TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

HIGHER EDUCATION LAW SEMINAR

JUNE 1, 2023
HOSTED BY STEPHENS COLLEGE

JUNE 2, 2023
HOSTED BY SAINT LOUIS COMMUNITY COLLEGE

DIFFERENT BY DESIGN™

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WELCOME

Welcome to the 2023 Tueth Keeney Higher Education seminar! Higher Education law is complex and constantly changing. We are pleased to provide these seminars as part of our ongoing commitment to providing cutting-edge training to our clients and friends, free of charge.

SPECIAL THANKS TO STEPHENS COLLEGE AND ST. LOUIS COMMUNITY COLLEGE

The Firm would like to express its sincere gratitude to Stephens College and to St. Louis Community College for graciously hosting our Higher Education Law Seminars.

ABOUT OUR FIRM

Tueth Keeney Cooper Mohan & Jackstadt, P.C. is a leader in representing colleges, universities, community colleges, and other educational institutions throughout Missouri and Illinois. Our Firm has offices in St. Louis, Missouri and Edwardsville, Illinois, and serves the legal needs of numerous public and private colleges, universities, and community colleges throughout Missouri and Illinois.

Because Tueth Keeney regularly represents more than twenty public and private colleges, universities, and community colleges, and more than 150 public school districts, we are able to provide our clients with the most up-to-date legal advice in an efficient and supportive manner. Our attorneys have extensive experience in effectively representing our Higher Education clients in complex litigation in state and federal court throughout our region. Our attorneys are not only advocates, but also counselors and advisors. We also regularly conduct internal investigations of sensitive and problematic workplace matters, and work diligently with our clients to prevent disputes and minimize risk before the disputes become lawsuits.

Our attorneys are leaders in their profession and have established reputations for excellence in a variety of areas of law, including higher

education law, employment law and litigation, immigration law, labor negotiation and collective bargaining, commercial litigation, and real estate. Tueth Keeney attorneys are recognized as experts in their field and are frequently asked to speak to educators and lawyers at national conferences. Our attorneys are active members of the National Association of College and University Attorneys and frequently write and lecture on a wide range of topics impacting the higher education community.

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2023 HIGHER EDUCATION LAW SEMINAR PROGRAM SCHEDULE

11:30 a.m. to 12:30 p.m.
Ethical Issues in Discovery
Mollie Mohan and Jim Layton

12:30 p.m.
Registration

1:00 p.m. to 1:10 p.m.
Welcome and Introduction

1:10 p.m. to 1:45 p.m.
Affirmative Action in Education:
Current Status and Expected Changes
Kate Nash and Aigner Carr

1:45 p.m. to 2:30 p.m.
Mastering the Fine Print: Contract Essentials and Legal Challenges
Columbia: Rob Jackstadt and John Reynolds
STL: Rob Jackstadt and Lisa Berns

2:30 p.m. to 2:40 p.m.
Refreshment Break

2:40 p.m. to 3:25 p.m.
Hot Immigration Topics and DOJ Gone Wild
Columbia: Melanie Keeney and Calvin Bill
St. Louis: Melanie Keeney and Luke Phillips

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3:25 p.m. to 4:10 p.m.
Change is Coming:
What's Next on ED's Regulatory Agenda?
Veronica Potter and Bobby Nickel

4:10 p.m. to 5:00 p.m.
Dealing with Difficult Faculty
Ian Cooper and Kate Nash

2023 Tueth Keeney Higher Education Seminar

Schedule

- **11:30am**: Ethical Issues in Discovery
- **1:10pm**: Affirmative Action in Education: Current Status and Expected Changes
- **1:45pm**: Mastering the Fine Print: Contract Essentials and Legal Challenges
- **2:40pm**: Hot Immigration Topics and DOJ Gone Wild
- **3:25pm**: Change is Coming: What's Next on ED's Regulatory Agenda?
- **4:10pm**: Dealing with Difficult Faculty

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Ethical Issues in Discovery

Presented by:
James R. Layton
Mollie G. Mohan

Date:
June 1-2, 2023

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Who is SUPER excited to talk about discovery AND ethics?

Start Menti

Me!

Definitely, positively me!

0%

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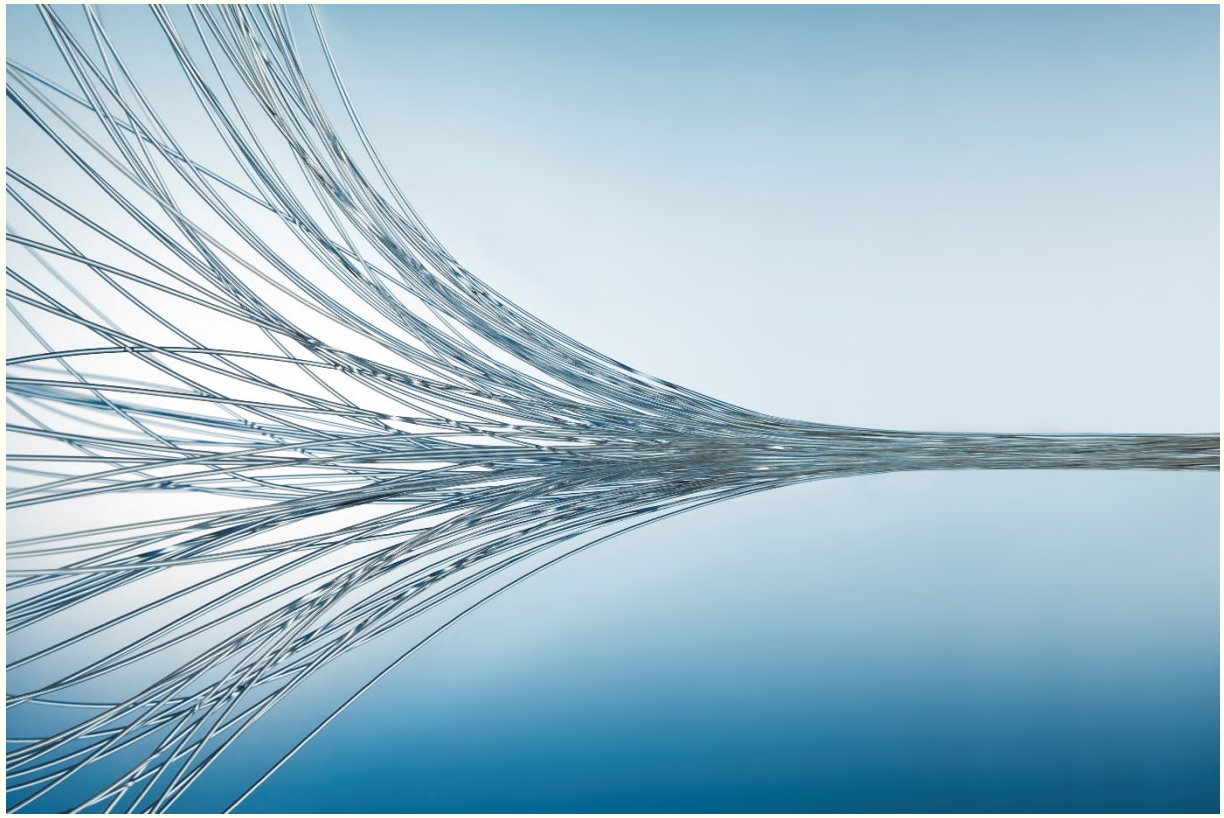
Who Cares?

In re: Eisenstein (2016): Indefinite suspension

Agenda

- Sending and Receiving Documents
  - Ethical rules
  - Hypotheticals
  - Best practices



SENDING DOCUMENTS

Rule 4-1.6 (c)

- Confidentiality of Information
- "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client."

Hypothetical No. 1

- You prepared a batch of documents to produce in response to discovery requests.
- The batch contains an email chain in which you (counsel) have replied all and weighed in on the legality of a termination.
- In Adobe PDF, you cover the text of the attorney-client privileged communication with solid black lines.
- Unbeknownst to you, the privileged text is still "under" black lines and can be read when highlighted, searched for, etc.

Hypothetical No. 1

Subject: Re: Cooper termination - CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Hi all,

I want to weigh in on the legal implications of this termination.

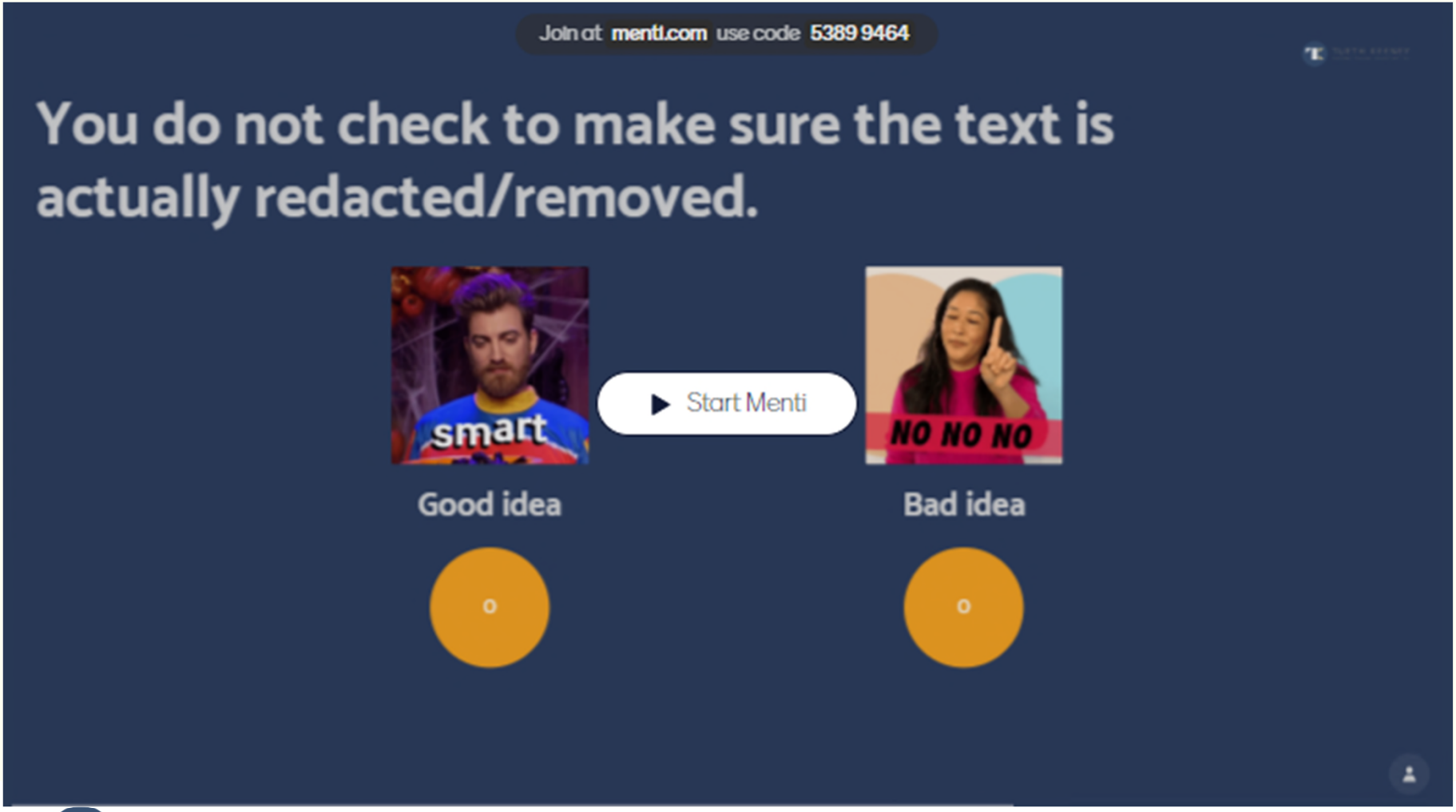
[redacted]

[redacted]

[redacted]

[redacted]

Hypothetical No. 1



Rule 4-1.6 (c)

- Comment 15
  - A lawyer is required to "act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and ***against inadvertent or unauthorized disclosure by the lawyer*** or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision."

Rule 4-1.6 (c)

- Comment 15
  - A lawyer must make "reasonable efforts to prevent the access or disclosure."
- Rule 4-1.0 (h)
  - Reasonable = "conduct of a reasonably prudent and competent lawyer"

Rule 4-1.6 (c)

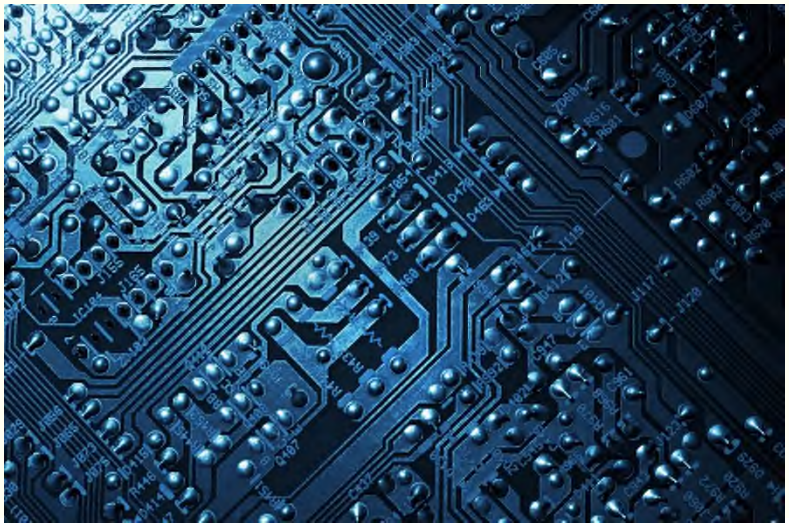
- Comment 15
  - Factors to determine reasonableness:
    1. Sensitivity of information
    2. Likelihood of disclosure if additional safeguards are not employed
    3. Cost of employing additional safeguards
    4. Difficulty of implementing the safeguards
    5. Extent to which the safeguards adversely affect the lawyer's ability to represent clients

Hypothetical No. 1.a

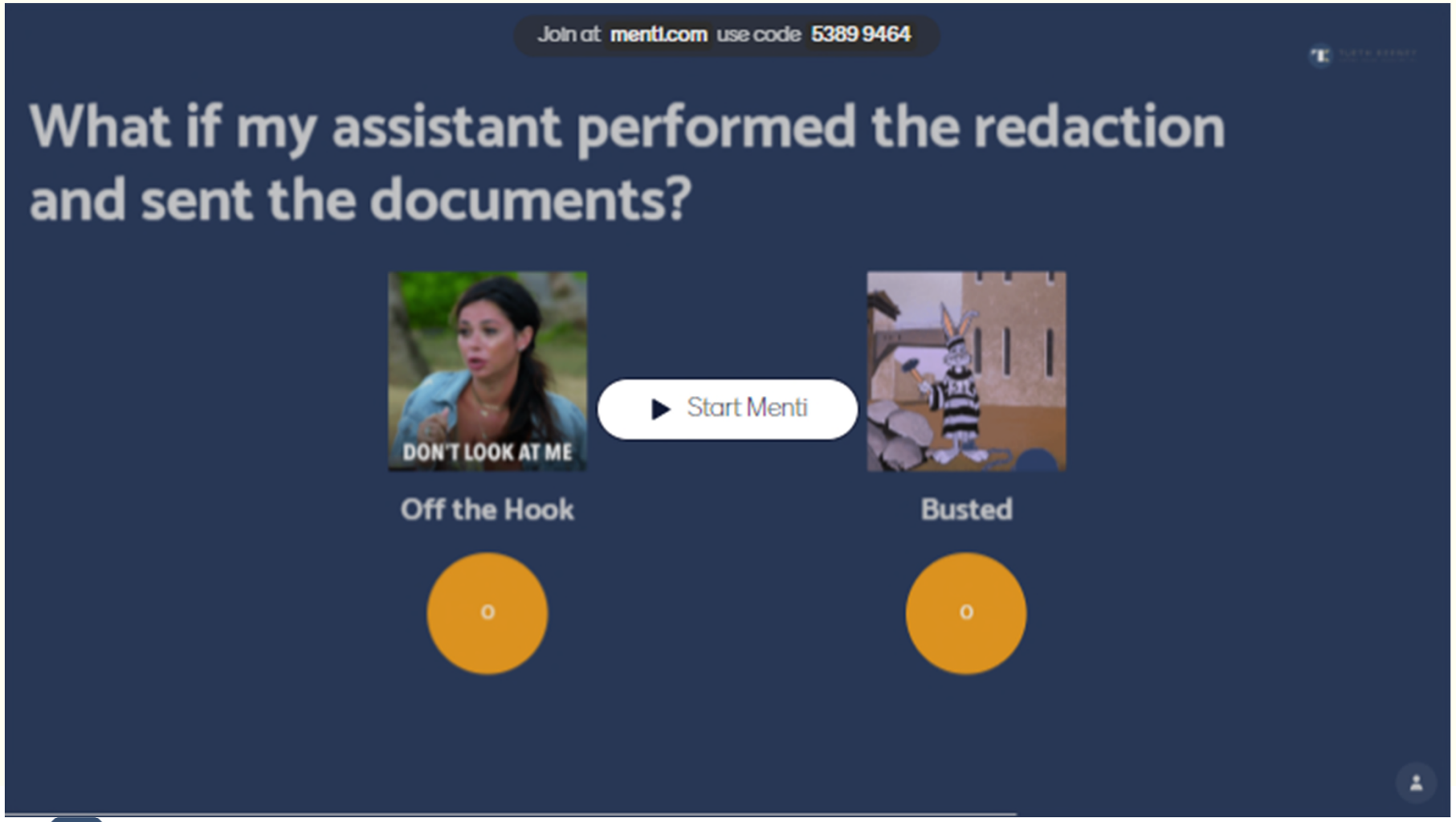
But I’m not a redaction technology expert, I’m a lawyer!

Hypothetical No. 1.a

- Rule 4-1.1 - Competence, Comment No. 6
- A lawyer "should keep abreast of the changes in the law and its practice, ***including the benefits and risks associated with relevant technology*** . . . ."



Hypothetical No. 1.b



Hypothetical No. 1.b

- Rule 4-5.3 (b) – Responsibilities Regarding Nonlawyer Assistants
- A lawyer "having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer."

Hypothetical No. 2

- You need to send documents to opposing counsel, but the files are too large to send via email.
- You decide to upload the documents to Dropbox and share a link to opposing counsel.
- Unbeknownst to you, the folder you sent to opposing counsel also contained numerous, unrelated personnel files that were previously uploaded by your client.

Hypothetical No. 2

Rule 4-1.6 (c)

- Comment 16
  - "When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients."
  - Lawyer need not use "special security measures" if method of communication affords a reasonable expectation of privacy.
  - But special circumstances may warrant special precautions.

Rule 4-1.6 (c)

- Comment 16
  - Factors to determine reasonableness of lawyer's expectation of confidentiality:
    - Sensitivity of the information
    - Extent to which privacy of communication is protected by law or confidentiality agreement

Rule 4-1.6 (c)

- Comment 16
  - Client may require lawyer to implement special security measures
  - OR may give informed consent to use means of communication that would otherwise be prohibited
    - Informed consent (Rule 4-1.0(e)) = agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonable available alternatives to the proposed course of conduct
  - So → client can authorize more or less security than required

Hypothetical No. 2

- ABA Formal Opinion 477R
  - Lawyers must exercise reasonable efforts when using technology in communicating about client matters.
  - Fact specific approach to security obligations that requires a process to assess risks, identify and implement appropriate security measures responsive to those risks, verify that they are effectively implemented, and ensure that they are continually updated in response to new developments.
  - Each access point, and each device, should be evaluated for security compliance.

Hypothetical No. 2

- ABA Formal Opinion 477R
- Considerations relevant to whether attorney's efforts are reasonable:
  - Understand the nature of the threat
  - Understand how client confidential information is transmitted and where it is stored
  - Understand and use reasonable electronic security measures
  - Determine how electronic communications about client matters should be protected

Hypothetical No. 2

- ABA Formal Opinion 477R
- Considerations relevant to whether attorney's efforts are reasonable:
  - Determine how electronic communications about client matters should be protected
  - Label client confidential information
  - Train lawyers and nonlawyer assistants in technology and information security
  - Conduct due diligence on vendors providing communication technology

Hypothetical No. 2

- Missouri Informal Advisory Opinion 2018-09
  - Cloud computer permissible if attorney maintains competence in use of relevant technology and makes reasonable efforts to safeguard confidential information from inadvertent or unauthorized disclosure or access.
  - Attorney should read carefully the cloud computing provider's terms and conditions.

