OFFICIAL UNITED STATES DEPARTMENT OF LABOR
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and
OHIO CIVIL RIGHTS COMMISSION
CHARGE OF DISCRIMINATION OF AND AGAINST WOOD & LAMPING, LLP FILED THROUGH ITS CINCINNATI AREA OFFICE
ON JULY 7, 2009[1]

Charge Filed With:	United States Department of Labor U.S. Equal Employment Opportunity Commission ("EEOC") Cincinnati Area Office **ATTN: U.S. Secretary of Labor – Hilda L. Solis** **c/o Attn: Wilma L. Javey (Director)** 550 Main Street, 10th Floor Cincinnati, Ohio 45202 Ohio Civil Rights Commission ("OCRC") **ATTN: Jean Marshall-McEntire** 7162 Reading Road, Suite 1001 Cincinnati, Ohio 45237
Complainant/Employee:	V. Denise Newsome ("Newsome") Post Office Box 14731 Cincinnati, Ohio 45250 Phone: (513) 680-2922
Respondent/Employer:	Wood & Lamping, LLP **Attn: Andrea Griffith (Human Resources)** **Attn: C. J. Schmidt, III (Managing Partner)** 600 Vine Street – Suite 2500 Cincinnati, Ohio 45202 Phone: (513) 852-6006 County: Hamilton County, Ohio No. Employees: Approximately 60-65
Number of Employees:	15+
Discrimination Based On:	**(1)** Race; **(2)** Sex; **(3)** Retaliation; **(4)** Other – knowledge of engagement in protected activity(s); **(5)** Systematic Discrimination; and **(6)** Disparate Treatment
Date of Hire:	**September 11, 2006** [**Note:** *Employed as contract employee prior to permanent employment offer*]
Date of Recent Discrimination:	Latest: **January 9, 2009** (Employment Terminated)
If Violations Are Found:	EEOC/Ohio Civil Rights Commission/Ohio Department on Human Rights is to enforce the applicable statutes/laws and seek

[1] Newsome relied upon legal resources (i.e. such as **PREVIOUS** EEOC DECISIONS, **PREVIOUS** OHIO CIVIL RIGHTS COMMISSION DECISIONS, EEOC Compliance Manual, United States Code Annotated, American Jurisprudence Pleading and Practice Forms, Federal Procedural Forms – Lawyers Edition, American Jurisprudence Proof of Facts, Code of Federal Regulations, Internet, etc.) in the preparation of this Complaint. Boldface, underline, italics added for emphasis.

to eliminate discriminatory practices, Title VII violations/employment violations/civil rights violations made known to it.

EEOC/Ohio Civil Rights Commission/Ohio Department on Human Rights shall prevent any person from engaging in unlawful discriminatory practices, provided that, before instituting formal hearing and/or authorized proceedings, it has attempted, by informal methods of conference, conciliation and persuasion, to induce compliance with this chapter. **If** necessary, *initiate a complaint and refer it to the attorney general with a recommendation to seek a temporary or permanent injunction or temporary restraining order*. If this action is required to be taken, the attorney general shall apply, as **expeditiously** *as possible* after receipt of the complaint, to the court of common pleas of the county in which the unlawful discriminatory practice allegedly occurred for the appropriate injunction or order, and the court shall hear and determine the application as **expeditiously** *as possible.* (ORC 4112.05)

Wood & Lamping Specializes in Employment Law:

Federal Laws You Need to Know - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 5 attached hereto and incorporated by reference as if set forth in full herein.

State Laws You Need to Know - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 6 attached hereto and incorporated by reference as if set forth in full herein.

COPY MAILED TO:

VIA PRIORITY MAIL: SIGNATURE CONFIRMATION
TRACKING NO. 2306 1570 0001 0442 8225
U.S. Department of Labor
ATTN: Secretary Hilda L. Solis
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

VIA PRIORITY MAIL: SIGNATURE CONFIRMATION
TRACKING NO. 2306 1570 0001 0442 8256
The United States White House
ATTN: U.S. President Barack Obama
1600 Pennsylvania Ave NW
Washington, DC 20500

VIA PRIORITY MAIL: SIGNATURE CONFIRMATION
TRACKING NO. 2306 1570 0001 0442 8218
U.S. Department of Justice
ATTN: Attorney General Eric H. Holder, Jr.
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

COMES NOW Denise Newsome ("Newsome"), an African-American female, and files this her Official **United States Equal Employment Opportunity Commission** (hereinafter "EEOC") Complaint with the *United States Secretary of Labor* in care of and through the EEOC's Cincinnati Area Office of and against Wood & Lamping, LLP ("W&L")[2] and/or its representatives under Title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.], 29 C.F.R. § 1601.7, and any/all applicable statutes/laws under which the jurisdiction of the EEOC is applicable.

This instant Charge is also being filed with the **Ohio Civil Rights Commission** with the *Cincinnati Regional Director* in care of and through its Cincinnati Regional Office of and against Wood & Lamping, LLP ("W&L") and/or its representatives under 4112 and any/all applicable statutes/laws under which the jurisdiction of the Ohio Civil Rights Commission is applicable. Newsome's job performance was subjected to ***heightened scrutiny*** IMMEDIATELY AFTER she filed a lawsuit and Wood & Lamping's knowledge of her engagement in protected activities. The temporal proximity between Newsome's filing of lawsuit notice of filing of charges and the heightened scrutiny is enough to establish the *causal connection* for purposes of proving a prima facie case of discriminatory and retaliatory practices. This instant Charge will provide circumstantial evidence which will include the proximity between the protected activities and changes in Wood & Lamping's relationship with Newsome and the terms of her employment. An investigation will yield how Wood & Lamping began to closely monitor Newsome and create conditions (i.e. taking away job duties to give to white employees, harassment and creation of hostile environment to interfere with performance of job duties, and measures taken to force her to quit) which led to her unlawful/illegal discharge and/or termination. Newsome believes said interference in which an investigation may yield a causal connection between her filing of lawsuits, EEOC Charge and/or engagement in protected activities – supporting prima facie criteria.

In support of this Complaint Newsome states the following:

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[2] **Wood & Lamping LLP in this Complaint will refer to it, its employees (not including Newsome in that she is identified) and/or representatives.**

JURISDICTION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

The jurisdiction of the *United States Equal Employment Opportunity Commission ("EEOC")* is invoked under the Title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.], 29 C.F.R. § 1601.7 and the applicable statutes/laws granting said agency jurisdiction. Newsome, through this instant Charge, is requesting the administration and enforcement of Title VII. The enforcement of Title VII rights begins with the filing of a charge of unlawful employment discrimination; moreover, to determine whether Title VII will need to be enforced. Therefore, Newsome through this instant documentation is filing a Charge of unlawful employment discrimination. The filing of this instant Charge of Discrimination is being submitted to the EEOC to provide it with an opportunity to investigate and attempt a resolution of the controversy. *Moreover, is also provided to determine whether or not Newsome is a victim of individual and/or* ***systematic*** *discrimination pursuant to 29 C.F.R. § 1601.6.*

> **Cut and pasted from:** http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=b9450571b015e008a05be196188cdc58&rgn=div8&view= text&node=29:4.1.4.1.2.2.17.1&idno=29
>
> **Title 29: Labor**
> PART 1601—PROCEDURAL REGULATIONS
> Subpart B—Procedure for the Prevention of Unlawful Employment Practices
>
> **§ 1601.6 Submission of information.**
>
> (a) The Commission shall receive information concerning alleged violations of Title VII . . . from any person. Where the information discloses that a person is entitled to file a charge with the Commission, the appropriate office shall render assistance in the filing of a charge. Any person or organization may request the issuance of a Commissioner charge for an inquiry into *individual* or ***systematic***[3] discrimination. Such request, with any pertinent information, should be submitted to the nearest District, Field, Area, or Local office.

[3] **EMPHASIS ADDED.**

This instant Charge of Discrimination has been timely filed pursuant to the guidelines and/or procedures of the EEOC. To preserve Newsome's rights, the most recent discriminatory act rendered Newsome by her employer, Wood & Lamping, LLP occurred on **January 9, 2009**, therefore giving Newsome ***until approximately July 8, 2009*** to file a Charge of Discrimination – See http://www.eeoc.gov/cincinnati/ timeliness.html which provide the following information:

> A charge must be filed with EEOC within **180** days from the date of the alleged violation, in order to protect the charging party's rights.
>
> This 180-day filing deadline may be extended to 300 days if the charge also is covered by a state or local anti-discrimination law. . .
>
> **Cincinnati Area Office Information**
> An individual has 300 days from the date of alleged harm to file a charge with this office against an employer with 15 or more employees for discrimination based on race, color, national origin, sex, religion, and/or disability in the State of Ohio. . .

OHIO CIVIL RIGHTS COMMISSION:

The jurisdiction of the *Ohio Civil Rights Commission* ("OCRC") is invoked under the provisions of Section 4112 of the Ohio Revised Code and the applicable statutes/laws granting said agency jurisdiction regarding unlawful discriminatory practices. Newsome through this instant Charge is requesting the administration and enforcement of the applicable laws under Section 4112. The filing of this instant Charge is to initiate a preliminary investigation to determine whether it is probable that an unlawful discriminatory practice has been and/or is being engaged in. The filing of this instant Charge is being submitted to the OCRC to determine if unlawful discriminatory practices occurred. Then if so, Newsome is requesting the OCRC *"to initiate a complaint and refer it to the Attorney General with a recommendation to seek a temporary or permanent injunction or a temporary restraining order. If this action is taken, the Attorney General shall apply, as* ***expeditiously*** *as possible after receipt of the complaint, to the court of common pleas of the county in which the unlawful discriminatory practice allegedly occurred for the appropriate injunction or order, and the court shall hear and determine the application as* ***expeditiously*** *as possible"* pursuant to Section 4112.05(3)(a)(iii).

Pursuant to Ohio Revised Code ("ORC") Section 4112.02(A)(I):

It shall be an unlawful discriminatory practice:

(A) For an employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge **without just cause**, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing. . .

Ohio Civil Rights Commission Sources Used:

OCRC Complaint No. 9569 (*Hatem* matter) - See **EXHIBIT "1"** attached hereto and incorporated by reference.

19. In order to create a hostile work environment, the conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993), *quoting Meritor, supra* at 67. The conduct must be unwelcome. *Meritor, supra* at 68. The victim must perceive the work environment to be hostile or abusive, and the work environment must be one that a reasonable person would find hostile or abusive. *Harris* at 21-22. If the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation. *Id.*

20. In examining the work environment from both subjective and objective viewpoints, the fact-finder must examine "all the circumstances", including the employee's psychological harm and other relevant factors, such as:
. . .the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. *Id.*, at 23.

Rabidue v. Osceola Refining Div., 42 FEP Cases 631 (6th Cir. 1986) (plaintiffs must show that a hostile work environment resulted not from a single or isolated offensive incident, comment, or conduct, but from incidents, comments, or conduct that occurred with some frequency). "A hostile work environment is usually 'characterized by multiple and varied combinations and frequencies of offensive exposures.'" *Rose v. Figgie International*, 56 FEP Cases 41, 44 (8th Cir. 1990).

Supervisor Harassment:

23. An employer is vicariously liable for a hostile work environment created by a supervisor with immediate or higher authority over the employee. *Faragher, supra at* 2275 (1998). If not tangible employment action is taken against the employee, then the employer may raise an affirmative defense to liability or damages.[4] *Ellerth, supra* at 2270; *Faragher,* at 2293.

Retaliation:

32. In order to establish a *prima facie* case of retaliation under R.C. 4112.02(I), the Commission must prove the following elements:

a. Complainant engaged in protected activity;
b. Respondent knew of Complainant's participation in the protected activity;
c. Respondent engaged in retaliatory conduct; and
d. a causal link exists between the protected activity and the adverse action.

Hollins v. Atlantic Co., Inc., 80 FEP Cases 835 (6th Cir. 1999), *aff'd in part and rev'd in part,* 76 FEP Cases 533 (N.D. Ohio 1997)(quotation marks omitted).

36. The test for determining whether an employee was constructively discharged is whether the employer's actions made working conditions so intolerable that a reasonable person under the circumstances would have felt compelled to resign. *Mauzy v. Kelly Services, Inc.*, (1996), 75 Ohio St.3d 578, 1996 Ohio 265, 664 N.E. 2d 1272.

37. Whether the discriminatory conduct unreasonably interfered with Complainant's work performance is one factor to be considered. The Commission, however, is not required to show the Complainant's "tangible productivity . . . declined as a result of harassment." *Harris,* 63 FEP Cases at 229 (Justice Ginsburg's concurrence) *quoting Davis v. Monsanto Chemical Co.*, 47 FEP Cases 1825, 1828 (6th Cir. 1988). Instead the Commission must demonstrate that a reasonable person subjected to the discriminatory conduct would find that the harassment so altered working conditions as to "ma[k]e it more difficult to do the job." *Id.*

38. To support a retaliation claim, the Commission must show that the change in Complainant's employment conditions was more disruptive than a mere inconvenience or an alteration of job responsibilities. *Bowers v. Hamilton City Sch. Dist. Bd. Of Educ.,*

[4] In *Ellerth,* the Supreme Court described a tangible employment action as: . . . a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. *Id.* at 2268.

12th Dist. No. CA2001-07-160, 2002 Ohio 1343, citing *Kocis*, 97 F.3d at 886.

FACTS OF THIS COMPLAINT

Newsome believe it is important to note that the Title VII/Civil Rights/Employment violations, etc. addressed in this instant Charge may be as a direct and proximate result of the EEOC's failure in the past to perform ministerial duties mandated by statutes/laws. Moreover, as a direct and proximate result of said failure that she has repeatedly been subjected to such unlawful employment discrimination/practices, systematic discriminatory practices and criminal acts by Wood & Lamping, LLP ("W&L") its representatives and others. An investigation **will** yield that the very policies and practices that the EEOC acknowledges as discriminatory – i.e. *contacting employers and notifying of employee's past participation and/or filing of EEOC Charge is the very practice that has been repeatedly allowed to be used and transferred from one employer to another regarding Newsome. Moreover, the posting of such protected activity on the INTERNET was deliberately done for purposes of depriving Newsome equal employment opportunities, equal protection of the laws, due process of laws, life, liberties and the pursuit of happiness, etc.* ***All because Newsome exposed what is known for a long time to be systematic discrimination leveled against African-Americans and/or people of color who challenge employers for discriminatory practices and the government's handling of such claims.*** *An investigation into this instant Charge will support systematic discrimination and violation under Title VII of the Civil Rights Act and other governing statutes/laws have been implemented to prevent and/or preclude Newsome from obtaining gainful employment – i.e. equal employment opportunities.*

I. VIOLATION OF STATUTE:

1. Wood & Lamping, LLP ("W&L"), Newsome's former employer, is a private sector employer who employs approximately 15 or more employees for at least 20 work weeks in the current or preceding calendar year and is engaged in an activity affecting commerce.

2. Andrea Griffith (Human Resources Manager/Representative) and C. J. Schmidt (Attorney and Managing Partner) at Wood & Lamping, LLP are people who act, directly, in the interest of their employer (Wood & Lamping, LLP) to the employees of said employer.

3. Newsome worked for a covered employer – Wood & Lamping, LLP. Newsome's hire date being effective September 11, 2006. Newsome was employed as ***Estate Planning Coordinator.*** *At the time of Newsome's termination on January 9, 2009, W&L still had a need for the job duties performed by Newsome as Estate Planning Coordinator.*

4. During Newsome's employment at W&L she was subjected to ***systematic*** *discriminatory practices* based on W&L's knowledge of her participation and engagement in protected activities.

5. During Newsome's employment at W&L, she was subjected to *discriminatory treatment* based on her race and sex. Newsome is an African-American. Newsome is a female. Therefore, a member of the protected group.

6. During Newsome's employment at W&L, she was subjected to *unlawful discriminatory practices* based on her race and sex. Newsome is an African-American. Newsome is a female. Therefore, a member of the protected group.

7. During Newsome's employment at W&L, she was subjected to *retaliatory treatment* for reporting unlawful employment practices and/or for participating/engaging in protected activities.

8. During Newsome's employment at W&L, she was subjected to *disparate treatment* because of her race.

9. W&L changed Newsome's terms and conditions of employment, and terminated her, in retaliation for having engaged in activity protected by R.C. 4112.

10. Newsome believes she was discriminated in employment on the basis of race, sex, retaliation, her participation in protected activities and disparate treatment. Said discrimination is in violation of Title VII of the Civil Rights Act of 1964, 29 CFR 1601 (.7, .6), fair employment practices, and/or the applicable statutes/laws governing said matters.

II. PURPOSE OF TITLE VII:

11. Newsome believes an investigation into this instant Charge will support the facts, evidence and legal conclusions set forth herein as well as that obtained through an investigation. Federal case law generally applies to alleged violations of R.C. 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantive evidence means evidence sufficient to support a finding of unlawful retaliation under Title VII of the Civil Rights Act of 1964. - OCRC Complaint No. 9496 (*Glaser v. HLS Bonding* matter)

12. This instant Charge has been filed seeking the EEOC's/OCRC's intervention; moreover: **(a)** for the ***prohibition*** of employment discrimination;

> *Czupih v. Card Pak Inc.*, 916 F.Supp. 687 (N.D.**Ohio**.E.Div.,1996) - Purpose of Title VII is to prohibit employer discrimination. Civil

Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

(b) deter and protect Newsome from *prejudicial* and ***systematic*** *discriminatory* treatment rendered her while employed at W&L; **(c)** achieve *employment* ***equality*** by preventing discrimination and to *make Newsome whole* due to the unlawful employment practices/unlawful discriminatory practices as well as *restoring her to the position she would have been entitled absent the unlawful discrimination*; and **(d)** *achieve* ***equality*** *and* ***remove the long-standing racial barriers*** *that in the past have been known to* ***favor*** *whites over African-Americans and/or people of color.*

Johnson v. University Surgical Group Associates of Cincinnati, 871 F.Supp. 979 (S.D.**Ohio**. W.Div., 1994) - Purpose of Title VII is to protect workers from certain kinds of prejudicial treatment on the job and not to federalize common-law torts. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

Adler v. John Carroll University, 549 F.Supp. 652 (N.D.**Ohio**.E.Div., 1982) - Twin statutory purposes of Title VII of Civil Rights Act of 1964 are to achieve employment equality by preventing discrimination and to make persons whole for injuries suffered due to unlawful employment discrimination; scope of relief is intended to restore victim of unlawful employment practices to position he would have been in were it not for unlawful discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

Asad v. Continental Airlines, Inc., 328 F.Supp.2d 772 (N.D.**Ohio**.E.Div., 2004) -The purpose of Title VII, . . . is to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of employees over other employees. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

13. **Ohio's *Anti*-Discrimination** law prohibits such conduct as that under Title VII and is constructed identically as Title VII; wherein Title VII is designed to address, expose and rid the world of such ***evil*** acts as discrimination because of a person's race, sex, etc. Therefore, this instant Charge targets the discriminatory practices of W&L and will demonstrate that its hostility and/or abuse towards Newsome was itself discriminatory and how W&L attempted to cover-up such discriminatory employment violations – ***i.e. by removing and destroying evidence for purposes of obstructing the administration of justice and pretext.***

Shoemaker-Stephen v. Montgomery County Bd. of Com'rs, 262 F.Supp.2d 866 (S.D.**Ohio.** W.Div., 2003) - Ohio anti-discrimination law prohibits same conduct as Title VII, and is generally construed in identical fashion to Title VII. Civil Rights Act of 1964, § 703(a)(1), as amended, 42 U.S.C.A. § 2000e-2(a)(1); Ohio R.C. § 4112.02(A).

Eperesi v. Envirotest Systems Corp., 999 F.Supp. 1026 (N.D.**Ohio.**E.Div., 1998) - The state statute prohibiting discrimination based on race is interpreted under the same standards applied to Title VII. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; Ohio R.C. § 4112.02(A).

Neff v. Civil Air Patrol, 916 F.Supp. 710 (S.D.**Ohio.**E.Div., 1996) - Title VII is designed **to rid the world of *work of the* <u>*evil*</u> of discrimination** because of individual's race, color, religion, sex, or national origin. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

Walk v. Rubbermaid Inc., 913 F.Supp. 1023 (N.D.**Ohio.**E.Div., 1994) - Purpose of Title VII is to create equality in workplace by targeting discrimination based on race, color, religion, sex, or national origin, and thus employee must demonstrate that employer's hostility or abuse was itself discriminatory. Civil Rights Act of 1964, § 703(a)(1), as amended, 42 U.S.C.A. § 2000e-2(a)(1).

14. Through this instant Charge, Newsome seeks the EEOC's/OCRC's intervention and request that it report violations found to the proper authorities and file the applicable lawsuit(s) of and against Wood & Lamping seeking the applicable agency and/or courts to impose the proper statutes/laws prohibiting such acts and governing injunctive relief and/or applicable relief to correct the alleged unlawful employment practices addressed herein because of Newsome's race/sex, engagement in protected activities, etc. and provide a remedy for said violators and continuing efforts of the ***systematic** discriminatory* practices made known herein and past discrimination.

Watson v. Limbach Co., 333 F.Supp. 754 (S.D.**Ohio**.E.Div., 1971) - Civil Rights Act of 1964 gives courts jurisdiction to correct alleged unlawful employment practices because of race and color, and to provide a remedy for present and continuing efforts of past discrimination. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

III. <u>PATTERN-OF-DISCRIMINATION</u>:

15. The direct evidence contained in this instant Charge will support a conclusion that challenged employment actions of Wood & Lamping was motivated at least in part by *prejudice* and ***systematic** discrimination* against Newsome who is a member of the protected group. Moreover, that said prejudice and discrimination is based on W&L's personal knowledge or observation, that if true (when it is), reveals a fact without inference or presumption.

Kline v. Tennessee Valley Authority, 128 F.3d 337 (C.A.6., 1997) - Direct evidence and circumstantial evidence paths for proving employment discrimination are mutually exclusive, and employee need only prove one or the other, not both; if employee can produce direct evidence of discrimination McDonnell Douglas burden shifting paradigm is of **no** consequence, and if employee attempts to prove its case using that paradigm, employee **is <u>not</u>** required to introduce direct evidence of discrimination.

Johnson v. Kroger Co., 319 F.3d 858 (C.A.6.**Ohio**, 2003) - Direct evidence of discrimination does not require a factfinder in a Title VII action to draw any inferences in order to conclude that the challenged employment action was motivated at least in part by prejudice against members of the protected group. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

16. W&L considered ***impermissible*** *factors* when it made the adverse employment decision to terminate Newsome's employment. W&L knew and/or should have known that it was providing Newsome with false information for the reason resulting in her termination of employment. *In an effort to cover-up its employment violations, W&L went through Newsome's desk (**Newsome kept her desk locked**), removed and destroyed documentation that it felt would be incriminating to it.* **(EMPHASIS ADDED)** Such acts which were done with ***malicious intent*** to *cover-up* and *obstruct the administration of justice* should Newsome file charges with the proper authorities. *W&L's assertion of the need for reduction-in-force ("RIF") for financial and/or economic reasons will also prove to be false because **shortly** **AFTER** Newsome's termination, W&L employed several white employees **AFTER** Newsome's termination in its efforts to create an **ALL** white work force. Moreover, W&L's removal and destruction of evidence containing evidence of violation of its own policies and procedures **discredits** any such proffered reasons W&L may offer.* **(EMPHASIS ADDED).**

> *Wexler v. White's Fine Furniture, Inc.*, 317 F.3d 564 (C.A.6.**Ohio**, 2003) -Under mixed-motive analysis for reviewing employment discrimination claim, the plaintiff must produce direct evidence that the employer considered impermissible factors when it made the adverse employment decision at issue; once the plaintiff has shown that the unfavorable employment decision was made at least in part on a discriminatory basis, the burden shifts to the employer to prove by a preponderance of the evidence that it would have taken the same adverse action even if impermissible factors had not entered into its decision.

17. The laws are clear that W&L cannot discriminate against Newsome because she has engaged in protected activities and/or its knowledge of her intent to engage in protected activities – therefore, terminating employment to interfere with protected rights. W&L discriminated against Newsome based on its knowledge of her engagement in protected activities. Moreover, W&L terminated Newsome's employment for:

a) Knowledge of Newsome's filing of past EEOC Charges and/or civil lawsuits brought by Newsome against other employers. Said knowledge motivated *W&L to go into Newsome's desk (**Newsome kept her desk locked**) to remove and destroy any evidence that would be incriminating in charges filed against it.* **(EMPHASIS ADDED).** *W&L's criminal/civil acts were deliberately done for purposes of obstructing the administration of justice and impede any investigation that may be initiated as a direct result of the filing of a Charge against it.* W&L **repeatedly** requesting that Newsome waive protected rights and not bring legal action against it in exchange for obtaining medical benefits to which she is entitled and it is both civil/criminally wrong to attempt to bribe Newsome to waive such rights in the providing of **entitled** benefits in exchange of not bringing legal action with appropriate authorities. **(EMPHASIS ADDED).**

b) Knowledge of Newsome's engagement in protected activities;

c) Knowledge of Newsome's filing and participation in an FBI investigation;

d) Efforts in aiding Thomas J. Breed's former law firm (Schwartz, Manes & Ruby – a/k/a Schwartz Manes Ruby & Slovin) ("SMR&S") - See **EXHIBIT**

"2" – *August 28, 1997 Letter on SM&R Letterhead Bearing Breed' Name* attached hereto and incorporated by reference - in a lawsuit W&L obtained knowledge would be brought against Newsome. Therefore, W&L aware of the CONFLICT OF INTEREST[5] that would arise should Newsome remain in its employment terminated her employment to provide SM&S with an undue/unlawful/illegal advantage over her. Newsome addressing such concerns in her January 30, 2009 correspondence to Andrea M. Griffith (W&L's Human Resources Representative) and C. J. Schmidt (W&L's Managing Partner and an Attorney). See **EXHIBIT "3"** – *January 30, 2009 Letter of Newsome to Griffith and Schmidt* attached hereto and incorporated by reference as if set forth in full herein.

Said employment violations which clearly violates information set forth in *Wood & Lamping LLP Policies and Procedures Manual* (*also referred to herein as* ***"Employee Handbook"***). See **EXHBIT "4"** - *Wood & Lamping LLP Policies and Procedures Manual* attached hereto and incorporated by reference as if set forth in full herein

> **EQUAL OPPORTUNITY**
> The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. *Discrimination by any member of the firm* ***will not*** *be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also* ***prohibits retaliation*** *against anyone who has filed a complaint of* ***discrimination*** *or* ***harassment***.
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 11) – **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein.

18. Newsome believes that she was first subjected to discrimination and retaliation in **November 2006** by W&L and/or its employees/representatives as a direct and proximate result of advising of exercising rights secured to her U.S. Constitution, Civil Rights Act, Fair Housing Act and/or the applicable laws governing a dispute she was having with her landlord. Thus, *the beginning of the* ***systematic*** *discriminatory Newsome was subjected to during her employment with W&L*. **(EMPHASIS ADDED)**. Newsome brought the matter to W&L through an attorney,

[5] See **EXHIBIT "4"** – "CONFLICT OF INTEREST" of the *Wood & Lamping LLP Policies and Procedures Manual* at page 9 attached hereto and incorporated by reference as if set forth in full herein.

Elizabeth Horwitz ("Horwitz"), that she was assigned. Horwitz is a *white* female. Horwitz was authorized and/or given approval to work with Newsome in resolving this matter.

19. Horwitz engaged in conversations with Newsome's landlords' attorney, Gailen Bridges ("Bridges") – *white* male. From their conversation(s), Horwitz set out to attempt to get Newsome give up her apartment. *Newsome aware of her* ***rights under the Fair Housing Act*** *refused to waive any such rights.* Newsome's refusal to give up rights secured under the Fair Housing Act *upset and frustrated* Horwitz. ***In RETALIATION*** *to Newsome's refusal to forego protected rights, Horwitz,* ***without notice to Newsome****, requested that she be assigned another Secretary/Legal Assistant.* Newsome believes such act by Horwitz was in ***retaliation*** of Newsome's refusal to waive rights secured and/or guaranteed to her under the Fair Housing Act. **(EMPHASIS ADDED)**. Moreover, W&L obliged Horwitz in such matters. Those making such decisions all being *white*. ***As a direct and proximate result of Newsome's refusal to waive protected rights, the relationship between Horwitz and Newsome changed; moreover, the relationship between Newsome and W&L changed.*** Horwitz stopped speaking to Newsome when seeing her. It being apparent that Horwitz retaliated against Newsome because she refused to give up her apartment and insisted on remaining where she lived – as allowed under the Fair Housing Act. Newsome believes Horwitz's conduct and/or attitude not only affected their working relationship, but influenced Newsome's working relationship with W&L and/or its representatives. **IT IS IMPORTANT TO NOTE,** that some of the correspondence between Horwitz and Newsome is memorialized in W&L's e-mails between the two. Moreover, the removal of Horwitz (approximately **December 2006**) coming shortly after Newsome's refusal to waive rights under the Fair Housing Act and her inability to convince Newsome of doing so. *During a conversation with Horwitz, she advised Newsome that she was not an attorney – such statement being made to Newsome with resentment and hostile intent because Newsome refused to waive protected rights.* **Newsome under the governing statutes/laws is entitled to live where she chose to live free of discrimination in housing based on race, sex, etc. Moreover, free of harassment, intimidation. . .**

20. It was Horwitz' duty to convenience Newsome to forego rights secured to her under the Fair Housing Act and other statutes/laws governing said matters. Those engaging and requesting that Newsome forego and/or waive her rights were ALL white. **(EMPHASIS ADDED)**.

21. W&L offer representation to its employees. However, its decision process to represent an employee, may be discriminatory as well – i.e as it was in its handling of Newsome's request for representation.

> **REPRESENTATION OF EMPLOYEES**
> Assistance, guidance, advice, or suggestions offered to employees by an attorney of Wood & Lamping shall be deemed informal personal assistance and not official firm advise until such time that file is opened in the employee's name. . .

22. As a direct and proximate result of Horwitz' retaliation, protest, resentment, and anger because Newsome refused to waive protected rights, W&L obliged Horwitz and removed her from working with Newsome. Leaving Newsome to have to proceed on her own without legal representation. Newsome proceeded to handle the matter herself and proceeded to bring legal action against her landlords as well as file the applicable charge for continued violations under the Fair Housing Act – matters which Newsome has since elected to take to Washington D.C. **(EMPHASIS ADDED)**. W&L was aware of the legal actions brought by Newsome. **IT IS IMPORTANT TO NOTE,** that in W&L's Employee Handbook provided employees, which it states that it **will not** discriminate against an employee who elects to engage in lawsuits and/or such protected activity.

23. To clarify how W&L employee(s) feel about filing complaints without fear of reprimand, discrimination or retaliation, Newsome recalls incident where a co-worker, Mary J. Lewis (***white*** female) sent an e-mail out to the entire firm ("Everyone") advising of a complaint she was intending to bring. Such e-mail which stated:

> I recently had a very negative experience with our insurance coverage when attempting to refill a prescription ordered by my doctor. I was obliged to pay for the prescription myself, or go without for approximately 6 days while the pharmacist waited for approval of an insurance-generated change in the manner of dispensing the medication and contrary to my doctor's instructions.
>
> *I have **heard** from a few* people in the office who have had other delays with prescriptions.
>
> *If you have had problems I would like to hear from you.* I am *getting ready to **voice a complaint*** with the Ohio Department of Insurance over this incident.

(See **EXHIBIT "5"** attached hereto and incorporated by reference). Newsome is not aware of Lewis being subjected to discrimination or retaliation in her pursuit and/or notification of bringing a complaint. However, as a direct and proximate result of Newsome's refusal to waive protected rights, she was subjected to discrimination and retaliation. Moreover, *W&L's willful decision to engage in **systematic** discriminatory practices against Newsome*.

24. After Horwitz' request for removal from working with Newsome, W&L elected to assign an attorney by the name of Brian P. Gillan ("Gillan"). Brian P. Gillan is a ***white*** male. Brian P. Gillan was "of counsel" for W&L. Which from Newsome's conversation with him was due to the fact that [while he is an attorney licensed to practice law] he **had not** been practicing law and/or had been ***absent*** from the practice of law and was returning. - - - *Warranting an investigation into what the **TRUE** reasons may have been for Gillan's absence and not practicing law.* **(EMPHASIS ADDED)**.

25. When W&L assigned Gillan to Newsome, W&L ***failed*** to advise Newsome of the employment problems (***pattern-of discriminatory practices***) they were having with Gillan. **(EMPHASIS ADDED)**. It was brought to Newsome's attention that Gillan had only been with W&L for a few months prior to her employment. That Newsome was approximately the third (3rd) Secretary/Legal Assistant Gillan had been assigned to in his *short* tenure. W&L's assignment of Gillan to Newsome was with discriminatory intent and harassment purposes. W&L was timely, properly and adequately placed on notice of Gillan's hostile and harassing behavior; however, allowed Gillan to continue such unlawful/illegal acts with its approval. See **EXHIBIT "6"** – *January 15, 2007 E-mail of Newsome to Griffith to Support Such Hostile/Harassing Practices and PRETEXT to cover-up/mask discriminatory practices* attached hereto and incorporated by reference as if set forth in full herein:

Excerpt of January 15, 2007 E-mail of Newsome to Andrea Griffith:

> Gillan: I will also ignore the fact that in nearly 25 years of working with secretaries and executive assistants, I have **never** had one send as insubordinate a communication as the one you sent below.

Newsome: I do not believe I was insubordinate in my e-mail. I simply shared my concerns. I believe it is wrong for Brian to repeatedly attack me and my performance and not expect a response. While he is my subordinate, it does not give him the right to be rude, hostile, etc. towards me. Nor create and/or generate e-mails such as this in an effort to destroy my character and/or reputation. From my understanding, he has been here about a year (or little over) and I am his **third** (3rd) assistant/secretary. He appears to not be able to work with anyone. I have some concerns here.

Gillan: This e-mail will address some of my issues, and my expectations of your performance. ***Do not waste my time giving me another long-winded explanation of how I am wrong, or how your way is the better way to do it, because I will not read it.*** I want your performance to meet my reasonable expectations; I want your insubordinate and passive/aggressive behavior to change; and I want you to address the issues Andrea raises with you, or *else* ***your tenure here will be short-lived.***

Newsome: Again, I simply share my concerns with Brian. Something is definitely wrong when such concerns are twisted and/or manipulated in a way to try and make it look as though I was insubordinate. His use of "insubordinate," "passive/aggressive behavior" is apparent to me he is fluffing the pad to find reasons to have me terminated. Since such assertions are made by Brian, ***I need for him to provide and/or demonstrate when such "passive/aggressive behavior" has been displayed.*** Also, when I have been insubordinate – if responding to an e-mail sharing my concerns in his *behavior*, is insubordinate while he is allowed to vent his hostility towards me, then I have some concerns. Why, because no such "insubordination," "passive/aggressive behavior" was ever brought to my attention by any of the other attorneys or people I have worked here with. So, I would question why would Brian be making such assertions if they were not ***ill*** motivated. . . .

Gillan: But your reaction Friday to my request to merely format a letter I had drafted on the system – rather than dictating it to you, since that would have taken more of your time, and I was trying to make it easier for you – was really beyond the pale. The issue with the client came up Thursday night, and the letter had to get to Washington asap Friday. You gave me another long-winded e-mail explanation why you could not give my work the priority it needed. If you had just formatted my letter, it would have taken less time than the e-mail you sent in its place. I had to go aks Juanita for help, which she gladly provided. It took her all of 5 minutes.

Newsome: *Brian presented me with a task* ***which was completed in the a.m. the day before****. He* ***failed to check his box****.* ***I placed it in his chair****. When he sent me an e-mail regarding it, I advised him that* ***the task was completed the day before in the a.m. and placed in his chair****.* ***Any delay in responding was not due to me. The task was completed and returned.***

Gillan: And then I asked you to merely print off some long e-mail attachments which Ray had sent me to get up to speed on the new case I've been asked to take over – the largest case in the office, and one that could be very lucrative for the firm. Instead of taking the few minutes to hit "print" several times, you again sent me a long explanation of why my request was unreasonable and you could not get to it for a while. I wanted to read those attachments then, not later. When some time had passed, and it was getting past 4:00, I decided to do it myself. That seemed to prompt you to finally get to it.

Newsome: I have the e-mail and others. I mentioned to you, your job was next. You just didn't

want to wait. In an effort to make me look bad or to shape the "insubordinate," "passive/aggressive behavior" opinion you created of me, you proceeded to print them yourself. ***My e-mail advised you that the last one was printing***.

Gillan: Here is my expectation: not all of my work is urgent, and that work which is not can wait a reasonable amount of time to be done. But the work that is truly urgent needs to be given immediate attention. If you have a project for another attorney that is also urgent, let me know and I will work it out with that attorney.

Newsome: I have some concerns to this e-mail presented by Brian in that I believe it is **ill** motivated. Why? Because it has been brought to my attention that Brian apparently had a relationship with a legal assistant (who is no longer) here at the firm who was upset with the fact I was hired and she was not. I have concerns that Brian may be bitter towards me and such bitterness is displayed through his ***elaborately*** *generated* e-mails to make it appear that I am insubordinate and/or have exhibited passive/aggressive behavior towards him. This being false. While it is now apparent that Brian may have been trying to pull such behavior out of me through his attacks and criticism via e-mail, I was not going to stoop to such antics by him. I consider myself professional and strive to carry myself in a respectful and proper manner. However, when questioned, as here, I am going to respond.

In Brian's e-mail on Friday, he states, "*The last few days have not worked for me*." *He has attacked my character* ***when in previous e-mail commends me for doing a good job.*** So I question his motive behind his recent behavior. I find his recent behavior to unfair, unjust and **ill** motivated. Believing that he may blame me for the reason why the legal assistant he was such good friends with is not here. Realizing that others appreciated my work and performance, I believe Brian may have set out to just try and find something in an effort to make me look bad. It is not clear to me, why he would send such e-mails and not expect a response and/or believe that I am not supposed to respond but just take such without feedback. I have some serious concerns and just wanted to share.

Thanks for your time.

A. Newsome sure hopes that through this instant Charge the EEOC/OCRC require W&L produce the documentation Gillan assert was sent by Newsome to support such attacks leveled against her as being "insubordinate," "passive/aggressive behavior." Moreover, inquire into Gillan's sexual relationship with contract employee (in that he may *have* ***a history*** of such behavior). If so, W&L knew and/or should have known of the liability that would be incurred in allowing Gillan engage in such unlawful/illegal practices – i.e. practices that violates W&L's own policies and procedures.

B. SW&L making good on Gillan's threats that my "tenure here will be **short-lived**."

26. **IT IS IMPORTANT TO NOTE** that upon Newsome's hiring it was brought to her attention that a Paralegal (contractor and white) was upset at Newsome being hired in that the Paralegal had been there before Newsome and wanted to be hired on as well. It was also brought to Newsome's attention that this Paralegal (*married*) was having a **sexual** relationship and/or affair with one of the attorneys (Brian P. Gillan – of counsel and white) which may have been exposed by the

Paralegal's husband.[6] From Newsome's understanding, the Paralegal was let go and of course Gillan denied having any such relationship with the Paralegal *although there was evidence on W&L's computer to this relationship, in that* ***both spent a great deal of time using W&L's e-mail to*** *correspond with each other*. **Gillan specializes in employment law; therefore, he knew and/or should have known of the liability such acts would cost W&L. Nevertheless, he was allowed to remain in the employment of W&L with W&L knowledge of such conduct. Such acts which are characterized as "UNWISE."**

POLICY AGAINST UNLAWFUL HARASSMENT[7]

General:

Wood & Lamping is committed to maintaining a professional and collegial work environment in which all individuals are treated with respect and dignity. The firm prohibits discrimination because of race, color, religion, sex, national origin, age, veteran's status, disability, or any other protected status in accordance with applicable laws. *Harassment is a form of discrimination and* ***will not*** *be tolerated.*

Wood & Lamping encourages individuals who believe they are subject to harassing behavior to clearly and promptly notify the offender that his or her behavior is unwelcomed, but one is not required to do so. However, any individual who believes he or she has been subject to harassment of any kind must notify a partner of the firm or a member of management in order for the matter to be resolved. (Wood & Lamping LLP Policies and Procedures Manual @ p. 20)

Policy Against Sexual Harassment:

A. Sexual Harassment Defined

. . .While mutually consenting relationships between members of the firm are not sexual harassment, these relationships *are considered* ***unwise*** because of the potential denial of mutual consent.

B. Procedures for Reporting Sexual Harassment

Wood & Lamping encourages individuals who believe they are subject to sexual harassment to clearly and promptly notify the offender that his or her behavior is unwelcomed. However, one is not required to do so. Any individual who believes he or she has been subject to harassment **of any kind** must notify a partner of the firm or a member of management. The partner or manager will initiate an investigation of the matter….

C. Investigations

Investigations will be prompt, thorough, accurate, consistent, and conducted as discreetly as possible. Confidentiality will be maintained to the extent practical, but a few members of the firm will have to know about the situation due to the employer's **obligation** to investigate. Effective enforcement of this policy

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[6] See **OCRC Complaint No. 9569** (*Hatem* matter): Federal case law generally applies to alleged violations of R.C. 4112. *Columbus Civ. Serv. Comm. V. McGlone* (1998), 82 Ohio St.3d 569. . . .Sexual harassment is sex discrimination and prohibited by R.C. Chapter 4112. Ohio Adm. Code (O.A.C.) 4112-5-05(J)(1); *Cf. Meritor Savings Bank v. Vinson*, 477 U.s. 57 (1986). . . . Hostile work environment sexual harassment, the Commission must establish that: (1) Complainant is a member of a protected class; (2) Complainant was subjected to unwelcomed harassment; (3) the harassment complained of was based on sex;; (4) the harassment had the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment; and (5) the existence of respondeat superior liability. *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998). - See OCRC Complaint No. 9569 at pp. 8-10.

[7] Also see "ANTI-HARASSMENT POLICIES" - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 19 attached hereto and incorporated by reference as if set forth in full herein.

requires that the offender be made aware of the alleged conduct at some point, and fairness demands that an accused be afforded an opportunity to make a defense. The reporting individual will be notified before the offender is questioned about or told of the charge.

Once the investigation is complete, findings and decisions will be made and communicated to the reporting individual and the offender. If there is no evidence to support the allegations, the matter will be dropped and the investigation closed. If the investigation confirms that harassment occurred, the harasser will be subject to resolution procedures and/or appropriate disciplinary[8] penalties, which may include one or more of the following: referral to counseling, withholding of a promotion, reassignment, mediation, temporary suspension without pay, a written warning, and *discharge* from the firm.

Non-Retaliation Policy:
No *one* will be subject to ***any*** *form* of discipline or *retaliation* for reporting incidents of unlawful harassment, ***pursuing*** *any such claim,* or ***cooperating*** *in the investigation of such reports.* Any form of retaliation will result in appropriate disciplinary procedures, up to and including discharge from the firm. However, individuals who falsely and maliciously accuse another will be subject to the disciplinary procedures described above.
(Wood & Lamping LLP Policies and Procedures Manual @ pp. 20-22)

27. Those having knowledge of Gillan's affair with the white female Paralegal may include: **(a)** W&L, its Partners, Associates and Executive Committee; and **(b)** W&L employees (past and present): Christina Burke-Tillman, Ami Armbruster, Jennifer Brue, Beverly Bowling, Sue Crable, Rebecca Daniels, Sharon Flood, Juanita Hamilton, Angie Hart, Rose Heidkamp, Sherry Kellison, Janet Kemper-Hall, Judy Knarr, Hope Kortanek, Mary Lewis, Mary Milliken, Sandy Milner, Marianne Myers, Patricia Perkins, Kathy Richey, Laura Shafer, Marcia Sherman, Stacey Vogelsang, and Diane Werner.

29 CFR § 1604.11 – Sexual Harassment

(a) Harassment on the basis of sex is a violation of section 703 of Title VII. **[FN1]** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

[FN1] **The principles involved here *continue to apply* to race, color, religion or national origin.**

[8] See "DISCIPLINARY STEPS" - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 21 attached hereto and incorporated by reference as if set forth in full herein

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis…

(d) *With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action…*

(f) *Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned….*

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

See "ANTI-HARASSMENT POLICIES" - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 19 attached hereto and incorporated by reference as if set forth in full herein. Also "DISCRIMINATION""

"DISCRIMINATION:" . . . The ***best way to avoid creating a discriminatory inference*** is to make and document employment decisions based on consistent company practices and objective criteria. **Employment decisions or practices based on protected status**, . . .sex,. . . ***or involvement in a legal process are presumptively unlawful***. . . Employment policies and practices having a "disparate impact" on protected groups in employment are presumptively unlawful even if the impact is unintended. . .

Sexual Harassment: Sexual harassment is a form of sex discrimination and is unlawful. Sexual harassment may be found in implied and explicit verbal or physical conduct of a sexual nature if the purpose or effect of the conduct is one of the two type:

- *Quid pro quo,* or the conditioning of employment, job benefits, or opportunities upon sexual favors; or
- **the creation of a hostile, intimidating, or offensive work environment**. . . .

Employers can and should take proactive measures to avoid sexual harassment lawsuits. These include:

- Developing and implementing an anti-harassment policy;
- Having employees sign a statement that they have read and understand the policy;
- Identifying possible harassment situations;
- Investigating any harassment complaint;
- Interviewing the complainant, the alleged harasser and any witnesses;
- Assuring non-retaliation for complaints;
- Making decisions only after reviewing all reliable information;
- Issuing appropriate disciplinary action; and
- Communicating conclusions to the affected employees.

An employer can be liable for sexual harassment committed by its employees, even if such acts are against stated company policy. It is prudent for an employer to tactfully and immediately investigate all situations that may involve or lead to sexual harassment, including any apparent "romances" between an employee and his or her supervisor. Any such investigation must be conducted carefully to guard against claims of discrimination, wrongful termination, defamation, or invasion of privacy. Early consultation with counsel is strongly recommended.

EXHIBIT "20" - *W&L's Employer's Guide* at pages 37-38 attached hereto and incorporated by reference as if set forth in full herein.

28. ***Newsome timely, properly and adequately notified W&L of concerns that Gillan's retaliation and subjecting her to hostile, harassing and discriminatory practices may have been a direct result of W&L's ending the contract assignment of his lover and/or mistress***. See EXHIBIT "6" attached hereto and incorporated by reference as if set forth in full herein. **(EMPHASIS ADDED)**.

29. **IT IS IMPORTANT TO NOTE**, that upon Horwitz being removed from Newsome's desk, W&L decided to assign Newsome to Brian P. Gillan ("Gillan"). Gillan being with W&L for only a ***few months*** however, having been assigned approximately two or three Secretaries/Legal Assistants prior to Newsome (with Newsome being the third or fourth) because of his ***pattern-of-harassment*** *of female employees*. While Gillan *complimented* Newsome on her work (as evidenced in e-mail – i.e advising "advising "You're the best!")" see **EXHIBIT "7"** – *December 21, 2006 E-mail From Gillan* to Newsome attached hereto and incorporated by reference) for some reason, he decided to begin to subject her to *harassment, hostile treatment threats, and discriminatory practices* **to which Newsome objected**. Newsome being confident in her work abilities and capabilities to perform duties assigned her. *Newsome working in a contract employee position* ***prior to obtaining permanent employment with Wood & Lamping***. **(EMPHASIS ADDED)**. Wood & Lamping having sufficient time and opportunity to review and observe Newsome's work habits/work ethics and after doing so, offered her employment.

30. Newsome was qualified for the job she was hired for and the additional assignments given. Newsome possess sufficient computer skills and computer knowledge to perform the job duties assigned her. See **EXHIBIT "8"** – *Test Results of Newsome's Computer Skills* attached

hereto and incorporated by reference as if set forth in full herein. Newsome's professional attitude and work ethics can be sustained as provided in Letters of References attached hereto at **EXHIBIT "9"** and incorporated herein by reference.

References obtained from those who have had an opportunity to work with Newsome:

> This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative Assistant or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.
>
> She is an asset and will be sorely missed at Lash Marine. - - ROBERT K. LANSDEN (**VICE PRESIDENT**)

> I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. If my previous secretary were not rejoining me, I would want Vogel to be my new permanent secretary.
>
> If any one would care to discuss Vogel with me, please do not hesitate to give them my name and number. I will be more than happy to talk with them.
>
> I am not certain of the exact day when my previous secretary will rejoin me. It could be immediately, or, it could be a couple of weeks. In light of that, we would like to request that we be allowed to continue to work with Vogel until further notice. However, the last thing I want to do is have Vogel miss another good opportunity that might lead to permanent employment. Therefore, if she must be reassigned, I will understand, but grudgingly so.. . . - - RALPH B. GERMANY, JR. (**ATTORNEY**)

> I was first introduced to Ms. Newsome over five (5) years ago. Since that time, she has been a Woman of integrity and intelligence. Ms. Newsome always has presented herself in a professional manner and has always addressed me and others with the uttermost of respect. Ms. Newsome outgoing personality and personal strengths would make her an excellent additional to anyone's staff. I have had the opportunity to work with Ms. Newsome and she has demonstrated flexibility in working outside of her field of endeavor and doing an excellent job is a strong indicator of how well she will do in her chosen field of endeavor. Ms. Newsome demonstrated a willingness to perform any task assigned to her promptly and

correctly with little supervision. Ms. Newsome is a very pleasant person to associate with, works as a team player, and would truly be an ASSET to your organization because she is the best one for the job. - - LISA J. WASHINGTON (**COORDINATOR**)

A copy of Newsome's Resume is attached hereto at **EXHIBIT "10"** and is incorporated herein by reference.

31. Newsome was *shocked* to receive the **VICIOUS** and **HOSTILE** e-mail from Gillan – **an e-mail craftily drafted over the WEEKEND** (Saturday, January 13, 2007) and a great deal of time put in it as W&L's continuing the systematic discriminatory practices leveled against Newsome. (See EXHIBIT "6" – *January 13, 2007 E-mail From Gillan to Newsome and Newsome's Response of January 15, 2007*, attached hereto and incorporated by reference as if set forth in full herein.) An e-mail to which Gillan ***did not*** *want Newsome to respond because he and W&L were attempting to set the stage in creating documents to place in her employment file*. However, to W&L's and Gillan's disappointment, Newsome's concerns of such employment violations required her to respond and are addressed and/or memorialized in response to e-mail. See EXHIBIT "6" attached hereto. Moreover, the W&L's record's will evidence and support documents provided by Newsome to memorialize concerns of employment violations. Gillan specializes in employment law; therefore, a reasonable mind may conclude that his e-mail to Newsome was created with malicious intent and pretext purposes – i.e. to cover-up/mask an illegal animus/employment discrimination and retaliation.

A reasonable mind may conclude that **AFTER** obtaining information on Newsome's engagement in protected activities, W&L hatched a plan to create a hostile, retaliatory and discriminatory work environment in efforts of forcing her to quit and/or to lay the groundwork for the unlawful/illegal termination of Newsome's employment. W&L's harassment was being done by Gillan's use of e-mails as well as verbal confrontations, ***over Newsome's objections***. Gillan *heavily* relies on e-mails to launch his **attacks** and to carry on employment violations (i.e as that *with the paralegal he* ***had an affair with***).

> **WORKPLACE VIOLENCE**
> **Threats, intimidation**, flashing of weapons, **stalking** or any ***acts of aggression*** or **violence** made toward or by anyone ***will not*** be tolerated. Any potentially dangerous situations, including threats, should be reported immediately to a manager or partner. All reports will be promptly investigated. . . . ***No employee will be subject to retaliation, intimidation or discipline as a result of reporting a situation***. If an investigation confirms that a threat of a violent act or violence itself has occurred, corrective action will be taken against the offender.
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 29) – **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein.

Although Gillan was advised by Griffith (Human Resources Representative) to cease such behavior and correspondence via e-mail; ***Gillan continued to do so***. Such unlawful/illegal actions by Gillan had become more hostile, brutal, unrelenting and vicious that Newsome became emotionally affected (*reducing her to tears/crying*) by such and was witnessed by Griffith who called Newsome into her office to discuss the matter. **(EMPHASIS ADDED)**. In that Newsome had put in for Vacation Leave, Griffith advised the matter would be looked into while she was out on vacation and Griffith would let her know how W&L intends to handle when she returned. When Newsome

returned from vacation, W&L had not done anything and advised Newsome that *Gillan wanted to continue to work with her*. Newsome ***voiced her objections*** and advised that she could not understand W&L's decision in that Gillan made it clear it was not working out (evidenced in e-mail). **Nevertheless, W&L required Newsome to continue to work with Gillan; however, did not require *white* employees assigned him prior to Newsome's employment to continue under such hostile and harassing conditions when they complained**. Newsome again complained and advised that she would take the matter to William Ellis (attorney/Partner at W&L) of what was going on. Ellis being a litigation attorney and advising Newsome during her employment that if there were any problems that she could come talk to him. Only after notifying of doing this, was Gillan pulled. **Leaving Newsome to believe that W&L's refusal to remove Gillan in the beginning, left the appearance and/or impression that certain ones at W&L may have agreed with Gillan's harassment, discriminatory treatment and the hostile environment he created; moreover, was behind his acts in that they knew how it was affecting Newsome (*emotionally and physically*) and interference with performance of job duties**. Moreover, that certain ones at W&L allowed Gillan to proceed in such a manner they knew were clearly in violation of Title VII and their Policies and Procedures; however, allowed him to proceed. Gillan is an attorney who was known to be engaging in such acts that may present a liability to W&L; however, W&L allowed him to remain in its employment and continue such discriminatory practices. *Again, Gillan is an attorney who specializes in employment law; therefore, a reasonable mind may conclude he was aware of his conduct and the liability thereof. Moreover, W&L knew as well and supported such behavior and conduct of Gillan – as evidenced in its retaining his employment and paying the fees he charged W&L for hours used to commit such discriminatory practices.*

32. **IT IS IMPORTANT TO NOTE** that during Newsome's employment, W&L terminated another attorney (Peter K. Newman). From Newsome's understanding, Newman was painted as an attorney with behavior that was hostile, aggressive, harassing, etc.; however, W&L terminated his employment. Moreover, **after the incident gave his assistant,** Kathy Richey ("Richey") **some time off after the ordeal**. Nevertheless, W&L allowed Gillan to continue on knowing his history, reputation, pattern-of-discriminatory practices; moreover, potential liability to W&L. **(EMPHASIS ADDED)**.

33. W&L allowed Gillan to remain in its employment over the **REPEAT** objection of SENIOR PARTNERS (i.e. Eric C. Holzapfel and William R. Ellis) of the law firm. Holzapfel having **over** approximately 30 years with W&L. Both Holzapfel and Ellis deciding to leave W&L and not please with the administration and/or handling of matters. **(EMPHASIS ADDED)**.

34. The actions of Gillan clearly violated W&L's policies/procedures regarding "Discrimination" and "Sexual Harassment." Nevertheless, W&L **continued to employ** Gillan **and pay** him for services he billed W&L for. **(EMPHASIS ADDED)**. Gillan violating policies and procedures outlined in W&L's Employee Handbook through such discriminatory practices. IT IS IMPORTANT TO NOTE **PRETEXT,** *that while Newsome retained a copy of W&L's Employee Handbook at her desk, upon cleaning out her desk after being terminated, she noticed that W&L had a representative remove Newsome's Employee Handbook from her desk (**Newsome kept her desk locked**). Newsome believes a reasonable mind may conclude that such act by W&L was done with willful and malicious intent. Moreover, was **PRETEXT** - done to shield and/or cover-up an illegal animus. The Employee handbook containing pertinent information regarding nondiscrimination for the filing of complaints, its discrimination policy and sexual harassment policies along with other policies and/or procedures of W&L.*

35. **IT IS IMPORTANT TO NOTE**, that certain *Senior* Partners made it known as to their concerns regarding Brian Gillan (i.e. what is it that he does at the firm/his purpose); however, Gillan was allowed to remain in the employment of W&L. Gillan being employed at the time of

Newsome's termination. Concerns being made known of Gillan's employment in that he does not bring in a great deal of business to the practice; moreover, during the time Newsome worked with Gillan, *a **great deal of his time** was being billed directly to W&L (not hours for work on client matters)*. Not only that, during his employment, he received increases in the hourly rate he was charging for his services – hours used to draft e-mails as that submitted to Newsome and time used to subject her to hostile, harassing and discriminatory practices. From Newsome's understanding, it appears ***objections** from PARTNERS OF THE FIRM over Gillan's behavior and employment came into question*; however, as with Newsome's concerns, W&L clearly ignored. *Resulting in attorneys with a great amount of longevity and seniority leaving W&L*. **(EMPHASIS ADDED)**. *Attorneys who questioned the employment and unethical practices of Gillan*. Neither was Gillan bringing in much business for the firm. Nevertheless, **W&L was CONTINUING to INCREASE the HOURLY RATE INCREASES for Gillan**. *While W&L would want one to think that it had to subject me to **frivolous** reduction-in-force for economic reasons; however, then W&L **turns around and hire SEVERAL white employees shortly AFTER Newsome's termination**.*

A reasonable mind may conclude given the facts and evidence any argument that W&L may attempt to assert for the elimination of Newsome's position is *pretext* to shield/mask an illegal animus. Moreover, ***that the keeping of an attorney who an investigation may yield repeatedly violated the laws under Title VII and other governing statutes/laws, is W&L condoning of such unlawful/illegal discriminatory practices***. That Newsome's termination was in retaliation of her reporting of unlawful employment violations during her employment. **As well as W&L's knowledge of Newsome's engagement in protected activities**. *Therefore, any assertion that reduction in eliminating Newsome's position is merely pretext and an investigation into this matter may yield evidence to support that W&L provided Gillan as well as other white employees with additional salary increases and promotions; **while it deprived African-Americans such salary increases and promotions.** Clearly no financial problems there if they were able to extend special promotions and salary increases. Then SHORTLY **after** Newsome's termination, W&L **employed SEVERAL white employees in its efforts to create an ALL-white work force**. Thus, supporting that any proffered reason by W&L is pretext to mask/shield an illegal animus – Newsome's complaining of employment violations and W&L's knowledge of Newsome's participation in protected activities.*

36. **IT IS IMPORTANT TO NOTE** that an investigation will yield that W&L hired white employees shortly AFTER Newsome's unlawful/illegal termination. Moreover, that the salaries offered these newly hired white employees may have exceeded that of Newsome and/or that *Newsome was **replaced by a white person***. Rebutting any frivolous claims W&L may attempt to assert was for financial and/or economic reasons.

37. **IT IS IMPORTANT TO NOTE** that *should W&L assert any such claim as to the need for Newsome's termination may have been for financial/economic purposes, she believes a reasonable mind may conclude that she was making way less in salary than Gillan and other whites that were repeatedly given salary increases*. Moreover, ***over the advice** of seasoned lawyers and PARTNERS, W&L elected to keep on Gillan who **barely** brought in any business or **money** for the firm and paid Gillan a **substantial** salary compared to that of Newsome*. Moreover, **during his employment provided him with rapid increase(s) in hourly rates with knowledge that a great deal of his hours was being billed to W&L**. W&L made a willful, deliberate and conscious decision to keep Gillan employed and to pay him an extremely high salary at the expense of Newsome and others who objected to his work ethics, discriminatory practices as well as employment violations.

38. **IT IS IMPORTANT TO NOTE** that during Newsome's employment she was required to perform duties of that of paralegals; however, did not obtain the title or pay associated with it. However, **whites** *similarly* situated that were performing such duties were either promoted to

such a title and may have obtained *additional* pay to compensate them for the additional duties (if any) obtained while Newsome (African-American) just obtained additional duties and was required to remain at her annual salary and only obtained annual salary increase. *While Newsome questioned such practices with Human Resources; she was still* ***denied*** *salary increases as that given to white employees.*

39. **IT IS IMPORTANT TO NOTE** that on October 9, 2008, Newsome was unlawfully/illegally evicted from her apartment (***due to the ongoing landlord matter Horwitz was assigned to assist with***). Such actions coming although there was a binding Injunction and Restraining Order issued by the Court and Newsome was required to pay rent into escrow which was current at the time of such actions – See **EXHIBIT "11"** – *Injunction and Restraining Order* attached hereto and incorporated by reference. As a direct and proximate result, Newsome filed a Complaint of criminal charges with the Federal Bureau of Investigations ("FBI") – a matter that Newsome believes is still pending at the time of the filing of this instant Charge. *It is important to note that W&L was made aware of this situation as well as the fact that Newsome had filed a formal charge with the FBI*. Said notification was made known verbally and via written correspondence. (See **EXHIBIT "12"** – *October 15, 2008 E-mail & Interoffice Memorandum of Newsome to Griffith* attached hereto and incorporated by reference). **IT IS IMPORTANT TO NOTE,** *that while W&L states in its Employee Handbook, that it will not discriminate against employees who engage in protected activities*, Newsome's termination of employment on January 9, 2009, was illegally motivated because she exercised rights secured to her under the Civil Rights Act, United States Constitution and/or the applicable statutes/laws governing said matters. **Moreover, W&L's representative's taking of Newsome's Employee Handbook prior to her termination may leave a reasonable mind to conclude the January 9, 2009 reasons provided for her termination was PRETEXT to mask/shield an illegal animus. Moreover, to shield/mask the fact that their Employee Handbook addresses it will not discriminate against employee who engages in protected activities (i.e filed lawsuit). Furthermore, the acts of W&L will support *premeditation* and *forethought* in its knowledge that it was acting in violation of the laws governing said matters – resulting in its theft, removal and destruction of evidence from Newsome's desk *(Newsome kept her desk locked)* that it knew was incrementing.** HOWEVER, W&L IS DISAPPOINTED TO FIND THAT NEWSOME RETAINED COPIES ELSEWHERE.

While **discussing the October 9, 2009** incident with Thomas Breed (attorney Newsome worked with at W&L), he asked Newsome whether or not she needed representation. Newsome advised Breed that she had sought W&L's assistance and was assigned Elizabeth Horwitz; however, Horwitz developed an attitude because Newsome refused to waive rights secured under the Fair Housing Act and/or applicable statutes/laws governing such matters. *Newsome advised Breed she was in no hurry and that she had filed a complaint with the appropriate agency (FBI) to investigate the matter*.

Documentation in W&L's possession will support its knowledge that it was first advised of medical concerns of Newsome as early as October 2008. Moreover, how Newsome had been affected mentally, emotionally, and physically and had to obtain a doctor's excuse for time off from work. See EXHIBIT "12" attached hereto and incorporated by reference.

40. W&L aware of the criminal acts rendered me of October 9, 2008, attempted to use such information to subject me to discriminatory practices and retaliation. Moreover, use this situation against me and attempt to make it appear as though there was a problem with my attendance – **ALTHOUGH I was not in violation of any of its policies and procedures and had the time to use** (See **EXHIBIT "4"** – *"ATTENDENCE POLICY"* and *"SICK LEAVE"* of *Wood & Lamping LLP Policies and Procedures Manual* at pages 2 and 26-27 attached hereto and incorporated by reference as if set forth in full herein). **In an effort to add SALT to the wound and horrific ordeal**

Newsome had just encountered, W&L was attempting to use this matter for PRETEXT purposes - i.e. efforts to cover-up/mask its discriminatory practices. W&L was fully aware that the October 9, 2008 matter resulted from the legal matters that I brought to its attention in 2007. Griffith in an e-mail to me of October 15, 2008 stated:

> Denise. We do need to meet this afternoon to discuss your being out of the office so much over the last couple of days. Also, you need to inform me in advance on doctor's appointments. 45 minutes before an appointment is not sufficient time. Please see me when you return. Andrea.

See EXHBIBIT "12" - *October 15, 2008 Correspondence Between Newsome and Griffith* attached hereto and incorporated by reference.

Newsome responding to Griffith's October 15, 2008 E-mail via Interoffice Memorandum which states in part:

> As you are aware, per my voicemail messages of October 9, 2008, my apartment was burglarized, etc. I had to leave work not realizing the magnitude of this crime; however, I was devastated and seriously affected by this crime.
>
> On October 11, 2008, I was admitted to the Emergency Room and test were run out of concerns from symptoms I was having. The doctor recommended that I return to work on 10/14/08, in which I did. (See Document Attached).
>
> My doctor's appointment for 10/10/08 was scheduled way in advance and prior to the October 9, 2008, criminal actions. The appointment that I set for 10/13/08 was made on 10/10/08; however, had to be cancelled and rescheduled for today in that my doctor wanted this test done right away.
>
> Without going into details where things are at, as a direct and proximate result of the 10/09/08 criminal acts rendered me, a Criminal Complaint has been filed with the FBI (Federal Bureau of Investigations) . . .

Moreover, provided Griffith with a copy of the "Return to Work" provided by Physician to support Newsome was required to take time off from work. This was TIME in which Newsome had available to her to use under W&L's policies and procedures. This was TIME in which Newsome was required to use prior to year end or be compensated for it. See EXHBIBIT "12" - *October 15, 2008 Correspondence Between Newsome and Griffith* attached hereto and incorporated by reference.

41. In **December 2008 (well over 30 days)**, Newsome ***again*** notified W&L through its representative Andrea Griffith ("Griffith"), Human Resource Manager/Representative, of her moving forward and inquired into how W&L handled medical leave to begin the medical procedure doctors recommended. While Griffith was made aware of medical issue Newsome was dealing with (as early as October 2008), it was in December 2008 - *after medical staff finally got back with Newsome to advise of opening to begin the medical process recommended*, that Newsome went to Griffith to determine how W&L handles such medical requests and was advised that she would be okay under the FMLA. Moreover, that W&L would provide a percentage of her salary during the time taken.

Newsome advised Griffith of the approximate date (January 29, 2009) on which she was to begin the procedure. Griffith advised Newsome she could use either her sick time, vacation time and/or both, but would wait to see how much time would be required. Thus supporting W&L's knowledge of Newsome being availed FMLA protection. Newsome kept her January 29, 2009 appointment and advised W&L of such as well as concerns of discrimination under the FMLA. See **EXHIBIT "28"** – *January 30, 2009 Letter to Andrea Griffith and C.J. Schmidt* attached hereto and incorporated by reference as if set forth in full herein.

> When requesting unpaid leave, employee need not mention Family and Medical Leave Act (FMLA) and can be completely ignorant of benefits conferred by Act, and **notice** ***is sufficient if employee provides employer with enough information to put employer on notice that FMLA-qualifying leave is needed.*** *Stoops v. One Call Communications, Inc.*, 141 F.3d 309 (7th Cir.).

42. W&L's record will reflect that Newsome timely, properly and adequately provided it with notification of concerns of violations. W&L **cannot** say that Newsome did not report these violations **PROMPTLY** to them – as Newsome did with the January 9, 2009 termination. See **EXHIBIT "13"** – *January 11, 2009 Letter of Newsome to Andrea M. Griffith and C. J. Schmidt* attached hereto and incorporated by reference as if set forth in full herein. W&L retaliated as a direct and proximate result of Newsome's request for medical leave and retaliated because of its knowledge of her engagement in protected activities. CONTINUING THE ***SYSTEMATIC*** DISCRIMINATORY PRACTICES LEVELED AGAINST NEWSOME. *Newsome guess she needs to wait and see whether those who commit such discrimination remained employed – leaving a reasonable mind to conclude that W&L indeed* ***tolerates and supports*** *such* ***discriminatory PRACTICES***. Newsome is entitled to know whether or not W&L was entitled to deny her the benefits (i.e. – medical insurance, etc.) she was entitled to and that it afforded to other employees (whites). From the information contained in W&L Policies and Procedures Manual, medical coverage is to be continued and/or Newsome is entitled to medical benefits with W&L as that *which she had before* it violated the Act. From Newsome's understanding of the W&L Policies and Procedures, she is to be "**retained** on the firm's health plan(s) *under the same* conditions that applied **before** leave commenced if employees make their contributions to the plan(s)…. (Wood & Lamping LLP Policies and Procedures Manual @ pp. 12-14)" – See **EXHIBIT "4"** – "FAMILY AND MEDICAL LEAVE ACT" attached hereto and incorporated by reference as if set forth in full herein. *Remember Newsome* ***was covered under the FMLA once verbal notification was provided*** *to Andrea of her medical condition and intent for medical treatment and W&L's handling of such matters*. See **EXHIBIT "4"** of *Wood & Lamping LLP Policies and Procedures Manual*:

> **FAMILY AND MEDICAL LEAVE ACT (FMLA)**
>
> **Eligibility:**
>
> **On October 16, 2000**, the firm became subject to the Family and Medical Leave Act ("FMLA"). (Should the firm ever drop below 50 employees, it will remain covered by the Act until the future point when it has no longer employed 50 or more employees for 20 or more weeks in the current or preceding calendar year.) Family and Medical Leave is unpaid unless the employee has paid leave available. (Wood & Lamping LLP Policies and Procedures Manual @ p. 12)
>
> **Reasons for Requesting Leave:**
>
> . . .The firm will need to carefully analyze each situation to determine if the leave qualifies as FMLA leave. In general, the intent of FMLA is to provide leave for medical conditions that require ongoing, continuous care and treatment. The Act is

not intended to cover short-term conditions where treatment and recovery are brief. (Wood & Lamping LLP Policies and Procedures Manual @ p. 13)

Procedure for Requesting Leave:
An employee intending to take family or medical leave because of . . .a planned medical treatment, must submit a request a least 30 days before the leave is to begin. If leave is to begin within 30 days, an employee must give notice to the firm as soon as the necessity for leave arises....

