represent medical equipment manufacturing company in various products liability actions.
- Obtained summary judgment for county board of education in retaliation, race, gender, and age discrimination actions, as well as obtaining dismissal of negligence claims in premises liability, wrongful death and negligent hiring/retention actions.

EDUCATION

J.D., *magna cum laude*, University of Louisville Brandeis School of Law

- Member, Irving R. Kaufman Memorial Securities Law Moot Court Team
- Top Grade Award, Torts II, Secured Transactions, Products Liability, 2015

B.S., *summa cum laude*, Kentucky Wesleyan College; (Accounting)

- Second-team NCAA Baseball All-American;

- Two-time GLVC Baseball Scholar-Athlete of the Year
- GLVC Council of President's Academic Excellence Award, 2012

ADMISSIONS

- Kentucky
- Indiana
- United States District Court for the Western District of Kentucky
- United State District Court for the Eastern District of Kentucky
- United States District Court for the Southern District of Indiana
- United States District Court for the Northern District of Indiana
- United States Court of Appeals, Sixth Circuit
- Bankruptcy Court for the Northern District of Indiana
- Bankruptcy Court for the Southern District of Indiana

HONORS

- Recognized by his peers as a *Kentucky Super Lawyers*® Rising Star, 2018-2021
- 2018 Ky Wesleyan Alumni Outstanding Young Graduate Award winner

PROFESSIONAL EXPERIENCE

- Summer Associate, Wyatt, Tarrant & Combs, LLP, 2014
- Law Clerk, O'Bryan, Brown & Toner, PLLC, May 2013-August 2013
- Tax Intern, BKD, LLP CPAs & Advisors, May 2012-August 2012

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Kentucky Bar Association
- Louisville Bar Association
- Defense Research Institute
- Kentucky Defense Counsel
- Louis D. Brandeis American Inn of Court, Associate Member
- Indiana Trial Lawyers Association



Cornelius E. Coryell II

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PRACTICES AND INDUSTRIES

Litigation & Dispute Resolution
Financial Institutions
Product Liability
Tort & Insurance Defense
Fiduciary Litigation

Corky Coryell is a member of the Firm's Litigation and Dispute Resolution Service Team. He concentrates his practice in the areas of complex commercial litigation, banking litigation, trust and estate litigation, and insurance disputes. Corky has experience representing business entities and individuals in a range of matters in state and federal court, at both the trial court and appellate levels. He has litigated a wide variety of civil disputes, including cases involving non-competition and non-solicitation agreements, alleged violation of fiduciary duties, data privacy breaches, alleged bad faith insurance settlement practices, and the defense of consumer class actions. Corky's clients include banks, consumer finance companies, nationwide private label credit card issuers, title insurance underwriters, and life and disability income insurance underwriters.

REPRESENTATIVE MATTERS

- *Watkins v. Trust Under Will of William Marshall Bullitt by and through its Trustee PNC Bank, National Association*, 2017 WL 3710088 (2019) – an action brought by the remainder beneficiary of a trust alleging that the Trustee had breached fiduciary duties by, among other things, failing to pursue development opportunities for a large tract of real property owned by the Trust and inflating the value of the property to increase trust administration fees. After years of discovery and motion practice, the United States District Court for the Western District of Kentucky granted summary judgment to the Trustee on all claims.
- *Pogue v. The Northwestern Mutual Life Insurance Company*, 2019 WL 1376032 (2019) – a breach of contract and bad faith action brought by an insured claiming wrongful denial of claims under three policies of long-term disability income insurance. The insurer defended on the grounds that among other things, the plaintiff's claim for benefits was excluded under the terms of the policies. After extensive discovery and motion practice, the United States District Court for the Western District of Kentucky granted summary judgment to the insurer on all claims. That ruling was affirmed by the United States Court of Appeals for the Sixth Circuit.
- *Lyles, et al. v. RDP Company, et al.*, 2017 WL 3393947 (2017) – multiple actions brought by mineral lessors against the operator of a limestone quarry claiming that their leases were unconscionable and seeking a declaration that the leases were no longer valid. After extensive discovery and motion practice, the trial court granted summary judgment to the quarry operator on all claims, and that ruling was affirmed by the United States Court of Appeals for the Sixth Circuit.