Hypothetical No. 2

- Missouri Informal Advisory Opinion 2018-09
  - Reasonable efforts to safeguard confidential information may include (but are not limited to) ensuring adequate policies and practices regarding:
    - Security measures protecting confidentiality of client information during transmission and storage;
    - Prompt notification of Attorney in the event of a security breach or provider's receipt of a subpoena for client information;
    - Ownership of data solely by Attorney or Attorney's firm;
    - No access rights by the provider to client information, except as required by law;

Hypothetical No. 2

- Missouri Informal Advisory Opinion 2018-09
  - Reasonable efforts to safeguard confidential information may include (but are not limited to) ensuring adequate policies and practices regarding:
    - Regular data backup by the provider;
    - Handling of client information in the event Attorney's relationship with the provider is terminated;
    - Compliance with applicable law regarding data storage and transmission;
    - Reliable access to data by Attorney;
    - No access to data by third parties, including advertisers, except as required by law; and
    - Domestic storage of data, or, alternatively, storage in a jurisdiction subject to United States data protection laws or equivalent.

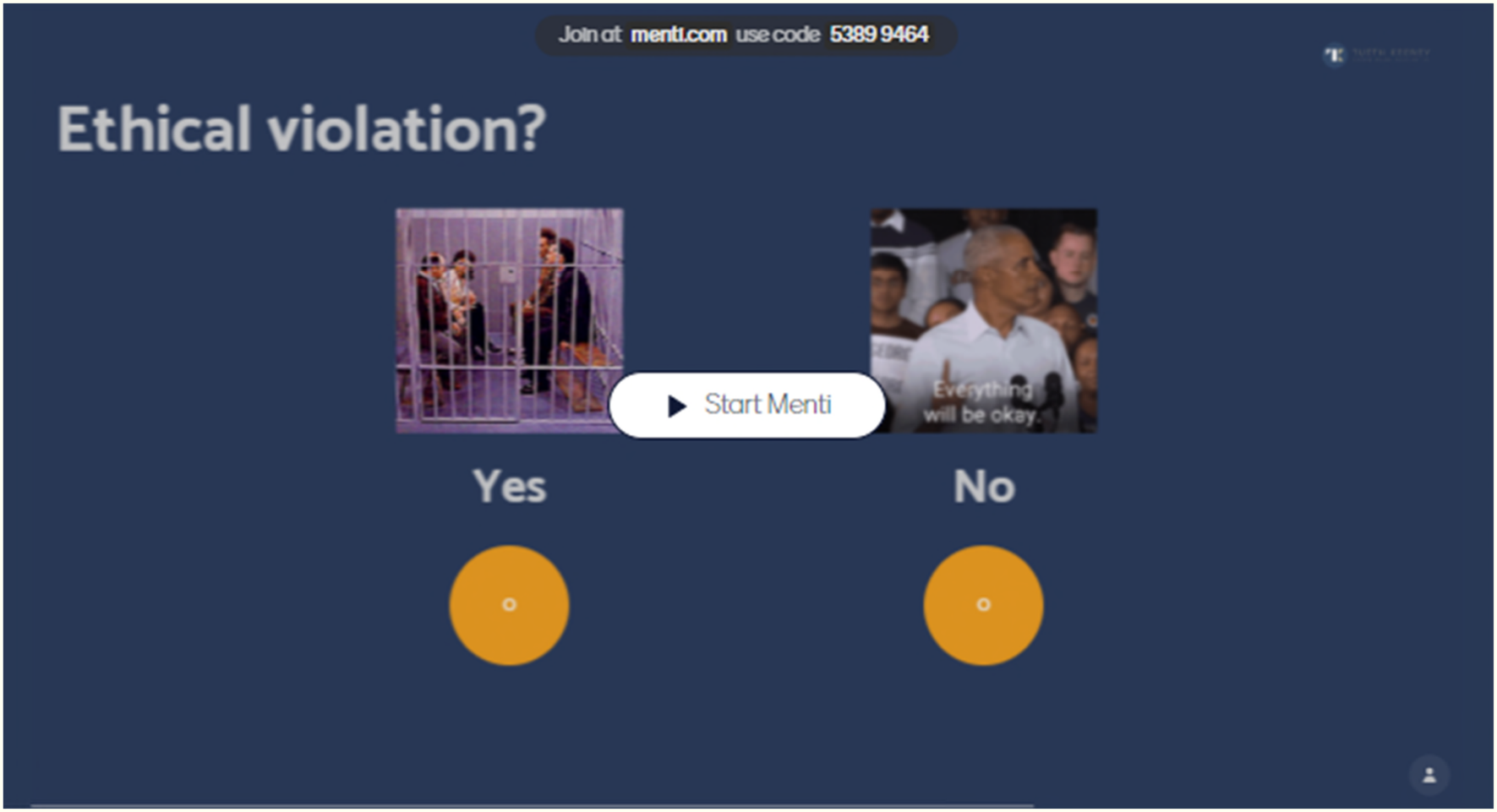
Hypothetical No. 2

- Pennsylvania Bar Formal Opinion 2011-200
  - Dropbox and other cloud computing services permissible if attorney takes reasonable care to assure that materials remain confidential and reasonable safeguards are employed to ensure that data is protected from beaches, data loss, and other risk.
- Illinois Bar Opinion No. 10-01
  - A law firm's utilization of off-site cloud network will not violate the rules of professional conduct if the law firm makes reasonable efforts to ensure the protection of confidential client information.

Hypothetical No. 3

- You produce documents to opposing counsel, including native versions of several spreadsheets and word documents.
- After you produce the documents, you realized you did not scrub the metadata on these native documents.
- The metadata reveals that counsel ghost-wrote or revised several key documents.

Hypothetical No. 3



Hypothetical No. 3

- Missouri Informal Advisory Opinion 2021-13
  - Rule 4-1.6
  - Attorneys must use reasonable care to ensure no information related to the representation of the client is revealed without client consent.
  - This includes obligation to use reasonable care to ensure no confidential information is contained in embedded metadata.

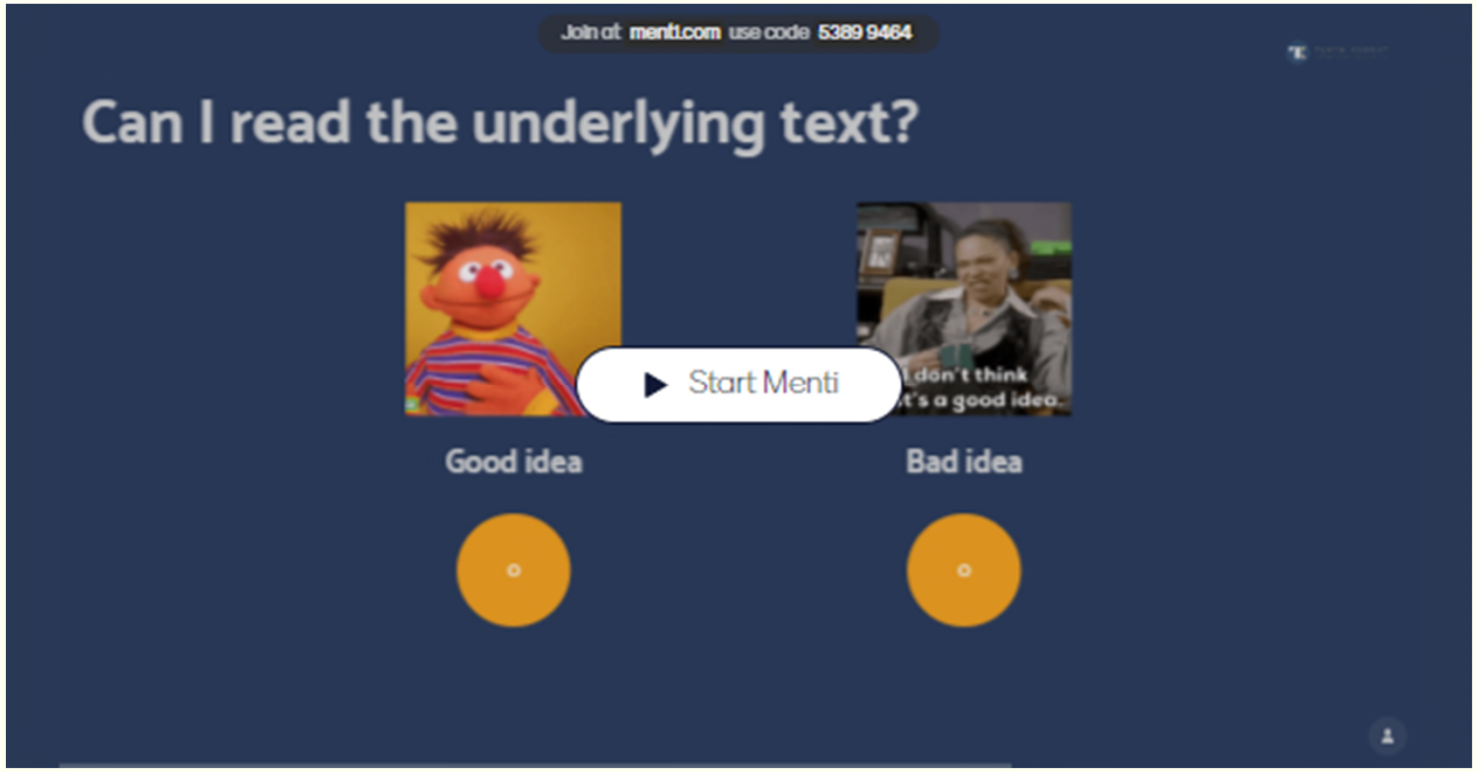
Hypothetical No. 3

- Missouri Informal Advisory Opinion 2021-13
  - BUT efforts to protect confidential information "must be exercised in light of Attorney's obligations pursuant to Rule 4-3.4(a) not to unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal evidence."
  - Removing metadata with evidentiary value before transmitting certain documents may constitute a violation of discovery rules and therefore would violate Rule 4-3.4(a).

RECEIVING DOCUMENTS

Hypothetical No. 1.c

- What if I am the one who receives documents with "solid" black lines over text (and I am able to view the underlying text)?



Rule 4-4.4

- Respect for Rights of Third Persons
- "A lawyer who receives a document or electronic [sic] stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender."

Rule 4-4.4

- Comment 2
  - "If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures."

Rule 4-4.4

- Comment 3 – "See also Rule 56.01(b)(9)(A)(ii)"
  - Rule 56.01(b)(9)(A)(i) – Once a party is on notice that a producing party is claiming privilege, "a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved."

Rule 4-4.4

- Comment 3 – "See also Rule 56.01(b)(9)(A)(ii)"
  - Rule 56.01(b)(9)(A)(ii) – "An attorney who receives information that contains privileged communications involving an adverse or third party and who has reasonable cause to believe that the information was incorrectly received shall not read the information or, if he or she has begun to do so, shall stop reading it. The receiving attorney shall promptly notify the sending attorney of such receipt; promptly return the information to the sending attorney; sequester, delete, or destroy the information and any copies thereof; and take reasonable measures to assure that the information is inaccessible. A sending attorney who has been notified about information containing privileged communications has the obligation to preserve the information."

Rule 4-4.4

- Duty to stop reading, promptly notify sender, etc. kicks in when lawyer "knows or reasonably should know" document was inadvertently sent.
- ABA Formal Opinion 477R
  - "Lawyers should follow the better practice of marking privileged and confidential client communications as 'privileged and confidential' in order to alert anyone to whom the communication was inadvertently disclosed that the communication is intended to be privileged and confidential."

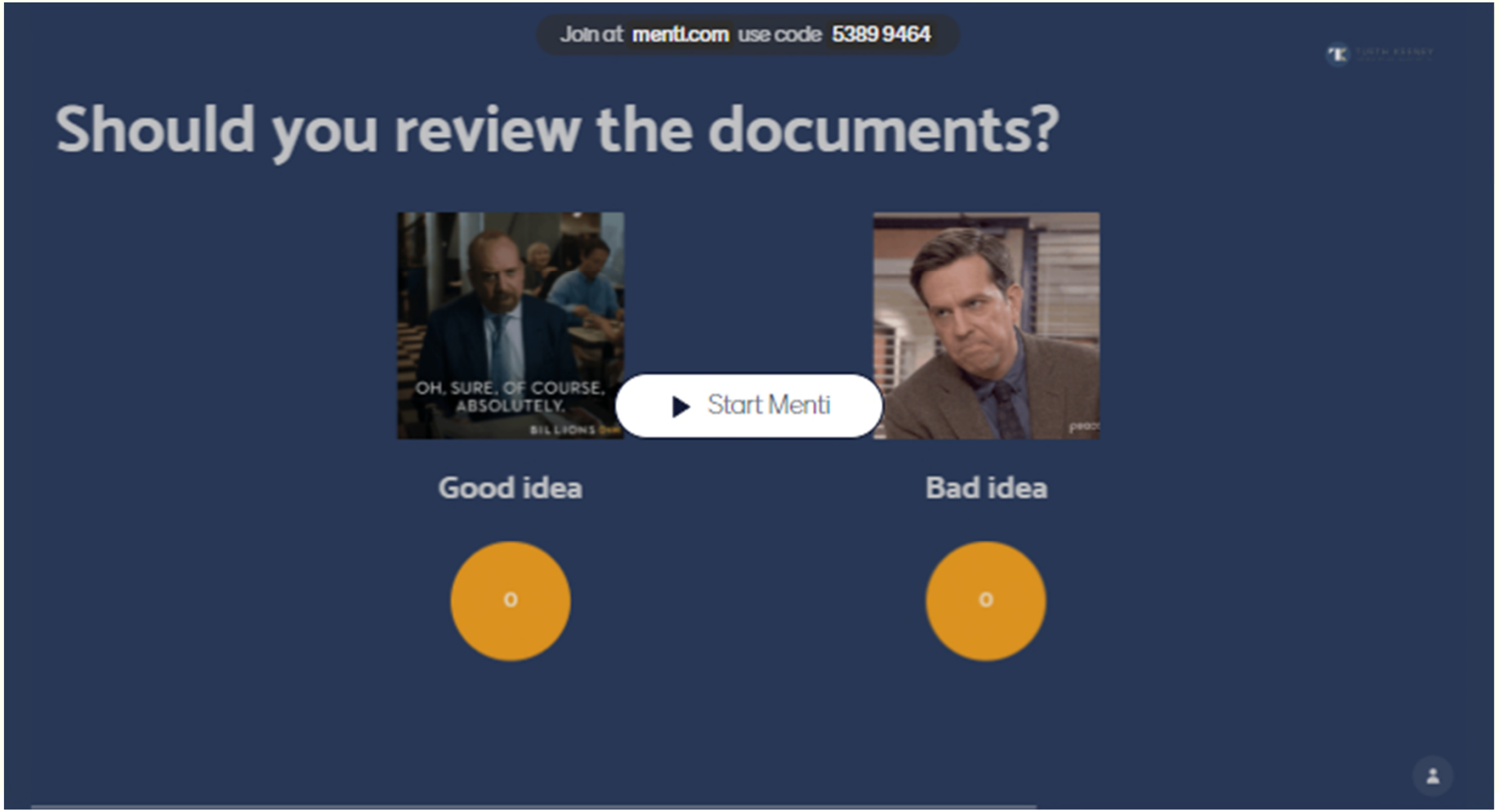
Rule 4-4.4

- Comment 2
  - "[T]his Rule ***does not*** address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person."

Hypothetical No. 4

- Title IX Coordinator works in same office suite as legal.
- Fired for misconduct, decides to sue.
- Before leaving, prints confidential attorney-client privileged communications she believes helps her case.
- Takes photos of confidential, privileged documents in legal counsel's office.
- Forwards confidential, privileged emails to her personal email account.
- All Title IX Coordinator actions are prohibited by acceptable use policy.
- Title IX Coordinator provides these documents to you (her counsel).

Hypothetical No. 4



Hypothetical No. 4

- *In re: Eisenstein*, 485 S.W.3d 759 (2016)
  - Rule 4-4.4(a) – Prohibits lawyer from using "methods of obtaining evidence that violate the legal rights" of a third party.
  - Comment 1 – Rule is intended to prevent "unwarranted intrusions into privileged relationships, such as the client-lawyer relationship."
  - When lawyer knows he/she has received improperly obtained information, rule requires the lawyer to promptly notify sender.

Hypothetical No. 4

- *In re: Eisenstein*, 485 S.W.3d 759 (2016)
  - Rule 4-8.4(c) – Lawyer is prohibited from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation."
  - "[O]btaining evidence procured through improper means and failing to immediately disclose the same to opposing counsel demonstrates a violation of Rule 4-8.4(c)."

Hypothetical No. 4.a

- What about waiver?
- Rule 4-4.4, Comment 2
  - "Whether the privileged status of a document or electronically stored information has been waived is a matter of law beyond the scope of these Rules."

Hypothetical No. 4.a

Hypothetical No. 4.a

- *Hill v. Wallach*, 661 S.W.3d 786 (Mo. 2023)
  - Protections of privilege are waived "when a party ***voluntarily*** discloses the protected material to an adversary."
- Rule 56.01(b)(9)(B)
  - "The production of privileged or work-product protected documents, electronically stored information or other information, whether inadvertent or otherwise, ***is not*** a waiver of the privilege or protection from discovery in the proceeding."

Hypothetical No. 4.a

- Rule 4-4.4, Comment 2
  - "A document or electronically stored information is inadvertently sent when it is accidently transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted."

Hypothetical No. 4.b

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What if you receive these documents from opposing counsel?

Immediate heart attack

0%

Immediately disclose to other side

0%

Hypothetical 4.b

- Rule 56.01(b)(9)(A) – Once a party is on notice that there is a claim of privilege, must stop reading, notify other side, etc.
  - So → to trigger Rule 56.01 safe harbor provisions, must immediately notify other side
- Rule 4-4.4, Comment 2
  - Must promptly notify the sender in order to permit that person to take protective measures.

Hypothetical 4.b

- Rule 4-1.6 (c), Comment 15
  - A lawyer is required to "act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer ***or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.***"

BEST PRACTICES

Best Practices

- Have proper policies in place
- Train employees on policies
- Provisions in employment contracts
- Offboarding checklist
  - Physical equipment (laptop, cell phone, etc.)
  - Documents (electronic and other)
  - Explicit conversation regarding copying/taking documents

Best Practices

- IT security
  - Password protection
    - Computers
    - Phones, ipads, other devices
  - Two factor authentication
  - Remote wipe capability
  - Encrypted emails
  - Secure cloud storage/services

Best Practices

- Model acceptable use policy
  - Definition of institutional property
    - Computer networks, equipment, documents (physical and electronic)
  - Prohibition on misuse of institutional property
  - Discipline up to and including termination
- *Bonus points if you include acceptable use policy in employment contracts

QUESTIONS???

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Was this the best ethics CLE you've ever attended?

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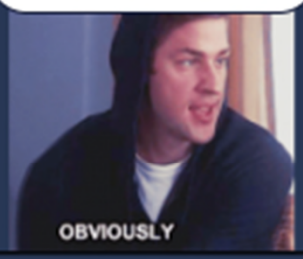

Yes

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Affirmative Action in Education: Current Status and Expected Changes

Presented by:
Kate L. Nash
Aigner S. Carr

Date:
June 1-2, 2023

DIFFERENT
BY DESIGN

Agenda

- Defining Affirmative Action
- Historical *Bakke* Decision
- *Gratz* and *Grutter*
    - Issues before the SCOTUS: *North Carolina* and *Harvard* cases
- Beyond Admissions

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What is Affirmative Action

Background on Affirmative Action

- The effort to improve employment or educational opportunities for women and members of minority groups.
- Overall goal is to remedy the effects of long-standing discrimination against certain groups through policies, programs, or procedures that give limited preferences to those disadvantaged groups.

Affirmative Action in Education (Students)

- Sources of law (focus on race):
  - Title VI (public and private institutions that receive federal funding)
  - Equal Protection Clause of the 14th Amendment to the U.S. Constitution (public institutions)
  - State non-discrimination statutes

Affirmative Action In Education

Title VI

Prohibits discrimination "on the basis of **race, color, and national origin** in programs and activities receiving federal financial assistance."

EPC

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;… nor deny to any person within its jurisdiction the equal protection of the laws."

Race Conscious Admissions

Strict Scrutiny

- Highest level of judicial review
- Applies to actions that discriminate on the basis of race and national origin OR
- When a "fundamental right" is at issue

Race Conscious Admissions

Strict Scrutiny

1. A **compelling interest** behind the challenged policy, AND

2. That the law, policy, procedure is **narrowly tailored** to achieve its result.

Race Conscious Admissions

Key Issue

Does the challenged policy or program confer material benefits or opportunities to certain students (to the exclusion of others) based on race or ethnicity?

- If yes, then strict scrutiny applies, and strict scrutiny elements must be met.

