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SINCE 1914

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CAREER MOVES

Waugh appointed to board of directors

Craig Waugh, a business litigation attorney with the national law firm Polsinelli, has been appointed to serve on the Greater Phoenix Chamber of Commerce Valley Young Professionals (VYP) Board of Directors.

Waugh

Waugh focuses on prosecuting and defending claims in federal and state courts alleging violations of securities laws, and represents entities and individuals before the SEC, Arizona Securities Division and FINRA.

Waugh has served as a commissioner with the Maricopa County Trial Courts' Judicial Merit System Commission since 2010, and is currently chairperson. Waugh earned his bachelor's degree cum laude from the University of Vermont and his law degree from Georgetown University Law Center.

Rose Law Group expands estate-planning practice

Rose Law Group just announced the hire of attorney Timothy Heileman who practices law in the area of business transactions and estate planning. Heileman will focus on business transactions and estate planning through trust-based planning, including revocable living trusts, retirement plan trusts, gun trusts, and irrevocable trusts for gifting or life insurance, as well as estate administration, guiding clients through probate or trust administration.

Heileman

Heileman received his law degree from the Sandra Day O'Connor College of Law at Arizona State University, where he received the dean's recruitment award, was named a Willard H. Pedrick Scholar, and co-founded, and served as vice president of, the Tax and Estate Planning Law Association.

JUDICIAL PROFILE

User-Friendly Court

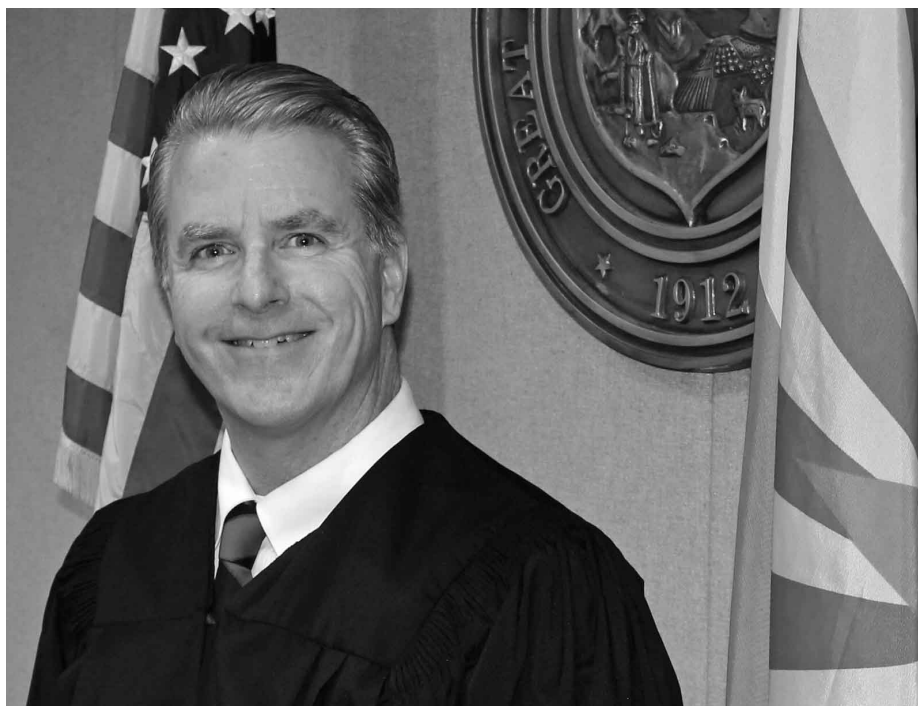

PHOTO BY BRIAN BERGNER JR.

After spending 18 years as an attorney, Judge Timothy J. Ryan was appointed to the bench by Gov. Janet Napolitano. He now serves on the Juvenile Bench.

By Brian M. Bergner Jr.

Having spent the bulk of his childhood under the same roof as his eight brothers and two sisters, Judge Timothy J. Ryan learned at a young age how to solve problems quickly, a skill that remains with him today at the Maricopa County Superior Court.