- *Watkins v. PNC Bank, National Association*, 2015 WL 394103 (2015) – an action brought by the remainder beneficiary of a trust alleging that the Trustee had improperly invested the trust’s assets in violation of the Prudent Investor Rule and had breached fiduciary duties by investing trust assets with an affiliated mutual fund company. The trial court granted summary judgment to the Trustee on all claims and that ruling was affirmed by the Kentucky Court of Appeals.
- *Guangzhou Consortium Display Product Company, Ltd. v. Standard Chartered Bank USA, et al.*, 956 F. Supp.2d, 769 (2013) – an action involving a standby letter of credit that was issued to facilitate the borrowing of the Chinese manufacturing affiliate of a bank customer. When the Chinese affiliate failed, the customer claimed that it relied upon the bank to provide advice and instruction concerning the structure of its international transactions as well as currency conversion issues relating to the letter of credit. The customer sought damages in excess of \$40 million on the grounds that the bank had breached its fiduciary duties, breached the parties’ contract, and tortuously interfered with the customer’s business relationships. After extensive discovery and motion practice, the court ruled in favor of the bank dismissing all of the plaintiffs’ claims.
- *Brewer Machine & Conveyor Mfg. Company v. Old National Bank*, 2011 WL 6111392 (2011) – a customer of a nationally chartered bank alleged that the bank negligently allowed the customer’s payroll manager to misappropriate more than \$3.5 million through an Automated Clearing House account. The customer alleged that the bank improperly failed to detect and prevent the manager’s fraudulent conduct which involved unauthorized electronic transfers of funds to the manager’s own account as well as accounts of fictitious employees. After extensive discovery and motion practice, the court ruled in favor of the bank dismissing all of the plaintiff’s claims. The court’s ruling was affirmed by the Kentucky Court of Appeals.
- *Bariteau v. PNC Financial Services Group, Inc.*, 285 Fed. Appx. 218 (2008) – an action in which a shareholder of a former corporate customer alleged that the bank had breached its account agreement and aided and abetted misappropriation of funds by a former corporate officer. The plaintiff claimed damages in excess of \$14 million. The United States District Court for the Western District of Kentucky dismissed the plaintiff’s claims and that ruling was affirmed by the United States Court of Appeals for the Sixth Circuit.
- *Giverny Gardens LP v. Columbia Housing Partners, LP*, 147 Fed. Appx. 443 (2005) – an action arising out of a letter of intent between a bank and the plaintiff relating to the creation of a limited partnership to develop a low income housing project. Plaintiff claimed that the bank breached the letter of intent, breached fiduciary duties by failing to negotiate various issues that arose during the bank’s due diligence review, and breached the duty of good faith and fair dealing. Plaintiff claimed damages in excess of \$5 million. After extensive discovery and motion practice, the court ruled in favor of the bank dismissing all of the plaintiff’s claims. The court ruling was affirmed by the United States Court of Appeals for the Sixth Circuit.

- *Reliable Mechanical, Inc. v. Naylor Industrial Services, Inc.*, 125 S.W.3d 856 (2003) – action involving claims made against an international supplier of preoperational pipe and equipment cleaning services alleging breach of contract and negligence relating to cleaning services performed on hydraulic and lubricating pipe systems installed in a steel processing plant. More than \$10 million in claims were asserted against the supplier, who counterclaimed for services rendered. The matter was concluded after a lengthy trial when the court found in favor of the supplier, awarding consequential damages, including a significant award of prejudgment interest.
- *North American Stainless v. PNC Bank, Kentucky, Inc.*, 229 F3D 1153 (2000) an action arising out of the nonpayment of a Spanish bill of exchange, the payment mechanism used by the plaintiff in connection with the purchase of steel processing equipment from a Spanish manufacturer. The plaintiff sought damages in excess of \$10 million on the grounds that the bank breached its fiduciary duties by providing erroneous advice concerning the plaintiff's obligations under the bill of exchange. After extensive discovery and motion practice, the court ruled in favor of the bank dismissing all of the plaintiff's claims. The court's ruling was affirmed by the United States Court of Appeals for the Sixth Circuit.
- *Muhammad Ali v. Walter Cuff*, Jefferson County, Kentucky Circuit Court, CI-002604 representation of Muhammad Ali in litigation regarding ownership of a robe worn by Ali while fighting under the name Cassius Clay.
- Lead counsel for a nationally chartered bank in an action involving premium financed life insurance policies issued to the individual plaintiffs. The plaintiffs claimed that the bank conspired with the insurance underwriter and agent to fraudulently induce the plaintiffs' purchase of policies that were unsuitable for their intended purpose. After extensive discovery and motion practice, the court dismissed all claims against the bank.
- Lead counsel for the plaintiff in a fraud action involving technology relating to prepaid long distance calling cards. The plaintiff sought rescission of a multimillion dollar purchase agreement and consequential damages resulting from the fraud. A nine day jury trial resulted in a plaintiff's verdict rescinding the contract and awarding the plaintiff significant consequential damages.
- Lead counsel for a defendant waste hauling company in a suit alleging breach of a recycling services agreement, fraud and a variety of other business torts. The plaintiff sought damages in excess of \$3 million and a declaratory judgment designating the plaintiff as the defendant's exclusive provider of recycling services. This matter was concluded after a two week hearing and the arbitrator ruled in favor of the defendant on all claims.