Historical Context: *Bakke v. UC-Davis* (1978)

- Challenges to the UC Davis Med. Sch. “special” admissions programs
- Consideration for "economically and/or educationally disadvantaged" and minority applicants (blacks, Chicanos, Asians, American Indians).
- No 2.5 GPA cutoff
- Not ranked against general admission candidates
- 16 reserved “special spots”

Bakke (1978)

- During a four-year period, 63 minority students admitted compared to 44 general admissions
- No "disadvantaged" whites were admitted under the special program, though many applied.
- Bakke, a white male, applied in 1973 and 1974; considered only under the general admissions program.
- Rejected both years; multiple special admission slots unfilled and applicants with lower scores admitted

Bakke (1978)

- Trial court found in favor of Bakke—special program operated as "racial quota"
  - Declared it impermissible to take race into account for admission
- SCOTUS:
  1. Affirmed Bakke's admission;
  2. Invalidated the special admission program;
  3. Reversed the blanket prohibition against taking race into account during admission (5-4 decision)

Bakke (1978)

- Racial classifications are "inherently suspect" and call for strict scrutiny.
- The goal of achieving a diverse student body is sufficiently **compelling** to justify consideration of race in admissions decisions *under some circumstances…*
- Admission programs that foreclose consideration of certain applicants are unnecessary to achieve the goal of diversity (i.e., *not* **narrowly tailored**)

Gratz v Univ. of Mich (2003)

- Two Caucasian plaintiffs within the qualified range denied admission
- Admissions factors considered: HS grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race.
- University admitted virtually every qualified applicant from underrepresented minority groups.
- Underrepresented racial or ethnic minority groups automatically awarded 20 points of the 100 needed for admission

Gratz (2003)

- Reaffirmed that achieving diversity constitutes a compelling state interest.
- 20-point automatic distribution for every "underrepresented minority" applicant solely because of race was not narrowly tailored to achieve educational diversity
  - Had the effect of making "the factor of race . . . decisive" for minimally qualified minority applicants

Grutter v Univ. of Mich. Law Sch (2003)

- Caucasian female applicant with 3.8 GPA and 161 LSAT score: argued that using race as a "predominate factor" gave minority applicants with similar credentials greater chance of admission
- Policy did not define diversity solely in terms of racial and ethnic status, but attributed "substantial weight" to diversity contributions
- Frequently accepted nonminority applicants with grades and test scores lower than underrepresented minority applicants.

Grutter (2003)

"The Law School's admissions program (like Harvard's) bears the hallmarks of a narrowly tailored plan."

Grutter (2003)

Policy Distinctions in *Grutter*

- It did not insulate certain applicants from competition with all other applicants
- No quotas or automatic points
- It considered race only as a "plus" in light of other qualifications (i.e., was not decisive)
- It was flexible and placed applicants on same footing for consideration, despite certain factors being weighed differently
- *Purportedly* limited in time with the ultimate goal of finding a race neutral policy to achieve the same interest**

Students for Fair Admissions v. Harvard/UNC

Challenges to *UNC* and *Harvard*: Where Are We?

- Alleged violations of EPC (for UNC) and Title VI (for Harvard)
- Applying *Grutter*, Harvard and UNC prevailed after full trials; First Circuit affirmed Harvard decision
- Separate oral arguments on October 31, 2022
- SFFA asked SCOTUS to:
  - overrule *Grutter* and rule that race may not be used as a factor in admissions; **and**
  - to rule that Harvard and UNC's use of race as a factor did not meet the standards set by *Grutter*

Beyond Admissions: Financial Aid and Scholarships

How does this play out in other contexts?

Beyond Admissions: Financial Aid and Scholarships

ED Guidance

- 1994 OCR Guidance
  - Provided some framework for considering race in making financial aid awards.
  - Withdrawn by OCR in 2000.

Beyond Admissions: Financial Aid and Scholarships

2012 OCR Guidance

- Challenges to University of Missouri's race-based scholarships
- 52 scholarships included race or NO as a factor, or as a condition of eligibility
- 1994 Guidance had determined that institutions may use race in a narrowly tailored way to award financial aid to achieve a compelling interest in diversity.
- OCR analyzed the evidence under the same strict scrutiny standards and in accordance with 1994 Guidance, 2011 Guidance, and *Grutter*
- Discussion of the distinction between financial aid and admissions

If/When Grutter Is Overturned

Race Conscious Policies	Race Neutral Policies
Involve explicit racial classifications (race-as-a-factor)	Neutral language and neutral intentions
Require certain race as a condition of eligibility	All inclusive in terms of outreach and recruitment
Confer material benefits to the exclusion of non-targeted students.	Don't confer material benefits to the exclusion of non-targeted students.
May attribute greater weight to race	

If/When Grutter Is Overturned

Race neutral options for achieving diversity:

- Continued use of socioeconomic status?
- Membership and participation in certain student groups?
- Membership and participation on certain sports?
- Quality/location of high school?

If/When Grutter Is Overturned

Complaint re using race neutral factors **as a discriminatory proxy** for race and national origin

- Certain factors may be evidence of intent to discriminate:
  - impacts more heavily upon one racial group than another
  - a pattern of discrimination unexplainable on grounds other than race
  - the historical background of a decision to change the policy
  - departure from the normal procedural sequence

See In re Wake County Public School System, OCR Complaint Nos. 11-02-1044, 1104, and 1111

QUESTIONS??

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MASTERING THE FINE PRINT: CONTRACT ESSENTIALS AND LEGAL CHALLENGES

Presented by:
Rob Jackstadt
John Reynolds/Lisa Berns

Date:
June 1-2, 2023

DIFFERENT
BY DESIGN

Before you get to the Contract – Step 1 Purchasing Procedures and Policies

- Review
- Update Annually
- Authority Questions
- Dollar Amount Thresholds
- Procurement / Bidding
- Signatures

Before you get to the Contract – Step 2 Requests for Proposals

- Early Involvement
- Review and Tailor – Types and Contents
- Update Annually
- Favorable Contract Provisions
- Ability to Preempt Vendor Terms

“Hot Items” in Contracts

- Can I Even Modify This?
- Term and Termination Rights
- Limitation of Liability
- Waiver of Consequential Damages
- Mandatory Mediation / Arbitration
- Venue Selection

"Hot Items" in Contracts (cont.)

- Statute of Limitations
- Insurance
- Indemnification
- Payment and Performance
- Prevailing Party Attorneys Provision
- Boilerplate "Gotchas"

Contract Types

- Technology Contracts
- Service Contracts
- Construction Contracts
- Real Estate Contracts

Technology Contracts

- Pre-Printed Forms / One-Sided Documents
- Requests for Proposals
- Liability Limitations
- Data Privacy
- Cyber Issues
  - Data Breach
  - Artificial Intelligence

Service Contracts

- Performance and Payment
- Termination Rights
- Who is Doing the Work

Construction Contracts

- Standard AIA Contracts
- Bid Documents
  - Include Construction Contract
  - Bond Requirements
  - Insurance Requirements
  - Liquidated Damages
- Any Public Works Requirements for Public Entities
- COVID-19 Hangover

Real Estate Contracts

- Letter of Intent / Term Sheet v. Contract
- Battle of the Forms
- Statutory Requirements

Missouri Statutory Requirements

- Required to Bid
- Bond Requirements
- Prevailing Wage
- E-Verify / Anti-Discrimination Against Israel Act

Questions?

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2023 TUETH KEENEY HIGHER EDUCATION SEMINAR

TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

HOT IMMIGRATION TOPICS AND DOJ GONE WILD

Presented by: Melanie Gurley Keeney
Calvin Bill/Luke Phillips

Date: June 1-2, 2023

DIFFERENT
BY DESIGN

Agenda

- Premium Processing for Student Work Permits (EADs)
- DHS Ends Form I-9 Inspection Flexibility
- Proposed Changes for I-9
- DOJ Gone Wild - Immigrant and Employee Rights Section (IER)
  - Who They Are and Why You Should Care
  - Risk Mitigation

Premium Processing for Student Work Permits (EADs)

- Premium processing availability has expanded to Applications for Employment Authorization (Form I-765) for:
  - F-1 students seeking Optional Practical Training (OPT); and
  - F-1 students seeking science, technology, engineering, and mathematics (STEM) OPT extensions.
- Online filing of Requests for Premium Processing (Form I-907) is now available to F-1 students in these categories (paper version is also still acceptable).

Premium Processing for Student Work Permits (EADs)

- A Request for Premium Processing can either be filed together with the Application for Employment Authorization, or filed separately if the latter application is already pending.
- $1,500 premium processing fee.
- 30 calendar days to adjudicate the request.

DHS Ends Form I-9 Inspection Flexibility

- COVID-19 temporary flexibilities for Form I-9, Employment Eligibility Verification, will end on July 31, 2023.
- These flexibilities allowed for remote inspection of I-9 documentation for employees who worked exclusively in a remote setting due to COVID-19.
- Employers must complete in-person physical document inspections for employees whose documents were inspected remotely during the temporary flexibilities by August 30, 2023.

Example 1: Completing Section 2 When Inspecting Documents Remotely

Issuing Authority N/A	Additional Information Remote inspection completed on 03/30/2020
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	
Document Title N/A	
Issuing Authority N/A	
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: 03/30/2020 ***(See instructions***

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer o
Abigail Adams	03/30/2020	HR Manager

Example 2: Performing Physical Inspection Once Normal Operations Resume

Issuing Authority N/A	Additional Information Remote inspection completed on 03/30/2020 *COVID-19* *Documents physically* *examined on mm/dd/yyyy* *by AA*
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	
Document Title N/A	
Issuing Authority N/A	
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented b (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) t employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: 03/30/2020 ***(See instructions***

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer
Abigail Adams	03/30/2020	HR Manager

Example 3: Performing Physical Inspection by a Different Person Once Normal Operations Resume

Issuing Authority N/A	Additional Information Remote inspection completed on 03/30/2020 *COVID-19* *Documents physically* *examined on mm/dd/yyyy* *by HR Manager Betsy Ross*
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	
Document Title N/A	
Issuing Authority N/A	
Document Number N/A	
Expiration Date *(if any) (mm/dd/yyyy)* N/A	

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to employee is authorized to work in the United States.

The employee's first day of employment *(mm/dd/yyyy)*: 03/30/2020 ***(See instructions f***

Signature of Employer or Authorized Representative	Today's Date *(mm/dd/yyyy)*	Title of Employer o
Abigail Adams	03/30/2020	HR Manager

Proposed Changes for I-9

- Last year, DHS published a Notice of Proposed Rulemaking for alternative procedures allowing remote document examination for Form I-9.
- DHS anticipates publishing a Final Rule in the Federal Register that will implement this proposal.
- While DHS was not specific about the alternative procedures to be adopted, it would likely feature a remote verification option similar to the COVID-19 flexibility policy.

Proposed Changes for I-9

- DHS is considering requiring employers to retain copies of all I-9 documentation, including any presented remotely via video, fax, or email.
- Furthermore, DHS is considering adding a fraudulent document detection and/or an anti-discrimination training requirement for employers.
  - For example, the employer or authorized representative who uses the alternative procedure may be required to take an online training (30-60 minutes) on detecting fraudulent documents remotely and avoiding discrimination in the process.

What Should Employers Do Now?

- For any employees whose documents were reviewed through remote means, employers should **TAKE STEPS NOW** to complete in-person physical examination of the documents before **August 30, 2023.**
- This is also an opportunity for employers to conduct an internal audit of their Form I-9s with counsel.

What Should Employers Do Now?

- Employers should also review the integrity of their employment verification procedures, especially if they relied on the pandemic era's remote verification policies.
- Such a review will provide employers with the information needed to make an informed decision about whether to take advantage of any future remote verification system in the case that DHS implements one.

DOJ GONE WILD!

- THE IER
- WHO THEY ARE AND WHY YOU SHOULD CARE?
- RISK MITIGATION

IER Website

Kristen Clarke
Assistant
Attorney General

How Does IER Protect Your Rights? View this brief video.

The Immigrant and Employee Rights Section (IER), enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. Regulations for this law are found at 28 C.F.R. Part 44.

This federal law prohibits: 1) citizenship status discrimination in hiring, firing, or recruitment or referral for a fee, 2) national origin discrimination in hiring, firing, or recruitment or referral for a fee, 3) unfair documentary practices during the employment eligibility verification, Form I-9 and E-Verify, and 4) retaliation or intimidation.

If you feel you have suffered one of these forms of discrimination, click here to file a charge or call our Worker Hotline: 1-800-255-7688.

The IER – Who are they?

United States Department of Justice

Civil Rights Division

Immigrant and Employee Rights Section

The IER – What do they do?

The IER is the enforcement agency responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA) set forth in 8 U.S.C. § 1324b.

Relevant Federal Legal Framework

INA § 1324b prohibits:

1. Citizenship status or national origin discrimination in employee hiring, firing, or recruitment or referral for a fee
2. Unfair documentary practices during the employment eligibility verification process (e.g. Form I-9 and E-Verify)
3. Intimidation, threats, coercion or retaliation against an individual for the purpose of interfering with their rights under § 1324b

Other Related Federal Laws Concerning Employment

Title VII of the Civil Rights Act of 1964 – its anti-discrimination provisions include, among other protected categories, protection against discrimination on the grounds of national origin

- *Enforced by the U.S. Equal Employment Opportunity Commission (EEOC)*

Related Federal Laws Concerning Employment

42 U.S.C. Section 1981–

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts…as is enjoyed by white citizens…"

- *Enforced by private cause of action rather than agency*

The IER Investigation Process

- Complainant files a charge of discrimination with the IER - complainant is usually an individual, but a charge can also be made by the DHS or self-initiated by the IER when they have reason to believe there is a violation
- Within 10 days of receipt of charge, IER will send employer a notice of the charge via certified mail
- IER will request a response from employer no later than 90 days, but will include requests for information on a shorter time-frame (e.g. 20 to 30 days)

The IER Investigation Process

Information sought by the IER investigator may include:

(a) documents;

(b) interrogatories;

(c) testimony;

(d) site inspection; and/or

(e) I-9 and E-Verify information.

The IER Investigation Process

- IER tries to conclude its investigations within 120 days but can extend the time if it desires to do so

- Following the investigation, IER makes a determination whether to file a formal complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) , which is the tribunal that hears these types of claims

IER Civil Penalties

The IER is not as well known as other enforcement agencies, but it can pack a punch.

In October 2021, the largest INA anti-discrimination monetary award in the history of its enforcement was reached in a settlement agreement with Facebook: $4,750,000 civil penalty, $9,750,000 victim restitution fund.

IER Facebook Settlement

IER alleged Facebook used recruiting methods designed to deter U.S. workers from applying to positions reserved for temporary visa holders in connection with the permanent labor certification process ("PERM"), and refused to consider U.S. workers who applied to the positions, and hired only temporary visa holders for the positions

Common INA Violations Investigated by the IER

The IER routinely investigates and reaches settlements with companies for various types of violations:

- Demanding specific documents during the I-9 process, particularly asking LPRs for green cards
- Demanding additional documents beyond what were already shown in I-9 process
- Only checking citizenship status of non-U.S. citizens
- Unlawfully screening employees based on citizenship status
- Treating USC or other protected individuals differently

BEST PRACTICES

Best Practices for Risk Mitigation

1. Include the employment verification process as part of your legal compliance/risk management protocols or procedures – this process is mandatory for all U.S. employers and the risk is directly proportional to the size of your workforce
2. The risk can be widespread if the process is not centralized - the wider the reach of personnel involved in the employment verification process the greater the need for oversight and education/training
3. Third-parties can also create risk – e.g. recruiting violations
4. Consider the use of electronic I-9 systems – these systems can significantly reduce frequent errors in the manual I-9 process that create undue risk of fines

QUESTIONS?

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CHANGE IS COMING: WHAT'S NEXT ON ED'S REGULATORY AGENDA?

Presented by:
Veronica Potter
Robert Nickel

Date:
June 1-2, 2023

DIFFERENT
BY DESIGN

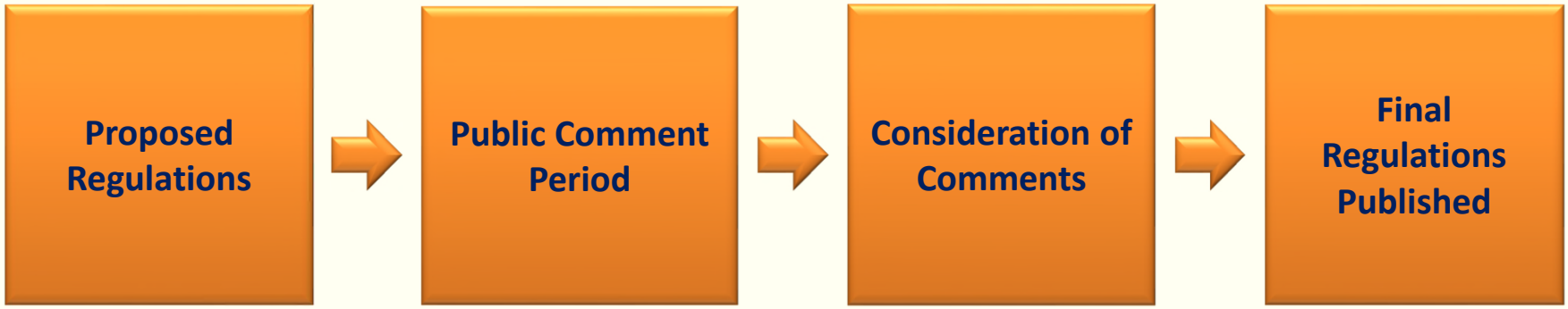
Agenda

- Title IX Proposed Regulations
- Athletic Eligibility Proposed Regulations
- Financial Value Transparency and Gainful Employment Proposed Regulations
- Section 504 Future Regulations

What are Regulations?

- Regulations are implemented through a notice and comment process.
- Final regulations have the authority of law.
  - For example, used by OCR when conducting an investigation.
- Regulations do not set the standards for liability in private litigations.

Rulemaking Process



TITLE IX

Title IX Proposed Regulations

- January 2021: President Biden took office.
- March 2021: President Biden signed executive order directing Dept. of Education to review Title IX regulations.
- July 2021: Dept. of Education releases Title IX Q&A.
- June 2022: Notice of Proposed Rulemaking published.
- September 2022: Comment period closed – 240,000+ public comments received.

Title IX Final Regulations?

- Dept. of Education just announced that the anticipated date for the final regulations is now October 2023.

- Meetings have not yet been scheduled by the Office of Information & Regulatory Affairs.

Title IX Proposed Regulations

- Some potential changes in new regulations:
  - Broader scope covering all sex discrimination, not just sexual harassment.
  - Broader definition – "sex-based harassment."
  - Require addressing off campus conduct.
  - No requirement for a live hearing or cross examination.
  - Require more employee reporting of complaints.
  - Extend Title IX protections based on sexual orientation and gender identity.
  - Increased protections for pregnant students.

Waiting game…

- 2020 Regulations are still in effect, so not time to modify any policies yet!
- Proposed regulations may change before the final regulations are released.

Planning ahead

- But, can start to plan, gather input, identify stakeholders.
- What has worked in your policy and procedure over the last three years?
- What hasn't worked?
- What are the expectations of the campus community?

ATHLETIC ELIGIBILITY UNDER TITLE IX

Background

- March 2021: President Biden issued executive order directing ED to examine Title IX.
- January 2022: NCAA announced updated policy on transgender student athlete participation.
- June 2022: ED released proposed Title IX regulations, but these did not specifically address the question of transgender students' eligibility for athletic teams.
- April 2023: ED released proposed regulation on athletic eligibility.

Proposed Regulation

- 106.41(b)(2) – If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:
  - Be substantially related to the achievement of an important educational objective; and
  - Minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

Proposed Regulation

- Educational institutions can prohibit students from participating on athletic teams that align with the students' gender identity, if:
  - Substantially related to achievement of important educational objective, and
  - Minimize harms to affected students.
- Blanket policies excluding students from teams that match gender identity that cover all sports/all levels would not comply.

Proposed Regulation

- Important educational objectives suggested by ED:
  - Fairness in competition;
  - Prevention of sports-related injuries would qualify as important educational objectives.
- No guidance on what would be considered to minimize harm to affected students.