...The firm's notice **may be given orally**, but will be confirmed in writing. (Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

Pay During Leave:
The employee must use all available paid leave (e.g. paid vacation or sick time, short-term disability, worker's comp., etc.) concurrent with FMLA leave...(Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

Benefits during Leave:
Employees **will be retained** on the firm's health plan(s) under the same conditions that applied before leave commenced if employees make their contributions to the plan(s).... (Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

*Employees who take family and medical leave **will not lose** any earned...employment benefits*....(Wood & Lamping LLP Policies and Procedures Manual @ p. 15)

43. Andrea Griffith advising Newsome that she would be entitled to medical leave. According to W&L, its Policies and Procedures Manual states what Newsome was entitled to under said policies as well as the FMLA – establishing W&L's FAR DEPARTURE from its own policies and procedures to deprive Newsome protected rights and benefits secured to her under the applicable statutes/laws governing said matters:

SHORT-TERM DISABILITY LEAVE
Definitions:

(a) For purposes of this short-term disability leave provision, a "disability" means a personal condition of an employee which causes the employee to be unable to perform the essential functions of the employee's job for an extended and/or indefinite period of time due to personal illness, injury, hospitalization, post surgical recovery, childbirth, complications due to pregnancy or childbirth, or psychological or mental impairment. A "disability" must be established by medical certification as being of an extended or indefinite duration. Common illness and minor injuries are not disabilities. (Wood & Lamping LLP Policies and Procedures Manual @ p. 23)

(b) Short-term disability leave will commence after an absence of seven (7) working days or 52.50 working hours (the waiting period) in a fourteen calendar-day period.

(c) Short-term disability begins on the eighth working day or 52.50 hours of absence.

Length of Leave and Compensation:

(a) Employees may use earned sick time (or earned vacation time if sick time is unavailable) during the seven-day waiting period or take it unpaid.

(c) A full-time employee who has completed one year of continuous employment shall be entitled to fifty (50) days (or 375 hours) of paid disability leave at the rate of eighty percent (80%) of the employee's hourly rate of pay, plus his or her longevity rate (if applicable), in effect on the first day of unpaid absence prior to the commencement of the disability leave. Salaried employees shall be compensated at the rate of eighty percent (80%) of the employee's weekly salary.

(*Wood & Lamping LLP Policies and Procedures Manual* @ pp. 23 & 24)

44. On **January 8, 2009**, *Newsome submitted her* ***Request for Medical Leave*** on January 29, 2009 for the medical procedure recommended by her doctors. (See attached hereto as **EXHIBIT "14"** and incorporated herein by reference as if set forth in full). Form clearly states reason as "**MEDICAL LEAVE**." Newsome's Request for this leave was approved by the attorneys (Sharon S. Parsley and Thomas J. Breed) she assisted and then submitted to Griffith for handling. **Newsome followed the procedures of W&L to obtain this leave.** *This document further evidences Newsome's protection under the FMLA. While Newsome was terminated, she still attended said appointment.*

45. On **January 9, 2009,** Newsome was taken by ***surprise*** when Griffith approached her and asked to see her. Newsome followed Griffith to her office where C. J. Schmidt (an attorney and Managing Partner at W&L) was awaiting their arrival. During this meeting Newsome was advised that her employment with W&L was being terminated. Newsome being advised her position having to be eliminated due to reduction in force necessitated by the conditions/matters the firm was encountering. Newsome was advised that she would be compensated for that week and given two additional weeks of pay. Newsome was advised that her medical insurance would lapse **at the end of January 2009** (*approximately **two** days after beginning of the medical process Newsome advised Griffith of **first in** October 2008 and after being contacted by doctor's medical staff, **submitting** request for medical leave on January 8, 2009*) and that any additional medical coverage could be maintained through COBRA if she desired. Thus supporting W&L's termination of Newsome was illegally motivated and to deprive her protection under the FMLA; moreover to deprive her benefits afforded to other **white** employees similarly situated.

> Employer ***may not use*** **reduction-in-force** (RIF),[9] reorganization, or improved-efficiency rationale *as pretext* **to mask actual *discrimination* or *retaliation*** for employee's exercise of FMLA rights; the mere incantation of the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination. *Hodgens v. General Dynamics Corp.*, 144 F.3d 151 (1998). Moreover, *Hodgens* goes on to find "an employer may not use its RIF/reorganization/improved-efficiency rationale as a **pretext** to *mask* **actual** *discrimination* or *retaliation*; the mere incantation of

[9] See "REDUCTION IN FORCE" - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 25 attached hereto and incorporated by reference as if set forth in full herein.

> the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination. See *McDonnell Douglas,* 411 U.S. at 804, 93 S.Ct. 1817 (employer may not use an ostensibly legitimate reason for an adverse action as a pretext for discrimination that is prohibited by statute); 29 U.S.C. § 2615(a); 29 C.F.R. § 825.220; cf. *INS v. Chadha,* 462 U.S. 919, 944, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983): "Convenience and efficiency are not the primary objectives-or the hallmarks-of democratic government." Nor are they the objectives of public policy underlying statutes like the FMLA or the ADA."

Ohio law is clear that an employer **may <u>not</u>** retaliate against an employee who exercises rights under the FMLA –

PRIMA FACIE: (a) Newsome faced an adverse employment action as a direct and proximate result of W&L's knowledge of her engagement in protected activities [(i) her engagement in legal lawsuits – past, present, and future intent; (ii) filing of Title VII Charges; (iii) filing of Fair Housing Charge; (iv) filing of FBI Complaint, etc.] **(b)** An investigation and evidence will yield that Elizabeth Horwitz (attorney at W&L) was upset when Newsome would not waive protected rights and give up her residence that Newsome's landlords and their attorney wanted her to do. Newsome advised Horwitz (as she did with her landlords and their counsel) of her right under the laws to live there. **(c)** An investigation will yield as a direct and proximate result of Newsome's refusal to waive protected rights, W&L began to engage in **SYSTEMATIC** discrimination practices against Newsome. **(d)** An investigation will support that W&L's **SYSTEMATIC** discriminatory practices included the engagement of Gillan and others. **(e)** An investigation and evidence will support W&L retaliated against Newsome under the FMLA and unlawfully/illegally terminated her employment ***<u>one day AFTER</u>*** *<u>granting her medical leave</u>*. Newsome's medical leave was approved on January 8, 2009, and her termination of employment occurred on January 9, 2009. **(f)** An investigation will support that W&L's termination of Newsome's employment was to aid a Thomas J. Breed's former law firm (SMR&S) in a legal action made known to it that would be brought against Newsome. **(g)** *An investigation and evidence will support that W&L prior to Newsome's termination removed documentation for the purposes of covering up its unlawful/illegal employment practices; moreover, for purposes of interfering with the administration of justice – ill motive:* ***W&L's removing and destroying evidence taken from Newsome's desk*** ***<u>(Newsome kept her desk locked)</u>*** *<u>(without Newsome's knowledge)</u>* ***that it knew would be <u>incriminating</u> in any legal action brought by Newsome.*** *W&L committed such civil/criminal wrongs* ***so that it could <u>falsify and/or lie</u> during a federal investigation*** *for the purposes of obstructing justice.* **(h)** <u>W&L is attempting to violate the statutes/laws governing said matters and</u> ***<u>is attempting to get Newsome to waive protected rights in exchange medical benefits</u>***<u>; as well as refusing to allow her to return to work by</u> **<u>DEMANDING</u>** <u>that Newsome not bring any legal action/lawsuit against it. Said Demand which Newsome</u> *<u>has repeatedly denied</u>* <u>and advised W&L is</u> **<u>PROHIBITED BY STATUTES/LAWS</u>** <u>governing said matters</u>. See **EXHIBITS "15"** – *February 4, 2009 Letter of Berninger to Newsome* attached hereto and incorporated by reference as if set forth in full herein:

> W&L 2/4/09 Letter From Paul R. Berninger to Newsome:
>
> . . . I had previously told you that I believed that the firm would accept my recommendation to extend your health insurance at the firm's cost for a period of time to allow you to attend to a medical matter which was pending
>
> In our telephone conversation, and in the nine page document you sent to me, you addressed a number of perceived wrongs you

suffered while employed by the firm as well as your perception of an unlawful termination. You did not respond to the issue of resolution based on an extension of health insurance coverage.

I have been assured by the firm that we would extend your health insurance coverage for a reasonable period, ***but only on the condition that you sign a release of all your perceived claims***. *As you know, that means that if you accept our offer of health insurance coverage for a period of time, yet to be determined,* ***you could not file any charges, lawsuits or other complaints against the firm regarding your employment and separation of employment.***

(i) An investigation and evidence will support a ***pattern-of-discrimination*** by W&L against African-Americans. One of W&L's attorney (Paul Berninger) advised Newsome of another African-American (Angie Hart) bringing of action and not being successful. Newsome advising lack of knowledge of action by Angie Hart and circumstances surrounding her. (See **EXHIBIT "16"** – *February 2, 2009 Letter of Newsome to Berninger* attached hereto and incorporated by reference as if set forth in full herein); however, *Newsome's interest is in W&L's actions regarding the handling of her termination.*

2/2/09 Letter From Newsome to Paul R. Berninger:

. . . From my understanding of the conversation, Wood & Lamping (Andrea) acknowledges that I advised of my request regarding medical procedure I discussed with her. At this time, Wood & Lamping is willing to extend me medical coverage under COBRA where they will make the payments. However, in exchange for such agreement, I would be required to sign a Release relinquishing all rights that I may have to bring charges and/or lawsuit against Wood & Lamping for any injury/harm I sustained from violations – i.e. wrongful discharge, retaliation, racial discrimination, etc. As I shared with you, **my main focus right now is getting the medical procedure done that I was advised of** any other relief I seek will be done in the applicable time permitted by statute/laws.

HOWEVER, PLEASE LET ME REITERATE, it is Wood & Lamping's duty and responsibility to **mitigate** damages – that includes continuing medical coverage and/or benefits – in the showing of good faith (not in continuance of bad faith or malicious behavior, etc. to cause me additional injury/harm).

You mentioned that an employee, Angie, brought charges against Wood & Lamping which was unsuccessful. While I am not aware of any charges by Angie, I would think that any comparison of my treatment and handling would be left up to the appropriate agency to handle*; moreover, up to a jury to decide*. I believe that the liability in my situation is clear and that Wood & Lamping retaliated against me in interfering with my rights under the Family and Medical Leave Act; moreover, may be in retaliation of its knowledge of my engagement in protected activities.

Being brief:

EQUAL OPPORTUNITY
The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees

and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. *Discrimination by any member of the firm **will not** be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also **prohibits retaliation** against anyone who has filed a complaint of **discrimination** or **harassment**.*
(Wood & Lamping LLP Policies and Procedures Manual @ p. 11) – **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein.

Nevertheless, based on additional information proved by Berninger regarding Angie Hart, it now raises VALID and SERIOUS concerns as to whether W&L committed similar criminal acts and removed documentation/evidence from Angie Hart's desk that it knew would prove to be incriminating. Blindsiding Hart as it did Newsome. However, to W&L's disappointment, Newsome maintained additional copies.

Campbell v. Washington County Public Library, 241 Fed.Appx. 271 (C.A.6.**Ohio,**2007) - County public library employee established prima facie case that her discharge was discriminatory in violation of FMLA; employee faced adverse employment action shortly after taking FMLA leave and filing a complaint to Department of Labor, and there was evidence that library director was upset about employee's complaint. Family and Medical Leave Act of 1993, § 2 et seq., 29 U.S.C.A. § 2601 et seq.

Nocella v. Basement Experts of America, 499 F.Supp.2d 935 (N.D.**Ohio.**W.Div.,2007) - There was sufficient evidence to establish a prima facie case of retaliation under the Family and Medical Leave Act (FMLA) in connection with the termination of an employee approximately one week after she returned from her leave; the time lapse from the beginning of her leave until the elimination of her position was nine weeks at most, only about five weeks elapsed between the elimination of her position and her permanent firing, and there were attempts to keep her from returning to work. Family and Medical Leave Act of 1993, § 105(a)(2), (b), 29 U.S.C.A. § 2615(a)(2), (b).

Chester v. Quadco Rehabilitation Center, 484 F.Supp.2d 735 (N.D.**Ohio.**W.Div.,2007) - There was sufficient temporal proximity

between employee's FMLA leave request and his termination to establish the **causal connection** needed for prima facie case of retaliation under FMLA, where employee was terminated less than one month after he made his FMLA request. Family and Medical Leave Act of 1993, § 105(a)(2), 29 U.S.C.A. § 2615(a)(2).

46. Ohio Civil Rights Commission Sources Used:
OCRC Complaint No. 9496 (*Glaser v. HLS Bonding* matter) - See **EXHIBIT "17"** attached hereto and incorporated by reference.

Causal Connection:

23. In determining whether a **causal connection** exists, the proximity between the protected activity and the adverse employment action is often "telling." *Holland v. Jefferson Natl. Life Ins. Co.*, 50 FEP Cases 1215, 1221 (7th Cir. 1989), *quoting Reeder-Baker v. Lincoln Nat'l Corp.*, 42 FEP Cases 1567 (N.D. Ind. 1986). The closer the proximity between the protected activity and the adverse employment action, the stronger the inference of a causal connection becomes. *See Johnson v. Sullivan*, 57 FEP Cases 124 (7th Cir. 1991) (court held that plaintiff showed causal connection and established *prima facie* case of retaliation where plaintiff was discharged within days of filing a . . . race discrimination lawsuit); *Waddell v. Small Tube Prods., Inc.*, 41 FEP Cases 988 (3d Cir. 1986) (court properly inferred retaliatory motive from evidence that defendant's decision to rehire plaintiff was rescinded one day after the defendant received notice that state FEP agency had dismissed plaintiff's charges of discrimination).

24. A causal connection may be established with evidence that the adverse employment action closely followed the protected activity. *Holland v. Jefferson National Life Ins. Co.*, 50 FEP Cases 1215 (7th Cir. 1989).

> . . . a court may look to the temporal proximity of the adverse action to the protected activity to determine where there is a causal connection. *EEOC v. Avery Dennison Corp.*, 72 FEP Cases 1602, 1609 (6th Cir. 1997)(citation and quote within quote omitted).
>
> Temporal relationship between a plaintiff's participation in protected activities and a defendant's alleged retaliatory conduct is an important factor in establishing a causal connection. *Gonzales v. State of Ohio, Dept. of Taxation,* 78 FEP Cases 1561, 1564 (S.D. Ohio 1998).

30. The Commission having established a *prima facie* case, the burden of production shifted to Respondent to "articulate some legitimate, nondiscriminatory reason" for the employment action. *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondent **must**:

. . . "clearly set forth, through the introduction of admissible evidence," reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the employment action. *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 507, 62 FEP Cases 96, 103 (1993), *quoting Burdine, supra* at 254-55, 25 FEP Cases at 116., n.8.

32. Respondent having met its burden of production, the Commission must prove that Respondent retaliated against Complainant because he engaged in protected activity. *Hicks, supra* at 511, 62 FEP Cases at 100. The Commission must show by a preponderance of the evidence that Respondent's articulated reasons for Complainant's discharge were not its true reasons, but were a "pretext for . . . [unlawful retaliation]." *Id.,* at 515, 62 FEP Cases at 102, *quoting Burdine*, 450 U.S. at 253, 25 FEP Cases at 115.

> [A] reason cannot be proved to be a "pretext for . . . [unlawful retaliation]" unless it is shown *both* that the reason was false, *and* that. . . [unlawful retaliation] was the real reason. *Hicks, supra* at 515, 62 FEP Cases at 102.

47. **PRIMA FACIE - CAUSAL CONNECTION: (a)** W&L's termination of Newsome occurred on January 9, 2009. **(b)** SMR&S' client's (Stor-All's) Amnesty Weekend was set for January 9th thru January 11th. Stor-All advising Newsome of Amnesty Weekend via facsimile at the number assigned Newsome by W&L. See **EXHIBIT "18"** – *12/19/08 Fax From Lori Whiteside/Stor-All* attached hereto and incorporated by reference. **(c)** On January 9, 2009, Stor-All provided Newsome with "NOTICE TO LEAVE THE PREMISES." See **EXHIBIT "19"** attached hereto and incorporated by reference. **(d)** *While Stor-All provided Newsome with faxes at W&L during her employment, **on the date of Newsome's termination** Stor-All did not provide her with the "Notice to Leave the Premises" via facsimile (as it did with the 12/19/08 fax and others) **because it knew that W&L was terminating Newsome's employment on said date***. **(e)** On January 20, 2009, SMR&S on behalf of Stor-All filed a lawsuit against Newsome.

48. On **January 9, 2009**, W&L waited until the end of the day and had Griffith approach Newsome, taking Newsome by ***surprise***,[10] and asked Newsome to come to her office where C.J. Schmidt (attorney and Managing Partner of W&L) was waiting for both of them to return. It was at this time, that Newsome was advised that her employment with W&L was being terminated due to the need to eliminate her position. Newsome was taken by surprise with this news in that she was not aware or given notice of W&L's intent to do so. ***Neither was Newsome aware of any employment violations and/or problems W&L was having with her work (if any)***. Newsome was advised that she would be receiving pay for that week as well as two weeks pay and that she would have medical coverage through the end of the month (January 2009); however, any other medical

[10] See *Wood & Lamping, LLP The Employer's Guide to Employment Law in Ohio, Kentucky, and Indiana* at p. 22 – Employee Termination: **"A termination conversation should not occur suddenly or as a surprise."** . . . *Always treat employees equally and consistently under similar circumstances. You may create the appearance of unlawful discrimination if you allow some employees to engage in prohibited conduct and then claim good cause for firing others for the same reason.* See **EXHIBIT "20"** attached hereto and incorporated by reference as if set forth in full herein.

coverage she desired, would have to be obtained through COBRA which would kick in immediately and would have to be paid by her.

Newsome believe the actions by W&L and/or its representatives were willful, malicious and wanton and done to deprive Newsome rights secured/guaranteed under the FMLA, and/or the applicable statutes/laws governing said matters. Newsome believe such acts by W&L and/or its representatives are discriminatory and may be based on race as well as retaliatory for her complaining of violations and discriminatory treatment during her employment – continuation of **SYSTEMATIC** discriminatory practices. W&L used the **SURPRISE**-Approach to terminate Newsome. An approach **discouraged** in W&L as addressed in its Employer's Guide. However, this was an approach used because W&L was fully aware that it had created criminal/civil violations in the handling of Newsome's termination and was attempting to cover-up such practices. Newsome believes that her employment with W&L was terminated as a direct and proximate result of its knowledge of Newsome's engagement in protected activities. In support thereof, Newsome states:[11]

a) During Newsome's employment **white** employees and/or those similarly situated provided notice of medical procedures that they needed and *said* ***white employees*** were allowed to proceed with such medical procedures without losing their jobs; moreover, some had to obtain medical procedures on a last-minute basis which did not afford them the opportunity to notify W&L prior to seeking such attention, however, they were not terminated and they were allowed to return to their employment with W&L. *When **white** employees did not have time for sick leave and/or medical leave W&L took extra steps to accommodate them with the time and allowed them to return to employment*. Therefore, Newsome believes her termination with W&L may have been a direct and proximate result to deprive Newsome rights secured/guaranteed under the FMLA and was racially motivated based on her race. Furthermore, in retaliation of Newsome's participation in protected activities known to W&L and/or its representatives.

W& L ***failed*** *to provide Newsome with the entitlements set forth in the FMLA based on her race and as a direct and proximate result of its knowledge of her engagement in protected activity*. W&L's knowledge of Newsome's engagement in protected activity resulted in its removal and destruction of evidence it having knowledge would be incriminating and reveal employment violations by it against Newsome.

> Employer may not defend its interference with FMLA's substantive rights on the ground that it treats all employees equally poorly without discriminating; employer's subjective intent is not relevant, and the issue

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[11] ***Prima Facie Tort:*** A prima facie tort is the intentional infliction of harm without an excuse or justification that is legally recognizable as such. . . The elements of a malicious discharge claim premised on a prima facie tort are:

(i) Intentional lawful act by the defendant.

(ii) Intent to cause injury to the plaintiff.

(iii) Injury to the plaintiff; and

(iv) Insufficiency or absence of justification for the defendant act.

82 Am Jur 2d Wrongful Discharge §84.

is simply whether the employer provided its employee the entitlements set forth in FMLA. *Hodgens v. General Dynamics Corp.*, 144 F.3d 151 (1st Cir. 1998).

b) **IT IS IMPORTANT TO NOTE,** Newsome kept a copy of the ***Wood & Lamping LLP Policies and Procedures Manual*** in her desk. However, upon cleaning out her desk after being terminated, Newsome noticed this Manual had been removed by a representative of W&L. ***Newsome kept her desk locked***. Newsome believes the removal of the Manual was done with willful and malicious intent by W&L and/or its representatives to cover-up its employment violations - **PRETEXT**. Moreover, supports W&L and/or its representatives having knowledge that they were acting in violation of FMLA, Title VII and/or any other applicable laws governing said matters. Furthermore, such acts may support ill motive and the actual/underlying reasons for Newsome's termination. W&L ***specializes in employment laws***, *so it knew and/or should have known that its actions were unlawful and/or illegal*. Moreover, a reasonable mind may conclude that the taking Newsome's Employee Handbook from her desk may have been acts done by W&L to shield the fact it knew the Employee Handbook contained information pertaining to the handling of FMLA requests, termination, etc. that W&L knew and/or should have known it was violating on January 9, 2009, and it did not want Newsome to be able to use this information in any legal action she may decide to bring. *However, to their disappointment, Newsome had obtained a copy of the Employee Handbook in that it was brought to her attention that W&L's representatives were known to practice in such an illegal/unlawful manner* ***to avoid liability***. Thus making it difficult for an employee to bring legal action against W&L. *A reasonable mind may conclude this is why W&L uses the surprise approach that it advise against in W&L's Employer's Guide in its termination of employees.* While W&L took steps to commit civil/criminal wrongs to remove and destroy **INCRIMINATING** evidence that it knew and/or should have known would be used against it during an investigation (state/federal); it **FAILED** in such efforts because Newsome also retained a copy of Employee Handbook as well as Employer's Guide.

49. **IMPORTANT TO NOTE:** During Newsome's meeting where she was advised of termination, Griffith advised that Newsome would have medical insurance coverage through the end of January (2009). Newsome's request for medical leave beginning the medical procedure was for January 29, 2009. Griffith advised Newsome that if she was interested in continuing medical insurance coverage, she could do so under COBRA. *Newsome* ***is not*** *aware of any other employee being terminated* ***prior*** *to the medical attention they advised Wood & Lamping they would be having and that such other white and/or similarly situated employee was required to cover their medical expenses under COBRA.* In Newsome's case, Wood & Lamping LLP terminated her employment and terminated her medical insurance effective January 31, 2009, and thereafter, Newsome was required to pay for any other medical expenses for the medical services she advised Griffith of in December 2008 directly out of pocket – extremely high premium under the COBRA option (Newsome would be requested to pay 100% of the premium cost) – to secure the medical attention Newsome sought and advised Wood & Lamping/Griffith of. Pursuant to the Wood & Lamping LLP Employer's Guide, it states:

> COBRA gives an employee covered by an employer's group health plan the right to stay covered when coverage is lost due to certain qualifying events, and the employee pays for 100% of the premium cost. COBRA coverage must be elected within 60 days after coverage would otherwise end or from the date the election form was sent, whichever is later. *The employer is required to continue the same coverage available to* ***similarly situated*** *employees.* The cost can be up to the entire cost of coverage, plus a small (2%) additional charge for administration , as decided by the employer. Employers must maintain records pertaining to compliance with COBRA.

(See **EXHIBIT "20"** at p. 26 of the *Wood & Lamping LLP's Employer's Guide* attached hereto and incorporated herein by reference). Given such facts and evidence, Newsome believes a reasonable mind may conclude that Wood & Lamping LLP and/or its representatives are in violation of COBRA. Moreover, acts may be willful, malicious and wanton. *These were acts knowingly and deliberately done to deprive Newsome of medical services under the FMLA as well as benefits W&L extended to employees similarly situated. Moreover, that W&L's removal and destruction of Newsome's Employee Handbook were acts done by W&L to shield an illegal animus -* ***PRETEXT.*** However, to W&L's disappointment, Newsome had obtained a copy of the *Wood & Lamping LLP's Employer's Guide* handed out at a ***public*** seminar hosted by an attorney (Julie R. Pugh) she assisted and Heather Walsh. Newsome being advised during her employment of the corrupt practices of W&L retained a copy of the Employee Handbook and W&L's Employer's Guide.

50. **IMPORANT TO NOTE:** Newsome believes Wood & Lamping LLP and/or its representative(s) was timely, properly and adequately placed on notice of her intent to have a medical procedure done which would require absence from employment. Looking in "*The Employer's Guide to Employment Law in Ohio, Kentucky and Indiana*" of W&L that Newsome obtained from the ***public*** seminar that Julie Pugh and Heather Walsh conducted it states (boldface, underline, italics added for emphasis):

> If the condition for which leave is granted is **foreseeable**, employees **must** provide the employer with **30** ***days notice*** **to be entitled to the protection of the FMLA**. . .
>
> Upon return from leave granted under the FMLA, employees are entitled to reinstatement to the position of employment previously held, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment . . . Employer's **may not** interfere with any employee's attempt to exercise his/her rights under the FMLA. It is also **illegal** *for employers to* ***discriminate*** *against or discharge an employee because he/she has attempted to exercise his/her rights. . .granted by the FMLA.*

See **EXHIBIT "20"** at p. 32 of *Wood & Lamping's Employer's Guide* attached hereto and incorporated by reference as if set forth in full herein. Therefore a reasonable mind may conclude that W&L's and/or its representative's removal of Newsome's Employee Handbook ***(Newsome kept her desk locked)*** was a willful and malicious act and ***PRETEXT*** to shield its knowledge that it was committing legal wrongs against Newsome.

51. On or about **January 16, 2009,** Newsome filed an Official Complaint with the Secretary of Labor/Department of Labor (Wage & Hour Division) under the statutes/laws governing rights protected under the Family and Medical Leave Act ("FMLA"). IMPORTANT TO NOTE, that while Newsome has filed a FMLA Complaint, ***through this INSTANT*** *Charge of Discrimination,* ***she seek relief protecting rights secured under Title VII and/or statutes/laws governing unlawful employment practices*** *– prohibiting discrimination and retaliation based on race, sex and participation in protected activities.*

52. Newsome is not aware of any male employees at W&L having to endure such racial, discriminatory, prejudicial, hostile, retaliatory and harassing treatment.

53. W&L, through its duly authorized agents and employees who acted on behalf of W&L and within the scope of their employment, intentionally discriminated against Newsome based on her race, sex and engagement/participation in protected activities.

54. As a direct and proximate result of the intentional discriminatory acts and practices of W&L, its agents and employees, including the taking away of job duties to give to white employees to provide them with job security,[12] and terminating Newsome's employment **AFTER** she requested medical leave and due to her reporting and/or objecting to discriminatory practices; *Newsome has suffered and continues to suffer injury, including past and future loss of income and other employment benefits, severe emotional pain and suffering, mental anguish, humiliation, loss of enjoyment of life, costs associated with obtaining reemployment, embarrassment, damage to her reputation, and other past and future pecuniary losses.*

55. **IT IS IMPORTANT TO NOTE** that through this instant Charge of Discrimination, Newsome seeks the EEOC's/OCRC's jurisdiction to determine whether or not the unlawful employment practices rendered her *is individual and/or* ***systematic*** *discrimination pursuant to 29 C.F.R. § 1601.6.*

56. W&L's acts described above and/or throughout this instant Complaint were intentional, willful, and performed with malice or reckless indifference to Newsome's federally protected rights, within the meaning of the FMLA (29 USC § 2654, 29 CFR 825.401) and/or the applicable statutes/laws governing such matters. W&L's violation of the FMLA and denial of benefits to Newsome (to which she was entitled) was a direct and proximate result of her race and participation in protected activities. Moreover, in keeping with the ***SYSTEMATIC*** *discrimination* practices leveled against Newsome.

57. The termination of Newsome's employment by W&L constituted a wrongful discharge and violated public policy of the State of Ohio, as articulated in the ***Ohio Human Rights Act.*** Moreover, ***Ohio Anti-Discrimination*** laws.

58. *As a direct and proximate result of the acts and practices of W&L, its agents and employees, in the wrongful discharge of Newsome from employment, Newsome has suffered and continues to suffer injury/harm, including loss of employment, past and future loss of income and*

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[12] See **EXHIBIT "20"** *Wood & Lamping, LLP The Employer's Guide to Employment Law in Ohio, Kentucky, and Indiana* at p. 25 – **Reduction in Force:** Sometimes it becomes necessary for a company to reduce its work force to cope with economic conditions. Care should be taken to be sure that the determination of which employees are to be laid off is done in a nondiscriminatory way. Appropriate factors to consider include the need for a particular job function, seniority, and objectively determined by job performance. . . . **Final Paycheck and Paperwork:** Pay, including any benefits and unused vacation, **should be delivered at the termination meeting**. This is not only good policy, frequently it's the law. . . . In addition, ***the employee should be given the termination paperwork while still on the premises, and sign a receipt form.*** If the employee refuses to sign, the fact should be noted on the paperwork in the employee's presence.

other employment benefits, severe emotional pain and suffering, mental anguish, humiliation, loss of enjoyment of life, costs associated with obtaining reemployment, embarrassment, damage to her reputation and other past and future pecuniary losses.

59. **IT IS IMPORTANT TO NOTE** that **W&L specializes in *employment* law (i.e. which includes DISCRIMINATION in employment)**; therefore, it knew and/or should have known that its acts rendered Newsome was discriminatory and unlawful/illegal. In fact, in its *Wood & Lamping, LLP The Employer's Guide to Employment Law in Ohio, Kentucky, and Indiana* at p. 24 – **Informing the Employee**, it states: *Obtain Legal Advice. Every situation is different; therefore employers should consult with their attorney before disciplining or discharging an employee. Wood & Lamping regularly consults with clients regarding problems with employees and/or the discharge of employees, advising them as to the best way to handle a particular situation in order to AVOID potential litigation*. (See EXHIBIT "20" attached hereto and incorporated herein by reference as if set forth in full). Moreover, a reasonable mind may conclude W&L and/or its representative's taking of Newsome's Employee Handbook was ***clear and convincing*** knowledge it was aware civil/criminal wrongs were being committed. Furthermore, that such act was done to shield/mask an illegal animus. ***A reasonable mind may conclude based on information in W&L's Employer's Guide whether such examples as the theft of Newsome's property is the advice W&L provide to client's to AVOID potential litigation***.

60. **IT IS IMPORTANT TO NOTE** that *Newsome was hired on with W&L on September 11, 2006, AFTER working briefly as a contract worker*. **It was made known by certain attorneys at W&L that they were pleased with Newsome's work *and wanted to hire her on for a position with them***. Newsome was contacted by a representative at an employment agency and advised of W&L's request for the employment of her services which Newsome accepted. Newsome was **hired on as an *Estate Planning Coordinator***. ***During the course of her employment and at the termination of her employment the duties of an Estate Planning Coordinator were still needed***. To assure that other white employees had a job and/or employment W&L took the job duties of the *Estate Planning Coordinator* from Newsome and gave them to white employees to perform. Newsome ***timely* objected** to the taking away of the job duties of the Estate Planning Coordinator. Newsome shared her disappointment with Griffith about this change and/or decision of W&L in that she enjoyed what she was doing and the people she worked with. ***Griffith advised Newsome that there were no complaints in her job performance as the Estate Planning Coordinator; however, the decision to take away job duties was that of those who make such decisions at W&L.*** Nevertheless, W&L and/or its representatives had made a decision that Newsome would lose these duties and they would be given to **white** employees. *While Newsome lost the job duties of Estate Planning Coordinator to white employee(s), she continued to work **throughout** her course of employment with at least one attorney **at ALL** times* in the *Estate Planning* group – at the beginning and during her employment she was assigned Jan M. Frankel (Partner) and during her employment W&L removed Frankel and provided her with Thomas J. Breed ("Breed") (Partner and **Department Head** *of the Estate Planning Group – Group to which Newsome was hired as the Estate Planning Coordinator*). *During Newsome's employment Breed also became a member of the Executive Committee – **group known for making the hiring and termination** of employee decisions*.[13] **(EMPHASIS ADDED).** Newsome was working with Breed at the time of her termination. ***Breed's performance of his work required the job duties Newsome provided as Estate Planning Coordinator that were taken away and given to white employees.***

[13] INTERVIEWING AND HIRING. . . *Failure to adhere to consistent procedures may encourage claims of discrimination, misrepresentation, or breach of oral employment agreement.* – **EXHIBIT "20"** - *W&L's Employer's Guide* at page 3.

It is important to note whenever such changes were made, Newsome was advised it was because of her work ethics, ability to perform the duties being assigned her and ***W&L needing to keep attorneys assigned to her happy*** – thus, providing the confidence W&L and/or its representatives had in Newsome's ability to perform her duties and the tasks assigned her. **Attorneys W&L assigned Newsome that they wanted to keep happy were**: (a) V. Brandon McGrath, Sharon S. Parsley and Thomas J. Breed.

61. W&L's termination of Newsome's employment *was* ***WITHOUT*** *good cause.* Moreover, W&L ***failed to follow its own*** policies and procedures for terminating Newsome's employment. **(EMPHASIS ADDED).**[14] Newsome's termination was in retaliation to W&L's knowledge of her engagement in protected activity as well as its knowledge that one of its attorneys (Thomas J. Breed's) former law firm, Schwartz Manes & Ruby ("SMR&S") – now known as Schwartz Manes Ruby & Slovin, on behalf of SMR&S' client (Stor-All), was in the process of bringing a lawsuit against Newsome regarding a personal matter. Therefore, SMR&S' representation of its client (Stor-All) and Newsome's employment at W&L would create a CONFLICT OF INTEREST!! **(EMPHASIS ADDED).** Encompassed with such information, W&L's obtaining knowledge of such information was determined to deprive Newsome rights secured under the FMLA, Civil Rights Act, Constitution and other governing statutes/laws, moved swiftly to terminate Newsome's employment. *As a result, W&L deprived Newsome medical benefits/fringe benefits afforded to white employees and/or those similarly situated.* See:

> "COMPENSATION AND BENEFITS:" Vacations, holidays, paid sick leave, other leaves, and benefits are not required by law, but once established by company policy, must be available to all employees on a nondiscriminatory basis. Statutory holidays need not be observed by private employers, except that company observation of holidays must be made available to all employees of similar position.

EXHIBIT "20" - *W&L's Employer's Guide* at page 28 and "FMLA" - *W&L's Employer's Guide* at pages 31-32 attached hereto and incorporated by reference as if set forth in full herein.

IV. UNLAWFUL EMPLOYMENT TERMINATION/WRONGFUL DISCHARGE:

62. Courts have ruled on specific factual grounds as to whether an employer has acted in bad faith in the termination of an at-will employee. In the majority of cases, ***the existence of an employee booklet*** *or self-imposed policies for terminations have given rise to the application of the implied covenant and limited the common-law employment rule* ***by restricting*** *the employer's right to* ***discharge employees without cause.*** *In these cases, the implied covenant is* ***breached*** *when the discharge is without good cause or when the employer fails to follow the prescribed procedures for terminating employees. The implied covenant may also be* ***violated*** *by conduct that falls into other categories such as* ***retaliatory firings,*** *. . .* ***discharges*** *motivated by the employer's desire to deprive an employee of future compensation for past services.* 48 Am Jut Proof of Facts 2d 217-218.

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[14] See "EMPLOYEE TERMINATION," "EMPLOYEE TERMINATION PAPERWORK" and "INFORMING THE EMPLOYEE" - **EXHIBIT "20"** - *W&L's Employer's Guide* at pages 22- 24 attached hereto and incorporated by reference as if set forth in full herein.

63. Retaliatory firings have been traditionally the ground for invoking the public policy exception to the common-law at-will employment doctrine. In these cases, the retaliatory act has been held to violate the public interest if the employee has been discharged for performing an act that public policy encourages, or for refusing to engage in conduct that public policy condemns. 48 Am Jur Proof of Facts 2d 224. *Newsome's discharge/termination was a direct and proximate result of her engagement in protected activity and exercising of Constitutional/Civil Rights, Title VII, FMLA, acts that public policy encourages, as well as her refusal to waive protected rights secured to her under the laws that public policy condemns.*

64. Most courts recognize an exception to the common-law at-will employment doctrine where the termination of the employee is based upon a violation of a principle of public policy. Thus, where an employee is ***discharged for exercising a right*** or performing a duty that public policy encourages or requires, the employer may be subject to liability in tort for wrongful discharge. 48 Am Jut Proof of Facts 2d 192. *Sabine Pilot Service, Inc. v. Hauck* (1985) 687 SW2d 733, *Brockmeyer v. Dun & Bradstreet* (1983) 335 NW2d 834

65. **PRIMA FACIE:** There was a ***bad-faith*** *breach* of the implied covenant by W&L in terminating Newsome's employment:[15]

a) Termination was without notice or warning;

b) ***Termination was without following established personnel practices and policies as that set forth in the Employee Handbook;*****

c) Termination was without cause;

d) Termination of employment is in breach of promises provided and/or outlined in the Employee Handbook and inconsistent with the common-law at-will doctrine;

e) Termination was abusive, capricious, arbitrary, unreasonable, vindictive, retaliatory and/or malicious;

f) Termination was an unjustified denial of Newsome's rights under the statutes/laws governing protected activities;

g) Termination clearly evidences lack of good faith on the part of W&L

See "EMPLOYEE HANDBOOK" - **EXHIBIT "20" - *W&L's Employer's Guide* at page 17.

PRIMA FACIE: [**(i)** Newsome's termination was without notice or warning; **(ii)** Newsome's termination was done without W&L following its established personnel policies and procedures – as set forth in its *Wood & Lamping LLP Policies and Procedures Manual*; **(iii)** Newsome's termination was without just cause; **(iv)** Newsome's termination was a breach of promises provided and/or outlined in *Wood & Lamping LLP Policies and Procedures Manual* as with as the *Employer's Guide* created and made available to the public by W&L and is inconsistent with the common-law at-will doctrine; **(v)** *W&L's termination of Newsome was retaliatory, abusive, capricious, arbitrary, unreasonable, vindictive, and malicious to cause her substantial injury/harm*; **(vi)** W&L's termination of Newsome's employment was an unjustified denial of her rights under the statutes/laws governing protected activities – moreover, was done to interfere with Newsome's

[15] 48 Am Jur Proof of Facts 2d 235 - 240.

engagement and/or participation in protected activities; **(vii)** W&L's termination of Newsome's employment is clear evidence that it lacked good faith .]

66. An investigation and research will yield that Newsome is entitled to the relief sought herein. Newsome's termination was maliciously motivated. *W&L is **depending on the EEOC to continue its own SYSTEMATIC discriminatory** practices and failure to perform ministerial duties mandated by law – i.e. acts in furtherance of our government system to oppress people of color and seek ways to break them down and destroy their lives as the government has done with Newsome. Targeting those who are strong and proud of their heritage (African-American) and exposure of corrupt practices of our government. W&L is **depending on the EEOC to RETALIATE** against Newsome for her bringing and exposing of civil/constitutional violations*. **THE REASON WHY AFRICAN-AMERICANS and/or PEOPLE OF COLOR are having so many problems with discriminatory employment practices, is because the EEOC cover up such unlawful/illegal practices of the employer.** ***EMPLOYERS rely upon insiders (relationship to EEOC representatives, lobbyist, etc.) to aid in obtaining rulings in their favor***. However, the EEOC and government officials (with the support of others) – in past matters brought to its attention - have gone to great lengths to deprive Newsome relief to which she is entitled – in keeping with our own GOVERNMENT's ***systematic discriminatory*** practices and its targeting African-Americans and/or people of color:

> [DAMAGES ENTITLED TO: Back pay, wages, bonuses, loss of fringe benefits, cost of securing other employment, difference between uninsurance benefits and salary earned]
>
> ***Newsome has no duty to seek inferior employment*** – *Flanigan v. Prudential Federal Sav. & Loan Asso.* (1986) 720 P2d 257, CCH LC ¶ 55589, 93 L. Ed 2d 570, 107 S.Ct. 564.
>
> It has been held that the employer may be estopped from raising the issue of the employee's duty to mitigate damages if the employee's dismissal was maliciously motivated. *Wehr v. Burroughs Corp.* (1980) 619 F2d 276. *Mason County Bd. Of Education v. State Superintendent of Schools* (1982) 295 SE2d 719.
>
> Damages for consequential losses and emotional distress when the unlawful employment practice is sound in tort allows for compensatory damages. *Cancellier v. Federated Dept. Stores* (1982) 672 F2d 1312. Punitive damages are recoverable in an action for a bad faith wrongful discharge when the employer's conduct is sufficiently culpable. 44 ALR 4th 1131, § 13.
>
> **Case Illustration:** Plaintiff was discharged on the ground of poor work performance, after the employer's incomplete and insufficient investigation of the charges that had been brought against plaintiff by co-employees. *Plaintiff experienced substantial difficulty finding subsequent employment, and she ultimately had to leave the state. She had lived and worked in a small community where a dismissal for poor work performance would necessarily have an adverse consequence on her reputation and ability to earn a livelihood.* One of the charges against her had been fabricated, and her personnel file had been altered to support the allegation. An award of punitive damages against her former employer was affirmed on the basis of

this evidence. *Crenshaw v. Bozeman Deaconess Hospital* (1984) 693 P2d 487; 104 CCH LC ¶ 55590. (Compensatory damages of $125,000 and punitive damages of $25,000)

Plaintiff had a . . .record of faithful performance until she was *fired by a vindictive supervisor* and as part of a company policy of removing older workers and replacing them with younger workers in order to reduce pension costs. At the trial of plaintiff's wrongful discharge case, expert witnesses testified that the employer had violated its own personnel practices and policies in thirteen separate instances; and the employer's evidence at trial was often inconsistent and even contradictory as to whether plaintiff was fired because of her alleged poor performance or as part of a reduction-in-force program.. . . *Flanigan v. Prudential Federal Sav. & Loan Asso.* (1986) 720 P2d 257 (verdict of $95,000 economic damage, $100,000 compensatory damages for mental distress, and $1,300,000 punitive damages).

An investigation will support the government's posting of protected activity regarding Newsome on the INTERNET. The posting of such protected information is our government's violation of Title VII/Civil Rights/Constitutional protection – equal protection of the laws. *Said information has been posted by our government for purposes of depriving Newsome equal employment opportunities, equal protection of the laws, due process of laws, life, liberties and the pursuit of happiness. Moreover,* ***deliberate acts to destroy and ruin the life of Newsome and to make it difficult for her to obtain employment.*** *While Newsome is entitled to the relief from damages sustained, our government and others have gone to great lengths to see that Newsome is not financially compensated for damages/injuries sustained. It is because of our own government's actions and systematic discrimination leveled against African-Americans and/or people of color, that W&L felt a liberty and very comfortable in committing criminal/civil acts against Newsome.*

67. Reduction-in-force is inapplicable and a defense that cannot be used by W&L. Moreover, that any such defense is **PRETEXT** and asserted to cover-up/mask an illegal animus. *An investigation into this Charge will support that W&L hired* ***several*** *white employees* ***AFTER*** *Newsome's unlawful/illegal termination.* Supporting W&L's termination of Newsome's employment was discriminatory.

68. *An investigation and research into this instant Charge as well as prior handling of charges filed with the EEOC and other organizations in the past, will support efforts taken to ruin Newsome's life* ***(as evidenced on the INTERNET)*** *and retaliation by government officials against Newsome for reporting civil violations and/or challenging the EEOC's failure to perform ministerial duties mandated by statutes/laws. Moreover, an investigation will support how* ***government officials posting of INTERNET information violates the very policies and procedures of the EEOC and decisions rendered by it.*** *Nevertheless, Newsome has had to endure such civil/criminal wrongs for exercising said rights from this country's government.*

69. *An investigation and research into this instant Charge may support that* ***W&L engaged in such illegal/unlawful acts because of its knowledge that government entities and others have been allowed to get away with such civil/criminal wrongs leveled against Newsome. Therefore, W&L engaging in such civil/criminal wrongs is in hopes that the EEOC and others will extend to it the same favors given to others that sought to destroy Newsome's life.***

70. In W&L's termination of Newsome it violated several of its own *Policies and Procedures*; moreover, violated those provided in its "*Employer's Guide*" that is provided to

employers and/or the public. W&L doing so because it knew that it was in violation of Title VII, Civil Rights Act, etc. – thus, a reasonable mind may conclude that W&L's taking of Newsome's *Wood & Lamping LLP Policies and Procedures Manual* was its knowledge that it was committing criminal/civil wrongs against Newsome and, therefore, sought to cover-up and/or mask such illegal animus.[16]

V. HARASSMENT:

71. An investigation and research into this Charge will support that during Newsome's employment with W&L she was repeatedly subjected to harassment and retaliation as a direct and proximate result of W&L's knowledge of her filing of EEOC charges, engagement in protected activities, ***systematic*** *discrimination,* etc. Moreover, *W&L terminated Newsome's employment with intention to bring said information (filing of past charges/engagement in civil lawsuits) to the attention of the EEOC/OCRC and/or government entity*. ***W&L will do so thinking that the revealing of such information will allow it to get away with practices that have been used by former employers of Newsome and the EEOC has condoned***. W&L set out to create a hostile, discriminatory and harassing environment for the purposes of interfering with Newsome's performance of job duties, efforts of forcing her out of the workplace and efforts of creating situations to mask its unlawful/illegal termination of Newsome's employment because of her participation on protected activities; moreover, *W&L is **relying upon the EEOC** to allow such systematic discriminatory practices to continue against Newsome*:

> African-American . . . suffered harassment because of his race, which was severe and pervasive, as required to support Title VII racial harassment and retaliatory harassment claims against city employer; firefighter was subjected to a plethora of racially offensive jokes, racist graffiti, and derogatory comments, *he experienced social isolation and racial segregation, one supervisor engaged in a **pattern of confrontational** and **caustic behavior*** toward group . . .who were almost exclusively African-American, including plaintiff, the supervisor repeatedly forced . . .to perform extra and demeaning duties, and . . .took early retirement on the basis of stress. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. §2000e et seq., *Jordan v. City of Cleveland,* 464 F.3d 584 (6th Cir. **Ohio**, 2006)
>
> To establish that an employer's conduct constitutes severe or pervasive retaliatory harassment, the plaintiff must show that the workplace is **permeated** with discrimination, intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment. *Ceckitti v. City of Columbus, Dept. of Public Safety, Div. of Police,* 14 Fed. Appx. 512 (6th Cir. **Ohio**, 2001)
>
> Evidence of whether the conduct at issue is so severe and pervasive as to create a hostile work environment, as element of claim

[16] The court noted that in the present case an expert on personnel management had testified that the hospital administrator had failed to make a proper investigation before affirming the plaintiff's discharge. In this case expert testimony also revealed that the employer had *committed **thirteen** different **violations** of its firing policies*. The court therefore found the precedent of *Crenshaw* compelling and held that the negligence theory had been proper. *Flanigan v. Prudential Federal Savings & Loan Association,* 720 p2d 257, 107 S.Ct. 564.

> of retaliatory harassment under Title VII, may include the ***frequency*** *of the discriminatory conduct*, its **severity,** whether it is ***physically*** *threatening or* ***humiliating*** *or instead a mere offensive utterance, and whether it reasonably interferes with employee's work performance. Ceckitti.*
>
> Female . . . was not required to establish adverse employment action in order to establish prima facie case of retaliation in Title VII action . . ., where she established that she was subjected to severe or pervasive retaliatory harassment by her supervisor. *Dunnom v. Bennett,* 290 F.Supp.2d 860 (S.D. **Ohio.** W.Div. 2003).

PRIMA FACIE: An investigation into this Complaint will support that the relationship between W&L and Newsome changed as a direct and proximate result of: **(a)** its knowledge of Newsome's engagement in protected activities; **(b)** Horwitz' (an attorney and Partner at W&L) ***retaliation*** against Newsome and advising W&L of not wanting to work with Newsome after Horwitz's and other whites' efforts into getting Newsome to give up rights secured under the Fair Housing Act and other governing statutes/laws failed; **(c)** Gillan was assigned to develop and create a hostile, intimidating, discriminatory, harassing, etc. environment – being assigned Newsome shortly AFTER Horwitz' refusal to work with her and Horwitz' disappointment when Newsome would not waive protected rights. Newsome was repeatedly placed in situations she felt (and a reasonable mind may find) discriminatory, prejudicial, physically threatening, humiliating, offensive, hostile, frequently occurring and interfering with the performance of job duties; **(d)** W&L having its representatives *tamper with Newsome's computer* and began to *subject her to close monitoring/supervision* and depriving her benefits afforded to other employees similarly situated; **(e)** W&L removed and destroyed evidence Newsome kept in her desk ***(Newsome kept her desk locked)*** that it knew would be incriminating in an investigation for employment violations – removing said documents with ill intent and PRETEXT; **(f)** W&L condoned such severe and pervasive retaliatory harassment by attorneys/supervisors with the intent to force Newsome out of the workplace and/or cover-up the unlawful/illegal termination Newsome was subjected to; **(g)** *W&L taking away of Newsome's job duties and giving them to* ***WHITE*** *employees was deliberately done to set the stage for her unlawful/illegal termination; moreover, to see that Newsome had nothing to do in hopes of forcing her out of the workplace. W&L's taking away of Newsome's job duties and giving to* ***white*** *employees* ***over Newsome's OBJECTIONS****. When such efforts failed, W&L created false/frivolous reasons to unlawfully/illegally terminate Newsome's employment.* **SITUATIONS created and directed by W&L**. **(h)** W&L's termination was done to provide Breed's former employer/law firm (SMR&S) with an undue/unlawful/illegal advantage over Newsome in a lawsuit to be filed against her on behalf of Stor-All. For Newsome to remain in the employment of W&L would have created a CONFLICT OF INTEREST in SMR&S representation of Stor-All and W&L representation of Newsome.

> Under Title VII, existence of retaliatory hostile work environment is based upon frequency of retaliatory conduct, its severity, whether it is physically threatening or humiliating, or mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. *Donahoo v. Ohio Dept. of Youth Services,* 237 F.Supp.2d 844 (N.D. **Ohio**.E.Div. 2002).

W&L failed to exercise reasonable care to prevent and correct promptly the discriminatory and harassing behavior. Instead, W&L elected to go forward and continue such practices thinking that it would be successful in masking such behavior. However, to W&L disappointment and its pattern-of-practices it simply continued to change its plans of operation for such discriminatory employment

practices. Practices which resulted in W&L going into Newsome's desk ***(Newsome kept her desk locked)***, removing and destroying documentation that it knew would be incriminating an EEOC/OCRC and/or government agency investigation for employment violations. *Now W&L is disappointed to find that Newsome maintained other copies and refuses to forego protected rights in the recovery of damages for the discriminatory termination/discharge.*

72. An investigation into this instant Charge will support that Newsome timely, properly and adequately took advantage of any preventive or corrective opportunity and reported employment violations to W&L. Moreover, based on W&L's area of specialty in the law (Employment), it knew and/or should have known that it was acting in violations of employment/labor laws governing said matters. Newsome placed W&L on notice of concerns of its employment violations. Rather than correct such violations, W&L made a conscious decision to proceed. Doing so in that it saw the impact and affect such unlawful/illegal employment practices were having on Newsome mentally, physically, emotionally, etc.

> Employer's affirmative defense to retaliatory harassment claims under Title VII is comprised of the following elements: (1) that employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (2) that plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by employer to avoid harm otherwise. *Donahoo.*

73. **PRIMA FACIE: (a)** Newsome is an African-American female and a member of the protected group; **(b)** Newsome was subjected to unwelcomed harassment and discrimination to which she ***repeatedly objected*; (c)** The discrimination/harassment complained of is based on race in that Newsome is African-American and may be based on her sex (female); **(d)** The discrimination/harassment complained of had the purpose and effect of unreasonably interfering with Newsome's work and performance of her duties. Moreover, a work environment to be ***retaliatory, hostile, prejudicial, discriminatory, intimidating, hostile, harassing, threatening***, etc; **(e)** W&L was timely, adequately and properly placed on notice of supervisors' violations (including January 9, 2009 termination) – see EXHIBIT "13" attached hereto. Nevertheless, W&L did nothing to correct or deter such employment violations; **(f)** W&L familiar with the liability it incurred through the unlawful/illegal termination of Newsome's employment attempted to cover-up or mask employment violations by removing and destroying evidence it knew and/or should have known would be incriminating in legal actions brought against it. W&L is now disappointed to find that Newsome had retained another copy of her *Wood & Lamping LLP Policies and Procedures Manual*; **(g)** Since Newsome's termination, W&L has ***repeatedly*** attempted to get Newsome to waive protected rights and agree not to bring legal action against it in exchange for employment benefits to which she is AUTOMATICALLY entitled to. *Said demand by W&L is **clearly in violation** of Newsome's rights and neither is it lawful for W&L to demand such relief that is prohibited by statutes/laws*. See EXHIBIT "15" attached hereto and incorporated by reference as if set forth in full herein.

> To establish a claim against employer under state civil rights law for hostile-work-environment sexual or racial harassment, a plaintiff must establish (1) that the employee was a member of the protected class, (2) that the employee was subjected to unwelcome harassment, (3) that the harassment complained of was based upon sex or race, (4) that the harassment had the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment, and (5) the existence of respondeat superior liability. R.C. §§4112.02(A),

4112.99. *Bell v. Cuyahoga Community College,* 717 N.E.2d 1189 (**Ohio**.App.8.Dist. Cuyahoga.Co., 1998)

Courts employ the **same criteria** used for analyzing hostile-work-environment sexual harassment *when considering claims for* **racial harassment** brought under state civil rights statute. R.C. §§ 4112.02(A), 4112.99. *Bell v. Cuyahoga.*

To prevail on claim of hostile work environment racial harassment under state antidiscrimination statute, the harassment complained of must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. R.C. §4112.01 et seq. *Tarver v. Calex Corp.,* 708 N.E.2d 1041 (**Ohio**.App.7. Dist.Mahoning.Co., 1998)

*To establish a claim against an employer for hostile work environment created by sexual or racial harassment, a plaintiff must establish: (1) the employee was a member of the protected class, (2) the employee was subjected to unwelcome harassment, (3) the harassment complained of was based upon sex or race, (4) the harassment had the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment, and (5) the existence of respondeat superior liability. R.C. § 4112.02(A) (2001); *Courie v. ALCOA,* 832 N.E.2d 1230 (**Ohio**.App.8. Dist.Cuyahoga.Co., 2005)

74. Because W&L's racial composition is majority white, African-Americans were subjected to discriminatory practices and treatment that W&L did not subject white employees to. Therefore, a reasonable mind may conclude W&L's workplace was permeated with discrimination, ridicule and practices severe enough to alter Newsome's employment - to which it adversely affected and resulted in her termination. Moreover, W&L repeatedly allowing such unlawful/illegal practices and abusive working environment.

*Title VII is violated when the workplace is permeated with discriminatory intimidation, ridicule and insult sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Peterson v. Buckeye Steel Casings,* 729 N.E.2d 813 (**Ohio**.App.10 Dis.Franklin.Co., 1999)

75. Because of the severe and pervasive racial discrimination, harassment, retaliation, systematic discrimination, etc., Newsome has brought this instant Charge. A Charge necessary to address and expose the continued systematic discriminatory practices; moreover, the *unlawful/illegal* ***STALKING*** of Newsome from employer-to-employer and state-to-state to preclude/deprive her of employment opportunities. W&L creating situations to force Newsome out of the workplace/to quit. When such efforts failed, W&L unlawfully/illegally terminated Newsome's employment. Newsome's termination coming ***without*** *just cause*.

*Under state statute governing unlawful discriminatory practices, a plaintiff may bring a claim in which he can show that severe and pervasive harassment on the basis of race altered the conditions of employment by creating a hostile work environment. R.C. § 4112.02. *Rice v. Cuyahoga Cty. Dept. of Justice,* 2005-**Ohio**-5337.

> To constitute a hostile work environment, conduct must be severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive and that the victim must subjectively regard as abusive. R.C. § 4112.02. *Rice v. Cuyahoga.*

VI. HOSTILE:

76. **PRIMA FACIE:** Newsome believes an investigation will yield **(a)** she is an African-American female and, therefore, a member of the protected class; **(b)** she was subjected to unwelcomed repeat harassment and discriminatory practices – ***systematic*** *discrimination*; **(c)** said harassment was based on race and/or sex – no males were subjected and/or required to endure the harassment/ discriminatory treatment that Newsome had to endure during her employment; **(d)** the harassment unreasonably interfered with Newsome's work performance and affected her physically, mentally and emotionally; moreover, created a very hostile, offensive and intimidating work environment to which Newsome repeatedly objected to; **(e)** there is a basis for W&L's liability – *W&L engaged and/or allowed its employees to engage in such unlawful/illegal employment practices based on Newsome's engagement in protected activity and her refusal to abandon rights secured to her under the applicable statutes/laws, its knowledge of Newsome's filing of EEOC charges; its knowledge of Newsome's engagement in investigations and/or lawsuits.* W&L's knowledge that it violated the laws attempted to cover-up and/or mask such unlawful/illegal employment practices by removing and destroying evidence that it knew would be incriminating. Moreover, attempted to get Newsome to agree to not bring legal action to obtain recovery of liability sustained as a direct and proximate result of civil/criminal wrongs leveled against her – See EXHIBIT "15" attached hereto and incorporated by reference.

> To prove claim of hostile work environment harassment based upon sexual harassment, plaintiff-employee must show by preponderance of evidence that (1) she was member of protected class, (2) she was subjected to unwelcome. . . harassment, (3) the harassment was based on sex, (4) harassment unreasonably interfered with her work performance by creating hostile, offensive, or intimidating work environment, and (5) there is basis for employer liability; same prima facie analysis is applicable to claim of hostile work environment based upon race with third prong requiring plaintiff to establish that she was subjected to unwelcome racial harassment. Civil Rights Acct of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1). *Rogers v. DaimlerChrysler Corp.*, 2008 WL 5061636 (N.D. **Ohio**.W.Div., 2008).

W&L's Partners, Executive Committee, Supervisors having full knowledge and/or should have known it was acting in violation of Newsome's protected rights, Title VII, Civil Rights Act, employment laws, etc. Moreover, that it initiated a plan to cover-up such violations in hopes that Newsome would not have evidence to expose such employment violations. *Therefore, a reasonable mind may conclude that W&L's methods of covering up their civil/criminal wrongs is a* ***common pattern-of-practice*** *with it and its knowledge of* ***willful*** *and* ***blatant*** *employment violations.*

77. **PRIMA FACIE:** **(a)** the harassment W&L subjected Newsome to was unwelcomed. **(b)** W&L's harassment of Newsome was based on her race and sex. **(c)** W&L's harassment of Newsome was sufficiently severe or pervasive to affect the terms, conditions, or privileges of her employment, or any matter directly or indirectly related to Newsome's employment. **(d)** The harassment W&L subjected Newsome to was committed by supervisor(s) and W&L, through its

supervisory personnel, knew and/or should have known of the harassment because Newsome complained and W&L was allowing supervisory personnel to engage in the harassment leveled against Newsome. W&L failed to take immediate and appropriate corrective action – instead went to great lengths (*i.e. breaking into Newsome's desk that she kept locked for purposes of removing and destroying documents incriminating and supporting W&L discriminatory practices; moreover* ***failure*** *to implement polices/procedures*) to cover-up/mask employment violations.

> In order to establish a claim of hostile-environment sexual harassment, the plaintiff must show (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action. R.C. §4112.02(A). *Stachura v. Toledo,* 2008-**Ohio**-3581 (**Ohio**.App.6. Dist.Lucas.Co., 2008)
>
> Harassment because of sex need not be explicitly sexual; if sufficiently patterned or pervasive, any harassment or unequal treatment of an employee that would not occur but for the sex of the employee is unlawful. R.C. § 4112.02(A). *Stachura.*
>
> In order to determine whether the harassing conduct was severe or pervasive enough to affect the conditions of the plaintiff's employment, the trier of fact, or the reviewing court, must view the work environment as a whole and consider the totality of all the facts and surrounding circumstances, including the cumulative effect of all episodes of sexual or other abusive treatment. R.C. § 4112.02(A). *Stachura.*

VII. RETALIATION:[17]

78. **PRIMA FACIE: (a)** Newsome engaged in protected activities. **(b)** At the time of Newsome's termination, W&L had knowledge of her engagement in protected activities. **(c)** W&L took an adverse employment action against Newsome in retaliation to her engagement in protected activities. **(d)** There is a **causal connection** between Newsome's engagement and protected activities, W&L's knowledge of said engagement and W&L's termination of Newsome's employment.

79. **PRIMA FACIE: (a)** W&L had actual and imputed knowledge that Newsome participated in protected activities. Based on said knowledge, W&L retaliated against Newsome for

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*Schwartz, Manes, Ruby & Slovin.

[17] *Mack v. B.F. Goodrich Co.,* 699 N.E.2d 97 (Ohio.App.8.Dist.Cuyahoga.Co., 1997) - To establish a prima facie case of retaliatory discharge, an employee must produce the following evidence: (1) that she engaged in protected activity; (2) that her protected activities were known to employer; (3) that employer took adverse employment action against her and stated reasons that were not the true retaliatory reason; and (4) that there is a **causal connection** between the protected activity and the adverse employment action. *White v. Mt. Carmel Med. Ctr.,* 780 N.E.2d 1054 (Ohio.App.10.Dist.Franklin.Co., 2002) - To support a claim for retaliatory discharge, an employee must show that: (1) she engaged in a protected activity; (2) she was the subject of an adverse employment action; and (3) a causal link existed between the protected activity and the adverse action.

her engagement in protected activities and for her exercising rights secured to her under the applicable statutes/laws governing said matters. **(b)** W&L's termination of Newsome's employment was in retaliation and in efforts of providing those involved in matters involving protected activities she engaged in with an undue/unlawful advantage over Newsome. W&L's discriminatory practices were deliberately done to cause Newsome financial devastation and ruin to preclude/prevent her from exercising protected rights and pursuing justice. **(c)** W&L aware that it was committing civil/criminal wrongs removed and destroyed evidence from Newsome's desk ***(Newsome kept her desk locked)*** that would be incriminating in any legal action brought by Newsome against it. **(d)** W&L's unlawful/illegal acts were done so that it could provide EEOC/OCRC and/or government agency with information regarding Newsome's engagement in protected activity (**as a defense**) and the taking of Newsome's *Wood & Lamping LLP Policies and Procedures Manual* was done with malicious intent to cover-up such employment violations and efforts to prevent government officials from obtaining information which would yield evidence of violation of its own policies and procedures. **(e)** *W&L termination of Newsome's employment was also done with malicious intent to aid Thomas J. Breed's (attorney Newsome assisted at W&L) former law firm (Schwartz, Manes & Ruby [**"SMR&S"**]) with an undue/illegal advantage over Newsome in a lawsuit W&L was advised would be filed against her on behalf of SMR&S' client.* W&L's termination of Newsome's employment occurred on January 9, 2009 – the same date that SMR&S' client's (Stor-All) Amnesty Weekend began. See EXHBIT "18" attached hereto and incorporated herein as if set forth in full herein. **(f)** SMR&S' client providing Newsome with a fax at her place of employment to place W&L on notice of the matter and problems it was having with Newsome. See **EXHIBIT "21"** – *December 9, 2008 Fax of Lori Whiteside/Stor-All to Newsome* attached hereto and incorporated by reference.

PLEASE TAKE NOTICE: *That while W&L provided its employees with individual fax numbers* – See **EXHIBIT "22"** – W&L Phone/***Individual*** Fax Directory attached hereto and incorporated herein, *SMR&S' client* ***(without Newsome's knowledge a fax was being sent – Newsome obtained seeing it laying around)*** *elected to send its December 19, 2008 fax to W&L's main number for ill purposes and in furtherance of the* ***systematic*** *discrimination W&L was subjecting Newsome to. Newsome did not provide Stor-All's representative with W&L's main fax number. Stor-All's representative submitted fax addressing matter it was having with Newsome to place W&L on notice in that it would be seeking W&L's assistance in terminating Newsome's employment – due to CONFLICT OF INTEREST that existed because Stor-All's attorney worked with Breed's former law firm. The acts of Stor-All and W&L were willful and malicious with intent to bring about the termination of Newsome's employment. W&L's termination of Newsome's employment was to provide SMR&S' client with an undue/unlawful advantage over Newsome in the lawsuit W&L was advised would be filed against her. W&L having knowledge that under its "REPRESENTATION" policy, Newsome could request representation in legal matter SMR&S brought on behalf of Stor-All. Thus, would create a CONFLICT OF INTEREST due to Breed's former employment and relationship to SMR&S.* ***It is important to note that ALL of those engaging in such unlawful/illegal activities being WHITE. It is important to note, decision makers at W&L reaching a decision to terminate Newsome's employment were ALL WHITE. Decision makers were aware of Newsome's engagement in protected activities. There is a causal connection between Newsome's engagement in protected activities, W&L's termination of Newsome's employment and SMR&S' filing of lawsuit against Newsome.*** – See **EXHIBIT "23"** – *February 6, 2009 Correspondence of Newsome to David Meranus* attached hereto and incorporated by reference as if set forth in full herein.

> Employer violated § 2000e-(3)(a) by discharging an employee after learning he had filed charges of discrimination against a former employer. **EEOC Decision No**. 71-460, 1973, **EEOC Decisions** ¶ 6175.

