



INTERNATIONAL

FRENCH CONNECTION – FIRM’S LAW MEMBERSHIP DELIVERS INTERNATIONAL LEVERAGE

When a client’s expensive new piece of equipment failed to perform as promised by its French manufacturer, the client tried for nearly a year to resolve the problem through its local Chicago-based sales and service arm.



Chris Manning

When that failed (the manufacturer could not repair the equipment), the client’s only recourse was in federal court. However, the French company countersued — in France — initiating delaying tactics to “set up” a long and burdensome legal battle to induce the client and plaintiff to drop the case entirely or resolve the case in a way that would not have been satisfactory. When faced with the French law suit, the

Firm reached out to one of its international legal relationships through its affiliation with Lawyers Associated Worldwide

Continued on page 9

BWM&S

FIRM RAISES BAR FOR INVESTING IN JUSTICE CAMPAIGN



(From left) The Chicago Bar Foundation’s Robert Glaves, Karina Ayala-Bermejo from the Legal Aid Society and Metropolitan Family Services, and the Firm’s Jeff Warren and Alex Marks at the Firm’s Investing In Justice Campaign kickoff on March 14.

The attorneys at Burke, Warren, MacKay & Serritella are honored to participate in the Chicago Bar Foundation’s Investing in Justice Campaign, now in its 10th year. This annual campaign has grown to include 150 firms, more than

Continued on page 7

LABOR & EMPLOYMENT

YARCH TO CHAIR FIRM’S LABOR & EMPLOYMENT PRACTICE



Rachel Yarch

Accomplished labor & employment attorney Rachel Yarch realized that her search was over when she connected with Burke, Warren, MacKay & Serritella — a new home to nurture both her career aspirations and her substantial client list of corporate and privately held companies, not-for-profit and social services institutions.

Attracted by the Firm’s position


Continued on page 8

INSIDE THIS ISSUE:

McCrohon Elected to Executive Committee 2
Firm Client Welcomes Bockwinkel’s 2
Jonathan Michael Elected to ACTEC. 3
Geoly Addresses Constitutional Law Issues 3
Living (and Dying) in a Digital World 4
Firm’s Choh, Jung & Rick Promoted to Partner 6
Firm Welcomes Tom Paravola 7
Mendelsohn Returns as NITA Instructor 9
Developing Area of Law 10
Department of Labor Issues Guidance 11
NEXT ISSUE: Firm grows again and more.

McCROHON ELECTED TO EXECUTIVE COMMITTEE OF ILLINOIS STATE UNIVERSITY RETIREMENT SYSTEM

Craig McCrohon, a partner in the Firm's corporate group, was recently elected to the executive committee of the Illinois State University Retirement System board of trustees. He continues to serve as chairman of the fund's investment committee. The Illinois State University Retirement System manages \$19.8 billion on behalf of 225,000 employees at Illinois hospitals, universities, community colleges and selected state agencies. McCrohon was appointed to the Illinois governor and ratified by the full Illinois Senate. While in office, McCrohon has testified before the Illinois legislature regarding investment matters and has taken a national role in controlling pension costs.

McCrohon specializes in securities and mergers and acquisitions law at Burke, Warren, MacKay & Serritella. He also advises companies and investment funds regarding director and officer liability, corporate finance, and regulatory matters. His work has included bank organization and acquisitions; venture capital; securities offerings; and domestic, European, and Asian joint ventures. He is a graduate of Harvard University and received his joint law degree and M.B.A. from the University of Pennsylvania and the Wharton School of Business. He can be reached at 312/840-7006 or cmcrohon@burkelaw.com. 



Craig McCrohon

REAL ESTATE

FIRM CLIENT WELCOMES BOCKWINKEL'S GROCERY STORE TO STREETERVILLE LOCATION

The Firm represented landlord, Multi-Employer Property Trust (MEPT), with respect to the lease for Bockwinkel's at McClurg, a local high-end grocery store, at McClurg Court Center in Streeterville. Bockwinkel's at McClurg joins the chain's other locations at Park Millennium and Harbor Point.



Rachel Wanroy




Doug Wambach

Rachel Wanroy and Doug Wambach worked with MEPT's advisor, Bentall Kennedy, on the drafting and negotiation of the lease for the store. The building, which is located at 320 East Ohio Street, includes 2 residential apartment towers on the upper levels containing more than 1,000 apartment units and a mix of retail and retail offices on the first level, including a national bank branch, a spa, multiple restaurants and medical offices. Formerly the McClurg Court Theater, Bockwinkel's now occupies the largest space in the building (approximately 16,500 square feet), which was repurposed as part of the base building renovation.



Pictured: New Bockwinkel's location at 320 East Ohio Street in the Streeterville neighborhood of Chicago.