EDUCATION

- J.D., University of Kentucky College of Law, 1987
- B.S.B.A. with high honors, University of Louisville, 1984 (Finance)

ADMISSIONS

Kentucky

HONORS

- *Woodward/White's Best Lawyers in America*® in the areas of Commercial Litigation, Banking & Finance Litigation, and Real Estate Litigation 2006-2021 and Personal Injury Litigation (Defendants) 2018-present
- Best Lawyers® 2017 Louisville Litigation-Banking and Finance "Lawyer of the Year"
- Best Lawyers® 2013, 2022 Louisville Litigation-Real Estate "Lawyer of the Year"
- *Chambers USA: America's Leading Lawyers in Commercial Litigation*. Clients interviewed by *Chambers USA* describe Mr. Coryell as "very practical and an excellent writer; he has a real feel for strategy."
- "AV" rated in *Martindale-Hubbell*
- Recognized as a Litigation Star by *Benchmark Litigation* 2017-2019
- Recognized as Local Litigation Star by *Benchmark Litigation* 2015
- *Kentucky Super Lawyers*® 2007-2021

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Louisville and Kentucky Bar Associations
- Defense Research Institute member

CIVIC INVOLVEMENT

- Board of Directors of the Louisville Sports Commission
- Elder, Highland Presbyterian Church



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PRACTICES AND INDUSTRIES

Litigation & Dispute Resolution
Intellectual Property Protection & Litigation
Securities Litigation
Trade Secret Litigation
Confidentiality Agreements and Employee Non-Compete Agreements

David Calhoun is a member of the Firm's Litigation and Dispute Resolution Service Team, and also serves as the Firm's Deputy General Counsel and Deputy Partner in Charge of Ethics and Loss Prevention. He has more than 22 years of experience as a trial and appellate lawyer, serving as lead counsel for both plaintiffs and defendants in a wide variety of complex commercial, insurance, securities, intellectual property, and trust and estates disputes.

Mr. Calhoun's clients include manufacturers, insurance companies, banks, retail brokerage and financial advisory firms, and trust and estate fiduciaries.

REPRESENTATIVE MATTERS

- *William Kennedy v. Life Insurance Company of North America*, United States District Court, Western District of Kentucky. Obtained summary judgment for disability insurer in an ERISA coverage dispute, and successfully defended that judgment against appeal.
- *Bari Kemper v. Life Insurance Company of North America*, United States District Court, Eastern District of Kentucky. Obtained summary judgment for disability insurer in a review of the denial of ERISA disability benefits, and successfully defended that judgment against appeal.
- *Branch Banking and Trust Company, Trustee v. Pacific Life Insurance Company*, United States District Court, Western District of Kentucky. Lead counsel for the trustee of a life insurance trust suing life insurer for breach of contract due to its failure to process a 1035 exchange of the trust's variable life insurance policy in compliance with the policy terms. Jury trial resulting in verdict for the trustee and a judgment awarding the trust over \$470,000 in damages. Affirmed on appeal.
- *National Trust Insurance v. Heaven Hill Distilleries, Inc.*, United States District Court, Western District of Kentucky. Lead counsel for insured manufacturer in an insurance coverage action involving the question of whether various policy exclusions barred coverage and whether the insurance company would be entitled to reimbursement of the cost of defending the underlying action. Obtained summary judgment for the insured manufacturer on the issue of recoupment of defense costs, resulting in the insurer voluntarily dismissing the action.
- *Century Indemnity Company v. Begley Company, et al.*, United States District Court, Eastern District of Kentucky. Lead counsel for insured company in declaratory judgment action involving disputed coverage for alleged environmental pollution claims.

