



Oklahoma Attorney General Scott Pruitt's
Office of Civil Rights Enforcement Presents

TITLE VII 50TH ANNIVERSARY OCRE EDUCATIONAL OUTREACH

50th Anniversary of the Civil Rights Act of 1964

7.24.2014

Emphasizing Practical, Best Practices for Complying
With Oklahoma's Anti-Discrimination Act

[AGE DISCRIMINATION]

Leonard Court/Crowe Dunlevy

Leonard Court

Leonard Court joined Crowe & Dunlevy Law Firm in 1972 and served as chairman of the Firm's Labor and Employment Law Section from 1981 until 2008. Mr. Court has served as a member of the United States Chamber of Commerce Labor Relations Committee since 1997. In 1999, he was appointed chairman of the Wage, Hour and Leave Subcommittee.

Best Lawyers' 2013 Oklahoma City Labor Law - Management Lawyer of the Year

Best Lawyers' 2012 Oklahoma City Employment Law - Management Lawyer of the Year

Best Lawyers' 2010 Oklahoma City Labor and Employment Law Lawyer of the Year

Chambers, USA America's Leading Business Lawyers – Ranked in the “star” category nationally as a management attorney in labor and employment law. Received highest ranking in Oklahoma 2003 - present.

Fellow, American College of Labor and Employment Lawyers, inducted 1997

Oklahoma Super Lawyers, Top 50 attorneys in Oklahoma 2007 – present

Oklahoma Super Lawyers, 2006 – present

Former president of the Oklahoma State University Alumni Association and received the organization's Distinguished Alumni Award in 1998

Inducted into the Oklahoma State University Alumni Association Hall of Fame in 2006

Member of the American Bar Association's Equal Employment Opportunity Committee, Section on Labor and Employment Law and the Labor Relations Law Committee, Litigation Section

Oklahoma representative to the ABA Regional Liaison Committee with the EEOC

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I'M MATURE
I'M EXPERIENCED –
No
I'm Just
OLD!!

Age Discrimination In Employment

Presented by:
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- I. The History of the Age Discrimination in Employment Act.
 - A. Passed in 1967.
 - B. Age Limits – protected anyone 40 to
 1. Originally
 - a. Private sector – 65
 - b. Public sector – 70
 2. 1978
 - a. Private sector – 70
 - b. Public sector – no cap
 3. 1986 – no cap
 - C. Enforcement
 1. Patterned after federal wage and hour laws rather than Title VII. 29 U.S.C. § 626(b).
 - a. Complaints filed with Department of Labor – change in 1979 to EEOC.
 - b. Damages provide for liquidated damages rather than compensatory and punitive damages which were added to Title VII.
 - c. Right to jury trial.
 2. Amended in 1978 and 1991 to more closely pattern that ADEA with Title VII.
 - a. 1978 – adopts timely filing of EEOC charge as prerequisite for filing suit.
 - b. 1991 – adopts requirement for filing suit within 90 days of receipt of the Notice of Right to Sue letter from the EEOC.
- II. Determining when discrimination occurred.
 - A. Courts hold that the alleged discriminatory act occurs on the date the employee receives notice of the adverse action rather than its effective date.
 1. *Hutson v. Wells Dairy, Inc.*, 578 F.3d 823, 107 FEP 50 (8th Cir. 2009) (start of limitations period triggered when employee told she was being terminated, rather than subsequent denial of severance pay).

2. *Hamilton v. 1st Source Bank*, 928 F.2d 86, 87-89, 54 FEP 1019 (4th Cir. 1990) (“discovery rule” does not apply in ADEA actions; under *Ricks*, limitations period runs from date employee receives notice of adverse action, not when employee learns of discriminatory nature of decision.
3. With respect to claims of discrimination in compensation, the Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, amended the ADEA, as well as Title VII and the ADA, to provide that “an unlawful employment practice occurs . . . each time wages, benefits, or other compensation are paid.”