The project took several months of negotiations and review, including on-site meetings with the tenant and the construction team. Bockwinkel's at McClurg opened for business in February. Rachel Wanroy can be reached at rwanroy@burkelaw.com or 312/840-7079. Doug Wambach can be reached at dwambach@burkelaw.com or 312/840-7019. 

WEALTH & SUCCESSION PLANNING

JONATHAN MICHAEL ELECTED TO ACTEC, NATION'S LEADING ESTATE PLANNING NETWORK

Burke, Warren, MacKay & Serritella congratulates Firm partner Jonathan W. Michael on his election as an American College of Trust and Estate Counsel ("ACTEC") Fellow. ACTEC is a nonprofit association of lawyers and law professors skilled and experienced in the preparation of wills and trusts; estate planning; and probate procedure and administration of trusts and estates of decedents, minors and incompetents. With approximately 2,600 Fellows primarily in private practice in the United States, ACTEC is recognized as the nation's most prestigious estate planning organization.

To qualify for membership, a lawyer must have no less than 10 years' experience in the active practice of probate and trust law or estate planning. Lawyers and law professors are elected as Fellows based on their outstanding reputation, exceptional skill, and substantial contributions to the field by lecturing, writing, teaching and participating in bar activities. ACTEC aims to improve and reform probate, trust and tax laws, procedures, and professional responsibility. Founded in Los

Angeles in 1949, ACTEC continues to set the standard for the practice of estate planning, probate and trust law.


"Being elected as a Fellow is an onerous process which involves a detailed vetting at the state ACTEC level, and then by the National Membership Committee," says colleague and ACTEC Fellow Karen MacKay. "It is a significant achievement to be elected and Jonathan fulfilled all requirements, not only as a speaker at many professional conferences, but also as a law professor and frequent writer for legal publications. He is also a licensed Florida attorney, which is of great assistance to our Firm's clients who have established legal residency in Florida."

According to Jonathan, his ACTEC election is part of a long term plan focused on continuous improvement in client service and professional growth. "Obviously being a part of ACTEC is a milestone for me," says Michael. "Another professional milestone was becoming a part of an exceptional group of attorneys at the Firm. It all centers around developing value for clients."

Jonathan's practice focuses on estate and

gift tax issues, with an emphasis on wealth and business succession

planning for closely held business owners and entrepreneurs. Jonathan also has extensive experience in representing corporate and individual executors and trustees in probate and trust administration matters. He is an Adjunct Professor at the DePaul University School of Accountancy and MIS as well as in the LL.M. Program at The John Marshall School where he developed and currently teaches the "Basic Estate Planning," "Advanced Estate Planning," and "Business Succession Planning" courses. Jonathan also frequently speaks at professional education seminars and has authored numerous articles on a wide range of topics, including business succession planning, asset protection planning, and the transfer and taxation of collections and collectibles.

For more information, please contact Jonathan at 312/840-7049 or jmichael@burkelaw.com. 



Jonathan Michael

RELIGIOUS ORGANIZATIONS

GEOLY ADDRESSES CONSTITUTIONAL LAW ISSUES ON RELEVANT RADIO




Jim Geoly

The Firm's Jim Geoly was invited by Relevant Radio to provide commentary in connection with the upcoming Supreme Court argument in the *Little Sisters of the Poor* case, involving religious exemption from the contraceptive mandate under the Affordable Care Act. The broadcast took place on Monday, March 21, at 9 am CST.

Geoly is a partner in the Firm's Religious Organizations practice and is regularly called upon in connection with constitutional law issues.

The Relevant Radio network serves the Catholic Church with 46 stations reaching 25 states. The national headquarters of this listener-supported lay apostolate are located in Green Bay, Wisconsin.

Jim Geoly can be reached at 312/ 840-7080 or jgeoly@burkelaw.com. 

LIVING (AND DYING) IN A DIGITAL WORLD

If Madonna were recording her famous 1984 hit today, it might go something like this:

*“Some boys Facebook me
Some boys Instagram me
I think they’re ok
If they don’t give me proper credit
I just un-friend them away*

*They can text and they can iMessage
But they can’t see the light (that’s right)
‘Cause the boy with the most BitCoins
Is always Mister Right*

*Cause we are living in a digital world
And I am a digital girl”*

Let’s face it. While we still walk and talk in a material world, we also live in an evolving digital world. We store our family pictures in the Cloud. We read our ebooks on our Kindles. We watch movies and TV series on our iPads from Netflix or Amazon libraries. We check bank balances online, pay our credit cards using our phones, pay for piano lessons with Popcash. We own Bitcoins, Paypal accounts, eBay accounts, Facebook pages, Twitter feeds, website domain names, apps. We email, Text, iMessage, and Instagram.

We conduct our social lives, our personal lives, and our financial lives on the internet, a new reality we’ve embraced, or at least learned to live with. But consider what would happen to your digital life if you were unable to manage it on your own? Who will step into your virtual shoes after you’re gone?