Proposed Regulations

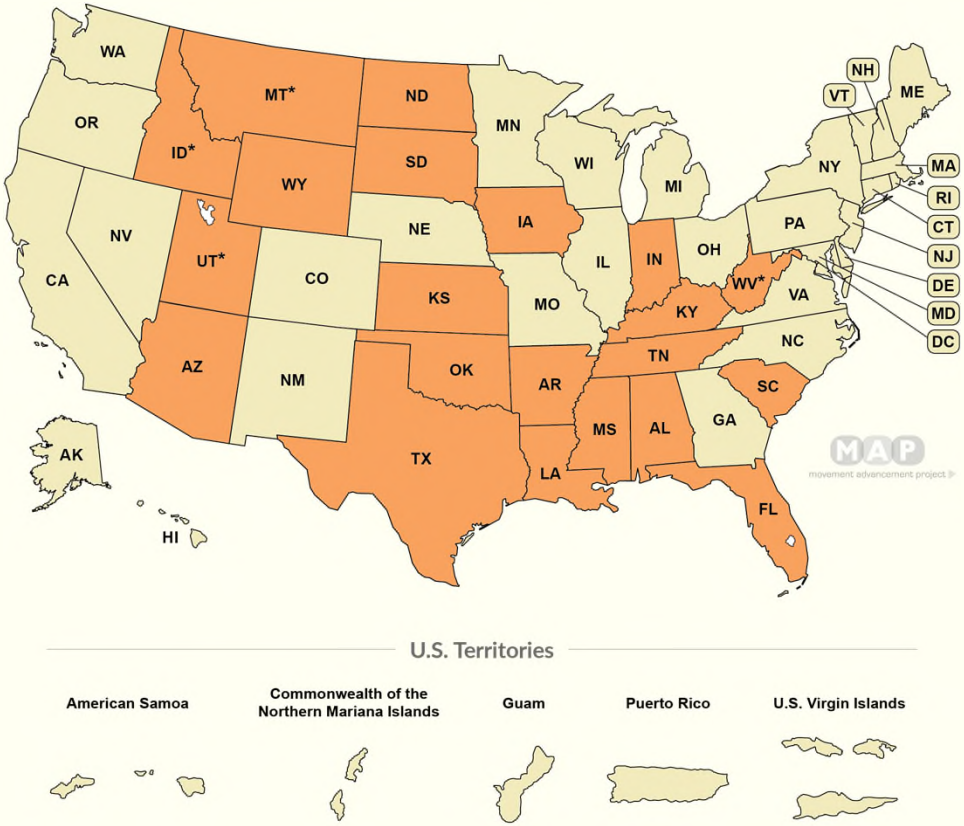
- May 15, 2023: Comment period closed, over 150,000 comments were submitted.
- Dept. of Education just announced that they intend to release the final regulation in October 2023.
- No federal regulation in effect at this time.

MO Senate Bill 39

- "… [N]o private school, public school district, public charter school, or **public or private institution of postsecondary education** shall allow any student to compete in an athletics competition that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate…"
- Schools that violate SB 39 "shall not receive any state aid under this chapter or chapter 173 or any other revenues from the state."
- Passed by MO House and Senate.

Around the Country

- Currently 21 states have laws similar to MO Senate Bill 39



https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans

West Virginia et al v. BPJ

- WV District Court granted an injunction blocking a law that prohibited transgender girls from playing on girls teams while the case challenging the law was pending.
- WV District Court decided the law was constitutional and removed the injunction.
- 4th Circuit granted an injunction blocking the law while the case is on appeal.
- Supreme Court declined to vacate that injunction.

> The application to vacate injunction presented to THE CHIEF JUSTICE and by him referred to the Court is denied.

NCAA

- In January 2022, the NCAA announced an updated policy regarding transgender athletes.
- Under this policy, transgender athletes will need to document sport-specific testosterone levels.
- These will need to be documented 1) at the beginning of their season, 2) six months after the first documentation, and 3) four weeks before championship selections.

NCAA

- This policy follows the sport-by-sport approach taken by the Olympic movement.
- This sport-by-sport approach aligns with the ED's proposed regulations.
- However, this policy may be updated again once the proposed regulations are finalized and implemented.

What's next?

- This is an actively developing area of law.
- Likely to be litigation challenging SB 39 in the next few months.

FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT

Background

- Prior rules on gainful employment introduced under President Obama, rescinded under President Trump.
- May 2021:Notice of Intent to Commence Negotiated Rulemaking (required for rulemaking under Title IV).
- May 17, 2023: Proposed regulations released.
- Comments are due June 20, 2023.
- ED plans to release final regulations by Nov. 1, to take effect July 1, 2024.

Application

- Gainful employment - for-profit institutions AND non-degree programs at any institution.
- Financial value transparency - all institutions receiving federal funds.

Gainful Employment

- Two independent metrics to determine if a program meets the requirement to prepare students for gainful employment:
  - Debt-to-earnings ratio – Debt payments must be no more than 8% of annual income or 20% of discretionary income. Programs that do not meet the standard are deemed "high-debt programs."
  - Earnings premium test – Is a typical program graduate earning at least as much as a typical high school graduate between the ages of 25 to 34? Programs that do not meet the standard are deemed "low-earnings."

Gainful Employment

- Programs would be assessed separately on each metric.
- Programs that fail at least one metric in a single year would need to warn students that the program is at risk of losing access to Federal aid in subsequent years.
- Programs that fail to meet the standards on the same metric twice in a three-year period would have eligibility to participate in Federal aid programs revoked.

Financial Value Transparency

- Under new proposed Financial Value Transparency regulations, ED would calculate the debt-to-earnings ratio and earnings premium measure for all undergraduate and graduate programs across all sectors of higher education.

- Proposed regulations create a new disclosure website hosted by ED to provide information on the financial value of these programs to students and prospective students.

Financial Value Transparency

- To do so, proposed regulation would collect new information about costs, non-Federal grant aid, typical borrowing amounts, earnings, any applicable occupational and licensing requirements, and licensure exam passage rates.
- This information would be made publicly available on the disclosure website.

Financial Value Transparency

- Institutions will have to provide a link to the disclosure website.
- Students will have to acknowledge seeing the disclosure website prior to receiving Federal financial aid for programs that fail the debt-to-earning ratio as calculated by ED.

SECTION 504

Section 504 Background

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in public and private programs that receive federal funding.
- Current regulations interpreting Section 504 are at 34 CFR Part 104.
- Regulations were implemented in 1977.

What's next?

- 2022 was the 45th anniversary of the publication of the regulations implementing Section 504.
- In May 2022, ED announced plans to gather public input on possible amendments to the existing regulations.
  - Comments can be submitted by email.
  - Listening sessions?
- The ED seeks to strengthen the current regulations.

Future Regulations

- As part of the regulatory agenda, proposed regulations were scheduled for May 2023.

Timetable:

Action	Date	FR Cite
NPRM	05/00/2023	

https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1870-AA18

- No meetings have been scheduled on these regulations with the Office of Information and Regulatory Affairs.


Q&A

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DEALING WITH DIFFICULT FACULTY: A "CRASH COURSE"

Presented by:
Ian Cooper and Kate Nash

Date:
June 1-2, 2023

DIFFERENT
BY DESIGN

We LOVE faculty!!!

- We are confident that:
  - The VAST majority of faculty are dedicated, thoughtful, caring people
  - The VAST majority of faculty provide excellent teaching, service, and research
  - The VAST majority of faculty get along, follow the rules, and behave themselves
- On the other hand, occasionally there are "issues"
- We live on the dark side of Moon . . .

Some fun recent headlines . . .

Ex-HBS Professor Sues Harvard for Allegedly Mishandling Tenure Review After Chinese Restaurant Email Spat

Former Harvard Business School professor Benjamin G. Edelman '02 filed a lawsuit against Harvard on Tuesday for allegedly mishandling his tenure consideration process. By Christopher Hidalgo

And . . .

EDSOURCE SPECIAL REPORT

Chico State professor disciplined for student affair allegedly threatened colleagues who complained

Chico State says 2020 affair "might be considered differently today."

BY THOMAS PEELE
DECEMBER 8, 2022

And . . .

University of Montana faculty member put on leave over alleged misogynistic, homophobic blog

Keila Szpaller Daily Montanan

Published 12:02 p.m. MT Oct. 12, 2021 | **Updated 12:11 p.m. MT Oct. 12, 2021**

Rob Smith, University of Montana Computer Science faculty member. *Provided By UM*

A University of Montana Computer Science faculty member who had posted disparaging remarks about women, LGBTQ+ people and Muslims on his blog is on leave pending an investigation, UM said Tuesday.

"That action was made last night," said UM spokesperson Dave Kuntz in an email. "Mr. (Rob) Smith will no longer be teaching and he will not be physically on campus during his leave."

And this doozy . . .

LBCC professor fired over alleged elbow incident during graduation ceremony

by Jason Ruiz
Sep 15, 2022

The Long Beach Community College District Board of Trustees meets in open session Wednesday September 14, 2022. Photo by Jason Ruiz

Hmm . . .

The Long Beach Community College District Board of Trustees voted to fire a professor Wednesday afternoon following allegations that she had elbowed a student while announcing names on stage during the college's graduation ceremony earlier this year.

Kashara Moore, a part-time faculty member at the college for the past 10 years who was recently elected president of the part-time faculty union, had been on paid administrative leave since June, pending the outcome of an internal investigation.

Roberts, a former president of the faculty union Moore was recently elected to lead, which filed a class action lawsuit against the college in April over alleged minimum wage violations, said that part-time professors across the state were watching what was happening at LBCC.

"Don't sit in your small, small world and think this isn't going to affect the college," Roberts said. "It's going to affect the college."

The basics (101)

- Understand the **relationship** between the institution and the faculty member.
  - –Usually not "at will"
  - –If not "at will"
    - oContract?
    - oTenure?
    - oOther procedural protections?
    - oState versus private (constitutional dimensions)?

101

- Understand the **misconduct** at issue.
  - Teaching? Scholarship? Sexual harassment? Fraud? Conflicts of interest? **Collegiality**? "All of the above"?
  - Who suffers because of the misconduct?
  - Different allegations trigger different types of responses and processes. . .

101

- Understand the **policies and other sources of authority** that are implicated.
  - Employee Handbook (or HR policies)?
  - Faculty Handbook (which takes precedence)?
  - Board policies
  - Publics:
    - Collected Rules (or similar)
    - Statutes
    - Regulations

101

- Understand your **processes** and how they intersect.
  - Formal, informal, hybrid?
  - Progressive discipline requirements?
  - Conciliation efforts required?
  - HR processes versus Institutional Equity or Title IX?

101

- Understand the **range of possible sanctions** that may be available.
  - Verbal counseling?
  - Written warnings?
  - Removal of duties?
  - Docking of pay?
  - Suspension?
  - Termination?

Sophomore year (201)

- Assess the nature of the particular conduct: is **safety** an issue?
  - Threats versus weirdness
  - Involvement of public safety
  - What do your policies permit regarding suspension – does a "credible threat to physical safety" have to be present to allow removal from campus duties?
  - Who should be involved in making threat assessments?

201

- Who are the **persons involved in making the decisions**?
  - What is the context (academic unit)?
  - Is there history (with particular individuals or academic units) . . . are there "axes to grind"?
  - Are the decision-makers reasonable or reactive?
  - How involved is HR? The VPAA or Provost? The President?
  - Who **should** be involved?

201

- Assess the **particular behavior** involved.
  - Does the behavior relate to teaching, service, and/or scholarship?
  - Is "academic freedom" implicated?
  - Is the problem "collegiality" and, if so, what are the particular issues and what role does collegiality play in your policies?
  - Is there a pattern of behavior, as series of incidents, or a single incident?
  - Is mental health involved – and how has it been addressed – or has it?

201

- Assess **how long the problems have gone on**, and **how they've been handled**.
  - Days, weeks, months or (heaven forbid) years?
  - What do the **evaluations** say (oh no, they don't mention it!)?
  - If has been going on for years, **why** do something about it **now**?
  - What efforts have been made to remediate or prevent further "issues"?

201

- Assess the **impact of the behavior** on others.
  - Students or other vulnerable persons (e.g., staff)?
  - Other faculty?
  - Academic unit functioning?

201

- How have **other faculty** been dealt with historically?
  - Who are your campus historians?
  - Prior controversies on campus?
  - Track record regarding faculty discipline: successes, failures, or both?
  - Will your action be precedent setting?

201

- Are there **other considerations** in play?
  - What's the temperature on campus?
  - Union involvement?
  - Protected status of, or activity by, the faculty member?
  - Publics: is this "speech" or behavior or both?
  - Other timing considerations (faculty retirement, leave, immediacy of other impacts, class coverage, etc.)

Junior year (301)

- So you have decided that **now is not the time to dismiss**, but you're concerned things will continue to be problematic during the interim . . .
  - Planning for measures short of dismissal
  - Involving all relevant stakeholders (administrators and faculty)
  - Consider creative options – like professional coaching, referral to counseling

301

- How is the **message conveyed** to the faculty member?
  - In-person is always preferred
  - Who will deliver the message?
  - Scripts for meetings
  - Witnesses to key meetings

301

- Document, document and, by the way, did we mention **DOCUMENT**
  - Written summaries of issues and meetings
  - Direct communication (no beating around the bush) with the faculty member
  - Annual evaluation follow up – coordinating with Chairs or Division heads
  - Robust HR documentation

301

- How are you going to **monitor progress** and **follow up**?
  - Consultant feedback?
  - 30-day review?
  - End of semester follow up?

Senior year (401)

- So now it's getting serious . . . You're deciding **dismissal** is probably the next step
  - But who will be on your "jury"?
    - Faculty tenure committees present "unique challenges"
    - How are they selected, retained, removed?
    - Lawyers on the committee?
  - Who ultimately decides (President, Board, etc.)?
  - And will the faculty member **continue to be paid**?

401

- Are you required to take **efforts to resolve** short of a hearing?
  - "Amicable adjustment" – the best euphemism ever!
  - Single versus multiple committees (i.e., is the resolution committee different from the hearing committee)?
  - Who should participate on behalf of the institution?
  - How many cards do you show during conciliation efforts?

401

- Preparing a formal **Charging Document**
  - Build it using your definition of "just cause"
  - Create a central theme
  - Provide just the right amount of detail ("reasonable particularity")
  - All grounds versus just the really damning ones
  - Persuasive writing versus legalistic writing
  - Exhibits: key documents versus all evidence
  - Identify witnesses versus maintaining anonymity

401

- Assemble the **Hearing Committee**
  - Selection (striking for cause and peremptory challenges)
  - Bias (membership in AAUP, or knowledge of the faculty member)
  - Availability
  - Same academic unit as faculty member
  - How large (read: cumbersome)
  - Can the Chair make procedural decisions

401

- Decide who **participates** at the hearing and **identify their roles**?
  - Observers (how many – what organizations)
  - AAUP (observers only – not anything more)
  - Academics (if teaching is implicated)
  - Legal counsel for the committee (advising)
  - Legal counsel for the parties (advocates versus advisors)

401

- Will the hearing be **open** or **closed**?
  - Open is rarely a good idea
  - Who will the witnesses be (students, for instance) and how would they be impacted by an open hearing?

401

- Will the hearing be **in person or remote or hybrid**?
  - The pitfalls of remote hearings
    - Judging witness credibility
    - Lengthening the process
    - Exhibit management
  - The advantages of remote hearings
    - Scheduling
    - Cost

401

- How can you **maintain confidentiality**
  - Policies likely require no "public statements" or "publicity"
  - Confidentiality agreements/stipulations
    - Get agreement from outside observers
  - FERPA considerations . . . Probably not, but maybe

401

- **Pre-hearing activities**
  - "Discovery" and obligations to cooperate
  - Marshal the evidence and limit the exhibits
  - Identify witnesses
  - Pre-hearing conferences
    - Rules of the road
    - Schedules!

401

- **Burden of proof**
  - Preponderance of the evidence
  - Clear and convincing evidence
  - It is ALWAYS the College's or University's burden
  - The "secret burden"

401

- What are your **evidentiary rules and issues**
  - Formal rules of evidence rarely apply
  - But there still may be relevance and reliability issues
  - The right to "confront and cross-examine"
  - Overarching rule: process that is "due"

401

- The hearing should not be a **referendum on tenure**
  - Faculty members fear the "assault on tenure"
  - Reassure the committee that the proceeding is about an individual faculty member's failings
  - Speak academic language, not legal language – make it relatable
  - Reassure the committee that they are not next!

401

- Who will **take the lead**?
  - Sharing the load
    - Legal, procedural, evidentiary and policy interpretation matters: legal counsel
    - Academic, institutional, cultural issues: the University's or College's academic officer (Provost, VPAA, Dean, etc.)
  - Divide and conquer!

401

- **Post-hearing processes**
  - Grounds for appeal (substantive versus procedural)
  - Limited review (the hearing transcript and exhibits only)
  - Timing considerations
  - Argument before the appeal hearer (President or Board)

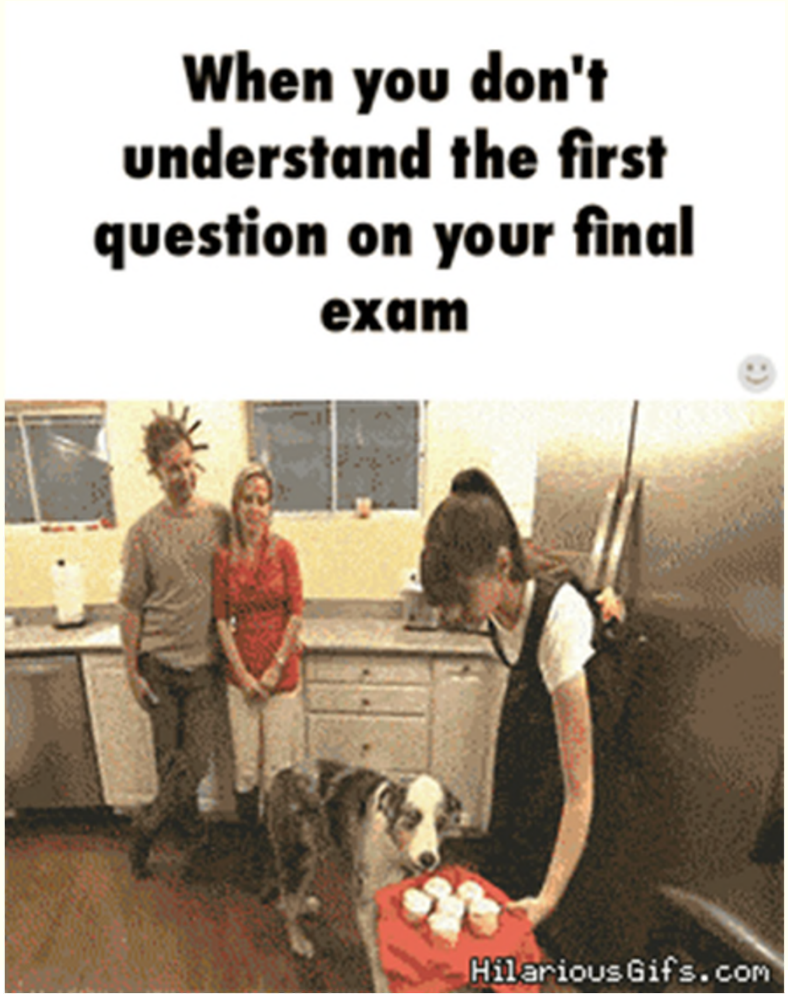
Graduate Level

- Possible **legal claims** emanating from the tenure revocation process
  - Disability, age, sex, or other discrimination claims
  - Retaliation claims
  - Constitutional (free speech) claims

Doctoral degree

- **THE LAWSUIT!!!**

Your Final Exam



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MOHAN & JACKSTADT, P.C.

THANK YOU
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HIGHER EDUCATION SEMINAR

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Our Firm

Our law firm is different by design. We pride ourselves in our ability to provide "big firm" quality legal services with significantly greater responsiveness, efficiency, value, and the individual touch of a dedicated boutique practice. Personal contact, quality services and efficient results are the deeply-held values that shape our relationships and drive our success. We believe clients deserve honest, accurate, and practical answers to their legal issues, delivered in the most efficient manner, from attorneys they know, like, and trust.

Tueth Keeney has rejected the idea of "being all things to all people." Instead, we are deliberately focused on being the best at what we do. Our attorneys provide support to our clients in areas of practice in which Tueth Keeney is recognized for its virtually unmatched expertise: education law, employment law, immigration law, and litigation.

Our attorneys recognize the need to deliver real-world, tangible solutions with quality and transparency. We form enduring working relationships and friendships with our clients. We strive to bring creative thinking and innovative solutions to every client's legal challenges. By keeping our practice optimized for efficiency, we built a value-driven law firm that is uniquely aligned with our clients' best interests.

The traditional practice of law is reactionary — a response to legal disputes after they arise. The attorneys at Tueth Keeney are not only advocates, but also counselors and advisors. We work with our clients to prevent legal disputes, and to minimize legal risks before the disputes become lawsuits. Our firm is widely recognized for not only winning cases, but for helping to prevent cases from being filed in the first place.

Our attorneys routinely provide training to clients and friends of the Firm, including multiple annual free seminars and in-service sessions on a wide variety of challenging legal issues. In addition, we often provide free email updates to clients and friends of the firm, in an ongoing effort to keep them up to date on important legal developments.

Our attorneys recognize that employers and managers are faced with significant challenges in today's environment of rapidly-changing economic conditions, ever-increasing governmental regulation, and the spiraling risks of litigation. Against this volatile background, the hallmark of Tueth Keeney's unique law practice is our unparalleled record of success in advising and representing our clients — whether public or private, large or small — in their legal matters.

Personal Contact; Quality Services; Efficient Results. We invite you to learn more about our Firm, our practices areas, and our attorneys – and to discover how we can partner with you to successfully address your legal challenges.

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TUETH KEENEY
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Our History

Tueth, Keeney, Cooper, Mohan & Jackstadt P.C., is different by design. Our firm was established in the year 2000 by a group of eighteen attorneys who separated from one of the largest law firms in the Midwest. Our founding shareholders rejected the traditional approach to legal issues, and established a unique firm with a practical focus and the ability to offer creative, flexible problem-solving techniques tailored to the unique needs of each client — whether that client is a Fortune 500 company, major research university, local municipality, or rural school district.