> To establish a violation of § 2000e-3(a), it must be shown that the employer had actual or imputed knowledge that the plaintiff participated in a protected activity; and, further that based on such knowledge the discharge was in fact retaliatory – that is, motivated by the employee's participation in protected activity with the intent to retaliate against the employee for such participation, and not by unrelated legitimate business reasons. However, while retaliation must be the principal reason for the discharge it need not be the sole reason; and an employment action based in part on an unlawful consideration is not rendered lawful by the coexistence of a nondiscriminatory reason. If any element of retaliation or reprisal played any part in the discharge, no matter how remote or slight or tangential, it is in violation of the law. The trier of fact determines the reasons for the employee's discharge based on reasonable inferences drawn from the totality of facts, the conglomerate of activities, and the entire web of circumstances presented by the evidence. In examining the evidence, the trier of fact may consider such factors as the timing of the discharge; departures from customary dismissal notice or procedures afforded other employees; harassment, surveillance, or other disparate treatment or special conditions of employment in comparison to similarly situated employees or to prior treatment of the plaintiff immediately following the protected activity and leading up to the discharge; threats or retaliation against other employees for engaging in similar conduct; absence of a reasonable alternative reason for the discharge. . . 7 Am Jur POF 2d 38, 39. (*Tidwell v. American Oil Co.*, 332 F.Supp. 424)

SMR&S' attorney, David Meranus (a white male), disappointed that he had lost legal argument before the Hamilton County Municipal Court regarding transfer of case to higher court filed by Newsome in a motion to transfer matter to higher court, at the signing of Magistrate's Order, advised of his knowledge of Newsome's engagement in protected activity. See **EXHIBIT "24"** – February 6, 2009 correspondence to Meranus *with a copy being sent to W&L's representatives* attached hereto and incorporated by reference. Therefore, a reasonable mind may conclude that W&L had knowledge also of Newsome's engagement in protected activities and agreed to termination of her employment to provide SMR&S and its client with an undue/unlawful/illegal advantage over Newsome in the lawsuit filed against her; moreover, to financially devastate Newsome to preclude her from defending against the lawsuit W&L knew SMR&S would be filing on behalf of its client. *SMR&S' counsel supporting concerns of Newsome that she was* ***being STALKED*** *from* ***employer-to-employer/job-to-job*** *and* ***state-to-state*** *IN* ***RETALIATION*** *of her engagement in protected activities – filing of EEOC Charge.* **UNLAWFUL/ILLEGAL PRACTICES** *being done to deprive Newsome* ***equal employment opportunities*** *for exposing and/or reporting employment violations.*

80. *The unlawful/illegal practices of SMR&S, its clients and others STALKING Newsome from job-to-job/state-to-state to contact her employer(s) of her engagement in protected activities was of serious concerns to Newsome, that in December 2008, Newsome went to Washington, D.C. (as mentioned in February 6, 2009 correspondence to Meranus) to address such CRIMINAL acts. Moreover, the conversation with Meranus confirmed Title VII violations in which W&L engaged in with SMR&S.*

81. To establish a violation of ~2000e-3(a), it must be shown that employer had actual or imputed knowledge that the plaintiff participated in a protected activity (7 Am. Jur. Proof of Facts 2d

38, 39; EEOC Decision No. 71-1000, 1973 CCH EEOC Decisions ¶6194; EEOC Decision No. 70-840, 1973 CCH EEOC Decisions ¶6155), and further, that based on such knowledge the discharge was in fact retaliatory - that is, motivated by the employee's participation in protected activity with the intent to retaliate against the employee for such participation, and not by unrelated legitimate business reasons.

82. **PRIMA FACIE:** W&L terminated Newsome's employment because of: **(a)** its knowledge that Newsome had filed and/or would be filing EEOC charge(s) against another employer; and **(b)** its knowledge that Newsome was engaged in protected activities (past, present and knowledge of future intent). While W&L knew that its termination and retaliation against Newsome for her engagement in exercising her rights and/or engaging in protected activities were acts prohibited by statutes/laws and infringed upon her rights, it nevertheless, proceeded to commit said illegal/unlawful acts against Newsome. Therefore, *Newsome is entitled to an injunction of and against W&L restraining it from refusing to employ her because she has filed EEOC complaints against employers in the past and its knowledge of her intent to do so in the future as well as knowledge of Newsome's engagement in protected activities (under the applicable statutes/laws)*.

> *Barela v. United Nuclear Corp.*, 317 F.Supp. 1217 (1970) - **(n. 1)**Refusal to process plaintiff's application for employment simply because he had filed with Equal Employment Opportunity Commission a charge against another employer violated Civil Rights Act. **(n.2)** Filing of charge against employer with Equal Employment Opportunity Commission is protected right under Civil Rights Act and conduct infringing upon that right cannot be permitted. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).
>
> . . .(N.2) - The evidence will support no other inference than that United . . . did not want the plaintiff only because of the charge against Kerr. . . The filing of such a charge **is a protected right** under the Civil Rights Act, and conduct infringing upon that right **cannot** be permitted. See *Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998 (5th Cir. 1969): *Equal Employment Opportunity Commission v. United Ass'n. of Journeymen and Apprentices of the Plumbing and Pipefitting Indus. of the United States and Canada, Local Union No. 189*, 311 F.Supp. 464 (S.D.**Ohio**, 1970).
>
> (n.3) Plaintiff was entitled to injunction restraining defendant from refusing to process his application for employment simply because he had a complaint pending before Equal Employment Opportunity Commission against another employer. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

> ***Equal Employment Opportunity Commission*** *v. United Ass'n of Journeymen*, 311 F.Supp. 464 (D.C.**Ohio** 1970) - **(n.2)** By utilizing statutorily established machinery of the equal employment opportunity commission an employee **is exercising a protected right** and federal court cannot permit conduct which would tend to infringe on that right to be practiced with impunity. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

> *Christopher v. Stouder Memorial Hosp.*, 936 F.2d 870 (C.A.6.**Ohio**, 1991) - Fact that Congress used words "any individual" in provision making it unlawful employment practice to refuse to hire or

discriminate against person, while it used term "employees or applicants for employment" in retaliation provision of Title VII, did not limit class of persons entitled to sue for retaliation; rather, **Congress intended to prohibit** discrimination on basis of race or sex and *to **prohibit** discrimination against person who engages in protected activity under Title VII.* Civil Rights Act of 1964, §§ 703, 704, as amended, 42 U.S.C.A. §§ 2000e-2, 2000e-3.

83. **PRIMA FACIE:** An investigation into this instant Complaint will support a prima facie case[18] wherein W&L retaliated under Title VII against Newsome in that: **(a)** Newsome engaged in activity protected under Title VII – W&L having knowledge of Newsome's filing of past EEOC charges, filing of lawsuits addressing said violations, and engagement in other protected activities, etc.; **(b)** Newsome's exercise of her civil rights as well as her intentions to bring additional legal actions for civil rights violations were known by W&L; **(c)** thereafter, W&L made a willful, conscious and deliberate decision which adversely affected Newsome's employment – terminating employment; and **(d)** there was a **causal connection** between Newsome's engagement in the protected activities made known to W&L and its adverse action in the retaliating, harassing, and terminating employment, etc. of Newsome. Moreover, W&L engaged with others (by conspiring) to deprive Newsome of protected rights and infringe upon said rights.

> ***E.E.O.C.*** *v. Avery Dennison Corp.,* 104 F.3d 858 (C.A.6.**Ohio**,1997) - To establish prima facie case of retaliation under Title VII, employee must prove by preponderance of evidence that: (1) employee engaged in activity protected by Title VII; (2) employee's exercise of his or her civil rights was known by employer; (3) thereafter, employer took employment action adverse to employee; and (4) there was causal connection between protected activity and adverse action. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).
>
> *Wille v. Hunkar Lab., Inc.,* 724 N.E.2d 492 (**Ohio**.App.1.Dist. **Hamilton**.Co.,1998) - To state a claim of retaliation, an employee must demonstrate that: (1) she engaged in a protected activity; (2) employer knew of her participation in the protected activity; (3) *employer engaged in retaliatory conduct;* and (4) *the alleged retaliatory action followed employee's protected activity sufficiently close in time to warrant the inference of retaliatory motivation.*

84. **PRIMA FACIE:** An investigation will yield evidence that W&L knew that: **(a)** Newsome during her employment had filed a complaint with the applicable agency regarding rights secured/protected under the Fair Housing Act; filed the appropriate complaint with the applicable agencies addressing civil rights violations, filed a complaint with the Federal Bureau of Investigations ("FBI"), Newsome's engagement in protected activities (filing of past EEOC charges and intent to bring future legal lawsuits) – engagement in pending lawsuits involving

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[18] *DiPietro v. Morgan Stanley DW Inc.,* 517 F.Supp.2d 1016 (S.D.Ohio.W.Div., 2007) - To establish a prima facie case of retaliation, employee must show that (1) he engaged in a protected activity; (2) employer was aware of such activity; (3) employer thereafter took adverse employment action against employee; and (4) there was a **causal connection** between the protected activity and the adverse employment action. *Spengler v. Worthington Cylinders,* 514 F.Supp.2d 1011 (S.D.Ohio.E.Div., 2007) - Under McDonnell Douglas burden-shifting framework, employee must make out prima facie case of retaliation by showing that (1) he or she engaged in a protected activity, (2) employer had knowledge of employee's protected conduct, (3) employer took an adverse employment action towards employee, and (4) there was a **causal connection** between the protected activity and the adverse employment action.

Constitutional/Civil Rights violations, etc.; **(b)** W&L having knowledge of Newsome's participation and her opposition to said civil rights violations; **(c)** W&L terminated Newsome's employment for purposes of: unlawfully/illegally aiding others, providing others to which Newsome brought actions and would be bringing legal actions with an undue advantage – terminating Newsome's employment to financially devastate her, prevent her from seeking legal recourse (i.e. for lack of financial income would provide those Newsome opposed with an undue and/or unlawful/illegal advantage). W&L having knowledge and/or should have known that one of its attorneys, Thomas J. Breed's, former law firm (SMR&S]) was about to bring a lawsuit against Newsome. **W&L <u>assigning</u> <u>Newsome</u> to Breed to provide him with legal support**. Therefore, in an effort to provide SMR&S with an undue advantage (i.e. LEGAL and financial advantage, etc.) over Newsome, W&L terminated Newsome's employment in efforts of aiding SMR&S. W&L having knowledge of SMR&S' client's legal issues with Newsome because SMR&S client (Stor-All) sent Newsome a fax at her place of employment for W&L to review and notification of the legal issues going on [See EXHIBIT "21" - fax from Stor-All's representative]; moreover, SMR&S' knowledge of Newsome's engagement in protected activities – see correspondence to Meranus of February 6, 2009 at EXHIBIT "_" attached hereto. Said knowledge of SMR&S knowledge of Newsome's engagement in protected activity was confirmed on February 6, 2009, at a hearing in which SMR&S lost its argument regarding transfer of a lawsuit to a higher court's jurisdiction – Newsome filing the appropriate Motion to Transfer and court granting her request for transfer. Disappointed with this loss Stor-All's attorney, David Meranus, made it known to Newsome of his knowledge of her engagement in protected activity. Therefore, a reasonable mind may conclude that if Meranus had knowledge of such information, that W&L had knowledge of Newsome's engagement in protected activities and reached an agreement to terminate her employment to provide SMR&S and its client (Stor-All) with an undue advantage in the lawsuit W&L knew and/or may have known was going to be filed against Newsome; moreover, effort taken by W&L and SMR&S to eliminate the CONFLICT OF INTEREST both knew would arise if Newsome were to remain in the employment of W&L because of the support Newsome provided Breed.

85. W&L using such information for unlawful/illegal purposes – to deprive Newsome of employment and rights to engage in protected activities. Evidence further establishing a **<u>causal connection</u>** between Newsome's opposition to employment violations, her participation or in protected activities, SMR&S' knowledge of Newsome's engagement in protected activity and employment with W&L, and W&L's adverse action taken against Newsome to terminate her employment.

> *Zanders v. National R.R. Passenger Corp.*, 898 F.2d 1127 (C.A.6.**Ohio**,1990) - Plaintiff claiming retaliatory discrimination must show protected participation or opposition under Title VII, alleged retaliator's knowledge of that participation or opposition, employment action or actions disadvantaging persons engaged in protected activities, and **<u>causal connection</u>** between protected participation or opposition and employment action, that is, retaliatory motive playing part in adverse employment action. Civil Rights Act of 1964, §§ 704, 704(a), 42 U.S.C.A. §§ 2000e-3, 2000e-3(a).

PRIMA FACIE - <u>CAUSAL CONNECTION</u>: (a) W&L's termination of Newsome occurred on January 9, 2009. **(b)** SMR&S' client's (Stor-All's) Amnesty Weekend was set for January 9th thru January 11th. Stor-All advising Newsome of Amnesty Weekend via facsimile at the number assigned Newsome by W&L. See **EXHIBIT "18"** – *12/19/08 Fax From Lori Whiteside/Stor-All* attached hereto and incorporated by reference. **(c)** On January 9, 2009, Stor-All provided Newsome with "NOTICE TO LEAVE THE PREMISES." See **EXHIBIT "19"** attached hereto and

incorporated by reference. **(d)** *While Stor-All provided Newsome with faxes at W&L during her employment, **on the date of Newsome's termination** Stor-All did not provide her with the "Notice to Leave the Premises" via facsimile (as it did with the 12/19/08 fax and others) **because it knew that W&L was terminating Newsome's employment on said date***. **(e)** On January 20, 2009, SMR&S on behalf of Stor-All filed a lawsuit against Newsome.

86. **PRIMA FACIE:** Newsome believes an investigation into this instant Complaint will show a prima facie case, that: **(a)** she engaged in activity protected by Title VII – as early as October 2006, W&L was aware of what issues Newsome was having with her landlord and claims of violation under the Fair Housing Act. While W&L allowed one of its attorneys (Elizabeth Horwitz) to assist Newsome with this matter, Horwitz became upset when Newsome refused to waive her rights under the Fair Housing Act, Civil Rights, etc. *Horwitz is a **white** female as well as landlords and their counsel being **white**. Therefore, those committing such civil wrongs and attempting to get Newsome (African-American) to waive her rights under the Fair Housing Act and applicable statutes/laws were white and acting in clear violation of laws prohibiting their activities.* Horwitz in retaliation requested W&L remove Newsome from providing her legal assistant/support in which it obliged said request; **(b)** Newsome in the preservation of her rights proceeded to bring legal action as well as followed up with filing the applicable charge under the Fair Housing Act with the appropriate agency – to which W&L was fully aware and/or should have known Newsome had elected to exercise protected rights – as well as the criminal complaint Newsome filed with the FBI. Moreover, W&L knew and/or should have known of past, present as well as Newsome's intent to bring future legal actions for violations to her civil rights and/or protected rights; **(c)** W&L took and adverse employment action against Newsome – retaliating against Newsome, subjecting her to harassment and hostile work environment, which eventually led to the terminating Newsome's employment - immediately following the accommodation of Horwitz' requests, W&L assigned an attorney (Brian P. Gillan) to Newsome for purposes of retaliation, harassment, hostile and discriminatory treatment. *Gillan being assigned Newsome for purposes of creating a hostile and discriminating environment for purposes creating a situation to mask W&L's unlawful/illegal animus and criminal/civil wrongs it engaged in, in terminating Newsome's employment. Moreover, to create an environment so harassing, hostile, etc. to force Newsome to quit*; and **(d)** there is a **causal connection** between W&L's knowledge of Newsome's engagement in protected activities and the pattern-of-discriminatory practices **(stalking of Newsome from job-to-job/employer-to-employer** and **state-to-state)** rendered Newsome; furthermore, a *causal connection* between W&L's engagement with others to infringe upon the protected rights of Newsome. Such ***systematic*** discriminatory practices were done under the direction of those who are white – (i.e. majority of decision makers being white).

> *Johnson v. University of Cincinnati,* 215 F.3d 561 (C.A.6.**Ohio**, 2000) - To establish a claim under the opposition or the participation clause of Title VII, plaintiff must meet the test of a slightly modified McDonnell Douglas framework by showing, at the prima facie case stage, that: (1) he engaged in activity protected by Title VII; (2) this exercise of protected rights was known to defendants; (3) defendants thereafter took an adverse employment action against plaintiff, or plaintiff was subjected to severe or pervasive retaliatory harassment by a supervisor; and (4) there was a **causal connection** between the protected activity and the adverse employment action or harassment. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).
>
> **(n.7)** Under the direct evidence approach to proving employment discrimination, once the plaintiff introduces evidence that the employer terminated him *because of his **race** or other*

protected status, the burden of persuasion shifts to the employer to prove that **it would have terminated the plaintiff even had it not been motivated by discrimination**. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

E.E.O.C. *v. Ohio Edison Co.,* 7 F.3d 541 (C.A.6.**Ohio**, 1993) - Title VII section prohibiting discrimination by employer against employee because employee has "opposed any practice" should be broadly construed to include claim in which employee, or his representative, has opposed any unlawful employment practice. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

87. W&L was timely, properly and adequately placed on notice as to the criminal/civil wrongs rendered Newsome on October 9, 2008. Acts resulting as a direct and proximate result of those committing such criminal acts due to ***knowledge of Newsome's engagement in protected activities*** and relying on those in positions to deter such unlawful/illegal ***actually engaging in and/or condoning such criminal activities***. The unlawful/illegal acts of Newsome's landlords resulted in Newsome having to file the appropriate criminal charge with the FBI. W&L being notified of said matters and Newsome's engagement in protected activities. See **EXHIBIT "12"** attached hereto and incorporated by reference. Further supporting that W&L had knowledge of Newsome's engagement in protected activity. *This is the matter W&L authorized Horwitz to assist Newsome with. Horwitz abruptly abandoning Newsome because she refused to waive rights secured to her under the Fair Housing Act and/or applicable statutes/laws governing such matters*. Acts resulting as a direct and proximate result of Newsome's landlord depriving her rights secured under the Fair Housing Act; moreover, ***relying upon special favors from his attorneys and their relations to court officials and certain law enforcement***.

E.E.O.C. v. Ohio Edison Co., 7 F.3d 541 (C.A.6.**Ohio**,1993) - Employer may not discriminate against employee because employee opposed unlawful employment practice, or made charge, or participated in investigation, proceeding, or hearing . . .

Weaver v. Ohio State University, 71 F.Supp.2d 789 (S.D.**Ohio**. E.Div., 1998) - Plaintiff **is not** required to show that she engaged in formal proceedings under Title VII in order to establish retaliation claim; an informal complaint to an employer concerning practices which are prohibited by Title VII is sufficient to constitute protected activity. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

88. W&L *is* ***refusing to reinstate*** Newsome as required by statutes/laws governing said matters. W&L's failure to reinstate Newsome is in violation of her Constitutional/Civil Rights. *W&L is attempting to force Newsome to forgo protected rights – i.e. by* ***requesting that she agree not to bring legal actions*** *against it in exchange* ***for benefits to which she is entitled to*** *and benefits afforded to whites and/or those similarly situated.* See EXHIBIT "15" – *February 4, 2009 Letter of Berninger to Newsome* attached hereto and incorporated by reference. W&L knew and/or should have known that Newsome would bring legal action against it for liability sustained. W&L having such knowledge made a conscious and willful decision to remove and destroy evidence that it knew would be incriminating and support Title VII, Constitutional/Civil Rights violations, etc.

To prove a prima facie case of retaliation under Title VII or ***state employment discrimination statute***, a plaintiff must demonstrate that (1) she engaged in a

protected activity, (2) her employer knew about the protected activity, (3) her employer took adverse employment action against the plaintiff, and (4) there was a **causal connection** between the protected activity and the adverse employment action. R.C. §4112.02(I). *Hollingsworth v. Time Warner Cable,* 812 N.E.2d 976 (**Ohio**.App.1. Dist.**Hamilton**.Co., 2004)

In order to establish a prima facie case of the unlawful discriminatory employment practice of retaliation, a plaintiff must demonstrate (1) that she engaged in protected activity; (2) that the employer knew of her exercise of protected rights; (3) that she was the subject of adverse employment action; and (4) that there is a causal link between the protected activity and the adverse employment action. R.C. § 4112.02(I). *Valentine v. Westshore Primary Care Assoc.,* 104 Fair Empl.Prac.Cas. (BNA) 917 (**Ohio**.App.8. Dist.Cuyahoga.Co., 2008)

To establish prima facie case of retaliation, employee is required to prove the following elements: employee engaged in protected activity, such as filing claims with Ohio Civil Rights Commission (OCRC); employer knew of employee's participation in protected activity; employer engaged in retaliatory conduct; and causal link exists between protected activity and adverse action. R.C. § 4112.02(I). *Carney v. Cleveland Hts. –Univ. Hts. City School Dist.,* 758 N.E.2d 234 (**Ohio**.App.8. Dist.Cuyahoga.Co., 2001)

To establish a claim of retaliation under Title VII's participation clause, plaintiff must make a prima facie case by showing that defendants discharged him because he filed a claim with the EEOC. *Johnson v. University of Cincinnati,* 215 F.3d 561 (6th Cir. **Ohio**, 2000)

To prove a claim of retaliation, a plaintiff must establish three elements: (1) that she engaged in protected activity, (2) that she was subjected to an adverse employment action, and (3) that a causal link exists between a protected activity and the adverse action. R.C. § 4112.02(I). *Peterson v. Buckeye Steel Castings,* 729 N.E.2d 813 (**Ohio**.App.10. Dist.Franklin.Co., 1999)

Employee's efforts to report to his superiors co-worker's alleged . . . harassment and abuse of female employees constituted protected activity, for purposes of retaliatory discharge claim. R.C. § 4112.02(I). *Thacher v. Goodwill Industries of Akron,* 690 N.E.2d 1320 (**Ohio**.App.9. Dist.Summit.Co., 1997)

Opposing employer's condoning of illegal discrimination is itself protected activity for purposes of claim of retaliatory discharge. R.C. § 4112.02(I). *Thatcher.*

Employer knew of employee's participation in protected activity, as an element of employee's prima facie case against employer for discriminatory retaliation for demoting and firing him after employee participated in fellow employee's racial discrimination claim against employer for failing to provide him health care benefits; prior to fellow employee's claim, employee questioned employer about fellow employee's lack of benefits, shortly after which fellow employee asked employer for benefits, Civil Rights Commission named employee as a witness in fellow employee's discrimination claim before it, and employee was the only witness on

Commission's list who could have supplied fellow employee with benefits information. R.C. § 4112.02. *HLS Bonding v. Ohio Civ. Rights Comm.*, 104 Fair Empl. Prac.Cas. (BNA) 512 (**Ohio**.App.10.Dist.Franklin.Co., 2008)

Complaining to the employer about . . . harassment is a protected activity for the purposes of a claim for retaliatory discharge. *Payton v. Receivables Outsourcing, Inc.*, 840 N.E.2d 236 (**Ohio**.App.8. Dist.Cuyahoga.Co., 2005)

An employee is engaged in a protected activity, for the purposes of a claim of retaliatory discharge, if she opposes a discriminatory employment action or has made a charge, testified, assisted or participated in any investigation, proceeding, or hearing concerning discriminatory employment practices. *Payton v. Receivables.*

89. *W&L created workplace situations which it knew was discriminatory in practices – i.e. taking away of Newsome's job duties and giving them to white employees. Doing so over Newsome's objections. W&L relied upon such discriminatory practices in terminating Newsome's employment. W&L relied upon such discriminatory practices in its effort to create an ALL-white workforce it is trying to create*.

90. **Newsome shared concerns with Andrea Griffith** (Human Resources Representative) **of the need to stay busy and the taking away of her job duties.** ***Newsome advising Griffith of her objections to W&L's taking away of job duties.***

Confining member to ***menial tasks***, deny them access to same job opportunities within an existing employment as are available to members of other groups, can be just as burdensome on the affected persons which results in the denial of any work. Job assignments are recognized as a *vitally* important aspect of employment, which **must** be *tainted with improper discrimination*. [39 POF 3d 63-64]

*Race discrimination occurred in W&L's initial job assignments and transfers, and, when such assignment changes which Newsome **did not** seek **but was forced** to undergo and over her objections was carried out, W&L engaged in practices violating Title VII and/or employment laws*.

VIII. PRETEXT/BAD FAITH:

91. Wood & Lamping went into Newsome's desk ***(Newsome kept her desk locked)*** to remove and destroy documents – i.e. *Wood & Lamping LLP Policies and Procedures Manual* (revision date as of **July 2006**). Newsome's ***employment date was September 11, 2006***, although she worked at W&L as a contract employment prior to permanent employment. W&L's removal of documentation was done for purposes of destroying evidence it having knowledge would be incriminating and its intent to provide false and misleading information to government agencies should Newsome decide to bring legal action against it. A reasonable mind may conclude that W&L's taking and destroying of said evidence was for purposes of obstructing an investigation and efforts to obtain an undue/unlawful/illegal advantage over Newsome should she bring legal action. Moreover, *W&L's taking and destruction of documentation further supports premeditation, willful and malicious intent to engage in criminal/civil wrongs leveled against Newsome. W&L's taking and destruction of evidence further supports its knowledge that it was **acting in violation of its OWN** policies and procedures in the termination of Newsome's employment.* W&L did not want Newsome to have documentation to refer to that would reveal said violations of its policies and procedures. *An*

investigation into this instant Charge will support that W&L ***failed*** *to follow proscribed procedures in the handling of Newsome's request for medical leave as well as its termination of Newsome's employment.* ***W&L's removal and destruction (willful, deliberate and malicious) of incriminating evidence clearly supports PRETEXT and its acts were done in bad faith – i.e. to cover-up/mask discriminatory practices, obstruction of investigation, deprivation of equal employment opportunities, failure to abide by its own policies and procedures, etc.***

> ***What Constitutes Evidence of Bad Faith – Generally:*** . . . the existence of an employee booklet or self-imposed policies for terminations have given rise to the application of the implied covenant and limited the common-law employment rule by restricting the employer's right to discharge employees without cause. In these cases, *the implied covenant is breached when the discharge is without good cause or when the employer* ***fails to follow the prescribed procedures*** *for terminating employees*. The implied covenant may also be violated by conduct that falls into other categories, such as retaliatory firings. . . see 48 Am Jur POF 2d 217-218

92. W&L knew and/or should have known that their termination of Newsome's employment was PRETEXT to cover-up/mask an illegal animus. During Newsome's employment, she repeatedly advised of concerns of discriminatory practices. As Newsome did with the January 9, 2009 termination. See EXHIBIT "16" - *February 2, 2009 Letter of Newsome to Paul R. Berninger* attached hereto and incorporated by reference as if set forth in full herein which states in part:

> February 2, 2009 Letter From Newsome to Paul R. Berninger:
>
> 7. **PRETEXT** on the part of Wood & Lamping can also be shown. I believe a reasonable mind and/or jury may conclude that its taking of my *Policies and Procedures Manual* was deliberate, willful and malicious. Moreover, done to cover up unlawful/illegal practices. Clearly prior to my termination Wood & Lamping had ***premeditated, calculated*** and ***well-hatched plan*** to cover-up their retaliatory and discriminatory practices. Such acts which are clearly unacceptable. Thank goodness I decided to make a copy of the Policies and Procedures Manual as well as keep my copy of the binder provided at the Seminar Julie Pugh and Heath Walsh conducted. Even the laws are aware how shady employers are in attempting to cover-up such unlawful/illegal acts. No I believe I have a valid claim.
>
> 8. It is going to be interesting to find out why others (white) felt comfortable acknowledging bringing Complaints and wanting feedback; however, when I presented mine, how Wood & Lamping retaliated; moreover, subjected to discriminatory treatment - which ultimately resulted in my termination.
>
> 9. Elimination of my job – taking away of my job duties were merely acts orchestrated by Wood & Lamping to mask their unlawful/illegal practices (discrimination and retaliation and knowledge of my engagement in protected activities). The Policies and Procedures Manual clearly states no employee

engaging in protected activities would be discriminated and/or retaliated against; however, that was not the case. Again, who am I - just let a jury decide.

10. While you mentioned economic times contributing to Wood & Lamping's decision, that is also up to a jury to decide. Let them release their financial information and of course a great deal of other information as it relates to the information they relied upon to reach their decision. Let the jury decide whether or not my termination was for non-discriminatory reasons. I really do not think so. However, that is not up to me to decide. . .

93. An investigation into this instant Charge will support that W&L's termination of Newsome's employment violated policies and procedures as set forth in its *Wood & Lamping LLP Policies and Procedures Manual* and its *Employer's Guide*. This Employer's Guide was created by W&L and is provided to the public.

94. An investigation into this instant Charge may yield that W&L failed to investigate the harassment and discrimination reported by Newsome. Said failure was a direct and proximate result of its knowingly creating *a hostile, intimidating, discriminatory, threatening, harassing and discriminatory* work environment for purposes of forcing Newsome to quit and/or creating situations for purposes of covering-up/masking the unlawful/illegal employment termination to which it subjected Newsome to.

> ***Employment Termination Policies:*** No particular form for an employee booklet or personnel pamphlet is required before the implied covenant may be invoked to condition the termination of an at-will employee upon a showing of good cause. *All that is required is that the booklet describe what conduct constitutes ground for dismissal and what activities of employees warrant disciplinary action short of discharge*. Where this requirement is met, the court will hold the employer to something approximating a due process standard in determining whether the employer acted in good faith. . . Thus, *the issue was whether the employee had received the required warning provided by the booklet*. .. The court held that a covenant of good faith was implied in the employee's employment contract, and that there was a triable issue of fact as to whether the employer had afforded the employee the process required by the employee booklet.. . .The information upon which the employee relies as an objective manifestation of the employer's implied promise of job security in exchange for good performance may be entirely informal. *A formal printed booklet that is routinely distributed to new workers* ***is not*** *always required, and* ***neither is a statement*** *outlining the employer's termination procedures*. . . *The court also held that an employee booklet with termination policies* ***was not*** *essential to invoke the implied covenant.* . . Where the employee pamphlet or the employer's personnel policies prescribe a procedure for terminating at-will employees and imply that employees will be dismissed only for cause, *the employer* ***has an affirmative duty*** *to carry out its function* ***in good faith*** *and* ***to deal fairly*** *in determining to discharge an employee* . . . The employer's good faith may be evidenced by the fact that the employer performed all of the investigation, hearing and

> evaluative processes strictly in accordance with the provisions of its policies or the employee booklet. . . *On the other hand, where the evidence shows that the process was incomplete and* ***negligently*** *conducted, and included the* ***deliberate alteration of the employee's personnel file*** *in order* ***to document charges against the employee,*** *such evidence may not only result in a finding of bad faith on the employer's part but also* ***lead to the imposition of punitive damages*** *for* ***oppression*** *and* ***malice***. . . .An expert witness testified on plaintiff's behalf that the investigation of the charges against her had been incomplete and that, in the expert's opinion, the dismissal had been unjustified. On the employer's appeal, the court affirmed a judgment awarding plaintiff contract damages, compensatory damages and punitive damages. See 48 Am Jur POF 2d 218 – 222.

95. ***Violation of Employee Handbook Rules:*** Employee handbooks or manuals are frequently used as a basis for implied-in-fact contract rules. An employee handbook may give rise to an implied-in-law contractual obligation. Thus, although there is some authority to the contrary, it has been recognized that the fair dealing portion of the covenant gives the employee the benefit of the rules and regulations promulgated for his protection, as in an employee handbook. While the procedures for discharge in an employee handbook do not necessarily create a contract right in the employee, the employee's dismissal without following the procedures outlined in the handbook may be evidence of bad faith by the employer. 82 Am Jur 2d Wrongful Discharge § 72 (*Gates v. Life of Montana Ins. Co.,* 638 P.2d 1063 (1982)).

96. An investigation into this instant Charge may yield that *W&L* ***manipulated*** *job assignments which adversely affected Newsome*. Therefore, precluding any assertion W&L may attempt to assert under the at-will employment doctrine. W&L hiring Newsome as an Estate Planning Coordinator; however, in its manipulation of job assignments, took away duties for said position and gave to white employees. *W&L doing so over Newsome's objections*. At the time of Newsome's termination she was assigned and provided legal support to Thomas J. Breed. Thomas J. Breed is a Partner and the **Department Head** *of the Estate Planning Group* as well as a member on the Executive Committee (Committee making decision on hiring and termination). Breed being a member of the group authorizing and/or approving the termination of Newsome's employment. *Members of the Executive Committee are* ***ALL*** *white*. Breed being the attorney to which his former law firm (SMR&S) at the time of Newsome's termination would be filing a lawsuit against Newsome – a lawsuit that was filed on or about January 20, 2009 against Newsome. *To allow Newsome to remain in the employment of W&L and continue to assist Breed would have created a CONFLICT OF INTEREST for SMR&S in its representation of Stor-All in the lawsuit filed against Newsome*. W&L **scheming**, **conniving**, and **deviously** working with SMR&S to deprive Newsome equal employment opportunities and relying upon relationships. An investigation will yield that Newsome's termination of employment with W&L was maliciously motivated.

> ***Retaliatory Dismissals:*** Retaliatory firings have been traditionally the ground for invoking the public policy exception to the common-law at-will employment doctrine. In these cases, the retaliatory act has been held to violate the public interest if the employee has been discharged for performing an act that public policy encourages, or for refusing to engage in conduct that public policy condemns.. . . The court held that the . . . seeming ***manipulation*** of job assignments, *the capricious firing*, and the apparent ***connivance of the personnel manager*** *in this course of events* all supported the jury's conclusion that the *dismissal was* ***maliciously*** *motivated*. . . . In other decisions

where an employee's recovery for bad faith wrongful discharge has been upheld, it was relatively clear that the retaliatory dismissal of the employee would constitute a violation of public policy. The public policy issue is rarely given separate treatment, however, where the discharge was independently or alternatively found to constitute a violation of the implied covenant of good faith and fair dealing. 48 Am Jur POF 2d 224-225.

IX. STATISTICS/DISPARATE TREATMENT:

29 CFR § 1607.11 – Disparate Treatment

> The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure – even though validated against job performance in accordance with these guidelines – cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

97. An investigation into this instant Charge may support that hiring and terminations of African-Americans are disproportionate; moreover, adversely affected African-Americans. W&L maintaining approximately ***1% to 3% of African-Americans*** *in workplace consistently comprised of approximately* ***95% to 97%*** *whites*.

98. **PRIMA FACIE:** An investigation in this instant Charge will support that: **(a)** *Newsome's job duties were taken away and given to white employee(s) over her objections.* W&L doing so to provide white employees with job security. *Had W&L not taken job duties from Newsome to give to white employees, it would have been white employees not having work.* **(b)** Newsome was assigned attorneys W&L wanted to keep happy and attorneys that were not pleased with Assistants/Legal Secretary(s) they were assigned; **(c)** Newsome was required to take on various attorneys along with paralegal assignments; however, was not given additional increase in pay rates or promotions as white employees were; **(d)** Salary pay rates/increases were ***heavily*** *disproportionate* amongst whites and African-Americans – i.e. with whites getting better pay raises, salary increases

and/or promotions for taking on additional duties; **(e)** Newsome was deprived medical leave and/or fringe benefits afforded to whites and/or those similarly situated; and **(f)** Newsome was deprived equal treatment, equal employment opportunities - based on W&L's knowledge of her engagement in protected activities (clearly violating W&L's policies and procedures) and ***systematic*** *discrimination* – afforded to white employees and/or those similarly situated.

> ***Equal Employment Opportunity Commission*** *v. New York Times Broadcasting Service, Inc.*, 542 F.2d 356 (6th Cir. 1976) – Although statistical evidence is primarily used in cases alleging racial discrimination within meaning of Civil Rights Act of 1964, statistical evidence is important tool for placing all seemingly inoffensive employment practices in their proper perspective. Civil Rights Act of 1964, §§ 701 et seq., 706(e) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(1).
>
> **Prima facie violation** of Civil Rights Act may be established by statistical evidence showing that an employment practice has effect of denying members of one race equal access to employment opportunities. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. *New York City Transit Authority v. Beazer,* 440 U.S. 568, 99 S.Ct. 1355 (n.5) (1979)

99. W&L **repeatedly** attempted to get Newsome to work with Brian Gillan over her objections to the discriminatory practices reported. W&L attempting to do so with knowledge that working with Gillan had affected Newsome physically, mentally and emotionally as a direct and proximate result of the creation of a hostile, threatening, intimidating, harassing and discriminatory work environment. W&L advising Newsome that Gillan wanted to continue to work with her. Gillan wanting to do so although advising that it was not working out. See **EXHIBIT "25"** attached hereto and incorporated by reference. Gillan doing so **AFTER** commending Newsome of the great work she was doing (advising "You're the best!"). See **EXHIBIT "7"** - *December 21, 2006 E-mail from Gillan* attached hereto and incorporated by reference as if set forth in full herein. W&L did not require whites who complained of Gillan's unlawful/illegal actions to continue to work with Gillan; however, W&L was requiring Newsome to continue to work with Gillan. ***It was only because Newsome advised of reporting such unlawful/illegal actions did W&L pull Gillan*** – a PROTECTED ACTIVITY.

100. An investigation into this Charge will support that W&L terminated another employee/attorney (Peter Newman – **white** male) that was said to be hostile, harassing, loud, etc. and provided Newman's Assistant (Kathy Richey) with some time off to regroup from such hostile and harassing treatment. Kathy Richey is a white female. *Kathy Richey was assigned to work with Gillan prior to Newsome's employment; however, due to complaints, Gillan was removed from her desk.* Gillan was assigned to Hope Kortanek - a white female; however, after complaints W&L from white employees, W&L did not try and force white employees to continue to work with Gillan. Gillan was assigned to Newsome (African-American female); however, when Newsome complained of hostile and discriminatory practices and forwarded evidence of such hostile, threatening, harassing and discriminatory practices ***evidenced*** in Gillan's e-mail to the Human Resource representative (Andrea Griffith), W&L forced Newsome to continue to work with Gillan over her objections. *It was not until Newsome advised of reporting such employment violation that W&L pulled Gillan. However, this* ***did not*** *stop W&L from continuing to seek ways in which to terminate Newsome's employment.* At the time of Newsome's termination of employment, both Richey and Kortanek and Gillan were still employed. See **EXHIBIT "25"** – *April 19, 2007 E-mail of Newsome to Griffith* attached hereto and incorporated by reference as if set forth in full herein.

April 19, 2007 Email of Newsome to Andrea M. Griffith:

> Just to let you know that I am thinking about talking to Bill Ellis when he returns regarding BPG.
>
> While I have been patient, I find that **his behavior is increasing annoying, badgering and harassing. I shared with you from his first e-mail the motives for his actions.**
>
> I was told prior to going on vacation in March to be patient. It is now April and his behavior is still the same. Providing ***false*** deadlines or urgency of some and then constantly and repeatedly badgering regarding them. The discovery that BPG mentioned in his e-mail on last week and needing to be done by Monday (4-16-07) was served on him on or about **February 23, 2007**. So would think he knew as early as February that he had a deadline. Then I was given the impression that it had to go out Monday; however, did not get it until yesterday. Now the constant notes providing time restraints. Along with attacks on my appointments along with implication that they are excessive – when they are not.
>
> *While I am aware that Kathy and Hope worked with him in the past, they are not now.* ***My concerns is the reason and/or the difference between their situation and mine. It is apparent that I am being required to work with BPG when he has made it clear it was not working out, so why am I being subjected to his treatment and changes were made for Kathy and Hope, yet not I.***
>
> He has come to collect his files (approximately a month) in advance. Collection coming after he had sent the e-mail on how he wanted his files handled. He has a copier/printer closer to his end of the hallway; however, elects to walk this far. Moving documents around on my desk – placing his first.
>
> I really need to know how this is going to be handled in that I have some serious concerns. **I have shared my concerns that I find his behavior hostile and efforts taken by him to provoke an altercation.** Still I am working with him and he is allowed to continue to do what he is doing. As I shared, I believe he has a motive and shared such motive with you. Furthermore, as I shared his actions and behavior is not right, neither is it fair.
>
> Please let me know something. As I mentioned, I intend to discuss this matter with Bill when he returns, **because it is affecting my ability to perform my tasks** and the request of other attorneys.

101. W&L knew and/or should have known of Gillan's established *pattern-of-harassment* and *sexual discrimination* against females. Moreover, Gillan used his position to engage in a sexual relationship with a contract employee. *When this information was made known, W&L terminated the female in which Gillan was having a sexual relationship with.* Newsome addressed said relationship

in January 15, 2007 e-mail to Andrea Griffith. See EXHIBIT "6" attached hereto and incorporated by reference. Again, W&L terminated the employment of an attorney (Peter Newman); however, allowed Gillan who has an established record of violating employment laws to remain in its employment and allowed Gillan to continue to sexually harass and/or use his position to harass female employees and/or take advantage of female employees. *Gillan drafting and distributing an e-mail to Newsome that was drafted with discriminatory/hostile/harassing intent.* Gillan attacking Newsome through e-mail(s) and asserting her to be "insubordinate," and exhibiting "passive/aggressive behavior." Such discriminatory practices condoned by W&L because it was intending (*for **PRETEXT** purposes*) to place *discriminatory e-mail* in Newsome's employee file and did not want a rebuttal or the truth in Newsome's employee file that would support how early the retaliation and discrimination against Newsome had begun and W&L's efforts to cover-up/mask its knowledge of Newsome's engagement in protected activity. *W&L knew and/or should have known that Gillan was prejudice and had a history of **discriminating against females.*** Moreover, used his position to obtain an undue advantage (i.e. engage in sexual relationship) over female(s).

> **EEOC Decision No.** 71-357 (¶ 6168) **Retention of Supervisor With Known Prejudices Was Unlawful: Racial Discrimination-Discharge for Misconduct-Racially Tainted Evidence** – The discharge of a Negro worker was reasonably to be regarded as unlawful where the misconduct used as a basis for the termination was tainted with racial discrimination in that the warnings and statements regarding the employee's work performance came from a supervisor known to be prejudiced against Negroes, and much of the misconduct charged against him involved opposition to racial discrimination.
>
> **Racial Discrimination-Prejudice of Supervisor-Retention as Violation** - There was a reasonable basis for believing that an employer violated the Act by retaining as a foreman an individual known to be prejudiced against Negroes. Negro employees were discriminated against because of their race with respect to terms and conditions of employment in that they were precluded from many of the jobs open to Caucasian employees because of the employer's policy of not assigning Negroes to jobs under this prejudiced foreman.

102. At the time of Newsome's termination, W&L employed **approximately 65** employees of which **two (2) were African-American** – which is **3%.** To include one person who is of India descent (at time of hire, Newsome does not believe employee – Brian Coutinho - had obtained American citizenship; however Coutinho was working on it) would be approximately 4%. Pertinent information needed to address "Disparate Treatment" in W&L's handling of hiring(s) and termination(s). Moreover, W&L's goal of creating an **ALL**-white work environment.

At the time of Newsome's employment there were two (2) other African-Americans – Angie Hart and Marcia Sherman. Ms. Hart's employment was ABRUBTLY terminated. From my understanding from information received AFTER my unlawful/illegal termination, Ms. Hart believed that W&L may have discriminated against her. Newsome being advised by Paul Berninger that Ms. Hart brought action against it. See **EXHIBIT "1"** - attached hereto and incorporated by reference. However, *Newsome prior to being provided information from Paul Berninger (attorney at W&L) had no knowledge that Ms. Hart had brought and/or was intending to bring legal action against W&L.* However, what is important to note, *W&L may have subjected Hart to the same discriminatory practices and having knowledge (although Hart did not) that it was committing Title VII*

violations/employment violations – as with Newsome – W&L may have removed and destroyed evidence that Hart possessed which it felt would be incriminating and would support any action brought by Hart. Because W&L did so with Newsome – removed and destroyed evidence – a reasonable mind may conclude W&L has a known practice of committing such criminal/civil wrongs to avoid employer liability.

Based upon the information contained herein, the ***racial composition*** of employees at W&L, W&L's removal and destruction of evidence from Newsome's desk ***(Newsome kept her desk locked)*** that it knew was incriminating, a reasonable mind may conclude that the racial composition of W&L's workforce and its acts to cover-up/mask discriminatory practices, was its knowledge that it was engaging in Title VII violations, Civil/Constitutional violations, criminal/civil wrongs against Newsome. Moreover, the **pattern-of-discrimination** and retaliation against Newsome based on W&L's knowledge of her engagement in protected activities further support racial discrimination and its efforts to interfere with Newsome's rights to seek recovery. See EXHIBIT "16" - *Newsome's Letter of February 2, 2009 to Paul Berninger* attached hereto and incorporated by reference as if set forth in full herein:

February 2, 2009 Letter from Newsome to Paul R. Berninger:

Pattern-of-Discrimination/Retaliation:

1. About November 2006, I requested assistance from Wood & Lamping regarding a Landlord matter I was dealing with. Elizabeth Horwitz was assigned to assist me. However, Elizabeth became upset with me with I refused to give up rights I believe I was entitled to under the Fair Housing Act. From my take, Elizabeth (white) and opposing counsel (white) were must have agreed to try and convince me to waive rights secured under the Fair Housing Act. Such efforts failed and I proceeded to file the lawsuit to protect my rights. Again, Elizabeth being upset with me, requested a change in Secretaries/Legal Assistants and Wood & Lamping obliged. Her acts were unacceptable, and clearly obvious of no understanding or feeling of what it is like to have to stand by rights that many sacrificed their lives for so that I can enjoy and live where I want not where another decides. Some of our conversations I am confident are memorialized in Wood & Lamping's e-mails.

2. Then I was assigned Brian Gillan. While I was commended on my work ethics and strived to carry myself in a professional manner, my experience with Brian Gillan was a continuance by Wood & Lamping to subject me to retaliation and discriminatory treatment. First appearing to be pleased with my work (as evidenced in e-mail), Brian's sudden change and craftily drafted e-mail to slander my character, work ethics, etc. was launched. Wood & Lamping was aware of this and for quite some time did nothing to deter Brian's acts although I reported violations to its attention. It was not until I advised that I was to going to report this to Bill Ellis that Brian was pulled. My concerns were made known as to the motives behind Brian's conduct; however, nothing was done. My concerns regarding how other white employees were not required to endure the hostile, discriminatory and brutal treatment that Wood & Lamping was going to make me endure although it was fully aware of the emotional,

physical and mental impact it was having on me. Some of our conversations I am confident are memorialized in Wood & Lamping's e-mail (for example attached). . . .

3. While it was not clear to me why Wood & Lamping would not represent me in matters brought to its attention, I could not dwell on that. I was able to obtain an Injunction and Restraining Order in my Landlord & Tenant matter which Elizabeth thought would be hard to obtain. Then in October 2008, I was unlawfully evicted from my residence. Wood & Lamping was timely and promptly notified of this matter. I even advised of my reporting this matter to the FBI. Either way, I was engaging in protected activities in which Wood & Lamping was fully aware. See my correspondence with Andrea regarding this. What I did not like about this was how Andrea attempted to make it appear there was a problem with my being out. I do not ever recall exceeding any days allowed for leave (vacation and/or sick); however, aware of my circumstances, attempted to add salt to the womb – clearly UNACCEPABLE.

4. I had a doctor's appointment **in October** and advised Andrea of what was taking place. Then **in December 2008**, I went to Andrea to advise of medical procedure and determine how leave would be covered. Andrea advised of the Family and Medical Leave Act and how the firm would handle such matters. I followed up with the required Request Form for leave on January 8, 2009. On January 9, 2009, I was terminated being advised my position was being eliminated.

5. Since leaving Wood & Lamping, I have found out that Thomas J. Breed's former law firm Schwartz Manes & Ruby – now Schwartz Manes Ruby & Slovin – is representing a client that has business a business dispute with me. Whether or not Wood & Lamping would have represented me in that matter, I do not know. What I do know, is that I recall getting a fax from the company while at Wood & Lamping when I picked it up from the counter in the copy room. While I was not aware at the time that Tom's former law firm was representing that company, I found it interesting to find out that my termination came on January 9, 2009 – the very same weekend this company was holding what they called an "Amnesty Weekend." Not only that, no fax as sent prior by them on this date (so I concluded that they knew of what was about to take place at Wood & Lamping), but I was mailed a notice on the very same date of my termination. Tom is a member of the Executive Board at Wood & Lamping if I am not mistaken. Raising concerns for a reasonable mind (jury) as to the motive behind my termination – was it done to aid his former law firm (you scratch my back and I'll scratch yours – at my expense). What is Tom's interest in the matter and whether or not he has any interest still with Schwartz Manes? Again, that is not up to me to decide, but for a jury I would think. A ***causal*** link/connection can be established.

6. In regards to the FMLA, I will only present the following and let you take it from there because all I am required to do is present a prima facie case and evidence which I believe can be done . . .

Newsome believes that an investigation into this instant Charge will yield that W&L's January 9, 2009, termination of Newsome's employment was a direct and proximate result of its knowledge of Newsome's engagement in protected activities, her filing of Title VII actions, complaint of discriminatory treatment, hostile work environment, etc. The record evidence will support W&L's knowledge of Newsome's engagement in lawsuits and its knowledge that Breed's former law firm (SMR&S) would be filing a lawsuit against Newsome. Therefore, as a direct and proximate result of knowledge of said information, W&L terminated Newsome's employment without just cause.

An investigation into this instant Charge and evidence contained herein, will support W&L's African-American employees (approximately 3% at the time of Newsome's termination) were discriminated against because of their race in respect to hiring, promotions, raises/merit increases, termination, terms and conditions of their employment, employee benefits – i.e. deprived benefits (such as medical coverage) - that were afforded to whites and/or those similarly situated, etc. Moreover, ***W&L terminated the employment of African-Americans that complained of discriminatory practices***.

An investigation into this instant Charge and evidence contained herein will support that W&L's termination of Newsome was a direct and proximate result of its efforts to create an **ALL-**white workforce. It appears from information provided by Paul Berninger (attorney at W&L) that another African-American (Angie Hart) may have believed her discharge/termination was illegally motivated. Therefore, a reasonable mind may conclude based on such information, W&L decided to violate Title VII and remove African-Americans from its place of employment because it did not want its discriminatory practices exposed. Upon W&L's termination of Newsome's employment, it *hired **several** WHITE employees **SHORTLY*** thereafter. Moreover, W&L terminated Newsome's employment with discriminatory and retaliatory intent. Further supporting **DISPARATE TREATMENT.**

> **Racial Discrimination-Prejudiced Supervisor-Effect on Racial Composition of Workforce** – On the basis of testimony regarding the prejudices held against Negroes by a supervisor and the inferences to be drawn from the fact that Negroes made up 26 percent of the workforce prior to hiring of such supervisor but declined to 5 percent after his hiring, it was reasonable to conclude that the employer was unlawfully refusing to hire Negroes as a class because of their race. . .
>
> .
>
> Section 704(a) of Title VII is intended to provide "exceptionally broad protection" for protestors of discriminatory employment practices. *Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998 at n. 18 (5th Cir. 1969), [2 EPD ¶10,011] 60 LC ¶9253. *Pettway* holds that an employer may not retaliate even if the protestor's claims are completely unfounded. It is clear from the transcript, and we so find, that the testimony of Respondent's officials regarding Charging Party's opposition to racial discrimination influenced the decision to discharge him. Under these circumstances, the discharge was in violation of Section 704(a) of Title VII. (United States v. Hayes International Corp., 415 F.2d 1038 (5th Cir. 1969) [2 EPD ¶10,061] 60 LC ¶ 9303; United States v. Sheet Metal Workers,

Local 36, 416 F.2d 123 (8th Cir. 1969), [2 EPD ¶ 10,083] 61 LC ¶9319].. . .

It is clear that Respondent's Negro employees are hereby discriminated against because of their race with respect to the terms and conditions of their employment, because they are precluded from many of the jobs that are open to similarly situated Caucasian employees. . .

The record before us contains Respondent's payroll covering 97 production employees for the week ending June 30, 1968. It reveals that 10 (26%) of 38 production employees hired before June 30, 1966, are Negro, and that only 3 (5%) of 59 post-Foreman B hires are Negro. On the basis of the testimony of Respondent's Superintendent regarding Forman B and the inference which may be drawn from these figures, we conclude that Respondent has violated and is violating Title VII by refusing to hire Negroes as a class because of their race.

103. While the *Wood & Lamping LLP Policies and Procedures Manual* states:

> **EQUAL OPPORTUNITY**
> The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. *Discrimination by any member of the firm **will not** be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also **prohibits retaliation** against anyone who has filed a complaint of **discrimination** or **harassment**.*
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 11) – **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein.

W&L violated Title VII as well as other statute/laws governing employment. W&L refusing to hire African-Americans because of their race and apparently because complaints of concerns of discriminatory practices. As a direct and proximate result of Newsome's complaints and now it appears from information obtained from Paul Berninger (attorney at W&L) that another African-American (Angie Hart) complaining of discriminatory practices, that W&L *has set out to create **an ALL-white*** workforce and/or ridding itself of African-American employees who complained of discriminatory practices. *At the time of Newsome's employment and during her employment, W&L*

did not *employ any African-American attorneys*. While there were vacancies for attorneys and apparently a need for support staff, W&L *shortly* ***AFTER*** Newsome's termination employed *several* white employees. W&L *creating a work environment of approximately one (1) African-American* – Marcia Sherman. Therefore, leaving the racial composition of **approximately 1%** for African Americans. Supporting **DISPARATE TREATMENT.**

An investigation into this instant Charge will support the racial bias revealed by the disproportionate workforce, work opportunities, promotions, raises, etc. Therefore, *there is a reasonable basis for believing that W&L engaged in unlawful employment discrimination against African-Americans on account of their race and/or sex and reporting of discriminatory practices and there is a* ***SIGNIFICANT*** *disproportion of said race in employment at W&L.* Therefore, such ***statistics may be used*** **to infer a *pattern or practice* of discrimination** by W&L. Moreover, said statistical evidence and otherwise, as well as the record as a whole, may conclude that W&L discriminated against Newsome, African-Americans as a class, because of their race and sex with respect to hirings, termination, promotions, raises, etc.

Therefore, reasonable cause may exist to believe that W&L and/or its representatives collectively and severally engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act, by terminating, refusing to hire African-Americans because of complaints of discriminatory practices by said class, promotions, pay raises, etc. Moreover, for purposes of creating an ALL-white workforce – supporting **DISPARATE TREATMENT.**

An investigation into this instant Charge will support that W&L's instigation and creation of discriminatory work environment. Furthermore, how W&L took away job duties of Newsome to give to white employee(s). W&L taking of job duties from Newsome (over Newsome's objections) was to provide white employee(s) with job security. *The job duties W&L took away from Newsome to give to white employee(s) were those still needed and required in the job Newsome performed at the time of her unlawful/illegal termination*. W&L assigning Newsome to work with Thomas J. Breed, **Department Head** *of the Estate Planning Group*, and requiring the duties of Estate Planning Coordinator – position Newsome was hired for. W&L's taking away of Newsome's job duties was done with malicious intent and done for pretext purposes – to mask/cover-up illegal animus. Terminating Newsome's employment in retaliation of her participation in protected activities and knowledge that Breed's former law firm (SMR&S), on behalf of Stor-All, would be filing a lawsuit against Newsome.

> **EEOC Decision No.** 71-1531 (¶ 6227) **Racial and National Origin Bias Revealed by Disproportionate Work Opportunities: Racial and National Origin Discrimination-Statistical Evidence-Disproportionate Work Opportunities** – There was a reasonable basis for believing that a local labor union, an employer association and its individual members engaged in unlawful employment discrimination against Negroes on account of their race and against Spanish surnamed Americans on account of their national origin, where the work opportunities accorded members of both groups were disproportionate to their members of the employers association. Statistics may be used to infer a pattern or practice of discrimination..
> . .
>
> Title VII permits the use of statistical probability to infer a pattern or practice of racial discrimination. *Parham v. Southwestern Bell Telephone Co.*, [3 EPD ¶8021] 433 F.2d 421 (8th Cir., October 28, 1970), 3 EPD ¶ 8021, and the cases cited therein. See also *United States v. Hayes International Corp.*, [2 EPD ¶10,061, 60 LC ¶ 9303]

415 F.2d 1038 (5th Cir. 1969); ***Cameron Iron Works v. EEOC,*** 320 F.Supp. 1191 (S.D. Tex. December 18, 1970), 3 EPD ¶8064. From the above evidence, statistical and otherwise, and the record as a whole, we conclude that Respondent Local, Respondent Employer Associations, and their contractor members discriminated against Charging Parties, Negroes as a class, and Spanish surnamed Americans as a class, because of their race and national origin respectively, with respect to the referral and hiring of cement mason foremen and cement mason journeymen and apprentices. . .

Reasonable cause exists to believe that Respondent Local, Respondent Employer Associations, and the individual members of the Employer Associations collectively and severally engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, by refusing to hire, limiting, segregating, and otherwise discriminating against Charging Parties, Negroes as a class, and Spanish surnamed Americans as a class because of their race and national origin.

EEOC Decision No. 72-0976 (¶6344) **Racial Bias Against Negro Supervisor: Racial Discrimination-Negro Supervisor-Notice of Promotion-Lack of Support** – There was reasonable cause to believe that an employer discriminated against a Negro worker by failing to give the customary notice of promotion of the worker to a supervisory position, failing to support him in the supervision of white employees, failing to award him incentive pay, *assigning him the **least** **desirable** night shift duty* during most of the tenure of his employment, and by discharging him because of his race.

104. Newsome set forth a detailed ***statistical*** *pattern* as well as pattern of discriminatory practices – i.e. refusal to represent Newsome in legal matters because she refused to forgo protected rights and/or waive protected rights secured to her under Fair Housing Act, Title VII, Civil Rights Act, Constitution, etc. – wherein *W&L engaged in unlawful employment practices by maintaining hiring and termination practices that adversely affected and discriminated against African-Americans because of their race. During Newsome's employment, W&L employed **no** African-American attorneys and if there were any prior to Newsome's hiring, W&L was sure not to hire anymore. However, similarly placed persons of different races were accorded dissimilar treatment. W&L repeatedly hiring white employees. Providing Newsome with false reasons for her termination and shortly thereafter hiring **several** whites – in its efforts of creating an ALL-white workforce*.

Racial Discrimination-Segregated Job Classifications – Detailed statistical patterns established a reasonable basis for finding that an employer engaged in an unlawful employment practice by maintaining a hiring and job assignment policy which discriminated against Negroes because of their race. The employer employed no Negroes as officials or managers, sales workers, office and clerical workers, skilled craftsmen or over-the-road drivers. The employer employed 110 persons, 13 of whom (or 11 percent) were Negroes, in an area where about 40 percent of the population was Negro.

Where similarly placed persons of different races are accorded dissimilar treatment, the Commission must find, in the absence of other evidence, that race was a factor in the disparate treatment. On the basis of the evidence presented herein we conclude that there is

> reasonable cause to believe that Charging Party was discriminated against with respect to the several foregoing terms and conditions of employment because of his race. . . .The statistical patterns detailed above establish, prima facie, that Respondent maintains racially discriminatory hiring and assignment policies. *Bing v. Roadway Express,* 444 F.2d 687 (5th Cir. 1971), 3 EPD ¶ 8265.. . . There is reasonable cause to believe that Respondent Employer has engaged and continues to engage in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964 by discriminating against Charging Party in the terms and conditions of his employment and subsequently terminating him because of his race (Negro), and by maintaining a hiring and assignment policy which discriminates against Negroes because of their race.

105. **PRIMA FACIE: (a)** The ***statistical*** *evidence* contained in this instant Charge and W&L's unlawful/illegal termination for purposes of creating an ALL-white work environment; along with false reasons provided for termination and its knowledge of Newsome's engagement in protected activities, *are important tools* ***for placing all seemingly inoffensive employment*** *practices in their* ***proper*** *perspective*; **(b)** an investigation into this instant Charge will support from the statistical evidence that W&L's practices has the effect of denying African-Americans equal access to employment opportunities; moreover, when African-Americans complained of discriminatory practices, W&L sought ways to terminate their employment as well as remove and destroy evidence it having knowledge would be incriminating and support Title VII violations and/or employment violations regarding discrimination/retaliation, etc.; **(c)** W&L **repeatedly** *relied upon word-of-mouth hiring* and when it terminated Newsome's employment relied upon discriminatory practices to eliminate the number of African-Americans in the workplace while *it employed SEVERAL white employees* ***shortly AFTER*** Newsome's termination. W&L knew at the time of Newsome's termination that it was committing Title VII violations as well as other discriminatory practices – intent of hiring additional white employees in their creation of *an* ***ALL-white*** *work environment* with intent to exclude African-Americans; and **(d)** Newsome believes an investigation will yield that she was qualified for the position she lost as well as was assigned job duties performed by paralegals, and, W&L shortly after Newsome's termination hired white employees with knowledge that it was engaging in Title VII violations and/or discriminatory employment practices.

> ***Word-of-mouth hiring*** **is** *discriminatory because of its tendency to perpetuate all white composition of a work force*. 42 U.S.C.A. § 1981; Civil Rights Act of 1964, §§701 et seq., 706(e) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(1). *Barnett v. W. T. Grant Co.,* 518 F.2d 543 (n. 8) (C.A.N.C. 1975)
>
> Statistics can in appropriate cases establish a prima facie of discrimination, without necessity of showing specific instances of overt discrimination. *Barnett v. W.T.* at n.7.
>
> Under Title VII law, an employee may prove intentional discrimination in a disparate treatment case either directly or indirectly. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. §2000e et seq. ***Ohio Civ. Rights Comm.*** *v. Kent State Univ.,* 717 N.E.2d 745 (**Ohio**.App.11. Dist.Portage.Co. 1998)
>
> Complainant may prove employer's discriminatory purpose by direct or circumstantial evidence, including discredit of proffered

> nondiscriminatory reasons for discharging complainant. *Republic Steel Corp. v. Hailey,* 506 N.E.2d 1215 (**Ohio**.App.8. Dist.Cuyahoga.Co., 1986)
>
> To establish a prima facie case of discrimination under Title VII, a plaintiff may prove her claim through either direct evidence, statistical proof, or the McDonnell Douglas test. *McConaughy v. Boswell Oil Co.,* 711 N.E.2d 719 (**Ohio**.App.1. Dist.**Hamilton**.Co., 1998)
>
> Under McDonnell Douglas test for establishing prima facie case of discrimination under Title VII, the plaintiff must show that (1) she was a member of a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position she lost, and (4) she was replaced by someone outside the protected class, or that a comparable non-protected person was treated better. Civil Rights Act of 1964, §701 et seq., as amended, 42 U.S.C.A. § 2000e et seq. *McConaughy V. Boswell* at n.11.

106. An investigation into the allegations of this instant Charge will support liability under Title VII of and against W&L which includes: **(a) disparate treatment (employment of African-Americans during Newsome's employment NEVER exceeded 3%)** – wherein Newsome (who is a member of the protected group – African American) was treated differently than non-members of her class/race and the reason being because of W&L's knowledge of her engagement in protected activities and ***VOCALIZED opposition*** **to violation of her protected rights; (b)** W&L allowed Newsome to be subjected to harassment that created an offensive, retaliatory, and hostile work environment; and **(c)** W&L retaliated against Newsome for her engagement in protected activity secured under statutes/laws.

> *Dunnom v. Bennett,* 290 F.Supp.2d 860 (S.D.**Ohio**.W.Div., 2003) - Several theories of liability are available under Title VII, including: **(1)** disparate treatment, in which a member of a class protected by the statute is treated differently than non-members of the class, and the reason is due to the protected status; **(2)** harassment that creates an offensive or hostile work environment; and **(3)** retaliation for protected activity under the statute. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

107. W&L treated Newsome differently because of her race, its knowledge of her engagement in protected activities, and Newsome's refusal to forgo and/or waive rights secured to her under the applicable statutes/laws. W&L's acts against Newsome were **overt** and **intentional** conduct because of her race and exercise of protected rights.

108. Two theories of race discrimination which have developed since the enactment of Title VII of the 1964 Civil Rights Act, and which are particularly common to claims of discrimination in job assignment, are "disparate treatment" and "disparate impact," or "pattern of practice." *Disparate treatment race discrimination involves overt or intentional conduct, and occurs when an employer treats one individual or group differently from another because of that individual's race.*

109. To establish a ***prima facie case of individual disparate treatment*** *based on race* in violation of Title VII of the 1964 Civil Rights Act, with respect to job assignments, Newsome must

show: **(a)** she is a member of a group protected by the statute; **(b)** that she satisfactorily performed duties assigned; **(c)** that she was rejected under circumstances giving rise to an inference of unlawful discrimination. *Moreover, may require that Newsome demonstrate that from such discrimination she was "harmed." Evidence of a pattern of practice of discrimination against Newsome, who is African-American may serve to support a claim of disparate treatment.*

PRIMA FACIE – DISPARATE TREATMENT: It is important to note: **(i)** Newsome is an African-American female and, therefore, a member of group protected under Title VII of the Civil Rights Act; **(ii)** Newsome satisfactorily performed duties assigned her and was assigned to attorneys W&L wanted to keep happy and complained about the work of the Assistant/Legal Secretary assigned. While Newsome was assigned various attorneys and took on additional job duties, W&L did so without giving her the pay increases and/or promotions as it afforded to white employees obtaining additional job duties and/or responsibilities; **(iii)** Newsome was rejected and terminated by W&L because of her race and W&L's knowledge of her engagement in protected activities. Newsome's employment with W&L was terminated in its obliging Thomas J. Breed's former employer/law firm (SMR&S) with termination because it had knowledge that SMR&S on behalf of its client, Stor-All, would be bringing a lawsuit against Newsome. Further supporting the criminal/civil wrongs of W&L and its overt and deliberate acts to infringe upon Newsome's rights secured to her under Title VII and/or governing statutes/laws; and **(iv)** Newsome has been injured/harm as a direct and proximate result of W&L discriminatory practices; moreover, as a direct and proximate result of W&L's engagement in ***systematic*** *discriminatory practices/****pattern-of-discriminatory*** *practices, **disparate** treatment* to cause Newsome injury/harm based upon its knowledge of her engagement in protected activities.

110. An investigation into this instant Charge will support W&L's knowledge of Newsome's previous filing of EEOC Charges, engagement in protected activities, filing of lawsuits, participation in investigations, etc. Moreover, that another African-American (Angie Hart) believed that she was discriminated against – pursuant to conversation with Paul Berninger. W&L fully aware of its discriminatory intent removed and destroyed evidence from Newsome's desk ***(Newsome kept her desk locked)*** that it knew would be incriminating.

> *Grano v. Department of Development of City of Columbus,* 637 F.2d 1073 (C.A.6.**Ohio**, 1980) - In a Title VII suit brought under a disparate treatment theory, the allegation is that defendant failed to hire or failed to promote person because of his or her race, religion, national origin, or sex, and reason why employer acted as he did is crucial; thus, where Title VII case is brought under disparate treatment theory, plaintiff must prove discriminatory intent. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

111. *An investigation into this instant Charge may support that hirings and terminations of African-Americans **are** **disproportionate**;* moreover, ***adversely*** *affected* African-Americans. W&L maintaining approximately 1% to 3% of African-Americans in workplace consistently comprised of approximately 95% to 97% whites.

> *Barnes v. GenCorp Inc.,* 896 F.2d 1457 (C.A.6.**Ohio**, 1990) - Appropriate statistical data showing employer's ***pattern of conduct*** toward protected class as group can, if unrebutted, create inference that defendant discriminated against individual members of class, but to do so, statistics must show significant disparity and eliminate the most common nondiscriminatory reasons for disparity.

112. W&L's termination of Newsome's employment was based on her race, sex, engagement in protected activities, and systematic discrimination. W&L *SHORTLY **after** Newsome's termination employed **SEVERAL** white employees* in its efforts to have a non-African-American workplace. Moreover, in retaliation of receiving complaints of discriminatory practices. W&L having knowledge that it was acting in violation of Title VII of the Civil Rights Act as well as engaging in discriminatory practices, retaliation, systematic discrimination, etc., acted with willful, malicious and malice in its removing and destruction of evidence known to it to be incriminating and supporting employment violations. W&L's acts were pretext in efforts of covering-up and/or masking discriminatory employment practices.

113. W&L may have applied the same unlawful/illegal tactics used on Newsome – in its removal and destruction of evidence incriminating to W&L – on Angie Hart because it knew that its practices were racially motivated and discriminatory. Moreover, that because concerns of discriminatory practices were made known to it and Hart's notification of discriminatory practices, that it moved to cover-up/mask such discriminatory practices in the handling of Newsome's termination.

114. W&L provided promotions with pay increases automatically to white Secretaries/Legal Assistants to Paralegals without notice and/or posting for position. Those who were subject to and receiving such benefits were **ALL** white. W&L provided promotions and/or salary increases to whites for taking on extra duties (paralegal, etc.) without posting. Rendering said special promotions and/or salary increases with knowledge that it was acting violation of the laws and engaging in discriminatory practices which adversely affected African-Americans.

115. Objective harm to Newsome resulted from W&L's racial discriminatory conduct.

116. Bias against Newsome occurred in the taking away of job duties to give to white employees similarly situated and to provide them with job security while Newsome continued to work for attorneys in the *Estate Planning Department* as well as required the performance of job duties taken away.

