

WOMEN'S LAW PROJECT

Safeguarding Rights, Creating Opportunities

June 2010

Violence Against Women • Reproductive Justice • Gender Equity
Family Law & Family Court Reform • Economic Justice & Health Care Reform

WLP FILES SEX DISCRIMINATION BRIEF

Alyson Kirleis v. Dickie, McCamey & Chilcote

The Women's Law Project, National Partnership for Women and Families, and the National Women's Law Center filed an amicus curiae brief in the U.S. Court of Appeals for the Third Circuit in an important Title VII sex discrimination case, *Alyson Kirleis v. Dickie, McCamey & Chilcote*.

The case involves an employment discrimination claim brought by a woman who is a partner in a prominent Pittsburgh-based law firm. She is alleging wage discrimination on the basis of gender, as well as a hostile work environment. U.S. District Judge Arthur Schwab granted the defendant law firm's motion for summary judgment, ruling that Title VII could not apply to Ms. Kirleis because it protects only "employees," and she cannot be considered an "employee" as she is a partner at her firm.

The issue on appeal involves the application of a 2003 U.S. Supreme Court ruling in *Clackamas Gastroenterology Assocs. v. Wells*, 538 U.S. 440 (2003), which construes the meaning of the terms "employer" and "employee" in federal anti-discrimination laws. Judge Schwab determined that Ms. Kirleis's status as shareholder rendered her an "employer" and hence unprotected by Title VII, the Fair Labor Standards Act, and the Pennsylvania Human Relations Act.

Our brief argues that the trial judge misconstrued *Clackamas* and used the wrong legal standard when he determined that Alyson Kirleis is not protected by federal anti-discrimination laws. Simply because she is

called a "partner" doesn't mean that she controls the conditions of her job; in fact, evidence in the record, summarized in the district court opinion, shows that she had little or no control over the conditions of her employment, which were almost entirely dictated by the law firm's Executive Committee. This committee determined compensation, assigned 90% of the cases, and controlled virtually every aspect of law firm life. Given these facts, summary judgment was inappropriate. Because of the broad remedial purpose of Title VII, Kirleis should be treated as an "employee" entitled to the protection promised by our federal anti-discrimination laws.

Our brief also surveys the data indicating that sex discrimination is a persistent, pervasive, and severe problem in the legal profession, including among associates and even partners at the biggest law firms in Pennsylvania.

Judge Brody Speaks at Awards Luncheon Hosted by The Legal Intelligencer, WLP, and ABA Women

On Tuesday, June 15, 2010, *The Legal Intelligencer* in association with the Women's Law Project and the American Bar Association's Commission on Women in the Profession is hosting a Special Awards Luncheon honoring Pennsylvania's Top Women in the Profession. The event honors twenty-one women of distinction in the law selected by *The Legal Intelligencer*. Judge Anita B. Brody, U.S. District Court for the Eastern District of Pennsylvania, is the keynote speaker.

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Third Circuit Court of Appeals Upholds Clinic Buffer Zones

On October, 30, 2009, in *Brown v. City of Pittsburgh*, the Third Circuit upheld a modified buffer zone around health care facilities, including those that provide abortion care. Sue Frietsche, Senior Staff Attorney at WLP, has assisted with drafting this ordinance. The three-judge panel concluded that both operative provisions – a 15-foot fixed no-protest zone around clinic entrances and a floating 8-foot personal bubble zone of protection around each person approaching the clinic – were content-neutral and consistent with the First Amendment speech and free exercise clauses, the Equal Protection Clause, and the Pennsylvania Religious Freedom Protection

Act. However, the Appeals Court concluded that the combination of the two zones was insufficiently narrowly tailored and that the city could therefore keep one but not both kinds of protective zones. The Appeals Court remanded the case to the trial judge to permit the City to determine which of the two types of buffer zones it wished to keep.

On December 17, 2009, the U.S. District Court for the Western District of Pennsylvania entered a permanent injunction in *Brown v. Pittsburgh*, preserving the 15-foot buffer zone and directing the City of Pittsburgh to clearly mark the protected zones around clinics.

WLP Files Brief: Supports Butler County Rape Victim

On September 28, 2009, the Women's Law Project filed an *amicus* brief with the Third Circuit Court of Appeals in *Reedy v. Evanson*, a civil rights case brought by a woman who was sexually assaulted during the course of a robbery. Ms. Reedy promptly complained to the police, but, instead of investigating her complaint, the police arrested her, charging her with falsely reporting a crime and other crimes.

The Women's Law Project prepared a brief in support of the plaintiff on behalf of 39 non-profit organizations dedicated to improv-

ing the criminal justice system's response to violence against women, including women's rights organizations, victim's rights organizations, and rape crisis centers. The brief urges the Third Circuit to reverse the decision of the lower court, which relied on the same myths about how a sexual assault victim should behave that the police relied on in arresting Ms. Reedy.

