



Inside

Charitable IRA Rollovers 2
Separation Agreement..... 2
Bankruptcy Reform..... 3
Firm News..... INSERT

Attorneys

Estate Planning

Calvin B. Bryant, Of Counsel
Edgar S. "Pat" Levy, III

General Business

William P. Harris
David B. Ashcraft
Charles A. Alt
Matthew C. Jobe
Cory A. Rayborn

Real Estate

Kim W. Gallimore
R. Bruce Laney
David N. Woods
Jason E. Moss

Litigation

Frank Burkhead Wyatt
A. Doyle Early, Jr.
William E. Wheeler
Kim R. Bauman
Frederick G. Sawyer
James R. Hundley
John D. Bryson
Stanley F. Hammer
Scott Fitzgerald Wyatt
Arlene M. Reardon
Jason M. Goins
Leah M. Howell

To receive InBrief via email call Jim Hundley at 884.4444 or email Jim at jhundley@wehwlaw.com.

Does Your Business Have an E-Mail Policy?

Kim R. Bauman, Litigation, kbauman@wehwlaw.com

E-MAIL IS A WONDERFUL AND POWERFUL TOOL THAT IS "MAKING THE WORLD FLAT." BUT IMPROPER USAGE BY BUSINESSES AND THEIR EMPLOYEES CAN RESULT IN A LAWSUIT WHICH WILL QUICKLY FLATTEN YOUR WALLET AS WELL.



Kim Bauman

E-Mail Is Now Used to Support Claims and Litigation

With the explosive growth of cell phones, computers, PDAs, and home computers, the use of e-mail and text messaging with accompanying attachments of cartoons, jokes, and photos is now commonplace. Unfortunately, so too are lawsuits resulting from their improper usage. Many companies have seen internal e-mail used in a variety of legal actions ranging from sexual harassment to software piracy to data theft. Some have been hit with fines for failing to produce e-mail in court cases.

Every business and employee should recognize that use of electronic communication devices can, with very little effort, be available to rest of the world. Therefore, you should never put anything in an e-mail or attachment that you would not mind others reading or viewing. Think twice, make that three times, before you hit the "SEND" button. Courts are permitting information technology experts to review business and personal computers and allowing litigants to use, introduce into evidence, and retrieve e-mails that the sender thought had been deleted. In fact, courts are ruling that once a business or individual learns of even a potential claim, any attempt to delete or destroy e-mails and their attachments raises an automatic presumption that the document favors the other party. This can be extremely costly.

Develop An E-Mail Policy

What can you do to limit legal exposure? Simple. As a business, have an e-mail policy (and for that matter a comprehensive technology policy), teach and train your employees about the policy, and then enforce the policy. As an individual, never send an e-mail (or attachment) you would not mind a judge or jury reading.

A good policy at minimum would be: (1) cover all technologies (cell phones, computers, PDAs) and forms of usage (e-mail, text messages, Internet, attachments); (2) advise the employees they can expect no right of privacy; (3) prohibit improper use — defamatory, discriminatory, harassing, and offensive usage; and (4) reasonably limit personal usage. Each current and new hire should sign an acknowledgment of receipt of the policy. Thereafter, the employer should enforce the

(continued page 3)

Charitable IRA Rollovers – Giving Made Easier

Edgar S. “Pat” Levy, III, Estate Planning, plevy@wehwlaw.com

- Do you have money in an IRA that could help you fulfill your charitable obligations or aspirations?
- Are you obligated to take a minimum required distribution from your IRA, but don't know what to do with it?
- Would you like to avoid some of the income tax obstacles to charitable giving?



Pat Levy

The Pension Protection Act of 2006 makes charitable giving easier for those age 70½ and older, by providing that an IRA may make a “qualified charitable distribution” directly to a charity. By directly rolling over those funds, as opposed to making the donation from funds withdrawn from your IRA, you may now avoid some of the tax drawbacks attributable to the typical income tax charitable deduction.

Notably, this provision requires that the IRA owner has reached age 70½. However, the qualified charitable distribution does qualify as a distribution for purposes of satisfying the minimum required distribution requirement. Therefore, for those 70½ or older who are confronted with taking their minimum required distributions, rolling over IRA funds to a desired charity may provide just the solution. Moreover, the qualified charitable distribution may be made to most charities, except for donor advised funds, supporting organizations or certain private foundations.

This qualified charitable distribution provision is subject to certain restrictions, including its limited timeframe and amount. Specifically, this provision will only be available for 2006 and 2007 distributions, and the income exclusion is limited to \$100,000 per year. Further, these distributions may only be made from IRAs, or to a limited extent, Roth IRAs, but not from other retirement accounts.

The qualified charitable distribution provision of the Pension Protection Act clearly opens up a new avenue for charitable giving, but does have a few limitations. If you are interested in determining whether this provision may be advantageous for you, you may contact one of our estate planning attorneys, Pat Levy, for further information.