III. Individual Actions Under the ADEA.

- A. Workers within the protected age group cannot sue based upon a theory that they were treated adversely relative to individuals older than themselves. *General Dynamics Land Systems, Inc. v. Cline*, 540 U.S. 581, 595, 93 FEP 257 (2004).
- B. The plaintiff must exhaust the required administrative remedies before filing suit.
 1. Must wait at least 60 days after filing the charge.
 - a. *Hankins v. Lyght*, 441 F.3d 96, 97 FEP 868 (2d Cir. 2006) (plaintiff’s ADEA claim was properly before court because he complied with 60-day waiting period).
 - b. *McPherson v. New York City Dep’t of Educ.*, 457 F.3d 211, 215, 98 FEP 769 (2d Cir. 2006) (although plaintiff’s Title VII claims were untimely, timeliness of ADEA claim was not affected by withdrawal of charge that had been filed for more than 60 days).

IV. Representative Actions Under The ADEA.

- A. Multiplaintiff actions under the ADEA have a structure that differs significantly from class actions under Title VII.
 1. The most fundamental difference is that ADEA representative actions are not subject to the procedures specified by Rule 23 of the Federal Rules of Civil Procedure.
 - a. *Thiessen v. General Elec. Capital Corp.*, F.3d 1095, 1102 (10th Cir. 2001).
 - b. *Hipp v. Liberty Nat’l Life Ins. Co.*, 252 F.3d 1208, 1216, 104 FEP 356 (11th Cir. 2001).
 2. The enforcement provisions of the ADEA generally follow the procedures of § 16(b) of the FLSA.

- a. Under § 16(b), no statutorily mandated class certification procedure exists to determine numerosity, commonality, typicality, and representativeness; the only statutory criterion is that the putative plaintiffs be “similarly situated.
- b. A party in an ADEA representative action potential plaintiffs must affirmatively opt *into* the suite by filing with the court a written consent to join.

V. Proof Issues Unique To Age Cases.

A. Disparate Treatment.

1. The plaintiff’s *prima facie* case.

- a. Unlike Title VII, the standard of proof in ADEA intentional discrimination cases is “but-for.” *Gross v. F.B.L. Financial Services Inc.*, 557 U.S. 167, 106 FEP 833 (2009).
- b. Courts still use *McDonnell Douglas v. Green* framework.

B. Disparate impact theory applies to ADEA cases. *Smith v. City of Jackson*, 544 U.S. 228, 241, 95 FEP 641 (2005).

C. Other Affirmative Defenses.

1. Statutory Defenses.
2. Reasonable Factor Other Than Age (RFOA).
3. Bona Fide Occupational Qualification (BFOQ).
4. Bona Fide Employee Benefit Plan.
 - a. Early Retirement Incentives.
 - b. Pensions.
 - c. Severance Benefits.
5. Bona Fide Seniority System.
6. Settlement and Release – OWBPA.
 1. Waiting period – 21 or 45 days.
 2. Advice of counsel.
 3. Revocation.

Recent Developments in the ADEA

**PAUL
HASTINGS**

EMPLOYMENT DISCRIMINATION LAW UPDATE

By

Paul Grossman*

This is a supplement to Lindemann, Grossman & Weirich, *Employment Discrimination Law* (5th ed. 2013). It is organized by book chapters. The 5th edition includes court of appeals decisions through June 30, 2011 and Supreme Court cases through June 30, 2012. With a few exceptions, this update begins with cases decided after January 1, 2011. It focuses almost exclusively on court of appeals and Supreme Court decisions.

Age (Ch. 12)

Summary Judgment, Directed Verdict, JNOV, and Reversals of Jury Verdicts

Teruggi v. CIT Grp./Capital Fin., Inc., 709 F.3d 654, 117 FEP 773, (7th Cir. 2013) – Summary judgment in age case – no reasonable fact finder could find for plaintiff – “The bits of evidence [plaintiff] offers, which are essentially isolated events or comments with no apparent connection to the termination decision, do not support a reasonable inference of discrimination or retaliatory discharge, either individually or collectively,” 709 F.3d at 656-57 – comments by decisionmaker about his retirement

plans, being “old,” and being on drugs, were insufficient since they predated his termination by at least 18 months and were not in reference to adverse employment action.