Focused on our strengths and designed for efficiency, Tueth Keeney provides sophisticated, practical legal solutions in the areas of labor and employment law, education law, immigration law, and litigation.

As Tueth Keeney has succeeded and grown throughout our second decade, our firm has continued to embody the entrepreneurial founding spirit of our organization. Reflecting our history, Tueth Keeney is built upon our core philosophy of Personal Contact, Quality Service, and Efficient Results. We remain committed to providing our clients with unparalleled legal services in the most cost-effective manner possible.

We persistently challenge conventional wisdom and offer clients a clear choice: the highest quality legal services, delivered in the most efficient manner, from attorneys they know, like and trust. Indeed, amidst all our success, we are most proud of our enduring relationships with our clients, whose legal challenges have been, and will always remain, our paramount focus. We invite you to learn more about our firm, our practice areas, and our attorneys, and how we are different from our competition.

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TUETH KEENEY
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Our Core Values

Tueth, Keeney, Cooper, Mohan & Jackstadt P.C., is different by design. Our founding shareholders established a unique firm with a practical focus and the ability to offer creative, flexible solutions to our clients' legal challenges. Tueth Keeney is committed to providing clients with the highest quality of legal services in all facets of our practice, and to ensuring that our clients' legal issues and concerns are always our paramount focus.

Consistent with our philosophy of personal contact, quality services, and efficient results, Tueth Keeney attorneys agree to adhere to the following core values in all of our actions and decisions, as lawyers and members of the Firm:

THE BEST AT WHAT WE DO

- We are leaders in our fields – we have unsurpassed proficiency in our particular areas of practice.
- We provide the greatest value by giving our clients the most practical and efficient advice possible.

CLIENT-CENTERED

- Our clients' goals are our highest priority – we put those goals above our personal interests.
- We form deep, trusting, and long-lasting relationships with existing and new clients — we treat our clients as colleagues and friends.

INNOVATIVE

- We are creative, resourceful and imaginative when addressing our clients' legal needs.
- We are forward-thinking, entrepreneurial, and visionary regarding our legal practice.

COLLABORATIVE

- We protect and promote our relationships with each other — we respect and support each other, and communicate all relevant information.
- We achieve consistent professional growth through training, delegation and transition.

GROUNDED

- We act with the highest ethics and integrity in everything we do — without exception.

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- We are not simply driven by profit — rather, we know that we will be successful, both personally and professionally, by remaining client centered and being the best at what we do.

We agree to measure our success — collectively and individually — in light of these core values. Indeed, amidst all our success, we are most proud of our enduring relationships with our clients, whose legal challenges have been, and will always remain, our paramount focus. We invite you to learn more about our firm, our practice areas, and our attorneys, and how we are different from our competition.

Tueth Keeney is pleased to be affiliated with:

The Employment Law Alliance

While our offices are located in Missouri and Illinois, through our selection to the Employment Law Alliance ("ELA"), our Firm has global outreach and access to the highest quality of labor, employment and immigration legal expertise worldwide. The ELA is the world's most prestigious alliance of elite labor and employment law and litigation firms. ELA members have access to a global employment law handbook prepared by ELA members containing critical employment law information relating to jurisdictions worldwide. The Firm is the only ELA member in the St. Louis and the Southern Illinois region.

TUETH KEENEY
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Lisa J. Berns

ATTORNEY AT LAW / OF COUNSEL

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Practice Areas

Real Estate and Construction
Lending and Finance
Higher Education

Bar Admissions

Missouri, 1992
Illinois, 1993

Lisa J. Berns practices in the areas of real estate, construction, general business contract, lending and finance and corporate law and provides general transactional construction and procurement advice to Missouri and Illinois public school district and higher education clients as well as private clients. She has extensive experience negotiating a variety of vendor, service, energy savings, and construction contracts for public school district and higher education clients, and has also represented public and private clients in a variety of transactional matters, including the purchase, sale, leasing and construction of public and private institutional properties. She has represented borrowers and lenders in complex financing transactions secured by major properties in Missouri and Illinois, as well as transactions involving asset-based and cash flow loans. Her practice also has involved the foreclosure of commercial and consumer properties and workout negotiations. She has represented multiple Fortune 500 clients in the management of their owned and leased properties on a nationwide basis. She has also assisted public school district and higher education clients with charitable giving and not-for-profit related matters and has also assisted education clients with procurement and public works compliance.

Prior to joining the Firm, Lisa practiced with the law firm of Blackwell Sanders Peper Martin LLP for twelve years, the last four as a Partner.

Education

J.D., Washington University School of Law, 1992
- Articles Editor, Washington University Law Quarterly
- Order of the Coif

B.A. Newcomb College of Tulane University, 1989
- Graduated summa cum laude
- Phi Beta Kappa

Professional Affiliations

- The Missouri Bar Association
- Illinois State Bar Association
- Bar Association of Metropolitan St. Louis

Presentations

- Real Estate Purchase and Sale Transactions; The Process Begins: Tying Up the Property, Sterling Education Services, April 8, 2004
- Title Search: The Process in Missouri; Permitting and Governmental Issues, Lorman Education Services, November 9, 2004
- The Fundamentals of Successful Office and Retail Leasing in Missouri: Lender Issues and Particular Lease Issues, National Business Institute, March 21, 2005

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Calvin Bill

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Practice Area

Immigration

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Calvin Bill has a practice focused in the area of immigration law. Calvin helps all clients, from corporations to universities to individuals, navigate the numerous complexities presented by the federal and state agencies responsible for processing immigration matters. Calvin provides advice and counseling on obtaining temporary/permanent visas, consular processing, employment eligibility verification compliance, and naturalization.

While in law school, Calvin was an active participant in Washington University in St. Louis' clinical programs. Through these experiences, he briefed and argued important issues before the Clean Water Commission and actively assisted local, low-income entrepreneurs get their businesses off the ground by providing personalized counseling and document preparation.

Education

J.D., Washington University in St. Louis School of Law, 2022 (cum laude)
- Recipient of the 2022 Clinical Legal Education Association Outstanding Student Award
- Recipient of the 2022 Academic Excellence Award
- Executive Articles Editor, Journal of Law and Policy

B.A., Central College (Pella, IA), 2018
- Biochemistry and Spanish
- Varsity Men's Soccer

Bar Admissions

Missouri, 2022

Professional Affiliations

- The Missouri Bar

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Aigner S. Carr

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Practice Areas

Missouri Education Law
Higher Education Law
Labor & Employment

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Aigner S. Carr practices in the areas of education, litigation, and labor & employment law. Her practice includes both appellate and trial courts matters involving complex legal issues. She represents school districts, charter schools, and private schools throughout Missouri and Illinois with respect to employment and personnel matters, special education, Section 504, student rights, and civil rights. Aigner also represents post-secondary educational institutions and private corporations with respect to employment and personnel matters, and civil rights issues. Aigner represents clients in various settings including state and federal court; and in front of administrative agencies, such as the Equal Employment Opportunity Commission, the Missouri Human Rights Commission, the Department of Education's Office for Civil Rights, and Administrative Hearing Commissions. Aigner also advises and provides general counseling to institutions regarding various employment issues including Title VII, the ADA, the ADEA, the FMLA and related state laws. Additionally, Aigner conducts external investigations for institutions involving sensitive matters such as high-level personnel issues, equity, Title IX, and general legal compliance.

Education

J.D., Law Saint Louis University School of Law, 2017

Theodore McMillian American Inns of Court, 2016-1017
Thurgood Marshall Mock Trial Team, Mid-West Regional Best Advocate Award; National Quarterfinalist, 2015-2016
Academic Excellence Award Recipient

University of Missouri- Kansas City, 2014

- Criminal Justice Honor Society
- Alpha Lambda Delta Academic Honor Society

Bar Admissions

- Missouri, 2017
- Illinois, 2021
- U.S. District Court for the Western District of Missouri
- U.S. District Court for the Eastern District of Missouri

Professional Affiliations

- Council of School Attorneys
- National Association of College and University Attorneys
- Mound City Bar Association
- Bar Association of Metropolitan St. Louis

Selected Presentations

- Title IX Update: Regulations and Litigation, August 2022
- Student Discipline and Cyberbullying, May 2022
- "Special Education/504 in COVID Aftermath," August 2021
- "MHRA Spotlight: Limits and Requirements of Place of Public Accommodation Claims," June 2021
- "Labor and Employment Law: What to Expect in 2021," Association of Corporate Counsel-St. Louis CLE, December 2020

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- Title IX Compliance Series: The Role of the Title IX Investigator, October 2020
- "Handling Political Speech on Campus in 2020," October 2020
- "From the Courtyard to the Courtroom: Practical and Legal Consequences of School Bullying," August 2019
- "Student Discipline Foundations and Special Education Issues," June 2018
- "Medical Marijuana: Coming to Your Campus?" June 2019
- "Assessing and Responding to Employee Requests for Religious Accommodations," April 2019
- "Green Light, Yellow Light, Red Light: Making Good Decisions int the Hiring Process," March 2019
- "Litigation Update- Recent Cases Impacting Higher Education," May 2018
- "Addressing Disparities in Student Discipline: An Update on Federal Guidance and Recent Cases," August 2018

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Ian P. Cooper

ATTORNEY AT LAW / SHAREHOLDER

Practice Areas

Employment Law and Litigation
Higher Education Law and Litigation
Commercial Litigation
Tort Litigation

Bar Admissions

Missouri, 1984
Illinois, 1985
Various State and Federal Courts including the U.S. Supreme Court

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Ian Cooper serves clients in employment, higher education, commercial, and tort matters. Ian regularly serves as lead counsel in significant cases, including class actions and other complex litigation and has tried numerous jury and bench trials in Missouri and Illinois. He has argued cases before the Missouri Supreme Court, the Illinois Supreme Court, the Missouri and Illinois Courts of Appeal, and the United States Courts of Appeal for the Seventh and Eighth Circuits and has briefed important employment issues before the Supreme Court of the United States. Ian also frequently counsels clients on a wide range of employment and higher education issues, including compliance, training, and litigation avoidance. Ian is a frequent speaker at national and regional conferences in the areas of employment law, higher education, and litigation.

Ian is a Fellow in the College of Labor and Employment Lawyers — a "fellowship of the most accomplished members of the labor and employment law community" in the United States. Ian is also a Fellow of the Litigation Counsel of America, an organization of leading trial and appellate counsel throughout the United States. Ian has been elected a member of the American Board of Trial Advocates, an invitation-only organization comprised of trial advocates "of high personal character and honorable reputation" practicing throughout the United States. Ian has also been named a Best Lawyer in America in both employment and commercial litigation and a Missouri & Kansas Super Lawyer in employment litigation. He is also a member of the National Association of College and University Attorneys.

Prior to founding the Firm, Ian was a partner at what is now Husch Blackwell, LLP. Before entering private practice, Ian served as Law Clerk to the Hon. James F. Warren of the Texas Court of Appeals, First Supreme Judicial District, in Houston, Texas.

Education

J.D., Washington University School of Law, 1984
- Notes and Comments Editor, Washington University Journal of Urban and Contemporary Law

B.A. Rice University, 1981

Significant Honors and Awards

- Fellow, College of Labor and Employment Lawyers
- Fellow, Litigation Counsel of America
- Member, American Board of Trial Advocates
- "Missouri and Kansas Super Lawyer" in employment litigation
- "Best Lawyer in America" in employment and commercial litigation
- Member, National Association of College and University Attorneys

Presentations

- "Employee Activism and Political Speech on Campus: The Limits of Free Speech Rights of Employees Regarding Political Issues and Viewpoints," National Association of College and University Attorneys, Seattle Washington, April 2019.
- "Legal update for HR," Missouri College and University Professional Association – HR, November 2018.
- "Speech on Campus," Missouri Community College Association – Chief Student Affairs Officers, November 2017.

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- "The Latest in Legal Updates for College and University HR Professionals," September 2017.
- "Updates to Missouri Employment Law," Missouri Chamber of Commerce, August 2017.
- "Hot Legal Topics for College and University HR Professionals," MCUPA-HR Fall 2015 Conference, September 2015.
- "Hot Legal Topics in Higher Education," Missouri Community College Association Trustee and Administrative Professional Spring Conference, May, 2015.
- "Litigation Update: New Direction in Failure to Hire MHRA Cases," St. Louis Chapter of the Association of Corporate Counsel, December 2014.
- "Hot Topics Impacting Higher Education," Missouri College and University Professional Association – Human Resources, October 2014.
- "Anatomy of an MHRA Claim," St. Louis Chapter of the Association of Corporate Counsel, November 2013.
- "The U.S. Supreme Court's 2013 Employment Law Decisions: Key Considerations for Employers," Employment Law Alliance Webinar, July 2013.
- "Managing High Profile Discrimination Litigation," National Association of College and University Attorneys, Nashville, Tennessee, March 2013.
- "Who is a 'Supervisor' Under Title VII?" St. Louis Chapter of the Association of Corporate Counsel, November 2012.
- "What Keeps You Up at Night?" Employment Law Alliance, Vancouver, B.C., September 2012.
- "First Amendment and Community Colleges: Student Organizations, Employee Speech, and Politics on Campus," Missouri Community College Association, May 2012.
- "A Year in Review: Key U.S. Labor and Employment Law Developments in 2011 and What to Expect in 2012," Employment Law Alliance Webinar, January 2012.
- "Legal Issues and Implications for Community Colleges," Missouri Community College Association, May 2011.
- "Anatomy of a Missouri Human Rights Act Trial," St. Louis Chapter of the Association of Corporate Counsel, August 2010.
- "My Space is not Your Space: What Employers Need to Know about Employee Social Networking," Employment Law Alliance Webinar, May 2010.
- "Campus Safety and the Clery Act," Midwestern Regional Conference of the University Risk Management & Insurance Association, May 2010.
- "Missouri Human Rights Act: Expanding Employer and Supervisor Liability," St. Louis Chapter of the Association of Corporate Counsel, October 2009.
- "Effective Mediation Advocacy from the Advocate's Perspective," Bar Association of Metropolitan St. Louis, August 2009.
- "Missouri Human Rights Act Case Law and Proposed Legislative Changes," Missouri Department of Higher Education Conference, May 2009.
- "Amendments to the Americans with Disabilities Act," Employment Law Alliance Webinar, January 2009.
- "Emerging Employment and Disability Law Issues," University of Vermont Legal Issues in Higher Education Conference, Burlington, Vermont, 2006.
- "Lessons Learned from the Trenches," College and University Professional Association for Human Resources, San Diego, California, 2006.
- "Auditing Hiring Practices and Policies," National Association of College and University Attorneys, Atlanta, Georgia, 2004.

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- "Managing the Embarrassing Executive in Litigation," Employment Law Alliance, New Orleans, Louisiana, 2003.
- "How to Lose a Jury Trial, "Employment Law Alliance, Montreal, Canada, 2003.
- "Turning Bad Claims into Good Lawsuits – Retaliation and Whistleblower Suits," National Association of College and University Attorneys, Austin, Texas, 2003.
- "Avoiding Retaliation Claims," United Educators Publication, 2002.

Significant Trials

- *Marcantonio v. Board of Governors of Lincoln University*. MHRA hostile work environment and constructive discharge claims against Lincoln University brought by the former Director of Human Resources at the University. The trial court directed a verdict for the University following a five-day jury trial.
- *Sanders v. City of Columbia.* Trial involving former Police Officer for the City of Columbia seeking reinstatement, back pay, and benefits. Judgment for the City/Employer. Upheld on appeal by the Western District of Missouri Court of Appeals.
- *Ma v. Board of Governors of Missouri State University*, Title VII race and national origin discrimination claims against Missouri State University brought by a former teacher at the LNU-MSU College of International Business. Unanimous verdict for the University following a four-day jury trial.
- *Jennings v. Board of Governors of Missouri State University.* Age discrimination and retaliation claims brought by faculty member against Missouri State University under the Missouri Human Rights Act. Unanimous verdict for the University following a five-day jury trial.
- *Petkoff v. Metropolitan Community College.* Disability discrimination and retaliation claims brought by Iraq war veteran against Kansas City's largest institution of higher education. Plaintiff sought $1.2 million in actual damages and $9 million in punitive damages. Defendant's verdict.
- *Washington University v. Missouri Commission on Human Rights.* Action in prohibition brought on behalf of a private university to establish that the University's academic program is not a "place of public accommodation" under the Missouri Human Rights Act. Judgment for the University.
- *Moll v. General Automatic Transfer Company.* Product liability claim (serious burns alleged) tried before a jury. Defendant's verdict.
- *Schaefer v. Spider Staging Corporation.* Personal injury negligence and product liability claims tried before a jury in the United States District Court for the Eastern District of Missouri. Judgment for Defendant following two jury trials.
- *Shafer v. Parkway School District.* ADA claim tried before a jury in the United States District Court for the Eastern District of Missouri. Defendant's Verdict.
- *In re First Escrow, Inc.*, 840 S.W.2d 839 (Mo. 1992). Key Supreme Court decision regarding unauthorized practice of law.
- *Zuelke v. Southern Illinois University*. Title VII and retaliation claims tried before a jury in the United States District Court for the Southern District of Illinois. Defendant's Verdict.

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Ian P. Cooper

ATTORNEY AT LAW / SHAREHOLDER

Practice Areas

Employment Law and Litigation
Higher Education Law and Litigation
Commercial Litigation
Tort Litigation

Bar Admissions

Missouri, 1984
Illinois, 1985
Various State and Federal Courts including the U.S. Supreme Court

Contact Information

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St. Louis, Missouri 63105

- *Page v. Smith.* Negligence claims against teacher and school district involving alleged serious personal injuries sustained by student. Defendant's verdict.

Significant Arbitrations

- In re: Engineered Fastener. Obtained award of actual and punitive damages for client on counterclaim relating to the dissolution of business partnership.
- In re: Pandjiris. Obtained actual damages for client in dispute over sale of equipment.
- In re: Corrigan v. Sun Container. Obtained award of damages, interest and expenses exceeding $740,000 in dispute over employment agreement.

Significant Appeals

- *Sanders v. City of Columbia*, 602 S.W.3d 288 (Mo. App. 2020). Affirming trial court's judgment for the City of Columbia in wrongful termination claim brought by former City police officer.
- *Cheng v. Ford*, 83 N.E. 2d 563 (5th Dist. 2017). Reversing the trial court's denial of a University administrator's motion to dismiss tort claims for lack of jurisdiction pursuant to the Illinois Court of Claims Act and the Illinois State Lawsuit Immunity Act.
- *K.T. v. Culver-Stockton College*, 865 F.3d 1054 (8th Cir. 2017). Affirming dismissal of Title IX claims against College brought by a campus visitor.
- *Doe v. St. Louis Community College*, 526 S.W.3d 329 (Mo. App. 2017). Affirming judgment for the College regarding a DACA student's challenges to tuition under Missouri statutes and regulations.
- *Hatcher v. Board of Trustees of Southern Illinois University*, 829 F.3d 531 (7th Cir. 2016). Affirming summary judgment in favor of the University and administrator on a former faculty member's gender discrimination and First Amendment retaliation claims.
- *Smith v. ConocoPhillips Pipe Line Company*, 801 F.3d 921 (8th Cir. 2015). Reversing class certification in favor of plaintiffs asserting property damage and medical monitoring claims arising out of pipeline leak.
- *Nickel v. Stephens College, et al.*, 480 S.W.3d 390 (Mo. App. 2015). Affirming summary judgment in favor of College and administrators regarding breach of contract and tort claims asserted by student given a medical withdrawal.
- *Novak v. Board of Trustees of Southern Ill.* 777 F. 3d 996 (7th Cir. 2015). Affirming summary judgment in favor of University and three faculty members in disability discrimination claim brought by doctoral student.
- *Bd. Of Trs. Ex rel. Becker v. Jones*, 2015 Ill. App. Unpub. LEXIS 62 (5th Dist. 2015). Affirming summary judgment against alleged whistleblowers under the Illinois False Claims Act.
- *Dunn v. Bd. Of Curators of the Univ. of Mo.*, 413 S.W.3d 375 (Mo. App. 2013). Affirming dismissal of class action Petition.
- *Vance v. Ball State University*, 133 S. Ct. 2434, (2012). Counsel for various amici including the American Council on Education, American Association of Community Colleges, American Association of State Colleges and Universities, in key case involving the definition of "supervisor" under Title VII.