Think about the hoops you’ve jumped through to retrieve a forgotten user ID or password. Ramp that frustration up by 1000 watts for your loved ones struggling to access your digital assets after your death.

With some preemptive planning on your part it does not have to be this way. Start with the following steps for managing your digital world even after you’re gone.

Select Your Successor

Identify a trusted, computer savvy person to act as your “Digital Agent.” This individual will access your computer, your email, and your online accounts in your absence. The Millennial in your family might be perfect for this job, or perhaps a capable good friend. As with all estate planning, talk to this person now and let others know your plans.



Mary McWilliams

Put It In Writing

Once you have identified your Digital Agent, the next step is to give him or her the legal authority to act on your behalf. This must be done in writing, typically by updating your estate planning documents. The following recommendations should be considered.

Address the possibility of your incapacity by updating your Durable Power of Attorney for Property to include language specifically giving authority to your Digital Agent to access your devices and digital assets during your lifetime.

Address the event of your death by updating your Will and Living Trust to give your Digital Agent express legal authority to take control of your digital assets. This person could be, but does not need to be, the same person you have selected as your executor or trustee. *Remember, your Will becomes a public record after your death, so do not include any specific digital asset or password information in your Will.*

Instructing your Digital Agent to close down accounts that are no longer needed will help to protect your family from identity theft after you are gone. If you want an account to be closed, your Digital Agent may want a copy made and saved first, especially if it contains photos or writings.

If you have a website or blog that you wish to continue, leave instructions for its maintenance or disposition. Make sure your Digital Agent has a list of all of your sites that currently produce or could produce revenue (e-books, photography,

Collect and maintain an inventory of all of your digital assets, as it could be the only such tool for your heirs. Include all of your important sites, bank and brokerage accounts, memberships, subscriptions, applications, passwords, and contact information.

videos, blogs). If your computer or hard drive stores items that you want to pass on (family photos, ancestry research, a book you have been writing), save them in a “Do Not Delete” folder and include that folder on your inventory list.

Each of your accounts is governed by its own Terms of

Continued on page 5

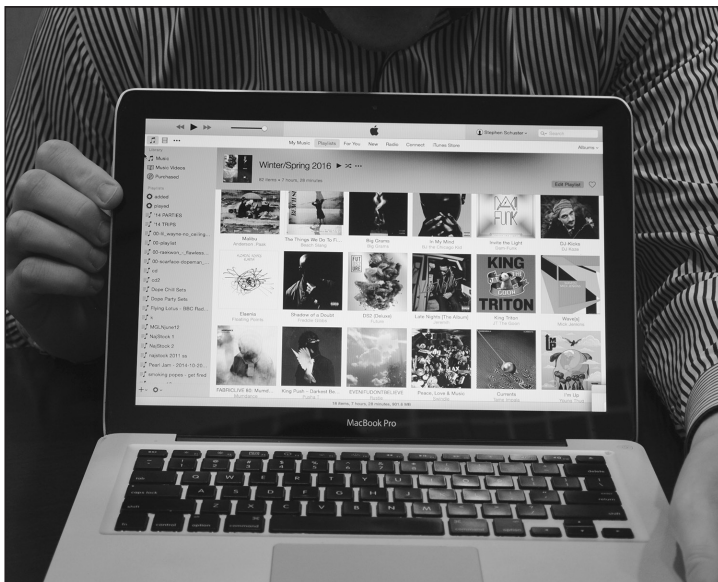
Service. Take advantage of online sites that allow you to give instructions now for later events.

In May 2013, Google became the first site to give users options for managing their content if they become incapacitated or die — there are choices to be made with regard to timelines, deletions and destinations for your content.

Facebook allows you to decide in advance whether you want your account memorialized or permanently deleted upon your death. Memorialized accounts offer a place for friends and family to gather and share memories after a person has passed away. Facebook also allows you to designate a legacy contact who will have access to your photos, videos and friend list and who can download an archive of your shared information after your account is memorialized.

Maintain An Inventory of Your Digital Assets

Gone are the days when an executor would simply collect a deceased loved one's mail for a month or two to identify his or her financial assets after death. And while paperless statements are good for the environment, they can be disastrous for those you leave behind.



The Firm's Steve Schuster displaying his highly-prized digital asset — his play list.

Collect and maintain an inventory of all of your digital assets, as it could be the only such tool for your heirs. Include all of your important sites, bank and brokerage accounts, memberships, subscriptions, applications, passwords, and contact information. Include financial accounts as well as social accounts and sites that hold emotional and sentimental value to you and your loved ones.

A sample inventory would include the following information for each asset: description, web address, user ID, pin, password, account number, answers to security

questions, and other instructions. Listing these assets by category will make the task less intimidating.