117. *Sexual harassment is actionable under Title VII only if it is so severe or pervasive as to alter the conditions of the victims employment and create an abusive working environment. Clark County School Dist. V. Breeden,* 532 U.S. 268, 121 S.Ct. 1508. . . . Two types of harassment are unlawful under Title VII: . .. (2) situations in which the *working environment is **oppressive** to members of the protected group because of actions of coworkers, supervisors,* or customers. (29 CFR § 1604.11) (45B Am. Jur. 2d § 824) The second type of unlawful harassment may occur absent any economic effect on the complainant's employment, and is referred to as *hostile work environment harassment. When the workplace is **so permeated** with **discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive** to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated. Discrimination based on sex, race, . . . if it creates a hostile or abusive work environment, violates Title VII. . . . A hostile work environment harassment claim involves a pervasive atmosphere of discriminatorily severe or unwelcome working conditions that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.*

118. When a workplace is so permeated with discriminatory intimidation, ridicule, and insult that are severe or pervasive to alter conditions of victim's employment and create an abusive working environment, Title VII is violated. *Title VII comes into play **before** the harassing conduct leads to clinical mental illness because*: **(a)** a discriminatorily abusive work environment, even one that does not seriously affect an employee's psychological well-being, can and often will detract

from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers; and **(b)** even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality.

119. W&L created a workplace environment discriminatory and prejudicial as a direct and proximate result of Newsome's engagement in protected activities and her refusal to forgo rights secured to her under the applicable statutes/laws. W&L doing so for purposes of depriving Newsome equal protection of the laws, due process of laws, deprivation of rights secured under Title VII of the Civil Rights Act, Constitution, W&L's keeping with systematic discrimination leveled against Newsome for her exercising rights and efforts to deprive her life, liberties and the pursuit of happiness. W&L's termination was in keeping with the ***systematic*** *discrimination* to which Newsome has become a victim in that W&L is engaging in criminal/civil wrongs to prevent and preclude Newsome equal employment opportunities and efforts of destroying her life and to create difficulty in her obtaining employment opportunities elsewhere. Such systematic discriminatory practices W&L was engaging in being practices commonly known to be used by white employers to preclude/prevent African-Americans from obtaining employment elsewhere. Such acts which are clearly motivated by malice and ill intent.

120. *W&L **was responsible and condoned** the discriminatory acts rendered Newsome*. W&L confident that it had destroyed evidence was disappointed to find that Newsome had retained copy of *Wood & Lamping LLP Policies and Procedures Manual*. Rendering W&L disappointing news in that they had failed to achieve their goal in cover-up/masking discriminatory practices and efforts to remove and destroy evidence supporting its knowledge of violations of its own policies and procedures. Moreover, W&L's failed efforts to cover-up/mask conspiracy it was engaging in with others through the ***systematic*** *discrimination* leveled against Newsome based upon its knowledge of her engagement in protected activities/exercise of protected rights. A reasonable mind may conclude that W&L's removal and destruction of *Wood & Lamping LLP Policies and Procedures Manual* and/or evidence were efforts taken by it to avoid liability. Moreover, *W&L's **repeated** efforts in requesting that Newsome waive protected rights and not bring legal action against it in exchange for receipt of medical benefits and/or medical insurance*.

> In a hostile work environment harassment claim where no job benefits are affected by the undesirable conduct alleged, a plaintiff must demonstrate both that sexual or other discriminatory harassing actions took place, and that the employer was responsible for the harassment. (*Andrews v. City of Philadelphia*, 895 F.2d 1469 (1990); *Katz v. Dole,* 709 F.2d 251 (1983))

121. A reasonable mind may conclude that in the context of all the relevant circumstances based upon the facts, evidence and legal conclusions contained in this instant Charge as well as that yielded from an investigation into the allegations contained herein, that W&L's acts were pervasive, severe, hostile, discriminatory, threatening, intimidating, harassing, etc. and done for purposes of forcing Newsome to quit and efforts initiated for PRETEXT purposes – i.e. to cover-up/mask discriminatory practices. A reasonable mind may conclude that Newsome has been affected emotionally and mentally and during the course of her employment had to endure repeated discriminatory practices because W&L was aware of her participation in protected activities, refusal to waive rights secured under the Civil Rights Act, Constitution and other governing statutes/laws. *Moreover, that W&L repeatedly attempted to get Newsome to forego protect rights and agree not to bring legal action against it in exchange of obtaining medical insurance to which she was entitled.* **Said demand by W&L is *clearly* ***prohibited*** as a matter of statutes/laws**. W&L is attempting to

coerce Newsome to forego protected rights in exchange of receiving medical benefits to which she was entitled and medical benefits afforded to whites and/or those similarly situated.

> In determining whether harassment is sufficiently serious enough to create a hostile work environment, the employer's conduct as a whole is evaluated in the context of all the relevant circumstances. *Haehn v. City of Hoisington,* 702 F.Supp. 1526 (1988).

122. **PRIMA FACIE: (a)** Newsome suffered intentional discrimination due to her race and sex. W&L allowed harassment by male supervisor (Gillan) and others based on knowledge of Newsome's engagement in protected activities, filing of charges/lawsuits, participation in investigation(s), etc. W&L knew and/or should have known of Gillan's engagement in employment violations and discriminatory practices leveled against female employees wherein he ***repeatedly asserted and abused his supervisory powers*** and subjected them to harassment; resulting in a sexual relationship with female employee in his usurpation of power/authority. **(b)** The record evidence will support W&L's discrimination against Newsome was pervasive and regular. Moreover, W&L's knowledge of Newsome's engagement in protected activities that further prejudiced it against her. Leading W&L to conspire with others to infringe upon Newsome's rights secured under Title VII of the Civil Rights Act, Constitution, Fair Housing Act, Family & Medical Leave Act, and other statutes/laws governing said matters. Newsome was subjected to discriminatory employment practices as a result of W&L's knowledge of her engagement in protected activity. W&L subjected Newsome to discriminatory practices in keeping with the ***systematic*** *discriminatory* practices leveled against Newsome for the reporting of Title VII violations, filing of charges and/or lawsuits, participation in investigations, etc. for recovery of injury/harm sustained. **(c)** The record evidence will support W&L's hostility towards Newsome, retaliatory and discriminatory practices towards Newsome, etc. which has detrimentally impacted/affected Newsome's life. W&L as early as January 15, 2007 and as recent as January/February 2009 (in response to its January 9, 2009 termination), was timely, properly and adequately placed on notice of its employment violations and the detriment of such civil rights violations leveled against Newsome. **(d)** The discrimination W&L leveled against Newsome would detrimentally affect a reasonable person of the same race and/or sex. **(e)** *Respondent superior liability exist and the record evidence will support that W&L's Human Resource Representative (Andrea Griffith), W&L's Managing Partner (C. J. Schmidt), W&L's Executive Committee, Partners of the firm and others were aware they were acting in violation of Title VII of the Civil Rights Act and/or the applicable statutes/laws governing employment. Moreover, W&L's removal and destroying of evidence known to it to be incriminating and would support employment violations/discrimination.*

> Various tests have evolved to establish hostile work environment claims under Title VII. One test for sexual harassment requires that: (a) the employee suffered intentional discrimination due to sex and race; (b) the discrimination was pervasive and regular; (c) the discrimination detrimentally affected the plaintiff; (d) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (e) respondent superior liability exists. (*Knabe v. Boury Corp.,* 144 F.3d 407 (1997); *Andrews v. City of Philadelphia,* 895 F.2d 1469); *Washington v. City of Cleveland,* 948 F.Supp. 1301 (N.D. **Ohio** 1996). (The subjective component of the test for a hostile work environment in violation of Title VII does not require that an employee feel physically threatened; instead, the employee must subjectively perceive the environment to be abusive. (*Williams v. General Motors Corp.,* 187 F.3d 553)

123. The record evidence will support that Newsome repeatedly advised W&L of concerns of abusive environment and supervisors' hostile and unacceptable behavior. Behavior which affected Newsome's work and ability to perform job duties assigned. Discriminatory practices to which Newsome objected to both verbally and/or in writing. Newsome being advised that W&L would handle; however, W&L allowed such discriminatory practices to continue and merely continued to seek ways to cover-up discriminatory practices and complaints submitted by Newsome, as well as seek ways in which to terminate Newsome's employment. Newsome's complaints of employment violations and W&L's knowledge of Newsome's engagement in protected activities resulted in its going through Newsome's desk ***(Newsome kept her desk locked)*** to remove and destroy evidence it knew would be incriminating and would reveal discriminatory practices, criminal/civil wrongs and ***efforts taken the obstruct justice should Newsome bring legal action against it*** – *legal action W&L* ***repeatedly*** ***requested*** *that Newsome* ***waive in exchange*** *for receipt of medical benefits to which she was automatically entitled to*.

> Factors as to whether the workplace environment is sufficiently hostile or abusive to support . . . harassment claim under Title VII include: (a) frequency of discriminatory conduct; (b) its severity; (c) whether it is physically threatening or humiliating or a mere offensive utterance; and (d) whether it unreasonably interferes with employee's work performance. (*Clark County School Dist. V. Breeden,* 532 U.S. 268, 121 S.Ct. 1508, 149 L. Ed. 2d 509; *DeAngelis v. El Paso Mu. Police Officers Ass'n,* 51 F3d 591 (1995)).
>
> In a case of race-based hostile work environment, . . . court established the following elements: (a) membership in a protected class; (b) plaintiff subjected to unwelcomed racial harassment; (c) harassment based on race; (d) harassment had the effect of unreasonably interfering with work performance by creating an intimidating, hostile, or offensive work environment; and (e) the existence of employer liability.

X. EMPLOYMENT-AT-WILL/PROTECTED ACTIVITY:[19]

> ***At-Will Employment Doctrine:*** At common law, in the absence of an employment contract or a definite term, employees and employers were free to terminate their relationship with or without cause at any time. The parties were engaged in an employment relationship said to be terminable "at-will" by either party. This notion became known popularly as the "at-will doctrine.". . . *Today the employer's unbridled freedom to fire an employee without cause and without incurring civil* ***liability no longer exists***. . . Later, courts began to find that self-imposed termination policies and practices of employers contained implied promises not to discharge at-will employees except for good cause. *If a discharge occurred under circumstances showing intentional abuse, the courts often permitted an additional recovery under a separate tort theory, such as intentional infliction of emotional distress. . .* modern courts have fashioned a separate, independent cause of action sounding in tort for wrongful discharge. This tort continues judicial

[19] When an employee is discharged solely for exercising a statutorily conferred right an exception to the general rule must be recognized. *Frampton v. Central Indiana Gas Co.*, 297 NE2d 425, 63 ALR3d 973.

adherence to the traditional at-will doctrine of employment but recognizes two exceptions: *firings in violation of a fundamental principle of public policy, and dismissals in breach of an implied covenant of good faith and fair dealing*. . . .because a firing in violation of a public policy interest necessarily implies a violation of the covenant of good faith and fair dealing.[20]

Today the employer's unbridled freedom to fire an employee without cause and without incurring civil liability no longer exists [**ANNOTATION:** Modern status of rule that employer may discharge at-will employee for any reason, 12 ALR 4th 554; Law Reviews: Blades, Employment at Will v. Individual Freedom: *On Limiting the **Abusive Exercise** of Employer Power*, 67 Colum L. Rev 1404 (1967). Peck, Unjust Discharges From Employment: A Necessary Change in the Law. 40 **Ohio St.** L J 1 (1979)]. . . Initially, restrictions were placed on the employer's right and power to fire through collective bargaining agreements and a variety of state and federal statutes forbidding discrimination in employment based on proscribed motivational factors [Title VII, Civil Rights Act of 1964, as amended 42 USCS § 2000e-17. *This act prohibits a discharge due to race. . . sex. . . It also prohibits retaliatory firings for protesting unlawful acts or for participating in Title VII charges*. **Administrative remedies are available through the Equal Employment Opportunity Commission (EEOC) and must be exhausted before civil suit**. . . This act prohibits a discharge due to race. . . A direct action in federal court is authorized. . . Civil Rights Act of 1871, 42 USCS § 1983. This act applies to persons acting under color of law and prohibits deprivation of rights secured under the constitution and the laws of the United States. Direct action in federal court is authorized.. . .] *In addition to the contract and statutory limitations on the employer's power, many courts now refuse to adhere to the traditional view, finding little to recommend its continued application in a modern society, particularly where the circumstances of the discharge contravene a clearly mandated public policy or where the employer is motivated by bad faith or malice.* While the courts that now recognize some limitation on the employer's power of dismissal do not agree on the doctrinal basis of the restriction, all of them recognize that, in an appropriate case, **the fired employee must have some civil remedy for a discharge that is judged to be "retaliatory," "abusive," "malicious," "in bad faith," or in contravention of public policy**. 31 Am. Jur. Trials 317 §§346-347.

EEOC Decision No. 70-925, Case No. YME9-141 (¶ 6158) **Discharge for Civil Rights Activities Indicates Racial Discrimination: Racial Discrimination-Discharge- Participation in Civil Rights Activities** – There was reasonable basis for a belief that joint employers of a Negro airline ticket agent engaged in unlawful employment practices by causing him to be removed from his regular employment and subsequently discharging him because of his race and for absenting himself to participate in various civil rights activities. Evidence indicated that the charging party's attendance record compared favorably with those of other ticket agents and that he was never officially reprimanded or warned against further absences or against engaging in civil rights activities prior to his termination. . . . . It is now well

[20] 48 Am. Jur. Proof of Facts 2d 191-192.

settled that, where an employer has mixed motives for discharging an employee, and any one of those reasons is unlawful, the non-discriminatory nature of other motives does not preclude a finding of reasonable cause to believe that the employer (or, in this case, employers) has engaged in an unlawful employment practice within the meaning of Title VII of the Act. [*NLRB v. Murray Ohio Manufacturing Company,* (48 LC ¶ 18,691) 326 F.2d 509, 517 (6th Cir. 1964); *Wonder State Manufacturing Company v. NLRB* (49 LC ¶ 18,870) 331 F.2d 737, 738 (6th Cir. 1964)].

124. Newsome's termination of employment with W&L was ***premeditated***. Moreover, W&L having knowledge that Ohio is an at-will-employment state, thought that it could ***create false/frivolous*** *reasons for Newsome's unlawful/illegal discrimination and* ***go unchallenged***. However, to W&L's disappointment, it found out that documentation removed from Newsome's desk ***(Newsome kept her desk locked)*** and destroyed would be that in which Newsome a copy had. W&L removing and destroying evidence that it knew would be incriminating and would reveal violations of its own policies and procedures. *W&L thinking that it could terminate Newsome and assert perhaps a defense under the at-will-employment doctrine. However, such defense would also fail because the record evidence reveals that such defense is null/void when the evidence supports violations under Title VII of the Civil Rights Act and/or applicable laws governing said matters.* Moreover, that *W&L's Title VII/employment violations and discriminatory practices occurred under circumstances showing* ***intentional abuse*** *and* ***intentional violations*** *of the statutes/laws prohibiting discrimination in employment.* **W&L's termination of Newsome's employment was *in violation of fundamental principle of public policy and clearly a breach of an implied covenant of good faith and fair dealing***. While W&L's policies and procedures clearly violates its Policies & Procedures – i.e. see "EQUAL OPPORTUNTY" and "POLICY AGAINST UNLAWFUL HARASSMENT" at pages 11 and 20-22 of *Wood & Lamping LLP Policies and Procedures Manual* - W&L took a far departure from said policies and procedures and subjected Newsome to discriminatory practices as a direct and proximate result of her race/sex and knowledge of her engagement in protected activities. W&L doing so with knowledge that its *discriminatory treatment* of Newsome during her employment as well as her termination violated Title VII of the Civil Right Act and employment laws.

125. An investigation into this instant Charge will support that W&L engaged in unlawful employment practices by refusing to represent Newsome in legal matters to which she sought representation and that said refusal was ill motivated – see "REPRESENTATION OF EMPLOYEES" at page 22 of *Wood & Lamping LLP Policies and Procedures Manual* at **EXHIBIT "4"** attached hereto. Said refusal by W&L to represent Newsome was discriminatory and denied as a direct and proximate result of her race and its knowledge that Newsome had engaged in protected activities. W&L knew and/or should have known that Newsome believed in exercising rights secured to her under the laws. That Newsome believed in pursuing the proper legal avenue/recourse when protected rights were violated. W&L with said knowledge attempted to coerce Newsome to forego the exercise of protected rights; moreover, waive the right to bring legal action against it for the discriminatory practices leveled against her.

126. Newsome's unlawful/illegal termination would not have occurred had W&L not been aware of her engagement in protected activities and/or filing of EEOC Charge/lawsuits. Moreover, Newsome's engagement and participation in civil rights activities, refusal to forego protected rights, knowledge of Thomas J. Breed's former law firm's (SMR&S) intent to file a frivolous lawsuit against Newsome, resulted in the unlawful/illegal termination. The fact that ALL persons engaging in such civil wrongs against Newsome and trying to convince her to waive and/or forego rights were white is pertinent information – apparently not understanding or appreciating (as Newsome did) the sacrifices of persons making it possible for the creation and enactment of civil rights laws.

An investigation into this instant Charge will support **systematic** *discrimination* and that W&L's discriminatory practices and termination was a direct and proximate result of its knowledge of Newsome's engagement in protected activities and her refusal to forego exercising protected rights. W&L determined to violate Newsome's rights and decided that should she bring legal action against it, it would resort to the system created to destroy and mask such discriminatory practices leveled against African-Americans. Moreover, **resort to advising the EEOC and/or government agencies of Newsome's engagement in other legal matters**. *W&L will be attempting to rely upon unlawful/illegal practices of former employers and others against Newsome. As with W&L and many others, the object of such discriminatory practices is to; (a) deprive Newsome of equal employment opportunities, (b) deprive her equal protection of the laws, (c) deprive her due process of laws, (d) obstruct the administration of justice, and (e) paint Newsome as the boy-who-cried-wolf, paranoid, a serial litigator, etc. – **such tactics of a system destroy the lives of African-Americans and/or people of color.***

Determined to keep the ***systematic*** *discrimination* leveled against Newsome going and efforts of obstructing the administration of justice, *W&L made a **willful, conscious** and **deliberate** decision to remove and destroy evidence from Newsome's desk (**Newsome kept her desk locked**) that **it knew was incriminating** and would support W&L's violation of its own policies and procedures.* Moreover, would reveal the unlawful/illegal actions taken by W&L to cover-up/mask discriminatory employment practices.

> **EEOC Decision No.** 71-460 (¶6175) **Time Limit Tolled By Premature Charge To EEOC: National Origin Discrimination-Discharge for Filing Charge** – A reasonable basis existed for concluding that a Spanish-surnamed American was discharged from his employment because he filed charges alleging discrimination on account of national origin, where there was no evidence that the discharge would have occurred had the employer not been aware of the filing of the charge.. . .
>
> Charging Party was hired by Respondent on June 4, 1968, as a bookkeeper. On November 21, 1969, Charging Party was discharged. Charging Party asserts that he had never been reprimanded in connection with his work, and that his supervisor was antagonistic because he is a Spanish surnamed American and *because he filed a charge of discrimination against another employer.* [Fn 6: A copy of a newspaper article describing that charge was included in Charging Party's personnel file] . . . One of three of Respondent's officials who participated in the decision to discharge Charging Party stated in an affidavit that he had contacted an employer against whom Charging Party had made a previous Commission Charge. He states that the employer recommended that "we take action now for our own protection." He also stated that "the material in (Charging Party's personnel file) gave indication the (Charging Party) was not rational (sic). The file reflected he had filed a Civil Rights charge with EEOC. I was sure the same thing would eventually happen to me." . . . There is no evidence on the record indicating that Respondent would have discharged Charging Party had it not been aware of Charging Party's earlier charge. Such an action based, at least in part, upon Charging Party's participation in Commission proceedings violates Section 704(a) of Title VII.

127. While the Fifth Circuit Court's decision in *Newsome v. Equal Employment Opportunity Commission*, 301 F.3d 227 in clearly states:

Newsome also is not entitled to the writ because she has another adequate remedy available, i.e. ***she could file suit in court against her employer****. . . .*

[EMPHASIS ADDED] See **EXHIBIT "26"** attached hereto and incorporated by reference. This **INFORMATION POSTED ON THE INTERNET:** The very practices that the EEOC notes as discriminatory practices are used to notify potential employers of Newsome's engagement in protected activities as well as retaliate against Newsome for exposing discriminatory practices of white employers.

128. W&L knew and/or should have known that it was engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act. This was the reason W&L went into Newsome's desk ***(Newsome kept her desk locked)*** to remove and destroy evidence that it knew would be incriminating and support the discriminatory practices Newsome was subjected to and had to endure over her objections. W&L creating a hostile/harassing environment and then resorted to retaliatory practices for purposes to forcing Newsome out of the workplace and/or setting the stage to mask the unlawful/illegal termination.

> **EEOC Decision No. 71-1677 (¶6289) Supervisor's Use of Racial Terms in Harassing Employee Was Unlawful: Racial Discrimination-Verbal Harassment-Use of Racially Related Terms-Discharge-Retaliation for Protected Activities** – . . . *Since the harassment was partially due to the employee's having filed charges with the Commission and her opposition to racial practices and its foreseeable result was a cessation of work for which the employee was discharged, the discharge was reasonably to be viewed as based on considerations of race and the employee's opposition to practices feared by the employer to be unlawful.*
>
> We find that the Respondent's continual use of the terms "troublemaker" and "civil rightser" played a substantial role in forcing Charging Party to leave her work. . . . *It is also well settled that Title VII guarantees employees the right to work in an atmosphere* ***free*** *from racial invective*. [Fn. 8 - Decision of Equal Employment Opportunity Commission No. 70-683, decided April 10, 1970, EMPLOYMENT PRACTICES GUIDE (CCH) ¶6145...]
>
> Inasmuch as Respondent's unlawful racial harassment of Charging Party was conducted either with an intent to cause Charging Party to cease work, or with reckless disregard of the consequences of such harassment, inasmuch as Charging Party's cessation of work was among the reasonably foreseeable results of such harassment, and inasmuch as Charging Party was discharged for her cessation of work, *we find that Charging Party was* ***discharged because of her race****, as alleged, and also because Charging Party* ***filed a charge with the Commission****, and* ***opposed practices feared*** *by Respondent to be unlawful.. . .*
>
> Reasonable cause exists to believe that Respondent engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964 *by harassing and discharging Charging Party because of her race, because she filed a charge with the Commission, and because she opposed practices feared by Respondent to be in violation of Title VII.*

129. An investigation into this instant Charge will support ***systematic*** *discriminatory* practices leveled against Newsome. Moreover, W&L's engagement with third parties to induce the breach and/or discriminatory practices. It was during the signing of the Magistrate's Order in a legal matter brought by SMR&S attorney (David Meranus) on behalf of their client (Stor-All) advised of his knowledge of Newsome's engagement in protected activity. Information confirming Newsome's concerns of *systematic discriminatory* practices as well as being stalked from job-to-job/state-to-state and her employer(s) being contacted and notified of her engagement in protected activities. Said contact is made for purposes of getting Newsome terminated from place of employment, deprive Newsome of equal employment opportunities, deprive Newsome equal protection of the laws, etc. See EXHIBIT "24" – *February 6, 2009 Letter to Meranus* attached hereto and incorporated by reference.

130. *The employer-employee relationship is contractual in nature*; ***it may be created by express***. . . *oral contract* or *by implication of circumstances*, but essentially consists of the right of one person to order and control another in the performance of work by the latter. . . The law also recognizes a term of employment which is terminable at will where there is an indefinite hiring – that is, where no period of service is specified. Under the well-established common-law rule still adhered to in most jurisdictions, in an employment for an indefinite term the employee may be discharged at any time for any or no reason, regardless of motive, without the employer incurring liability, ***unless there is a . . . statutory restriction on the right of discharge***. . . . **All** *the circumstances of the employment relationship will be examined to determine what the parties intended with respect to the duration of employment*. Factors that may be considered include **the policy** of the employer, nature of the job, . . . In such a case, or **where discharge is prohibited by statute,** *there is also a line of authority holding that* ***a tort action will lie*** *against the employer* ***for conspiring with third parties*** *to induce the breach*. 7 Am Jur Proof of Facts 2d 12-14.

131. Newsome believes that an investigation into this instant Complaint may reveal that W&L's termination of her employment is an ongoing pattern-of-discrimination and/or ***systematic*** *discrimination* of certain white employers against Newsome for her exercising of protected rights secured to her under Title VII, Civil Rights Act, Fair Housing Act, etc. Newsome in *good faith* exercised her rights and brought the applicable legal actions to address legal wrongs rendered against her – said engagement and/or pursuit which is clearly protected and prohibits retaliation against her. Moreover, Newsome had a good faith belief that she is being subjected to **systematic** *discrimination* and **former employers and others have been *stalking* her from job-to-job/state-to-state contacting her employers and advising of past/present legal actions and/or her intent to file future lawsuits.**[21] As evidenced in Newsome's conversation with David Meranus, attorney for Stor-All, in a lawsuit filed by him on behalf of Stor-All against Newsome. Confirmation of said stalking was made known on February 6, 2009 during the execution of Magistrate's Order ruling in favor of Newsome's motion to transfer matter. See **EXHIBIT "24"** – *February 6, 2009 Letter of Newsome to David Meranus* attached hereto and incorporated by reference. W&L obtaining a copy of said correspondence in that it is evident Newsome's termination of employment and Stor-All's lawsuit establishes a causal connection.

> **IMPORTANT TO NOTE:** That while Newsome was not sure (however had an idea) of the persons behind the stalking, Meranus' confirmation of February 6, 2009, shed additional light and provided Newsome with pertinent information to determine

[21] "POST-TERMINATION INFORMATION:" **It is when you go beyond the facts or make statements out of a desire to harm the former employee or cover up the truth that you can get in trouble**. . . Obtain Legal Advice: Each situation is unique and should be handled accordingly in order to avoid possible legal trouble from departing employees. Employers should consult with their attorney regarding their specific legal obligations to departing employees. - **EXHIBIT "20"** - *W&L's Employer's Guide* at page 27 attached hereto and incorporated by reference as if set forth in full herein.

this. In the lawsuit SMR&S brought against Newsome on behalf of its client (Stor-All), Stor-All's insurance company (Liberty Mutual) has been made known. This information is important because Liberty Mutual has been linked to the employer in New Orleans, Louisiana in the matter Meranus addressed. Supporting a CAUSAL Link and acts in furtherance of systematic discrimination against Newsome; moreover, the scope, range (extending across states), and at what great lengths that white employers have gone to see that Newsome is not employed. In that it was Meranus that mentioned this matter, Newsome believe it is important to determine how such information was obtained and the CAUSAL Link between Newsome's engagement in protected activity in New Orleans, Louisiana and her termination of employment from W&L. While Newsome was not aware during the settlement of a claim with Liberty Mutual on January 21, 2009 (day after SMR&S filed complaint on behalf of Stor-All against Newsome), during the course of Stor-All's lawsuit, its insurance company has become known to Newsome. Therefore, raising serious and valid concerns as to Liberty Mutual's role, Stor-All and SMR&S role in Newsome's termination of employment with W&L. See **EXHIBIT "27"** – *January 21, 2009 Fax from Liberty Mutual to Newsome* attached hereto.

> *Spence v. Local 1250, United Auto Workers of America,* 595 F.Supp. 6 (N.D.**Ohio.**E.Div., 1984) - Employee **need <u>not</u>** establish validity of original discrimination claim to prove charge of employer retaliation flowing from employee's opposition to unlawful employment discrimination, but rather, relevant issue is whether employee sincerely believed discriminatory practices existed. Civil Rights Act of 1964, § 704(a), as amended, 42 U.S.C.A. § 2000e-3(a).
>
> *Warren v. Ohio Dept. of Public Safety,* 24 Fed.Appx. 259 (C.A.6.**Ohio,**2001) - Under opposition clause which prohibits retaliation against someone opposing violation of Title VII, person opposing apparently discriminatory practices must have a good faith belief that practice is unlawful. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

132. While W&L may attempt to assert that Ohio is an "employment-at-will" state, its <u>*Title VII violations*</u> against Newsome ***<u>precludes any such defense</u>*** under said "at-will" doctrine. Moreover, its retaliation and harassment of Newsome because she opposed employment practices prohibited by law precludes any such defense under the employment-at-will doctrine.

> *Mulvin v. City of Sandusky,* 320 F.Supp.2d 627 (N.D.**Ohio.**W.Div., 2004) - Under Ohio law, public policy **warrants <u>exception</u>** to employment-at-will doctrine *for retaliation for reporting . . .harassment in workplace.*

133. Newsome believes the evidence provided not only in this instant Complaint and written documentation evidencing W&L's knowledge that she was engaging or would be engaging in protected activity – had filed and/or would be filing Title VII actions opposing unlawful practices, filing of criminal complaint addressing civil wrongs (i.e. under Civil Rights Act, etc.), participating in an investigation, proceeding with lawsuits addressing civil wrongs protected under Title VII, Civil Rights Act, etc. – will support retaliation by W&L and its attempt to cover-up/mask said violations by committing criminal/civil wrongs in the taking and destroying of evidence from Newsome's desk ***<u>(Newsome kept her desk locked)</u>***.

Muir v. Chrysler LLC, 563 F.Supp.2d 783 (N.D.**Ohio**.W.Div., 2008) - "Protected activity" element of prima facie case of retaliation under Title VII may be met by evidence of opposing an unlawful practice or making a charge, testifying, assisting or participating in an investigation, proceeding or hearing. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

134. An investigation into this instant Charge may yield information that W&L having knowledge that Newsome would be bringing civil lawsuits against former employers. Therefore, ***in an effort to aid former employers and/or those engaged in legal action brought by Newsome, W&L terminated Newsome's employment to provide opposing parties with an undue advantage*** – by financially devastating Newsome for purposes of creating difficulty in bringing actions and to provide opposing parties with an unlawful/illegal advantage – ***over any claims that she would be entitled to bring under the applicable statutes/laws within the time allotted***. RAISING VALID CONCERNS that such practices are in furtherance of the ***systematic*** *discrimination* leveled against Newsome and the perpetrators of said discrimination are **ALL** white – *in keeping with each scratching the others back.* W&L relying upon its knowledge of Newsome's engagement in protected activities and intent to use such information as a defense, proceeded to go into Newsome's desk ***(Newsome kept her desk locked)*** to remove and destroy evidence which it knew was incriminating and would support the discriminatory practices leveled against Newsome. Moreover, W&L's violations of its own policies and procedures. Then W&L attempted to ***coerce*** Newsome and get her to waive any rights she had to bring legal action in exchange for receiving medical benefits to which she is entitled and benefits afforded to white employees and/or those similarly situated.

135. Newsome believes the evidence contained in this instant Complaint as well as an investigation into the allegations of this Complaint will yield that she complained of harassment and/or hostile/ discriminatory treatment; therefore, shielding/protecting her against the retaliatory acts rendered her by W&L. Furthermore, that W&L's retaliation towards Newsome was a direct and proximate result of her notifying of exercising protected rights and its knowledge of Newsome's *participation* in bringing and/or filing of charge(s)/complaint(s)/lawsuit(s) to recover from civil/legal against her as well as her participation in an investigation.

Payton v. Receivables Outsourcing, Inc., 840 N.E.2d 236 (**Ohio.**App.8.Dist.Cuyahoga.Co., 2005) - Complaining to the employer about. . . harassment is a protected activity for the purposes of a claim for retaliatory discharge.

Payton v. Receivables Outsourcing, Inc., 840 N.E.2d 236 (**Ohio.**App.8.Dist.Cuyahoga.Co., 2005) - An employee is engaged in a protected activity, for the purposes of a claim of retaliatory discharge, if she opposes a discriminatory employment action or has made a charge, testified, assisted or participated in any investigation, proceeding, or hearing concerning discriminatory employment practices.

Gliatta v. Tectum, Inc., 211 F.Supp.2d 992 (S.D.**Ohio.**E.Div., 2002) - For purposes of a retaliation claim under Title VII, activities such as filing an Equal Employment Opportunity Commission (EEOC) claim fall under the "participation" clause of Title VII. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

The record evidence will support Newsome's reporting of harassment by supervisor(s); as well as others harassing her for exercising of protected rights and seeking relief from said wrongs. How bold and blatant was W&L? The record evidence will support that Newsome timely, properly and adequately placed it on notice of violations; moreover, W&L having access to various sources to support its knowledge of Newsome's engagement in protected activities elected to take a far departure from its own policies and procedures for purposes of depriving her equal employment opportunities, equal protection of the laws, etc.

136. Newsome's termination was unjustified, illegally motivated, was not due to any economic conditions and/or hardships, was not of business necessity and is evidenced by W&L's hiring of several white employees AFTER Newsome's termination of employment in its efforts of creating an ALL-white workplace and its efforts to destroy evidence to cover-up/mask discriminatory practices when it went into Newsome's desk ***(Newsome kept her desk locked)*** to remove and destroy evidence incriminating to it and revealing knowledge of its employment violations.

137. ***Bad Faith Discharges.*** An alternate theory of recovery in wrongful discharge cases may be advanced on the ground that the employee's at-will employment contract contained an ***implied-in-law covenant of good faith and fair dealing*** *and that an unjustified dismissal under some circumstances constitutes a breach of the covenant enabling the employee to recover damages in a cause of action sounding in contract or tort, in some cases, both contract and tort* [**Note:** Protecting At-Will Employees Against Wrongful Discharge: *The Duty To Terminate **only** in Good Faith*. 93 Harv L Rev 1816 (1980)]. To some extent this theory has been recognized by the courts in . . . **Ohio** [*Randolph v. New England Mut. Life Ins. Co.* (6th Cir. **Ohio**) 526 F2d 1383]. See 31 Am Jur Trials 317 § 7.

138. ***Bad Faith Breach of Contract.*** Regarding breach of contract claim in terminating Newsome's employment, W&L violated its contractual obligations in bad faith, then W&L is liable for all damages suffered by Newsome which are traceable to the breach, including those which could not be foreseen at the time the contract of employment was formed. Newsome's employment was terminated by W&L in bad faith violation of the employment contract, therefore, Newsome can recover all damages proximately caused by W&L's bad faith breach, including damages for mental distress, provided such injury is proximately caused by the bad faith breach. See 31 Am. Jur Trials 317 § 60, p. 509.

139. W&L in terminating Newsome's employment breached the covenant of good faith and fair dealing.

140. ***Definition of Implied Covenant of Good Faith and Fair Dealing.*** Newsome seeks to recover damages which she claims were sustained as a result of W&L's breach of its duty to act in good faith and deal fairly with Newsome with regard to the terms of W&L's personnel and appraisal policies and procedures. *Every* contract of employment includes *as a matter of law* an obligation of good faith and fair dealing between the parties in its performance or enforcement. This implied duty of good faith and fair dealing forbids either party from doing anything which will interfere with the right of the other to receive benefits of the agreements. The implied duty imposes on each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose. See 31 Am Jur Trials 317 § 60, pp. 509-510.

141. ***Breach of the Implied Covenant of Good Faith and Fair Dealing – Standard of Proof.*** Liability for the W&L's breach of the duty of good faith and fair dealing is imposed for failure of it to act in good faith and to deal fairly rather than arbitrarily in the performance of its obligations under the employment contract so as not to frustrate the purpose of the employment contract or to deny Newsome the benefits of the contract. It is not necessary to prove actual

dishonesty, fraud or concealment in order for Newsome to recover damages for breach of the implied duty of good faith and fair dealing. See 31 Am Jur Trials 317 § 60, p. 510.

*142. As a matter of law, Newsome is entitled to recover liability sustained by W&L for employment violations and its breach of the duty of good faith and fair dealing. W&L acted arbitrary and committed criminal/civil wrongs to cover-up/mask Title VII/employment violations. While it is not necessary for Newsome to prove actual dishonesty, fraud or through the evidence contained in this instant Charge, W&L's **theft of her property** to cover-up/mask and shield an illegal animus will further sustain pretext and knowledge of its engagement in criminal/civil wrongs leveled against Newsome.*

XI. REDUCTION IN FORCE:

> *Hodgens v. General Dynamics Corp.*, 144 F.3d 151 (1st Cir. 1998) - **[6]**Employees' rights to obtain leave under . . .are essentially prescriptive, setting substantive floors for conduct by employers, and creating entitlements for employees. **[9]**Employer's motive is relevant to whether employer has violated proscriptive provisions . . . protecting from discrimination those employees who exercise their rights . . .; *the issue is whether employer took the adverse action because of a prohibited reason or for a legitimate nondiscriminatory reason*. **[18]**. . .protects employee who visits a doctor with symptoms that are eventually diagnosed as constituting a serious health condition, *even if, at the time of the initial medical appointments, the illness has not yet been diagnosed nor its degree of seriousness determined*. **[21]**For employee to be unable to perform his or her job within meaning of . . . section entitling employee to 12 weeks of leave for serious health condition making employee unable to perform his or her job, it will suffice if employee is unable to perform job because of need to obtain medical treatment or diagnosis; he or she does not have to be physically unable to work. **[23]**Employer may not use reduction-in-force (RIF), reorganization, or improved-efficiency rationale as pretext to mask actual discrimination or retaliation for employee's exercise of . . . rights; the mere incantation of the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination.
>
> > N.23 - But *an employer **may not** use its RIF/reorganization/improved-efficiency rationale as a pretext to mask actual discrimination or retaliation*; the mere incantation of the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination. See *McDonnell Douglas,* 411 U.S. at 804, 93 S.Ct. 1817 (employer may not use an ostensibly legitimate reason for an adverse action as a pretext for discrimination that is prohibited by statute); 29 U.S.C. § 2615(a); 29 C.F.R. § 825.220; cf. *INS v. Chadha,* 462 U.S. 919, 944, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983): "Convenience and efficiency are not the primary objectives-or the hallmarks-of

democratic government." Nor are they the objectives of public policy underlying statutes . . .

[25]Even if employer's articulated reason for its adverse employment action is facially neutral, as in the case of a reduction in force (RIF), if in reality the employer acted for reason prohibited by the . . . retaliation provision, then its asserted legitimate reason and its ostensibly nondiscriminatory selection criteria as to who is subject to RIF *cannot* ***insulate it*** from liability.

N.25 - Because of the availability of seemingly neutral rationales under which an employer can hide its discriminatory intent, and because of the difficulty of accurately determining whether an employer's motive is legitimate or is a pretext for discrimination, there is reason to be concerned about the possibility that **an employer could manipulate its decisions to purge employees it wanted to eliminate**. See *Weldon v. Kraft, Inc.*, 896 F.2d 793, 798 (3d Cir.1990) (Subjective evaluations of performance "are more susceptible of abuse and more likely to mask pretext" than objective job qualifications.) (internal quotation marks omitted). The law does not permit this. **Even if an employer's actions and articulated reasons are facially neutral (e.g., a RIF), if in reality the employer acted for a prohibited reason (e.g., retaliation for exercising a protected right), then its asserted legitimate reason for the RIF and its ostensibly nondiscriminatory selection criteria as to who gets RIFed cannot insulate it from liability**. As Judge Posner wrote in the context of . . .discrimination, "[a] RIF is not an open sesame to discrimination . . . Even if the employer has a compelling reason wholly unrelated to . . . any of its employees to reduce the size of its work force, this does not entitle it to use the occasion as a convenient opportunity to get rid of its . . . workers." *Matthews v. Commonwealth Edison Co.*, 128 F.3d 1194, 1195 (7th Cir.1997) (citation omitted). Nor can it be an opportunity to get rid of workers who exercise their . . . right. . .

143. There is no legitimate nondiscriminatory reason for Newsome's termination. An investigation into this instant Charge will support a *pattern-of-practice* used by W&L. Such practices that W&L may have also been used on another African-American employee (Angela Hart). As Newsome advised W&L, "***You mentioned that an employee, Angie, brought charges against Wood & Lamping which was unsuccessful. While I am not aware of any charges by Angie, I would think that any comparison of my treatment and handling would be left up to the appropriate agency to handle; moreover, up to a jury to decide.*** ." See EXHIBIT "16" attached hereto and incorporated by reference. Taking advantage of African-Americans who may not be familiar with what their rights are and apparently W&L's repeat reliance upon such corrupt practices – placing

employees at a disadvantage so that they can obtain an undue/unlawful/illegal advantage should legal actions be brought against it.

144. W&L may attempt to use the reduction-in-force as an excuse to shield/mask Title VII violations – thinking that the state of the economy would provide it with such a frivolous defense masked behind discriminatory practices – however, *SHORTLY* ***AFTER*** Newsome's unlawful termination, W&L hired several white employees. Evidencing further discriminatory practices to reduce the number of African-Americans W&L employed and efforts of maintaining an ALL-white workforce.

145. *Even if W&L's RIF were true (when it is not), such defense cannot be used to deprive Newsome of protected rights secured to her under Title VII and/or other statutes/laws governing engagement in protected activities. W&L's deprivation of benefits under the Family & Medical Leave Act was also due to Newsome's race. W&L affording whites and/or those similarly situated medical leave to attend to medical issues; however, deprived Newsome of such benefits when she applied.*

146. W&L's termination of Newsome's employment was done to aid Thomas J. Breed's former employer/law firm (SMR&S) in a lawsuit it obtained knowledge would be filed against Newsome.[22] W&L's termination being done to aid a third party in legal matters to be brought against Newsome and to provide said third-party with an undue/illegal/unlawful advantage over Newsome. W&L's participation in such matter is also racially and discriminatorily motivated. Moreover, PRETEXT to cover-up/mask ***systematic*** *discriminatory* practices leveled against Newsome.

147. Newsome was not only terminated because of her race and W&L knowledge of her engagement in protected activities, but to deprive Newsome of medical benefits and/or fringe benefits afforded to white employees and/or those similarly situated.

> *Hollins v. Ohio Bell Telephone Co.*, 496 F.Supp.2d 864 (S.D.**Ohio**.W.Div., 2007) - When an employee complies with the requirements of the Family and Medical Leave Act (FMLA), the employee is entitled to certain substantive rights under the Act, including the right to take FMLA leave and the right, upon return from the leave, ***to be restored to the position of employment*** held when the leave commenced or to an equivalent position.
>
> *Schmauch v. Honda of America Manufacturing, Inc.*, 295 F.Supp.2d 823 (S.D.**Ohio**.E.Div., 2003) - Employers have prescriptive obligation under the FMLA, i.e., they must grant employees substantive rights guaranteed by the FMLA, and they have a proscriptive obligation, i.e., **they *may* <u>*not*</u> penalize employees for exercising such rights.**

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[22] **PRIMA FACIE - <u>CAUSAL CONNECTION</u>: (a)** W&L's termination of Newsome occurred on January 9, 2009. **(b)** SMR&S' client's (Stor-All's) Amnesty Weekend was set for January 9th thru January 11th. Stor-All advising Newsome of Amnesty Weekend via facsimile at the number assigned Newsome by W&L. See **EXHIBIT "18"** – *12/19/08 Fax From Lori Whiteside/Stor-All* attached hereto and incorporated by reference. **(c)** On January 9, 2009, Stor-All provided Newsome with "NOTICE TO LEAVE THE PREMISES." See **EXHIBIT "19"** attached hereto and incorporated by reference. **(d)** *<u>While Stor-All provided Newsome with faxes at W&L during her employment, **on the date of Newsome's termination** Stor-All did not provide her with the "Notice to Leave the Premises" via facsimile (as it did with the 12/19/08 fax and others) **because it knew that W&L was terminating Newsome's employment on said date**</u>*. **(e)** On January 20, 2009, SMR&S on behalf of Stor-All filed a lawsuit against Newsome.

Skrjanc v. Great Lakes Power Service Co., 272 F.3d 309 (C.A.6.**Ohio**, 2001) - The FMLA *protects an employee's right to be treated the same as other similarly situated employees*.

XII. PUBLIC POLICY:[23]

Defining "Public Policy:" "Public policy" has been characterized as the principle that no one can lawfully do that which has a tendency to be injurious to the public or against the public good.. . . In order for an employee discharge to be against public policy, the discharge must affect a duty that inures to the benefit of the public at large, rather than a particular employee. . . . the specific circumstances in which public policy will support a cause of action for wrongful termination, stating that a public policy cause of action arises only when the termination is in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act. The Model Termination Act provides that an employer ***may not*** *take adverse action in retaliation against an individual for filing a complaint*, giving testimony, or otherwise lawfully participating in proceedings under the Act. Courts in some states also look to the employer's motivation for discharging the employee as a part of its determination of whether public policy has been violated. A discharge will violate public policy only when the employer was motivated by bad faith, malice, or retaliation. The termination itself must be motivated by an unlawful reason or purpose that is against public policy. 82 Am. Jur 2d Wrongful Discharge § 57 (*Green v. Amerada-Hess Corp.*, 612 F.2d 212 (5th Cir. 1980)).

Public Policy: Despite the almost universal acceptance of the employment at will doctrine, the common law governing the employment relationship has been undergoing a period of flux corresponding to increasingly rapid and fundamental changes in the legal, social and economic conditions affecting the relations between employer and employee that have taken place since the formulation of the doctrine. An important ***judicially created restriction*** on an employer's otherwise ***arbitrary right to discharge an employee at will is the view recognizing a civil cause of action for wrongful discharge when such an employee is discharged in retaliation for actions which are protected by public policy***. . . The "public policy" exception to the employment at will doctrine has been applied to afford civil relief to an employee at will discharge under the following circumstances: . . . ***any employee because the employee has testified or is about to testify, or because the employer believes that the employee will testify in any investigation or proceedings relative to the enforcement"*** of the. . . law guilty of a misdemeanor, . . . for having filed a complaint under the . . . Act under the provision

[23] See "EMPLOYMENT AT WILL" and "SEVERANCE AGREEMENTS" - **EXHIBIT "20"** - *W&L's Employer's Guide* at pages 9-10 and 12 attached hereto and incorporated by reference as if set forth in full herein.

of that Act making it unlawful "to discharge. . . any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding. . . In most cases recognizing a private cause of action on the part of an employee discharged in retaliation for actions which are protected by public policy, the *public policy is evidenced by either. . . a statute designed **specifically** to protect the rights of the employee vis-à-vis employer. . .* .On the other hand, there is also authority recognizing a cause of action for the wrongful discharge of an employee at will in instances in which the *employer's motive for the discharge **interferes** with an important public interest*, regardless of the existence of an express statutory prohibition or statement of public policy specifically protecting the right of the employee vis-à-vis employer. . . and the public's interest in maintaining a proper balance between the two, *the court held that any **termination of employment** which is **motivated** by **bad faith** or **malice** or based **on retaliation** is not in the best interest of the **economic system** or the **public good** and constitutes a **breach of the employment contract**.* Other courts have apparently indicated that a discharge from employment which is motivated solely by malice on the part of the employer may be actionable under the prima facie tort doctrine. . .Using this approach, the plaintiff must satisfy the burden of showing an exclusive malicious motivation for the discharge, excluding any motive other than a desire on the part of the employer to cause the plaintiff harm. *The conduct recognized as tortuous must involve specific intent on the part of the employer to harm the plaintiff or to achieve some other proscribed goal*. . . . 7 Am Jur POF 2d 20-22, 25-28.

Public Policy Considerations. The courts have demonstrated an increased willingness to imply a terminate-for-cause **only** condition in an at-will employment contract, *and to enforce the covenant of good faith and fair dealing arising out of the contractual relationship*. The ground upon which most courts are willing to impose a restriction on the employer's right to discharge an at-will employee without cause, however, is public policy considerations. Thus, **where an employee is fired for exercising a right that public policy would encourage, or for refusing to perform an act that public policy would condemn, civil liability for resulting damages may be imposed on the employer**. This restriction on the employer's power to fire an at-will employee without cause appears to have been accepted, at least in principle, in the following jurisdictions:. . . **Ohio** [*Smith v. Frank R. Schoner, Inc.*, 94 **Ohio** App 308, 51 **Ohio** Ops 455, 115 NE2d 25]. . .The restriction has also been applied in two areas of federal jurisdiction. . . . **The discharged employee bears the burden in most cases of establishing that the alleged wrongful discharge contravened a public policy that was *clearly mandated* and *specifically expressed* in a statute, judicial decision or administrative agency regulation**. . . While the courts are not entirely uniform in their statement of the public policy exception, they do appear to be in greater agreement on the specific areas covered by

this ground. *Where the employee has been discharged for allegedly exercising a right encouraged by public policy,* ***liability has been imposed in virtually every case*** *where the dismissal was in retaliation for filing a . . . claim. . .* In other cases, the courts have imposed liability for wrongful discharge where the firing was in retaliation for an employee's serving on a jury, **for reporting *criminal* activity**, . . . Liability for wrongful discharge is more consistently found on public policy where the dismissal is in retaliation for the employee's refusal to participate in illegal acts or for attempting to rectify unlawful activity by the employer or coworkers. Thus, an employer has been held liable for wrongful discharge for firing an at-will employee in retaliation for the employee's refusal to participate in an illegal . . . scheme. . . 31 Am Jur Trials 317, § 6.

148. While Newsome approached W&L for legal representation regarding a legal matter she was dealing with involving her landlords and their counsel out of concerns that she was being requested to forego rights secured to her under the Fair Housing Act, Civil Rights Act, Constitution and other governing statutes/laws, Newsome did so in keeping with W&L's policies and procedures; however, W&L retaliated against Newsome because she refused to waive her rights and/or forego protected rights – i.e. as W&L has repeatedly tried to get Newsome to waive rights and agree not to bring legal action against it. See EXHIBIT "15" attached hereto and incorporated by reference.

149. ***Relation of Public Policy to Covenant:*** In determining whether the covenant of good faith and fair dealing has been breached, many courts will also examine public policy. Conduct of the employer which violates or undermines the public policy set forth in a statute will be deemed a breach of the covenant. In some jurisdictions, a cause of action for wrongful discharge in contract for violation of the implied covenant of good faith and fair dealing is coterminous with, and extends no further than, a cause of action for wrongful discharge in tort. *The case that first enunciated the covenant involved an employee fired because she refused to yield to her supervisor's. . . overtures; public policy was the basis for creating the implied covenant that prevents such* ***abusive dismissals****, the court holding that a termination by the employer of a contract of employment at-will which* ***is motivated by bad faith*** *and* ***malice*** *or* ***based on retaliation*** *is not in the best interest of the public good and* ***constitutes a breach of the employment contract.*** Thus, a dismissal which contravenes public policy constitutes not only an independent retaliatory tort, but also a breach of the implied covenant between the parties. While some courts have held that a discharged at-will employee may maintain a claim for breach of an implied covenant of good faith and fair dealing whenever the termination violates an established public policy, *most of the courts recognizing breach of the implied covenant claims in the employment at-will context have done so* **where dismissal *deprived* an at-will employee of an *employment benefit* that was earned or reasonably expected**. 82 Am Jur 2d Wrongful Discharge § 68.

150. ***Public Policy Exception:*** Most courts recognize an exception to the common-law at-will employment doctrine where the termination of the employee is based upon a violation of a principle of public policy. Thus, where Newsome is discharged for exercising a right or performing a duty that public policy encourages or requires, W&L may be subject to liability in tort for wrongful discharge. This exception is recognized, at least in principle, in the overwhelming majority of jurisdictions. Newsome may bear the burden of establishing that the alleged wrongful discharge contravened a public policy that was clearly mandated and specifically expressed in a constitution, statute, judicial decision, or administrative agency regulation in which Newsome was discharged for pursuing an employment-related right that is one of important public interest protected by state or federal constitutions, statutes, or judicial decisions; of which an investigation will yield Newsome

has shown and the evidence provided in this instant Charge will support has been sustained. See 48 Am Jur POF 2d 192-193.

151. **A. PRIMA FACIE: (a)** Public policies involved in W&L discriminatory practices and employment violations leveled against Newsome include but it not limited to – (i) Title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.]; (ii) 29 C.F.R. §§ 1601.6 and 1601.7; (iii) Section 4112 of the Ohio Revised Code; (iv) Ohio Civil Rights; (v) Ohio/U.S. Constitution; (vi) knowledge of Newsome's engagement in protected activities – i.e. filing of past EEOC Charges, filing of civil lawsuits, filing of claims under the Fair Housing Act, filing of criminal charges and participation in investigation, etc.; (vii) participation in federal investigations; (viii) violations under the applicable statutes/laws governing said matters. **(b)** Newsome was engaged in conduct favored by public policy. **(c)** W&L knew and/or believed that Newsome was engaged in protected activities – i.e. W&L finding out through other sources as well as Newsome advising of engagement in protected activities. **(d)** Retaliation was the motivating factor behind W&L's termination of Newsome's employment. W&L retaliated by terminating Newsome to deprive her of benefits to which she was entitled. Not only that, W&L having knowledge that Thomas J. Breed's (attorney Newsome assisted) former law firm (SMR&S), on behalf of its client (Stor-All), would be filing a lawsuit against Newsome; therefore, W&L terminated Newsome's employment for purposes of providing SMR&S and its client with an undue/illegal advantage over Newsome in the lawsuit that would be filed against her. **(e)** W&L's *termination of Newsome's employment was to undermine an important public policy.* In an effort to cover-up/mask such ***systematic*** *discriminatory* practices, W&L removed and destroyed evidence that it knew and/or should have known was incriminating. Evidence which it knew and/or should have known would support W&L's violations of its own policies and procedures. Criminal/civil wrongs committed by W&L were done with malicious intent to obstruct the administration of justice.

> ***Elements of Public Policy Exception:*** To prevail, an employee asserting a discharge that undermines public policy must establish five key elements:
>
> (i) The existence of a relevant public policy;
> (ii) That he or she was engaged in conduct favored by public policy;
> (iii) That the employer knew or believed that the employee was engaged in protected activity;
> (iv) That retaliation was a motivating factor in the dismissal decision, and
> (v) That the discharge would undermine an important public policy.
>
> (a) In some jurisdictions, *to state a claim for wrongful discharge due to violation of public policy*, an employee **must** demonstrate:
>
> (1) that the employee was discharged;
>
> (2) that the dismissal violated some clear mandate of public policy; and
>
> (3) that there was a nexus between the defendant and the decision to fire the employee.

(c) A prima facie case of termination in violation of public policy requires a showing that:

(1) the employer prohibited the employee from performing a public duty or exercising an important job-related right or privilege;

(2) action directed by the employer would violate a specific statute relating to public health, safety or welfare, or would undermine a clearly expressed public policy relating to the employee's basic responsibility as a citizen or a right or privilege as a worker;

(3) the employee was terminated as a result of refusing to comply with the employer's order or directive was based on the employee's reasonable belief that the action ordered by the employer was illegal, contrary to a clearly expressed statutory policy relating to the employee's duty as a citizen, or violative of the employee's right or privilege as a worker. See 82 Am Jur 2d Wrongful Discharge §55. *Owens v. Carpenters' Dist. Council,* 161 F3d 767 (4th Cir. 1998); *Hayden v. Bruno's Inc.,* 588 So.2d 874 (1991).

B. PRIMA FACIE: (i) Newsome was discharged/terminated from her place of employment; **(ii)** Newsome's discharge/termination clearly violated public policy clearly mandated by statutes/laws governing said matters – i.e. (a) Title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.]; (b) 29 C.F.R. §§ 1601.6 and 1601.7; (c) Section 4112 of the Ohio Revised Code; (d) Ohio Civil Rights; (e) Ohio/U.S. Constitution; (f) knowledge of Newsome's engagement in protected activities – i.e. filing of past EEOC Charges, filing of civil lawsuits, filing of claims under the Fair Housing Act, filing of criminal charges and participation in investigation, etc.; (g) participation in federal investigations; (h) violations under the applicable statutes/laws governing said matters.; and **(iii)** The record evidence will support that here is a nexus/connection between W&L's decision to discharge/terminate Newsome's.

C. PRIMA FACIE: (I) W&L's termination of Newsome's employment prohibited her from performing a public policy and exercising her rights secured/guaranteed under the FMLA. Depriving Newsome of benefits provided to white employees and/or employees similarly situated. Moreover, W&L deprived Newsome from performing a public duty or exercising an important job-related right or privilege. **(II)** The unlawful/illegal acts and discriminatory practices orchestrated by W&L clearly violated public policy -- Title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.]; 29 C.F.R. §§ 1601.6 and 1601.7; Section 4112 of the Ohio Revised Code; Ohio Civil Rights; Ohio/U.S. Constitution; knowledge of Newsome's engagement in protected activities – i.e. filing of past EEOC Charges, filing of civil lawsuits, filing of claims under the Fair Housing Act, filing of criminal charges and participation in investigation, etc.; participation in federal investigations; violations under the applicable statutes/laws governing said matters. -- relating to public health welfare and clearly undermined expressed public policy relating to Newsome's responsibility as a citizen and employee. **(III)** Newsome's employment with W&L was terminated because she refused to forego protected rights; for the exercise/engagement in protected rights; reporting of criminal/civil wrongs to the proper authorities; W&L's knowledge that any discriminatory practices and/or employment violations would be met with legal action, therefore, W&L had representatives remove

and destroy evidence it knew would be incriminating and support violations of its own policy and procedures as well as public policy.

152. **PRIMA FACIE: (a)** W&L's termination of Newsome's employment was motivated by reasons contrary to public policy. **(b)** Based on the orientation provided Newsome at the time of employment, *Wood & Lamping LLP Policies and Procedures Manual*, W&L's Employer's Guide, W&L's specializing in employment/labor laws, and the applicable statutes/laws governing employment laws, she had an expectation of job security and fair treatment under Title VII of the Civil Rights Act of 1964 and other governing statutes/laws.

> **EQUAL OPPORTUNITY**
> The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. *Discrimination by any member of the firm **will not** be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also **prohibits retaliation against anyone who has filed a complaint** of **discrimination** or **harassment**.*
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 11) – **EXHIBIT "4"** attached hereto and incorporated by reference as if set forth in full herein.

(c) An investigation into this instant Charge will support an absence that W&L's termination of Newsome's employment was for good cause. Therefore, a breach of good faith and fair dealing. **(d)** A special fiduciary relationship existed between W&L and Newsome. **(d)** An investigation on into this instant Charge as well as the evidence, facts and legal conclusions set forth herein, will support actual bad faith, malice, criminal intent, breach of good faith and fair dealing on the part of W&L and it having knowledge that there was no just cause for the termination of Newsome's employment. Criminal/Civil wrongs by W&L to remove and destroy evidence that it knew was incriminating and would support discriminatory intent/practices; moreover, done to obstruct the administration of justice and deprive Newsome rights secured to her under the applicable statutes/laws. W&L demanding that Newsome waive her right to bring legal action against it in exchange of benefits unlawfully/illegally withheld in retaliation of her exercising and/or engaging in protected activities. **(e)** An investigation into this instant Charge will support fraud, deceit and misrepresentation on behalf of W&L to cover-up/mask discriminatory practices leveled against Newsome. **(f)** W&L's termination of Newsome's employment was arbitrary.

> ***Specific Circumstances Constituting Breach***: Breach of an implied covenant of good faith and fair dealing occurs where:
>
> (i) Termination is motivated by a reason contrary to public policy.

(ii) There is an expectation of job security or fair treatment.

(iii) There is an absence of an express representation that employment is terminable at will.

(iv) A special, fiduciary relationship exists between the parties.

(v) There is actual bad faith on the part of the employer, not merely the absence of good cause for discharge.

(vi) There is fraud, deceit, or misrepresentation on the part of the employer.

(vii) The discharge is arbitrary.

82 Am Jur 2d Wrongful Discharge § 71.

153. Through this instant Charge, Newsome seeks the intervention of the EEOC/OCRC to enforce the applicable laws and to bring the proper actions of and against W&L for any/all employment violations/discriminatory practices found. Newsome was unlawfully/illegally discharged/terminated from employment with W&L in violation of public policy.

> *Miller v. MedCentral Health Sys., Inc.*, 2006 **-Ohio-** 63 (**Ohio.**App.5.Dist.Richland.Co., 2006) -Fact that statutes and regulations establishing public policy **do <u>not</u>** require an employee to report the violation or specifically protect the reporting employee from retaliation does not foreclose a discharged employee from maintaining a common-law claim for wrongful discharge in violation of public policy.

154. Newsome believes an investigation will support that she engaged in protected activities and W&L's knowledge of said engagement (i.e. filing of Title VII Charges, filing of lawsuit(s) for civil/legal wrongs, participation in investigations – See Exhibit "_" - filing of charge for violations under Fair Housing Act, notified W&L of request for medical leave protected under Family & Medical Leave Act, etc.) all of which supports Newsome's engagement in statutorily protected activities, of which an adverse employment action occurred which resulted in Newsome's termination of employment. There is a causal link between Newsome's engagement in the protected activities and W&L termination of her employment for the engagement in said protected activities. There is evidence to support W&L repeatedly requesting that Newsome waive protected rights and not bring legal action against it in exchange for benefits to which she was automatically entitled to – benefits W&L afforded to whites and/or those similarly situated; however, deprived Newsome of.

> *Kowalski v. Kowalski Heat Treating, Co.*, 920 F.Supp. 799 (N.D.**Ohio**, 1996) - To establish prima facie case of retaliation, plaintiff must show that he engaged in a statutorily protected activity, that adverse employment action occurred, and that causal link between the two exists.
>
> *Meyer v. United Parcel Serv., Inc.*, 882 N.E.2d 31 (**Ohio**.App.1.Dist.**Hamilton.**Co., 2007) - An

aggrieved employee may pursue a retaliatory-discharge claim based on a violation of public policy. R.C. § 4123.90.
Meyer v. United Parcel Serv., Inc., 882 N.E.2d 31 (Ohio.App.1.Dist.**Hamilton.**Co., 2007) - A statutory retaliation claim and a wrongful discharge claim based on public policy are distinct claims that must be addressed separately. R.C. § 4123.90.

155. W&L's termination of Newsome's employment was done with willful, malicious and deliberate intent to cause her injury and harm.

Malicious Discharge: Some courts recognize tortuous discharge claims only when the termination of an employee is in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act.. . . 82 Am Jur 2d Wrongful Discharge § 83 (*Graham v. Contract Trans., Inc.*, 220 F3d 910 (8th Cir. 2000)).

XIII. PRETEXT:

She now must have the opportunity to demonstrate that the proffered reason was not the true reason for the employment decision. This burden now merges with the ultimate burden of persuading . . . she has been the victim of intentional discrimination. She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. *Tye v. Board of Educ. Of Polaris Joint Vocational School Dist.*, 811 F.2d 315 (6th Cir. **Ohio**, 1987)

In each case, the plaintiff attempted to establish a prima facie case by showing (1) membership in the protected class, (2) discharge, (3) qualification for the position, and (4) replacement by a person who was younger or a member of the opposite. . . *Tye v. Board of Educ. Of Polaris*

156. **PRIMA FACIE: (a)** Newsome is an African-American female; therefore a member of the protected class. **(b)** Newsome was discharge/terminated from employment with W&L. **(c)** Newsome was qualified for the position (Estate Planning Coordinator) for which she was hired and was qualified to perform additional job responsibilities assigned her; and **(d)** Newsome was replaced by a white employee; moreover, W&L hired several white employees shortly AFTER Newsome's unlawful/illegal discharge.

157. **PRIMA FACIE: (a)** The reason provided to Newsome for her termination has no basis in fact. PRIOR to W&L's termination of Newsome's employment it removed and destroyed evidence from her desk ***(Newsome kept her desk locked)*** that would support violation of its own policies and procedures – removing and destroying of incriminating evidence. **(b)** The proffered reason W&L provided Newsome for termination did not actually support or motivate the adverse action taken against her. **(c)** An investigation into this instant Charge will support that W&L's

proffered reason for Newsome's termination is false, unworthy of belief and insufficient to motivate the adverse action taken against her.

> Title VII plaintiff who is trying to show that employer's stated reason for adverse employment action is pretextual is required to show by preponderance of evidence that proffered reason: (1) had no basis in fact; (2) did not actually motivate adverse action; or (3) was insufficient to motivate adverse action. *Niswander v. Cincinnati Ins. Co.,* 529 F.3d 714 (6th Cir. **Ohio,** 2008)

158. An investigation into this instant Charge will support W&L's EXTREME discriminatory and retaliatory practices leveled against Newsome. Moreover, leveled against African-Americans in efforts of reaching its goal of creating a non-African-American workplace. Moreover, the criminal/civil wrongs committed against African-Americans for reporting what they believed were discriminatory practices – i.e. Paul Berninger advising that another African-American employee (Angie Hart) expressing concerns similar to that of Newsome. Newsome was unaware of such claims by Hart until Berninger addressed such matter to her. Based upon W&L's handling of Newsome's employment as well as efforts to cover-up/mask/destroy evidence, a reasonable mind may conclude that W&L did the same with Hart for purposes of avoiding liability.

> When determining relative weight to assign similar past acts of harassment, factfinder may consider factors such as severity and prevalence of similar acts of harassment, whether similar acts have been clearly established or are mere conjecture, and proximity in time of similar acts to harassment alleged by plaintiff. *Hawkins v. Anheuser-Busch, Inc.,* 517 F.3d 321 (6th Cir. **Ohio,** 2008)
>
> In hostile work environment case, more weight should be given to acts committed by serial harasser if plaintiff knows the same individual committed offending acts in the past; serial harasser left free to harass again leaves impression that acts of harassment are tolerated at the workplace and supports plaintiff's claim that workplace is both objectively and subjectively hostile. *Hawkins v. Anheuser-Busch.*

An investigation into this instant Charge will also support that W&L subjected Newsome to a hostile working environment over her objections. Moreover, W&L allowed an attorney (Brian Gillan) who had a history of hostile treatment of females as well as engaged in sexual relationship, etc. to continue to work in its employment. *W&L aware of Gillan's past and history of harassing female employees allowed said behavior and assigned Gillan to Newsome. W&L left Gillan free to commit such unlawful/illegal acts for purposes of creating a hostile, threatening, intimidating, discriminatory, harassing environment against Newsome for purposes of covering-up/masking its unlawful/illegal discriminatory and retaliatory practices for Newsome's objections and participation in protected activities.* When a white employee (Kathy Richey) was subjected to alleged acts by another attorney (Peter Newman), W&L terminated Newman's employment and allowed Richey time off to recoup from such alleged hostile treatment alleged by Newman. ***However, when Newsome was subjected to such hostile/discriminatory and retaliatory practices to which she complained, W&L allowed Gillan to remain in its employment and to feel free to continue such employment violations.***

159. A reasonable mind may conclude that W&L's removal and destruction of evidence will support PRETEXT. Moreover, said actions of W&L were done for purposes of obstructing the administration of justice, depriving Newsome equal employment opportunities, cover-up/mask

W&L's violation of its own policies and procedures. W&L's termination of Newsome's employment was illegally motivated, done to cover-up/mask discriminatory practices, aid third party (SMR&S) in a legal matter it having knowledge would be brought against Newsome – termination being rendered in efforts of eliminating a CONFLICT OF INTEREST – a clear violation involving public policy as well as violation against an employee for engaging in protected activities made known to W&L.

> To establish, for purpose of Title VII claim, that employer's reason for terminating employee was pretextual because it was more likely than not that employee was terminated based on an illegal motivation, employee must show that the sheer weight of the circumstantial evidence of discrimination makes it more likely than not that the employer's explanation is a pretext, or coverup. *Abdulnour v. Campbell Soup Supply Co., LLC*, 502 F.3d 496 (6th Cir. **Ohio**, 2007)

> To demonstrate that employer's reason for the discharge was pretextual, in an employment discrimination action, the employee show by the preponderance of the evidence either (1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate his discharge, or (3) that they were insufficient to motivate discharge. *Jones v. Potter,* 488 F.3d 397 (6th Cir. **Ohio**, 2007)

160. An investigation into this instant Charge will support that Newsome approached W&L for representation in a legal matter to which W&L assigned Elizabeth Horwitz (attorney – white female). However, *Horwitz' job was to convince Newsome to waive protected rights secured to her under the Fair Housing Act, Civil Rights Act, Constitution and other governing statutes/laws* – **as W&L has attempted to do regarding depriving Newsome rights secured under the FMLA** (See EXHIBITS "15" attached hereto and incorporated by reference). When Newsome refused to waive protected rights, Horwitz became upset and requested to be assigned another person to provide her legal assistant. Horwitz became very hostile and irate because Newsome refused to forego her rights and expressed her entitlement to exercise said rights. From that point on, W&L subjected Newsome to discriminatory/hostile/retaliatory practices and harassed due to her refusal to waive protected rights, having to move forward and file the required civil actions to preserve her rights, W&L's knowledge of Newsome's engagement in protected activities as well as filing of charges/lawsuits to protect her rights. W&L taking job duties away from Newsome and giving to white employee – job duties to which was still required in the position Newsome held based on the attorneys assisted. At the time of Newsome's termination the job duties taken away from her and given to white employee were still required of the attorney, Thomas J. Breed (**Department Head** *of the Estate Planning Group*), to which Newsome provided legal support. *The decision makers and those engaging in the discriminatory practices leveled against Newsome* ***are ALL*** *white. Moreover, from the evidence, clearly have* ***no regard*** *for Civil Rights nor understanding of Newsome's appreciation and entitlement to said protected rights sought to be exercised. W&L's proffered reason for the termination of Newsome's employment* ***is PRETEXT*** *for racial prejudice*.