"Getting along within a group that size kind of helps out in what I have to do day in and day out," Ryan said. He was also influenced by his uncle, Michael Quigley, who became a Pima County judge. In fact, 20 members of Ryan's family are in the legal profession.

Although he acknowledges he can't solve every problem that comes before him, Ryan said the limitations from the juvenile bench can sometimes break his heart, especially when a case calls for a termination of a parental relationship.

"You have to find those right words so that when you are doing that thing that feels horrible to the parent, you're recognizing the fact that they do love their children, but that it isn't about that. That feels kind of limiting in a way," Ryan said. "I don't mind doing the right thing. I just wish there was some way I could reach out more to the parent whose rights are being terminated under the circumstances."

Timothy J. Ryan

Bench:
Juvenile Department

Court:
Maricopa County Superior Court

Education:
Bachelor's degree in history, University of Arizona [1984]
Law degree, University of Arizona College of Law [1987]

On the other hand, he said, there's nothing like the feeling a judge gets when they get the chance to reunite a family. "That's the feeling you want, but sometimes you have to deal with those tough issues."

Ryan learned to deal with tough issues during his 18-year career as an attorney. Shortly after joining Begam, Lewis, Marks and Wolfe as a partner in 1999, where he stayed until Gov. Janet Napolitano appointed him to the bench in 2005, Ryan represented Dennis and Carol Armstrong in a medical malpractice case.

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ARIZONA ATTORNEY COLUMN

Landmark case a win for religious liberty and privacy

Bob Brown, *Gallagher & Kennedy, P.A.*

In June , the United States Supreme Court issued an 8-1 victory for religious liberty advocates in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* by ruling that an employer may not use a person's religious practices as motivation in employment decisions. The case stemmed from a hiring decision in 2008 where teenager Samantha Elauf was denied employment because the hijab she wore violated Hollister's employee dress code which prohibited "caps."

Since Samantha's religious attire included her headscarf, the legal effect of the dress code was the same as if the store had openly prohibited hiring employees of her faith. In short, her religious clothing meant that she was not offered the job. The impact of the *Abercrombie* decision is reverberating throughout the business and legal community due to its significance in protecting the exercise of sincerely held religious beliefs in the workplace —not just inside the house of worship.

More than an absence of discrimination

Abercrombie held that Title VII requires

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NEWS

ICANN defeats antitrust lawsuit by domain name registry

The 9th U.S. Circuit Court of Appeals affirmed a federal court's dismissal of an antitrust lawsuit by a registry that sought to apply for new Web addresses such as .sucks and .law.

The three-judge panel found against Name.space Inc., a company that specializes in top-level domains.

Top-level domains are the last part of web addresses such as .com. The suit was originally brought against the Internet Corporation for Assigned Names and Numbers (ICANN) in 2013, and alleged a host of anti-competition issues. *Name.space Inc. v. Internet Corporation for Assigned Names and Numbers*, 2015 DJDAR .

ICANN is a nonprofit corporation contracted with the Department of Commerce to manage the Internet Assigned Numbers Authority. ICANN determines which registries operate existing top-level domains, and solicits applications for new top-level domains. Internet industry insiders, per the recommendation of the DOC, form the nonprofit corporation's board of directors.

The dispute stems from a 2012 application round for new top-level domains. The complaint says the cost of applications soared from $50,000 for unlimited applications in 2000 to $185,000 for one, out of the company's price range.

The suit alleged the rules and procedures in the application round were intentionally burdensome and the result of a conspiracy between ICANN board members and industry insiders.

U.S. District Judge Percy Anderson disagreed. So did 9th Circuit Judges N. Randy Smith, Stephen Reinhardt and Andrew D. Hurwitz, who wrote the opinion. The ruling found ICANN to be within the bounds of its governmental contract in the way it established the application process.

"We cannot infer an illegal agreement with outside interests simply because ICANN's rational business decisions favor the status quo rather than name.space's untested alternative business model," the opinion reads.

"It may well be, as name.space claims, that an 'open Internet' represents better public policy than one with a more limited supply of TLDs. But the DOC left that choice to ICANN."

Jeffrey A. LeVee, a partner at Jones Day, represented ICANN.