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- *Jennings v. Board of Curators of Missouri State University*, 386 S.W.3d 796 (Mo. App. 2012). Affirming dismissal of breach of covenant of good faith and fair dealing and declaratory judgment claims brought by a faculty member against a public university.
- *Milligan v. Southern Illinois University*, 686 F.3d 378 (7th Cir. 2012). Affirming summary judgment for university in faculty/student sexual harassment claim. The Court ruled that the University's response to the student's complaint of harassment was adequate as a matter of law.
- *Keveney v. Missouri Military Academy*, 304 S.W.3d 98 (Mo. 2010). Leading decision on rights of contract employees to assert common law claims for wrongful discharge.
- *Nemsky v. ConocoPhillips*, 2009 U.S. App. LEXIS 17227 (7th Cir. 2009). Judgment in favor of employer in hybrid-Section 301 claim under the National Labor Relations Act.
- *Nichols v. Southern Illinois University*, 510 F.3d 772 (7th Cir. 2007). Summary judgment for employer in multi-plaintiff discrimination/retaliation case.
- *Christian Legal Soc'y v. Walker*, 453 F.3d 853 (7th Cir. 2006). Analyzing First Amendment expressive association claims in higher education context.
- *Mershon v. St. Louis University*, 442 F.3d 1069 (8th Cir. 2006). Affirming summary judgment in disability discrimination and retaliation case.
- *Schaefer v. Spider Staging Corp.*, 275 F.3d 735 (8th Cir. 2002). Affirming Remittitur and new trial orders in multi-million dollar product liability action.
- *Taryen Development, Inc. v. Phillips 66 Co.*, 31 S.W.3d 95 (Mo. App. 2000). Summary judgment affirmed on breach of contract claim in multi-count suit over development disputes.
- *Padilla v. South Harrison R-II Sch. Dist.*, 192 F3d 805 (8th Cir. 1999). Obtained reversal of jury verdict in a First Amendment retaliation case against a public school district
- *Amir v. St. Louis University*, 184 F.3d 1017 (8th Cir. 1999). Important ADA and retaliation decision.
- *Schuler v. Phillips Petroleum Co.*, 169 F.3d 1171 (8th Cir. Mo. 1999). Affirming summary judgment for employer in age discrimination case brought under the ADEA.
- *Piele v. Skelgas, Inc.*, 163 Ill. 2d 323 (Ill. 1994). Illinois Supreme Court's Key ruling upholding intrastate forum non conveniens.
- *Ziaee v. Vest*, 916 F.2d 1204 (7th Cir. Ill. 1990). Obtained reversal of jury verdict in favor of plaintiffs in ERISA benefits case.
- *State ex rel Burlington Northern v. Forder*, 787 S.W.2d 725 (Mo. Banc 1990). Key venue decision regarding municipal corporations.
- *White v. Thomson Concrete Pump Co.*, 747 S.W.2d 655 (Mo. App. 1988). Affirming Defendants' verdict in wrongful death products liability action.

Teaching and Service

- Guest lecturer, Lindenwood University, Law of Higher Education.
- Guest lecturer, Maryville University, Law of Higher Education.
- Guest lecturer, Saint Louis University School of Law, Not-for-profit law.
- Guest lecturer, Washington University School of Law, Not-for-profit Law.

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Personal

- Married to Dr. Patricia Cooper since 1982.
- Father of three wonderful daughters.
- Active in the St. Louis community, particularly Pedal the Cause – raising funds for research at the Siteman Cancer Center, Washington University St. Louis.

IAN P. COOPER 2023 RECOGNIZED BY Best Lawyers

Best Lawyers BEST LAW FIRMS U.S.News 2023

Ian P. Cooper Best Lawyers Lawyer of the Year 2022 Litigation - Labor and Employment St. Louis, Missouri

RATED BY Super Lawyers Ian P. Cooper 10 YEARS

RATED BY Super Lawyers Top 50 St. Louis SuperLawyers.com

RATED BY Super Lawyers Top 100 Missouri & Kansas SuperLawyers.com

RATED BY Super Lawyers Ian P. Cooper FEATURE STORY

The College of Labor and Employment Lawyers

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Illinois Education
Higher Education
Business and Commercial Litigation
Construction Litigation
Labor and Employment Litigation
Appellate Practice

Bar Admissions

Missouri, 1985
Illinois, 1986

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Robert L. Jackstadt practices in the areas of commercial, construction and education litigation. Rob has tried to a conclusion numerous jury and bench trials in federal and state courts located in Illinois and Missouri. Rob has tried and/or handled hundreds of different civil litigation matters involving a wide variety of complex matters including construction defects, employment contracts, retaliatory discharge, railcar leases, letters of credit, minority shareholder claims, unfair labor practices, condemnation, products liability, non-competition agreements, mechanic's liens, tax increment financing districts, and securities.

Rob also has extensive experience negotiating construction contracts and providing advice to public entities on public construction projects. He has been selected by his peers as an Illinois Leading Lawyer in the area of Construction Law. Rob has also received an AV Rating from Martindale-Hubbell in both St. Louis and Edwardsville, the highest rating available.

Rob is a founding Shareholder of the Firm. Prior to co-founding this Firm, Rob was a partner at Blackwell Sanders Peper Martin (now Husch Blackwell Sanders, LLP) for eight years. In addition to his private practice, from May 2005-April 2021, Rob served as the Mayor of Glen Carbon, Illinois – a part time position.

Honors & Awards

Illinois Leading Lawyer: Commercial Litigation; Construction Law; and School Law
AV Preeminent® Attorney by Martindale-Hubbell

Education

J.D., St. Louis University School of Law, 1985
B.S., University of Illinois, with honors, 1982

Professional Affiliations

- American Bar Association – Construction Forum
- Illinois State Bar Association
- Illinois Council of School Attorneys
- The Missouri Bar Association

Significant Cases

- *Harris v. East Alton Wood River High School District*. Personal injury claim (broken jaw) filed by student after another student punched plaintiff during a passing period. The student asked the jury to award him $148,776.37. The Madison County jury deliberated two hours and returned a defendant's verdict.
- *Krieg v. Edwardsville Community Unit School District*. Retaliatory discharge claim filed by substitute teacher in the United States District Court for the Southern District of Illinois. She alleged violations of the Rehabilitation Act, American with Disabilities Act, and the Civil Rights Act. After less than two hours of deliberation, the jury returned a verdict in favor of the defendant.
- *Union Pacific Railroad Co. v. St. Louis Marketplace*, 212 F.3d 386. (8th Cir. 2000). $1.7 million breach of construction contract case involving city's requirement to obtain a payment bond for certain work done for redevelopment project.

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Business and Commercial Litigation
Construction Litigation
Labor and Employment Litigation
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- *Hitchcock v. Saint Louis University*. Tenured professor filed lawsuit in the City of St. Louis against University employer alleging damages for articles published in student newspaper. A directed verdict was entered after plaintiff's case in chief.

- *Peters v . Hill Loma, Inc. dba Hill-Acme*. Injured female worker with severely injured hand filed a personal injury claim in the City of St. Louis against pinch roll machine manufacturer. She sought $3.5 million in damages from the jury. The jury returned a defendant's verdict.
- *Bosley v. Kearney R-1 School District*. Student on student sexual harassment claim filed in United States District Court for the Western District of Missouri. The Title IX claim was submitted to the jury. Plaintiff sought $200,000 in damages from the jury. The jury returned verdict for only $2,500. The trial court granted motion for judgment notwithstanding the verdict and the federal appellate court affirmed.
- *W.A. Scheckendanz Agency, Inc.v. Cover-All Systems, Inc.* Case involved the validity and enforceability of a contract forum selection clause for a computer software company before the Illinois Appellate Court Fifth District. On appeal, the court upheld the clause and remanded it back to the Circuit Court of St. Clair County

Presentations

- "The Construction Process: Reducing Defects", 2016 Regional Conferences in Decatur and Mt. Vernon Illinois (October 26-27, 2016)
- "Illinois Construction Lien Laws", Lorman Education Services, (February 1999-2000 and July 2001)
- "Emails: Open Meetings Act and Record Keeping Implications", Southwestern Division of Illinois Association of School Boards (September 29, 2005).
- "Avoiding Problems with Vendors", Missouri Association of School Board Officials, (April 2004).
- "Annexations, Consolidations and Detachments," IASB/IASA/IASBO Joint Conference (November 23, 2002).

Publications

- Co-author, "Punitive Damages: Malice and Other Recent Developments," 43 *Missouri Bar Journal* 455 (October-November 1987)
- Author, "Board of Regents of University of Oklahoma v. NCAA: Antitrust Violations in College Football?," 29 St. Louis University Law Journal 207 (1984)

Civic and Charitable Activities

- Director, Gateway Center of Metropolitan St. Louis, Inc. (entity overseeing development of Malcolm W. Martin Memorial Park located across from the Gateway Arch), 1999 to present.
- Mayor, Village of Glen Carbon, May 2005 to April 2021.
- Member, Board of Education for Edwardsville Community Unit School District 7, 2001 to 2003.
- Trustee, Village of Glen Carbon, May 1995 to April 1999.

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Business and Commercial Litigation
Construction Litigation
Labor and Employment Litigation
Appellate Practice

Bar Admissions

Missouri, 1985
Illinois, 1986

- Member, Village of Glen Carbon Planning & Zoning Commission, 1993-1995.

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Melanie Gurley Keeney

ATTORNEY AT LAW / SHAREHOLDER

Practice Areas

Education
Employment
Immigration
Litigation

Bar Admissions

Missouri Bar, 1990
Illinois Bar, 1991

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Melanie Gurley Keeney practices in the areas of education, employment, and immigration law. She is a frequent presenter and also provides regular training to clients. Her experience in education law includes representing institutions regarding various personnel and student matters, including terminations, state and federal discrimination claims, discipline, § 1983 claims, Open Meetings law, and other issues.

Melanie represents private employers with respect to a wide range of employment matters, including discrimination charges and lawsuits, wage-hour compliance, non-competes, wrongful discharge actions, privacy, defamation and related tort litigation, disability issues, and provides preventive employment law services, including supervisor training programs and employment compliance audits.

Melanie also represents corporations, educational institutions and individuals with their immigration needs and in handling Global Mobility matters, including obtaining temporary and permanent visas, handling employer sanctions issues, I-9 and E-Verify employment eligibility verification compliance, consular processing and naturalization.

Melanie is a founding Shareholder of the Firm and currently serves as its Chairperson. She served on the Management Committee from 2006 to 2015, and served as its Managing Partner and President in 2014 and 2015.

Education

J.D., Washington University School of Law, 1990

- Notes and Topics Editor, Journal of Urban and Contemporary Law

B.A., Baylor University, magna cum laude, 1987, Phi Beta Kappa

Significant Honors and Awards

- Women's Justice Litigation Practitioner Award presented by Missouri Lawyers Weekly, 2016
- International Women's Day Award for Employment Law, awarded by Washington University School of Law, 2014
- Missouri & Kansas Super Lawyer, awarded by Super Lawyers for over 10 consecutive years and in the top 50 female lawyers in Missouri and Kansas
- St. Louis Best Lawyers Education Law Lawyer of the Year, awarded by Best Lawyers, 2017
- St. Louis Best Lawyers Immigration Law Lawyer of the Year, awarded by Best Lawyers, 2019, 2015, 2012
- Recognized by Best Lawyers in America, St. Louis, in the practice area of Immigration Law since 1995, and in the practice areas of Education Law and Employment Law-Management since 2015
- Martindale-Hubbell© Bar Register of Preeminent Women Lawyers™

Professional and Academic Affiliations

- Adjunct Professor, Washington University School of Law, 2017
- The Missouri Bar
- Bar Association of Metropolitan St. Louis

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Melanie Gurley Keeney

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Practice Areas

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Immigration
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- Illinois Bar Association
- Council for Educational Advancement, Board Member, 2015-Present
- National Council of School Attorneys Board of Directors, 1996-2000
- Missouri Council of School Attorneys, Chairman, 1997
- American Immigration Lawyers Association ("AILA"), Missouri-Kansas Chapter Chair, 1997-1999

Civic and Charitable Activities

- Board Member, Council for Educational Advancement (CEA)
- Former Board Member, The Wilson School
- Active with Burmese refugee population through church activities
- Church Youth Group Sponsor since 1990

Selected Publications and Presentations

- "DOJ Gone Wild! IER Discrimination Investigations," ACC (Association of Corporate Council) CLE, November 2022
- "Employment Law Practices: Discrimination & Relation," Missouri United School Insurance Council (MUSIC) and Gallagher Bassat, November 2022
- "Working 101 – Introduction to H-1B, and Other Visa Options," Washington University Office for International Students and Scholars, November 2022
- "Handling Tricky Employment-Based Nonimmigrant and Immigrant Visa Issues," AILA (American Immigration Lawyers Association) Missouri-Kanas Chapter Meeting, October 2022
- "Understanding Employees' First Amendment Rights," Principals Academy, October 2022
- "Employment Bases Immigrants," Guest Lecture Washington University in St. Louis, September 2022
- "Non-Immigrant Priorities," Guest Lecture Washington University in St. Louis, September 2022
- "Addressing the Labor Shortage – The Ins and Outs of H-1B Visas and Sponsoring Foreign Workers," MOASPA (Missouri Association of School Personnel Administrators) Webinar, July 2022
- "I-9 Compliance and Immigration Hot Topics," Higher-Education Seminar CLE, June 2022
- "Employment Law Practices: Discrimination & Relation," Missouri United School Insurance Council (MUSIC) and Gallagher Bassat, May 2022
- "Legal Issues Impacting Faith-Based Schools," CFO's for Faith-Based Schools, Westminster Christian Academy, March 2022
- "North America Year in Review: United States Immigration Law. Immigration Webinar Round Table," Employment Law Alliance (ELA), January 2022
- "Doc Extraordinaire Panel," Physician Immigration Institute Presentation presented by International Medical Graduate Taskforce (IMG Taskforce), Washington D.C., December 2021
- "What's on the Horizon: Employment Based Immigration Update," Association of Corporate Counsel (ACC), St. Louis, MO, November 2021

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- "Legal Overview: Employment-Based Immigration," Washington University Office for International Students and Scholars, St. Louis, MO, October 2021
- "Tinkering On-line: *Mahanoy vs. B.L.*," The Missouri Bar Committee Meetings, Missouri Education Law, Panelist Discussion of First Amendment Issues, May 2021
- Podcast – "US Business Immigration: The Road Ahead Under the Biden Administration," Employment Law Alliance (ELA), May 2021
- "EB-1 Questions and Answers," Immigration Law Worldwide (ILW), March 2021
- "Critical Policy and Handbook Updates," Society for Human Resource Management (SHRM), February 2021
- "Higher Education Webinar: Immigration – What to Expect in 2021!," Missouri United School Insurance Council (MUSIC), January 2021
- "Working 101 – OPT, CPT, Academic Training, H-1B and other visa options," Washington University Office for International Students and Scholars, January 2021
- "ACC St. Louis Labor & Employment Webinar – What to Expect in 2021!," Association of Corporate Counsel (ACC), December 2020
- "Immigration Update: What to Expect in 2021," Higher Education Seminar CLE, December 2020
- "Navigating the Federal Sea Change: The Impact of the 2020 Election on Employers," Employment Law Alliance, December 2020
- "Business Immigration Options in the COVID-19 Climate," AILA Missouri-Kansas Chapter Meeting, August 2020
- "Managing a Global Workforce During the Pandemic: A U.S. Immigration Law Perspective," Panel Member, ELA (Employment Law Alliance), April 2020
- Panelist on Employment Law Alliance (ELA) COVID-19 Update – March and April 2020
- "I-9 Related Audits and Investigations," Panel Member, Missouri-Kansas AILA Chapter Conference (American Immigration Lawyers Association), November 2019
- "Politics, Economics and the Law Collide: How Global Businesses are Impacted by These Landmines," Panel Moderator, ELA (Employment Law Alliance) Annual Meeting in Lisbon, October 2019
- "H-1B Visas – What's on the Horizon," Global Career Accelerator Program at Washington University in St. Louis, February 2019
- "Hidden Dangers: New Evidence in Discrimination and Harassment Claims," Annual MUSIC (Missouri United School Insurance Council) Seminar, January 2019
- "Current Issues in School Law," Legal Panel Member, MSSA (Midwest Suburban Superintendents Association), January 2019
- "The Keys to Your Success – Employment and Immigration Issues Post Graduation," Washington University Olin School of Business, December 2018
- "Update on New Policies Impacting Foreign Workers," ACC (Association of Corporate Council), November 2018

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- "What You Need to Know About Employing Foreign Nationals Under the Current Administration," ACC - CCI (Association of Corporate Counsel – Corporate Counsel Institute), May 2018
- "Employment Discrimination Caselaw Update," COSA (Council of School Attorneys) Webinar, May 2018
- "Employing Foreign Nationals – What's New and on the Horizon," ACC (Association of Corporate Council), February 2018
- "Employing Foreign Nationals," HRMA (Human Resources Management Association), February 2018
- "Navigating Global Employee Migration – Legal Strategies and Practical Considerations," Panel Chair, ELA (Employment Law Alliance) Annual Meeting in Shanghai, October 2017
- "Impact of the New Administration's Immigration Policies on Public Schools," Safe Schools and Colleges Conference, Lake of the Ozarks, MO, October 2017
- "Immigration Law in a Changing World," Adjunct Professor, Washington University in St. Louis, April 2017
- "Town Hall Meeting on President Trump's Executive Order," Webster University, February 2017
- "Teacher Workshop on Current Immigration Law," Street Law, Inc., February 2017
- "The Keys to Your Success – Immigration Issues for Employment," Washington University Olin School of Business, February 2017
- "Year in Review & What to Expect in 2017," ELA (Employment Law Alliance), Webinar, January 2017
- "To Have and Hold: Document Preservation and Discovery," Annual MUSIC Seminar, January 2017
- "Sexual Assault on Campus: Student Safety Best Practices and Emerging Issues," Missouri Community College Association Convention, November 2016
- "Working 101: OPT, Academic Training, H-1B and Other Visa Options," Washington University Office for International Students and Scholars, October 2016
- "Basics: Business Non-Immigrant Visa Options," Missouri-Kansas AILA Chapter Conference (American Immigration Lawyers Association), April 2016
- "The Keys to Your Success – Immigration Issues for Employment," Washington University Olin School of Business, February 2016
- "Navigating the U.S. Business Immigration Maze: Practical Guidance for Employers," ELA (Employment Law Alliance) Webinar, November 2015
- "Sexual Harassment in the Workplace – The Do's, Don'ts and Defenses of Handling Sexual Harassment Claims," COSA (Council of School Attorneys), Miami, October 2015
- "Legal Limbo: Schools and Religion," MSBA (Missouri School Boards Association) Annual Conference, October 2015
- "Visas and Vulnerabilities," EMSI (Eastern Missouri-Southern Illinois) Rescue and Restore Regional Conference to Combat Human Trafficking, June 2015

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- "Coming to a District Near You: Unaccredited School Districts - The Latest Legal Update and Practical Consideration," MoASBO (Missouri Association of School Business Officials), April 2015
- "Basics: Business Non-Immigrant Visa Options," Missouri-Kansas AILA Chapter Conference (American Immigration Lawyers Association), March 2015
- "Hot Topics & Employment Immigration Law," AILA St. Louis Chapter CLE (American Immigration Lawyers Association), March 2015
- "Business Immigration Law," Guest Lecturer, Washington University in St. Louis, February 2015
- "Executive Action on Immigration: What Employers Should Know," Annual Corporate Counsel Institute, ACC (Association of Corporate Council), December 2014
- "What Every School Attorney Should Know About the First Amendment: A PG-13 Review of Hot Topics in Employee Online Research," North Dakota School Boards Association, Bismarck, October 2014
- "What Every School Attorney Should Know About the First Amendment: A PG-13 Review of Hot Topics in Employee Online Research," Council of School Attorneys (COSA), Denver, October 2014
- "Perils and Pitfalls of Electronic Media in the Workplace: Best Practices to Reduce Liability for Your District," MoASBO (Missouri Association of School Business Officials), April 2014
- "Careers in Immigration Law," Panelist, Washington University in St. Louis, February 2014
- "Business Immigration Law," Guest Lecturer, Washington University in St. Louis, February 2014
- "What All Board Members Need to Know About the First Amendment," MARE (Missouri Association of Rural Education), February 2014
- "Expert Panel" and "Judge Judy-School Liability Presentation," Annual MUSIC Seminar, January 2014
- "MSIP 5 and Unaccredited School Districts," MSBA (Missouri School Boards Association) Annual Conference, September 2013
- "The Anatomy of an MHRA Claim: From the Administrative Charge through Jury Verdict," ACC (Association of Corporate Council), November 2013
- "PERM and the Offsite Worker," AILA (American Immigration Lawyers Association), September 2013
- "I-9 and E-Verify Update – New ICE Guidance and Compliance Tips," Missouri Employment, Labor and Immigration Seminar, September 2013
- "Hot Topics in Employment Immigration (Hs, Ls, TNs, Os, Ps, And the Rest of the Alphabet)," Missouri Employment, Labor and Immigration Seminar, September 2013
- "Hot Topics in Immigration," Annual Corporate Counsel Institute, ACC (Association of Corporate Council), May, 2013
- "Responding to Reference Requests: What You Can Say; What You Must Say," MoASBO (Missouri Association of School Business Officials), April 2013
- "ADA / FMLA Update," CACUBO (Central Association of College and University Business Officers), February 2013

TUETH KEENEY
COOPER MOHAN JACKSTADT P.C

Melanie Gurley Keeney

ATTORNEY AT LAW / SHAREHOLDER

Practice Areas

Education
Employment
Immigration
Litigation

Bar Admissions

Missouri Bar, 1990
Illinois Bar, 1991

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- "Facebook, Texting, Teachers, and Students…Oh My!" MARE (Missouri Association of Rural Education), February 2013
- "New Expansion of the Public Policy Exception to the Employment At-Will Doctrine," MUSIC (Missouri United School Insurance Council), January 2013
- "Collective Bargaining: What the Missouri Supreme Court Now Requires," Cooperating School Districts, January 2013
- "Legal, Practical and PR Issues Surrounding Background Checks," MoASBO (Missouri Association of School Business Officials), November 2012
- "Sizzling Hot "Must Knows" for In-House Counsel – Turning Up the Heat!" ACC (Association of Corporate Council), November 2012
- "Green Cards" -- So Many Options, So Little Time . . .," NAFSA: Association of International Educators, October 2012
- "Facilities Use and the First Amendment in the Schools," MoASBO (Missouri Association of School Business Officials), April 2012
- "Sexual Harassment - What Every School Employee Must Know," MoASBO (Missouri Association of School Business Officials), April 2012
- "Use of Electronic Communications by School Athletic Personnel," MIAAA (Missouri Interscholastic Athletic Administrators Association), April 2012
- "ADA/FMLA Update," Central Association of College and University Business Officers Indianapolis Winter Workshop, March 2012
- "Employment Law Update," Central Association of College and University Business Officers 43rd Annual Winter Workshop, February 2011
- The Fair Labor Standards Act: Strategies for Prosecuting and Defending Claims," Missouri Bar CLE Labor & Employment Law Symposium, November 2010
- "Tips for Investigating Allegations of Misconduct," ACC (Association of Corporate Counsel), August 2010
- "Hot Topics in Immigration and Employer Sanctions Compliance," GAPP (Gateway Association of Payroll Professionals), May 2010
- "Monitoring Student Electronic Communications," United Educators Risk Management Counsel, February 2010
- "School Law: Teacher Termination, Student Discipline, and Emerging Issues," MASSP (Missouri Assistant Principal Association), January 2010
- "Hot Topics in Business Immigration: How to Get What You Want and Stay Out of Trouble!" HRMA (Human Resources Management Association), May 2009
- "Law and Legal Principles," PRIMA (Public Risk Management Association) 2009 Institute, October 2009
- "No Monkeying Around…I-9 and E-Verify Compliance Issues," Association of Corporate Counsel, October 2009
- "Employment Law 101," Association of St. Louis Women CPAs, September 2009
- "E-Verify Update," MoASBO (Missouri Association of School Business Officials) Spring Conference, April 2009
- "E-Verify and Missouri H.B. 1549," Cooperating School Districts and SLPPDA (St. Louis Personnel/Placement Directors' Assoc.)