> Black female employee had proven employer's violation of statute regarding right of all persons to full and equal benefits of laws where employee had established that she was treated in harassing manner due to her filing of discrimination claims, that her attempted transfer was employment term varying from those accorded to similarly situated white workers, and that, although employer articulated legitimate nondiscriminatory reasons by way of rebuttal, employer

had been shown by preponderance of evidence to have employed such reason merely as pretext for racial prejudice. 42 U.S.C.A. § 1981. *Harris v. Richards Mfg. Co., Inc.*, 511 F.Supp. 1193 (n.6) (1981).

Proof of prima facie case under section of civil rights statutes regarding right of all persons to full and equal benefits of laws requires that person alleging violation first establish that his employment terms vary from those which his employer accords to similarly situated white workers. 42 U.S.C.A. § 1981. *Harris v. Richards Mfg. Co.* at n. 7.

161. Because of the **systematic** *discriminatory* practices of W&L and its engagement of third-parties to deprive her of protected rights, Newsome has brought this instant Charge with the EEOC/OCRC for purposes of recovering damages sustained from such injury/harm. Therefore, Newsome is demanding that the EEOC/OCRC perform the **MANDATORY** ***ministerial*** *duties* required and enforce the applicable statutes/laws governing Title VII/Civil Rights violations and/or discriminatory practices/employment violations leveled against her. An investigation into this instant Charge will support W&L's efforts to get Newsome to forego – i.e. agree not to bring legal action against it – protected rights in exchange for obtaining medical benefits to which she was entitled to and said benefits afforded to white employees of W&L and/or those similarly situated. *As a direct and proximate result of Newsome's* ***refusal to waive*** *protected rights, W&L allowed* ***her medical benefits/fringe benefits to lapse***.

Under section of civil rights statutes regarding right of all persons to full and equal benefits of laws, both compensatory and punitive damages are recoverable. 42 U.S.C.A. § 1981. *Harris* at n.8.

An award of punitive damages is permissible under section of civil rights statutes relating to right of all persons to full and equal benefits of laws even though action under such section is joined with Title VII action. Civil Rights Act of 1964, §§ 701 et seq., 704(a) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-3(a); 42 U.S.C.A. § 1981. *Harris* at n. 9.

Under section of civil rights statutes relating to right of all persons to full and equal benefits of laws, court may award compensatory **damages for *embarrassment, humiliation and mental anguish, and damages for emotional distress* may be inferred from circumstances as well as proved by testimony, but there must be sufficient causal connection between defendant's illegal actions and injury to plaintiff**. 42 U.S.C.A. § 1981. *Harris* at n.10.

XIV. CONSPIRACY:

Limitations on the Right of Discharge – Statutes Providing Civil Remedies: Some statutes dealing with the employer-employee relationship may expressly provide civil remedies. 42 USCS § 1985(3) authorizes an action by the injured party for the **recovery of damages sustained as a result of a conspiracy** (1) *for the purpose of depriving any person of equal protection of the laws, or of equal privileges and immunities under the laws* . . . A conspiracy by private persons to accomplish the purposes proscribed by § 1985(3) is actionable, even in the absence of state action. . . .*Even without state*

action, a plaintiff may contend that various ***of his constitutional rights,. . .*** **have been denied**, or that the exercise of such rights was the reason for defendant's termination in his employment within the context of a § 1985(3) action. However, the jury will be faced only with the question of whether defendants conspired to deprive plaintiff of his constitutional rights. 7 Am Jur POF 2d 28, 29, 31. See *Griffin v. Breckenridge,* 408 U.S. 88, 29 L.Ed.2d 338, 91 S.Ct. 1790. 15 Am. Jur. 2d, Civil Rights § 16.

The alleged discriminatory practices against which the employee's charge or opposition is directed need not be found to actually exist in order for the employee's activity in protesting to be protected under § 2000e-3(a), if the employee has acted on a reasonable and good faith belief that the employer was engaging in unlawful employment practices. *Even if the employee's complaints are completely unfounded, the Act forbids employer retaliation for making them.* . . . The filing of charges is protected even if the charge contains collateral statements which are false and apparently malicious, and **this includes charges filed against a previous employer**. .. . . *Section 2000e-3(a) also provides "exceptionally broad" protection from retaliation against individuals who oppose unlawful employment practices*.. . .Activities in opposition to unlawful employment practices that have been held to be protected under § 2000e-3(a) include. .. **other prohibited discrimination in employment**. . . **expressing an intention to file an unfair employment practices charge**. . . *Opposition to any unlawful employment practice is protected against retaliatory discharge by § 2000e-3(a)*. . .this is true even if opposition is unintentional and not by design. . . Moreover, it has been held that § 2000e-3(a) protects an individual from retaliatory discharge ***even when the target of his activity in opposition to unlawful employment practices is directed against someone other than the retaliating employer***. 7 Am Jur POF 2d 34 – 37

162. An investigation into this instant Charge will support that W&L **CONSPIRED** and engaged with third-parties to deprive Newsome of equal employment opportunities because of its knowledge of past filings of EEOC Charges against other employers, filing of lawsuits, participation in investigations, and engagement in protected activities. W&L's termination of Newsome's employment was done to deprive her equal protection of the laws and equal privileges and immunities under the laws. Moreover, to provide opposing parties involved in litigation with an undue/unlawful/illegal advantage over Newsome.** As a direct and proximate result of W&L's unlawful/illegal employment practices, Newsome has been denied rights secured to her under Title VII of the Civil Rights Act of 1964, Ohio Civil Rights law, Ohio/U.S. Constitution, and any and all other statutes/laws governing said matters.

****PRIMA FACIE - CAUSAL CONNECTION:** **(a)** W&L's termination of Newsome occurred on January 9, 2009. **(b)** SMR&S' client's (Stor-All's) Amnesty Weekend was set for January 9th thru January 11th. Stor-All advising Newsome of Amnesty Weekend via facsimile at the number assigned Newsome by W&L. See **EXHIBIT "18"** – *12/19/08 Fax From Lori Whiteside/Stor-All* attached hereto and incorporated by reference. **(c)** On January 9, 2009, Stor-All provided Newsome with "NOTICE TO LEAVE THE PREMISES."

See **EXHIBIT "19"** attached hereto and incorporated by reference. **(d)** *While Stor-All provided Newsome with faxes at W&L during her employment,* ***on the date of Newsome's termination*** *Stor-All did not provide her with the "Notice to Leave the Premises" via facsimile (as it did with the 12/19/08 fax and others)* ***because it knew that W&L was terminating Newsome's employment on said date***. **(e)** On January 20, 2009, SMR&S on behalf of Stor-All filed a lawsuit against Newsome.

XV. SYSTEMATIC DISCRIMINATION:

Elements of Damages – In General: All employment-related losses for salaried and hourly wage employees are recoverable in a wrongful discharge suit, regardless of whether the action sounds in contract or tort. Thus, the employee may recover back pay, bonuses, and commissions that would have been earned but for the dismissal. The employee's recovery may include ***damages for loss of fringe benefits***. . . The employee is also entitled to recover the cost of securing other employment, and this cost may include moving expenses. The amount of the award for back pay and loss of fringe benefits during the employee's period of unemployment **may** be offset by the amount of unemployment insurance, if any, received by the employee during that time.. . *the employee has NO duty to seek inferior employment, and the burden of proof of the employee's failure to mitigate damages is on the employer*. Moreover, it has been held that the employer may be estopped from raising the issue of the employee's duty to mitigate damages ***IF*** *the employee's dismissal was* ***maliciously*** *motivated*.. . . Damages for consequential losses and emotional distress generally are not allowed in a wrongful discharge case if the cause of action sounds entirely in contract. Where the action sounds in tort alone, or in both contract and tort, such compensatory damages are allowed. . . Plaintiff testified that as a result of the firing he suffered emotional distress by way of humiliation and lost confidence and trust. . . The court held that this evidence supported an award of compensatory damages.. . . Punitive damages are recoverable in an action for bad faith wrongful discharge if the defendant's conduct is sufficiently culpable.. . . The amount of punitive damages or exemplary damages to be awarded is a matter for the discretion of the jury; it depends on the circumstances of the particular case. Punitive damages must bear a reasonable relationship to the actual damages sustained by the plaintiff, though there is no fixed ratio by which punitive and actual damages are properly proportioned. An appellate court generally will not substitute its judgment for that of the trier of fact as to the amount of punitive damages to be awarded. . . . **Plaintiff experienced substantial difficulty finding subsequent employment, and she ultimately had to leave the state**. She had lived and worked in a small community where a dismissal for poor work performance would necessarily have an adverse consequence on her reputation and ability to earn a livelihood. One of the charges against her had been fabricated and

her personnel file had been altered to support the allegation. An award of punitive damages against her former employer was affirmed on the basis of this evidence. . . .Plaintiff had a . . . faithful performance until she was fired by a vindictive supervisor . . .At the trial of Plaintiff's wrongful discharge case, expert witnesses testified that the employer had violated its own personnel practices and policies in thirteen separate instances; and the employer's evidence at trial was often inconsistent and even contradictory as to whether plaintiff was fired . . . **as a part of a reduction-in-force program**. In addition, the president of the company for which she had worked had revealed a calloused attitude toward. . . plaintiff in particular. . . An award of exemplary damages against the plaintiff's former employer was affirmed on appeal. [FN 89] *Flanigan v. Prudential Federal Sav. & Loan Asso.* (1986), 720 P2d 257. . . 105 CCH LC ¶ 55614 (verdict for $95,000 economic damages, $100,000 compensatory damages for mental distress, and $1,300,000 punitive damages). See also *Cancellier v. Federated Dept. Stores* (1982) 672 F.2d 1312. . . 48 Am. Jur. Proof of Facts 2d 235-240.

163. An investigation into this instant Charge will support that Newsome has been subjected to unlawful/illegal employment practices in violation of Title VII, Civil Rights law, Constitutional law as well as other statutes/laws governing said matters. Moreover, that the very statutes/laws that the EEOC are to uphold and enforce has REPEATEDLY been abused and violated with Newsome being a victim of such legal wrongs. An investigation into this instant Charge will support how the ***United States Department of Labor*** and others have engaged in UNLAWFUL/ILLEGAL practices in retaliation of Newsome's bringing of legal actions challenging its Department's (i.e. EEOC) failure to enforce and uphold the laws under which it was created.

*The evidence will support that **UNLAWFUL/ILLEGAL** practices have been leveled against Newsome – as with other African-Americans – in retaliation of her challenging the EEOC's practices to interfere and/or preclude her from getting employment. Such practices which include posting information regarding EEOC Charges and/or engagement in protected activity on the INTERNET for ill purposes – i.e. for the destroying of Newsome's life, liberties and pursuit of happiness; moreover for blacklisting purpose. Our government's USAGE of such practices clearly in violation and a FAR DEPARTURE from EEOC policies and procedures.*

164. While it is a KNOWN FACT of the difficulty in African-Americans and/or people of color obtaining employment; moreover, equal employment opportunities, an investigation into this instant Charge will support the ***SYSTEMATIC*** DISCRIMINATION that has been leveled against Newsome and the ***SYSTEMATIC*** PRACTICES of our government to destroy the lives, liberties and pursuit of happiness of such citizens as Newsome who are educated, happy to be an African-American because they have challenged discriminatory handling of charges filed.

*165. As a direct and proximate result of the **SYSTEMATIC** DISCRIMINATORY practices leveled against Newsome and perhaps made known to W&L and/or W&L taking as acceptable based on handling of matters by the United States Department of Labor and others in the posting of information on the INTERNET for PUBLIC review. A reasonable mind may conclude that the United States Department of Labor and others have engaged in such practices for prejudicial/discriminatory/retaliatory intent.*

XVI. EMPLOYER LIABILITY:

166. **PRIMA FACIE:** An investigation into this instant Charge will support that: **(a)** W&L knew and/or should have known of the harassment Newsome was repeatedly subjected to; and **(b)** W&L failed to take prompt and/or appropriate corrective action. W&L advising Newsome that supervisor (as Gillan) wanted to continue to work with Newsome. Gillan wanting to do so over Newsome's objections to harassment and discriminatory practices. W&L aware of Newsome's objections required Newsome to continue to work with Gillan because Gillan advised wanting to continue to work with her. W&L allowed and condoned such harassment although it was aware of the affect it was having on Newsome's ability to perform her job duties, the emotional and mental affect on Newsome, and that its harassment of Newsome was in retaliation of Newsome's reporting and/or complaining of said harassment and discriminatory practices.

An investigation will support that while W&L implemented policies and procedures to remedy harassment and discriminatory practices, it may be held liable for discriminatory practices in violation of Title VII and applicable statutes/laws when the evidence supports an indifference as to indicate an attitude of permissiveness that amounts to discrimination – i.e. when a white employee (Kathy Ritchey) was subjected to what W&L believed to be harassment, it terminated the employment of an attorney (Peter Newman) and afford Ritchey time off from work to recover. However, W&L allowed a serial harasser (Brian Gillan) to remain in its employment and allowed Gillan to continue such practices. Gillan known as a harasser having a history of harassing female employees as well as engaging in sexual acts. While W&L terminated Newman for such harassment, it allowed Gillan to remain in its employment. Newsome advising of concerns of how white co-workers subjected to Gillan's harassment were not required to continue to work with Gillan; however, W&L required Newsome to continue to work with Gillan over her objections. It was only **AFTER** W&L was notified by Newsome of reporting such discriminatory practices that W&L assigned Gillan to another employee. However, the discriminatory practices did not stop there. W&L continued such discriminatory practices and retaliated against Newsome for such reporting. Shortly after the Gillan incident, W&L took away job duties of Newsome to give to white employee. *W&L in **retaliation** beginning the process of covering up/masking such **pattern-of-discriminatory** practices took away Newsome's job duties over her objections. **W&L failed to take an affirmative duty to prevent said harassment and discriminatory practices rendered Newsome**. W&L allowed a **serial** harasser (Gillan) and person **known to repeatedly violate** its policies and procedures to remain in its employment. Gillan is an attorney who specializes in employment/labor law; therefore, he knew and/or should have known that his acts were in clear violation of Title VII and other statutes/laws governing said matters.*

> For purposes of a Title VII claim, even after a hostile work environment has been established, for an employer to be liable for the . . . harassment of an employee by a coworker, the harassed employee must show that the employer both (1) knew or should have known of the harassment and (2) failed to take prompt and appropriate corrective action. *McCombs v. Meijer, Inc.*, 395 F.3d 346 (6th Cir. **Ohio**, 2005)
>
> An employer who implements a remedy for . . . harassment can be liable for . . . discrimination in violation of Title VII only if that remedy exhibits such indifference as to indicate an attitude of permissiveness that amounts to discrimination. *McCombs v. Meijer.*
>
> For an employer to take corrective action is not enough to avoid liability for hostile environment. . .harassment; an employer has an affirmative duty to prevent . . .harassment by supervisors. Civil Rights

Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. *Williams v. General Motors Corp.*, 187 F.3d 553 (6th Cir. **Ohio**, 1999)

167. An investigation into this instant Charge will support how W&L subjected Newsome to discriminatory practices as a direct and proximate result of her complaints regarding employment violations/violations to its policies and procedures. W&L's response to Newsome's complaints manifests indifferences or unreasonableness in light of the facts W&L knew and/or should have known of. W&L did not handle Newsome's complaints as it did those of white employees subjected to such harassment and/or discriminatory treatment – i.e. *W&L was going to force Newsome to continue to work with Gillan although it having knowledge of how his harassment and discriminatory practices affected her work. While W&L terminated the employment of Peter Newman for committing such harassment against a white employee (Kathy Ritchey).* W&L subjecting Newsome to strict and oppressive supervision in its efforts to engage in acts that it thought would be a defense to their covering up/masking their discriminatory practices. W&L repeatedly created situations discriminatory in nature for purposes of providing them with proffered reasons for Newsome's termination should she bring legal action against it. *W&L denying Newsome benefits afforded to white employees and/or those similarly situated.* W&L engaging in unlawful/illegal practices with third-parties to provide third-parties with undue/illegal/unlawful advantage in legal matters that would be sought against Newsome and/or to which Newsome was presently engaged and/or would be engaged in. Therefore, ***W&L is to be held liable for the harassment and discriminatory practices addressed herein.***

> When employer responds to charges of coworker. . .harassment, employer can be liable under Title VII, only if its response manifests indifference or unreasonableness in light of facts employer knew or should have known. *Blankenship v. Parke Care Centers, Inc.*, 123 F.3d 868 (6th Cir. **Ohio**, 1997)
>
> When employer implements remedy after complaint of coworker harassment, it can be liable for . . . discrimination in violation of Title VII only if that remedy exhibits such indifference as to indicate ***attitude of permissiveness*** that amounts to discrimination. *Blankenship v. Parke.*

168. An investigation into this instant Charge will support that W&L is liable under Title VII and other statutes/laws governing said matters because it knew and/or should have known of discriminatory practices complained of. W&L's removal and destruction of evidence from Newsome's desk ***(Newsome kept her desk locked)*** further supports knowledge that it was engaging in Title VII violations and/or discriminatory practices. Moreover, W&L failed to implement prompt and corrective action (i.e. as it did with Peter Newman) when an African-American employee complained of harassment that it afforded to white employees complaining of harassment. Because of the well-established pattern of Gillan, Gillan's harassment and discriminatory practices were foreseeable or fell within scope of his employment. Nevertheless, W&L failed to respond (as it did with Peter Newman) adequately and effectively to negate liability because said harassment involved an African-American employee. An African-American employee W&L knew was engaged in protected activities. Rather than take remedial action to deter the discriminatory practices rendered Newsome, W&L made a conscious decision to try and cover-up/mask such unlawful/illegal wrong doings.

> For purposes of determining whether employer is liable under Title VII for . . .harassment of employee by co-workers, test is whether employer knew or should have known of charged . . .harassment and

failed to implement prompt and appropriate corrective action. *Fleenor v. Hewitt Soap Co.*, 81 F.3d 48 (6th Cir. **Ohio**, 1996)

Determination of whether employer was liable for supervisor's. . . harassment of employee depended upon whether supervisor's harassing actions were foreseeable or fell within scope of his employment and whether the employer responded adequately and effectively to negate liability. *Kauffman v. Allied Signal, Inc., Autolite Div.*, 970 F.2d 178 (6th Cir. **Ohio**, 1992)

To prove that an employer is liable under Ohio's antidiscrimination statute for . . . harassment committed by co-worker, an employee must show that the employer knew or should have known of the harassment and failed to take appropriate remedial action. Ohio R.C. § 4112.02. *Courtney v. Landair Transport, Inc.*, 227 F.3d 559 (6th Cir. **Ohio,** 2000)

169. While W&L assigned Gillan to another person, it failed to correct and/or deter such discriminatory practices of Gillan and allowed him to remain in its employment although such practices were in violation of *Wood & Lamping LLP Policies and Procedures*. The taking away of Newsome's job duties and giving them to white employee is pretext; as well as support W&L's creation of discriminatory/hostile/harassing work environment. Further supporting at what lengths W&L went to cover-up/mask such discriminatory practices.

170. W&L failed to implement prompt and appropriate corrective action and merely attempted to hide such discriminatory practices that later manifested itself and resulted in Newsome's termination, its monitoring of Newsome and waiting for opportunities to terminate her employment – i.e. believing upon learning of SMR&S intent to file a lawsuit on behalf of Stor-All was the opportunity it was waiting on and W&L's duty to eliminate the CONFLICT OF INTEREST that would arise should Newsome remain in the employment of W&L – the taking away of Newsome's job duties to give to white employees shortly after her complaint regarding the discriminatory/harassing practices of Gillan.

171. ***Tort Measure of Damages Applicable to Theories of Recovery.*** It is the law that every person who suffers detriment from the unlawful act or omission of another arising out of tort or breach of duty may recover compensation in money from the person in fault which is called damages. Detriment means any loss or harm suffered in person or property. Damages also may be awarded for detriment which the evidence proves is reasonably certain to result in the person injured, in the future. With regard to Newsome's theories of recovery which has been explained based upon race/sex discrimination, breach of the duty of good faith and fair dealing, and Newsome's claims of deceit, the measure of damages for breach of such duties which gives rise to recovery in tort is the amount which will compensate Newsome for all detriment proximately caused by the breach, whether it could have been anticipated or not. ***See 31 Am Jur Trials 317 § 60, pp. 510-511.***

172. The record evidence will support how W&L conspired with third-parties and have gone to great lengths to deprive Newsome equal employment opportunities, equal protection of the laws and efforts taken to keep Newsome from working. It is illegal/unlawful for the EEOC/OCRC to allow the discriminatory practices and criminal/civil wrongs addressed herein to go unaddressed and unpunished. Both the EEOC/OCRC has a duty and obligation to deter and prevent such discriminatory practices as set forth herein and brought to its attention. Pursuant to 42 USC § 1986, the EEOC/OCRC has a duty to enforce the statutes/laws within its jurisdiction as well as deter and prevent such civil rights violations brought to its attention.

Power/Failure to Prevent (42 USC § 1986):

> **Every** person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, *and having* ***power*** ***to prevent*** *or* ***aid*** ***in preventing*** *the commission of the same,* ***neglects*** *or* ***refuses*** *so to do,* if such wrongful act be committed, **shall be liable** *to the party injured,* or his legal representatives, *for all damages caused by such wrongful act,* which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; . . .

173. ***Compensatory Damages in Tort:*** Newsome would be entitled to a finding against W&L, on any of her tort theories of race/sex discrimination, breach of the implied duty of good faith and fair dealing, and Newsome's claims of deceit, and an award to Newsome for damages in an amount that will reasonably compensate her for each of the following elements of claimed loss or harm, provided it is found such harm or loss suffered by her and was proximately caused by the act or omission upon which it is found liability. The amount of such award shall include:

- The reasonable value of medical care, services and supplies reasonably required and actually given in the treatment of Newsome.
- The loss of wages and fringe benefits to date.
- Reasonable compensation for any pain, discomfort, fears, anxiety or other mental and emotional distress suffered by Newsome and of which she or her injury was a proximate cause.

No definite method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for pain in suffering the factfinder shall exercise authority with common reasonable judgment and the damages fixed shall be just and reasonable in light of the evidence. ***See 31 Am Jur Trials 317 § 60 pp. 511-512.***

174. ***Punitive Damages.*** In the unlawful discharge of Newsome, W&L has acted maliciously, abusively and in wanton disregard of Newsome's rights, therefore, Newsome may be entitled to punitive damages to the trier of fact. In every state where punitive damages are allowed, the jurisdiction will have defined for itself the character of conduct that warrants the imposition of punitive damages. . . . Another consideration is the evidence upon which the factfinder measures the award. *Most jurisdictions* ***permit evidence of employer's wealth*** *in a punitive damages case to be used as a sort of yardstick to assess the amount of damages which reasonably ought to be imposed.* ***See 31 Am Jur Trials 317 § 62 pp. 513-514.***

The majority of cases to date have allowed recovery of punitive damages in a wrongful discharge case. *In assessing punitive damages, the factfinder may be allowed to consider evidence of the W&L's wealth and financial affairs.* The rationale is that the award should be in an amount sufficient to have an impact on W&L's attitudes and conduct in the future, so as to act as a deterrent to future wrongful conduct of the type under attack. In other words, the wealthier W&L, the larger should be the assessment of punitive damages. Accordingly, where punitive damages are claimed, Newsome may be allowed to conduct some discovery into the subject of the W&L's financial affairs

in most jurisdictions. . . . Newsome should anticipate that discovery into the subject of W&L's financial affairs will be strenuously resisted by it. Accordingly, the discovery plan in a wrongful discharge case should include an effective method of obtaining as much information on the subject of W&L's wealth as the situation will permit in an expedient and efficacious manner. Thus, where liberal or unrestricted discovery into the subject of W&L's wealth is allowed, Newsome should consider seeking the disclosure of the following items of information:

- W&L's current net worth
- W&L's total annual sales or gross income for the last fiscal year and one or more prior fiscal years
- W&L's net annual income for the past fiscal year and one or more prior fiscal years
- The identity and values of all W&L's capital assets
- The nature and amount of W&L's liabilities and obligations
- Copies of the W&L's tax returns whenever such discovery is permitted by the court.

See 31 Am Jur Trials 317 § 31 pp. 437, 438.

175. Through this instant Charge Newsome request an investigation and seeks any and all applicable relief to which she is entitled as a direct and proximate result of Title VII violations and discriminatory practices rendered her.

> 48 Am. Jur. Proof of Facts 2d 240 – 241 – Testimony as to the following elements of damages, among others, should be elicited, when applicable, . . . in an action for bad faith wrongful discharge. (Am. Jur Trials: ***Wrongful Discharge of At-Will Employee***, 31 Am. Jur. Trials 317, §§ 10-11.
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> - Back pay and unpaid-but-earned wage enhancements[24]
> - Compensation that plaintiff would have earned if plaintiff had not been discharged

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[24] *Head v. Timken Roller Bearing Co.*, 486 F.2d 870 (C.A.6.**Ohio**, 1973) - The finding of discrimination against blacks by district court, in addition to nature of relief, (compensatory as opposed to punitive), and clear intent of Congress that grant of authority under Equal Employment Opportunity Act should be broadly read and applied mandate an award of back pay unless exceptional circumstances were present. Civil Rights Act of 1964, § 706(g), 42 U.S.C.A. § 2000e-5(g).

Gutzwiller v. Fenik, 860 F.2d 1317 (C.A.6.**Ohio**, 1988) - Back pay is presumptively favored as make-whole remedy and, absent exceptional circumstances, should be awarded to successful employment discrimination plaintiffs. 42 U.S.C.A. § 1983; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.
Gutzwiller v. Fenik, 860 F.2d 1317 (C.A.6.**Ohio**, 1988) - Back pay award for employment discrimination should completely redress economic injury that plaintiff suffered as result of discrimination; it should include salary, raises which plaintiff would have received, sick leave, vacation pay, pension benefits, and other fringe benefits that would have been received but for discrimination. 42 U.S.C.A. § 1983; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

Schwartz v. Gregori, 45 F.3d 1017 (C.A.6.Ohio, 1995) - In determining the amount of front pay to award in employment discrimination action, district court considers a number of factors, including employee's work life expectancy.

- Cost of maintaining health, life, and disability insurance, and other services that would have been covered by employee benefits
- Expense of securing substitute employment, including moving costs
- ***Future*** damages, where appropriate, for commissions, bonuses and wage enhancements that would have been paid on the basis of past services
- Difference, if any, between the value of the plaintiff's former employment and the value of the new employment[25]
- Emotional distress suffered by plaintiff
- Punitive damages, where employer's conduct meets the required standard of culpability for exemplary damages[26]
- Other elements of damages, as appropriate.

176. Ohio Civil Rights Commission Sources Used:
OCRC Complaint No. 9569 - See **EXHIBIT "1"** attached hereto and incorporated by reference.

Damages:

54. The Commission has the authority to order W&L to pay equitable damages, which include but are not limited to, back pay and reinstatement when there is a finding of discrimination pursuant to R.C. 4112. However, " in instances in which it has been decided that an effective employment relationship could not be reestablished, the courts have excluded reinstatement from the forms of relief granted. *EEOC v. Pacific Press Publishing Association,* 482 F.Supp. 1291 at 1320 (1979).

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[25] *Knafel v. Pepsi-Cola Bottlers of Akron, Inc.*, 899 F.2d 1473 (C.A.6.**Ohio**, 1990) - Back pay awarded to Title VII claimant for a time during which the claimant was still employed by former employer, **was not** required to be offset by workers' compensation payments received by the claimant; claimant's inability to work was caused by employer. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

Jones v. Ohio Dept. of Mental Health, 687 F.Supp. 1169 (S.D.**Ohio**.W.Div., 1987) - Unemployment compensation received by terminated employee, who established racial discrimination in his discharge from employment, as well as fringe benefits and lost insurance benefits ***should not*** *be deducted from employee's back pay award.* Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.

[26] *Johnson v. University Surgical Group Associates of Cincinnati,* 871 F.Supp. 979 (S.D.**Ohio.**W.Div., 1994) - To prove damages, . . . discrimination plaintiff need simply prove that her conditions of employment were adversely affected.

Woodrum v. Abbott Linen Supply Co., 428 F.Supp. 860 (S.D.**Ohio.**W.Div., 1977) - Damages of type generally available at law are also generally available in civil rights employment discrimination case. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

55. It has also been recognized by the courts that it would be unjust to deny reinstatement without offering some quantum of monetary relief or "front pay" as a substitute.

56. This alternative relief has been deemed necessary not only to grant discharged employees a reasonable opportunity to find comparable employment, but also to deter future improper employer action. *EEOC v. Kallir, Phillips, Ross, Inc.*, 420 F.Supp. 919 at 927 (1976), *Burton v. Cascade School District No. 5*, 512 F.2d 850 at 854 (1975).

Recommendations:

1. The Commission order Respondent. . .and Respondent . . . to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112; and

2. The Commission order Respondent. . and Respondent. . . to pay front pay to Complainant with 10 days of the Commission's Final Order. Complainant shall be paid the same wage she would have been paid . . . with benefits and raises that she would have been entitled to for a total font pay . . ., less interim earnings, calculated from the date of the Commission's Final Order;

3. The Commission order Respondent. . . and Respondent . . . within 10 days of the Commission's Final Order to issue a certified check payable to Complainant for the amount that Complainant would have earned had she been employed. . . from September 11, 2002 up to the date of the Commission's Final Order, including any raises and benefits she would have received, less interim earnings, plus interest at the maximum rate allowed by law;[27] and

4. The Commission order Respondent. . . to receive sexual harassment training and submit to the Commission of copy of his sexual harassment policy within six (6) months of the date of the Commission's Final Order. A proof of participation in sexual harassment training, Respondent. . . shall submit certification from the sexual harassment trainer or provider of services that he has successfully completed sexual harassment training. The letter of certification shall be submitted to the Commission's Office of Special Investigations within seven (7) months of the date of Commission's Final Order.

[27] Any ambiguity in the amount that Complainant would have earned during this period of benefits that she would have received should be resolved against Respondent. . . Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent. . .

XVII. RELIEF SOUGHT

WHEREFORE, PREMISES CONSIDERED Newsome request the following relief:

a) Investigation into the allegations/claims addressed in this instant Charge, the United States Secretary of Labor's/Hilda L. Solis' findings, evidence and legal conclusions it relied upon to render the EEOC's findings and/or conclusion;

b) Investigation into the allegations/claims addressed in this instant Charge, the Ohio Civil Rights Commission's/Jean Marshall-McEntire's findings, evidence and legal conclusions it relied upon to render the OCRC's findings and/or conclusion;

c) That if violations are found, that the Secretary of Labor/Hilda L. Solis, bring the applicable actions of and against Wood & Lamping, LLP, its representatives and employees that engaged in such Title VII violations/discriminatory practices complained of herein;

d) That if violations are found, that the Cincinnati Regional Director of the Ohio Civil rights Commission/Jean Marshall-McEntire, bring the applicable actions of and against Wood & Lamping, LLP, its representatives and employees that engaged in such discriminatory practices complained of herein;

e) Award Newsome damages of and against W&L in an amount equal to any wages, salary, employment benefits, and other compensation denied or lost to Newsome by reason of the violation of the applicable statutes/laws;

f) Award Newsome interest in the amount of any wages, salary, employment benefits and other compensation denied or lost to Newsome by reason of the violation of the statute;

g) Award Newsome an additional amount as liquidated damages equal to the sum of the amount of any wages, salary, employment benefits, and other compensation denied or lost to Newsome and the interest on that amount;

h) *Newsome believes her termination would evidence that Wood & Lamping, LLP does not want her in its employment. Moreover, that during her employment she was subjected to discriminatory and retaliatory treatment for exercising rights secured/guaranteed to her under the applicable statutes/laws of the State of Ohio and/or United States. Newsome does not believe given the facts evidence and legal conclusions set forth herein and that to be determined through an investigation, that a reasonable mind may conclude that it would be in her best interest (mentally or physically) to return to the employment of Wood & Lamping, LLP.* Therefore, Newsome is to be awarded such equitable relief as may be appropriate; including salary of approximately **ten (10) years** – in that Newsome believes an investigation into this matter will yield the acts of W&L and/or its representatives and employees was done with malicious intent; moreover, was done in that it knew and/or should have known the difficulty Newsome would face in obtaining other employment and W&L's role in a conspiracy to deprive Newsome equal employment opportunities based upon information they have obtained on Newsome; moreover, its acts being to interfere with Newsome's exercise of protected rights guaranteed and/or secured under the United States Constitution, Civil Rights Act and/or any and all applicable statutes laws governing the protected activities in which Newsome has engaged and/or participated in. Newsome request that W&L be required to provide her with the appropriate fringe benefits afforded to her during her

employment and/or other employees for a period of **three (3) years**. Moreover, be required maintain any COBRA benefits for a period of three (3) years if it does not want to cover the Plaintiff under its group health coverage and paying any and all over insurance premium coverage to which Newsome became accustomed during her employment with W&L;

i) As a direct and proximate result of Wood & Lamping, LLP's unlawful/illegal actions rendered Newsome she has suffered and continues to suffer injury, including past and future loss of income and other employment benefits, severe emotional pain and suffering, mental anguish, humiliation, loss of enjoyment of life, costs associated with obtaining reemployment, embarrassment, damage to her reputation, and other past and future pecuniary losses. Therefore, Newsome seeks the appropriate relief afforded by laws for such injury/harm and to deter Wood & Lamping, LLP from continuing to practice in such violation of laws.

j) Award Newsome reasonable costs associated with the bringing of this Complaint;[28]

k) Grant Newsome such other and further relief – injunction, etc. – which the Secretary of Labor may deem appropriate to correct the injury/harm sustained by Newsome.

l) If the facts, evidence and legal conclusion sustain, that a finding of and against W&L that probable cause has been found to support its engagement in unlawful discrimination in violation of Title VII of the Civil Rights Act, O.R.C. 4112 and/or the applicable statutes/laws governing said matters.

m) That the EEOC/OCRC pursue the applicable legal action to deter discriminatory practices. Providing Newsome with the proper representation as it has done for other citizens when violations are found.

n) That the EEOC/OCRC enforce the applicable statutes/laws correcting and governing discriminatory practices/employment violations.

o) That the EEOC/OCRC seek any and all applicable relief to which Newsome is entitled and is allowed under the applicable statutes/laws governing said matters.

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[28] *Virostek v. Liberty Township Police Department/Trustees,* 14 Fed.Appx. 493 (C.A.6.**Ohio**, 2001) - Standard for awarding attorney fees is essentially the same in § 1983 actions and employment discrimination actions under Title VII. 42 U.S.C.A. §§ 1983, 1988(b); Civil Rights Act of 1964, § 706(k), 42 U.S.C.A. § 2000e-5(k).

Spence v. Local 1250, United Auto Workers of America, 595 F.Supp. 6 (N.D.**Ohio**.E.Div.,1984) - Employee who was wrongfully discharged in retaliation for his opposition to what he believed were discriminatory employment practices directed toward black coemployee was entitled to reinstatement, to back pay and to attorney fees. Civil Rights Act of 1964, § 706(g, k), as amended, 42 U.S.C.A. § 2000e-5(g, k).

Harrington v. Vandalia-Butler Bd. of Ed., 585 F.2d 192 (C.A.6.**Ohio**,1978) - To be a "prevailing party" entitled to award of attorney fees in employment discrimination suit a plaintiff must have been entitled to some form of relief at time suit was brought. Civil Rights Act of 1964, § 706(k) as amended 42 U.S.C.A. § 2000e-5(k).

James v. Runyon, 868 F.Supp. 911 (S.D.**Ohio**.W.Div.,1994) - Prevailing plaintiff in employment discrimination action is entitled to award of attorney fees for all time reasonably spent on a matter.

Parmer v. National Cash Register Co., 503 F.2d 275 (C.A.6.Ohio,1974) - Costs and attorney fees are awarded only to the prevailing party in a suit brought under Title VII of the Civil Rights Act of 1964. Civil Rights Act of 1964, § 706(k), 42 U.S.C.A. § 2000e-5(k).

EXHIBITS
for
Newsome
v
Wood + Lumping
EEOC Matter

Complaint 9Sep9

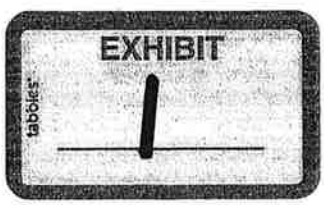
INTRODUCTION AND PROCEDURAL HISTORY

Leslie Hatem (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on October 11, 2002.

The Commission investigated the charge and found probable cause that BMAVS, Inc. (Respondent BMAVS) engaged in unlawful employment practices in violation of Revised Code Sections (R.C.) 4112.02 (A) and (I).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on October 9, 2003.

The Complaint alleged that Respondent subjected Complainant to disparate terms and conditions of employment including but not limited to, acts of sexual harassment for reasons not applied equally to all persons without regard to their sex, and discharged her in retaliation for having complained about the sexual harassment.



Respondent BMAVS filed an Answer to the Complaint on November 7, 2004.[1] Respondent BMAVS denied that it engaged in any unlawful discriminatory practices. Respondent BMAVS also pled affirmative defenses. On December 11, 2004, Counsel for the Commission filed a Motion to Amend the Complaint to Join Additional Respondent, Graham Francis (Respondent Francis). Respondent Francis did not file an Answer.[2]

A public hearing was held on May 14, 2003 at the Central Office of the Ohio Civil Rights Commission, 1111 East Broad Street, Columbus, Ohio.

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[1] The Answer was filed by BMAVS's statutory agent.

[2] At one point in the Commission's investigation of the charge of discrimination, Attorney Bruce L. Cameron (Cameron) represented Respondent Graham Francis. Cameron informed the ALJ by letter dated March 5, 2004 that he never represented Respondent BMAVS and that Respondent Francis had elected to proceed *pro-se*. However, Cameron appeared at the hearing and asked that he be permitted to represent Respondent Francis at the hearing. The Administrative Law Judge (ALJ) granted the request over the objection of Counsel for the Commission. Respondent Francis had exchanged witness information with Counsel for the Commission. The Commission was not surprised by witnesses and, therefore, was not prejudiced by Respondent Francis's request to have legal representation at the hearing.

The record consists of the previously described pleadings, a transcript of the hearing (185 pages), exhibits admitted into evidence during the hearing, and the post-hearing brief filed by the Commission on December 10, 2004. Respondents did not file post hearing briefs.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on October 11, 2002.

2. The Commission determined on August 21, 2003 that it was probable that Respondents engaged in unlawful discrimination in violation of R.C. 4112.02 (A) and (I).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.

4. Respondent Francis is the Representative and Director of Respondent BMVAS, Inc. (Tr. 12-13, 16-17; Comm. Ex. 1, 2)

5. Respondent Francis is also the owner and manger of Dalt's Restaurant. (Tr. 14-15, 17, 145)

6. Respondent Francis met Complainant when she was working at a restaurant called Bravo where she was the manager behind the bar.

7. Respondent Francis asked Complainant if she would be interested in running a restaurant in Columbus that he was planning on opening.

8. Complainant was hired by Respondent Francis to be the general manager of Dalt's Restaurant.[3] Her first day of work was May 29, 2002.

9. As general manager Complainant was responsible for overseeing the day-to-day operations of the restaurant. This included ordering inventory and supplies, managing the books, advertising, and dealing with employee issues.

10. On September 11, 2002, Complainant and Respondent Francis had a disagreement, among other things, about the assistant manager, David Stallings (Stallings).

11. As a result of the disagreement, Respondent Francis asked Complainant why she was not quitting her position.

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[3] The salary agreed upon was $1,000.00 per week, plus health benefits.

12. Complainant told Respondent Francis that she would not quit, that he would have to fire her.

13. Respondent Francis looked at Complainant and told her that she needed to leave at that moment.

14. Complainant gathered up her personal belongings from the office and left the premises.

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.[4]

1. The Commission alleged in the Complaint that Respondents subjected Complainant to disparate terms and conditions of employment including, but not limited to, acts of sexual harassment, for reasons not applied equally to all persons without regard to their sex, and discharged her in retaliation for having complained about the sexual harassment.

[4] Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

2. These allegations, if proven, would constitute a violation of R.C. 4112.02 (A) and (I), which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the . . . sex, . . . of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. 4112. The Commission must prove a violation of R.C. 4112.02(A) and (I) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence

sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).

SEXUAL HARASSMENT

5. Sexual harassment is sex discrimination and prohibited by R.C. Chapter 4112. Ohio Adm. Code (O.A.C.) 4112-5-05(J)(1); *Cf. Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (sexual harassment is sex discrimination under Title VII). There are two forms of sexual harassment: *quid pro quo* and hostile work environment. *Id.*, at 65. The latter form of sexual harassment, which the Commission alleges in this case, recognizes that employees have the "right to work in an environment free of discriminatory intimidation, ridicule, and insult." *Id.*

6. O.A.C. 4112-5-05 defines sexual harassment based on a hostile work environment, in pertinent part:

> (J) Sexual harassment.
>
> (1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

7. To establish a claim brought under R.C. 4112 against an employer for hostile work environment sexual harassment, the Commission must establish that:

(1) Complainant is a member of a protected class;

(2) Complainant was subjected to unwelcome harassment;

(3) the harassment complained of was based upon sex;

(4) the harassment had the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment; and

(5) the existence of respondeat superior liability.

Burlington Industries, Inc. v. Ellerth, 118 S.Ct. 2257 (1998).

8. There is no dispute that the Commission established the first element of a *prima facie* case of sexual harassment/sex discrimination: Complainant is a female.

9. The second and third elements are not so obvious because the conduct complained of was not observed by a third party.

10. When credibility is an issue in a sexual harassment case, corroboration or the lack of corroboration of the alleged victim's testimony, is often crucial.

> We note that in a case of alleged sexual harassment[,] which involves close questions of credibility and subjective interpretation, the existence of corroborative evidence or the lack thereof is likely to be crucial.
>
> *Henson v. City of Dundee*, 29 FEP Cases 787, 800, n.25 (11th Cir. 1982) (citations omitted).

11. However, there is no explicit corroboration requirement in either R.C. Chapter 4112 or Title VII.

> The credibility determinations are for the finder of fact. The finder of fact may credit either side's version of disputed facts whether or not there is corroboration if they find one witness's version more credible than the other witness's version.
>
> *Durham Life Insurance Co. v. Evans*, 78 FEP Cases 1434, 1440, n.2 (3d Cir. 1999).

12. The record is replete with testimony by Complainant regarding unwelcome conduct where Respondent Francis made statements of a sexual nature and touched Complainant in inappropriate places (breast and buttocks areas).

13. Although there were no eye witnesses to this behavior, the Commission presented credible evidence from two witnesses, Vonna Hayes and Steve Wagner, whom Complainant talked to (by telephone or in person) within a short period of time from when the incidences occurred.[5] Complainant also kept a personal calendar, which in addition to personal appointments and business information, contained documentation of Respondent Francis's inappropriate behavior of a sexual nature. (Comm. Ex. 3)

14. Complainant testified that Respondent Francis's inappropriate behavior of a sexual nature interfered with her ability to do her job because she was usually always looking to find out where Respondent Francis was in order to avoid an encounter so that he could not "hassle" her. (Tr. 117)

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[5] Vonna Hayes has known the Complainant for twenty (20) years and is a human resources generalist for the City of Columbus and also teaches human resources and business courses at Columbus State Community College. Complainant attempted to get Respondent to talk to Ms. Hayes about implementing personnel policies, including a sexual harassment policy. These attempts failed. The other witness, Steve Wagner, is in advertising and is a broadcast producer. He has known Complainant for twenty-three (23) years.

15. The Commission introduced a letter from Complainant's physician who treated her for a skin rash on July 16, 2002. The letter stated:

> She confided with me that she has experienced significant sexual harassment at her work place. It is likely that the infection she experienced was as a result of an id reaction due to the sexual harassment.
>
> (Comm. Ex. 5)

16. I found Complainant and the Commission's corroborating witnesses and documentation to be credible.

17. A part of Respondent Francis's defense to the allegations of sexual harassment was based on his assertion that Complainant's statement's regarding him asking her to touch him while he was having an erection ("hard on") could not be true. To support his assertion Respondent Francis testified that he is incapable of having an erection because he had a medical procedure.[6] (Tr. 174)

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[6] Although Mr. Cameron made reference to having a doctor's report from 2001, he did not introduce the report as evidence at the hearing. (Tr. 174)

18. I did not find the testimony of Respondent Francis to be credible.

19. In order to create a hostile work environment, the conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993), *quoting Meritor, supra* at 67. The conduct must be unwelcome. *Meritor, supra* at 68. The victim must perceive the work environment to be hostile or abusive, and the work environment must be one that a reasonable person would find hostile or abusive. *Harris* at 21-22. If the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation. *Id.*

20. In examining the work environment from both subjective and objective viewpoints, the fact-finder must examine "all the circumstances", including the employee's psychological harm and other relevant factors, such as:

> . . . the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.
>
> *Id.*, at 23.

Rabidue v. Osceola Refining Div., 42 FEP Cases 631 (6th Cir. 1986) (plaintiffs must show that a hostile work environment resulted not from a single or isolated offensive incident, comment, or conduct, but from incidents, comments, or conduct that occurred with some frequency). "A hostile work environment is usually 'characterized by multiple and varied combinations and frequencies of offensive exposures.'" *Rose v. Figgie International*, 56 FEP Cases 41, 44 (8th Cir. 1990).

21. I find that the conduct complained of by Complainant involved "multiple and varied combinations and frequencies of offensive exposures" and, therefore, altered the conditions of Complainant's workplace environment.

22. The testimony of the repeated comments of a sexual nature, and inappropriate touching (breast and buttocks) of Complainant are sufficient to support a finding of a hostile work environment.

SUPERVISOR HARASSMENT

23. An employer is vicariously liable for a hostile work environment created by a supervisor with immediate or higher authority over the employee. *Faragher, supra at* 2275 (1998). If no tangible employment action is taken against the employee, then the employer may raise an affirmative defense to liability or damages.[7] *Ellerth*, *supra* at 2270; *Faragher*, at 2293.

24. To be successful, the employer must establish the following two elements by a preponderance of the evidence:

(1) The employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and

(2) The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Id.

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[7] In *Ellerth*, the Supreme Court described a tangible employment action as:

> . . . a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

Id., at 2268.

25. This affirmative defense is unavailable when the supervisor's harassment "culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment." *Id.* (On the same pages, *Ellerth* and *Faragher* stated the following about the affirmative defense:)

> While proof that an employer has promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense.
>
> And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense.

(*See also* O.A.C. 4112-5-05(J)(3).)

26. Respondents did not have a sexual harassment policy. Complainant testified that she attempted to have a friend who is a human resources professional work with herself and Respondent Francis to develop a sexual harassment policy.

27. The evidence submitted by the Commission is credible and convincing regarding Respondent Francis's disinterest in developing a sexual harassment policy.

28. In the case sub judice, the *Faragher* defense would not be available to Respondent BMVAS because it had no sexual harassment policy. Respondent Francis is the Representative and Director of Respondent BMAVS, Inc. Respondent Francis had sole authority over the terms and conditions of Complainant's employment. She had no one else to complain to other than Respondent Francis.

29. Complainant took the initiative to stop the harassment by Respondent Francis.

30. On August 4, 2002, Complainant begged Respondent Francis to stop harassing her.

31. Respondent Francis told Complainant that he would not touch her any more unless it was by invitation.

RETALIATION

32. In order to establish a *prima facie* case of retaliation under R.C. 4112.02(I), the Commission must prove the following elements:

a. Complainant engaged in a protected activity;

b. Respondent knew of Complainant's participation in the protected activity;

c. Respondent engaged in retaliatory conduct; and

d. a causal link exists between the protected activity and the adverse action.

Hollins v. Atlantic Co., Inc., 80 FEP Cases 835 (6th Cir. 1999), *aff'd in part and rev'd in part*, 76 FEP Cases 533 (N.D. Ohio 1997) (quotation marks omitted).

33. The Commission has proven the first and second elements of a *prima facie* case of retaliation. Complainant testified that she asked Respondent Francis to stop making inappropriate comments of a sexual nature to her. I found Complainant's testimony and the Commission's supporting evidence on this issue to be credible.

34. To establish the third and fourth elements, the Commission must prove that Respondent Francis's actions after Complainant asked him

to stop created a hostile work environment in retaliation for Complainant opposing what she believed were discriminatory practices.

35. Additionally, the Commission alleges that Complainant was constructively discharged. In order for the Commission to prevail on this claim, the Commission must prove that Respondent Francis's actions forced Complainant to resign.

36. The test for determining whether an employee was constructively discharged is whether the employer's actions made working conditions so intolerable that a reasonable person under the circumstances would have felt compelled to resign. *Mauzy v. Kelly Services, Inc.*, (1996), 75 Ohio St. 3d 578, 1996 Ohio 265, 664 N.E. 2d 1272.

37. Whether the discriminatory conduct unreasonably interfered with Complainant's work performance is one factor to be considered. The Commission, however, is not required to show that Complainant's "tangible productivity . . . declined as a result of the harassment." *Harris*, 63 FEP Cases at 229 (Justice Ginsburg's concurrence) *quoting Davis v. Monsanto Chemical Co.*, 47 FEP Cases 1825, 1828 (6th Cir. 1988). Instead, the

Commission must demonstrate that a reasonable person subjected to the discriminatory conduct would find that the harassment so altered working conditions as to "ma[k]e it more difficult to do the job." *Id.*

38. To support a retaliation claim, the Commission must show that the change in Complainant's employment conditions was more disruptive than a mere inconvenience or an alteration of job responsibilities. *Bowers v. Hamilton City Sch. Dist. Bd. of Educ.*, 12th Dist. No. CA2001-07-160, 2002 Ohio 1343, citing *Kocsis,* 97 F. 3d at 886.

39. After Complainant begged Respondent Francis to quit making inappropriate sexual comments to her, Complainant was very vigilant in making sure that Respondent Francis did not invade her personal space. She would no longer be in the office alone with him.

40. If Complainant wanted to have a conversation with Respondent Francis she would ask another employee to be present during the conversation.

41. Respondent Frances would make comments around Complainant, "Oh yeah, that's right, I'm not allowed to comment that you have nice tits or a nice ass, that's sexual harassment." (Tr. 108)

42. On September 11, 2002, Complainant attempted to talk to Respondent Francis about David Stallings, an assistant manager. Complainant wanted to talk about inappropriate comments that Stallings made to employees that she believed to be sexual harassment.

43. Complainant testified that Respondent Francis responded by saying that he did not want to hear her bring anything up about sexual harassment. He did not want to hear her say anything disparaging about his behavior or David's behavior. (Tr. 128)

44. He also asked her why she did not quit.

45. Complainant told Respondent Francis she was not going to quit; he would have to fire her.

46. Respondent Francis said to Complainant, "Then fine, you need to leave, you need to leave at this moment." (Tr. 128)

47. Complainant gathered her belongings and left the restaurant.

48. A reasonable inference can be drawn from evidence introduced by the Commission that Respondent Francis was unhappy about Complainant's request that he stop making comments of a sexual nature to her. Thereafter, Respondent Francis made comments to Complainant that were both mocking and sarcastic, and showed that he was contemptuous of her request.

49. Complainant testified that from August 4, 2002 until she terminated her employment, Respondent Francis's conduct toward her created a hostile work environment; and, as a result of the hostile work environment, she was constructively discharged.

50. There is a nexus between Complainant's opposition to sexual harassment by Respondent and Respondent's conduct which, thereafter, created a hostile work environment for Complainant.

51. After a careful review of the entire record, the ALJ disbelieves the underlying reasons articulated by Respondent Francis for his treatment of Complainant and concludes that, more likely than not, it was a pretext for illegal retaliation.

52. Additionally, the testimony of Complainant regarding Respondent Francis's conduct on her last day of work supports the conclusion that Complainant's termination was not voluntary. Complainant was forced with the choice of enduring further inappropriate sexual behavior from Respondent Francis or quitting.

53. Complainant is entitled to relief.

DAMAGES

54. The Commission has the authority to order Respondents to pay equitable damages, which include but are not limited to, back pay and reinstatement when there is a finding of discrimination pursuant to R.C. 4112.05(G)(1). However "in instances in which it has been decided that an effective employment relationship could not be reestablished, the courts

have excluded reinstatement from the forms of relief granted." *EEOC v. Pacific Press Publishing Association*, 482 F. Supp. 1291 at 1320 (1979).

55. It has also been recognized by the courts that it would be unjust to deny reinstatement without offering some quantum of monetary relief or "front pay" as a substitute.

56. This alternative relief has been deemed necessary not only to grant discharged employees a reasonable opportunity to find comparable employment, but also to deter future improper employer action. *EEOC v. Kallir, Phillips, Ross, Inc.*, 420 F. Supp 919 at 927 (1976), *Burton v. Cascade School District No. 5*, 512 F. 2d 850 at 854 (1975).

57. The testimony and demeanor of both Complainant and Respondent Francis justifies the ALJ in making the determination that reinstatement would be an inappropriate remedy.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 9569 that:

1. The Commission order Respondent BMAVS and Respondent Francis to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112; and

2. The Commission order Respondent BMAVS and Respondent Francis to pay front pay to Complainant within 10 days of the Commission's Final Order. Complainant shall be paid the same wage she would have been paid as a general manager with benefits and raises that she would have been entitled to for a total front pay of four (4) months, less interim earnings, calculated from the date of the Commission's Final Order;

3. The Commission order Respondent BMAVS and Respondent Francis within 10 days of the Commission's Final Order to issue a certified check payable to Complainant for the amount that Complainant would have earned had she been employed as a general manager from September 11,

2002 up to the date of the Commission's Final Order, including any raises and benefits she would have received, less interim earnings, plus interest at the maximum rate allowed by law;[8] and

4. The Commission order Respondent Francis to receive sexual harassment training and submit to the Commission of copy of his sexual harassment policy within six (6) months of the date of the Commission's Final Order. As proof of participation in sexual harassment training, Respondent Francis shall submit certification from the sexual harassment trainer or provider of services that he has successfully completed sexual harassment training. The letter of certification shall be submitted to the Commission's Office of Special Investigations within seven (7) months of the date of the Commission's Final Order.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

February 23, 2006

[8] Any ambiguity in the amount that Complainant would have earned during this period or benefits that she would have received should be resolved against Respondent Francis. Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent Francis.

Schwartz, Manes & Ruby

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Doc. # 19970890

August 28, 1997

RECEIVED

AUG 29 1997

BOBBIE STERNE

Ms. Bobbie Sterne
Member of City Council
City Hall
801 Plum Street
Cincinnati, Ohio 45202

Dear Ms. Stern:

As you may be aware, I represent the Queensgate Civic Association, a group of property and business owners who have made substantial financial commitments to the Queensgate area. For your information, I am enclosing herewith a copy of the directory of the Queensgate Civic Association, identifying most of its members.

I have been retained by the Queensgate Civic Association to attempt to present an informed and coherent position with regard to the sexually oriented business overlay zone proposed to be located in Queensgate. I presented my comments orally to the Planning Commission at their August 22, 1997 meeting, but unfortunately, I will be unable to be present at the Urban Development Committee and full Council meetings on September 3 and 4, 1997, since I will be out of town.

Briefly, our position is that the concentration of sexually oriented businesses into one district runs counter to the lawful objectives of zoning in general and the stated objectives of the proposed legislation in particular. As you know, zoning is an exercise of the police power, permitted in order to promote and preserve the health, safety and welfare of the community. On the other hand, according to the premises upon which the zoning regulation of sexually oriented business is based, the concentration of sexually oriented businesses has a demonstrated secondary effect of increasing crime rates and decreasing property values in such an area. The establishment of a sexually oriented business zone in one area as a "combat zone" or "dumping ground" would thus run counter to the public health, safety and welfare and result in increased crime and decreased property values in the area where the zone is located. Indeed, property owners could have a case of inverse condemnation against the City if their property values were sufficiently decreased by the establishment and development of a sexually oriented business zone in their vicinity. In such a case, the City would clearly have decided to sacrifice

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

January 30, 2009

RESPONSE REQUIRED

VIA FACSIMILE & E-MAIL
Andrea M. Griffith (amgriffith@woodlamping.com & 513-419-6406)
C. J. Schmidt (cjschmidt@woodlamping.com & 513-419-6452)

RE: MEDICAL COVERAGE - CONCERNS DISCRIMINATION UNDER FMLA AND COBRA VIOLATIONS

Dear Andrea /C.J:

As you are aware, I had a medical appointment scheduled for yesterday that was approved by the attorneys (Sharon S. Parsley and Thomas J. Breed) on January 8, 2009, and prior to my termination on January 9, 2009. Also, of my inquiry into how Wood & Lamping (W&L) handles such matters. While I was advised by Andrea that this should be covered under the Family and Medical Leave Act ("FMLA"), she/you are aware that I have been deprived of my opportunity to exercise my rights under the FMLA although W&L was put on notice in December 2008 of the medical procedure to be done (Andrea being advise even prior to our December 2008 meeting of the health condition I was dealing with). As I also advised you in my January 11, 2009 correspondence, of concerns W&L allowing a representative to remove the Employee Handbook (i.e. Wood & Lamping LLP Policies and Procedure Manual) I retained at my desk. It is obvious that W&L knew that my termination was in violation of the FMLA and EEO policies and/or practices that it asserts in its Manual. Therefore, in an effort to cover-up/mask such unlawful/illegal acts they took my Manual I kept in my desk. As I advised, to W&L's disappointment☹, I made a copy of this Manual and retained a copy at home - ☺.

On yesterday, January 29, 2009, I kept the appointment set and am looking to move forward with the procedure. *I have been advised that the recovery period from the medical procedure may be three (3) to four (4) weeks and will involve a great deal of pain and discomfort.* Therefore, I am contacting you to determine whether or not W&L is still going to deny me the medical insurance coverage that has been afforded to its other employees similarly situated and/or are white – in that I am African-American. *If not, I have concerns that W&L refusal to do so would be in furtherance of depriving me rights because of its knowledge of my reporting of discriminatory practices while employed with it as well as knowledge of my participation in protected activities made known to it.* While W&L alleges it is an **equal** opportunity employer, I did not find that to be the case in its handling of me. However, I know that is not up to me to determine; however, to let the appropriate agency(s) determine.

As you have been advised, I *am* <u>not</u> interested in returning to W&L in that I do not believe it would be in my best interest (*mental, physical and emotional wellbeing*, etc.). W&L's termination of my employment without just cause was sufficient to also let me know that my services and work ethics was not needed there and neither was I welcomed and/or wanted in their employment. Therefore, being deprived equal opportunity employment.

Looking in my copy of the *Wood & Lamping LLP Policies and Procedures Manual*, I can see why W&L had its representative take the copy I had in my desk.

While W&L thrived itself to be an "**equal** opportunity employer" and "committed to treating **all** employees and applicants ***equally*** without regard to race, . . . sex. .,," from my personal experience I do not believe it can claim such and that the "EQUAL OPPORTUNITY" policy in its Employee Handbook, just as its other policies, are merely a sham (for false pretenses).

The following is what I found which I believe was W&L efforts to cover-up in the taking of my Policies and Procedures Manual (bold, italics, and/or underline added for emphasis):

> **EQUAL OPPORTUNITY**
> The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. <u>*Discrimination*</u> *by any member of the firm* ***will <u>not</u>*** *be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also* ***prohibits <u>retaliation</u>*** *<u>against anyone who has filed a complaint</u> of* ***discrimination*** *or* ***harassment.***
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 11)

<u>W&L **cannot** say that I did not report these violations **PROMPTLY** to them – not even the one that occurred on January 9, 2009</u>, in violation of my request for medical leave and retaliation of its knowledge of my engagement in protected activities. *I guess I need to wait and see whether those who commit such discrimination remained employed – leaving a reasonable mind to conclude that W&L <u>indeed **tolerates and supports**</u> such **discriminatory treatment**.* I need to know whether or not W&L is still going to deny me the benefits (i.e. – medical insurance, etc.) I was entitled to and that it afforded to other employees (whites). From what I see in the W&L

Policies and Procedures Manual, medical coverage is to be continued and/or I am entitled to medical benefits with W&L as that *which I had before* it violated the Act. From my understanding of the W&L Policies and Procedures, I am to be "**retained** on the firm's health plan(s) *under the same* conditions that applied before leave commenced if employees make their contributions to the plan(s).... (Wood & Lamping LLP Policies and Procedures Manual @ p. 14)" Remember I was covered under the FMLA once verbal notification was provided to Andrea of my medical condition and/or request into how W&L handles such matters.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Eligibility:

On October 16, 2000, the firm became subject to the Family and Medical Leave Act ("FMLA"). (Should the firm ever drop below 50 employees, it will remain covered by the Act until the future point when it has no longer employed 50 or more employees for 20 or more weeks in the current or preceding calendar year.) Family and Medical Leave is unpaid unless the employee has paid leave available. (Wood & Lamping LLP Policies and Procedures Manual @ p. 12)

Reasons for Requesting Leave:

. . .The firm will need to carefully analyze each situation to determine if the leave qualifies as FMLA leave. In general, the intent of FMLA is to provide leave for medical conditions that require ongoing, continuous care and treatment. The Act is not intended to cover short-term conditions where treatment and recovery are brief. (Wood & Lamping LLP Policies and Procedures Manual @ p. 13)

Procedure for Requesting Leave:

An employee intending to take family or medical leave because of . . .a planned medical treatment, must submit a request a least 30 days before the leave is to begin. If leave is to begin within 30 days, an employee must give notice to the firm as soon as the necessity for leave arises....

...The firm's notice **may be given orally**, but will be confirmed in writing. (Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

Pay During Leave:

The employee must use all available paid leave (e.g. paid vacation or sick time, short-term disability, worker's comp., etc.) concurrent with FMLA leave...(Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

Benefits during Leave:

Employees **will be retained** on the firm's health plan(s) under the same conditions that applied before leave commenced if employees make their contributions to the plan(s).... (Wood & Lamping LLP Policies and Procedures Manual @ p. 14)

> *Employees who take family and medical leave* ***will*** ***<u>not</u>*** ***lose*** *any earned...employment benefits....*(Wood & Lamping LLP Policies and Procedures Manual @ p. 15)

This is mild; however, if I could use a Gomer Pyle expression, "SHAME, SHAME, SHAME!!!" I am not going to go into any more of the violations of W&L because its allowing a representative to remove the copy from my desk *speaks for itself* and its knowledge of its discriminatory treatment and the legal wrongs committed. However, I will include additional excerpts from the Manual of some of the Policies and Procedures I personally experienced:

> **POLICY AGAINST UNLAWFUL HARASSMENT**
> **<u>General</u>:**
> Wood & Lamping is committed to maintaining a professional and collegial work environment in which all individuals are treated with respect and dignity. The firm prohibits discrimination because of race, color, religion, sex, national origin, age, veteran's status, disability, or any other protected status in accordance with applicable laws. *Harassment is a form of discrimination and* ***will*** ***<u>not</u>*** *be tolerated.*
>
> Wood & Lamping encourages individuals who believe they are subject to harassing behavior to clearly and promptly notify the offender that his or her behavior is unwelcomed, but one is not required to do so. However, any individual who believes he or she has been subject to harassment of any kind must notify a partner of the firm or a member of management in order for the matter to be resolved. (Wood & Lamping LLP Policies and Procedures Manual @ p. 20)
>
> **<u>Policy Against Sexual Harassment</u>**:
>
> A. Sexual Harassment Defined
> . . .While mutually consenting relationships between members of the firm are not sexual harassment, these relationships *are considered* ***<u>unwise</u>*** because of the potential denial of mutual consent.
>
> B. Procedures for Reporting Sexual Harassment
> Wood & Lamping encourages individuals who believe they are subject to sexual harassment to clearly and promptly notify the offender that his or her behavior is unwelcomed. However, one is not required to do so. Any individual who believes he or she has been subject to harassment **of any kind** must notify a partner of the firm or a member of management. The partner or manager will initiate an investigation of the matter....
>
> C. Investigations
> Investigations will be prompt, thorough, accurate, consistent, and conducted as discreetly as possible. Confidentiality will be maintained to the extent practical, but a few members of the firm will have to know about the situation due to the employer's **obligation** to investigate. Effective enforcement of this policy

requires that the offender be made aware of the alleged conduct at some point, and fairness demands that an accused be afforded an opportunity to make a defense. The reporting individual will be notified before the offender is questioned about or told of the charge.

Once the investigation is complete, findings and decisions will be made and communicated to the reporting individual and the offender. If there is no evidence to support the allegations, the matter will be dropped and the investigation closed. If the investigation confirms that harassment occurred, the harasser will be subject to resolution procedures and/or appropriate disciplinary penalties, which may include one or more of the following: referral to counseling, withholding of a promotion, reassignment, mediation, temporary suspension without pay, a written warning, and *discharge* from the firm.

Non-Retaliation Policy:
No *one* will be subject to ***any*** *form* of discipline or *retaliation* for reporting incidents of unlawful harassment, ***pursuing*** *any such claim,* or ***cooperating*** *in the investigation of such reports.* Any form of retaliation will result in appropriate disciplinary procedures, up to and including discharge from the firm. However, individuals who falsely and maliciously accuse another will be subject to the disciplinary procedures described above.
(Wood & Lamping LLP Policies and Procedures Manual @ pp. 20-22)

I am sure W&L information regarding my incident with Brian Gillan and the retaliation suffered as a result of my reporting of such acts which were tolerated (as evidenced of his remaining in employment after several violations to these policies and procedures). I could not even get any representation and matters brought to W&L although it asserts such, it was obvious to me that even the considerations for such assistance was discriminatory: Now since my termination additional information is surfacing (i.e. **CONFLICT OF INTEREST** = W&L's connection with Thomas J. Breed; Thomas J. Breed's connection with Schwartz Manes Ruby & Slovin LPA (a/k/a Schwartz Manes & Ruby)("SMR"); SMR's connection with David Meranus; David Meranus' connection with Stor-All; Stor-All's connection with Denise Newsome) - **causal** link established and additional ill motives behind my termination. SHAME, SHAME, SHAME!!!! While an employee at W&L, I could not even obtain representation in matters it was aware I was involved in. However, you have to keep in mind all of the decision makers were white. Perhaps that has something to do with it in that I was only one of two African-Americans in the whole firm.

REPRESENTATION OF EMPLOYEES
Assistance, guidance, advice, or suggestions offered to employees by an attorney of Wood & Lamping shall be deemed informal personal assistance and not official firm advise until such time that file is opened in the employee's name. …

What else would I have been entitled to in regards to pay had the January 9, 2009 employment violation not occurred to assist me in my absence during attendance to medical procedure?

SHORT-TERM DISABILITY LEAVE

Definitions:

(a) For purposes of this short-term disability leave provision, a "disability" means a personal condition of an employee which causes the employee to be unable to perform the essential functions of the employee's job for an extended and/or indefinite period of time due to personal illness, injury, hospitalization, post surgical recovery, childbirth, complications due to pregnancy or childbirth, or psychological or mental impairment. A "disability" must be established by medical certification as being of an extended or indefinite duration. Common illness and minor injuries are not disabilities. (Wood & Lamping LLP Policies and Procedures Manual @ p. 23)

(b) Short-term disability leave will commence after an absence of seven (7) working days or 52.50 working hours (the waiting period) in a fourteen calendar-day period.