On March 11, 2010, the Court of Appeals heard oral argument in this case.

Court Order Continues Delaware State University's Women's Equestrian Team Through 2010-2011



(courtesy: Mike Baker from www.dsuhornets.com)

Fifteen female student-athletes who are members of Delaware State University's women's equestrian team filed a class action suit, *Foltz et al. v. Delaware State University*, challenging the university's failure to provide female students with equal opportunity to participate in athletics in its plan to eliminate the women's equestrian team at the conclusion of the 2009-2010 academic year. The student athletes, represented by the Women's Law Project and Flaster/Greenberg, brought the lawsuit under Title IX of the Education Amendments of 1972. The announced elimination of the team left the students at risk of losing the athletic opportunity that brought them to

Approval of DPW Regulations Secures Critical Protection for Domestic Violence Victims

On April 22, 2010, the Pennsylvania Independent Regulatory Review Commission (IRRC) approved a Pennsylvania Department of Public Welfare (DPW) proposed regulation that officially codifies the Family Violence Option (FVO) in Pennsylvania. Adopted by Congress in 1996, the FVO allows states to facilitate access to Temporary Assistance to Needy Families (TANF) for needy victims of domestic violence. The FVO was adopted because of research demonstrating the importance of public assistance in achieving economic independence from abuse but recognizing the risks of further abuse that may be imposed by welfare requirements. Pennsylvania's FVO regulations will insure that the Commonwealth provides critical support and protection to domestic violence victims who need TANF.

A member of the Task Force established to assist DPW in the implementation of the FVO, the Women's Law Project is pleased to see the approval of these regulations, the culmination of many years of cooperative and productive work with the DPW. Consistent with the federal FVO, the regulations provide for the identification of victims of domestic violence who may be in need of help, the referral to appropriate services, and the waiver of TANF and General Assistance requirements that would place a victim at further risk of domestic violence, make it more difficult to escape domestic violence, or unfairly penalize a victim because of domestic violence.

Delaware State and jeopardized their ability to achieve equestrian-related career goals, including therapeutic training and coaching. On the eve of a hearing on the motion for a preliminary injunction seeking restoration of the team pending litigation of the lawsuit, the university agreed to keep the team for another year. The court entered a consent order that obligates the university to keep the team through the end of the 2010-11 academic year, providing it with funding, staffing, and other benefits commensurate with its status as a varsity intercollegiate team. The Court has scheduled a trial starting October 18, 2010.

Building of New Philadelphia Courthouse Announced



The Women's Law Project published a report, *Justice in the Domestic Relations Division of Philadelphia Family Court*, in April 2003 that became the catalyst for a new family courthouse. Seven years later, a site has been selected, funding secured, architectural plans drawn. Unfortunately, serious allegations of wrongdoing and conflicts of interest related to individuals involved in developing this project have come to light and have overshadowed the critical need for a Family Courthouse.

Family Court is truly the "people's court." It is where profound and life altering decisions are made about the future of families. It is also the Court held in the lowest esteem. Neither the Court itself, nor the judges, lawyers and litigants are accorded the respect and resources that they deserve, impeding fair treatment and negatively affecting the quality of life in our community. We have before us an opportunity to change for the better the lives of Philadelphians who enter Family Court each day, as well as the experiences of those who work there. We have urged our public officials to thoroughly and expeditiously investigate and resolve any and all allegations of wrongdoing and take all necessary steps to get this project back on track so that the tens of thousands of families in crisis passing through its doors will be in a facility that is accessible, safe, and efficient.

Telephone Counseling

Since the Women's Law Project opened in 1974, women have been seeking our assistance with their legal problems. In 1979, we created the Telephone Counseling and Consumer Education Service. Staffed by specially trained volunteers, who have given nearly 100,000 hours of service, we have served approximately 65,000 individuals. Our callers' lives are complicated by layers of abuse, discrimination, trauma, and poverty. They are involved in multiple systems: law enforcement, health care, and child welfare.

Callers often wish that someone would tell them what to do – exhausted and overwhelmed as they are – but we don't give advice. Instead, we seek to empower callers with knowledge, believing that they alone know their situations best.



One of our retired volunteers, Dr. Evelyn Bouden, has been volunteering for over 11 years. Formerly the Director of Pennsylvania's Division of Maternal and Child Health, she has found a setting in which she can effectively continue her service to women and their families.

Please read more about Dr. Bouden by going to: www.womenslawproject.org and clicking on Who We Are.