- *American Air Filter Company, Inc. v. Universal Air Products, LLC*, United States District Court. Western District Court of Kentucky. Lead counsel for manufacturer suing a competitor for cyberpiracy and trademark infringement.
- *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and Henderson Municipal Power & Light*, American Arbitration Association. Represented the City of Henderson and its municipal electrical utility in this AAA arbitration of a multi-million dollar dispute involving the interpretation of an amendment to an electrical power sales contract between Big Rivers and the City.
- *Cambridge Business Solutions, Inc. v. QuinStreet, Inc. and NarrowCast Group, LLC*, United States District Court, Western District of Kentucky. Lead counsel for the Defendants/Counterclaim Plaintiffs in a copyright infringement case involving custom computer software.
- *Julia Cain v. American Commerce Insurance Company*, 332 S.W.3d 81 (Ky. App. 2009). Defense of an insurance company against class action allegations of bad faith settlement practices and sales practice violations of the Kentucky Consumer Protection Act, all based on a novel argument as to the interpretation of the added reparation benefits section of the Kentucky Motor Vehicle Reparations Act. Obtained summary judgment for the insurer. Affirmed on appeal.
- *U.S. ex rel. Jose Bonilla v. ISP Chemicals, LLC and International Specialty Products, Inc.*, United States District Court, Western District of Kentucky. Lead counsel defending parent-sub chemical products manufacturers in this False Claims Act *qui tam* fraud and retaliation case prosecuted by a relator who was a former company chemist. Obtained dismissal of all claims in the suit with the consent of the United States.
- *Boze et al. v. General Electric Company*, United States District Court, Western District of Kentucky. Lead counsel defending GE Aviation in a combined federal False Claims Act retaliation case. Obtained summary judgment in favor of GE Aviation on all three plaintiffs' claims.
- *ATC Distribution Group, Inc. v. Whatever It Takes Transmissions & Parts, Inc.*, 402 F. 3d 700 (6th Cir. 2005). Defense of a transmission parts distributor, its owner, and four of its employees from claims of copyright and trademark infringement, unfair competition, misappropriation of trade secrets, trade defamation, breach of employment contracts and non-competes, breach of fiduciary duty and tortious interference that were brought by a competing transmission parts distributor. Obtained summary judgments for each of the defendants at the trial level. Affirmed on appeal.
- *XL Specialty Insurance Company v. Fort Knox National Company*, United States District Court, Western District of Kentucky. Representation of insured in coverage dispute involving applicability of D&O policy exclusions, resulting in amicable resolution.

- *N. Goldring Corp. and Magnolia Distribution v. Heaven Hill Distilleries, Inc.*, United States District Court Northern District of Florida; Eleventh Circuit U.S. Court of Appeals. Obtained summary judgment for a distilled spirits manufacturer on claims of wrongful termination of distributorship/franchise and breach of contract brought by two terminated distributors. Affirmed on appeal.
- *Kern et al. v. Davis, et al.*, Jefferson Circuit Court, Kentucky. Defended the director and majority shareholder of a closely held corporation against fraud, breach of fiduciary duty and various other claims brought by minority shareholders challenging the director's ownership percentage and control of the company.
- Insurance coverage opinion counsel for multiple insurers.
- Defense of multiple retail brokerage and financial advisory firms and their registered brokers and advisors in over thirty NASD/FINRA arbitration cases brought by investors alleging losses in the six and seven figure ranges.