(c) Short-term disability begins on the eighth working day or 52.50 hours of absence.

Length of Leave and Compensation:

(a) Employees may use earned sick time (or earned vacation time if sick time is unavailable) during the seven-day waiting period or take it unpaid.

(c) A full-time employee who has completed one year of continuous employment shall be entitled to fifty (50) days (or 375 hours) of paid disability leave at the rate of eighty percent (80%) of the employee's hourly rate of pay, plus his or her longevity rate (if applicable), in effect on the first day of unpaid absence prior to the commencement of the disability leave. Salaried employees shall be compensated at the rate of eighty percent (80%) of the employee's weekly salary.

(Wood & Lamping LLP Policies and Procedures Manual @ pp. 23 & 24)

SHAME, SHAME, SHAME!!!!!!!!! What I was subjected to during my employment with W&L, and W&L's knowledge of this:

WORKPLACE VIOLENCE

Threats, intimidation, flashing of weapons, **stalking** or any ***acts of aggression*** or **violence** made toward or by anyone ***will not*** be tolerated. Any potentially dangerous situations, including threats, should be reported immediately to a manager or partner. All reports will be promptly investigated. To protect the firm

> and its staff, the firm reserves the right to search employees and their personal property when there is reason to believe that this policy has been violated. Searches of firm facilities and property may be conducted at any time and do not have to be prompted by a belief that a policy is being violated. No employee will be subject to retaliation, intimidation or discipline as a result of reporting a situation. If an investigation confirms that a threat of a violent act or violence itself has occurred, corrective action will be taken against the offender.
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 29)

W&L has sufficient evidence and documentation in its possession to sustain this claim. Gather that is why they committed the unlawful/illegal acts to cover-up/mask such violations – i.e their failure to implement and/or enforce their own policies and procedures. In W&L's Employer's Guide it addresses concerns as to having such Manuals. So, I hope you can understand why it would not be in my best interest (mentally, physically, and emotionally, etc.) to return to W&L and the irreparable injury/harm I have sustained as a direct and proximate result of W&L failure to uphold and enforce its Policies and Procedures. Moreover, my having to endure months of discrimination and retaliation – which ultimately led to my termination on January 9, 2009. My termination coming without just cause and, of course, the decision makers being white.

While I was advised that COBRA would be available to me, I do not believe this is fair and clearly in violation of the FMLA. If I am entitled to coverage under the Act, then that is what I am demanding I be entitled to assist me through my medical procedure and to ease my mind as to medical coverage. If you (as an employee of W&L) are not required to pay for medical treatment under COBRA, then why should I. W&L had the required timely notification from me of this procedure; therefore, I am entitled to the medical coverage it affords to its employees (i.e. – coverage I was receiving prior to the unlawful/illegal termination) without discrimination.

PLEASE LET ME KNOW BY <u>Monday, February 2, 2009</u>, if Wood & Lamping is going to allow my benefits (i.e - medical insurance) to lapse and/or discontinue payment of these benefits. I need to advise my doctor on how to proceed.

Sincerely,

Denise Newsome

cc: Personal File

TRANSMISSION VERIFICATION REPORT

TIME : 01/30/2009 13:04
NAME :
FAX :
TEL :
SER.# : 000J7N195582

DATE,TIME	01/30 13:00
FAX NO./NAME	5134196452
DURATION	00:03:53
PAGE(S)	07
RESULT	OK
MODE	STANDARD

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

January 30, 2009

RESPONSE REQUIRED

VIA FACSIMILE & E-MAIL
Andrea M. Griffith (amgriffith@woodlamping.com & 513-419-6406)
C. J. Schmidt (cjschmidt@woodlamping.com & 513-419-6452)

RE: MEDICAL COVERAGE - CONCERNS DISCRIMINATION UNDER FMLA AND COBRA VIOLATIONS

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TRANSMISSION VERIFICATION REPORT

TIME : 01/30/2009 13:03
NAME : FEDEX KINKO'S #2138
FAX : 5139610138
TEL : 5139610104
SER.# : 000J7N199268

DATE,TIME	01/30 12:59
FAX NO./NAME	5134196406
DURATION	00:04:00
PAGE(S)	07
RESULT	OK
MODE	STANDARD

DENISE NEWSOME

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Cincinnati, Ohio 45250
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January 30, 2009

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WOOD & LAMPING LLP

POLICIES AND PROCEDURES MANUAL

July 2006

TABLE OF CONTENTS

POLICIES

PROCEDURES

ATTENDANCE

It is the firm's expectation that all non-exempt employees will arrive and leave at their scheduled times each workday. Employees who cannot come to work as scheduled must leave a message with the Manager of Human Resources (or their Department Head if applicable) before 8:30 a.m. For purposes of this handbook, "non-exempt" will normally mean those employees who are not deemed administrative, management, or professional under the Fair Labor Standards Act, and who are normally paid at an hourly rate. Office services staff, legal secretaries, and most paralegals are considered non-exempt.

Occasional requests to alter normal work schedules (e.g. doctor's appointments, family obligations, etc.) may be granted if the appropriate supervisor is notified and approves the request in advance. The firm allows these occasional occurrences as long as they do not become excessive. Excessiveness is defined as being tardy or absent several times within a relatively short period, or taking several days off without pay after exhausting paid sick or vacation time (subject to any applicable laws that protect employee absences). Excessive tardiness or absenteeism without extenuating circumstances will result in discipline, up to and including termination.

Any time missed must be made up in one of two ways. Employees can either request to make up small amounts of missed time (less than four hours per week) or employees can charge the missed time against available sick/vacation time. Requests to make up time must be approved by the appropriate supervisor before the time is made up. (Requests to make up time will generally be granted unless the employee has been excessively tardy or absent.) If the request is granted, the time should be made up within the week, and no later than the following week. At no time should employees make up missed time by working over 40 hours in one week (i.e. qualifying for overtime pay). If no paid time is available, the employee's pay will be docked.

BENEFITS

The following is only a general description of the benefits offered to Wood & Lamping employees. Benefits can be changed or revoked at any time with or without advanced notification. For the most complete information, please see the Manager of Human Resources for a copy of updated plan documents. Employees must notify the Manager of Human Resources of changes that will affect the employee's benefits.

Birthdays

The firm currently sends flowers to all non-exempt employees and signed cards to all exempt employees. Employees often elect to bring in a treat to share in celebration of a co-worker's birthday, but it is not required. The firm hopes everyone enjoys the camaraderie during these short get togethers in the kitchen.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA)

Employers with 20 or more employees on 50 percent of the working day in the prior calendar year are subject to rules of the Consolidated Omnibus Budget Reconciliation Act (COBRA). The firm will mail a COBRA General Notice to an employee's home whenever he or she joins the firm's group health plan(s). The firm will mail another copy of the COBRA General Notice, a COBRA Election Form, and a HIPAA Certificate to employees who terminate from the firm's group health plan(s). This information explains the employee's rights to elect continuation coverage under COBRA. Please refer to the appendix in this manual for a current copy of the firm's COBRA notices and HIPAA Certificate.

CONFLICTS OF INTEREST

To avoid conflicts of interest, attorneys should not accept any directorship or officer status without approval from the Managing Partner. Attorneys should not purchase or sell any equity or debt security of a publicly held client of the firm or designated entities unless the purchase or sale has been approved by the Managing Partner. Whenever anyone reasonably expects that there is a basis for a claim or suit against the firm because of some act or omission to act by the firm, the matter should immediately be brought to the attention of the Department Head and Managing Partner.

To help avoid conflicts, attorneys must give secretaries all of the necessary information for the completion of the Client Information form. All of the items on the form must be completed or marked as not applicable or otherwise Accounting will send the form back for completion. A list of newly opened matters is printed and distributed weekly and should be reviewed by all attorneys and paralegals. Anyone aware of a conflict should immediately notify the Department Head and Managing Partner.

COMPUTER, E-MAIL, AND INTERNET

The firm owns its computer systems and provides them to employees for business purposes. Users must comply with the guidelines found in this and all other firm policies, particularly the firm's policies regarding client confidentiality and unlawful harassment. Users must also adhere to local, state, federal, and international laws related to the access and use of computer systems.

Prohibited Uses

While limited personal use of the firm's computer systems is allowed, users should not use the firm's computer systems for anything contrary to the interests of the firm. The following are expressly prohibited:

Internet Access

All the foregoing policies also apply to Internet access. Users should not access websites that could violate any firm policies or guidelines; particularly, the firm's policy against unlawful harassment.

Retention

At this time, the computer system does not automatically delete saved electronic mail, but individual users are encouraged to regularly delete saved messages.

DRESS CODE/CASUAL (FRI)DAY

Clients, visitors, and other attorneys are in the office every day, so employees should dress professionally. Professional dress is defined for men as slacks, shirts with collars, and ties. For women, professional dress is defined as dresses, suits, or dress slacks and blouses.

On casual Fridays, clothing is relaxed to slacks and shirts with collars for men and casual slacks and tops for women. Because clients expect us to maintain a professional image and environment even on casual days, tee-shirts, tank or halter tops, blue jeans, leggings, stirrup pants, sweat shirts, sweat pants, jogging suits, shorts, skorts, capri pants, tennis shoes, and causal sandals are not considered appropriate attire to wear. Individuals wearing inappropriate attire will be admonished to adapt their dress to the above guidelines.

EQUAL OPPORTUNITY

The firm is an equal opportunity employer, and as such, is firmly committed to treating all employees and applicants equally without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of our business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of equal employment opportunity. Discrimination by any member of the firm will not be tolerated. Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. This policy also prohibits retaliation against anyone who has filed a compliant of discrimination or harassment.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Eligibility

On October 16, 2000, the firm became subject to the Family and Medical Leave Act ("FMLA"). (Should the firm ever drop below 50 employees, it will remain covered by the Act until the future point when it has no longer employed 50 or more employees for 20 or more weeks in the current or preceding calendar year.) Family and Medical Leave is unpaid leave unless the employee has paid leave available.

Employees who have been listed on payroll for at least 52 weeks and have actually worked 1,250 hours during the twelve-month period prior to the date of the leave are eligible for unpaid family and medical leave under the law. Employees who are not eligible for family and medical leave may request leave, but the firm will have to review business considerations and the individual circumstances involved before deciding whether or not to grant the employee's request.

Amount of FMLA Leave Available

Typically, a FMLA leave occurs in continuous uninterrupted blocks of time, up to 12 weeks. However, if the leave is medically necessary, employees may take FMLA leave intermittently or by reducing their normal weekly or daily work schedule. Intermittent leave is measured in no less than 15-minute increments. The employee's weekly average of hours worked over the prior 12 weeks is used to calculate the total number of FMLA hours available. For example, a 40 hour-per-week employee will have 480 hours of leave available; a 37.50 hour–per-week employee will have 450 hours of leave available; a 30 hour-per-week employee will have 360 hours of leave available; and a 25 hour-per-week employee will have 300 hours of leave available, etc.

The twelve-week period is measured backward from each date that the employee commences FMLA leave ("the rolling 12 months method"). The twelve-week annual allotment is for all FMLA covered purposes. In other words, employees are not entitled to take twelve weeks of leave for each qualifying condition.

Reasons for Requesting Leave

Under the FMLA, an eligible employee may take unpaid leave for:

1) the birth of the employee's child and/or in order to care for the child (leave entitlement expires 12 months from the date of birth);
2) the placement of a foster or adopted child with the employee (leave entitlement expires 12 months from the date of placement);
3) to care for the "serious health condition" of an employee's spouse, child, or parent (FMLA does not cover the care of in-laws); or

4) to care for the employee's own "serious health condition," which makes the employee unable to perform the essential functions of his or her job.

The firm will need to carefully analyze each situation to determine if the leave qualifies as FMLA leave. In general, the intent of FMLA is to provide leave for medical conditions that require ongoing, continuous care and treatment. The Act is not intended to cover short-term conditions where treatment and recovery are brief.

Definition of Serious Health Condition

A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that may fall into one of the following six categories:

1) a period of incapacity or treatment in a hospital or medical care facility or any subsequent leave needed for the condition; OR
2) a period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that involves:
    i) treatment two or more times by a health care provider, nurse, or physician's assistant under the direct supervision of a health care provider or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or
    ii) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. OR
3) any period of incapacity due to pregnancy or for prenatal care; OR
4) any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.); OR
5) any period of incapacity due to a condition that is long-term or permanent for which treatment may not be effective (e.g. stroke, terminal diseases, Alzheimer's, etc.); OR
6) any absence to receive multiple treatments by a health care provider for restorative surgery after an accident or injury, or for a condition that, if untreated, would likely result in a period of incapacity of more than three consecutive days (e.g. kidney disease, cancer treatments, etc.).

Unless complications arise, common colds, upset stomachs, flu, ear aches, non-migraine headaches, routine dental or orthodontia problems and periodontal disease do not ordinarily meet the definition of serious health condition. Absences due to the abuse of substances are not covered by the FMLA, but leave taken for the treatment of substance abuse is covered.

Procedure for Requesting Leave

An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment, must submit a request at least 30 days before the leave is to begin. If leave is to begin within 30 days, an employee must give notice to the firm as soon as the necessity for leave arises. If an employee is incapacitated, the next of kin is responsible to notify the firm.

In all cases, an employee requesting leave must complete the "Request for Family and Medical Leave" and return it to the firm. (The form is available in the brown forms file cabinet or from Human Resources.) Based on information provided by the employee, the firm will determine if an employee's leave counts as FMLA leave. The firm's notice may be given orally, but will be confirmed in writing.

If an employee exhausts all 12 weeks of FMLA leave, and needs a further extension of some other type of leave, he or she must make written application to the firm. This written request should be made as soon as the employee realizes that he or she will not be able to return at the expiration of the leave period. The firm will consider each extension request separately based upon business considerations and the individual circumstances of each situation.

Medical Certification

A request for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by a "Medical Certification" completed by the applicable health provider. (The form is available in the brown forms file cabinet or from Human Resources.) The firm may require a second or third opinion (at the firm's expense). The firm can ask the employee to provide updated certification no sooner than every 30 days. Employees are permitted at least 15 calendar days to get the medical certification completed and returned after it has been requested by the firm. Depending on the type of FMLA leave, a medical re-certification may be required every 30 days.

Pay During Leave

The employee must use all available paid leave (e.g. paid vacation or sick time, short-term disability, worker's comp., etc.) concurrent with FMLA leave. If available paid leave runs out during the twelve-week period, the remainder of the leave will be unpaid.

Benefits during Leave

Employees will be retained on the firm's health plan(s) under the same conditions that applied before the leave commenced if employees make their contributions to the plan(s). Employees can either pre-pay the amount that would have been collected during the leave or make payments as the leave commences. Failure of the employee to pay his or her share of the insurance premium(s) within the

grace period of the due date may result in the loss of coverage. If the employee fails to return to work after the expiration of the leave, the employee may be required to reimburse the firm for payment of insurance premium(s) during the leave, unless the reason the employee fails to return is the presence of a serious health condition that prevents the employee from performing his or her job or because of other circumstances beyond the employee's control.

Employees who take family or medical leave will not lose any earned seniority or employment benefits, but they are not be entitled to accrue any seniority or paid leave that would have accrued if not for the taking of leave. Cash-out payments taken in lieu of group health coverage(s) under the Section 125 plan are not accrued once paid leave is exhausted.

Return to Work

Employees on leave must complete a "Notice of Intention to Return from Family or Medical Leave" and have their health care provider certify that they are fit to return to work before an employee be returned to active status. (The form is available in the brown forms file cabinet or from Human Resources.)

An employee who is certified to return to work will be restored to his or her old position, or to a position with equivalent pay, benefits, and other terms and conditions of employment. The firm cannot guarantee that an employee will be returned to his or her original assignment. The firm will determine whether a position is considered to be an equivalent position.

Employees who need to return to work on an intermittent basis, or who are not able to perform the essential functions of their prior position, may be transferred to a position that is better suited to intermittent periods of leave or reduced work schedules. The firm may deny job restoration to "key" salaried employees.

Failure to Return to Work

The failure of an employee to return to work upon the expiration of a family or medical leave of absence may subject the employee to immediate termination unless an extension is granted or the employee is legally entitled to some other type of leave.

If the employee fails to return to work after the expiration of the leave, the employee may be required to reimburse the firm for payment of insurance premium(s) during the leave, unless the reason the employee fails to return is the presence of a serious health condition that prevents the employee from performing his or her job or to circumstances beyond the employee's control.

PERSONAL CHARGES

Effective January 1, 2001, the firm will begin to charge for personal expenses (i.e., Federal Express, long distance telephone calls, postage, copies, faxes, etc.). Employees should enter 99999-employee number for the client code so that Accounting can enter the expense into the Accounting system, then you will receive an invoice for your remittance of payment. (Please note you will no longer need to pay postage to Office Services, it can be billed to you by recording your client number and the charge on the postage ledger next to the postage machine in the copy room.)

POLICY AGAINST UNLAWFUL HARASSMENT

General

Wood & Lamping is committed to maintaining a professional and collegial work environment in which all individuals are treated with respect and dignity. The firm prohibits discrimination because of race, color, religion, sex, national origin, age, veteran's status, disability, or any other protected status in accordance with applicable laws. Harassment is a form of discrimination and will not be tolerated.

Wood & Lamping encourages individuals who believe they are subject to harassing behavior to clearly and promptly notify the offender that his or her behavior is unwelcome, but one is not required to do so. However, any individual who believes he or she has been subject to harassment of any kind must notify a partner of the firm or a member of management in order for the matter to be resolved.

Also, the firm will not tolerate harassment by an individual who is not a partner or employee of the firm (e.g., client, opposing counsel, court personnel, vendor) to the extent that it affects any partner or employee of the firm, and the firm has the ability to take corrective action.

Policy Against Sexual Harassment

A. Sexual Harassment Defined

Sexual harassment, which is a specific form of discrimination on the basis of gender, is defined as: unwelcome and unwanted sexual advances; requests for sexual favors, or other verbal, non-verbal, or physical conduct of a sexual nature when:

1) submission to or rejection of such conduct by an individual is used explicitly or implicitly as a factor in decisions affecting hiring, evaluation, promotion, or other aspects of employment; or

2) this conduct substantially interferes with an individual's work performance; or

3) this conduct creates an intimidating, hostile, or offensive work environment.

Examples of prohibited verbal behaviors can include: unwelcome and unwanted sexual advances, requests for sexual favors, verbal abuse of a sexual nature, and repeated sexual jokes, comments, suggestions, whistles, or propositions.

Examples of prohibited non-verbal behaviors can include: suggestive gestures, leering, or the display in the work place of sexually suggestive objects or pictures.

Examples of prohibited physical conduct can include: coerced sexual acts, assaults, and uninvited touches, pats, squeezes, pinches, or avoidable brushes against someone's body.

While mutually consenting relationships between members of the firm are not sexual harassment, these relationships are considered unwise because of the potential denial of mutual consent.

B. Procedures for Reporting Sexual Harassment

Wood & Lamping encourages individuals who believe they are subject to sexual harassment to clearly and promptly notify the offender that his or her behavior is unwelcome. However, one is not required to do so. Any individual who believes he or she has been subject to harassment of any kind must notify a partner of the firm or a member of management. The partner or manager will initiate an investigation of the matter.

Should a reporting individual decline to have the incident investigated, and the partnership concurs, he or she will be asked to sign a statement to that effect, which will be kept on record, and the investigation will be closed unless another incident occurs. However, management reserves the right to proceed with an investigation.

C. Investigations

Investigations will be prompt, thorough, accurate, consistent, and conducted as discreetly as possible. Confidentiality will be maintained to the extent practical, but a few members of the firm will have to know about the situation due to the employer's obligation to investigate. Effective enforcement of this policy requires that the offender be made aware of the alleged conduct at some point, and fairness demands that an accused be afforded an opportunity to make a defense. The reporting individual will be notified before the offender is questioned about or told of the charge.

Once the investigation is complete, findings and decisions will be made and communicated to the reporting individual and the offender. If there is no evidence to support the allegations, the matter will be dropped and the investigation closed. If the investigation confirms that harassment occurred, the harasser will be subject to resolution procedures and/or appropriate disciplinary penalties, which may include one or more of the following: referral to counseling, withholding of a promotion, reassignment, mediation, temporary suspension without pay, a written warning, and discharge from the firm.

Non-Retaliation Policy

No one will be subject to any form of discipline or retaliation for reporting incidents of unlawful harassment, pursuing any such claim, or cooperating in the investigation of such reports. Any form of retaliation will result in appropriate disciplinary procedures, up to and including discharge from the firm. However, individuals who falsely and maliciously accuse another will be subject to the disciplinary procedures described above.

REPRESENTATION OF EMPLOYEES

Assistance, guidance, advice, or suggestions offered to employees by an attorney of Wood & Lamping shall be deemed informal personal assistance and not official firm advise until such time that a file is opened in the employee's name. If a file is opened, a written fee agreement must be executed before representation commences in order to clearly establish the terms.

- Wills will be drafted for an employee and spouse at no charge;
- Services in connection with the purchase and/or sale of one principal residence will be furnished at no charge, except for expenses incurred;
- The probation of estates will be at 80 percent of the actual time expended (45 percent being allocated for work credit and 35 percent being allocated for office overhead), plus expenses;
- Services rendered on business matters to employees, his or her spouse, or children will be charged at normal rates;
- Other legal services on personal legal matters rendered to an employee, his or her spouse, or children will be charged at 75 percent of the normal rate;
- The firm will not represent any Wood & Lamping attorney or employee in domestic relations or bankruptcy matters.

The firm reserves the right not to represent any attorney, employee, or relatives in any given matter, just as the firm reserves the right not to accept a client's case.

SECRETARIAL ASSISTANCE

Each attorney is assigned a secretary to share with at least one or two other attorneys. The job description for legal secretaries is located in the appendix of this manual so that attorneys can know what to expect from secretaries. Attorneys should not assign work to another attorney's secretary without permission of the attorney. If an attorney has been given permission to use someone else's secretary, the attorney should communicate that to the secretary when assigning the work.

Each attorney is also assigned to a back-up secretary to use for work that *needs* to be done (not filing, time entry, etc.) in the short absence of an attorney's regular secretary. When necessary, temporary secretaries will be hired to cover long absences of a regular secretary.

Other Rights Under Law

Nothing in this provision is intended to restrict or limit any rights or benefits to which an employee may be entitled under any federal or state law. Should the firm become subject to the Family Medical Leave Act, leave granted under this provision shall be granted concurrently with the leave available to an employee under the Act.

Workers Compensation

Short-term disability leave shall not be available to an employee who is eligible for workers' compensation benefits as a result of the disabling condition.

Medical Reports

An employee shall provide medical certification satisfactory to firm management, and must submit to medical, psychiatric or psychological examination, if requested, by a medical practitioner of the firm's choice, in order to receive short-term disability benefits. The cost of a medical/psychiatric/psychological examination ordered by the firm shall be paid by the firm.

Holidays

An employee receiving disability leave benefits shall not receive holiday benefits for a holiday occurring during a period of disability leave.

SICK LEAVE

Full-time employees will earn 1/2 sick day per month from January through October (for a total of 5 sick days per year), to be credited on the last day of the month. New hires will earn 1/2 sick day per month from January through October, to be credited on the last day of the month after they have been employed for one calendar month. Part-time employees who work at least 20 hours per week will earn two sick days per calendar year, to be credited at the end of January and July.

If an employee is absent due to illness, but has not earned enough paid sick leave to cover the absence, the firm will decide whether the employee will either: 1) not be paid for the absence; 2) will be advanced the time (depending on the circumstances, employee's length of service, and work performance); or 3) a combination of #1 and #2. The firm may require the employee to provide documentation from a physician that clearly states the medical necessity of an absence.

Sick leave should only be used for the employee's own illness or injury, or the illness or injury of a member of the family household or close relative. When you are unable to report to work, call The Manager of Human Resources by 8:30 a.m. and she will forward the message to the attorneys, back-up secretaries, and receptionist.

At the election of the employee, sick days earned but not used by year end will either: 1) be rolled over at the rate of 1/2 vacation day for one sick day; 2) be paid out (in January of the following year) at $50 per day, with an extra $50 bonus for those who are paid out for five unused sick days; or 3) a combination of #1 and #2.

If an employee gives two week's notice upon resigning, sick days that were earned but not used, will be paid out at $50 each on the last paycheck. If a terminating employee was advanced sick time, the time owed to the firm will be deducted from his or her last paycheck.

Four-day employees are also subject to this policy since they work the same amount of hours in a week that any other full-time employees does. However, paid time off is calculated in hours instead of days.

Associates who must be absent due to illness should notify their Department Head or the Manager of Human Resources and record the hours under the appropriate non-billable time code. Sick hours are not counted as vacation time for associates.

SMOKING

Effective January 1, 1999, smoking will not be permitted at Wood & Lamping, except that existing partners who smoke may continue to do so in their private office with the door closed, once the partner purchases and installs, at his or her own expense, a smoke filtering device which has been previously approved by the Management Committee. For all others, smoking is only permitted on the lowest level of the building or outside during the standard break and lunch periods.

SOLICITATIONS

Employees who would like to solicit support from co-workers for charities, schools, gifts, etc. may post the information on the bulletin board in the kitchen. Generally, firm-wide e-mails to all personnel should not be sent. Solicitation by non-employees is prohibited at all times.

SUBSTANCE ABUSE

No employee shall report to work while under the influence of alcohol or illegal drugs. In addition, the unlawful manufacture, distribution, transfer, dispensation, or possession of illegal drugs on firm premises is strictly prohibited. Any violations may result in disciplinary action up to and including discharge from the firm. To protect the firm and its staff, the firm reserves the right to search employees and their personal property when there is reason to believe that this policy is being violated. Searches of firm facilities and property may be conducted at any time and do not have to be prompted by a belief that a policy is being violated. Any employee having a drug or alcohol abuse

Generally, no more than four secretaries can be absent at the same time. Employees with 15 days of vacation or more should schedule some of that vacation time in contiguous five-day increments.

Employees should remember to coordinate with those who will be covering their workload and to change their voicemail message to reflect that they are out of the office, giving the caller an alternative person to contact in case of an emergency.

Associates and Managers

Associates and managers hired between January 1 and June 30 shall receive two weeks of vacation to be taken during the calendar year in which they are hired. Associates and managers hired between July 1 and August 31 shall receive one week of vacation to be taken during the calendar year in which they are hired. Associates and managers hired on or after September 1 shall not receive vacation during the calendar year in which they are hired. Associates and managers shall be entitled to three weeks vacation during each calendar year after the calendar year in which they are hired. Part-time and summer law clerks are not entitled to paid vacation until they are officially hired as associates.

Associates and managers should submit a completed Vacation Request form (a copy of which is located in the appendix of this manual, or the form can be found under f:\share\forms\Vacation Request or in the brown forms file cabinet) to their Department Head, who should then forward the form to the Manager of Human Resources for recordkeeping purposes.

Associates and managers who do not use all of their vacation days by year end will be allowed to roll over up to five days; be paid out (up to five days) in January of the following year; or 3) a combination of #1 and #2. Upon termination, associates and managers will be paid vacation days that were earned, but not used.

WORKPLACE VIOLENCE

Threats, intimidation, flashing of weapons, stalking or any other acts of aggression or violence made toward or by anyone will not be tolerated. Any potentially dangerous situations, including threats, should be reported immediately to a manager or partner. All reports will be promptly investigated. To protect the firm and its staff, the firm reserves the right to search employees and their personal property when there is reason to believe that this policy is being violated. Searches of firm facilities and property may be conducted at any time and do not have to be prompted by a belief that a policy is being violated. No employee will be subject to retaliation, intimidation or discipline as a result of reporting a situation. If an investigation confirms that a threat of a violent act or violence itself has occurred, corrective action will be taken against the offender.

Denise Newsome

From: Mary J Lewis
Sent: Thursday, February 08, 2007 5:13 PM
To: Everyone
Subject: [redacted] Health Insurance issues

I recently had a very negative experience with our insurance coverage when attempting to refill a prescription ordered by my doctor. I was obliged to pay for the prescription myself, or go without for approximately 6 days while the pharmacist waited for approval of an insurance-generated change in the manner of dispensing the medication and contrary to my doctor's instructions.

I have heard from a few people in the office who have had other delays with prescriptions.

If you have had problems I would like to hear from you. I am getting ready to voice a complaint with the Ohio Department of Insurance over this incident.

WOOD & LAMPING LLP
ESTD 1907

Mary Lewis
Paralegal

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EXHIBIT
5

Denise Newsome

From: Denise Newsome
Sent: Monday, January 15, 2007 9:45 AM
To: Andrea M. Griffith
Subject: FW: DENISE - Appointment

My response (See below).

From: Brian P. Gillan
Sent: Saturday, January 13, 2007 10:29 AM
To: Denise Newsome
Cc: Andrea M. Griffith
Subject: DENISE - Appointment

Denise:

I do not have the time to sit down with you on Monday to discuss these issues, primarily because of the work associated with taking on management of this new case. I will leave it to Andrea to address these issues, along with the ones she has regarding your work.
RESPONSE: Andrea, I look forward to discussing this with you in that I have some concerns I needed addressed.

I will also ignore the fact that in nearly 25 years of working with secretaries and executive assitants, I have **never** had one send as insubordinate a communication as the one you sent below.
RESPONSE: I do not believe I was insubordinate in my e-mail. I simply shared my concerns. I believe it is wrong for Brian to repeatedly attack me and my performance and not expect a response. While he is my subordinate, it does not give him the right to be rude, hostile, etc. towards me. Nor create and/or generate e-mails such as this in an effort to destroy my character and/or reputation. From my understanding, he has been here about a year (or little over) and I am his ***third*** (3rd) assistant/secretary. He appears to not be able to work with anyone. I have some concerns here.

This e-mail will address some of my issues, and my expectations of your performance. Do not waste your time giving me another long-winded explanation of how I am wrong, or how your way is the better way to do it, because I will not read it. I want your performance to meet my reasonable expectations; I want your insubordinate and passive/aggressive behavior to change; and I want you to address the issues Andrea raises with you, or else your tenure here will be short-lived.
RESPONSE: Again, I simply share my concerns with Brian. Something is definitely wrong when such concerns are twisted and/or manipulated in a way to try and make it look as though I was insubordinate. His use of "insubordinate," "passive/aggressive behavior" is apparent to me he is fluffing the pad to find reasons to have me terminated. Since such assertions are made by Brian, I need for him to provide and/or demonstrate when such "passive/aggressive behavior" has been displayed. Also, when have I been insubordinate - if responding to an e-mail sharing my concerns in his *behavior,* is insubordinate while he is allowed to vent his hostility towards me, then I have some concerns. Why, because no such "insubordination," passive/aggressive behavior" was ever brought to my attention by any of the other attorneys or people I have worked here with. So, I would question why would Brian be making such

assertions if they were not ***ill*** motivated.

When we first met, I impressed upon you that the one issue I felt strongly about was staying on top of filing, so I could find what I needed when I needed. You gave me a long explanation of how you did filing every day--a bit in the morning and a bit at the end of the day--so my concern would not be a problem. In fact, you have done very little filing, and I have not been able to find documents in the files when I've looked for them. When I gave you intructions to get caught up on filing by this Friday, and stay caught up every week, you gave me a long explanation about how you could not do it. Your desk and work area is a mess. **You need to clean it up, organize it, and get the filing done for your attorneys. I expect you to have my filing caught up by this Friday, and my "to be filed" folder to be emptied every Friday.**
RESPONSE: It is clear to me that something is not right with Brian. He made it clear that it was not ***working out*** with me. He is aware that his files were in a mess and very unorganized. He is aware that I have taken the time to reorganize the files and have done filing in it. I also mentioned to Brian where documents needing to be filed are. I believe it is unfair for him to attack me on this issue as well in that I have been working on his filing and I do not believe I am the only assistant/secretary whose filing is not caught up by every Friday. Other attorneys understand the demands of the assistant/secretary, yet this is the way Brian wants to see things through his eyes and the demands that he wants to place on me with knowledge that I provide assistance to other attorneys as well.

In addition, it took you weeks to come up with an in-box and out-box for my work, and even then it was not what Andrea had instructed you to do, but a jerry-rigged system on the wall. **This week, please obtain an appropriate in-box/out-box set up on your desk.**
RESPONSE: Brian made no objections to the boxes prepared for him. In fact, he clearly advised me to take the box on the wall with Peter's name on it and change it to his. Now he wants to change it and make it seem like I was not following instructions. As he requested, I changed the label on the one for Peter. Since there was another extra one up there, I used it as a pick-up tray for him. As far as what Andrea instructed, I am not aware that she instructed me to set up a tray for Brian. I shared with Andrea how I would like to work on my area and was told that I could look through the office supply book to find items that I may need.

As to my work itself, and in reply to the accusations in your insubordinate e-mail, I have actually required very little work product from you. Much of it I've done myself. I suspect if you kept track of your work hours, you've done far more work for Jan and Brandon than for me. If my work is not truly urgent, I have not asked it to be given a priority. For example, the follow up seminar letters--which really should have gone out some time ago to be effective--did not all go out until last week. Even some work which I had promised to clients or other attorneys by a certain date--such as the Indepenedent Contractor Agreement for Upstart, and the Management Agreement for 4th Street Management--I was understanding of your inability to get it done by the deadline I had promised the clients. That makes us look bad.
RESPONSE: Brian makes commitments to clients that I am not aware of. He does not check with the other attorneys to determine whether they too have made commitments with their clients. I am given deadlines by other attorneys and I try to handle each job request equally and if URGENT priority is given make the necessary adjustment. Brian presents work and within minutes come to see if I have received an e-mail, or present me with work and then comes to see if it is done in 5, 10, 15 minutes at which time, I let him know that I am handling other tasks. He always insist its needed right away and demands that I put it before the other attorneys work. It just isn't fair. His job requests are completed and returned to him in time. Even when he has made efforts to present time restraints and then provide other task to

prevent me from meeting deadline set by him.

But your reaction Friday to my request to merely format a letter I had drafted on the system--rather than dictating it to you, since that would have taken more of your time, and I was trying to make it easier for you--was really beyond the pale. The issue with the client came up Thursday night, and the letter had to get to Washington asap Friday. You gave me another long-winded e-mail explanation why you could not give my work the priority it needed. If you had just formatted my letter, it would have taken less time than the e-mail you sent in its place. I had to go aks Juanita for help, which she gladly provided. It took her all of 5 minutes.
RESPONSE: Brian presented me with a task which was completed in the a.m. the day before. He failed to check his box. I placed it in his chair. When he sent me an e-mail regarding it, I advised him that the task was completed the day before in the a.m. and placed in his chair. Any delay in responding was not due to me. The task was completed and returned.

And then I asked you to merely print off some long e-mail attachments which Ray had sent me to get up to speed on the new case I've been asked to take over--the largest case in the office, and one that could be very lucrative for the firm. Instead of taking the few minutes to hit "print" several times, you again sent me a long explantion of why my request was unreasonable and you could not get to it for a while. I wanted to read those attachements then, not later. When some time had paseed, and it was getting past 4:00, I decided to do it myself. That seemed to prompt you to finally get to it.
RESPONSE: I have the e-mail and others. I mentioned to you, your job was next. You just didn't want to wait. In an effort to make me look bad or to shape the "insubordinate," "passive/aggressive behavior" opinion you created of me, you proceeded to print them yourself. My e-mail advised you that the last one was printing.

Here is my expectation: not all of my work is urgent, and that work which is not can wait a reasonable amount of time to be done. But the work that is truly urgent needs to be given immediate attention. If you have a project for another attorney that is also urgent, let me know and I will work it out with that attorney.

RESPONSE: I have some concerns to this e-mail presented by Brian in that I believe it is ill motivated. Why? Because it has been brought to my attention that Brian apparently had relationship with a legal assistant (who is no longer) here at the firm who was upset with the fact I was hired and she was not. I have concerns that Brian may be bitter towards me and such bitterness is displayed through his elaborately generated e-mails to make it appear that I am insubordinate and/or have exhibited passive/aggressive behavior towards him. This being false. While it is now apparent that Brian may have been trying to pull such behavior out of me through his attacks and criticism via e-mail, I was not going to stoop to such antics by him. I consider myself a professional and strive to carry myself in a respectful and proper manner. However, when questioned, as here, then I am going to respond.

In Brian's e-mail on Friday, he states, "The last few days have not worked for me." He has attacked my character when in previous e-mail commends me on doing a good job. So, I question his motive behind his recent behavior. I find his recent behavior to unfair, unjust and ill motivated. Believing that he may blame me for the reason why the legal assistant he was such good friends with is not here. Realizing that others appreciated my work and performance, I believe Brian may have set out to just try and find something in an effort to make me look bad. It is not clear to me, why he would send such e-mails and not expect a response and/or believe that I am not supposed to respond but just take such without feedback. I have some serious concerns and just wanted to share them.

Thanks for your time.

From: Denise Newsome
Sent: Friday, January 12, 2007 4:45 PM
To: Brian P. Gillan
Cc: Andrea M. Griffith
Subject: FW: DENISE - Appointment

Just let me know when you want to meet. Your expectations seems to only center around yourself. As I have advised you, I also work with other attorneys and try to give all equal attention to the work presented. However, you repeatedly insist on providing me with job request to preceded theirs and that just is not right.

I would just suggest that you learn to work with other and respect their job demands as well.
I have not had any complaints from them about my work performance or not getting their job requests done. The others seem to be more understanding and considerate of the other attorneys work request. All but you.

Thank you.

From: Denise Newsome
Sent: Friday, January 12, 2007 4:29 PM
To: Brian P. Gillan
Subject: RE: DENISE - Appointment

After all of that, the final document is printing now.
I sent confirmation to other attorneys I assist as well, just gathered you would know.

From: Brian P. Gillan
Sent: Friday, January 12, 2007 4:28 PM
To: Denise Newsome
Subject: RE: DENISE - Appointment

Never mind. I'll print it off myself.

Today is not the day, but Monday we need to sit down and talk about expectations and performance. The last few days have not worked for me, and I've just taken on a huge case. You need to step up.

From: Denise Newsome
Sent: Friday, January 12, 2007 4:22 PM
To: Brian P. Gillan
Subject: RE: DENISE - Appointment

Just letting you know about an appointment I have.
Sorry for the delay in responding.
Will e-mail info to you in the future.
Have other things pending and will get to your task next. Responding to e-mails takes up some of this time.

From: Brian P. Gillan
Sent: Friday, January 12, 2007 4:20 PM
To: Denise Newsome
Cc: Andrea M. Griffith
Subject: FW: DENISE - Appointment

As I asked yesterday, please explain to me what this is.

From: Brian P. Gillan
Sent: Thursday, January 11, 2007 5:31 PM
To: Denise Newsome
Subject: RE: DENISE - Appointment

What is this?

From: Denise Newsome
Sent: Thursday, January 11, 2007 5:21 PM
To: Jan M. Frankel; Brian P. Gillan; V. Brandon McGrath
Cc: Andrea M. Griffith
Subject: DENISE - Appointment
When: Tuesday, January 16, 2007 8:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Covington, KY

Denise Newsome

From: Brian P. Gillan
Sent: Thursday, December 21, 2006 3:37 PM
To: Denise Newsome
Subject: RE:

Thanks; you're the best.

From: Denise Newsome
Sent: Thursday, December 21, 2006 3:34 PM
To: Brian P. Gillan
Subject:

Denise Newsome
dnewsome@woodlamping.com

Staffers
Promoting a Better Workplace
362-1010

Vogel Newsome

Test Results from 11-20-02

Alphanumeric
8844 kph / 2% error rate

Typing
60 wpm / 1% error rate

Word 97
100 overall (100 on basic, intermediate & advanced)

Excel 97
100 overall (100 on basic, intermediate & advanced)

Jana Hedglin
362-1010
Staffing Coordinator

EXHIBIT
8

LASH MARINE SERVICES, INC.

MEMORANDUM

TO: WHOM IT MAY CONCERN

FROM: Robert K. Lansden
Vice President

DATE: July 11, 1996

RE: ***VOGEL D. NEWSOME***

This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be sorely missed at Lash Marine.

1700 POYDRAS CENTER - 650 POYDRAS ST. - P.O. BOX 58409 - NEW ORLEANS, LA 70158-8409
MARINE PERSONNEL - TEL: (504) 529-5461 - FAX: (504) 593-6941 DIR FAX: (504) 593-6941 TLX: 587435 (CGULFNO)

EXHIBIT 9

PURDY & GERMANY, PLLC
ATTORNEYS AT LAW
587 HIGHLAND COLONY PARKWAY
RIDGELAND, MISSISSIPPI 39157
TELEPHONE (601) 969-4140
TELECOPIER (601) 960-4203

RALPH B. GERMANY, JR.
Direct Dial: (601) 914-1735
rgermany@purdygermany.com

MAILING ADDRESS:
P.O. DRAWER 1079
JACKSON, MS 39215-1079

August 18, 2003

Ms. Jane Sanders
Legal Resources, Inc.
1675 Lakeland Drive, Suite 306
Jackson, Mississippi 39216

RE: *Vogel Newsome*

Dear Ms. Sanders:

This letter follows-up my telephone conversation with your office on August 15, 2003. As you know, Bill Purdy and I just recently formed this firm. I left another firm to start this one. After leaving my previous firm, I needed a temporary secretary. For the last several weeks your office provided us with Ms. Vogel Newsome.

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. If my previous secretary were not rejoining me, I would want Vogel to be my new permanent secretary.

If any one would care to discuss Vogel with me, please do not hesitate to give them my name and number. I will be more than happy to talk with them.

I am not certain of the exact day when my previous secretary will rejoin me. It could be immediately, or, it could be a couple of weeks. In light of that, we would like to request that we be allowed to continue to work with Vogel until further notice. However, the last thing I want to do is have Vogel miss another good opportunity that might lead to permanent employment. Therefore, if she must be reassigned, I will understand, but grudgingly so.

If you have any questions, please do not hesitate to give me a call.

Sincerely yours,

PURDY & GERMANY, PLLC

Ralph B. Germany

Ralph B. Germany, Jr.

RBGjr/vdn

FOURTH CIRCUIT DRUG COURT PROGRAM
STATE OF MISSISSIPPI

BETTY W. SANDERS
CIRCUIT JUDGE
LEFLORE COUNTY

MARGARET CAREY-MCCRAY
CIRCUIT JUDGE
WASHINGTON COUNTY

ASHLEY HINES
CIRCUIT JUDGE
SUNFLOWER COUNTY

LISA J. WASHINGTON
COORDINATOR

MARY ANN JONES
ADMINISTRATIVE ASSISTANT

July 7, 2006

Ms. Denise Newsome
Post Office Box 31265
Jackson, MS 39286

RE: Denise Newsome Letter of Recommendation

TO WHOM IT MAY CONCERN:

I was first introduced to Ms. Newsome over five (5) years ago. Since that time, she has been a Woman of integrity and intelligence. Ms. Newsome always has presented herself in a professional manner and has always addressed me and others with the uttermost of respect. Ms. Newsome outgoing personality and personal strengths would make her an excellent additional to anyone's staff. I have had the opportunity to work with Ms. Newsome and she has demonstrated flexibility in working outside of her field of endeavor and doing an excellent job is a strong indicator of how well she will do in her chosen field of endeavor. Ms. Newsome demonstrated a willingness to perform any task assigned to her promptly and correctly with little supervision. Ms. Newsome is a very pleasant person to associate with, works as a team player, and would truly be an ASSET to your organization because she is the best one for the job.

Thank you,

Lisa J. Washington

Lisa J. Washington, MS, LMFT
Coordinator

Drug Court: Recovering Lives ~ Restoring Families ~ Protecting Communities

900 WASHINGTON AVENUE – P.O. BOX 1775 – GREENVILLE, MISSISSIPPI 38702-1775
PHONE: (662) 332-7793
FACSIMILE: (662) 332-7301

RESUME OF
DENISE NEWSOME

P.O. Box 31265
Jackson, MS 39286

(601) 885-9536
E:mail – vdnewsome@hotmail.com

SUMMARY:

As a result of my experience and education, I have developed the skills necessary to work in both disciplined and undisciplined environments.

I possess the following: willingness to learn, enjoy interaction with people, sense of humor, enthusiastic, energetic, results oriented, reliable, like challenges, confidentiality, enjoy travelling, business oriented, and believe in getting the best results.

PERTINENT EXPERIENCE:

Experience in operating apple computer (Mac), IBM word processors and computers, Typing WPM (65-71), memorywriter, dictaphone, electric calculator (touch), communications, software packages: MS Word Suite (Word, Excel, PowerPoint, HomePage, MS Project, Access, Outlook) – 6.0 thru Windows 98, WordPerfect (Windows/Corel), Lotus 1-2-3 (Windows), Adobe/Acrobate Reader (creating PDF documents), Freelance Graphics, E:mail (GroupWise, Exchange, MS Outlook, etc.), IManage, WinScribe, Omega, TimeClock, Timeslips, TABS, MultiMate, WordStar Professional, various spreadsheets, databases, mainframe usage, Amicus Legal Training Course. Ability to create tables and forms to generate desired reports using Access. Ability to learn and retain new information well.

EXPERIENCE:

TEMPORARY/PERMANENT EMPLOYMENT: Jackson, MS (2002/Present) - Registered Agencies: **Legal Resources, Capitol Staffing, Jackson Temporaries, etc.**
Clients Assigned (12/2002 – Present): Baria, Fyke, Hawkins & Stracener; Brunini Grantham Grower & Hewes; Ott & Purdy/Purdy & Germany; Mitchell, McNutt & Sams; Copeland Cook Taylor & Bush; Page Kruger & Holland, P.A., etc.

LEGAL ASSISTANT/ SECRETARY SUPPORT
Responsibilities includes: Providing legal administrative support to attorneys, typing legal documents (Complaints, Motions, Court Orders, Summons, Subpoenas, etc.), filing pleadings, handling typing of responses to discovery requests according to rules of the court(s), setting up forms, assisting others with software application problems, other responsibilities that may arise, etc. Areas of Law: Employment Discrimination, Medical Malpractice, Nursing Home Negligence/Abuse, Personal Injury, Wrongful Death, Malpractice, Insurance, Wills & Estates, Corporate Law, Litigation, Tax, etc. Notary Public.

OWENS LAW FIRM, PLLC - Jackson, MS (12/2000 – 11/2002):

LEGAL ASSISTANT/SUPPORT
Responsibilities includes: Providing legal administrative support to attorneys, typing legal documents (Complaints, Motions, Court Orders, Summons, Subpoenas, etc.), filing pleadings, handling typing of responses to discovery requests according to rules of the court(s), typing contracts, setting up forms, company billables (entering of attorney's time spent on client's case, generating invoices and assuring clients are billed for legal services rendered), assisting others with software application problems, other responsibilities that may arise, etc. Notary Public.

TEMPORARY EMPLOYMENT - Jackson, MS and New Orleans, LA (8/1994 – 12/2000):
Registered Agencies: Legal Resources, Manpower, Capitol Staffing, Professional, Smith Temporaries, Jackson Temporaries, Remedy Intelligent Staffing, etc.

LEGAL SECRETARY/SUPPORT
Responsibilities includes: Providing legal clerical support to attorneys, typing releases (subrogation, etc.), filing probate of accounts, answers to complaints, summons, etc. according to rules of the court(s), typing contracts, setting up forms, form letters to effectively generate desired letters and reports, creating switchboard using Microsoft Access to allow the attorneys to retrieve important data and letters by clicking on icon – icon will open documents, merge, etc. and print based on the programming (macro or module) assigned, typing of contracts, establishing an electronic filing and tracking system for correspondence, mailing documents.

ADMINISTRATIVE ASSISTANT/COORDINATOR
Responsibilities included: Typing and creating documents using company software programs, coordinating company business meetings (working directly with sales department of hotels, restaurants, etc.), making reservations (lunch, dinner, travel), arranging hotel accommodations for guests and new employees/ex-pats, owner of the company computer Project Directory (accepting and declining employees/contractors access), scorecard and report preparation, maintaining logs and file system established, posting job vacancies on company electronic posting system for manager, ability to train/assist new department hires on company software applications and procedures, notifying departmental staff of meetings, ability to meet deadlines on special assignments and "high priority" job orders, customer service, accounts receivables, reconciliation, cost distribution, allocations, helicopter/vessel log reports, scorecards (graphics), data entry, preparation of cash reports, payroll data input, typing of contracts, proposals, resumes, legal documents (briefs) and filing court documents, researching cases, telefax, filing, typing, answering phone, knowledge of various software applications (MS Suite – MS Word, PowerPoint, Excel, Access, MS Project, MS Outlook, WordPerfect – Windows, Lotus 1-2-3, Freelance Graphics, WordStar Professional, etc.)

COMPUTER SOFTWARE SUPPORT TECHNICIAN
Responsibilities included: Providing Computer Software Support to Faculty and Staff at the University. Ability to answer and solve problems one may encounter while using software applications (MS Office Suite, WordPerfect). Creating Switchboards (front-end menus) using Microsoft Access for various departments. This allowed users to open desired program and on the click of the button open forms, generate desired reports, merge form letters, etc. from data stored in the databases used. At times data was pulled from other databases compatible with Microsoft Access. Departments I created menus for involved Financial Aid Office and Business & Finance. Upon completion, users were able to generate the desired financial reports, etc. Providing support to Client's Human Resource Manager in preparation for year 2000.

VOLUNTEER WORK
Dallas, TX/New Orleans, LA
January 1992 – Present

Responsibilities includes: Traveling to various cities, meeting various people of diverse backgrounds and cultures, assisting with feeding the homeless, teaching Church School, ushering, visiting sick and shut-in, assisting elderly in Nursing Homes during visits (volunteer), tutoring, child-care, and assisting in areas wherever needed in fellowship functions. Volunteer work. Non-denomination.

ADMINISTRATIVE SERVICES ASSISTANT/TRANSCRIPTIONIST
Floyd West & Company – Dallas, TX
May 1986 – December 1991

Responsibilities included: Transcribing dictated letters, reports and recorded statements, filing correspondence according to established filing procedures, maintaining appropriate logs for incoming and outgoing documents, operating copy machine, telecopier/fax. Providing training to new clerical(s) assigned to unit, assist Supervisor and Personnel Administrator in complex projects as assigned, type complex policies, endorsements, renewals, cancellations, quotations, non-renewals, recommend new procedures or enhancements to existing procedures to improve the operations and control of workflow. Formats, types and control statistical information for management reports on affiliated and non-affiliated business. Assist on special projects when necessary.

EDUCATION:

FLORIDA A&M UNIVERSITY – TALLAHASSEE, FL
B.S. Degree in Office Management

Concentrated Studies Include: Management (Office, Personnel, Records, Business, Principles, etc.), Business Law, Employee and Employers Relations, Math, Communications, Computer Programming, Business Accounting, Office Machines, etc.

COMMONWEALTH OF KENTUCKY
CIRCUIT COURT OF KENTON COUNTY, KENTUCKY

DENISE NEWSOME — PLAINTIFF

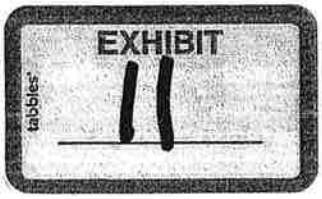
vs. — CIVIL ACTION NO. 06-CI-03270

GARY M. MARTIN, BERNICE MARTIN,
DENNIS DONNELLAN, and BETTY DONNELLAN,
d/b/a GMM PROPERTIES — DEFENDANTS

ORDER

The emergency motion of Plaintiff for injunction and restraining order against Defendants and their representatives was filed in this action on December 19, 2007, having come on for emergency hearing before the Honorable Gregory Bartlett, Circuit Court of Kenton County on January 5, 2007, with Denise Newsome appearing *pro se* and Gailen Bridges and James West appearing as attorneys for Defendant.

Now the Court being notified that a "LAST NOTICE" was rendered on the Plaintiff as a result of an eviction action brought by Defendants in their matter before the Kenton County District Court, having heard the circumstances surrounding such action and duly considered the same together with relevant pleadings, concerns of incomplete District Court file, notification of post judgment pleading being submitted by Plaintiff to vacate the Judgment in the District Court action, finds that this emergency hearing was necessary and/or essential to protect the interest of all parties involved and to prevent irreparable harm to the Plaintiff, within meaning of Rule 65 of the Kentucky Rules of Civil Procedure and other applicable laws governing said matters, and that the same *temporary* injunction and restraining order shall be granted.



IT IS ORDERED that:

1. Defendants their attorneys and other representatives are hereby temporarily enjoined and restrained from taking any eviction actions against the Plaintiff.

2. Temporary injunction and restraining order against Defendants, their attorneys and representatives is hereby order.

3. Plaintiff is ordered to post bond in the amount of Two Hundred Fifty Dollars ($250.00).

4. Plaintiff is instructed to make inquiry to the Kenton County District Court as to condition of its file and the reasons why pleadings and/or documents submitted by her have not been filed and are not contained in the Court file in that action.

5. This Court will hold a hearing on Plaintiff's Emergency Motion for an Injunction and Restraining Order Against Defendants and Their Representatives on Tuesday, January 16, 2007, at 9:30 a.m. before the Honorable Gregory Bartlett.

Date this 11th day of January, 2007.

Gregory Bartlett
CIRCUIT COURT JUDGE

Denise Newsome

From: Denise Newsome
Sent: Wednesday, October 15, 2008 1:56 PM
To: Andrea M. Griffith
Subject: RE: MEETING - Can you squeeze me in sometime this afternoon?

Andrea,

Please see the attached document. I am providing with original.

Thanks.
Denise

From: Andrea M. Griffith
Sent: Wednesday, October 15, 2008 12:16 PM
To: Denise Newsome
Subject: RE: MEETING - Can you squeeze me in sometime this afternoon?

Denise,
We do need to meet this afternoon to discuss your being out of the office so much over the last couple of days. Also, you need to inform me in advance on doctor's appointments. 45 minutes before an appointment is not sufficient time. Please see me when you return.
Andrea

From: Denise Newsome
Sent: Wednesday, October 15, 2008 11:26 AM
To: Andrea M. Griffith
Subject: MEETING - Can you squeeze me in sometime this afternoon?

Andrea:

I am going to be leaving to go to the doctor for a 12:15 Sono (the one originally set for Monday that I had to reschedule)
Was wondering do you have time for me this afternoon?

Thanks.
Denise

INTEROFFICE MEMORANDUM

TO: Andrea M. Griffith

FROM: Denise Newsome

DATE: October 15, 2008

RE: **RESPONSE TO YOUR E-MAIL OF 10/15/08**

As you are aware, per my voicemail messages of October 9, 2008, my apartment was burglarized, etc. I had to leave work not realizing the magnitude of this crime; however, I was devastated and seriously affected by this crime.

On October 11, 2008, I was admitted to the Emergency Room and test were run out of concerns from the symptoms I was having. The doctor recommended that I return to work on 10/14/08, in which I did. (See Document Attached).

My doctor's appointment for 10/10/08 was scheduled way in advance and prior to the October 9, 2008, criminal actions. The appointment that I set for 10/13/08 was made on 10/10/08; however, had to be cancelled and rescheduled for today in that my doctor wanted this test done right away.

Without going into details where things are at, as a direct and proximate result of the 10/09/08 criminal acts rendered me, a Criminal Complaint has been filed with the FBI (Federal Bureau of Investigations), the NAACP has been put on notice and made aware of this crime, as well as other government authorities. I am not at liberty to disclose anymore than this to you.

I apologize for the inconvenience and the impact this has caused in the performance of my work; however, I am doing my best to work through this all to be best of my abilities.

Thank you for your concerns and understanding through the critical times I am dealing with.

Sincerely,

Denise Newsome

Denise Newsome

NORTON HEALTHCARE

10/11/08
327
NEWSOME,DENISE

Return to Work

Norton Suburban Hospital- 4001 Dutchmans Ln. Louisville,KY 40207 (502)893-1000

RETURN TO WORK INSTRUCTIONS

We saw Denise Newsome in our Emergency Department on 10/11/08.
Denise Newsome should be able to return to work on 10/14/08

✓ with no limitations
____ with the following limitations:

_____

_____

If you have questions about care, please have the patient fill out a medical records release form. We would be happy to discuss the care with you once that document has arrived.

Thank you for allowing us to care for your employee.

[redacted]
Physician Signature

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

January 11, 2009

VIA E-MAIL
Andrea M. Griffith (amgriffith@woodlamping.com & 513-419-6406)
C. J. Schmidt (cjschmidt@woodlamping.com & 513-419-6452)

RE: TERMINATION OF EMPLOYMENT EFFECTIVE 01/09/09 and CONCERNS DISCRIMINATION UNDER FMLA AND COBRA VIOLATIONS

Dear Andrea and C.J:

This correspondence is in follow-up to my termination of January 9, 2009, wherein I was advised that my employment with Wood & Lamping LLP was being terminated due to the need to cut back on secretaries and, therefore, my position was being eliminated. My concerns being, is that I do not believe this to be the reason for my termination and that such explanation may have been provided for the purposes of masking/shielding/covering up illegal/unlawful/discriminatory practices. Therefore, that Wood & Lamping LLP:

PLEASE TAKE NOTICE that I believe my termination of employment may have been a direct and proximate result of my notifying of medical procedure, thus being in violation of the FMLA and/or applicable statutes/laws governing such matters. Further stating facts which may be pertinent:

1. In **December 2008**, I spoke with Andrea personally regarding a medical procedure to be done. I went to speak with Andrea to determine how such medical requests are handled. Andrea advised me that I should be okay under the FMLA; moreover, that depending on the amount of time that may be needed, I may be able to use sick time and/or coverage under the FMLA wherein this would kick in after a certain number of days and that I would obtain a percentage of my income during this time. Assuring me that it would be okay and to let her know when I plan to have this done.

2. I believe that Wood & Lamping LLP was timely, properly and adequately placed on notice of my intent to have a medical procedure done which would require absence from employment. Looking in the Wood & Lamping LLP "*The Employer's Guide to Employment Law in Ohio, Kentucky and Indiana*" that I obtained from the seminar that Julie Pugh and Heather Walsh conducted it states (boldface, underline, italics added for emphasis):

> If the condition for which leave is granted is **foreseeable**, employees **must** provide the employer with **30** *days notice* **to be entitled to the protection of the FMLA**.
>
> . .
>
> Upon return from leave granted under the FMLA, employees are entitled to reinstatement to the position of employment previously held, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment . . . Employer's **may not** interfere with any employee's attempt to exercise his/her rights under the FMLA. It is also **illegal** *for employers to* ***discriminate*** *against or discharge an employee because he/she has attempted to exercise his/her rights. . .granted by the FMLA.*

See p. 32 of Wood & Lamping's Employer's Guide attached hereto and incorporated by reference as if set forth in full herein.

On **January 8, 2009**, I submitted a request for medical leave on January 29, 2009. (See Request Form attached hereto and incorporated herein by reference as if set forth in full herein). The very NEXT day (January 9, 2009) my employment with Wood & Lamping LLP was terminated. Andrea Griffith ("Andrea") coming to my desk and advising that she needed to speak with me. I followed her to her office where C.J. Schmidt ("C.J.") was awaiting my arrival. I was advised that my employment with Wood & Lamping LLP was being terminated. It was apparent to me that the decision was final and that it was well thought out. Therefore, I believe that Wood & Lamping LLP and its representatives may have subjected me to unlawful/illegal and discriminatory practices. Moreover, upon being advised of my medical request and receipt of paperwork, Wood & Lamping LLP and/or its representatives made a *willful, deliberate* and *conscious* decision to terminate my employment as a means of **interfering** with my attempt to exercise rights secured/guaranteed under the FMLA and/or other applicable statutes/laws governing such matters. I believe given such facts, Wood & Lamping LLP has discriminated against me and terminated my employment because I have elected to exercise rights under the FMLA. In so doing, Wood & Lamping LLP and its representatives have deprived me of benefits, pay and other terms and conditions of employment secured to me under the applicable statutes/laws of the State of Ohio and United States. Moreover, has deprived me of such benefits as that has been afforded to whites and/or those similarly situated – i.e. since my employment I am aware that there have been other Secretaries/Legal

Assistants who notified of medical procedures that they would have to have done and Wood & Lamping allowed them to proceed without any interruption to their employment prior to their obtaining medical attention.

3. During the termination meeting, I was advised that I would have medical insurance coverage through the end of January (2009). My appointment is on January 29, 2009. I was advised that if I was interested in continuing medical insurance coverage, I could do so under COBRA. I am not aware of any other employee being terminated prior to the medical attention they advised Wood & Lamping they would be having and that such other employee was required to cover their medical expenses under COBRA. In my case, Wood & Lamping LLP terminated my employment and is terminating my medical insurance effective January 31, 2009, and thereafter, I am being required to pay for any other medical expenses directly out of pocket – extremely high premium under the COBRA option (I would be requested to pay 100% of the premium cost) – to secure the medical attention I seek and advised Wood & Lamping/Andrea of. Pursuant to the Wood & Lamping LLP Employer's Guide, it states:

> COBRA gives an employee covered by an employer's group health plan the right to stay covered when coverage is lost due to certain qualifying events, and the employee pays for 100% of the premium cost. COBRA coverage must be elected within 60 days after coverage would otherwise end or from the date the election form was sent, whichever is later. *The employer is required to continue the same coverage available to* ***similarly situated*** *employees.* The cost can be up to the entire cost of coverage, plus a small (2%) additional charge for administration , as decided by the employer. Employers must maintain records pertaining to compliance with COBRA.

(See p. 26 of Wood & Lamping LLP's Employer's Guide attached hereto and incorporated by reference).

Given such facts, I believe a reasonable mind may conclude that Wood & Lamping LLP and/or its representatives are in violation of COBRA. Moreover, acts may

be willful, malicious and wanton. Acts knowingly and deliberately done to deprive me of medical services under the FMLA.

4. **PLEASE TAKE NOTICE** that I believe that my termination may also be illegally/unlawfully motivated by Wood & Lamping LLP's and/or its representatives' knowledge of my engagement in protected activities. Wood & Lamping and/or its representatives are aware of legal matters/lawsuits pending (or past) that I am involved in. Therefore, I am concerned that my termination may have been a direct and proximate result of such knowledge of legal actions as well as that such acts were knowingly and deliberately done to financially devastate me and/or aid others in hopes of preventing me from exercising rights secured to me under the United States Constitution, Civil Rights Act and other statutes/laws governing such matters. During my employment whenever concerns arose, I brought it to the attention of the Human Resource Department. I continued to watch and observe behavior that I considered unlawful/illegal – i.e. being subjected to harassment and discriminatory practices. While I had hoped that Wood & Lamping LLP would uphold the policies of its Employer's Guide as well as the Employee Handbook distributed to employees, this does not seem to be the case. Wood & Lamping LLP clearly states in the handbook provided to employees that it would not discriminate against an employee because they are and/or have engaged in lawsuits. However, this does not appear to be true. **Upon cleaning out my desk, I noticed how the binder containing the Employee Handbook information had been cleaned out (removed). Therefore, leaving me with concerns that a representative of Wood & Lamping LLP removed this document. However, because I was advised to be watchful and mindful of such acts, I recall coping this handbook for my record just in case Wood & Lamping would pull such a stunt.** ***I believe a reasonable mind may conclude that the taking of this information may contribute to an act to cover-up and/or conspire to shield unlawful/illegal and discriminatory/retaliatory practices.***

5. **PLEASE TAKE NOTICE**, I believe a reasonable mind may conclude that based on the information Wood & Lamping LLP and/or its representatives have in regards to me and my legal matters, that such acts may have been done with deliberate, willful and malicious intent to cause me financial ruin, injury/harm. Moreover, with knowledge of the problems I will face in obtaining employment elsewhere. Not only due to my race, but because of the lawsuits pending and/or that have been filed by me and/or on my behalf

Therefore, I believe my termination may be in furtherance of acts to contribute to addition injury/harm to me, my reputation, character, etc. Moreover, may have been done to aid others to prevent me from exercising protected rights – without the proper finances/monies, how would one be able to pursue legal actions as well as live in the life style in which they have become accustomed. It is important to note that further concerns I believe may be due to my race. It is no secret the problems African-Americans face in obtaining jobs – having to come to the table with more skills and qualifications than those of whites. Thus, given the information Wood & Lamping LLP has obtained on me, a reasonable mind may conclude that the January 9, 2009 termination of my employment may have been illegally motivated.

6. **PLEASE TAKE NOTICE**, that while Wood & Lamping LLP may want it to appear that the elimination of my job was necessary, that during my employment it has been observed that whites similarly situated have been given promotions (Secretaries/Legal Assistants to Paralegals) and most likely with extra money/pay to compensate the title. While it was apparent that I possessed and performed similar duties of a paralegal (as those being given such titles) as well as others, it appears that Wood & Lamping LLP and/or its representatives did not extend such promotions to me (an African-American) – I was merely required to perform such duties without such a promotion and/or pay afforded to those in similar positions receiving such promotions. Nevertheless, Wood & Lamping LLP and/or its representatives would want one to believe that there are some financial issues, etc. that underlined my termination.

7. **PLEASE TAKE NOTICE**, that while Wood & Lamping LLP may want it to appear that the elimination of my job was necessary, I believe during my employment it was brought to my attention that certain Senior Partners were concerned about attorneys (i.e. such as Brian Gillan) being kept that were not beneficial. However, from my observation, such attorney(s) as Brian Gillan were constantly given increase in pay while and the majority of their hours were being billed to the firm. An attorney, such as Brian Gillan, upon my employment may have engaged in some unlawful/illegal practices; however, remained employed. I recall his unlawful/illegal acts while working with me; moreover, how he would disregard instructions from Human Resources and continue such practices. It was not until I advised going to one of the Partners (Bill Ellis) that he was removed from my desk.

Brian Gillan (of counsel) most likely drawing a big pay check from the firm and for what? Yet the firm made cuts keeping him on and allowing those who brought in a great deal of business leave.

8. I felt it was very unprofessional, rude and disrespectful in Wood & Lamping LLP's handling of my termination. I am very disappointed. Especially how the attorneys (Thomas J. Breed and Sharon S. Parsley) may have known that I was going to be terminated and observance of their behavior. Leaving without saying good bye. Clearly UNACCEPTABLE. Their ***actions*** spoke louder than anything that Andrea or anyone probably would have stated to me. Not only that, it contradicts any statements one would try to make that they appreciated my work and the services I provided during my employment. I believe it was communicated to them of my termination and look at the gratitude shown – scurrying out without a word to allow others to carry out what I believe to be unlawful/illegal acts in the handling of my employment.

9. **PLEASE TAKE NOTICE**, I believe that a reasonable mind given the facts, and investigation into this matter, would understand the embarrassment, humiliation, despair, anger, etc. associated with such unlawful/illegal employment violations. Moreover, the message conveyed to others from such acts that such practices are acceptable. I hope Wood & Lamping LLP and/or its representatives will also understand that based on this termination and their handling of me during my employment with it, how difficult it would be to return to its employment. Moreover, the mental and physical duress, etc. such acts cause on victims of such discriminatory practices. The relationship, reputation and report are tarnished and irreparable injury/harm has occurred.

10. **PLEASE TAKE NOTICE**, that while it appears that Wood & Lamping LLP and/or its representatives may have sustained liability as a direct and proximate result of my termination, this is a matter that with time I will be inquiring into – whether I have sustained injury/harm to which I am entitled to recover. As I shared with Andrea, certain acts and behavior gets old.

11. **PLEASE TAKE NOTICE**, I will be moving forward to obtain unemployment benefits. I also look to make another trip to Washington, D.C. on next month – allowing time for the new administration to get seated.

I close with the fact that when I came to Wood & Lamping LLP those who I worked with appeared to be genuine in their concerns and actions; however, during my employment I have observed the *"clicks," "office politic machines,"* etc. in action spinning their wheels and taking care of their own rather than what was in the best interest of the firm. Increasing salaries in pay for others (their favorites) while those worthy of increases were denied. I repeatedly heard how Wood & Lamping LLP has changed since certain administration took over; however, to see the blatant disrespect and handling of my employment, speaks for itself. No amount of thank you, fake smiles, etc. can take away from the ACTION exhibited – Actions speak louder than words. **On November 4, 2008,** the majority spoke that they wanted **CHANGE** and the United States elected its first African-American President. However, it is obvious that in the corporate arena (such as Wood & Lamping LLP), they are bent on *"more of the same"* and/or *"business as usual"* at the expense of others. I believe that **"every dog has its day!"**

Some scriptures that aid me through times such as these are:

I Timothy 1:8 – But I know that the law is good, if a man use it lawfully.
Hosea 3:6(a) – My people are destroyed for the lack of knowledge.