Callers to our Telephone Counseling and Consumer Education Service

- Callers reach out from 770 zip codes in 33 states
- 96% live in 59 of Pennsylvania's 67 counties
- 68% of our callers live in Philadelphia, two-thirds of them in the City's poorest neighborhoods
- 75% raise family-related concerns
- 36% seek help with domestic violence
- 66% are between the ages of 25 and 54 but young teenagers and women in their nineties also call
- More than 75% of our domestic violence callers seek help with 2, 3, 4 or more problems in addition to the violence in their lives

We provide our callers with extensive information about safety planning, the court processes they must navigate, and other resources from which they might benefit. We help them prioritize their next steps. Most importantly, we listen. Evaluations from callers reflect how highly they prize the opportunity to tell their stories to understanding volunteers; they feel heard.

Often, it is clear that they need legal advice, so we refer them to resources that offer legal representation. We know, however, that those resources are either prohibitively expensive for our callers or, in the case of legal services, stretched far beyond capacity. The vast majority of our callers request information on family law matters and the reality is that 90% of litigants at Philadelphia Family Court are unrepresented. We provide them with the information they need to navigate the system and represent themselves.

Providing information is an important service, but the WLP goes beyond that work. We compile what we hear and integrate it with our knowledge of systems. Then we seek – and in many cases bring about – changes in the public policies that make the complicated lives of women at least a little better.

Action Needed:

- On March 17, 2010, the Pennsylvania Senate passed **SB1074**, which would ban the shackling of pregnant prisoners in Pennsylvania. The legislation passed the House Judiciary Committee and is now before the House Appropriations Committee for consideration. Please contact your Representative in the Pennsylvania House and ask for support of SB1074.
- **SB890 and HB2061:** Support equitable athletic opportunities in Pennsylvania High Schools. If adopted, this law will require Pennsylvania secondary schools to annually disclose information about student athletic participation by gender, race, and ethnicity, and information about athletic facilities, equipment, coaching, and athletic expenditures by gender. Please contact your Pennsylvania Senator and Pennsylvania House of Representatives member and ask that they support this legislation.

IN MEMORY OF LISA M. SLOAN WLP BOARD OF TRUSTEES



The Women's Law Project mourns the loss of Lisa Sloan, Esq., shareholder at Greenberg Traurig LLP, who died suddenly Friday June 11, 2010.

Lisa was a passionate, vibrant feminist and staunch supporter of a woman's right to choose. She served on the Board of Trustees of the Women's Law Project and the Board of Directors of Planned Parenthood of Southeastern Pennsylvania. She will be missed.

Your Support Matters

In the mid-1980's the Women's Law Project brought a class action law suit, *Beehler v. Jeffes*, contesting unconstitutional conditions and sex discrimination at Pennsylvania's Correctional Institution at Muncy. The settlement provided, among other remedies, a mother-child visitation center. Dabney Miller, Associate Director of WLP, was in a group setting recently and gave a synopsis of *Beehler v. Jeffes*. One member of the group spoke up very quietly and said, "I need to thank you for that. I have a relative at Muncy and I remember when the trailer arrived. It made all the difference [during my regular visits there as a child.]"

The work of the Women's Law Project made an impact on this individual and was a gift he has carried in his heart for many years. Please consider contributing to the Women's Law Project today. Your support will provide immediate benefits for our work today - and benefits for women and their families for years to come. Visit:

<http://www.womenslawproject.org/contribution.htm>.

Please Save the Date December 3, 2010

Celebrate with the
Women's Law Project
at our annual Philadelphia event
MarketPlace Design Center
2400 Market Street

Please Give Where You Work

Giving through payroll deduction is a convenient and easy way for you to give. You make the decision once and fulfill your budget for giving for the year. For the Women's Law Project, even small amounts each payday mean a great deal.

When you refill a plastic bottle of water instead of buying a new one once a week, and put that money into a payroll deduction contribution to the Women's Law Project, over the course of a year, your gift would amount to over \$100. If you gave up a latte once a week for us, your gift would be double that.

For individuals in the **Philadelphia area**, United Way of Southeastern Pennsylvania's Donor Choice Program allows you to direct your United Way gift to the agency of your choice. When you are asked to give, please designate your gift, or a portion of your gift, to the Women's Law Project. Our Donor Choice number is 00198.

If you are an employee of the federal government, you may also designate your gift to the Women's Law Project. Our number in the Southeastern PA and Lehigh Valley Area Combined Federal Campaign (CFC) is #66304. In the **Pittsburgh area**, our number in the Three Rivers Pennsylvania West Combined Federal Campaign (CFC) is #41408.



United Way of
Southeastern PA
Philadelphia Region: #00198



Combined Federal Campaign
Philadelphia: #66304
3 Rivers/Western PA: #41408