REPRESENTATIVE CLIENTS

- Heaven Hill Distilleries, Inc.
- Branch Banking and Trust Company
- Mapfre/Commerce Insurance Companies
- Intellectual Property Insurance Services Company
- CIGNA/Life Insurance Company of North America

EDUCATION

- J.D., University of Louisville School of Law, 1996
- B.A., University of Louisville, 1984

ADMISSIONS

- Kentucky
- United States District Courts for the Western and Eastern Districts of Kentucky
- United States Courts of Appeals, Sixth, Seventh and Eleventh Circuits

HONORS

- Highest Professional AV Rating by *Martindale-Hubbell Law Directory*. "David is a bright and energetic lawyer who aggressively and competently advances the position of his client. He is a skilled litigator. He is very comfortable arguing before a jury. In my opinion, David Calhoun is an excellent lawyer deserving high marks" –Peer review comment from Martindale-Hubbell.

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Trial Practice Instructor, University of Louisville Brandeis School of Law, Spring 2018
- Vice President, University of Louisville Army ROTC Alumni Council
- Infantry Officer, United States Army, 1984-1992



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How do you achieve success for clients?

*There are many clever
lawyers, but our clients
deserve more. Their success is
achieved not merely through
creative legal strategies but,
most importantly,
representation that is
credible and trusted.*

PRACTICES AND INDUSTRIES

Litigation & Dispute Resolution
Non-Competition, Business Information, and Trade Secret Protection
Product Liability
Fiduciary Litigation

Sean G. Williamson is a member of the Firm's Litigation & Dispute Resolution Service Team. He represents a broad range of clients in a variety of complex commercial disputes, including products liability and warranty matters, fiduciary litigation and class actions. In addition, Sean works closely with the Firm's Intellectual Property Protection & Litigation Service Team, assisting businesses and innovators with the protection of valuable, competitive information, such as trade secrets and non-competition issues. Based on his experience practicing and clerking in federal court, Sean is also skilled in civil rights and constitutional litigation. The scope of Sean's practice extends from initial trial court proceedings through the entire appellate process.

REPRESENTATIVE MATTERS

- *White v. Universal Fidelity, LP, et al.*, No. 18-6302 (6th Cir. 2019). Represented hospital corporation and debt collection entities in equal protection challenge to Kentucky's necessities statute and related FDCPA claims. Obtained dismissal of all claims in district court and affirmance on appeal.
- *Laborers' Local #231 Pension Fund, et al. v. PharMerica Corporation, et al.*, No. 3:18-CV-109-RGJ-CHL (W.D. Ky. 2019). Obtained dismissal of shareholders' class action asserting claims under the Securities Exchange Act of 1934 for an allegedly misleading proxy statement associated with the company's going-private merger.
- *Cogan Imports, Inc. v. Dharod*, No. 3:16-CV-00352-GNS (W.D. Ky. 2019). Obtained summary judgment for defendant on breach of contract claims asserted by motor vehicle dealer attempting to compel specific performance of an alleged email contract for the \$2.7 million purchase of a Ferrari automobile.
- *Parshall v. Citizens First Corporation, et al.*, No. 19-CI-00643 (Warren Cnty. Ky. Cir. Ct. 2019). Represented local bank and its corporate officers in class action litigation brought by a putative class of shareholders demanding supplemental proxy disclosures and injunctive relief under common law breach of fiduciary duty theories. The litigation was dismissed before shareholders' merger vote.
- *Young, et al. v. Sullivan University System, Inc.*, No. 2018-CA-000364-ME (Ky. App. 2019). Represented private university system in obtaining affirmance of order denying certification of a putative class of former students alleging consumer protection and fraud claims related to the university's marketing and promotional materials for its culinary arts programs.