Sincerely,

Denise Newsome

Denise Newsome

cc: Personal File

WOOD & LAMPING LLP

SINCE 1927

THE EMPLOYER'S GUIDE

TO EMPLOYMENT LAW IN OHIO, KENTUCKY AND INDIANA

WOOD & LAMPING LLP
CENTER AT 600 VINE
600 VINE STREET SUITE 2500
CINCINNATI, OHIO 45202
513-852-6000
WWW.WOODLAMPING.COM

WOOD, LAMPING
& LEHNER LLP
208 WALNUT STREET
LAWRENCEBURG, IN 47025
812-537-2375
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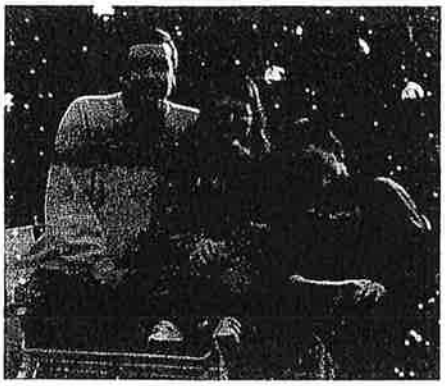
FMLA

If the condition for which leave is granted is foreseeable, employees must provide the employer with 30 days notice to be entitled to the protections of the FMLA. Employers can require that any request for leave is supported by a certification from a health care provider. In addition, where the requested leave is for the care of a child, parent or spouse with a serious health condition and is foreseeable, the employee must make a reasonable effort to schedule treatment so as not to disrupt the employer's business.



The FMLA only requires employers to grant unpaid leave. However, during any period in which an eligible employee takes leave, employers must maintain coverage under any group health plan for the duration of the leave, and may not change the coverage or conditions thereof. In limited circumstances, the employer may be able to recover any premiums it paid under a group health plan if the employee does not return to work.

Upon return from leave granted under the FMLA, employees are entitled to reinstatement to the position of employment previously held, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, the Act does provide an exception for certain highly compensated employees. Employers should seek the advice of counsel as to whether the exception applies in a particular situation.

Employees are entitled to any benefits which had accrued prior to the date upon which leave commenced, but are not entitled to the accrual of seniority or any other employment benefits during any period of leave.

Employers may not interfere with any employee's attempt to exercise his/her rights under the FMLA. It is also illegal for employers to discriminate against or discharge an employee because he/she has attempted to exercise his/her rights, or has filed or testified in any cause of action related to the rights granted by the FMLA.

Obtain Legal Advice

There are many aspects of the FMLA that could not be covered here. Employers should consult with their attorney regarding the specifics of any situation involving the FMLA. Wood & Lamping's Employment Law attorneys regularly consult with clients regarding the Family Medical Leave Act and other laws that govern employers.

COBRA AND HIPAA

Consolidated Omnibus Budget Reconciliation Act ("COBRA")
COBRA gives an employee covered by an employer's group health plan the right to stay covered when coverage is lost due to certain qualifying events. This continuation of coverage lasts between 18 and 36 months, depending on the events, and the employee pays for 100% of the premium cost. COBRA coverage must be elected within 60 days after coverage would otherwise end or from the date the election form was sent, whichever is later. The employer is required to continue the same coverage available to similarly situated employees. The cost can be up to the entire cost of coverage, plus a small (2%) additional charge for administration, as decided by the employer. Employers must maintain records pertaining to compliance with COBRA. COBRA applies to most employer group health plans but not to all of them. For example, it does not apply to plans of employers with fewer than 20 employees or to church plans. Many plans of small employers, however, are subject to State laws similar to COBRA.

More information about COBRA can be obtained through the Department of Labor on the Internet at www.dol.gov/dol/topic/health-plans/cobra.htm.

State Codes with "mini COBRA" laws similar to the federal requirements:

- Ohio: The Ohio statute governing continued health insurance coverage requires that employees must be terminated from employment involuntarily, have had three months of prior continuous coverage, and be eligible for Unemployment Compensation. R.C § 3923.38,
- Indiana: If you were denied coverage, the law provides "Comprehensive Health Insurance" for State residents. IC 27-8-10.
- Kentucky: A participant in a plan with 2-19 employees can qualify for 18 months of state continuation coverage. KRS 304.17A-005.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA")
HIPAA is a federal law that regulates employers of two or more individuals, and health insurance companies. HIPAA was enacted to provide for, among other things, improved portability and continuity of health insurance coverage in the group and individual insurance markets, and group health plan coverage provided in connection with employment. Employers must maintain records pertaining to compliance with HIPAA.

Some of the most significant of HIPAA's provisions include those that:

- limit exclusions for preexisting medical conditions;
- prohibit discrimination in enrollment and premiums against employees and their dependents based on health status; and,
- guarantee availability of health insurance coverage for small employers and renewability of health insurance coverage in both the small and large group markets.

For more information about HIPAA refer to the Internet address at www.hhs.gov/ocr/hipaa.

WOOD & LAMPING LLP

SINCE 1927

VACATION REQUEST FORM

Associates and paralegals should coordinate this vacation request with the attorneys with whom they work, get the Department Head's approval, and give this form to the manager of Human Resources. Secretaries and support staff should get approval from the attorney(s)/manager with whom they work and then submit this form to the manager of Human Resources for approval. The original of this form is filed in your attendance record and a copy is returned to you.

NAME: Denise Newsome DATE: 01/08/09

DAY(S) OF REQUEST (Monday-Friday)	DATE(S) OF REQUEST (Month-Day-Year)	TYPE OF DAY (Vacation or Floating Holiday)	TEMP. NEEDED? (for secretary)
Thursday	1/29/09 (1/2 Day - Medical)		No

APPROVED BY: _____
(Attorneys)

APPROVED BY: _____
(Department Head/Manager)

APPROVED BY: _____
(Manager of Human Resources)

****

(To be completed by Human Resources)

Beginning balance of days: _____ Vacation days rolled over from last year

\+ _____ Vacation days earned during this year

\+ _____ Floating holiday

= _____ Total number of days

Less days already taken: -- _____

Less days already scheduled, but not yet taken (including above): -- _____

Number of days to schedule: _____ Vacation days

\+ _____ Floating holiday

= _____ Total number of days

****

Number of sick days available: _____

369026.1

Rev. 01/01/01

TRANSACTION REPORT

JAN-13

FOR:

SEND

DATE	START	RECEIVER	PAGES	
JAN-13	03:50 AM	5134196452	11	7'27"

TRANSACTION REPORT

FOR :

SEND

DATE	START	RECEIVER	PAGES
JAN-13	03:25 AM	5134196406	11

WOOD & LAMPING LLP

SINCE 1927

VACATION REQUEST FORM

Associates and paralegals should coordinate this vacation request with the attorneys with whom they work, get the Department Head's approval, and give this form to the manager of Human Resources. Secretaries and support staff should get approval from the attorney(s)/manager with whom they work and then submit this form to the manager of Human Resources for approval. The original of this form is filed in your attendance record and a copy is returned to you.

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APPROVED BY: _____
(Attorneys)

APPROVED BY: _____
(Department Head/Manager)

APPROVED BY: _____
(Manager of Human Resources)

****

(To be completed by Human Resources)

Beginning balance of days: _____ Vacation days rolled over from last year

\+ _____ Vacation days earned during this year

\+ _____ Floating holiday

= _____ Total number of days

Less days already taken: -- _____

Less days already scheduled, but not yet taken (including above): -- _____

Number of days to schedule: _____ Vacation days

\+ _____ Floating holiday

= _____ Total number of days

****

Number of sick days available: _____

EXHIBIT 14

WOOD & LAMPING LLP
SINCE 1927
ATTORNEYS AT LAW

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www.woodlamping.com

Direct Dial: 513-852-6088
E-Mail: prberninger@woodlamping.com

February 4, 2009

Denise Newsome
P.O. Box 14731
Cincinnati, Ohio 45250

RE: Health Insurance Continuation

Dear Denise:

It appears to me from our telephone conversation and the nine page document you attached by voicemail to my office phone number that you are declining my effort to find a resolution of your concerns regarding health insurance. I had previously told you that I believed that the firm would accept my recommendation to extend your health insurance at the firm's cost for a period of time to allow you to attend to a medical matter which was pending.

In our telephone conversation, and in the nine page document you sent to me, you addressed a number of perceived wrongs you suffered while employed by the firm as well as your perception of an unlawful termination. You did not respond to the issue of resolution based on an extension of health insurance coverage.

I have been assured by the firm that we would extend your health insurance coverage for a reasonable period, but only on the condition that you sign a release of all of your perceived claims. As you know, that means that if you accept our offer of health insurance coverage for a period of time, yet to be determined, you could not file any charges, lawsuits or other complaints against the firm regarding your employment and separation from employment.

If my assumption that you are not interested in our proposed resolution is correct, you need not respond. Otherwise, you may call me, or preferably have your attorney call me, at 852-6088 if you wish to further discuss the terms of settlement.

Sincerely,

Paul R. Berninger

PRB:saf

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

February 2, 2009

VIA FACSIMILE & E-MAIL
Paul R. Berninger (prberninger@woodlamping.com & 513-419-6488)

RE: MEDICAL COVERAGE - CONCERNS DISCRIMINATION UNDER FMLA AND COBRA VIOLATIONS

Dear Paul:

This will confirm receipt of your voicemail message on yesterday which was cut off and our telephone conversation on today in regards to the above referenced matter.

From my understanding of the conversation, Wood & Lamping (Andrea) acknowledges that I advised of my request regarding medical procedure I discussed with her. At this time, Wood & Lamping is willing to extend me medical coverage under COBRA where they will make the payments. However, in exchange for such agreement, I would be required to sign a Release relinquishing all rights that I may have to bring charges and/or lawsuit against Wood & Lamping for any injury/harm I sustained from violations – i.e. wrongful discharge, retaliation, racial discrimination, etc. As I shared with you, **my main focus right now is getting the medical procedure done that I was advised of** any other relief I seek will be done in the applicable time permitted by statute/laws.

HOWEVER, PLEASE LET ME REITERATE, it is Wood & Lamping's duty and responsibility to **mitigate** damages – that includes continuing medical coverage and/or benefits – in the showing of good faith (not in continuance of bad faith or malicious behavior, etc. to cause me additional injury/harm).

You mentioned that an employee, Angie, brought charges against Wood & Lamping which was unsuccessful. While I am not aware of any charges by Angie, I would think that any comparison of my treatment and handling would be left up to the appropriate agency to handle; moreover, up to a jury to decide. I believe that the liability in my situation is clear and that Wood & Lamping retaliated against me in interfering with my rights under the Family and Medical Leave Act; moreover, may be in retaliation of its knowledge of my engagement in protected activities.

Being brief:

> **EQUAL OPPORTUNITY**
> The firm is an equal opportunity employer, and as such, is firmly committed to treating **all** employees and applicants **equally** without regard to race, color, sex, religion, national origin, age, disability, marital status, veteran status, or other protected classes. We will

> endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodation would impose an undue hardship on the operation of or business. Our employment decisions, including, but not limited to, hiring, compensation, benefits, training, and promotions are based on the principles of **equal** employment opportunity. *Discrimination by any member of the firm **will not** be tolerated.* Suspected violations of this policy must be reported promptly to a member of management or to a partner. Violators will receive discipline appropriate to the offense, up to an including termination. *This policy also **prohibits retaliation** against anyone who has filed a complaint of **discrimination** or **harassment**.*
> (Wood & Lamping LLP Policies and Procedures Manual @ p. 11)

Pattern-of-Discrimination/Retaliation:

1. About November 2006, I requested assistance from Wood & Lamping regarding a Landlord matter I was dealing with. Elizabeth Horwitz was assigned to assist me. However, Elizabeth became upset with me with I refused to give up rights I believe I was entitled to under the Fair Housing Act. From my take, Elizabeth (white) and opposing counsel (white) were must have agreed to try and convince me to waive rights secured under the Fair Housing Act. Such efforts failed and I proceeded to file the lawsuit to protect my rights. Again, Elizabeth being upset with me, requested a change in Secretaries/Legal Assistants and Wood & Lamping obliged. Her acts were unacceptable, and clearly obvious of no understanding or feeling of what it is like to have to stand by rights that many sacrificed their lives for so that I can enjoy and live where I want not where another decides. Some of our conversations I am confident are memorialized in Wood & Lamping's e-mails.

2. Then I was assigned Brian Gillan. While I was commended on my work ethics and strived to carry myself in a professional manner, my experience with Brian Gillan was a continuance by Wood & Lamping to subject me to retaliation and discriminatory treatment. First appearing to be pleased with my work (as evidenced in e-mail), Brian's sudden change and craftily drafted e-mail to slander my character, work ethics, etc. was launched. Wood & Lamping was aware of this and for quite some time did nothing to deter Brian's acts although I reported violations to its attention. It was not until I advised that I was to going to report this to Bill Ellis that Brian was pulled. My concerns were made known as to the motives behind Brian's conduct; however, nothing was done. My concerns regarding how other white employees were not required to endure the hostile, discriminatory and brutal treatment that Wood & Lamping was going to make me endure although it was fully aware of the emotional, physical and mental impact it was having on me. Some of our conversations I am confident are memorialized in Wood & Lamping's e-mail (for example attached).

> **POLICY AGAINST UNLAWFUL HARASSMENT**
> **General:**
> Wood & Lamping is committed to maintaining a professional and collegial work environment in which all individuals are treated with respect and dignity. The firm prohibits discrimination because of

race, color, religion, sex, national origin, age, veteran's status, disability, or any other protected status in accordance with applicable laws. *Harassment is a form of discrimination and will* ***not*** *be tolerated.*

Wood & Lamping encourages individuals who believe they are subject to harassing behavior to clearly and promptly notify the offender that his or her behavior is unwelcomed, but one is not required to do so. However, any individual who believes he or she has been subject to harassment of any kind must notify a partner of the firm or a member of management in order for the matter to be resolved. (Wood & Lamping LLP Policies and Procedures Manual @ p. 20)

Policy Against Sexual Harassment:

A. Sexual Harassment Defined
. . .While mutually consenting relationships between members of the firm are not sexual harassment, these relationships *are considered* ***unwise*** because of the potential denial of mutual consent.

B. Procedures for Reporting Sexual Harassment
Wood & Lamping encourages individuals who believe they are subject to sexual harassment to clearly and promptly notify the offender that his or her behavior is unwelcomed. However, one is not required to do so. Any individual who believes he or she has been subject to harassment **of any kind** must notify a partner of the firm or a member of management. The partner or manager will initiate an investigation of the matter....

C. Investigations
Investigations will be prompt, thorough, accurate, consistent, and conducted as discreetly as possible. Confidentiality will be maintained to the extent practical, but a few members of the firm will have to know about the situation due to the employer's **obligation** to investigate. Effective enforcement of this policy requires that the offender be made aware of the alleged conduct at some point, and fairness demands that an accused be afforded an opportunity to make a defense. The reporting individual will be notified before the offender is questioned about or told of the charge.

Once the investigation is complete, findings and decisions will be made and communicated to the reporting individual and the offender. If there is no evidence to support the allegations, the matter will be dropped and the investigation closed. If the investigation confirms that harassment occurred, the harasser will be subject to resolution procedures and/or appropriate disciplinary penalties, which may include one or more of the following: referral to counseling, withholding of a promotion, reassignment, mediation, temporary

suspension without pay, a written warning, and *discharge* from the firm.

Non-Retaliation Policy:
No *one* will be subject to ***any*** *form* of discipline or *retaliation* for reporting incidents of unlawful harassment, ***pursuing*** *any such claim,* or ***cooperating*** *in the investigation of such reports.* Any form of retaliation will result in appropriate disciplinary procedures, up to and including discharge from the firm. However, individuals who falsely and maliciously accuse another will be subject to the disciplinary procedures described above.
(Wood & Lamping LLP Policies and Procedures Manual @ pp. 20-22)

WORKPLACE VIOLENCE
Threats, intimidation, flashing of weapons, **stalking** or any *acts of aggression* or **violence** made toward or by anyone *will* ***not*** be tolerated. Any potentially dangerous situations, including threats, should be reported immediately to a manager or partner. All reports will be promptly investigated. To protect the firm and its staff, the firm reserves the right to search employees and their personal property when there is reason to believe that this policy has been violated. Searches of firm facilities and property may be conducted at any time and do not have to be prompted by a belief that a policy is being violated. No employee will be subject to retaliation, intimidation or discipline as a result of reporting a situation. If an investigation confirms that a threat of a violent act or violence itself has occurred, corrective action will be taken against the offender.
(Wood & Lamping LLP Policies and Procedures Manual @ p. 29)

3. While it was not clear to me why Wood & Lamping would not represent me in matters brought to its attention, I could not dwell on that. I was able to obtain an Injunction and Restraining Order in my Landlord & Tenant matter which Elizabeth thought would be hard to obtain. Then in October 2008, I was unlawfully evicted from my residence. Wood & Lamping was timely and promptly notified of this matter. I even advised of my reporting this matter to the FBI. Either way, I was engaging in protected activities in which Wood & Lamping was fully aware. See my correspondence with Andrea regarding this. What I did not like about this was how Andrea attempted to make it appear there was a problem with my being out. I do not ever recall exceeding any days allowed for leave (vacation and/or sick); however, aware of my circumstances, attempted to add salt to the womb – clearly UNACCEPABLE.

4. I had a doctor's appointment in October and advised Andrea of what was taking place. Then in December 2008, I went to Andrea to advise of medical procedure and determine how leave would be covered. Andrea advised of the Family and Medical Leave Act and how the firm would handle such matters. I followed up with the required Request Form for leave on

January 8, 2009. On January 9, 2009, I was terminated being advised my position was being eliminated.

5. Since leaving Wood & Lamping, I have found out that Thomas J. Breed's former law firm Schwartz Manes & Ruby – now Schwartz Manes Ruby & Slovin – is representing a client that has business a business dispute with me. Whether or not Wood & Lamping would have represented me in that matter, I do not know. What I do know, is that I recall getting a fax from the company while at Wood & Lamping when I picked it up from the counter in the copy room. While I was not aware at the time that Tom's former law firm was representing that company, I found it interesting to find out that my termination came on January 9, 2009 – the very same weekend this company was holding what they called an "Amnesty Weekend." Not only that, no fax as sent prior by them on this date (so I concluded that they knew of what was about to take place at Wood & Lamping), but I was mailed a notice on the very same date of my termination. Tom is a member of the Executive Board at Wood & Lamping if I am not mistaken. Raising concerns for a reasonable mind (jury) as to the motive behind my termination – was it done to aid his former law firm (you scratch my back and I'll scratch yours – at my expense). What is Tom's interest in the matter and whether or not he has any interest still with Schwartz Manes? Again, that is not up to me to decide, but for a jury I would think. A ***causal*** link/connection can be established.

6. In regards to the FMLA, I will only present the following and let you take it from there because all I am required to do is present a prima facie case and evidence which I believe can be done:

> If the condition for which leave is granted is **foreseeable**, employees **must** provide the employer with **30** ***days notice*** **to be entitled to the protection of the FMLA**. . .
>
> Upon return from leave granted under the FMLA, employees are entitled to reinstatement to the position of employment previously held, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment . . . Employer's **may not** interfere with any employee's attempt to exercise his/her rights under the FMLA. It is also **illegal** *for employers to* ***discriminate*** *against or discharge an employee because he/she has attempted to exercise his/her rights. . .granted by the FMLA.*

See p. 32 of Wood & Lamping's Employer's Guide

You know *McDonnell Douglas* is a landmark case.

Hodgens v. General Dynamics Corp., 144 F.3d 151 (C.A. 1, 1998)

(n. 16) Employee's atrial fibrillation was "serious health condition" within meaning of FMLA section entitling employee to 12 weeks of leave for serious health condition making employee unable to perform his or her job; employee had over three

consecutive days' absences from work, had two or more treatments by health care provider, and was placed on treatment regimen of medication, and his illness might have proved fatal if left untreated. Family and Medical Leave Act of 1993, §§ 101(11), 102(a)(1)(D), 29 U.S.C.A. §§ 2611(11), 2612(a)(1)(D); 29 C.F.R. § 825.114(a)(2, 3), (b)(1, 2) (1993).

(n. 18) FMLA protects employee who visits a doctor with symptoms that are eventually diagnosed as constituting a serious health condition, even if, at the time of the initial medical appointments, the illness has not yet been diagnosed nor its degree of seriousness determined. Family and Medical Leave Act of 1993, § 102(a)(1)(D), 29 U.S.C.A. § 2612(a)(1)(D); 29 C.F.R. § 825.114(b).

(n. 23) Employer may not use reduction-in-force (RIF), reorganization, or improved-efficiency rationale as pretext to mask actual discrimination or retaliation for employee's exercise of FMLA rights; the mere incantation of the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination. Family and Medical Leave Act of 1993, § 105(a), 29 U.S.C.A. § 2615(a); 29 C.F.R. § 825.220.

(n. 25) Even if employer's articulated reason for its adverse employment action is facially neutral, as in the case of a reduction in force (RIF), if in reality the employer acted for reason prohibited by the FMLA's retaliation provision, then its asserted legitimate reason and its ostensibly nondiscriminatory selection criteria as to who is subject to RIF cannot insulate it from liability. Family and Medical Leave Act of 1993, § 105(a), 29 U.S.C.A. § 2615(a).

(n. 35) Statements by supervisors carrying the inference that the supervisor harbored animus against protected classes of people or conduct are clearly probative of pretext in FMLA retaliation action. Family and Medical Leave Act of 1993, § 105(a), 29 U.S.C.A. § 2615(a).

> (@ n. 23) an employer may not use its RIF/reorganization/improved-efficiency rationale as a pretext to mask actual discrimination or retaliation; the mere incantation of the mantra of "efficiency" is not a talisman insulating an employer from liability for invidious discrimination. See **McDonnell Douglas,** 411 U.S. at 804, 93 S.Ct. 1817 (employer may not use an ostensibly legitimate reason for an adverse action as a pretext for discrimination that is prohibited by statute); 29 U.S.C. § 2615(a); 29 C.F.R. § 825.220; cf. *INS v. Chadha,* 462 U.S. 919, 944, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983): "Convenience and efficiency are not the primary objectives-or the hallmarks-of democratic government." Nor are they the objectives of public policy underlying statutes like the FMLA or the ADA.

> (@ n. 25) Because of the availability of seemingly neutral rationales under which an employer can hide its discriminatory intent, and because of the difficulty of accurately determining whether an employer's motive is legitimate or is a pretext for discrimination, there is reason to be concerned about the possibility that an employer could manipulate its decisions to purge employees it wanted to eliminate. See *Weldon v. Kraft, Inc.*, 896 F.2d 793, 798 (3d Cir.1990) (Subjective evaluations of performance "are more susceptible of abuse and more likely to mask pretext" than objective job qualifications.) (internal quotation marks omitted). The law does not permit this. Even if an employer's actions and articulated reasons are facially neutral (e.g., a RIF), if in reality the employer acted for a prohibited reason (e.g., retaliation for exercising a protected right), then its asserted legitimate reason for the RIF and its ostensibly nondiscriminatory selection criteria as to who gets RIFed cannot insulate it from liability. As Judge Posner wrote in the context of ADA disability discrimination, "[a] RIF is not an open sesame to discrimination against a disabled person. Even if the employer has a compelling reason wholly unrelated to the disabilities of any of its employees to reduce the size of its work force, this does not entitle it to use the occasion as a convenient opportunity to get rid of its disabled workers." *Matthews v. Commonwealth Edison Co.*, 128 F.3d 1194, 1195 (7th Cir.1997) (citation omitted). Nor can it be an opportunity to get rid of workers who exercise their FMLA right to take medical leave for serious medical conditions. See 29 U.S.C. § 2615(a).

OHIO LAW IS CLEAR ON THIS SUBJECT (so I'm sure it will be in areas in which other violations have occurred)

> *Skrjanc v. Great Lakes Power Service Co.*, 272 F.3d 309 (C.A.6.Ohio,2001) - Employee presented prima facie case of retaliatory discharge under FMLA by showing that he availed himself of protected right by notifying employer of his intent to take leave, that he was adversely affected by employment decision when he was discharged, and that there was proximity in time between employee's request for leave and his discharge. Family and Medical Leave Act of 1993, § 102(a)(1)(D), 29 U.S.C.A. § 2612(a)(1)(D).

> *Hollingsworth v. Time Warner Cable*, 812 N.E.2d 976 (Ohio.App.1.Dist.Hamilton.Co., 2004) - To establish a prima facie case of discrimination under the Family and Medical Leave Act (FMLA), an employee must demonstrate that (1) *she was a member of a protected class,* (2) *she suffered an adverse employment action,* (3) *she was qualified for the position that she lost,* and (4) she was replaced by a person outside the

> protected class, or a *comparable nonprotected person was treated better.* Family and Medical Leave Act of 1993, § 2 et seq., 29 U.S.C.A. § 2601 et seq.
>
> *Zechar v. Ohio Dept. of Edn.,* 782 N.E.2d 163 (Ohio.Ct.Cl.,2002) - An employee can prove Family and Medical Leave Act (FMLA) retaliation circumstantially, using the method of proof established in McDonnell Douglas, and thus, to establish a prima facie case of retaliation circumstantially, employee must show that she exercised rights afforded by the FMLA, that she suffered an adverse employment action, and that there was a causal connection between her exercise of rights and the adverse employment action. Family and Medical Leave Act of 1993, § 2 et seq., 29 U.S.C.A. § 2601 et seq.

So to deprive me medical coverage which I am certain will be proven was provided to white employees similarly situated for hopes of dragging out the process, is clearly UNACCEPTABLE – Negligence, Malice, etc. (COMPENSATORY, PUNITIVE DAMAGES, is looking good now – especially when the violations rendered me is within the firms area of speciality). Remember Wood & Lamping has a duty to mitigate damages.

7. **PRETEXT** on the part of Wood & Lamping can also be shown. I believe a reasonable mind and/or jury may conclude that its taking of my *Policies and Procedures Manual* was deliberate, willful and malicious. Moreover, done to cover up unlawful/illegal practices. Clearly prior to my termination Wood & Lamping had ***premeditated, calculated*** and ***well-hatched plan*** to cover-up their retaliatory and discriminatory practices. Such acts which are clearly unacceptable. Thank goodness I decided to make a copy of the Policies and Procedures Manual as well as keep my copy of the binder provided at the Seminar Julie Pugh and Heath Walsh conducted. Even the laws are aware how shady employers are in attempting to cover-up such unlawful/illegal acts. No I believe I have a valid claim.

8. It is going to be interesting to find out why others (white) felt comfortable acknowledging bringing Complaints and wanting feedback; however, when I presented mine, how Wood & Lamping retaliated; moreover, subjected to discriminatory treatment - which ultimately resulted in my termination.

9. Elimination of my job – taking away of my job duties were merely acts orchestrated by Wood & Lamping to mask their unlawful/illegal practices (discrimination and retaliation and knowledge of my engagement in protected activities). The Policies and Procedures Manual clearly states no employee engaging in protected activities would be discriminated and/or retaliated against; however, that was not the case. Again, who am I - just let a jury decide.

10. While you mentioned economic times contributing to Wood & Lamping's decision, that is also up to a jury to decide. Let them release their financial information and of course a great deal of other information as it relates to the information they relied upon to reach their decision. Let the jury decide whether or not my termination was for non-discriminatory reasons. I really do not think so. However, that is not up to me to decide.

TRANSMISSION VERIFICATION REPORT

TIME : 02/02/2009 17:38
NAME : FEDEX KINKO'S #2138
FAX : 5139610138
TEL : 5139610104
SER.# : 000J7N199268

DATE,TIME	02/02 17:33
FAX NO./NAME	5134196488
DURATION	00:04:43
PAGE(S)	09
RESULT	OK
MODE	STANDARD

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

February 2, 2009

VIA FACSIMILE & E-MAIL
Paul R. Berninger (prberninger@woodlamping.com & 513-419-6488)

RE: MEDICAL COVERAGE - CONCERNS DISCRIMINATION UNDER FMLA AND COBRA VIOLATIONS

Dear Paul:

This will confirm receipt of your voicemail message on yesterday which was cut off and our telephone conversation on today in regards to the above referenced matter.

From my understanding of the conversation, Wood & Lamping (Andrea) acknowledges that I advised of my request regarding medical procedure I discussed with her. At this time, Wood & Lamping is willing to extend me medical coverage under COBRA where they will make the payments. However, in exchange for such agreement, I would be required to sign a Release relinquishing all rights that I may have to bring charges and/or lawsuit against Wood & Lamping for any injury/harm I sustained from violations – i.e. wrongful discharge, retaliation, racial discrimination, etc. As I shared with you, **my main focus right now is getting the medical procedure done that I was advised of** any other relief I seek will be done in the applicable time permitted by statute/laws.

HOWEVER, PLEASE LET ME REITERATE, it is Wood & Lamping's duty and responsibility to **mitigate** damages – that includes continuing medical coverage and/or benefits – in the showing of good faith (not in continuance of bad faith or malicious behavior, etc. to cause me additional injury/harm).

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

MARK GLASER

Complainant

v.

HLS BONDING D/B/A
SMD/HLS BONDING COMPANY

Respondent

Complaint No. 9496
(COL) 71053102 (29621) 081202
22A – A2 – 03805

ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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5379 Ulry Road
Westerville, OH 43081

Complainant

ALJ'S REPORT BY:

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
1111 East Broad Street, Suite 301
Columbus, OH 43205-1379
614 – 466 – 6684

INTRODUCTION AND PROCEDURAL HISTORY

Mark Glaser (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on August 12, 2002.

The Commission investigated the charge and found probable cause that HLS Bonding LLC d/b/a SMD/HLS Bonding Company (Respondent) engaged in unlawful employment practices in violation of Revised Code Section (R.C.) 4112.02(I).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on April 10, 2003.

The Complaint alleged that Respondent changed Complainant's terms and conditions of employment, and terminated him, in retaliation for having engaged in activity protected by Revised Code 4112.02(I).

Respondent filed an Answer to the Complaint on June 6, 2003. Respondent admitted certain procedural allegations, but denied that it

engaged in any unlawful retaliatory practices. Respondent also pled affirmative defenses.[1]

A public hearing was held on September 2, 2004 at the Ohio Civil Rights Commission's Central Office in Columbus, Ohio.

The record consists of the previously described pleadings, a transcript of the hearing (285 pages), exhibits admitted into evidence during the hearing, and the post-hearing briefs filed by the Commission on June 3, 2005, by Respondent on July 8, 2005, and a reply brief filed by the Commission on July 20, 2005.

---

[1] On September 5, 2003, Respondent filed a Motion for Summary Judgment, the Commission filed a Memorandum in Opposition on September 23, 2003, and Respondent filed a Reply on September 30, 2003. The Administrative Law Judge (ALJ) denied Respondent's Motion for Summary Judgment.

The Commission filed a Motion to Amend the Complaint on November 24, 2003, and Respondent filed a Memorandum in Opposition on December 9, 2003. The Commission's Motion to Amend was granted. Respondent filed an Amended Answer on January 24, 2004.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on August 12, 2002.

2. The Commission determined on April 10, 2003 that it was probable Respondent engaged in unlawful retaliation in violation of R.C. 4112.02(I).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.

4. Respondent is a bail bonds business located at 571 South High Street in Columbus, Ohio.

5. Respondent is owned and operated by Harvey Handler (Handler) and Lowell Fox (Fox).

6. Complainant began his employment with Respondent on May 27, 1991, working as a part-time data clerk while he was still attending college.

7. After Complainant completed his undergraduate degree he became a licensed bail bondsman and began working full-time for Respondent.

8. Respondent also made Complainant the office manager. Complainant received a substantial pay raise that compensated him for the additional duties.

9. Complainant was responsible for keeping the books, which involved writing checks, paying bills, [including bills for health insurance premiums], making deposits, and doing most of the other internal office paperwork.

10. During Complainant's attendance at a Continuing Education Class in late 2001, he learned that if an employer provided health insurance, then it should be provided to all of its employees, not just some of the employees.

11. Complainant told Michael English (English), [the only African-American employee and Complainant's long-time friend and coworker], that it was "just not right" that Respondent was not giving him insurance benefits like they were for some of the other employees. Complainant recalls first telling English sometime in late November or early December 2001. (Tr. 88-89)

12. During a discussion that Complainant had with Handler regarding Complainant buying into the business, Complainant asked Handler when he was going to provide health insurance benefits to

English. Handler told Complainant that he (and Lowell) "could handle Mike English, don't worry about it". (Tr. 85-86)

13. English filed a charge of discrimination with the Commission on April 22, 2002. Complainant's name was listed on the charge as a Caucasian employee whose health insurance benefits were being paid for by Respondent.

14. On April 23, 2002, Handler was contacted by the Commission and informed that English had filed a charge of discrimination. (Tr. 19, 56-57)

15. By letter dated April 25, 2002 Respondent was notified English had filed a charge of discrimination.

16. A couple of days after English told Complainant that he had filed a charge of discrimination, Handler and Fox called Complainant into their office. They told Complainant that he was no longer going to be doing office manager duties and that Complainant needed to concentrate on his duties at the courthouse.

17. By memo dated May 3, 2002, regarding "New Employee Business Practices", the employees were apprised of new practices and policies:

> Finally, and perhaps most unfortunately, current circumstances have caused us to determine that effective July 1, 2002, H.L.S. Bonding Company will no longer provide healthcare benefits for any employee, regardless of full-time or part-time status.
>
> (Comm. Ex. 3)

18. By memo dated May 10, 2002, Complainant received a written job description. Under "Hours of Employment" and "Compensation" the memo set forth the following:

> HOURS OF EMPLOYMENT
>
> (...) The employee is expected to be at Arraignment Court during all scheduled arraignment court hours. All other employment hours are to be spent at the Employer's office doing necessary office work including writing bonds, answering telephones, verifying information, research and other reasonable and necessary office business required by the Employer.
>
> COMPENSATION
>
> Seven hundred dollars ($700) a week payable weekly.
>
> (Comm. Ex. 4)

19. On May 31, 2002, Complainant was terminated for cause.

The memo stated:

> As a result of your recent conduct, including your unwillingness to carry out the responsibilities of your position, your refusal to comply with the terms of your Employment Contract and the May 10, 2002 memorandum, and your insubordination, your employment with H.L.S. Bonding Company is immediately terminated for cause.
>
> (Comm. Ex. 10)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.[2]

1. The Commission alleged in the Complaint that Respondent changed Complainant's terms and conditions of employment, and terminated him, in retaliation for having engaged in activity protected by R.C. 4112.02(I).

[2] Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

> It shall be an unlawful discriminatory practice:
>
> (I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(I) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful retaliation under Title VII of the Civil Rights Act of 1964 (Title VII).

5. Under Title VII case law, the evidentiary framework established in *McDonnell Douglas Co. v. Greene*, 411 U.S. 792, 5 FEP Cases 965 (1973) for disparate treatment cases applies to retaliation cases. This framework normally requires the Commission to prove a *prima facie* case of unlawful retaliation by a preponderance of the evidence. The burden of establishing a *prima facie* case is not onerous. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254, 25 FEP Cases 113, 116, (1981). It is simply part of an evidentiary framework "intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination." *Id.*, at n.8.

6. The proof required to establish a *prima facie* case is also flexible and, therefore, may vary on a case-by-case basis. *McDonnell Douglas*, *supra* at 802, 5 FEP Cases 969, n.13. In this case, the Commission may establish a *prima facie* case of unlawful retaliation by proving that:

(1) Complainant engaged in an activity protected by R.C. Chapter 4112;

(2) The alleged retaliator knew about the protected activity;

(3) Thereafter, Respondent subjected Complainant to an adverse employment action; and

(4) There was a causal connection between the protected activity and the adverse employment action.

Hollins v. Atlantic Co., Inc., 80 FEP Cases 835 (6th Cir. 1999), *aff'd in part and rev'd in part*, 76 FEP Cases 533 (N.D. Ohio 1997) (quotation marks omitted).

7. The retaliation provision under R.C. 4112.02(I) contains an opposition clause and a participation clause. Since courts have analyzed these clauses differently, it is important to focus on the nature of the alleged protected activity.

> The distinction between employee activities protected by the participation clause and those protected by the opposition clause is important because federal courts have generally granted less protection for opposition than participation.
>
> *Aldridge v. Tougaloo College*, 64 FEP Cases 708, 711 (S.D. Miss. 1994), *citing Brown v. Williamson Tobacco Co.*, 50 FEP Cases 365 (6th Cir. 1989).

Courts usually grant absolute protection for participation activities such as filing a discrimination charge, testifying in civil rights proceedings, or otherwise participating in such proceedings. *Proulx v. CitiBank*, 44 FEP Cases 371 (S.D. N.Y. 1987).

8. As a threshold matter, the Commission must prove that Complainant engaged in activity protected by R.C. 4112.02(I). A wide array of conduct, including verbal complaints to management, may constitute opposition to unlawful discrimination. *See Reed v. A.W. Lawrence & Co., Inc.*, 72 FEP Cases 1345 (2d Cir. 1996) (employee engaged in protected activity by complaining about a coworker's allegedly unlawful conduct to an officer of company and maintaining same complaint throughout internal investigation); *EEOC v. Hacienda Hotel*, 50 FEP Cases 877 (9th Cir. 1989) (employee engaged in protected activity when she complained to management about her supervisor's refusal to accommodate her religious beliefs). Employees engage in protected activity under the opposition clause when they oppose, in good faith, what they reasonably believed at the time was unlawful discrimination on the part of their employer.

> It is critical to emphasize that a plaintiff's burden under this standard has both a subjective and an objective component. A plaintiff must not only show that he *subjectively* (that is, in good faith) believed that his employer was engaged in unlawful discriminatory practices, but also that his belief was *objectively* reasonable in light of the facts and record presented.
>
> *Little v. United Technologies, Carrier Transicold Div.*, 72 FEP Cases 1560, 1563 (11th Cir. 1997) (Emphasis added.).

> An employee is engaged in protected activity if he or she opposes an employer's conduct that he or she has a good faith and reasonable belief is illegal.
>
> *EEOC v. Wilson Metal Casket Co.*, 58 FEP Cases 1523, 1528 (M.D. Tenn. 1992) (citations omitted).

9. In the instant case Respondent argues that it did not have knowledge of Complainant opposing a discriminatory practice or engaging in a protected activity prior to his termination.

10. The Commission, on the other hand, asserts that Respondent was aware of Complainant's opposition to discriminatory practices when he questioned Handler about when health insurance benefits were going to be provided to English. Additionally, the Commission asserts that Respondent was aware of Complainant's participation in the Commission's proceedings because Complainant's name was on the charge as one of the Caucasian employees who was receiving health insurance from Respondent.

11. Complainant testified that he attended a seminar in late 2001 where he learned that it was state law that if an employer was providing

insurance benefits to some of its employees then the benefits should be provided to all employees.

12. Complainant approached Handler about health insurance benefits and when they were going to be provided to English.[3]

13. English was the only African-American employee working for Respondent and Complainant was aware, through the payment of health insurance premiums, that English was not receiving health insurance from Respondent.

14. Because there was no express declaration to Handler or Fox by Complainant that he believed what was happening to English was because of his race, there is no legal support for the Commission's assertion.

---

[3] Other than Handler and Fox, Complainant, as office manager, was the only other individual privy to which employees received health insurance from Respondent. Handler and Fox kept the employees' insurance records in locked file cabinets, and they kept the keys. (Tr. 108, 113)

15. Courts have consistently held that there is no "protected activity" when there is no discussion of or allegation of discriminatory conduct (*see Smith v. Wayne County Dept of Human Serv.*, 2003 Ohio App. LEXIS 386, *Jackson v. Champaign Nat'l. Bank & Trust Co.*, 2000 Ohio App. LEXIS 4390, *Gate v. Cincinnati Bell Telephone Co.*, 898 F. 2d 153 (6th Cir. 1990).

16. Complainant testified that the first time that he approached Handler about the issue he did not know why English was not receiving health insurance:

> Q: Do you know why Mr. English wasn't offered health insurance benefits?
>
> A: At that particular time, no, I really didn't know why. But after being in the – the room with Lowell and Mike English approaching Lowell about the – the banana issue, then my opinion changed.
>
> (Tr. 86)

17. English testified that after he received the information from Complainant he asked Handler and Fox for health insurance benefits. Complainant testified that he was in the room with English and that he knew that English was wearing a hidden recording device.

18. After English approached Handler and Fox, Handler started writing the checks for the health insurance premiums.

19. Soon after Respondent received notice of the charge of discrimination dated April 23, 2002,[4] wherein Complainant was listed as one of the Caucasian employees receiving health insurance, actions were taken to relieve Complainant of his duties as office manager, and Respondent reduced his salary.

20. Handler testified that Complainant had asked to be relieved of his duties sometime in early 2002 because he did not like to manage people. Complainant denied he asked to be relieved of his management duties.

21. I find Handler's testimony lacking in credibility because he admitted that he had asked Complainant to buy into the business in April of 2002, approximately one month before Complainant was terminated.

---

[4] Handler testified that he was contacted by the Commission on April 23, 2002 and informed that English had filed a charge of discrimination against them. (Tr. 56-57)

(Tr. 70, 83) Both Handler and Fox testified under cross-examination that they would not let a bad employee become one of their partners. (Tr. 31, 69, 70, 71)

22. A reasonable inference can be drawn that Handler and Fox knew that Complainant participated in English's charge of discrimination from the following conduct:

- Complainant's questioning of Handler about English's receipt of health insurance benefits;
- English's request for health insurance benefits;
- Complainant's change in responsibilities regarding the writing of checks for health care premiums; and
- Complainant's name on the April 22, 2002 charge of discrimination.

I find that Respondents Handler and Fox were aware of Complainant's participation in English's charge of discrimination.

CAUSAL CONNECTION

23. In determining whether a causal connection exists, the proximity between the protected activity and the adverse employment action is often "telling." *Holland v. Jefferson Natl. Life Ins. Co.*, 50 FEP Cases 1215, 1221 (7th Cir. 1989), *quoting Reeder-Baker v. Lincoln Nat'l Corp.*, 42 FEP Cases 1567 (N.D. Ind. 1986). The closer the proximity between the protected activity and the adverse employment action, the stronger the inference of a causal connection becomes. *See Johnson v. Sullivan*, 57 FEP Cases 124 (7th Cir. 1991) (court held that plaintiff showed causal connection and established *prima facie* case of retaliation where plaintiff was discharged within days of filing a handicap and race discrimination lawsuit); *Waddell v. Small Tube Prods., Inc.*, 41 FEP Cases 988 (3d Cir. 1986) (court properly inferred retaliatory motive from evidence that defendant's decision to rehire plaintiff was rescinded one day after the defendant received notice that state FEP agency had dismissed plaintiff's charges of discrimination).

24. A causal connection may be established with evidence that the adverse employment action closely followed the protected activity. *Holland v. Jefferson National Life Ins. Co.*, 50 FEP Cases 1215 (7th Cir. 1989).

> ... a court may look to the temporal proximity of the adverse action to the protected activity to determine where there is a causal connection.
>
> *EEOC v. Avery Dennison Corp.*, 72 FEP Cases 1602, 1609 (6th Cir. 1997) (citation and quote within a quote omitted).

> Temporal relationship between a plaintiff's participation in protected activities and a defendant's alleged retaliatory conduct is an important factor in establishing a causal connection.
>
> *Gonzales v. State of Ohio, Dept. of Taxation*, 78 FEP Cases 1561, 1564 (S.D. Ohio 1998).

25. By memo dated May 3, 2002 to employees entitled "New Employee Benefits", Respondent stated the following in the first paragraph:

> As a result of recent events, and in complying with the advice of our corporate counsel, we wanted to advise you that we will begin immediately implement(ing) [sic] certain new business practices that will affect all employee, both full time and part-time positions, regarding your employment at H.L.S. Bonding Company. (...)
>
> Comm. Ex. 3

26. Respondent changed Complainant's job duties and reduced his pay pursuant to a memo dated May 10, 2002. (Comm. Ex. 4)

27. Handler testified that when he and Fox responded to English's charge of discrimination they became aware that there was an Ohio insurance law that requires small employers to offer insurance to all employees if they offered it to any employee. (Tr. 24) This testimony was offered as a reason for the May 3, 2002 memo wherein Respondent notified employees that it would no longer be paying for employee health insurance benefits. I find this testimony to lack credibility.

28. The testimony by Complainant was credible regarding his attending a seminar in late 2001 and finding out about the law related to health insurance benefits. Complainant's testimony that he approached Handler in late 2001 about when English was going to receive health care benefits is also credible.

29. Complainant's acquired knowledge (state law) became the catalyst for raising the issue to Handler. Handler's response to Complainant ["We can handle Mike English, don't worry about it."] and his

failure to take corrective action led Complainant to disclose information to English about who was and who was not receiving health insurance coverage. (Tr. 43-44)

30. The Commission having established a *prima facie* case, the burden of production shifted to Respondent to "articulate some legitimate, nondiscriminatory reason" for the employment action. *McDonnell Douglas*, *supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondent must:

> ... "clearly set forth, through the introduction of admissible evidence," reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the employment action.
>
> *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 507, 62 FEP Cases 96, 103 (1993), *quoting Burdine*, *supra* at 254-55, 25 FEP Cases at 116, n.8.

The presumption of unlawful retaliation created by the establishment of a *prima facie* case "drops out of the picture" when the employer articulates a legitimate, nondiscriminatory reason for the employment action. *Hicks*, *supra* at 511, 62 FEP Cases at 100.

31. Respondent met its burden of production with the introduction of evidence that Complainant's job performance had declined and that Handler was threatened by Complainant's conduct during a meeting.

32. Respondent having met its burden of production, the Commission must prove that Respondent retaliated against Complainant because he engaged in protected activity. *Hicks*, *supra* at 511, 62 FEP Cases at 100. The Commission must show by a preponderance of the evidence that Respondent's articulated reasons for Complainant's discharge were not its true reasons, but were a "pretext for ... [unlawful retaliation]." *Id.*, at 515, 62 FEP Cases at 102, *quoting Burdine*, 450 U.S. at 253, 25 FEP Cases at 115.

> [A] reason cannot be proved to be a "pretext for ... [unlawful retaliation]" unless it is shown *both* that the reason was false, *and* that ... [unlawful retaliation] was the real reason.
>
> *Hicks*, *supra* at 515, 62 FEP Cases at 102.

33. Thus, even if the Commission proves that Respondent's articulated reasons are false or incomplete, the Commission does not automatically succeed in meeting its burden of persuasion:

> That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the ... [Commission's] proffered reason of ... [unlawful retaliation] is correct. That remains for the factfinder to answer ...[.]
>
> *Id.*, at 524, 62 FEP Cases at 106.

Ultimately, the Commission must provide sufficient evidence for the factfinder to infer that Complainant was, more likely than not, a victim of unlawful retaliation.

34. In order to show pretext, the Commission may directly or indirectly challenge the credibility of Respondent's articulated reasons for Complainant's termination. The Commission may directly challenge the credibility of Respondent's articulated reasons by showing that the reasons had no basis *in fact* or they were *insufficient* to motivate the employment decision. *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994). Such direct attacks, if successful, permit the fact-finder to infer intentional discrimination from the rejection of the reasons without additional evidence of unlawful discrimination.

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may together with the elements of the *prima facie* case, suffice to show intentional discrimination ... [n]o additional proof is required.[5]
>
> *Hicks*, *supra* at 511, 62 FEP Cases at 100 (emphasis added).

35. I found Handler's testimony regarding the reasons for Complainant's termination to lack credibility. On cross-examination Handler could not be specific about having a conversation with Complainant about his declining job performance. In April of 2002 Handler asked Complainant about becoming a partner in the business, something he admitted he would not ask of an employee with poor performance.

36. English testified that on the day and time when Handler allegedly felt threatened by Complainant at the courthouse, Handler's outward demeanor did not indicate that he was feeling threatened or upset.[6] (Tr. 45-46) I found English's testimony to be credible.

---

[5] Even though rejection of a respondent's articulated reason is "enough at law to *sustain* finding of discrimination, *there must be a finding of discrimination.*" *Hicks, supra* 2749, 62 FEP Cases at 100, n.4.

[6] Complainant and English were on the fourth floor of the courthouse when Handler told Complainant that he wanted to talk to him. Handler and Complainant went to the ninth floor. After the discussion with Handler, Complainant went back to the office per Handler's instructions, and Handler returned to the fourth floor.

37. After a careful review of the entire record, the ALJ disbelieves the underlying reasons that Respondent articulated for Complainant's reduction in pay and discharge and concludes that, more likely than not, they were a pretext for unlawful retaliation.

38. These actions by Respondent constitute unlawful retaliation and entitle Complainant to relief as a matter of law.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 9496 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;

2. The Commission order Respondent to make an offer of employment to Complainant within 10 days of the Commission's Final Order for the position of office manager. If Complainant accepts Respondent's offer of employment, Complainant shall be paid the same

wage he would have been paid had he been employed as an office manager at the salary of $800.00 per week on May 31, 2002 and continued to be so employed up to the date of Respondent's offer of employment; and

3. Whether Complainant accepts Respondent's offer of employment, Respondent shall submit to the Commission within 10 days of the offer of employment a certified check payable to Complainant for the amount that he would have earned had he been employed as an office manager at the salary of $800.00 per week on May 31, 2002 and continued to be so employed up to the date of Respondent's offer of employment, including any raises and benefits he would have received, less his interim earnings, plus interest at the maximum rate allowed by law.[7]

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

July 31, 2006

[7] Any ambiguity in the amount that Complainant would have earned during this period or benefits that he would have received should be resolved against Respondent. Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent.

Fax to: Denise Newsome
Direct Fax: 513-419-6453

From: Lori Whiteside
Fax: 606-474-0222
Mobile: 606-232-0225

Date: 12/19/08

Dear Denise:

Thanks for your fax of December 19, 2008. I appreciate your providing the applicable Landlord Tenant portions of the law. I have actually contacted Dave Meranus in Cincinnati, Ohio and forwarded our file on your unit for his review and instruction to see if we would be better off to move forward with a Forcible Entry and Detainer action. Dave is to get back with me by next week.

However, in lieu of taking these steps and trying to bring this matter to a close, Stor All Alfred is in the process of scheduling an amnesty weekend for January 9, 10, and 11, 2009, at which time we are going to have a moving truck and driver available for any of the tenants that wish to vacate the premises at absolutely no cost to the tenant. Note that there is going to be a restriction in how many miles from our facility we will be able to deliver belongings, and as soon as I find that out, I will let you know right away.

While I await your response, if you can take a look at your schedule, maybe this whole matter can be resolved during our amnesty weekend – the only thing you would need to do is to load your unit (hopefully you'll have some help) and we will provide the vehicle and driver to deliver your belongings to another location as long, again taking into consideration that mileage restriction that is going to be set. This means you have to pay absolutely nothing, and you will be in control of your property, plus you have a free truck and driver to get it delivered.

If you are interested in looking at this approach, please let me know. I will be at Stor All Alfred January 9, 10, and 11th and I would be glad to get you scheduled to vacate. I am sure you would love to bring this matter to a conclusion as would I.

In any event, I certainly look forward to hearing from you by December 23, 2008. Have a great weekend.

Sincerely,

Lori A. Whiteside

EXHIBIT 18

NOTICE TO LEAVE THE PREMISES

TO: Denise V. Newsome, Tenant;
a/k/a V. Denise Newsome, Tenant;
a/k/a Denice V. Newsome, Tenant;
a/k/a Denise Newsome, Tenant

You are hereby notified that we want you on or before January 19, 2009 to leave the premises you now occupy and have rented from us, situated and described as follows:

Storage Unit #173 - 1109 Alfred Street in Cincinnati, Hamilton County, Ohio 45214.

GROUNDS: Non-Payment of Rent

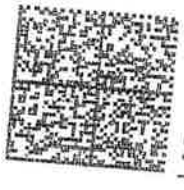
YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

January 9, 2009: Lessor: Stor-All Alfred, LLC
c/o Stor-All
253 Womstead Drive
Grayson, Kentucky 41143

By: Lori A. Whiteside, Agent

Stor All
253 Womstead Dr
Grayson, Ky 41143

7006 2760 0002 4757 2218



NAME LW
1st Notice 1-12-09
2nd Notice 1-17-09
Return

Denise Newsome aka V. Denise Newsome,
AKA Denice V Newsome, aka Denise V Newsome
PO Box 14731
Cincinnati, OH 45250

45250+0731

WOOD & LAMPING LLP

SINCE 1927

THE EMPLOYER'S GUIDE

TO EMPLOYMENT LAW IN OHIO, KENTUCKY AND INDIANA

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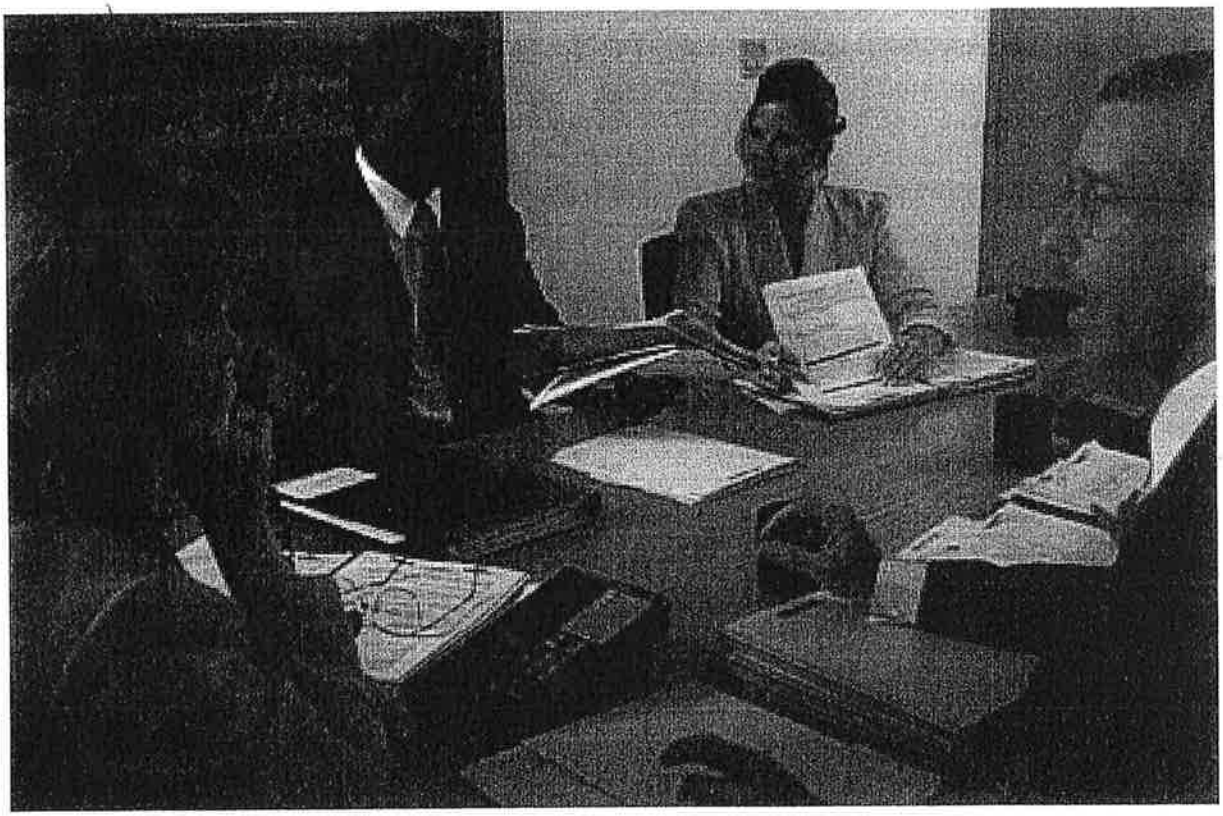
INTERVIEWING AND HIRING

Hiring procedures should be consistent throughout a company; ideally, the human resources manager should supervise or monitor all hiring. A standard process typically includes an employment application, a standardized screening interview, and supplemental interviews as needed for upper level employees. All those engaged in the hiring process should receive training that covers both interviewing skills and legal "do's and don'ts." Failure to adhere to consistent procedures may encourage claims of discrimination, misrepresentation, or breach of oral employment agreement.



Wood & Lamping regularly provides on-site training programs for clients' management personnel upon request.

Federal Laws You Need to Know

Title VII of the Civil Rights Act of 1964

42 U.S.C. § 2000e *et seq.*

This law prohibits employment discrimination based on race, color, religion, sex or national origin. Title VII applies to all employers engaged in business affecting commerce who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.

Age Discrimination in Employment Act of 1967

29 U.S.C. § 623

This law protects employees and job applicants who are 40 years of age or older from employment discrimination based on age. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. The ADEA applies to employers with 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The law applies to federal, state and local governments, employment agencies and labor organizations.

Americans with Disabilities Act (ADA)

42 U.S.C. § 12101 *et seq.*

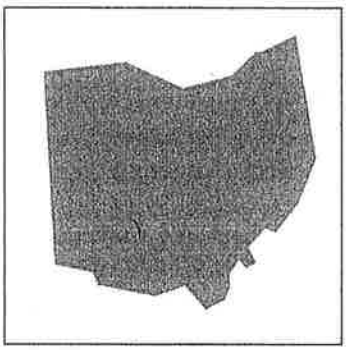
This law prohibits employment discrimination against qualified individuals with disabilities. The law applies to employers engaged in business affecting commerce who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

The Family Medical Leave Act of 1993 (FMLA)

29 U.S.C. § 2601 *et seq.*

This law allows covered employees to take up to twelve weeks of unpaid leave every twelve months for the birth of a child, to care for a spouse, child or parent with a serious health condition, or for the employee's own serious health condition.

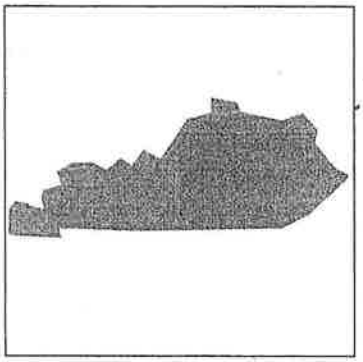
State Laws You Need to Know



Ohio

R.C. § 4112 *et seq.*

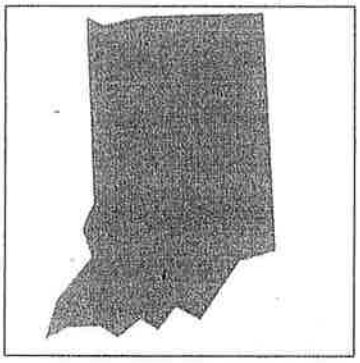
Under the Ohio statute, it is unlawful for an employer to discriminate because of race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.



Kentucky

KRS § 344 *et seq.*

The Kentucky Commission on Human Rights focuses on the eradication of discrimination through enforcement of the Kentucky Civil Rights Act. The Kentucky statutes prevent an employer from failing to hire, refusing to hire, discharging, or otherwise discriminating against an individual on the basis of the individual's race, color, religion, national origin, sex, age (forty and over), disability, or smoking status. The law also prevents an employer from segregating or classifying employees on these same bases. Employers may not require an employee to abstain from using tobacco products outside of the workplace.



Indiana

IC § 22-9 *et seq.*

Indiana statutes provide all citizens equal opportunity for education and employment. An employer may not segregate on the basis of race, religion, color, sex, disability, national origin or ancestry.

EMPLOYMENT AT WILL

An employer has the right to discharge employees at any time for any reason or for no reason at all.

The at-will relationship gives you maximum freedom to fire employees (you cannot fire someone for an illegal reason, of course, such as the person's age or race), as long as you preserve your legal right to do so. You must be careful in the language you use on job applications, in interviews, and in the employee handbook so there is no implication of a promise of employment.

Your best protection is to include an "at will" statement on all applications, handbooks, and employment offers. Such a statement might look something like this, and would be signed by the employee:

> **"I acknowledge that if hired, I will be an at will employee. I will be subject to dismissal or discipline without notice or cause at the discretion of the employer. I understand that no representative of the company, other than the president, has the authority to change the terms of at-will employment and that such change can occur only in a written employment contract."**

Obtain Legal Advice
There are other exceptions to employment at will, such as collective bargaining agreements, employment contracts, implied contracts, and public policy exceptions. Employers should always check with their attorney before taking any action.

EMPLOYMENT AT WILL

Discharges prohibited by law:

Age Discrimination in Employment Act, 29 U.S.C. 621 *et seq.*

State Age Discrimination in Employment Statutes:

- The Ohio statute states that if the employee is over age 40, Ohio requires just cause for the discharge. R.C. § 4112.14.
- Indiana statute states "Discrimination" shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of seventy (70) years. IC § 22-9-2.
- Kentucky statutes allow a human rights commission to set up local rules to protect against age discrimination: KRS 344.310.

Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000(e), *et seq.* This law prohibits discharge based on race, color, religion, sex, national origin and pregnancy, childbirth or related medical conditions.

Rehabilitation Act of 1973, 29 U.S.C. 701, *et seq.*, and Americans With Disabilities Act of 1990, 42 U.S.C. 1210, *et seq.*, which prohibit discrimination against qualified handicapped employees who can perform essential functions of the job with reasonable accommodation.

Miscellaneous statutes which prohibit discharge for:

- Serving on jury duty, 28 U.S.C. § 1875
- Filing OSHA complaints, 29 U.S.C. § 651
- Union activity, 29 U.S.C. § 141
- Filing bankruptcy, 11 U.S.C. § 525
- Refusing to submit to lie detector test, 29 U.S.C. § 2002 (Private Sector)
- Garnishment of wages, 15 U.S.C. § 1671
- Whistleblower statutes, 31 U.S.C. § 3730(h)
- Filing workers' compensation claims, 5 U.S.C. § 8101 *et seq.*

Ohio, Kentucky and Indiana also have anti-discrimination statutes:

- Ohio R.C. 4123.90
- Kentucky KRS 342.197
- Indiana IC 22-3-2-6

Remember

An at-will employer may terminate an employee for any reason at any time as long as the reason is not prohibited by law, and the employee may also leave the employer at any time without notice. A policy requiring two weeks notice prior to resignation may be desirable.

SEVERANCE AGREEMENTS

The ever-increasing litigation involving termination of employment means that every termination of an employee presents a potential wrongful discharge action. As a result, most employers now use a form of separation agreement, at least for certain situations, where the employee terminates his or her employment either voluntarily or involuntarily. Whether an employer uses a separation agreement in the instance of every termination, its use is certainly well advised in any situation where an employer provides to an employee a benefit above and beyond that which is otherwise provided for under the employer's general policies and procedures, or in the employer's employee handbook.

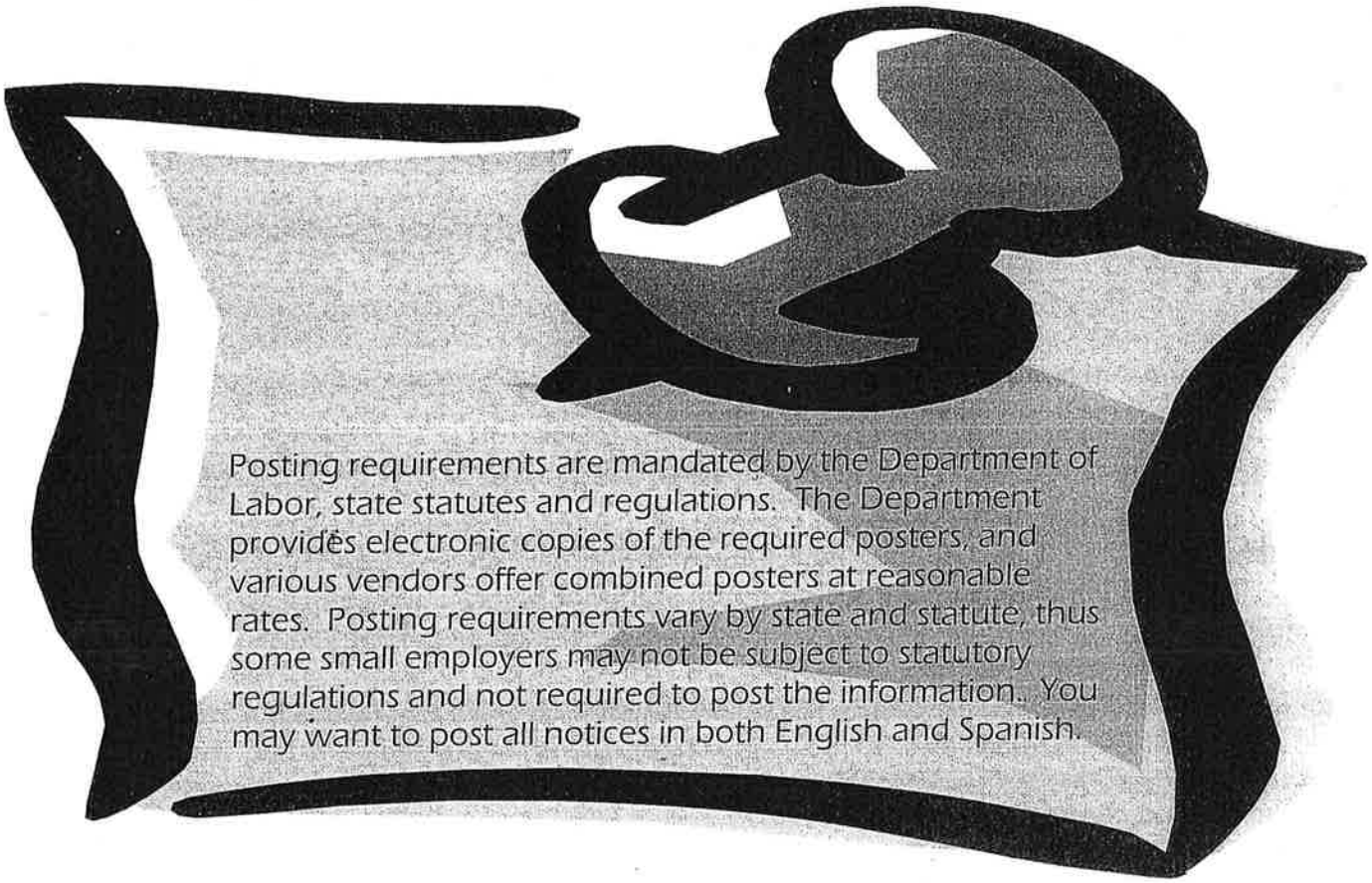
Contract law does not typically require courts to inquire into the amount of consideration provided in exchange for an agreement; that is, the court will not "second guess" whether the amount of consideration provided is sufficient to support the promise extracted from the party who receives the consideration. Rather, the court will look to whether the employee gave a knowing, voluntary release of claims in exchange for *some* consideration. The key is the conclusion that the individual employee was sufficiently well informed to understand that he/she was waiving claims against the employer.

In most states, a general release is valid as to all claims for which a signing party has actual knowledge or that he or she could discover upon reasonable inquiry. In many states, a general release agreement does not serve as an effective bar as to claims which the individual did not know or suspect to exist at the time of execution. Thus, if the employer wishes to have the employee release every conceivable claim, whether known or unknown, suspected or unsuspected by the employee, the agreement should recite the applicable statute and follow the dictates of applicable case law, and have the employee expressly waive the protection of the statute. The ADEA has special requirements for releasing age-related claims that should be discussed with an attorney. The employee's statutory protections can generally be released so long as the statutory protection is expressly waived in the release agreement.

Obtain Legal Advice

Wood & Lamping attorneys regularly assist clients in drafting and implementing effective severance agreements. Your attorney should review your severance agreements and releases prior to using them to avoid potential problems.