Separation Agreements Can Protect Against Claims Of Alienation of Affections

Arlene M. Reardon, Litigation, areardon@wehwlaw.com

When one spouse has sexual relations with someone other than his or her partner, twin lawsuits for “alienation of affections” and “criminal conversation” unfortunately follow.

These torts involve neither aliens nor jail-time; but can result in substantial monetary awards. In June, the *Greensboro News and Record* reported a \$500,000 verdict secured on behalf of an ex-husband who sued an alleged “wife stealer.”

Whenever these cases are reported in the press, our domestic attorneys receive inquiries about these two funny sounding lawsuits.

Q: What is the difference between alienation of affections and criminal conversation?

A: Put simply, criminal conversation is sexual intercourse with someone else's spouse. Alienation of affections, as the term implies, requires that the wrongdoer actually alienate the one spouse from another.

Q: Husband and wife are no longer living together. Is there a “safe” period in which they may have sexual intercourse with another person and not subject their new partner to a lawsuit for either criminal conversation or alienation of affections?

A: Other than waiting until the divorce is final, the only other way to pursue this type of relationship is to have both parties sign a Separation Agreement that specifically waives alienation of affections and criminal conversation. We frequently draft these clauses in separation agreements we prepare for our clients.

Q: Is an employer liable if his employee is having an affair at work with a married co-worker?

A: In recent cases, several plaintiffs have unsuccessfully attempted to name employers as parties to actions for criminal conversation or alienation of affections. Courts have dismissed these cases, holding generally that the employee who pursues a

romantic relationship is acting “outside the scope of employment” and, consequently, the employer is not liable to an injured party — here the heartbroken plaintiff whose spouse has found a new lover at work.

The General Assembly has repeatedly considered abolishing these torts. Although they have come close to abolishing them several times, they have not yet done so. As of now, these causes of action remain very much alive. Those who are in the process of separating from their spouses are well advised to secure separation agreements which protect against post-divorce litigation.



Arlene Reardon

Arlene Reardon concentrates her practice in domestic relations law and has defended both alienation of affections and criminal conversation claims. She may be reached at areardon@WEHWLAW.com

Bankruptcy Reform Allows Us To Better Protect Our Business Clients

Jim Hundley, Litigation, jhundley@wehwlaw.com

On October 17, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 became effective. As a result of some of the most significant bankruptcy changes in over twenty-five years, we are now better-positioned to assist our clients who deal with bankrupt debtors. While it is impossible to cover in great detail the numerous changes made to the Bankruptcy Code, here are four that may be of interest to business clients:

1. Trustee's Power to Avoid Preference is Curtailed

At long last, Congress has seen fit to make substantial changes to a bankruptcy trustee's power to avoid alleged preferential payments made within ninety days immediately preceding a debtor's bankruptcy petition. Chief among those changes is a limitation upon a trustee's power to file a preference avoidance lawsuit that seeks to recover less than \$5,000 in alleged preferential payments. This is a positive step because preference claims below that amount were not economical to defend, thereby often resulting in undesirable settlements.

In addition, the "ordinary course of business" defense has been changed to make it easier for creditors to establish their specific course of dealings with the debtor regarding payments made outside of stated terms. While the changes made to the Bankruptcy Code regarding preference avoidance actions will not totally end preference claims, creditors now have a bigger shield to protect themselves with.

2. Creditors Have Longer Period to Reclaim Goods Sold to Bankrupt Debtor

The Reform Act has given the sellers of goods more than twice as long to make a reclamation demand to reclaim possession of goods sold to the debtor on credit immediately before bankruptcy. Specifically, creditors can now make a reclamation demand so long as it is made (i) not later than forty-five days after receipt of such goods by the debtor, or (ii) not later than twenty days after the commencement of the bankruptcy case if the forty-five-day period expires after commencement of the bankruptcy. However, as before, creditors should be vigilant to not only comply with the time limitations but to make sure that all proper information is included in the reclamation demand. Therefore, it is still recommended that you consult with your attorney if you think you are entitled to give a reclamation notice.

3. Trustee Must Timely Assume or Reject Non-Residential Lease

A bankruptcy trustee or Chapter 11 debtor-in-possession must now assume or reject a lease of non-residential real property (i.e., commercial lease) within one hundred twenty days of the commencement of the case unless the landlord gives its prior written consent to an extension of time. The Reform Act does allow for one (1) ninety-day extension of time, but lengthy and multiple extensions of this deadline will no longer be permitted or granted by the Court. This change will give landlords more certainty about their ability to relet the

property and, if the lease is assumed, a more prompt cure and certain stream of post-petition rents.