- *Libertarian National Committee, Inc., et al. v. Holiday, et al.*, No. 17-6216 (6th Cir. 2018). Obtained summary judgment and affirmance on appeal in favor of public broadcaster on alleged viewpoint discrimination and other constitutional claims arising from a third-party candidate's exclusion from a televised forum for U.S. senatorial candidates.
- *Nami Resources Co., et al. v. Asher Land and Mineral, Ltd., et al.*, Nos. 2015-SC-000405, 2016-SC-000235-DG (Ky. 2018). Assisted appellate team in successfully obtaining reversal of \$2.7 million punitive award based on alleged fraudulent concealment of underpaid natural gas royalties.
- *Conrad v. Bevin, et al.*, No. 3:17-CV-00056-GFVT (E.D. Ky. 2018). Defeated motion for preliminary injunction, and obtained dismissal of action against physicians' health organization alleging antitrust, due process, equal protection, and ADA violations, as well as invasion of privacy claims, arising from temporary suspension of plaintiff's medical license.
- *National Achievement Source, LLC v. Jefferson County Public Schools, et al.*, No. 17-CI-004017 (Jefferson Cnty. Ky. Cir. Ct. 2017). Defeated motion for preliminary injunction, and obtained complete dismissal of vendor's claims of alleged violations of the Kentucky Model Procurement Code arising from student purchases of graduation memorabilia, including caps and gowns.
- *Boyd ex rel. B.B. v. Jefferson County Public Schools, et al.*, No 3:16-cv-00023-CRS-CHL (W.D. Ky. 2017). Obtained complete summary judgment in favor of public school district and employees on alleged Fourth Amendment, due process, and equal protection violations, as well as related state tort claims, arising from law enforcement's arrest of a student on school property.
- *Warren Paving, Inc., et al. v. Heartland Material, Inc., et al.*, No. 15-6052 (6th Cir. 2016). Defended favorable judgment on appeal in royalty dispute over limestone production.
- Represents a wide range of commercial clients, including construction companies, equipment distributors, financial institutions, insurance companies, and natural resource companies, in a variety of disputes.
- Advises commercial clients regarding non-competition and non-solicitation covenants and matters related to the protection of confidential business information and trade secrets.
- Represents commercial lessors in disputes with tenants, including evictions and collections.
- Represents state agencies, such as the state judicial conduct commission and public television broadcaster, in civil rights and constitutional litigation.
- Represents county board of education in numerous matters, including commercial disputes with vendors, actions based on alleged personal injuries or violations of statutory or constitutional rights, as well as employment matters and labor arbitrations.
- Represents healthcare providers in actions seeking Medicaid reimbursements from state administrative cabinet.

EDUCATION

J.D., University of Pennsylvania Law School, 2014

- Executive Editor, *Journal of Constitutional Law*
- Moot Court Board
- Frank G. Leebron Memorial Prize (awarded to the graduating student who has written the best paper in the field of constitutional law)
- Award for Distinguished Pro Bono Service
- Legal Writing Honors

B.A., *summa cum laude*, University of Louisville, 2011 (History and Political Science)

- McConnell Scholarship for Political Leadership

ADMISSIONS

- Kentucky
- United States District Court for the Western District of Kentucky
- United States District Court for the Eastern District of Kentucky
- United States Court of Appeals for the Sixth Circuit
- United State District Court for the Southern District of Indiana

HONORS

- Recognized by *Best Lawyers*® as “Ones to Watch” in Commercial Litigation, 2020
- Recognized by his peers as a *Kentucky Super Lawyers*® Rising Star, 2019-2021

PROFESSIONAL EXPERIENCE

- Clerk for the Honorable Charles R. Simpson, III, United States District Court for the Western District of Kentucky, 2014-2015
- Summer Associate, Wyatt, Tarrant & Combs, LLP, 2013
- Intern for the Honorable John G. Heyburn, II, United States District Court for the Western District of Kentucky, 2012

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- Kentucky Bar Association
- Louisville Bar Association

CIVIC INVOLVEMENT

- Volunteers of America Mid-States, Board of Directors
- McConnell Center, University of Louisville, Advisor Moot Court Program
- St. John Center for Homeless Men, Board of Directors, 2017-2019
- The Home of the Innocents, Associate Board, 2017-2020
- Junior Achievement of Kentuckiana, Young Professionals Board, 2017-2019
- Louis D. Brandeis American Inn of Court, Associate Member, 2016-2018
- YPAL Emerging Leaders Program, 2016

PUBLICATIONS

Comment, *Contemporary Contextual Analysis: Accounting for Changed Factual Conditions Under the Equal Protection Clause*, 17 U. Pa. J. Const. L. 591 (2014)



Wyatt is a full-service regional law firm with offices in Louisville and Lexington, Kentucky; New Albany, Indiana; Memphis and Nashville, Tennessee. Wyatt, Tarrant & Combs, LLP is a member of AdvanceLaw. For more information about Wyatt, please visit www.wyattfirm.com.

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