Cleaning up and organizing your desktop and files would be a thoughtful thing to do as well. Categories might include:

- **Hardware:** computers (laptop, desktop, work computer), hard drives, back-up drives, flash drives, iPods, cell phones and cameras. Include a general overview of where they are located and what is on each one.
- **Software:** Include Word and Excel documents, Quicken or Quickbooks for financial records, tax preparation programs and past tax returns.
- **Social Media and Online Presence:** Facebook, Twitter, LinkedIn, Flickr, YouTube, your own website, your blog, online backup sites, online photo and work document storage sites.
- **Online Accounts:** Bank and other financial accounts, email accounts, website and blog hosting and registration sites. Amazon, other shopping sites, and bills that you pay online may also have your credit card or bank information stored on them.

Keep Your Inventory Current and Secure

Creating and regularly updating your list will present challenges of its own, as accounts are opened or closed, websites change, and passwords expire. Compounding this challenge is the need to keep this list safe and secure during your lifetime, yet easily located and accessible to your digital agent when they need it. There is no one solution for all of us. Typically, a person has 40 accounts with passwords, and 71% choose to memorize those passwords.


You might choose a password protected folder or Excel spreadsheet on your computer (so long as your Digital Agent knows how to find and open the inventory). Others may choose to use an online password storage system, such as Assetlock, PasswordBox, SecureSafe, Deathswitch, or 1Password.com.

Keep in mind, though, that all online systems are vulnerable to hacking and identity theft.

Remember to create a backup of your list, whether on hard copy or jump drive. Store the backup in a secure place, such as a safety deposit box.

Get Started Right Away

It is, of course, daunting to organize all this information, but it is absolutely worth the time and effort. If you don't, your loved ones may not know where to begin, and valuable items may be overlooked or lost. As with traditional estate planning, the more you do now, the easier it will be for your family later.

If you would like more information on planning for your digital assets, please contact Mary Kruit McWilliams at 312/840-7081 or mmcwilliams@burkelaw.com. 

FIRM'S CHOH, JUNG & RICK PROMOTED TO PARTNER

Burke, Warren, MacKay & Serritella congratulates Sara Choh, Adam Jung, and Adam Rick on their recent promotions to partner.

Sara Choh is a member of the Firm's Consumer Financial Services Litigation and Class Action Defense practice groups. She has litigated class actions and individual suits on behalf of financial institutions brought under state and federal laws including the Truth in Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, and various state consumer protection statutes. Ms. Choh also has experience with bankruptcy



Sara Choh

proceedings, complex product liability cases, franchisor-franchisee disputes, and mass tort litigation.

"The combination of the Firm's highly collaborative environment and wealth of challenging matters have allowed me to grow tremendously during my time at Burke Warren," says Ms. Choh. "I have the utmost respect for the people that I work with and I am grateful for the opportunity to further develop my practice."

Ms. Choh received her J.D. from the University of Minnesota Law School in 2007 and her B.A., *magna cum laude*, from Georgetown University. She can be contacted at 312/840-7005 or schoh@burkelaw.com.

Adam Jung is a member of the Firm's corporate practice, working closely with and providing counsel to entrepreneurs, small business owners, financial institutions, in-house counsel, and governmental entities for a wide



Adam Jung

range of transactions. Mr. Jung represents acquirers and target businesses in stock and asset acquisitions, sales, and mergers. He routinely advises both lenders and borrowers in commercial loans and financing transactions. Mr. Jung analyzes, negotiates, structures, and drafts a variety of contracts that include employment and consulting agreements, non-competition and restrictive covenant agreements,

purchase and supply contracts, service agreements, intellectual property and licensing agreements, and sponsorship agreements. Additionally, Mr. Jung assists clients with structuring, organizing, and documenting new business ventures and entities.

"Some of Burke Warren's greatest strengths are its collaborative environment and the wealth of experience among its personnel. The support from my colleagues allows me to better serve my clients and to continue to grow my practice," says Mr. Jung.

Mr. Jung received his J.D. from the University of Illinois Law School, *cum laude*, in 2006 and his B.S. from the University of Illinois in 2003. He can be contacted at 312/840-7097 or ajung@burkelaw.com.

Adam Rick is a member of the Firm's Litigation and Religious Organizations practice groups. He defends institutions against claims based on alleged malfeasance by their employees. While Mr. Rick has won cases on motion, at trial, and on appeal, he also appreciates that cases can be won through negotiation. To that end, he has achieved multiple no-liability, walk-away settlements that




Adam Rick

required no payments by his clients. Mr. Rick's most recent courtroom successes have resulted in summary judgment and dismissal of negligent supervision claims.

"As attorneys, we owe a solemn duty to advocate for our clients. Their trust should be earned through frank advice, hard work, and a focus on obtaining the best possible outcomes," says

Mr. Rick. "I am grateful for the responsibility entrusted to this law firm by its clients, and for the opportunity to take on their most important legal challenges."