NOTICES



Federal Postings Recommended for All Employers

www.dol.gov/osbp/sbrefa/poster/matrix.htm

- Annual summary of occupational injury or illness (posted from February 1 to March)
- Check Your Withholding and Earned Income Credit
- Employee Polygraph Protection Act and federal plant closure ("WARN" Act)
- Equal Employment Opportunity is the Law – ESA and OFCCP
- Federal Minimum Wage – Fair Labor Standards Act
- Job Safety and Health Protection – Occupational Safety and Health Administration (OSHA notice)
- Nondiscrimination in employment posters, including federal EEO and age discrimination in employment information
- Notice Migrant and Seasonable Agricultural Worker Protection Act
- Notice to all Employees Working on Federal or Federally Financed Construction Projects (Davis Bacon Act)
- Notice to Employees Working on Government Contracts (Service Contracts Act)
- Notice to workers with disabilities - ADA (federal Americans with Disabilities Act)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Your Rights under the Family Medical Leave Act

STATE REQUIRED POSTINGS

Ohio Postings

http://das.ohio.gov/hrd/laborlawposters.html

- Election day poster
- Fair Employment
- Minimum wage (Updated 7/2006)
- Minor Labor Law
- Pay dates and place of payment
- Rebuttable Insurance Notice
- Safety and Health Protection on the Job
- Unemployment Insurance and disability benefits
- Workers' Compensation carrier or fact of self-insurance
- Workers' Compensation Fraud

App. D

Remember
Wood & Lamping can provide an HR audit to ensure compliance with all posting requirements.

Kentucky Postings

www.desky.org/des/pubs/publications.htm

- Child Labor Law – Teen Worker Hour Restrictions
- Equal Employment Opportunity
- Minimum Wage and Overtime
- Safety and Health Protection on the Job
- Workers' Compensation
- Workforce Development Act

Indiana Postings

www.in.gov/dwd/required_posters.html

- Child Labor Law
- Equal Employment Opportunity
- Equal Housing Opportunity
- Fair Housing Law
- Public Accommodations
- Safety & Health Protection on the Job
- Unemployment Insurance
- Wage and Hour Laws
- Wage Discrimination because of Sex
- Workers' Compensation

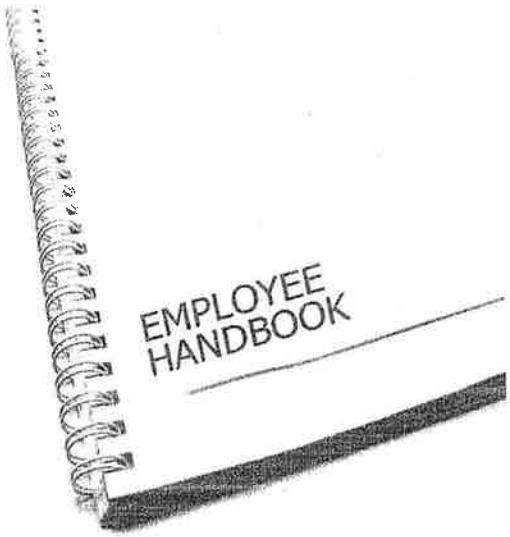
EMPLOYEE HANDBOOK

The Employee Handbook has become an extremely important document. Many employers find it useful to distribute written manuals outlining company policies and procedures to all employees. These may be simple, setting out only general company policy on working hours, termination, vacations, benefits (including a brief description of tax-qualified plans), and company holidays, or they may be lengthy and elaborate describing policies relating to all areas of employment law. Everything contained in an employee manual must be consistent with current company policy and stated in unambiguous terms. If you decide to use an employee manual, it should be reviewed with counsel annually and updated frequently.

The following principles should be kept in mind:

App. E

- Include a disclaimer with an employment-at-will statement:
  "This handbook is not a contract and should not be relied upon as a contract or promise of employment, hours of work, or benefits. I acknowledge that if hired, I will be an at will employee. I will be subject to dismissal or discipline without notice or cause at the discretion of the employer. I understand that no representative of the company, other than the president, has the authority to change the terms of at-will employment and that such change can occur only in a written employment contract."
- Avoid using terms such as "team, valuable asset, due process, fairness, equity, just cause" or any other language that might indicate the promise of equal or similar treatment;
- Do not use language that indicates job security or longevity of employment;
- Include your FMLA (Family Medical Leave Act of 1993) policy, if applicable;
- Include accurate descriptions of your vacation, sick leave and other personnel policies;
- Do not offer "probationary periods" of employment;
- Reiterate that the employer has the right to change employment practices and procedures at any time without prior notice to employees;
- Make only statements of fact regarding company policies or procedures. Do not make generalizations; and
- Do not borrow a handbook and use it without revisions. It should be tailored to your specific circumstances in order to offer you the most protection.



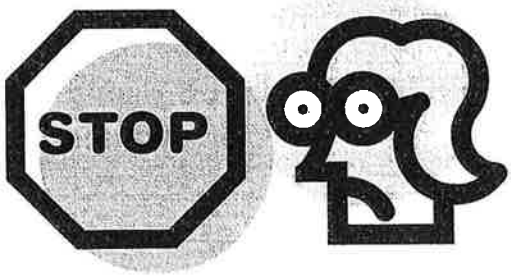
Some items you may also want to include:

- Welcome
- Hours of operation
- Pay and salaries - a clear statement regarding how pay is set and raised
- Benefits
- Drug/alcohol policy (details later)
- Sexual harassment policy (details later)
- Job attendance
- Discipline policy
- Employee safety
- Smoking policy
- Complaint procedures.

ANTI-HARASSMENT POLICIES

A written Anti-Harassment Policy should include:

- Statement that no form of harassment will be tolerated, including harassment because of race, age, national origin, and physical abilities or characteristics;
- Definition of sexual harassment with examples;
- Explanation of procedures for reporting incidences of sexual harassment;
- Explanation of procedures for investigation of incidents;
- Statement that retaliation for reporting of incidents will not be tolerated;
- Statement explaining the extent of any confidentiality regarding filed complaints.



IMPORTANT

- Training in Sexual Harassment Policy must be given to <u>all</u> personnel.
- Get a signed acknowledgment and receipt from <u>all</u> participants.

Obtain Legal Advice

The Employee Handbook has become one of the most important ways that employers can protect themselves from breach of contract and other claims by employees. Employers should consult with their attorney when creating or revising their Employee Handbook or establishing any other employment policies. Wood & Lamping works with clients every day to protect them from future litigation through the use of effective Employee Handbooks and clearly delineated employee policies.

DISCIPLINARY STEPS

Periodic evaluations can work hand in hand with disciplinary steps for employees whose evaluations are poor. This is a good way to warn an employee that he needs to improve or that his job is at risk. In many cases progressive discipline is appropriate, though not always possible for very small companies. Progressive discipline may not be appropriate for all infractions, but can go a long way toward demonstrating your fairness, even if you eventually have to fire the employee and the employee sues you. A properly used progressive discipline system establishes legitimate expectations of fairness and is good for employee morale. A progressive discipline plan includes verbal warning(s), written warning(s), counseling, suspension, and finally termination.

Remember
An at-will statement in your handbook is important!

Having such a policy can backfire if you do not make it clear that you reserve the right to fire employees at will and that your policy of progressive discipline is left to your discretion as an employer.

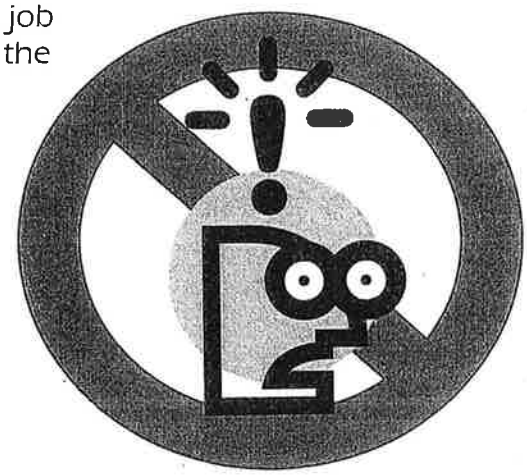
Progressive discipline policies should be simple and should not contain too many required steps. Such a policy should also be phrased in terms of guidelines and should include a stated exception for situations that, in the company's judgment, require more extreme or immediate action. Management should ensure that whatever policy is stated in the company manual is in fact used. Supervisors should be trained to follow whatever disciplinary policy is set and to impose penalties objectively. All disciplinary measures and actions, even oral warnings, should be noted in the employee's personnel file, and the employee should be advised that the action will be so recorded.

Meeting to discuss performance issues

- Prepare an agenda in advance
- State the problem, give specific instances and attach examples
- State your expectations for improvement and establish a timetable
- State consequences for failure
- Take notes
- Have a witness present
- Date, sign, give a copy to employee, and put a copy in the personnel file. If the employee refuses to sign the disciplinary notice, that fact should be noted with the supervisor's initials and the date of refusal in the presence of the employee.

Finally, if progressive discipline will not be used for managers or executive employees, that fact also should be clearly noted in your discipline policy.

EMPLOYEE TERMINATION



Ideally, the employee in question has had some feedback on job performance and disciplinary steps have been taken prior to the termination. A termination conversation should not occur suddenly or as a surprise.

In an at-will employment circumstance, all reasons for terminating an employee are lawful subject to certain exceptions. These exceptions are statutorily defined, and include (but are not limited to):

- Discrimination
- Retaliation
- Public Policy
- Employment Contracts
- Disability
- Pregnancy

However, well-documented and supportable reasons for termination will reduce the likelihood of litigation. These reasons may include:

- poor performance
- refusal to follow instructions
- excessive absenteeism, abuse of sick leave, habitual tardiness (caution: FMLA may apply)
- violation of company policies
- endangering health and safety of self or others
- dishonesty
- engaging in criminal activity
- possessing a weapon at work
- behaving violently at work
- drug or alcohol use at work
- gambling at work
- disclosing confidential information to others
- poor relationships with co-workers

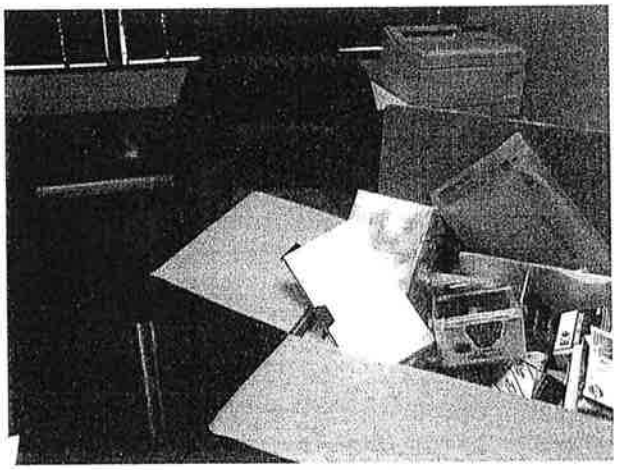
Always treat employees equally and consistently under similar circumstances.

Always treat employees equally and consistently under similar circumstances. You may create the appearance of unlawful discrimination if you allow some employees to engage in prohibited conduct and then claim good cause for firing others for the same reason.

EMPLOYEE TERMINATION PAPERWORK

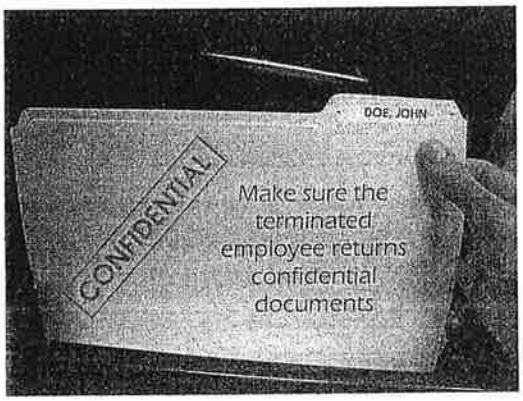
Proper paperwork for firing an employee typically includes the following:

- Letter describing any severance package you intend to offer.
    - Some employers require employees to sign a waiver of possible legal claims against them in order to qualify for the severance benefits. In this case you will need to also prepare a release for them to sign. You must also give the employee a reasonable time to decide whether to accept the package and sign the release;



- A severance package is only required if specifically provided in the employee's employment contract or the employer's handbook. However, there may be cases in which you may wish to offer severance pay and other benefits to help cushion the impact of a firing - and alleviate any ill will. This may especially be the case with long-term employees.
    - The Older Workers Benefit Protection Act requires special release language in a severance agreement if the departing employee is age 40 or older. Your legal counsel can assist with drafting an appropriate agreement.

- Termination letter which outlines the details of the firing such as date and time, arrangements for final paycheck and accrued sick or vacation time owed, health insurance benefits, return of company property, *etc.*; and,
- List of company property that must be returned. Think about such things as automobiles, computers, cell phones, pagers, pda's, manuals, other documents (especially confidential ones), keys, credit cards, uniforms, ID badges, parking permits, *etc.*



INFORMING THE EMPLOYEE

Informing the Employee of the Termination

Never say, "I know what you're going through," even if you do.

- Reserve a private neutral meeting room where the conversation will not be overseen or overheard by other employees;
- Have a manager or other authority figure handle the discharge in person with a witness present, preferably a human resources representative;
- Take notes;
- Go into the meeting understanding that the conversation will not be comfortable,
- Watch your tone of voice. Choose your words carefully, but make sure you convey a tone of cordiality and sympathy. Be compassionate but firm, honest but guarded. Never say, "I know what you're going through," even if you do.
- State the actual reason for termination;
- Treat the employee with respect;
- Seek the employee's feedback. Although it's important to keep the meeting short, encourage the employee to voice his feelings after the news has been delivered. If he doesn't answer immediately, count to 20 before moving on. The last thing you want is a reputation for being heartless. If recriminations result, however, take charge and cut him off; remember that you're terminating his employment, not engaging in a dialogue.
- Collect keys, files and any company property;
- Arrange for the employee to remove personal property;
- Take no unnecessary action to draw attention to the discharge proceedings; and,
- Always end the meeting on a positive note. Offer words of encouragement and confidence in the employee's future career. Stand and extend your hand to indicate the meeting has ended. And of course, thank the employee for his service. But don't be surprised or hurt if the employee declines to thank you for firing him.

Obtain Legal Advice

Every situation is different; therefore, employers should consult with their attorney before disciplining or discharging an employee. Wood & Lamping regularly consults with clients regarding problems with employees and/or the discharge of employees, advising them as to the best way to handle a particular situation in order to avoid potential future litigation.

REDUCTIONS IN FORCE

Sometimes it becomes necessary for a company to reduce its work force to cope with economic conditions. Care should be taken to be sure that the determination of which employees are to be laid off is done in a nondiscriminatory way. Appropriate factors to consider include the need for a particular job function, seniority, and objectively determined job performance. Once layoff candidates are identified, it is a good idea to review the list with counsel in order to spot any potential problems. Severance pay is not required, but if given, should be awarded on an equitable basis.

The ADEA has specific requirements in a Reduction in Force scenario to prevent disabled individuals from being adversely impacted by a Reduction in Force ("RIF"). Your legal counsel should be contacted to ensure adequate compliance with federal statutes.

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If an entire facility or a substantial portion of the company's operations are being shut down, the federal Plant Closing Act (the "WARN" Act) may apply, which requires that employees and the public be given 60 days advance notice of the shutdown.

Final Paycheck and Paperwork

Pay, including any benefits and unused vacation, should be delivered at the termination meeting. This is not only good policy, frequently it's the law.

- Ohio – no special statute
- Indiana - Whenever any employer separates any employee from the payroll, the unpaid wages or compensation of such employee shall become due and payable at regular pay day for pay period in which separation occurred. IC 22-2-9-2.
- Kentucky - Employees who have been discharged shall not be paid any more than 14 days after termination, or any later than the next pay period, whichever event takes place last. KRS 337.055.

In addition, the employee should be given the termination paperwork while still on the premises, and sign a receipt form. If the employee refuses to sign, the fact should be noted on the paperwork in the employee's presence.

COBRA AND HIPAA

Consolidated Omnibus Budget Reconciliation Act ("COBRA")
COBRA gives an employee covered by an employer's group health plan the right to stay covered when coverage is lost due to certain qualifying events. This continuation of coverage lasts between 18 and 36 months, depending on the events, and the employee pays for 100% of the premium cost. COBRA coverage must be elected within 60 days after coverage would otherwise end or from the date the election form was sent, whichever is later. The employer is required to continue the same coverage available to similarly situated employees. The cost can be up to the entire cost of coverage, plus a small (2%) additional charge for administration, as decided by the employer. Employers must maintain records pertaining to compliance with COBRA. COBRA applies to most employer group health plans but not to all of them. For example, it does not apply to plans of employers with fewer than 20 employees or to church plans. Many plans of small employers, however, are subject to State laws similar to COBRA.

More information about COBRA can be obtained through the Department of Labor on the Internet at www.dol.gov/dol/topic/health-plans/cobra.htm.

State Codes with "mini COBRA" laws similar to the federal requirements:

- Ohio: The Ohio statute governing continued health insurance coverage requires that employees must be terminated from employment involuntarily, have had three months of prior continuous coverage, and be eligible for Unemployment Compensation. R.C § 3923.38,
- Indiana: If you were denied coverage, the law provides "Comprehensive Health Insurance" for State residents. IC 27-8-10.
- Kentucky: A participant in a plan with 2-19 employees can qualify for 18 months of state continuation coverage. KRS 304.17A-005.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA")
HIPAA is a federal law that regulates employers of two or more individuals, and health insurance companies. HIPAA was enacted to provide for, among other things, improved portability and continuity of health insurance coverage in the group and individual insurance markets, and group health plan coverage provided in connection with employment. Employers must maintain records pertaining to compliance with HIPAA.

Some of the most significant of HIPAA's provisions include those that:

- limit exclusions for preexisting medical conditions;
- prohibit discrimination in enrollment and premiums against employees and their dependents based on health status; and,
- guarantee availability of health insurance coverage for small employers and renewability of health insurance coverage in both the small and large group markets.

For more information about HIPAA refer to the Internet address at www.hhs.gov/ocr/hipaa.

POST-TERMINATION INFORMATION

Unemployment Compensation

Some employees who are terminated are still entitled to unemployment benefits, while others are not. Determining who qualifies is not always easy. For example, employees who are terminated because of cutbacks or because they are not a good fit for a job are generally entitled to unemployment benefits, while those who are terminated because of serious violations of the company's policies are not. In addition, an employee who quits without good cause is not entitled to benefits. An employer may appeal a former employee's unemployment compensation award in certain situations. When deciding whether or not to appeal at any stage in this process, consider the time and energy needed, in addition to the fact that you will be guaranteed a disgruntled former employee.

Employment References

The subject of post-employment inquiries from prospective employers can be a touchy one. The key to protecting yourself is to stick to the facts and act in good faith. It is when you go beyond the facts or make statements out of a desire to harm the former employee or cover up the truth that you can get into trouble. You are always safe to simply not discuss an employee with prospective employers if you can't say something positive, or to only verify general information regarding their employment, such as date hired, position held, *etc.* If the employee's record is mixed, you may be able to discuss the positive aspects of their employment while alluding to the less positive aspects. Remember to stick with the facts and act in good faith and you should be fine.

If asked for a reference of a former employer, give only true, accurate and documented information.

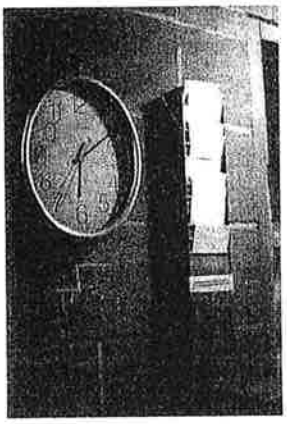
Ohio law protects employers who provide true and accurate information regarding a former employee. (R.C. 4113.71). Neither Indiana nor Kentucky has a similar statute.

Obtain Legal Advice

Each situation is unique and should be handled accordingly in order to avoid possible legal trouble from departing employees. Employers should consult with their attorney regarding their specific legal obligations to departing employees.

COMPENSATION AND BENEFITS

Classification of Employees and Traditional Compensation



Compensation

Federal and state wage and hour laws have similar provisions. Both statutes start from the premise that all employees who work more than their regularly scheduled number of hours must be paid at an overtime rate for the excess hours.

Overtime statutes mandating employers to pay time and a half for nonexempt employees:

- Ohio – R.C. 4111.03
- Indiana – IC 22-2-2-4
- Kentucky – KRS 337.285

The statutes then carve out a number of exceptions to these rules for employees who meet specific criteria. In general, employees whose jobs are executive, administrative, professional, or outside sales are exempt from wage and hour laws and need not be paid overtime. All other employees are covered and are termed "nonexempt."

Wood & Lamping can assist its clients in ensuring that all employees are properly classified and paid.

The definitions of what constitutes an executive, administrative, professional or outside sales position are complicated and rather specific. A Department of Labor audit of wage and hour practices can cause an employer to pay back overtime and penalties to a large group of misclassified employees.

Minimum Wage

Minimum wages per hour must be paid to all employees. The minimum wage is established both by federal and state statute. Numerous exceptions to the minimum wage laws exist. As of April 1, 2007, the following minimum wage rates are in effect:

- Federal – $5.15 under 29 U.S.C. § 206(a)(1)
- Ohio – $6.85 under the Constitution Art. II § 34(a), R.C. 4111.02
- Indiana – $5.15 under IC 22-2-2-4(g)
- Kentucky – follows the federal wage rate under KRS 337.275

Vacations, Holidays, Paid Sick Leave, Other Leaves, Benefits

Vacations, holidays, paid sick leave, other leaves, and benefits are not required by law, but once established by company policy, must be made available to all employees on a nondiscriminatory basis. Statutory holidays need not be observed by private employers, except that company observation of holidays must be made available to all employees of similar position.

FMLA

The Family Medical Leave Act of 1993 ("FMLA") allows covered employees to take reasonable leave time for medical reasons, the birth or adoption of children, and the care of children, parents and spouses. 29 CFR § 825.

The FMLA applies to all employers with fifty (50) or more employees within a 75 mile radius for each working day during each of twenty (20) or more calendar work weeks in the current or preceding twelve month period. Under the FMLA, an employee must have worked for the covered employer for at least twelve (12) months and have performed at least 1,250 hours of service with that employer during the previous twelve months to be eligible for Family Medical Leave. Employers should be aware that special eligibility provisions apply to civil service employees.

Under the FMLA, eligible employees may take up to twelve weeks of leave in a twelve-month period for any of the following:

- The birth of a child, an adoption, or placement of a foster child (regardless of whether the employee is the mother or father);
- In order to care for a spouse, child or parent if such person has a "serious health condition"; and,
- Due to a serious health condition that prevents the employee from performing the usual functions of his/her position.

A "serious health condition" is defined by the FMLA as an illness, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility, or continuing treatment by a health care provider. Employers can require employees to substitute accrued sick leave, personal leave or vacation time for the leave provided by the FMLA.

If a husband and wife are both eligible employees of the same employer, the total leave allowed for both may be limited to twelve weeks during any twelve month time period if the leave taken is for (1) the birth or adoption of a child, (2) the placement of a foster child, or (3) the care of a sick parent.

FMLA

If the condition for which leave is granted is foreseeable, employees must provide the employer with 30 days notice to be entitled to the protections of the FMLA. Employers can require that any request for leave is supported by a certification from a health care provider. In addition, where the requested leave is for the care of a child, parent or spouse with a serious health condition and is foreseeable, the employee must make a reasonable effort to schedule treatment so as not to disrupt the employer's business.

The FMLA only requires employers to grant unpaid leave. However, during any period in which an eligible employee takes leave, employers must maintain coverage under any group health plan for the duration of the leave, and may not change the coverage or conditions thereof. In limited circumstances, the employer may be able to recover any premiums it paid under a group health plan if the employee does not return to work.

Upon return from leave granted under the FMLA, employees are entitled to reinstatement to the position of employment previously held, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, the Act does provide an exception for certain highly compensated employees. Employers should seek the advice of counsel as to whether the exception applies in a particular situation.

Employees are entitled to any benefits which had accrued prior to the date upon which leave commenced, but are not entitled to the accrual of seniority or any other employment benefits during any period of leave.

Employers may not interfere with any employee's attempt to exercise his/her rights under the FMLA. It is also illegal for employers to discriminate against or discharge an employee because he/she has attempted to exercise his/her rights, or has filed or testified in any cause of action related to the rights granted by the FMLA.

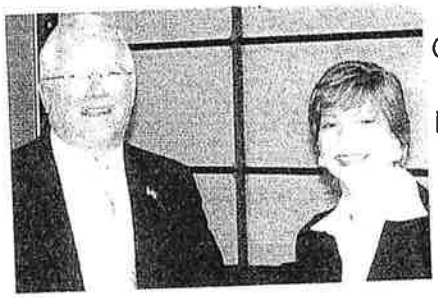
Obtain Legal Advice

There are many aspects of the FMLA that could not be covered here. Employers should consult with their attorney regarding the specifics of any situation involving the FMLA. Wood & Lamping's Employment Law attorneys regularly consult with clients regarding the Family Medical Leave Act and other laws that govern employers.

DISCRIMINATION

Claims of unlawful employment discrimination can arise even if company managers and supervisors do not intend to discriminate. All employment decisions and practices should be based on reasons that are job-related (such as employee attendance, production output, or work skills and experience) and necessary to your business. The best way to avoid creating a discriminatory inference is to make and document employment decisions based on consistent company practices and objective criteria. Employment decisions or practices based on protected status, disability, sex, pregnancy, age, or involvement in a legal process are presumptively unlawful.

Although discrimination claims may be asserted in lawsuits, claimants often file first with an appropriate state or federal agency. Antidiscrimination statutes require an employee to utilize and exhaust the agency proceeding first, before filing suit in court. The Equal Employment Opportunity Commission, or EEOC, is the federal agency based in Washington, D.C., with local (District) offices in all major cities. States with similar agencies include:



Ohio – Ohio Civil Rights Commission (OCRC) www.ocrc.ohio.gov
R.C. 4112 *et seq.*
Indiana – Indiana Civil Rights Commission (ICRC) www.in.gov/icrc
IC 22-9-5 *et seq.*
Kentucky – Kentucky Commission on Human Rights (KCHR)
www.kchr.ky.gov.
KRS 344 *et seq.*

Employment policies and practices having a "disparate impact" on protected groups in employment are presumptively unlawful even if the impact is unintended.

Title VII of the Civil Rights Act of 1964 42 U.S.C. §§ 2000e *et seq.*

The practice of fair and equal employment in the workplace is regulated by federal law. Title VII applies to private and public employers with 15 or more employees and prohibits employers from discriminating against employees on the basis of race, color, sex, pregnancy-related issues, national origin and religion.

DISCRIMINATION

Sexual Harassment

Sexual harassment is a form of sex discrimination and is unlawful. Sexual harassment may be found in implied and explicit verbal or physical conduct of a sexual nature if the purpose or effect of the conduct is one of two types:

- *quid pro quo*, or the conditioning of employment, job benefits, or opportunities upon sexual favors; or
- the creation of a hostile, intimidating, or offensive work environment.

Touching, jokes, posters, cartoons and unsolicited comments based on sex can create a hostile environment.

Employers can and should take proactive measures to avoid sexual harassment lawsuits. These include:

- Developing and implementing an anti-harassment policy;
- Having employees sign a statement that they have read and understand the policy;
- Identifying possible harassment situations;
- Investigating any harassment complaint;
- Interviewing the complainant, the alleged harasser and any witnesses;
- Assuring non-retaliation for complaints;
- Making decisions only after reviewing all reliable information;
- Issuing appropriate disciplinary action; and,
- Communicating conclusions to the affected employees.

An employer can be liable for sexual harassment committed by its employees, even if such acts are against stated company policy. It is prudent for an employer to tactfully and immediately investigate all situations that may involve or lead to sexual harassment, including any apparent "romances" between an employee and his or her supervisor. Any such investigation must be conducted carefully to guard against claims of discrimination, wrongful termination, defamation, or invasion of privacy. Early consultation with counsel is strongly recommended.

WOOD & LAMPING LLP

SINCE 1927

The attorneys in Wood & Lamping's Employment / Labor Law Group primarily represent management in labor, employment, immigration and workers' compensation matters. We service clients of all sizes, from large companies with multiple locations to companies with a single office and few employees. Wood & Lamping offers a broad range of services to meet your labor and employment needs:

- Employment Litigation. We represent small and large employers in class actions and individual cases in state and federal courts, arbitrations and mediations. Our areas of litigation experience include wrongful termination, sexual and other harassment, age discrimination, race and national origin discrimination, retaliation matters, implied and express contracts, trade secret theft, and disability discrimination.
- Litigation Prevention. Wood & Lamping strives to assist its clients in preventing costly litigation by offering training, conflict resolution consulting, and personal attention. Our employment attorneys provide manager and employee sexual harassment training, human resources policy review, workplace violence prevention plans, equal employment opportunity guidance, and employee exit policies to help our clients make the best legal decisions possible.
- Client Counseling. Our attorneys regularly advise employers on their employment policies and practices, including employment handbooks, drug policies, employment contracts, independent contractor agreements, terminations, severance plans and releases, Family and Medical Leave Act (FMLA), wage hour compliance, return to work issues, affirmative action plans, immigration issues, workers' compensation programs, trade/business secrets, non-compete agreements, plant closing, reduction-in-force, technology matters, privacy issues, Federal and State investigations, and Occupational Safety and Health issues.

WOOD & LAMPING LLP
CENTER AT 600 VINE
600 VINE STREET SUITE 2500
CINCINNATI, OHIO 45202
513-852-6000
WWW.WOODLAMPING.COM

WOOD, LAMPING
& LEHNER LLP
208 WALNUT STREET
LAWRENCEBURG, IN 47025
812-537-2375
WWW.WOODLAMPING.COM

Stor All
253 Womstead Drive
Grayson, KY 41143
Phone Number: (606) 474-6601 ext. 103
Fax Number: (606) 474-0222

Email: lorifoor@hughes.net

FAX TRANSMITTAL FORM

To: Denise Newsome
From: Lori Whiteside
Date Sent: 12/9/08
Phone: 513-680-2922
Number of Pages: 3
Fax: 513-852-6087

Message:

See attached letter. I look forward to hearing from you.

Lori

EXHIBIT 21

TELEPHONE LIST

NAME	EMP.NO.	EXT.	FAX NO.	SECRETARY	EXT.
Armbruster, Ami M.	168	6017	419-6417		
Bender, Edward D.	041	6002	419-6402	Sharon Flood	6046
Benjamin, Roxanne M.	125	6038	419-6438		
Berninger, Paul R.	013	6088	419-6488	Sharon Flood	6046
Bowling, Beverly A.	102	0	N/A		
Breed, Thomas Jr.	037	6074	419-6476	Denise Newsome	6053
Brue, Jennifer M.	259	6048	419-6448		
Burrell, Peter M.	051	6096	419-6496	Sherry Kellison	6084
Coutinho, Rayan F.	085	6030	419-6430	Hope Kortanek	6015
Daniels, Rebecca J.	136	6011	419-6411		
Davis, Gary J.	035	6085	419-6485	Hope Kortanek	6015
Eder, William H., Jr.	008	6025	419-6425		
Eilers, John W.	055	6079	419-6479	Janet Kemper-Hull	6050
Engel, Heather L.	104	6022	419-6422		
Flood, Sharon A.	105	6046	419-6446		
Flottman, Anne B.	27	6094	419-6494		
Forbes, Jeffrey D.	058	6092	419-6492		
Frank, Kevin K.	075	6004	419-6404	Janet Kemper-Hull	6050
Frankel, Jan M.	029	6045	419-6445	Kathy Richey	6081
Garry, Timothy A., Jr.	061	6035	419-6435	Beci Daniels	6011
Gillan, Brian P.	034	6055	419-6455	Beci Daniels	6011
Griffith, Andrea M.	129	6006	419-6406	Beci Daniels	6011
Hall, Suzanne M.	*301*	*6059*	*419-6459*		
Hamilton, Juanita L.	106	6014	419-6414		
Harrison, James B.	039	6047	419-6447	Jennifer Brue	6048
Harrison, Jonathan D.	990	6029	N/A		
Heidkamp, Rose A.	163	6064	419-6464		
Hoffman, Meredith R.	101	6016	419-6416		
Horwitz, Elizabeth A.	028	6032	419-6432	Kathy Ritchey	6081
Kellison, Sherry M.	174	6084	419-6484		
Kemper-Hull, Janet	114	6050	419-6450		
Knarr, Judy I.	161	6089	419-6489		
Knauer, Brian M.	131	6042	419-6442		
Korbee, Harold G.	33	6082	419-6482	Juanita Hamilton	6014
Kortanek, Hope R.	112	6015	419-6415		
Lehner, Lisa deHart	*045*	*6013/4013*	*419-6413*	*Suzanne Hall*	*6059*
Lewis, Mary J.	072	6061	419-6461	Beci Daniels	6011
Malloy, Robert P.	021	6043	419-6443	Janet Kemper-Hull	6050
McGuire, Joel F.	087	6003	419-6403	Sharon Flood	6046
McSherry, Jeffrey P.	046	6008	419-6408	Sherry Kellison	6084
Menker, David J.	142	6010	419-6410		
Menninger, Hank E., Jr.	019	6033	419-6433	Diane Werner	6005
Menninger, Michael J.	086	6077	419-6477	Diane Werner	6005
Milliken, Mary M.	134	6009	419-6409		
Myers, Marianne E.	126	6020	419-6420		
Newsome, V. Denise	109	6053	419-6453		
Niehaus, Roccina S.	057	6062	419-6462	Judy Knarr	6089
Oster, E. Wednesday	084	6071	419-6471		
Pannos, Lisa K.	146	6018	419-6418		
Parsley, Sharon S.	89	6012	419-6412	Denise Newsome	6053
Pikna, Raymond J., Jr.	060	6039	419-6439	Diane Werner	6005
Pugh, Julie R.	088	6007	419-6407	Kathy Richey	6081
Rammes, Lisa M.	050	6051	419-6451	Jennifer Brue	6048
Reckman, Mark S.	030	6054	419-6454	Hope Kortanek	6015
Reckman, Robert F.	005	6019	419-6419	Sharon Flood	6046
Richey, Kathy M.	118	6081	419-6481		
Richshafer, Howard L.	25	6027	419-6427	Juanita Hamilton	6014
Rollman, Jeffrey M.	023	6057	419-6457		
Schmidt, C.J., III	048	6052	419-6452	Juanita Hamilton	6014
Schneider, Kenneth J.	006	6021	419-6421	Judy Knarr	6089
Shafer, Laura K.	127	6036	419-6436		
Sherman, Marcia V.	128	6023	419-6423		
Vogelsang, Stacey L.	121	6074	419-6474		
Walsh, Heather D.	90	6075	419-6475		
Weber, Arthur D., Jr.	031	6097	419-6497	Sharon Flood	6046
Werner, Dianna P.	113	6005	419-6405		
Westendorf, Douglas L.	062	6093	419-6493	Kathy Richey	6081
Woebkenberg, Thomas M.	036	6044	419-6444	Judy Knarr	6089

Indiana Number

CONFERENCE ROOMS

Lamping	6080*
Legacy	6083
Mt. Airy	6031
Mt. Auburn	6109
Wood	6070**

*Must be plugged in as needed
**Must be plugged in as follows:
Red jack – regular telephone
Yellow jack – conference telephone

MISCELLANEOUS NUMBERS

Copy Room /East	6104
Copy Room/West	6068
Fax Machine	852-6087
Lobby	No telephone
Lunch Room	6099
Mail Room	6107
Page	Dial #30

MISCELLANEOUS INFORMATION

W&L is a partnership, ID #31-0494955
W&L Website: www.woodlamping.com
Indiana Phone: (812) 537-2375
Indiana Fax (812) 537-2368

BUILDING MANAGEMENT

Hertz Properties Garage 421-0063
Hertz Prop. Offices/Security 241-6006
Hertz Properties Fax 241-9242

3/31/2008

EXHIBIT 22

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

February 6, 2009

VIA U.S. MAIL & FACSIMILE: (513) 579-1418
Schwartz Manes Ruby & Slovin, LPA
Attn: David Meranus, Esq.
2900 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202

RE: ***Stor-All Alfred, LLC v. Denise V. Newsome;*** **Hamilton County Municipal Court-Hamilton County, Ohio; Case No. 09CV01690**

Dear Mr. Meranus:

This will confirm the Court hearing on today in regards to the above referenced matter. As you know, this case has been transferred to the Common Pleas Court as my counterclaim exceeds the Municipal Court's jurisdiction.

This will confirm that during the signing of the attached *Magistrate's Decision*, you brought to my attention **your knowledge of legal actions** brought by me in New Orleans, Louisiana. Information I believe a reasonable mind will conclude has no bearing on the above referenced lawsuit. *I gather your bringing of this information was done to* ***blackmail*** *and/or* ***extort*** *monies from me* – thinking I was going to drop my Counter-Claim against your client. I gathered from the way you presented the information to me, you that I was going to back down. To your disappointment, I advised you that I had a feeling that there were illegal motives behind the filing of this lawsuit on behalf of your client (Stor-All Alfred, LLC). It also appears your *arrogance* got the best of you. At least I now have additional information as to the reason and ill motives behind you and/or your client contacting Wood & Lamping and the reasons underlying my termination (along with the Conflict of Interest – Thomas J. Breed's relationship with Schwartz Manes Ruby & Slovin – my working directly with Breed at Wood & Lamping and the conflict that would arise if Wood & Lamping were to represent me in this matter. So to appease you and your client, my employment with Wood & Lamping was terminated and I was denied rights under the Family & Medical Leave Act, etc.) SHAME, SHAME, SHAME!!! !!!

I advised you that I was just up in Washington, D.C. in December 2008 addressing concerns of such unlawful/criminal acts committed by you and/or your client. ***This stalking, harassing, etc. me from state-to-state, job-to-job (CONTACTING MY EMPLOYER),*** *is clearly prohibited by laws/statutes and clearly in violation of my Constitutional Rights (Ohio and United States), Civil Rights, Landlord & Tenant Act, etc.* Thanks for confirming my beliefs as to Wood & Lamping's motives. This is well deserved information.

While you seemed to be comfortable in advising me that it is the insurance company that is going to pay the liability, what you failed to understand is that the divulgence of your knowledge of matters regarding me in New Orleans, Louisiana opens the doors for additional claims of and against you, your law firm (Schwartz Manes Ruby & Slovin), Stor-All Alfred, LLC, Wood & Lamping and who knows who else. I THANK YOU, THANK YOU, THANK YOU. . . . . for such good news. I shared during my trip to Washington, D.C. continued concerns of conspiracies to destroy my life, liberties and pursuit of happiness, etc. and such willful, malicious and wanton acts as that committed by you and others to continue to cause me irreparable harm/injury.

My termination from employment with Wood & Lamping, LLP, your acknowledgment in Court today in efforts of extorting and/or blackmailing me, (along with other reasons known to you) etc. is clearly UNACCEPTABLE!!!! Your acts which not only violate the Ohio Rules of Civil Procedure, but that of the Ohio Code of Professional Conduct and/or other statutes/laws governing such matters. You are aware that I have filed the appropriate Motion for Sanctions and through this motion am I not only seeking sanctions but, if possible, your disbarment. When you use your profession to interfere with the life of another for unlawful/illegal gain; moreover, for **racial** and/or **prejudicial** reasons, I do not believe as an *"officer of the court"* that you uphold neither the integrity nor the respect of the Court and/or judicial process. The criminal/civil wrongs you, your client and others have committed against me have cause irreparable injury/harm and such acts which cannot go unaddressed.

Again, **THANK YOU, THANK YOU, THANK YOU, THANK YOU, THANK YOU.** . . . You know this is news/information that needs to be shared. This was the nail I needed to expose and shine the light on such criminal/civil wrong. Did you and others in cohort with you not understand the message sent on November 4, 2008 (Presidential Election) – **CHANGE**, **NOT MORE OF THE SAME!!!!**

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Denise Newsome

Denise Newsome

cc: Paul R. Berninger, Esq. (Wood & Lamping- via facsimile & email)
Andrea Griffith (Wood & Lamping – via email)
C. J. Schmidt, Esq. (Wood & Lamping-via email)
U.S. Legislature/Congress (Via Facsimile & Mail)
Personal File

Hamilton County Municipal Court
HAMILTON COUNTY, OHIO

Entered

IMAGE

STOR ALL ALFRED LLC VS. DENISE V NEWSOME

CASE #: 09CV01690 G2

MAGISTRATE'S DECISION

☐ E023 Case called: Trial had: Defendant(s) found guilty as charged. Plaintiff is granted restitution of the premises as described in the statement of claim, plus costs. The claim for money is continued for the filing of an answer or default judgment.

☐ E025 The first cause of action is dismissed without prejudice at Plaintiff's cost. The claim for money is continued for answer or default judgment.

☐ E028 Case called: Trial had: Defendant(s) found guilty as charged. Plaintiff is granted restitution of the premises as described in the statement of claim, plus costs.

☐ E126 For good cause shown and by consent of the court, this case is continued to _____.

☐ E135 For good cause shown and by consent of the court, this case is continued to _____. If Plaintiff prevails, the magistrate's decision shall be submitted to the court _____ days thereafter.

☐ E005 This action is dismissed without prejudice at the Plaintiff's cost.

☐ E073 Case called: Trial had: Judgment for the defendant, case dismissed.

☐ E074 Case called: Trial had: Judgment for the defendant. First cause of action is dismissed; the claim for money is continued for answer or default judgment.

☐ E136 Case called: Trial had: Defendant(s) found guilty as charged. Plaintiff is granted restitution of the premises as described in the statement of claim, plus costs. The magistrate's decision shall be submitted to the court _____ because _____.

☐ E029 Bond in this action is set at $_____ payable _____ with an additional amount of $_____ due on the _____ of each month beginning _____ during pendency of this action.

☑ MISC This case is hereby transferred to the Common Pleas Court as counterclaim exceeds jurisdiction of this Court

date 02/06/2009

plaintiff/attorney

defendant/attorney

ORDER:
Notice Mailed
To Parties
On: _____
Int: _____

Magistrate

THE MAGISTRATE'S DECISION IS ADOPTED.

Judge

CMSR5201

TRANSMISSION VERIFICATION REPORT

TIME : 02/06/2009 12:10
NAME : FEDEX KINKO'S 0125
FAX : 513--241-0584
TEL : 5132413366
SER.# : 000J7N205312

DATE,TIME	02/06 12:09
FAX NO./NAME	5135791418
DURATION	00:01:10
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

TIME : 02/07/2009 16:33
NAME : FEDEX KINKO'S #2138
FAX : 5139610138
TEL : 5139610104
SER.# : 000J7N199268

DATE,TIME	02/07 16:32
FAX NO./NAME	5134196488
DURATION	00:01:41
PAGE(S)	03
RESULT	OK
MODE	STANDARD

DENISE NEWSOME

Mailing: Post Office Box 14731
Cincinnati, Ohio 45250
Phone: 513/680-2922

February 6, 2009

VIA U.S. MAIL & FACSIMILE: (513) 579-1418
Schwartz Manes Ruby & Slovin, LPA
Attn: David Meranus, Esq.
2900 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202

RE: *Stor-All Alfred, LLC v. Denise V. Newsome;* **Hamilton County Municipal Court-Hamilton County, Ohio; Case No. 09CV01690**

Dear Mr. Meranus:

This will confirm the Court hearing on today in regards to the above referenced matter. As you know, this case has been transferred to the Common Pleas Court as my counterclaim exceeds the Municipal Court's jurisdiction.

This will confirm that during the signing of the attached *Magistrate's Decision*, you brought to my attention **your knowledge of legal actions** brought by me in New Orleans, Louisiana. Information I believe a reasonable mind will conclude has no bearing on the above referenced lawsuit. *I gather your bringing of this information was done to* ***blackmail*** *and/or* ***extort*** *monies from me* – thinking I was going to drop my Counter-Claim against your client. I gathered from the way you presented the information to me, you that I was going to back down. To your disappointment, I advised you that I had a feeling that there were illegal motives behind the filing of this lawsuit on behalf of your client (Stor-All Alfred, LLC). It also appears your *arrogance* got the best of you. At least I now have additional information as to the reason and ill motives behind you and/or your client contacting Wood & Lamping and the reasons underlying my [illegible]

Denise Newsome

From: Denise Newsome
Sent: Thursday, April 19, 2007 9:08 AM
To: Andrea M. Griffith
Subject: CONCERNS REGARDING BRIAN P. GILLAN
Importance: High

Andrea:

Just to let you know that I am thinking about talking to Bill Ellis when he returns regarding BPG.
While I have been patient, I find that his behavior is increasing annoying, badgering and harassing. I shared with you from his first e-mail the motives for his actions.
I was told prior to going on vacation in March to be patient. It is now April and his behavior is still the same. Providing ***false*** deadlines or urgency of some and then constantly and repeatedly badgering regarding them. The discovery that BPG mentioned in his e-mail on last week and needing to be done by Monday (4-16-07) was served on him on or about **February 23, 2007**. So I would think he knew as early as February that he had a deadline. Then I was given the impression that it had to go out Monday; however, did not get it until yesterday. Now the constant notes providing time restraints. Along with attacks on my appointments along with implication that they are excessive - when they are not.

While I am aware that Kathy and Hope worked with him in the past, they are not now. My concerns is the reason and/or the difference between their situation and mine. It is apparent that I am being required to work with BPG when he has made it clear it was not working out, so why am I being subjected to his treatment and changes were made for Kathy and Hope, yet not I.

He has come to collect his files (approximately a month) in advance. Collection coming after he had sent the e-mail on how he wanted his files handled. He has a copier/printer closer to his end of the hallway; however, elects to walk this far. Moving documents around on my desk - placing his first.

I really need to know how this is going to be handled in that I have some serious concerns. I have shared my concerns that I find his behavior hostile and efforts taken by him to provoke and altercation. Still I am working with him and he is allowed to continue to do what he is doing. As I shared, I believe he has a motive and shared such motive with you. Furthermore, as I shared his actions and behavior is not right, neither is it fair.

Please let me know something. As I mentioned, I intend to discuss this matter with Bill when he returns, because it is affecting my ability to perform my tasks and the request of other attorneys.

Sincerely,

Denise Newsome
dnewsome@woodlamping.com

301 F.3d 227
301 F.3d 227, 89 Fair Empl.Prac.Cas. (BNA) 986, 83 Empl. Prac. Dec. P 41,131
(Cite as: 301 F.3d 227)

H
Briefs and Other Related Documents

United States Court of Appeals,
Fifth Circuit.
Vogel Denise NEWSOME, Plaintiff-Appellant,
v.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; Patricia T. Bivins; Marvin L. Hicks; Sharon C. Williams, Defendants-Appellees.
No. 01-30817
Summary Calendar.

April 22, 2002.

Employee appealed from a decision of the United States District Court for the Eastern District of Louisiana, A.J. McNamara, Chief Judge, which dismissed her complaint against the Equal Employment Opportunity Commission (EEOC) and three of its employees for failure to state a claim upon which relief can be granted and for frivolity. The Court of Appeals held that: (1) employee did not have a "clear right" to a writ of mandamus to compel EEOC to further investigate her charge; (2) *in forma pauperis* complaint lacked an arguable basis in law, and was thus subject to dismissal as frivolous; (3) appeal from dismissal of certain claims, which were virtually identical to those rejected in plaintiff's prior lawsuit, was frivolous.

Dismissed.

West Headnotes

[1] United States Magistrates 394 ⚿13

394 United States Magistrates
394k12 Jurisdiction and Authority; Additional Authority
394k13 k. Consent. Most Cited Cases
Consent of the parties was not required for reference to magistrate of motion to dismiss for failure to state a claim. 28 U.S.C.A. § 636(b)(1)(B).

[2] Federal Courts 170B ⚿11

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk10 Issuance of Writs
170Bk11 k. Mandamus. Most Cited Cases

Federal Courts 170B ⚿813

170B Federal Courts
170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk813 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases
District court's decision not to exercise jurisdiction under the mandamus statute for federal officers is a discretionary one, which is reviewed for abuse of discretion. 28 U.S.C.A. § 1361.

[3] Mandamus 250 ⇐72

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k72 k. Matters of Discretion. Most Cited Cases
Mandamus is not available to review discretionary acts of agency officials. 28 U.S.C.A. § 1361.

[4] Mandamus 250 ⇐1

250 Mandamus
250I Nature and Grounds in General
250k1 k. Nature and Scope of Remedy in General. Most Cited Cases
In order to be granted a writ of mandamus, a plaintiff must show a clear right to the relief sought, a clear duty by the defendant to do the particular act, and that no other adequate remedy is available. 28 U.S.C.A. § 1361.

[5] Mandamus 250 ⇐3(4)

250 Mandamus
250I Nature and Grounds in General
250k3 Existence and Adequacy of Other Remedy in General
250k3(2) Remedy at Law
250k3(4) k. Acts and Proceedings of Public Officers and Boards and Municipalities in General. Most Cited Cases

Mandamus 250 ⇐73(1)

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k73 Specific Acts
250k73(1) k. In General. Most Cited Cases
Because the nature and extent of an Equal Employment Opportunity Commission (EEOC) investigation into a discrimination claim was a matter within the discretion of the agency, employee did not have a "clear right" to a writ of mandamus to compel EEOC to further investigate her charge; furthermore, employee was not entitled to the writ because she had another adequate remedy available, i.e. she could file suit in court against her employer. 28 U.S.C.A. § 1361.

[6] Federal Courts 170B ⇐813

170B Federal Courts

170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk813 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases
Determination that an *in forma pauperis* complaint is frivolous is reviewed for abuse of discretion. 28 U.S.C.A. § 1915(e)(2)(B).

[7] Federal Civil Procedure 170A ⚿2734

170A Federal Civil Procedure
170AXIX Fees and Costs
170Ak2732 Deposit or Security
170Ak2734 k. Forma Pauperis Proceedings. Most Cited Cases
In forma pauperis complaint lacks an arguable basis in law, and is thus subject to dismissal as frivolous, if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist. 28 U.S.C.A. § 1915(e)(2)(B).

[8] Civil Rights 78 ⚿1527

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1526 Persons Liable
78k1527 k. In General. Most Cited Cases
(Formerly 78k370.1)

Federal Civil Procedure 170A ⚿2734

170A Federal Civil Procedure
170AXIX Fees and Costs
170Ak2732 Deposit or Security
170Ak2734 k. Forma Pauperis Proceedings. Most Cited Cases
Title VII did not confer on a charging party a right of action against Equal Employment Opportunity Commission (EEOC), and therefore such claim raised in an *in forma pauperis* complaint was frivolous. Civil Rights Act of 1964, § 706, as amended, 42 U.S.C.A. § 2000e-5; 28 U.S.C.A. § 1915(e)(2)(B).

[9] Civil Rights 78 ⚿1712

78 Civil Rights
78V State and Local Remedies
78k1705 State or Local Administrative Agencies and Proceedings
78k1712 k. Judicial Review and Enforcement of Administrative Decisions. Most Cited Cases
(Formerly 78k447)
Equal Employment Opportunity Commission's (EEOC) dismissal of charging party's complaint was not a final agency action subject to review under the Administrative Procedures Act (APA); dismissal did not determine charging party's rights or have legal consequences, but simply ended the agency's investigation of her charge, and notified charging party of her right to pursue her claim in court. 5 U.S.C.A. §§ 551(13), 704.

[10] Conspiracy 91 ⚿18

91 Conspiracy
91I Civil Liability
91I(B) Actions
91k18 k. Pleading. Most Cited Cases
Charging party's vague allegations of a "personal business relationship" between employer and Equal Employment Opportunity Commission (EEOC), which did not find in her favor on her charge, were not sufficient to allege a conspiracy in violation of § 1985(3); there were no allegations that conspirators were motivated by her race. 42 U.S.C.A. § 1985(3).

[11] Constitutional Law 92 ⚿1073

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1073 k. Fourteenth Amendment in General. Most Cited Cases
(Formerly 92k82(5))
Fourteenth Amendment applied only to state actors, not federal actors, and therefore Fourteenth Amendment claim could not be brought against Equal Employment Opportunity Commission (EEOC) or EEOC officials. U.S.C.A. Const.Amend. 14.

[12] United States 393 ⚿125(9)

393 United States
393IX Actions
393k125 Liability and Consent of United States to Be Sued
393k125(9) k. Nature of Action in General. Most Cited Cases
United States and its officials are entitled to sovereign immunity for civil rights claims because the United States has not consented to suit under the civil rights statutes.

[13] Federal Courts 170B ⚿726

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(I) Dismissal, Withdrawal or Abandonment
170Bk726 k. Proceedings Frivolous or for Delay. Most Cited Cases
Appeal from dismissal of certain claims, which were virtually identical to those rejected in plaintiff's prior lawsuit, was frivolous.
***229** Vogel Denise Newsome, Jackson, MS, pro se.

Susan Lisabeth Starr, E.E.O.C., Washington, DC, for Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before JOLLY, DeMOSS and STEWART, Circuit Judges.

PER CURIAM:

Vogel Denise Newsome ("Newsome") appeals the district court's dismissal of her complaint against the Equal Employment Opportunity Commission and three of its employees (collectively, "EEOC"), for failure to state a claim upon which relief can be granted and for frivolity. Finding that this appeal is frivolous, we DISMISS the appeal and place Newsome on NOTICE that future frivolous appeals may subject her to sanctions.

I

Newsome was an employee of Christian Health Ministries ("CHM") for approximately one month. CHM fired her, and she filed a charge of discrimination with the EEOC, alleging that she had been discriminated against based on her religion and retaliated against in violation of Title VII of the Civil Rights Act of 1964. The EEOC sent a letter to CHM asking them to respond to the charge. CHM responded to the request by providing documentation that it is a religious organization that is exempt from the religious discrimination provisions of Title VII, pursuant to 42 U.S.C. § 2000e-1(a).[FN1] In a "Dismissal and Notice of Rights" sent to Newsome, the EEOC checked a box indicating that it was dismissing Newsome's charge because "[t]he Respondent [CHM] employs less *230 than the required number of employees or is not otherwise covered by the statutes." In the Dismissal, the EEOC also notified Newsome that she had a right to bring suit in state or federal court against CHM within ninety days of her receipt of the notice.

FN1. The statute provides:

> This subchapter shall not apply to ... a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.
>
> 42 U.S.C. § 2000e-1(a).

Newsome filed a *pro se* "Writ of Mandamus," which we treat as a petition, in federal district court against the EEOC and three of its employees. She sought to compel them to further investigate her charge, and to enjoin them "from interfering and depriving her of rights under Title VII ... and ... the 14th Amendment to the U.S. Constitution." She alleged that the officials had failed to perform their duties to her and sought review of their actions under the Administrative Procedures Act, 5 U.S.C. § 702. She also alleged that the EEOC and CHM were engaged in a conspiracy to violate her civil rights under 42 U.S.C. § 1985.

The district court granted Newsome's motion to proceed *in forma pauperis*, and referred the case to a magistrate to handle all pre-trial matters "upon consent of the parties" under 28 U.S.C. § 636(c). The EEOC filed a motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim. The district court referred this motion to the magistrate under 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended that Newsome's claims be dismissed under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) (" § 1915") for frivolity and for failure to state a claim upon which relief could be granted. The district court, "after considering the complaint, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the objections to the Magistrate Judge's Report and Recommendation filed by the plaintiff," adopted the magistrate judge's report and recommendation. Newsome then filed a "Motion to Stay Proceedings to Enforce a Judgment; Motion to Amend Judgment; and Motion to Set Aside Judgment," which the district court denied. Newsome

timely appealed.

II

In her *pro se* brief, Newsome argues that this matter was improperly referred to a magistrate judge without her consent. The first order of reference was to a magistrate judge to "handle all pre-trial matters, including trial and pre-trial proceedings upon consent of the parties pursuant to 28 U.S.C. § 636(c)." Neither party objected at the time, though it appears that neither party specifically consented, either. The only action taken under this order of reference was the issuance of a summons to the defendant. After the defendants moved to dismiss for failure to state a claim, the district court referred this motion to a magistrate judge under § 636(b)(1)(B). After the magistrate judge issued her report and recommendations, in Newsome's objections to the magistrate's report and recommendations, Newsome argued that the reference to the magistrate was improperly made without the parties' consent, as required by § 636(c), and raises this argument again on appeal.

[1] The reference to the magistrate of the defendants' motion to dismiss for failure to state a claim was made under § 636(b)(1)(B). The consent of the parties is not required under this section. This reference was not improper. The prior reference under § 636(c) did require the consent of the parties. To the extent that Newsome did not consent to this reference, any error that resulted was harmless. The only action taken under this reference was the issuance of a summons to the defendants, which did not prejudice Newsome in any way.

*231 III

Newsome also sought a writ of mandamus under 28 U.S.C. § 1361 to compel the EEOC to reopen her case, investigate her charge further and ask particular questions. The district court denied this writ, and dismissed the complaint.

[2] Mandamus is awarded only "in the exercise of a sound judicial discretion." *Duncan Townsite Co. v. Lane,* 245 U.S. 308, 311, 38 S.Ct. 99, 62 L.Ed. 309 (1917). "A district court's decision not to exercise jurisdiction under the mandamus statute for federal officers, 28 U.S.C. § 1361, is a discretionary one," which is reviewed for abuse of discretion. *Franchi v. Manbeck,* 972 F.2d 1283, 1289 (Fed.Cir.1992).

[3][4] A writ of mandamus is an "extraordinary remedy." *Adams v. Georgia Gulf Corp.,* 237 F.3d 538, 542 (5th Cir.2001). "Mandamus is not available to review discretionary acts of agency officials." *Green v. Heckler,* 742 F.2d 237, 241 (5th Cir.1984). Further, in order to be granted a writ of mandamus, "[a] plaintiff must show a clear right to the relief sought, a clear duty by the defendant to do the particular act, and that no other adequate remedy is available." *U.S. v. O'Neil,* 767 F.2d 1111, 1112.(5th Cir.1985) (quoting *Green,* 742 F.2d at 241).

[5] Here, although Title VII provides that the EEOC "shall make an investigation" of a charge filed, *see*42 U.S.C. § 2000e-5(b), it does not prescribe the manner for doing so. The EEOC did investigate Newsome's charge, though not to her satisfaction. However, "the nature and extent of an EEOC investigation into a discrimination claim is a matter within the discretion of that agency." *E.E.O.C. v. Keco Industries, Inc.,* 748 F.2d 1097, 1100 (6th Cir.1984) (citing *E.E.O.C. v. St. Anne's Hospital,* 664 F.2d 128 (7th Cir.1981); *E.E.O.C. v. General Electric Co.,* 532 F.2d 359 (4th Cir.1976); *E.E.O.C. v. Chicago Miniature Lamp Works,* 526 F.Supp. 974 (N.D.Ill.1981)). Because the nature and extent of the investigation are discretionary, Newsome does not have a "clear right" to a writ of mandamus.

Newsome also is not entitled to the writ because she has another adequate remedy available, i.e. she could file suit in court against her employer. For these reasons, the district court did not abuse its discretion in denying the writ.

IV

[6][7] The district court also dismissed Newsome's claims under Title VII, the APA, § 1985, and the Fourteenth Amendment. The court dismissed these claims under § 1915(e)(2)(B)(i) and (ii) for frivolity and failure to state a claim, respectively. We review a determination that a case is frivolous under § 1915(e)(2)(B)(i) for abuse of discretion. *Siglar v. Hightower,* 112 F.3d 191, 193 (5th Cir.1997). Newsome's *in forma pauperis* complaint "may be dismissed as frivolous if it lacks an arguable basis in law or fact. A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Id.* (citations omitted). We review a dismissal for failure to state a claim under § 1915(e)(B)(ii) *de novo,* applying the same standard used to review a dismissal pursuant to Fed.R.Civ.P. 12(b)(6). *Moore v. Carwell,* 168 F.3d 234, 236 (5th Cir.1999) (citation omitted). We must assume that the plaintiff's factual allegations are true, and may uphold the dismissal of Newsome's claims only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations. *Id.* (citations omitted).

***232** [8] First we address Newsome's Title VII claims. Newsome alleges that the EEOC deprived her of her rights under Title VII. To the extent that Newsome is attempting to invoke Title VII as a jurisdictional basis for suing the EEOC, she cannot do so. We have held that Title VII does not confer on a charging party a right of action against the EEOC. *See Gibson v. Missouri Pac. R.R.,* 579 F.2d 890, 891 (5th Cir.1978) ("Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-5 et seq., confers no right of action against the enforcement agency. Nothing done or omitted by EEOC affected [plaintiff's] rights. Their adverse determination could not have precluded, and in fact did not preclude, the present suit by [plaintiff]. The relief sought of further investigation or action by the agency would be meaningless.") Therefore it was proper for the district court to dismiss Newsome's Title VII claims.

[9] Newsome also sought relief under the APA. The APA allows for judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court...." 5 U.S.C. § 704. The APA defines "agency action" to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). The Supreme Court has addressed the meaning of "final agency action":

> As a general matter, two conditions must be satisfied for agency action to be "final": First, the action must mark the "consummation" of the agency's decisionmaking process-it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow."

Bennett v. Spear, 520 U.S. 154, 177, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997) (citations omitted). The EEOC's dismissal of Newsome's complaint did not determine her rights or have legal consequences. It simply ended the agency's investigation of her charge, and notified Newsome of her right to pursue her claim in court. Any final determination would occur in court. Therefore, there is no final agency action here, and no review available under the APA.

[10] Newsome also alleged that the EEOC and CHM engaged in a conspiracy to deprive her of her civil rights, in violation of 42 U.S.C. § 1985(3). "To state a claim under § 1985(3), Appellant must allege that two or more persons conspired to directly, or indirectly, deprive him of the equal protection of the laws or equal privileges and immunities under the laws." *Green v. State Bar of Texas,* 27 F.3d 1083, 1089 (5th Cir.1994). Further, to state a § 1985(3) claim, Newsome must allege that the conspirators were motivated by her race. *See Slavin v. Curry,* 574 F.2d 1256, 1262 (5th Cir.1978), *modified on other grounds,* 583 F.2d 779 (5th Cir.1978), *overruled on other grounds, Sparks v. Duval County Ranch Co.,* 604 F.2d 976 (5th Cir.1979) (en banc), *aff'd* 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). Newsome has not done so. She seems to complain because the EEOC did not find in her favor on her charge, and she makes extremely vague allegations of a "personal business relationship" between CHM and the EEOC. This simply is not enough to allege a conspiracy.

[11][12] Finally, Newsome alleges that the EEOC deprived her of her Fourteenth Amendment rights. However, the Fourteenth Amendment applies only to state actors, not federal actors. *See Bolling v. Sharpe,* 347 U.S. 497, 499, 74 S.Ct. 693, 98 L.Ed. 884 (1954). Newsome therefore ***233** cannot bring a Fourteenth Amendment claim against the EEOC or EEOC officials. Further, the United States and its officials are entitled to sovereign immunity for the civil rights claims brought by Newsome, "because the United States has not consented to suit under the civil rights statutes." *Unimex, Inc. v. U.S. Dept. of Housing and Urban Development,* 594 F.2d 1060, 1061 (5th Cir.1979).

In sum, Newsome's complaint has no arguable basis in fact or law, and no relief could be granted to her under any set of facts consistent with her allegations. The complaint is frivolous, fails to state a claim, and was properly dismissed. Newsome's claims are completely without merit, and this appeal is frivolous.

V

[13] Normally, we recognize that a *pro se* plaintiff does not have the same training as an attorney, and accord a *pro se* plaintiff some measure of latitude in her complaint and in the errors she might make. However, Newsome previously has brought an almost identical complaint against the EEOC, which was dismissed in part for failure to state a claim. In *Newsome v. Equal Employment Opportunity Commission,* 1998 WL 792502 (N.D.Tex.) ("*Newsome I*"), Newsome had filed a charge of race discrimination under Title VII with the EEOC against a former employer, Floyd West & Company ("FWC"). The EEOC investigated the charge, found there to be no violation of Title VII, and issued Newsome a right to sue letter. *Id.* at *1. Newsome sued FWC, and a take nothing judgment was rendered against her. Five years later, Newsome brought a *pro se* lawsuit against the EEOC, FWC, and Talegen Holdings, Inc. ("Talegen," an affiliate of FWC), alleging that the EEOC failed to investigate the merits of her discrimination charge, and "conspired with FWC and Talegen to deprive her of her civil rights in violation of Title VII, the Fourteenth Amendment to the United States Constitution ... and 42 U.S.C. §§ 1983 and 1985." *Id.* at *1. The court found that Title VII did not confer jurisdiction over cases brought by an individual against the EEOC as an enforcement agency, and that Title VII does not confer a right of action against the EEOC as an enforcement agency. The court further found that there is no cause of action against federal agencies or officials under the Fourteenth Amendment, and that Newsome had no § 1983 claim because the EEOC officials were not acting under the color of state law, as required for a § 1983 claim. The court also found the EEOC to be entitled to sovereign immunity. The court did not reach the merits of the § 1985 claim, because it was barred by the statute of limitations. The court dismissed Newsome's complaint for lack of subject matter jurisdiction, failure to state a claim and on sovereign immunity grounds. *Id.* at *5. We affirmed, for the reasons stated in the district court's opinion. *See Newsome v. E.E.O.C.,* No. 98-11381, 1999 WL 423085 (5th Cir. June 3,

1999); 182 F.3d 915. The United States Supreme Court denied certiorari. *See Newsome v. E.E.O.C.*, 528 U.S. 917, 120 S.Ct. 273, 145 L.Ed.2d 229 (1999).

The merits of Newsome's Title VII and Fourteenth Amendment claims were addressed in her prior lawsuit, and are virtually identical to the claims before us. Newsome therefore was on notice that these claims fail to state a claim upon which relief could be granted. Newsome now is on notice that her APA and § 1985 claims also fail to state a claim, and that all her claims are frivolous. This appeal is frivolous as well. We therefore are putting Newsome on NOTICE that if she continues to bring such frivolous appeals in ***234** the future, this court will consider sanctioning her pursuant to our inherent sanction powers and our powers to sanction frivolous appeals. *See*F.R.A.P. 38.

VI

For the foregoing reasons, this frivolous appeal is

DISMISSED.

C.A.5 (La.),2002.
Newsome v. E.E.O.C.
301 F.3d 227, 89 Fair Empl.Prac.Cas. (BNA) 986, 83 Empl. Prac. Dec. P 41,131

Briefs and Other Related Documents (Back to top)

• 2001 WL 34106713 (Appellate Brief) Brief of Appellees (Nov. 14, 2001) Original Image of this Document (PDF)
• 2001 WL 34108065 (Appellate Brief) Appeal Brief for Vogel Denise Newsome Plaintiff - Appellant (Oct. 15, 2001) Original Image of this Document (PDF)
• 01-30817 (Docket) (Jul. 17, 2001)

END OF DOCUMENT

FAX COVER SHEET

Date: Wednesday, January 21, 2009

To: Denise Newsome

Fax #: 513-[redacted]

From: Cynthia [redacted]

Phone #: 1-800-[redacted]

Fax #:

Pages (including cover): 03

Notes: Please date and sign along with two witnesses and return to me at 603 334-8103.

Thank you.

NATIONAL LIABILITY FIELD CLAIMS MS
HELMSMAN MANAGEMENT SERVICES LLC
[redacted]

Telephone: (800) [redacted]
Fax: (603) [redacted]

Helmsman Management Services LLC

January 21, 2009

Denise Newsome
PO Box 14731
Cincinnati OH 45250

Claimant: Denise Newsome
Claim Number: [redacted]
Customer:
Date of Loss:

Dear Denise Newsome:

This will confirm our settlement of [redacted] dollars ([redacted]). Please read, sign in ink, and return the accompanying release.

On the line indicated:

"(1)" Fill in the date the release is signed.
"(2)" Write "I (or We) have read this release."
"(3)" Sign your full legal name.
"(4)" & "(5)" Have two witnesses write their names and addresses to verify your signature.

Our check will be issued when we receive the properly executed Release.

Please feel free to contact me if you have any questions. You can reach me at extension 715.

Sincerely,

CYNTHIA [redacted]

ENCLOSURE

[redacted]

SEE EXHIBIT "3"