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- "Working in America: OPT, Academic Training, H-1B and Other Visa Options," Washington University
- "Immigration Issues for Employers: What In-House Counsel and Human Resources Professionals Need to Know," ELA (Employment Law Alliance), Webinar, February 2009
- "I-9s, E-Verify and Your District's Responsibilities," MSBA (Missouri School Boards' Association) Practical Personnel Law Workshop, February 2009
- Employment Law Update – What's New and How to Stay Out of Trouble!" CACUBO (Central Assoc. of College and University Business Officers), February 2009
- "Update on Legal Issues Impacting Employment in Higher Education," University of Central Missouri, 2008
- "NCLB and IDEA: A Disgruntled Marriage", MOCASE Law Seminar, Tan-Tar-A Resort, Missouri, 2007
- "Ethical Implications of New E-Discovery Rules and Handling Related Conflicts-of-Interest Situations," KASB School Law Seminar, Kansas City, 2007 "Bullying: Lessons to Combat Cruelty," Webinar sponsored by United Educators, July 2008
- "Nightmare on Elm Street: New E-Discovery Rules and Implications for School Districts," KSBA School Law Seminar, Kansas City, 2007
- "Ethical Implications of New E-Discovery Rules and Handling Related Conflicts-of-Interest Situations," NSBA Council of School Attorneys Advocacy Seminar, Kansas City, 2006
- "Business Office Pot Luck," Cooperating School Districts Business Meeting, 2006
- "Update on Religion Issues Impacting Schools," Missouri School Boards Association Fall Conference, 2004, and Missouri United School Insurance Council Annual Meeting, 2005
- "Update on Staff and Student Issues," Missouri Lutheran Schools Association, 2004
- An Analysis of the Impact NCLB May Have on Placement Decisions Under the IDEA," National School Boards Association's Council of School Attorneys Annual Conference, 2004
- "Tips For Employees Traveling Abroad And Other Post 9/11 Issues," St. Louis Employee Relocation Council, 2003
- "Legal Issues in the Area of School Liability," Lutheran High Schools, 2003
- "Legal Issues in the Area of Staff and Student Management," St. Louis Lutheran Elementary School Association, 2003
- "Church and State," Co-Editor, Chapter 9 of The Missouri Bar Association's Mo Bar CLE Deskbook, 2003
- "Policing Cybermisconduct and Other Hot First Amendment Topics," Missouri United School Insurance Council, 2003
- "State Criminal Records Checks: Scope, Cost and Procedure," BAMSL Not-For-Profit Sector, 2002
- "Legal Goulash – Pre/Post Employment and Cyber Liabilities," Missouri United School Insurance Council, 2002
- "Post September 11th Issues," AAIM Executive Roundtables, St. Louis, St. Charles, and Edwardsville, 2001-2002

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- "Proving Discrimination: Evidence and Discovery Issues," American Bar Association, 2001
- "Issues Involving Students with Limited English Proficiency," COSA Annual Seminar, 2001
- "Legal Issues and Liabilities," Missouri Community College Association Conference, June 2000

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Jim Layton joined the firm in 2017 after serving more than 22 years in the Missouri Attorney General's Office—nearly all of those as the State's principal civil appellate lawyer, Solicitor General.

Jim practices in both appellate and trial courts, particularly in matters involving complex legal questions, including those arising under the U.S. and Missouri constitutions, Missouri school funding and other education statutes, discrimination laws, and Missouri tax laws. He represents both private and public entities.

In addition to handling cases at Tueth Keeney, Jim assists clients, in-house counsel, and counsel at other firms with appellate strategy, motions, briefing, and argument. In doing so, he relies on many years of intense appellate experience: Jim has argued more than 90 times before the Missouri Supreme Court, four times before the U.S. Supreme Court, and more than 100 times in other state and federal appellate courts. Since joining Tueth Keeney, Jim has been retained repeatedly to assist with applications to transfer appeals to the Missouri Supreme Court.

Jim's experience in working with high-level government officials and state boards and commissions gives him special insight into government and regulatory decision-making. He has been consulted on a wide range of issues relating to Missouri laws regulating public and private entities.

An adjunct professor of law at the University of Missouri for 20 years, Jim is a frequent speaker on appellate practice, legal writing, constitutional law, and issues arising from new appellate decisions.

A long-time leader in the appellate bar, Jim has served as Co-Chair of the Appellate Practice Committee of The Missouri Bar, Chair of the American bar Association's Council of appellate Lawyers, President of the Bar Association of the U.S. Court of Appeals for the Eighth Circuit, and President of the Elwood Thomas American Inn of Court. He serves on task forces for both the American Academy of Appellate Lawyers and the Missouri courts dealing with remote court proceedings and electronic filing.

Education

J.D., Brigham Young University, magna cum laude, 1982
B.S., Brigham Young University, magna cum laude, 1977

Bar Admissions

Missouri Bar
U.S. Supreme Court
U.S. Court of Appeals for the Eighth Circuit
U.S. Court of Appeals for the D.C. Circuit
U.S. Court of Appeals for the Federal Circuit
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Seventh Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. District Court for the Western District of Missouri

Significant Honors and Awards

- Elected Fellow, American Academy of Appellate Lawyers, 2010

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- Missouri Bar Foundation Spurgeon Smithson Award for outstanding contributions to the administration of justice, 2010
- University of Missouri-Columbia School of Law Distinguished Non-alumnus, 2010
- Missouri Lawyers Weekly Influential Appellate Advocate, 2012

Professional Affiliations

- The Missouri Bar (Civil Practice and Administrative Law Committees)
- American Academy of Appellate Lawyers

Publications and Presentations

- "Labor and Employment Law: What to Expect in 2021," Association of Corporate Counsel-St. Louis CLE, December 2020
- Annual Supplement, APPELLATE PRACTICE, MO. PRACT., Vol. 24 (2005-2020, West).
- "Oral Argument," Chapter 7, APPELLATE COURT PRACTICE (Mo. Bar 2002).
- "Appellate Court Jurisdiction," Chapter 3, EIGHTH CIRCUIT APPELLATE PRACTICE MANUAL (8th ed. 2018 and 9th ed (forthcoming); Minn. Bar CLE).
- "Direct Review of Administrative Agency Decisions", Chapter 17, EIGHTH CIRCUIT APPELLATE PRACTICE MANUAL (3d, 4th, 5th, and 6th eds.; Minn. Bar CLE).
- "Recent changes in Missouri's Appellate Rules," Journal of the Missouri Bar, Sept-Oct 2018.
- "Five Things Missouri Lawyers Should Know About the Missouri Constitution," Missouri Bar Administrative Law Committee, Nov. 2018
- "Contests re Noncontested Cases: Missouri Administrative Law and the MHRA after Tivol and SB43," Missouri Bar Labor and Employment Annual Seminar, Oct. 2018
- "Five Things Judges Should Know About the Missouri Constitution," Missouri Judges Appellate Forum, Columbia MO 2017
- "We Feel Your Pain: Tips on Appellate Practice for Solo or Small Firm Practitioners," Missouri Bar Solo & Small Firm Conference, Osage Beach MO 2017 (with Missouri Supreme Court judges Mary Russell and Zel Fischer)
- "The Leap from e-Filing to e-Briefing," Kansas Bar 2017 Appellate Practice CLE, Topeka KS 2017
- "The Evolving Role of the State Solicitor: Toward the Federal Model?" JOURNAL OF APPELLATE PRACTICE AND PROCESS (Fall 2001).
- "Legal Writing for the iPad Reader" and "Clear Paths to Effective Obfuscation in Legal Writing," Savannah GA, 2017; Las Vegas, NV and Little Rock, AR, 2016; Orlando, FL 2015; Portland OR, 2014.
- "The Missouri Constitution: History, Context, and Content," Missouri Attorney General's Office, Osage Beach, MO 2016.
- "What Weird Al Taught me About Legal Writing," Bar Association of Metropolitan St. Louis, St. Louis, MO, 2015.
- "View from the Podium," Missouri Bar Solo and Small Firm Conference, Osage Beach, MO, 2016.
- "Before the Brief: Issues in Appellate Advocacy," National Association of Attorneys General National Appellate Advocacy Seminar, Washington, DC, 2008, 2009, 2015, 2016.

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- "Supreme Court of Missouri Update: Focus on Solo and Small Firm Cases" and "What Weird Al Taught me About Legal Writing," Missouri Bar Solo and Small Firm Conference, Branson, MO, 2015.
- "The Status of the Law Regarding Same-sex Marriage" and "Same-sex Marriage: Practical Issue," Missouri Bar Family Law Conference, Branson, MO, 2015.
- "Same-sex Marriage Cases," Missouri Bar Government Attorneys Committee, Jefferson City, MO, 2015; Missouri Attorney General's Office, Osage Beach, MO 2015.
- "A Tale of Two Attorneys: Appellate Advocacy," Missouri Bar Government Practice Institute, Jefferson City, MO 2015.
- National Deposition Training, National Attorneys General Research and Teaching Institute, Santa Fe, NM, 2015.
- Trial Training, National Attorneys General Research and Teaching Institute, Boston, MA 2015.
- "Horizontal Federalism: Regulating States," National Association of Attorneys General, Indianapolis IN, 2015.
- Deposition Training, National Attorneys General Research and Teaching Institute, Princeton, NJ 2011.
- Trial Skills Course, Missouri Attorney General's Office, Columbia MO 2011.
- "Clear Paths to Effective Obfuscation in Legal Writing," Mo Dept of Transportation General Counsel's Office, Jefferson City, MO 2011.
- "Ethical Issues in the Day of Social Media," Mo. Bar Young Lawyers' Division, Jefferson City, MO 2011.
- "Writing Successful Writ Petitions and Motions for Extraordinary Relief," Mo. Bar Solo and Small Firm Conference, Osage Beach MO 2011.
- "Discussion on the Constitutional Considerations of Inadequate Court Funding" American Academy of Appellate Lawyers, St. Paul, MN 2011.
- "Nuts And Bolts of Appellate Practice: Effective Motion and Writ Practice," Missouri Bar, St. Louis, Kansas City, and Springfield, 2011.
- "Please, Judge, Keep Reading,:" National Academy of Elder Law Attorneys, Washington DC 2009.
- "History of State Solicitors and Solicitors General" Univ. of Texas Review of Litigation Annual Symposium, Austin, TX 2009.
- "Administrative Medicine: Companies Practicing Medicine," National Association of State Medical Boards, New Orleans, LA 2008.
- "Rule 4.2 and Corporations," Indianapolis, IN, 2008.
- "Annual Supreme Court Review," Missouri Bar teleconference, 2006, 2007, 2008.
- "2007 Changes to the Rules of Professional Conduct," Missouri Attorney General's Office, June 2007.
- "Appellate Practice: Briefs and Beyond," Missouri Attorney General's Office, Sept. 2008.
- "Searching for the Activist Judge: An Appellate Lawyer's Thoughts," J. Reuben Clark Law Society, St. Louis MO 2007.
- "Ethical Issues in Representing the Government," Missouri Bar Government Attorneys Committee, Jefferson City MO 2006.
- "Matching Advocacy to Audience: Differences Between Intermediate Appellate courts and Courts of Law Resort," Appellate Judges Education Institute, Scottsdale AZ 2006.

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- "Taming the Monster Record: How to Manage the Voluminous Trial Record on Appeal," Appellate Judges Education Institute, Dallas TX 2006.

Significant Appeals

- Lin v. Ellis, No. SC97641 (Mo. 2020). The Missouri Supreme Court held that a Missouri Human Rights Act retaliation claim cannot be based on a request for accommodation of an alleged disability.
- Trinity Lutheran Church of Columbia, Inc. v. Pauley, 788 F.3d 779 (8th Cir. 2015) (cert. granted; to be argued April 19, 2017). The Eighth Circuit upheld Missouri's constitutional provision barring the State from giving tax funds to churches.
- Roper v. Simmons, 543 U.S. 551 (2005). The Supreme Court upheld a challenge to the application of Missouri's death penalty statute to a defendant who committed murder while under age 18.
- Missouri Director of Revenue v. CoBank ACB, 531 U.S. 316 (2001); On remand, Production Credit Assoc. v. Director of Revenue, 43 S.W.3d 311 (Mo. 2001). The U.S. Supreme Court reversed the Missouri Supreme Court's holding that CoBank (formerly the National Bank for Cooperatives), whose establishing statute describes it is a "federal instrumentality," could not be taxed by the State.
- Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000). The Supreme Court upheld Missouri's limits on the size of campaign contributions.
- Southwestern Bell Telephone Company v. Director of Revenue, 454 S.W.3d 871 (Mo. 2015). The Court upheld the Director of Revenue's decision preventing Southwestern Bell from avoiding payment of Missouri's franchise tax by converting its Missouri subsidiary from a corporation to a limited partnership with.
- Conway v. CitiMortgage, Inc., 438 S.W.3d 410 (Mo. 2014) (amicus). The Supreme Court reversed a decision by the Missouri Court of Appeals, Eastern District, that barred use of Missouri's consumer protection law to address deceptive and unfair practices by companies that buy and collect loans.
- State ex rel. Saint Louis Charter School v. State Bd. of Educ., 438 S.W.3d 437 (Mo. Ct. App. W.D. 2014). The Court addressed the manner in which the Department of Elementary and Secondary Education must address financial disputes between a school district and a charter school.
- Public Communications Services, Inc. v. Simmons, 409 S.W.3d 538 (Mo. Ct. App. W.D. 2013). The Court rejected a challenge to the State's contract for inmate telephone service, which included terms asking for innovative proposals by the bidders.
- Schweich v. Nixon, 408 S.W.3d 769 (Mo. 2013). The court upheld the authority of Missouri governors to restrict the use of appropriations in light of cashflow during a fiscal year.
- Breitenfeld v. School Dist. of Clayton, 399 S.W.3d 816 (Mo. 2013). The court rejected a claim that Missouri's school transfer law, which applies to students in unaccredited districts, violates the "Hancock Amendment" as an "unfunded mandate" on school districts.
- Southern Wine & Spirits of Am., Inc. v. Div. of Alcohol & Tobacco Control, 731 F.3d 799 (8th Cir. 2013). The Court upheld Missouri's bar on liquor wholesalers operating in Missouri without Missouri-resident owners and managers.

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- Degraffenreid v. State Bd. of Mediation, 379 S.W.3d 171 (Mo. Ct. App. W.D. 2012). The Court upheld an election through which a union was certified to represent personal care attendants.
- Wright-Jones v. Nasheed, 368 S.W.3d 157 (Mo. 2012); Gray v. Taylor, 368 S.W.3d 154 (Mo. 2012). Court upheld the ability of candidates for the Missouri House, immediately after redistricting that follows a decennial census, to run in districts that contain part of their former districts.
- Manzara v. State, 343 S.W.3d 656 (Mo. 2011). The Court upheld Missouri's "land assemblage tax credit law."
- State v. Nationwide Life Ins. Co., 340 S.W.3d 161 (Mo. Ct. App. W.D. 2011). The Court reversed a decision with regard to actions taken by an insurance company that administrated a state employee annuity plan, alleging breach of contract. The result was the return of more than $18 million, plus interest, from the company to the employees' retirement accounts.

- School Dist. of Kan. City v. State Of Mo., 317 S.W.3d 599 (Mo., 2010). The Court upheld Missouri's charter school statute against a challenge from one of the two districts, based on the Hancock Amendment's bar on imposing new obligations on local government without a state appropriation.
- Committee for Educational Equality v. State, 294 S.W.3d 477 (Mo. 2009). The Court rejected a constitutional challenge to Missouri's "foundation formula" – the formula used to allocate state funds to local school districts.

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Mollie G. Mohan practices primarily in the areas of labor & employment and higher education with an emphasis on litigation and appeals. Mollie represents colleges, universities, and private employers in labor and employment matters at the administrative, trial, and appellate level. Prior to joining the firm, Mollie worked at a large-sized litigation firm in Saint Louis. While in law school, Mollie was a student law clerk to the Honorable Jean C. Hamilton of the United States District Court for the Eastern District of Missouri.

Mollie is the Chair of the firm's Liaisons for Equity, Access, and Diversity Committee (the LEAD Team).

Education

J.D., Charleston School of Law, 2012
- Graduated magna cum laude
- Editor-in-Chief, Charleston Law Review

B.A., Saint Louis University, 2006
- Graduated cum laude

Professional Affiliations

- The Missouri Bar Association
- The Bar Association of Metropolitan St. Louis
- The Women Lawyers' Association of Greater St. Louis
- Joint Commission on Women in the Profession

Selected Publications and Presentations

- "Higher Education HR Legal Update," Missouri College & University Professional Association – HR Annual Conference (September 2022) "Preparing Effective Position Statements," Association of Corporate Counsel CLE, November 2021
- "Higher Education Human Resources Legal Update," Missouri College and University Professional Association for Human Resources Annual Conference, September 2021
- "Legal Updates," Missouri Community College Associate Trustee and Leadership Conference, July 2021
- "Title IX Updates," Tueth Keeney Higher Education Seminar, June 2021
- "MHRA Spotlight: Limits and Requirements of 'Place of Public Accommodation' Claims, Tueth Keeney Higher Education Seminar, June 2021
- "Policy and Handbook Essentials," Society for Human Resource Management Annual Legal Update, February 2021
- "Labor and Employment Law: What to Expect in 2021," Association of Corporate Counsel-St. Louis CLE, December 2020
- Author of the Missouri Chapter of the Employment Law Alliance (ELA) Global Employer Handbook
- "Missouri Passes Law Bringing Discovery Rules More in Line with Federal Rules," 2019 Association of Corporate Counsel Newsletter
- "E-discovery Myth Busters Brown Bag Lunch CLE," February 2019
- "Employee Handbook Must Haves," University of Missouri – St Louis Non-Profit Management & Leadership Program continuing education class, February 2019
- "E-discovery: The Good, the Bad, and the Ugly," Tueth Keeney CLE, September 2018 (Part I) and October 2018 (Part II)
- "MHRA on the Move: Where We Are Today," Association of Corporate Counsel Conference, February 2018

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Mollie G. Mohan

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- "Navigating Employee Leaves of Absence," Human Resources Management Association of Greater St. Louis Employment Roundtable, February 2018
- "Navigating Employee Leaves of Absence," Missouri Association of School Business Officials Fall Conference, November 2017

- "What Nonprofits Need to Know about Personnel and Schedule-Related Policies," University of Missouri – St Louis Non-Profit Management & Leadership Program continuing education class, August 2017
- "Agency Update," Association of Corporate Counsel Conference, December 2016
- "Hot HR Topics," University of Missouri – St Louis Non-Profit Management & Leadership Program continuing education class, October 2016
- "Litigating the Locker Room: Transgender Issues," Missouri School Board Association Safety Conference, September 2016
"Privacy in the Internet Age," 5 CHARLESTON L. REV. 581 (2011)
- "Proposed Change to Civil Lawsuit Pleading Standard Strays Far from Original Federal Rule," 25 WASH. LEGAL FOUND. 33 (2010)

Significant Trials

- *Sanders v. City of Columbia*. Trial involving former Police Officer for the City of Columbia seeking reinstatement, back pay, and benefits. Judgment for the City/Employer. Upheld on appeal by the Western District of Missouri Court of Appeals.
- *Novak v. Board of Trustees of Southern Ill. Univ.*, 777 F.3d 996 (7th Cir. 2015). Affirming summary judgment in favor of University and three faculty members in disability discrimination claim brought by doctoral student.
- *Hatcher v. Board of Trustees of Southern Illinois University*, 829 F.3d 531 (7th Cir. 2016). Affirming summary judgment in favor of the University and administrator on a former faculty member's gender discrimination and First Amendment retaliation claims.