Mr. Rick graduated first in his class from Franklin Pierce (now University of New Hampshire School of Law) in 2009. He received his B.A. from Pomona College in 2002. He can be reached at 312/840-7053 or arick@burkelaw.com. 

FIRM RAISES BAR

Continued from page 1

5,000 individual attorneys, throughout greater Chicago, working together to ensure that everyone has access to necessary legal help, even those who can't afford it.

The Firm's internal campaign kicked off with a lunch on Monday, March 14, featuring presentations by Robert Glaves, Executive Director of the Chicago Bar Foundation, and Karina Ayala-Bermejo, Executive Director of the Legal Aid Society and General Counsel of Metropolitan Family Services. The Chicago Bar Foundation, charitable arm of the Chicago Bar Association, aims to make the legal system more fair and efficient for everyone through pro bono and legal aid organizations that are funded, in large part, by the Investing In Justice Campaign. The Legal Aid Society of Metropolitan Family Services, a funding recipient of the campaign, provides legal support in various areas for vulnerable citizens, regardless of income.


The Investing in Justice Campaign is the largest campaign of its type in the country. In the course of its ten years, the Campaign has raised more than \$12 million to help people in need get critical legal assistance. 100 percent of individual contributions to the Campaign go directly to CBF grants while leveraging hundreds of thousands in additional funding for this work as well. This year's Campaign grants will serve 34 pro bono and legal aid organizations thanks to a number of generous matching contributions from participating firms and companies, including Burke Warren, and with the additional

foundation and government funding the CBF is able to leverage through the Campaign grants process.

The grants made possible by the Campaign fund a continuum of much-needed services in our community, including web-based information and resources, legal aid hotlines, advice desks and clinics, extended representation and significant impact litigation. Those receiving services thanks to the Campaign include the elderly, disabled individuals, veterans, children, domestic violence victims, people at risk of wrongfully losing their homes, immigrants fleeing persecution and abuse, and many others in the Chicago area in need of legal assistance.

In the course of its ten years, the Campaign has raised more than \$12 million to help people in need get critical legal assistance.

Thank you to Alex Marks and Aaron Stanton for serving as Vice Campaign Chairs, Jeff Warren and Firm management for their continued support and donation matching, the Pro Bono Committee for its efforts, and most importantly to all of the attorneys who participated!

More information about the Investing in Justice Campaign and the work of the CBF is available on the CBF website, chicagobarfoundation.org/campaign/. 

EMPLOYEE BENEFITS

FIRM WELCOMES EMPLOYEE BENEFITS ATTORNEY TOM PARAVOLA


Burke, Warren, MacKay & Serritella P.C. is very pleased to announce that Tom Paravola has rejoined the Firm.

Mr. Paravola is a returning member of the Firm's employee benefits law practice group. He has been practicing exclusively in the area of employee benefits law for more than 30 years, 11 years with Burke Warren from 1989 to 2000. Mr. Paravola's practice consists of drafting required documents and providing legal advice and representation concerning all matters relating to pension and profit sharing retirement plans (including 401(k) plans), health and welfare benefit plans (including cafeteria plans), and deferred compensation and equity based on executive arrangements (particularly stock option plans). He addresses benefits issues arising in business merger and acquisition transactions and financing transactions involving plan assets, and consults on benefit claim litigation, QDRO preparation, and distribution planning and tax issues.



Tom Paravola

Mr. Paravola's practice includes working with small to mid-size private sector employers, as well as governmental, church and tax-exempt entities, on the full range of employee benefit plan matters. He also acts as counsel to a number of multiemployer pension and health and welfare funds.

Mr. Paravola earned his B.S. from Elmhurst College and his J.D. from the University of Illinois College of Law. In addition to his time with Burke Warren, Mr. Paravola's benefits experience includes time with an employee benefits consulting firm, in his own private practice, and with other Chicago firms. He can be contacted at 312/840-7067 or tparavola@burkelaw.com. 

L&E PRACTITIONER

Continued from page 1

in the market, its practice areas and the clients it serves, Yarch moved in just before the New Year. “I felt that I had outgrown the boutique firm where I’d been practicing and my clients blended well with the Burke Warren client list,” says Yarch. “I also wanted a greater leadership opportunity, and Burke Warren made the practice chair position available to me.”

Q: Why did you choose Burke Warren? What appeals to you about the Firm?

A: I like the fact that Burke Warren is a full service firm with a diverse client base. The Firm’s long history of serving corporate entities as well as non-profits made for an excellent fit. Loyalty and commitment are key to my client base, and it was essential to me that I find the best possible fit to serve all of my clients, including my non-profit clients. I like to think that my non-profit clients and I share a strong sense of mission and history.

Overall, joining Burke Warren is an exciting step forward for my career and I feel very fortunate that the firm had a need for my skill set. I’m equally excited to begin working with the Firm’s clients, while offering the Firm’s wide range of services to my existing clients.