"This should be over now," LeVee said. "Considering a unanimous ruling from judges not of the same school of thought, I doubt Name.space will request rehearing."

Michael B. Miller, a partner with Morrison & Foerster LLP, represented Name.space Inc. Miller did not immediately respond to a request for comment.

- The Record Reporter

Brown

Continued from Page 1

more than "mere neutrality" when it comes to religion. Instead, employers are required to provide "favored treatment" to employees whose practice of sincerely held religious beliefs inadvertently clash with employment policies. In other words, a "tie" goes to the employee!

Policies, like Abercrombie's, that are not intended to discriminate against certain religious groups cannot shield employers from liability. Employers are already adapting by creating exceptions to "innocent" policies to ensure that religious rights are not inadvertently trampled upon.

"Favored treatment" means a lot when an employer can avoid making a religious accommodation if it can show that the cost of doing so would be "more than de minimis." That is a significantly lower standard than the "significant difficulty or expense" required of those seeking to avoid, for example, accommodations under the Americans with Disabilities Act. Thus, Abercrombie adds teeth to Title VII's religious accommodation requirement.

Actual knowledge not required

Even more critically, the decision abolished the "lack of knowledge" defense previously enjoyed by employers. Abercrombie focused instead on the employer's motive—if the goal in making the employment decision was to avoid the accommodations, Title VII protections are at play. In fact, evidence of an employer's merely "unsubstantiated suspicion" about the religious beliefs of the employee is enough to activate Title VII protection for the employee.

Justice Scalia offered the example of an employer who suspects that a prospective employee may be an orthodox Jew who observes the Sabbath. If the employer makes a decision based even in part on his motivation to avoid accommodating Sabbath worship, then the employer has crossed the line and, thus, established the requisite motive to trigger the application of Title VII protections for the employee.

This has enormous implications for religious privacy. Under the knowledge interpretation rejected in *Abercrombie*, a job applicant would have to educate a prospective employer about his or her religious practices to preserve the argument that religious accommodations played a role in the hiring/firing decision. Anything less would allow an employer to claim that it lacked knowledge. As Justice Scalia pointed out, however, the employer has the advantage of knowing what the company's policies are. The *Abercrombie* decision, thus, correctly places the burden on the party with the most knowledge of the company's policies.

Religion is belief and the practice of that belief

The *Abercrombie* decision stresses that religious practice is a crucial facet of religion at large, and therefore subject to Title VII protections. Before *Abercrombie*, it was unclear whether Title VII protected "practice" or just "belief."

While *Abercrombie* dealt only with religious attire, the decision impliedly impacts every kind of practical worship. Whether clothing, food and drink or work restrictions on specific days—the ruling opens the door for religious practitioners to assert their rights to exercise reasonable practices. But for those whose faith includes practical observances, this distinction provides significant relief.

Multiple polls, surveys, and academic studies suggest that religious discrimination is rising against those who seek to openly practice the behaviors required by their religion in the workplace. Thus, this inclusive definition of "religion" encompassing overt indicia of religious convictions appears to be a timely response to a real threat to religious liberty.

In the end, not only is this landmark case a win for religious liberty, but for religious privacy as well. Those whose religious beliefs include practical observances can take comfort in knowing that they are far less likely to be forced to choose between their convictions and their paychecks.

This decision is a setback for those who would attempt to "cabin" religious freedom by narrowing this First Amendment right to "freedom to worship". Instead, the court is protecting the "freedom to practice" sincerely held religious beliefs in a manner which clearly follows the intention of our Founding Fathers who sought to protect the exercise of religious faith in our daily lives, not just the freedom to worship inside our houses of worship.

Over his 40 year career, Brown has focused his law practice in real estate, commercial transactions and nonprofits. As a Certified Real Estate Specialist by the State Bar for over 24 years, he has represented clients in a wide range of real estate transactions with particular expertise in medical real estate transactions. He advises clients in a wide range of business transactions of ongoing operations. Through his nonprofit work over the last 15 years, he has represented secular and faith-based nonprofit entities, including human services organizations, health-related charities, faith-based schools and other faith-based entities. For more information about Brown, please go to www.gknet.com/attorneys/bobbrown.