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Kate L. Nash

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Kate L. Nash practices primarily in the areas of higher education, education, non-profit, litigation, labor and employment law. Kate works primarily with educational institutions, including public and private colleges and universities, community colleges, public school districts and charter schools. She regularly advises these institutions, as well as private employers, on all manner of employment issues including Title VII, the ADA, the ADEA, the FMLA and related state laws. She advises institutions of higher education on a wide range of legal issues, including employment matters, student rights, harassment and discrimination disputes, tenure litigation, first amendment issues, Title IX compliance and litigation, disability law, Title IV funding, board governance, endowment matters and numerous other legal issues impacting the higher education community. Kate also acts as outside general counsel to numerous institutions, advising them on a myriad of day-to-day legal issues. Kate has extensive experience on matters related to Title IX, VAWA, the Clery Act and Title IV regulations.

Kate also has extensive experience advising private employers, including multi-jurisdictional employers, on other employment-related issues, including reorganizations and reductions-in-force. She works with employers throughout the process – including design, communications to employees, and timing – in ways meant to reduce risk and treat employees fairly.

In addition, Kate maintains an active investigations practice, both conducting and directing investigations at educational institutions and other workplaces involving sensitive matters such as high-level personnel issues.

Kate represents educational institutions and other employers in state and federal court in Missouri and Illinois. She represents clients in front of administrative agencies, such as the Equal Employment Opportunity Commission, the Missouri Human Rights Commission the Illinois Department of Human Rights, the Department of Education's Office for Civil Rights, and the Office of Federal Contract Compliance Programs.

Kate is a frequent lecturer and author on employment law and legal issues related to educational institutions. She is a member of the National Association of College and University Attorneys (NACUA), the Council of School Attorneys (COSA), and has been recognized by Super Lawyers in the field of education law. Kate was an adjunct professor at St. Louis University School of Law for many years where she taught a course on the law of non-profit organizations.

Kate is a member of the Firm's Management Committee.

Education

J.D., Washington University School of Law
- Articles and Notes Editor, Journal of Law and Policy
- Receipt of Jack Gardner Humanitarian Award

B.A., Cornell University

Professional Affiliations

- The Missouri Bar Association
- The Illinois Bar Association

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DIFFERENT
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- National Association of College and University Attorneys
- National School Boards Association, Council of School Attorneys
- Missouri School Boards Association, Council of School Attorneys

Selected Presentations

- "Managing Faculty Misconduct: When Good Educators Do Bad Things," NACUA (National Association of College and University Attorneys) Spring CLE Workshop, 2022.
- "Artificial Intelligence & Talent Management in the Workplace," Moderator, Opening Session of 2022 ELA Global Conference.
- "Back to Campus – Back to Title IX: Confronting the Challenges of the 2020 Regulations," Employment Law Alliance Webinar, 2021.
- "Beyond Students: Strategies for Managing Faculty & Staff Mental Health Issues, Moderator, Employment Law Alliance Webinar, 2021.
- "Legal Update," MCCA (Missouri Community College Association) Chief Student Affairs Officers, 2021.
- "Implementing New Title IX Regulations on Community College Campuses," MCCA Webinar, 2020.
- "Who Dunnit? How to Guide Internal Investigations," Association of Corporate Counsel – St. Louis Chapter, 2018.
- "#MeToo: A Year Later – Legal Analysis & Lessons Learned," In-House Counsel, 2018.
- "Knowledge is Power: Key Legal Concepts for Serving Your Community," Key Note Speaker at 2018 Show Me Title IX Conference.
- "Higher Education Law 101: Legal Issues for Student Services Professionals," MCCA Student Affairs Forum, 2018.
- "Campus Sexual Assault Update," Employment Law Alliance Webinar.
- "Speech on Campus," MCCA Chief Student Affairs Officers, 2017.
- "From Black Armbands to Red Ball Caps: Navigating Student Speech in Politically Charged Times," NSBA (National School Boards Association) Council of School Attorneys, School Law Practice Seminar, 2017
- "Termination of Tenured Faculty for Cause: Obligations and Risks," NACUA Annual Conference, 2017.
- "Hot Legal Topics in Higher Education – What HR Professionals Need to Know," Missouri College & University Professional Association – HR Fall Conference, Presenter in 2021, 2019, 2018, 2017, 2016, 2015 and 2014.
- "Legal Issues for Trustees," and "Legal Update for Community Colleges," MCCA Fiftieth Convention, 2016.
- "Presidential Politics in the School House," MSBA (Missouri School Boards' Association) Annual Conference, 2016.
- "Sexual Harassment in the Workplace: the Do's, Don'ts, and Defenses of Handling Sexual Harassment Claims," NSBA Council of School Attorneys' School Law Practice Seminar, 2015.
- "Do's and Don'ts of Employee Termination in Non-Profit Organizations," University of Missouri – St. Louis Nonprofit Leadership and Management Program, 2014 and 2013.
- "Legal Issues: The Violence and Against Women Act and What it Means for Community Colleges," and "Legal Issues: Sexual Violence on Campus – What's Next?" MCCA Fiftieth Convention, 2014.
- "What Every School Attorney Should Know About the First Amendment: A PG-13 Review of Hot Topics in Employee Online Speech," NSBA Council of School Attorneys' School Law Practice Seminar, 2014.

TUETH KEENEY
COOPER MOHAN JACKSTADT P.C

Kate L. Nash

ATTORNEY AT LAW / SHAREHOLDER

Practice Areas

Higher Education
Education
Labor and Employment Employer
Non-Profit
Litigation

Bar Admissions

Missouri
Illinois

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- "Student-Centered: Legal Issues for Community Colleges," MCCA Spring Trustee Conference, 2014.
- "Employment Issues in Higher Education," Guest Lecturer, Lindenwood University, 2014 and 2013.
- "Perils and Pitfalls of Electronic Media in the Workplace: Best Practices to Reduce Liability for Your District," MoASBO Spring Conference, 2014.

Selected Publications

- Co-Author of Article, "Managing Faculty Misconduct: When Good Educators Do Bad Things," Submitted for the NACUA Spring CLE Workshop, 2022.
- Co-Author of Article, "Termination of Tenured Faculty for Cause: Obligations and Risks," submitted for the NACUA Annual Conference, 2017.
- Co-Author of Article, "Sexual Harassment in the Workplace: the Do's, Don'ts, and Defenses of Handling Sexual Harassment Claims," submitted for the NSBA (National School Boards' Association) Council of School Attorneys' School Law Practice Seminar, 2015.
- Co-Author of Article, "What Every School Attorney Should Know About the First Amendment: A PG-13 Review of Hot Topics in Employee Online Speech," submitted for the NSBA Council of School Attorneys' School Law Practice Seminar, 2014.
- Author of the Equal Pay Act Chapter of the Missouri Bar Association CLE Employment Discrimination Deskbook
- Contributing Author, Cumulative Supplements to the American Bar Association's Family and Medical Leave Act Treatise in 2009 and 2017.
- Contributing Author, "ABA Section of Labor and Employment Law Committee on Federal Labor Standards Legislation" for the Midwinter Meeting Report of the Subcommittee on the Family and Medical Leave Act in 2007, 2008 and 2009
- Contributing Author, to the "ABA Section of Labor and Employment Law Committee on Federal Labor Standards Legislation" for the Midwinter Meeting Report of the Subcommittee on the Developments under the Age Discrimination in Employment Act in 2003 and 2004

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Robert A. Nickel

ATTORNEY AT LAW / ASSOCIATE

Practice Areas

Missouri Education
Higher Education
Labor and Employment
Commercial Litigation

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Robert A. Nickel practices primarily in the areas of Missouri education law, higher education law, labor and employment law, and commercial litigation. He represents both public and private institutions in education, labor, and employment matters. Robert advises K-12 schools and school districts, colleges and universities, and other public entities as well as private employers throughout Missouri on employment and litigation matters.

While in law school at the University of Missouri, Robert participated in the Entrepreneurship Legal Clinic, where he worked with small, local businesses on various transactional matters. In addition, Robert worked with the Allen Angel Capital Education Program, advising a university investment fund on startups and angel investing. Prior to joining Tueth Keeney, Robert practiced bankruptcy at a real estate firm in St. Louis.

Education

J.D., University of Missouri, 2022
- Entrepreneurship Legal Clinic
- Legal Analyst for Allen Angel Capital Education Program

B.A., University of Missouri - St. Louis, magna cum laude, 2018
- Degree in Political Science
- Pierre Laclede Honors College

Professional Affiliations

- The Missouri Bar

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Luke T. Phillips

ATTORNEY AT LAW

Practice Areas

Immigration Law
Higher Education Law
Labor and Employment

Bar Admissions

Missouri, 2020

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Luke T. Phillips practices primarily in the area of immigration law, representing corporations and institutions of higher education with their immigration needs, including obtaining temporary and permanent visas, handling employer sanctions issues, I-9 and E-Verify employment eligibility verification compliance, consular processing, and naturalization.

Prior to joining the firm, Luke served as an Honors Attorney for the United States Postal Service. While in law school, Luke was a student law clerk to the Honorable Michael P. Mills of the United States District Court for the Northern District of Mississippi, and he served as a legal intern with the U.S. Attorney's Office for the Eastern District of Missouri. As a third-year law student, Luke wrote the article *Chevron in the States? Not So Much*, 89 Miss. L.J. 313 (2020), which was cited by Justice Neil Gorsuch in his dissent from the denial of *certiorari* in *Buffington v. McDonough, Secretary of the Veterans Affairs*, 598 U.S. ___ (2022).

Education

J.D., University of Mississippi School of Law, magna cum laude, 2020
- Executive Articles Editor, Mississippi Law Journal
- William C. Keady American Inn of Court
- Dean's Leadership Council

B.A., University of Mississippi, magna cum laude, 2017
- Sally McDonnell Barksdale Honors College
- Center for Intelligence and Security Studies
- Lott Leadership Institute

Professional Affiliations

- The Missouri Bar
- American Immigration Lawyers Association

Selected Publications and Presentations

- "Immigration Law Updates That In-House Counsel Need to Know," Association of Corporate Counsel - St. Louis Chapter, August 2022 Newsletter
- "What's on the Horizon: Employment-Based Immigration Update," Association of Corporate Counsel, CLE Lunch, November 2021
- *Chevron in the States? Not So Much*, 89 Miss. L.J. 313 (2020) (cited in *Buffington v. McDonough, Secretary of the Veterans Affairs*, 598 U.S. ___ (2022) (Gorsuch, J., dissenting from denial of *certiorari*))
- *The Future of ISIS and U.S. Counterterrorism: A Study of ISIS, Boko Haram, Al-Shabaab, and the U.S. Policy Response*, Honors Theses 597 (2017)
- "Russian Foreign Policy in the Middle East in the Next Five Years," Presenter, Five Eyes Conference in Ottawa, Canada (October 2015)

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Veronica E. Potter

ATTORNEY AT LAW / SENIOR ATTORNEY

Practice Areas

Missouri Education Law
Higher Education Law
Labor & Employment
Commercial Litigation
Appellate Practice

Bar Admissions

Missouri, 2013
Illinois, 2020

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Veronica E. Potter practices primarily in the areas of higher education, litigation, and labor and employment law. Veronica represents colleges, universities, and private employers in education and employment litigation matters. In her work with institutions of higher education, Veronica advises on a wide range of legal issues, including employment matters, student rights, harassment and discrimination disputes, and numerous other legal issues impacting the higher education community. She regularly works with clients on a variety of day-to-day legal issues.

Veronica also has extensive experience working with colleges and universities on matters related to Title IX compliance and litigation, including drafting policies and procedures, providing trainings, conducting investigations, and representing institutions in litigation. Veronica also conducts investigations at educational institutions and other workplaces on both student and personnel issues. As a former sex crimes and domestic violence prosecutor, Veronica has been trained in trauma-informed interview techniques and has experience interviewing victims of trauma.

Veronica has experience in all stages of litigation, including case investigation, discovery, arguing pretrial motions, and presenting cases to both judges and juries. She started her legal career as an Assistant Circuit Attorney in the St. Louis City Circuit Attorney's Office, where she gained first chair trial experience. Veronica also has experience working on E-Discovery and leveraging technology to help clients manage data in litigation. Prior to joining Tueth Keeney, Veronica also practiced civil litigation at a large defense firm in St. Louis. Veronica also has experience handling appellate matters and has argued before the Missouri Supreme Court and the Missouri Eastern District Court of Appeals.

Education

J.D., Washington University School of Law, 2013

- Graduated cum laude
- Executive Notes and Projects Editor, Journal of Law & Policy
- Webster Society Scholar
- Recipient of Equal Justice Works Award and Dean's Service Award

B.A., Washington University in St. Louis, 2010

- Graduated with College Honors in Arts & Sciences
- Dean's List

Professional Affiliations

- The Missouri Bar Association
- The Bar Association of Metropolitan St. Louis
- National Association of College and University Attorneys

Selected Presentations

- "Higher Education HR Legal Update," Missouri College & University Professional Association – HR Annual Conference (September 2022)

TUETH KEENEY
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Veronica E. Potter

ATTORNEY AT LAW / SENIOR ATTORNEY

Practice Areas

Missouri Education Law
Higher Education Law
Labor & Employment
Commercial Litigation
Appellate Practice

Bar Admissions

Missouri, 2013
Illinois, 2020

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- "Open for Comment: The Impact of Proposed Changes to the Title IX Regulations for US Higher Education," Employment Law Alliance webinar (September 2022)
- "Title IX Update: Regulations and Litigation," Tueth Keeney Higher Education Seminar (June 2022)
- E-Discovery: Because it's not like all this data is going away," Tueth Keeney (March 2022)
- Legal Updates – Missouri Community College Association, Trustee and Executive Leadership Conference (July 2021)
- Title IX Updates – Tueth Keeney Higher Education Webinar (June 2021)
- Protecting Data Privacy and Other Cybersecurity Concerns - Tueth Keeney Higher Education Webinar (June 2021)
- Hot Legal Topics for College and University HR Professional – Missouri College & University Professional Administration-HR (February 2021)
- Legal Update for Student Affairs Professionals – Missouri Community College Association, Student Services Seminar (February 2021)
- Title IX: Rules of Procedure and Decorum – Tueth Keeney Higher Education Webinar (October 2020)
- The Logistics of E-Discovery: Responding to Requests – Tueth Keeney CLE (December 2019)
- "E-Discovery Essentials," Presentation to Association of Corporate Counsel – St. Louis (November 2019)
- "Student Accommodations in Clinical Settings" MCCA Allied Health Conference (October 2019)
- "E-Discovery Essentials," Tueth Keeney Higher Education Seminar (June 2019)
- "Legal Issues for Student Affairs Professionals," MCCA Student Services Seminar (March 2019)
- "E-discovery Myth Busters Brown Bag Lunch CLE" (February 2019)
- "Title IX Proposed Regulations: Overview and Discussion," St. Louis Area Title IX Coordinators Roundtable (January 2019)
- "Legal Update for Student Affairs Professionals: The Latest on Title IX" – MCCA Annual Convention, Chief Student Affairs Officers Meeting (November 2018)
- "Practical Considerations for E-Discovery or: How I Learned to Stop Worrying and Love Metadata," Tueth Keeney CLE (August 2018)
- "The Latest News on Title IX," Tueth Keeney Higher Education Seminar (May 2018)
- "Title IX Update on Respondents' Rights," St. Louis Area Title IX Coordinators Roundtable (April 2018)
- "Higher Education Law 101: Legal Issues for Student Services Professionals," Missouri Community College Association (MCCA) Student Services Seminar (March 2018)

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ATTORNEY AT LAW / SENIOR ATTORNEY

Practice Areas

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Higher Education Law
Labor & Employment
Commercial Litigation
Appellate Practice

Bar Admissions

Missouri, 2013
Illinois, 2020

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Selected Publications

- Missouri Supreme Court Releases Much-Needed Revisions to Missouri's Civil Discovery Rules – March 2021 Association of Corporate Counsel Newsletter
- "Missouri Passes Law Bringing Discovery Rules More in Line with Federal Rules," 2019 Association of Corporate Counsel Newsletter
- A Tale of Two States: Challenges to Voter ID Ballot Measures in Missouri and Minnesota, 42 Wash. U. J. L. & Pol'y 203 (2013)

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John M. Reynolds

ATTORNEY AT LAW

Practice Areas

Construction Litigation
Commercial Litigation
Fraud
Employer Compliance
Labor & Employment
Lease Disputes
Product Liability
Information Technology

Bar Admissions

Missouri Bar
Illinois Bar
Federal Bar

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John M. Reynolds is an experienced and trusted trial lawyer, whose practice focuses on complex, technical litigation. He has served as trial counsel in some of the largest commercial cases tried to verdict in the St. Louis area, involving Fortune 500 companies and seven-figure disputes. His commercial litigation involves U.C.C. disputes, business valuation disputes, breach of contract and other general commercial disputes. John also assists in dealing with issues involving employee theft, as well as financial audits.

In addition to trial work, John helps businesses deal with employment claims and assists in resolving employee issues, including the prosecution and defense of non-compete disputes, as well as information technology issues, including data privacy issues and forensic computer investigations.

John also handles Immigration Reform and Control Act of 1986 (IRCA) matters and related I-9 issues, including E-Verify requirements, audit responses, and ICE investigations. He also handles export control licensing reviews for H-1B compliance purposes.

Education

J.D., University of Virginia School of Law, 1995
- Editor, Virginia Tax Review
- Member, National Trial Team

B.A., Economics, University of Missouri-Columbia, *summa cum laude*, 1992

Construction and Commercial Litigation

John's construction litigation ranges from simple mechanic's lien actions to complex, contractor/owner disputes on high value projects. John's commercial litigation involves U.C.C. disputes, business valuation disputes, breach of contract and other general commercial disputes.

Fraud

John prosecutes and defends civil fraud cases, including mortgage fraud cases. John also assists in dealing with issues involving employee theft, as well as financial audits.

Employer Compliance

John assists employers with complex, technical issues involving:

- Data Privacy
- Data Governance
- Software Licensing
- Immigration Reform and Control Act of 1986 (IRCA) I-9 audit responses and investigations
- Export Control Licensing
- Title IV Program Reviews
- Section 504 and ADA compliance

TUETH KEENEY
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John M. Reynolds

ATTORNEY AT LAW

Practice Areas

Construction Litigation
Commercial Litigation
Fraud
Employer Compliance
Labor & Employment
Lease Disputes
Product Liability
Information Technology

Bar Admissions

Missouri Bar
Illinois Bar
Federal Bar

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Labor and Employment

John defends employment claims and assists in resolving employee issues, including the prosecution and defense of non-compete disputes. John has also successfully protected public sector employers against civil rights claims, including First Amendment claims.

Products Liability

John litigates issues involving motor homes, mobile homes, and manufactured homes, as well as other disputes where product design and safety are at issue.

Information Technology

John helps businesses deal with disputes involving information technology issues, including data privacy issues and forensic computer investigations.

Recent Presentations

- 2020 Missouri School Board Association Annual Conference – Keynote Speaker - *Cybersecurity and Data Governance*
- 2020 K-12 School Seminars – *Legal Considerations for Online Learning*
- 2018 MO-KAN AILA Chapter Conference - *The Intersection of Employment Law and Immigration Law, Including I-9's*
- 2018 Association of Corporate Counsel CLE - *Who Dunnit? How to Guide Internal Investigations*
- 2018 Corporate Client CLE – *Fraud/Compliance Considerations in the Digital Arena*

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