Q: Why specialize in labor & employment law?

A: After a longstanding focus on litigation, I took on more of a counseling role over the past five years and realized how crucial it is for companies. Conducting day-to-day legal counseling helps me steer clients away from conflict, as opposed to arriving later to extinguish fires. Risk management and coaching are key to my client strategy and vision. I’ve performed client counseling for employers across the country and I really envisage that my experience will benefit the Firm.

Q: Why does labor & employment law appeal to you?

A: This area of law has a broad spectrum. There are so many factors — harassment, discrimination, wage disputes and more. Because all companies have employees, a labor & employment focus allows me to work with an infinite range of companies and organizations. I really enjoy meeting and getting to know new people. Labor & employment law is constantly changing and evolving, so this specialty ensures that I also have to stay abreast of the current trends in the business world. I really enjoy employee relations and I take great pleasure in working closely and sharing my knowledge with HR personnel and in-house counsel.

Q: How would you describe the difference between labor issues and employment issues?

A: Labor issues include union issues, overtime issues and more. Employment issues include discrimination, disability, employee relations and the like. There are many distinctions amid the similarities. Both areas include employment agreements, non-compete and non-solicitation issues, as well as other transactional issues and many types of litigation.

Q: What would you say are the most complicated issues that you deal with?

A: Essentially all labor & employment issues are complicated because people are complicated, but that’s why I enjoy it. On the employment side, the Americans with Disabilities Act (ADA) issues are the most complex because the law is very unclear and each situation is extremely fact specific. Even the most experienced HR professionals are often uncertain how to navigate these issues, and will often need a second opinion, which is when I step in. For example, a solution may involve making an employee feel more comfortable about opening up to discuss issues whether they are medical, emotional or family based; sometimes medical professionals

must be consulted to provide opinions about work restrictions and reasonable accommodations. The main objective is for all parties to feel satisfied with the solution.

Q: Are you involved in the employee meetings?

A: Not typically because, the vast majority of the time, I can’t be a witness when I will ultimately defend the cause of action; if I am involved, it’s usually behind the scenes. However, sometimes I am involved with making sure an employee termination proceeds smoothly. Usually I will coach HR personnel through investigating an internal complaint, documenting a step-by-step process, and so on. The outcome within each step of this process will typically determine what the next step should be; these consultations involve a lot of ongoing collaboration.

Q: What issues do you think that companies should focus on right now in the area of labor and employment?

A: I think companies really need to pay attention to changes in the Fair Labor Standards Act (FLSA.) Another hot topic is the classification or misclassification of independent contractors.

Q: What do you consider to be your strongest suits in your area of law?

A: I think that my emotional intelligence plays an important role in the success of my practice. I make it a priority to really connect with employees and HR personnel. It’s similar to a doctor’s good bedside manner. Reading people and connecting with them are important skills in all aspects of life.

Q: What kinds of relationships do you have with your clients today and in what ways do they rely on you?

A: I am very close with clients that I’ve worked with for many years. They know that they can call, text, or email me at any time. In my area of law, it’s important

Continued on page 9


to be “on call” for many reasons. Some clients have employees working non-traditional shifts and employment issues are often very time sensitive, so you have to be responsive. Sexual harassment allegations, for example, require that you act immediately.

Ms. Yarch represents employers in all aspects of employment law, including client counseling, training and litigation. Her experience includes representing various corporate entities, both large and small, schools, colleges, universities,

nursing homes, and municipal corporations. She has trial experience in both state and federal courts, and has litigated and mediated employment law matters through various agencies, including the Equal Employment Opportunity Commission and the Illinois Human Rights Commission. In addition to employment law, Ms. Yarch has extensive experience handling complex litigated matters, including general liability, civil rights and insurance claims, from investigation through trial.

Ms. Yarch also assists employers in

drafting policies and making personnel decisions in compliance with federal and state statutes. She is a frequent lecturer on employment law issues and provides training sessions on important employment topics (e.g., *Accommodating Disabilities, Preventing Discrimination Claims and Preventing Sexual Harassment in the Workplace*).

To learn more about Ms. Yarch’s practice, please contact her at ryarch@burkelaw.com or 312/840-7029. 

FRENCH CONNECTION

Continued from page 1


(LAW). While the Firm was taking steps here to fend off the French suit, it also engaged a fellow member firm in Paris to make sure the litigation stayed on track.

LAW is comprised of more than 100 member firms located in markets throughout the U.S. and around the world. Each member is a full-service firm, highly regarded in its home market. In 2015, Burke Warren was selected to become the LAW member representing the greater Chicago area. In order to become a LAW member, prospective members, as a first step, must complete a detailed application and, if determined to possess the necessary expertise, are then personally interviewed to further assure compatibility and competency. LAW’s vetting process ensures that clients of any member firm receive prompt, expert advice when needed in more than 100 markets around the world.