4. Creditors Have More Opportunity to Seek State Court Remedies

Abusive serial filings by bankruptcy debtors will no longer automatically preclude creditors from pursuing their state law and contractual rights as a result of the Bankruptcy Code's automatic stay provision. Now, if a Chapter 7, 11, or 13 petition is filed within one year of a prior bankruptcy dismissal, the automatic stay in the second case terminates within thirty days unless the debtor shows that the second case was filed in good faith. Hopefully, this will now allow creditors to obtain relief to pursue their other legal rights outside of bankruptcy sooner rather than later.



Jim Hundley

If, as a creditor, you have specific questions or need assistance in pursuing your rights against a bankrupt debtor, please contact Jim

Hundley at 336-884-1000 extension 224, or jhundley@wehwlaw.com.



Does Your Business Have an E-Mail Policy?

(continued from page 1)
policy and periodically review and update the policy to cover the latest technology.

In short, ride the power of e-mail, but curtail its strength by having an effective electronic usage policy, and monitor your own behavior by carefully considering three times what you "SEND".

If you would like to discuss establishing an electronic content, usage and retention policy for your firm, contact Kim Bauman at kbauman@wehwlaw.com.



Firm News Our Attorneys In The News And On The Move

DAVE ASHCRAFT

served this year as Chair of the North Carolina Bar Association's Annual Convention Planning and Advisory Committee. He has also become a member of the Board of Directors and Executive Committee for the Piedmont Triad Entrepreneurial Network.



Dave Ashcraft

DOYLE EARLY has again been designated as one of the "Best Lawyers in America" and one of North Carolina's "Super Lawyers". He was a featured speaker this year at two CLE seminars where he taught other lawyers about "Equitable Distribution after Death" and "Consideration of Tax Consequences in Equitable Distribution".



Doyle Early

KIM GALLIMORE is serving as the 2006-2007 Chair of the North Carolina Bar Association's Real Property Section, a voluntary professional organization of about 2,100 NC real estate lawyers. He was the recipient of the Section's Extraordinary Services Rendered Award for 2005-2006.



Kim Gallimore

He will also serve this year on the NC State Bar Board of Legal Specialization's Real Property Committee which prepares and grades the real property law specialization exams. Earlier this year he spoke at the 2006 North Carolina Land Title Association's Annual Convention on "The Future of the Practice of Real Estate Law in North Carolina".



Matt Jobe

MATT JOBE is serving this year as the Chairman of the board of directors for the ARC of High Point.



Jason Moss

JASON MOSS has been named the Chairman of the board of directors for the High Point Theater.

ARLENE REARDON has been certified by the North Carolina State Bar as a Board Certified Specialist in Family Law. She will serve this year on the Family Law Council of the North Carolina Bar Association's Family Law Section.



Arlene Reardon

BILL WHEELER has been re-elected to serve as General Counsel for Lees-MacRae College and was recently elected as a Trustee of John Wesley College in High Point. Bill received Honorable Mention this year in the North Carolina State Bar's fiction writing contest. His short story entitled "Maggie" was published in the September issue of the Bar's quarterly magazine. He is currently pursuing a Master's Degree in literature from UNC-G at night.



Bill Wheeler



Frank Wyatt

FRANK WYATT has been selected again this year as one of North Carolina's "Super Lawyers".

SCOTT WYATT has been appointed to serve as a member of the North Carolina Bar Association's Annual Convention Planning and Advisory Committee for the Association's 2007 Convention.



Scott Wyatt

New Associates Join Firm

JASON GOINS

Jason joined our firm as a member of our litigation practice group. He is a graduate of Wake Forest University where he earned a B.S. degree in biology and religion, as well as his Juris Doctorate degree. His practice will involve general civil litigation. He is an active member and teen counselor at Hope Outreach Assembly of God.



Jason Goins



Leah Howell

LEAH HOWELL

Leah joined our firm as a member of our family law practice group. She earned her B.A. degree from Warren Wilson College and her Juris Doctorate degree from the University of North Carolina. She is a member of the Rotary Club of the Triad and the High Point YWCA Women's Service committee.

FIRM PARALEGALS CERTIFIED

Our firm is pleased to announce that several of our dedicated staff members have been certified by the North Carolina State Bar as Certified Paralegals. Congratulations to Kathy Barley, Kimberly Braswell, Tammie Brown, Michelle Ceely, Karen England, Alana Guthrie, Jane Harris, Sharon Queen, Lauren Sheffield, Diane Talley and Elizabeth Vance on achieving this designation.

Elizabeth Vance has also received her Certified Paralegal certification from the National Association of Legal Assistants. She is also serving this year as the President of the Guilford Paralegal Association.



In Brief is published quarterly by Wyatt Early Harris Wheeler LLP. The purpose of this newsletter is to provide general information about legal developments. As the information presented is not a comprehensive treatment of the subject matters covered, readers are encouraged to seek specific legal advice before taking any action.



WYATT EARLY HARRIS WHEELER

ATTORNEYS AND COUNSELLORS AT LAW

1912 Eastchester Drive
High Point, NC 27265

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