“Globalization is not limited to international conglomerates and a handful of multinational law firms that serve them,” says

When faced with the French law suit, the Firm reached out to one of its international legal relationships through its affiliation with Lawyers Associated Worldwide (LAW).

the Firm’s Chris Manning. “Every year, more of our clients are expanding into foreign markets both for sourcing supplies and selling products. In the six months since we became a member of LAW, we have been able to tap into the LAW network to provide our clients with experienced legal counsel not only in Europe, but also in Asia and South America.”

LAW is organized to facilitate firm-to-firm relationship building throughout its network by conducting two highly structured meetings annually — one global and one regional. The Firm’s Jeff Warren and John Stephens attended LAW’s 2015 global meeting in Shanghai. Chris Manning and Gerry Ring joined Jeff Warren at the LAW 2016 regional meeting in Bogota, Colombia. 

BWM&S



Fred Mendelsohn

MENDELSON RETURNS AS NATIONAL INSTITUTE OF TRIAL ADVOCACY INSTRUCTOR

NITA’s motto is learning by doing. Experienced and well trained trial attorneys, from across the nation — literally from Alaska to the East Coast and states in between, devote their time and skill to teach young lawyers the art of trial law. Training includes how to try a case, including jury trials, direct and cross examination of fact witnesses, presentation of expert testimony, opening statements and closing arguments, including niche areas such as voir-dire (jury selection), pre-trial conferences (to persuade the inclusion or exclusion of evidence), and further to understand how their advocacy impacted the trier-of-fact (either a judge or a mock-jury).

Continued on page 12

DEVELOPING AREA OF LAW

Broadening Protections for Transgender Individuals Under Federal and State Law

Over the past decade, in addition to new applications of federal law, a number of states and cities — including Illinois and Chicago — have passed laws expanding anti-



Josh Cauhorn

discrimination protections to transgender individuals, a term which refers to people whose sincere inner sense of gender identity differs from their assigned or presumed

sex at birth. Employers, businesses and nonprofits should be aware of these recent updates in the law to ensure, most importantly, the lawful treatment of all people whom they employ and serve, but also to confirm their policies and procedures align with the changing law in this area.

Most recently, on November 2, 2015, the U.S. Department of Education Office of Civil Rights (“OCR”) issued a letter of findings against Township High School District 211 in Palatine, Illinois, finding that the District had discriminated against a transgender student. Specifically, by not allowing the student to use the girls’ locker room before and after P.E. Class, the school engaged in discrimination based on sex. The student was born male and from a young age identified as female.

OCR concluded that the District denied the student the full benefits of its education program, and where those benefits were provided in part, the District’s different treatment of the student violated Title IX of the Education Amendments of 1972 (“Title IX”). Title

IX may sound familiar; it is the same anti-discrimination law known for its application in ensuring, for example, equal access to sports programs at the high school and college level. OCR’s action against the District constituted the first time OCR had found a district in violation of federal civil rights law over transgender issues. To remedy the District’s violations, OCR entered into an agreement with the District, which precluded any penalty to the District. The agreement mandates that, among other things, the District provide private changing stations within the girls’ locker room to accommodate both the student and any other students who wish to change privately.

Such action is becoming more common as continuously changing laws recognize and broaden the rights of transgender individuals. In addition to the patchwork of federal law that both public and

Employers, businesses and nonprofits should be aware of these recent updates in the law to ensure, most importantly, the lawful treatment of all people whom they employ and serve, but also to confirm their policies and procedures align with the changing law in this area.

private entities increasingly employ to enforce such rights, among them Title IX (education) and Title VII of the Civil Rights Act of 1964 (employment discrimination), a number of states have passed their own laws on the issue. Illinois, in particular, placed into law the following protections:

2006: Adding to the prohibited forms of discrimination under the Illinois Human Rights Act discrimination based upon one’s gender-related identity. 775 ILCS 5/1-103. The Illinois Human Rights Act applies in employment, real estate, financial credit, education and public accommodations contexts.

2014: Mandate added to the School Code that schools create anti-bullying policies protecting, among other groups, transgender students. 105 ILCS 5/27-23.7.

In addition to Illinois law, Chicago also prohibits discrimination based on an individual’s gender identity. Such discrimination may include denying transgender individuals access to restroom facilities or a refusal to hire or promote an individual based on their gender identity. Since this is not yet a settled area of law, organizations would be best served by keeping apprised of developments as they occur and, in the meantime, using the current application of Title VII and Title IX to gender discrimination as a model in their interactions with transgender individuals.

Undoubtedly, the content and application of this fast-developing area of law will continue to change over the coming years. This article was written by the Firm’s Josh Cauhorn. For more information, you may contact Mr. Cauhorn at 312/840-7055 or jcauhorn@burkelaw.com.

This article addresses topics connected to emerging legal principles that may affect the rights of religious institutions. We invite you to contact the Firm’s labor and employment counsel, Rachel Yarch, at 312/840-7029 or ryarch@burkelaw.com and Alex Marks at 312/840-7022 or amarks@burkelaw.com. 

DEPARTMENT OF LABOR ISSUES GUIDANCE ON EMPLOYEE/EMPLOYER RELATIONSHIPS

As the American and global economies evolve via new technologies, fissured workplaces and varied organizational and staffing models, formerly straightforward questions like “Who are my employees?” and “Who is my employer?” have become more complex. “Gig” economy companies like Uber, third-party management companies, and staffing companies now dot the economic landscape, creating greater arm’s-length relationships with workers, which have generated legal gray areas in the traditional employment relationship.

The Department of Labor (“DOL”) recently provided guidance as to: (1) when a worker is an independent contractor vs. employee; and (2) when an employee has “joint” employers. Understanding these distinctions is essential in every business; employers need to know when their company becomes accountable for violations of employment laws, including the Fair Labor Standards Act (“FLSA”) and state law equivalents governing the payment of wages and overtime.

Independent Contractor vs. Employee

In order for the FLSA’s minimum wage and overtime provisions to apply to a worker, the worker must be an “employee,” broadly defined to include to “suffer or permit to work.” Generally speaking, employees are economically dependent on the business of the employer, while independent contractors are workers with economic independence in business for themselves.

The DOL has identified several “economic realities” as factors to help establish a baseline determination of when an employment relationship is created, including: (1) the extent to which the work performed is an integral part of the employer’s business; (2) whether the worker’s managerial skills affect his or her opportunity for profit and loss; (3) the relative investments in facilities and equipment by the worker and the employer; (4) the worker’s skill and initiative; (5) the permanency of the worker’s relationship with the employer; and (6) the nature and degree of control by the employer. The Supreme Court has indicated that no single factor is determinative here. Moreover, it is the *nature* of the relationship, and not how the relationship is defined in any employment contract, that is the true determinant.

Joint Employers

The DOL has also weighed in on who constitutes an



Alex Marks

“employer.” Increasingly, business models and labor arrangements result in an employee being employed by two or more employers. The DOL has noted that the FLSA defines both employment and joint employment “expansively.”

Joint employment may exist when two or more employers each separately employ an employee and are sufficiently associated with or related to each other with respect to

the employee. A waitress working for two separate restaurants sharing common economic ties is an example. Often the employee will perform separate work or work different hours for each employer. This is referred to as horizontal joint employment.

Joint employment may also exist when an employee of one employer is, with regard to the work performed, economically dependent on another employer. For example, a nurse who works for a staffing agency that is placed at a hospital. In determining whether sufficient dependency exists, courts again consider “economic realities” factors like control of the work performed, employment conditions, permanency of the relationship, and whether the work is integral to the business and performed on its premises. This is referred to as vertical joint employment. Vertical joint employers often share operations.

Industries where some form of joint employment is common include home health care agencies, construction, agriculture, hospitality, and warehousing and logistics.

Employers Should Exercise Caution

Understanding the employee/employer relationship is the first step toward properly managing a workforce. The complexity of the modern economy dictates that careful consideration be given to what used to be a simple analysis. As the push to protect misclassified workers continues, erring on the side of caution and/or consulting an attorney can help your business avoid unnecessary legal liability.

If you have questions or would like to discuss your company’s employment structure, please contact Alex Marks at 312/840-7022 or amarks@burkelaw.com. ☒



BURKE, WARREN,
MACKAY & SERRITELLA, P.C.

330 N. Wabash Avenue
Suite 2100
Chicago IL 60611-3607

The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2016 Editor: Cy H. Griffith, Director of Marketing.

312/840-7000 • www.burkelaw.com

MENDELSON RETURNS

Continued from page 9

Each student undergoes a rigorous schedule of working through each element of a case (from voir-dire, to opening statement, to jury instructions, to closing arguments, etc.) in front of the watchful eye of experienced trial lawyers who not only teach them how to do it, but critique their students in the classroom and on video (personal sessions). The students are exposed to the best of the best in terms of trial lawyers, and the NITA Midwest Intensive Trial Program is as rigorous

The students are exposed to the best of the best in terms of trial lawyers, and the NITA Midwest Intensive Trial Program is as rigorous and enriching as training can be.

and enriching as training can be.

For more than ten years, the Firm's Fred Mendelsohn has served as a volunteer adjunct faculty member of NITA, teaching younger, less experienced attorneys the art and skill of trying cases. NITA training for 2016 in Chicago was recently completed. NITA is the leading provider of legal advocacy skills training. A 501(c)(3) not-for-profit

organization based in Boulder, Colorado, NITA pioneered learning-by-doing methodology for legal skills more than 40 years ago.

Fred Mendelsohn can be reached at 312/840-7004 or fmendelsohn@burkelaw.com. 