Sims v. MVM, Inc., 704 F.3d 1327, 117 FEP 1 (11th Cir. 2013) – Proximate causation standard for cat’s paw liability set forth in *Staub v. Proctor Hosp.* is not applicable to the ADEA – under Title VII and USERRA plaintiffs need only show discrimination was a “motivating factor” or a proximate cause – ADEA plaintiffs must show “but-for” causation which requires more than mere proximate causation – summary judgment affirmed in age discrimination case – *McDonnell Douglas* framework continues to be applicable after *Gross* – “It is important to note . . . the ultimate burden of persua[sion] remains at all times with the [employee],” 117 FEP at 4 (citation omitted) - regardless of the analytical framework, a plaintiff will always survive summary judgment if he presents circumstantial evidence that creates a triable issue concerning the employer’s discriminatory intent – there is virtually no evidence that the decisionmaker who was 61-years old had age bias – every supervisor other than the plaintiff thought that plaintiff was one of the two weakest performers and should be laid off – plaintiff also argued that the decisionmaker acted as a mere cat’s paw for the immediate supervisor – even assuming that the immediate supervisor had animus there is no evidence from which this animus could be concluded to be a “but-for” cause of the termination – “[I]n light of the unanimous opinion of all persons consulted (except for [plaintiff]), we conclude that a reasonable juror could not find that Davis’s animus was a ‘but-for’ cause of [plaintiff’s] termination,” 117 FEP at 7.

Blizzard v. Marion Tech. Coll., 698 F.3d 275, 116 FEP 392 (6th Cir. 2012) – Summary judgment affirmed – although alleged comparable made the same type of mistake, the consequences of the plaintiff’s mistakes were much more serious – replacement was 6½ years younger which falls between age difference of six years or less which is not significant and age difference of 10 or more years which is generally considered significant – employer honestly believed that she was not capable of using new software and had made serious mistakes.

Fleishman v. Cont'l Cas. Co., 698 F.3d 598, 116 FEP 400 (7th Cir. 2012) – Summary judgment affirmed – Offer of severance pay and retirement to poorly performing employee does not create an inference of age discrimination – ambiguous ageist comments not made by decisionmaker – 54-year old staff attorney relied in part on the departure of ten older lawyers from the office – “One would expect older employees to naturally leave their employers. Without more, this occurrence is not evidence of discrimination,” 698 F.3d at 606.

Lefevers v. GAF Fiberglass Corp., 667 F.3d 721, 114 FEP 385 (6th Cir. 2012) – Summary judgment in RIF upheld – record reflected dissatisfaction with performance and economic necessity for RIF – general statements about age and impending retirement made by certain managers immaterial since no evidence that decisionmaker made the statements or considered them – only arguably probative statement was ageist comment by HR representative but that was two years before RIF.

Provenzano v. LCI Holdings, Inc., 663 F.3d 806, 114 FEP 90 (6th Cir. 2011) – 33-year-old promoted over 50-year-old – 50-year-old had more experience and education – district court erred in finding no prima facie case – however, district court did not err in finding no evidence of pretext – plaintiff had received several warnings – promoted employee had a much stronger performance record – evidence that store was undertaking a new marketing campaign geared toward attracting a younger customer base is not probative of age discrimination – no evidence that store felt that employees’ ages needed to match the proposed customer base – summary judgment affirmed.

Rahlf v. Mo-Tech Corp., 642 F.3d 633, 112 FEP 787 (8th Cir. 2011) – Summary judgment affirmed in RIF case – does not matter that new employees were hired because they were hired to fill positions requiring less skill than the positions from which the layoffs came – claim of subjective evaluations of skills insufficient to create fact issue – employer used both objective and subjective criteria – failure to give weight to seniority as required by employee handbook not indicative of pretext – employer’s destruction of rankings used to determine which employees to lay off does not show pretext where the objective data used was easily reproducible and managers testified about their subjective judgments – nothing indicates evidence was destroyed to conceal truth – failure to

consider past performance reviews does not create an issue of pretext – the company “was not required to base its RIF decision on positive performance reviews” (642 F.3d at 639).

Simmons v. Sykes Enters., Inc., 647 F.3d 943, 112 FEP 596 (10th Cir. 2011) – Summary judgment affirmed – 10-year employee, 62 years old, terminated for revealing confidential medical information about an employee – no direct evidence of age bias – courts do not act as super personnel departments to second-guess employer’s business decisions – decisionmakers in good faith believed employee contradicted herself and did disclose the information – but the contention that subordinates of the decisionmakers harbored discriminatory animus and thus there is cat’s paw liability – cat’s paw decision in *Staub* does apply to Age Act but with a difference – ADEA does not provide that plaintiff may prevail by simply showing that age was “a motivating factor,” the operative phrase in *Staub* – under *Gross* plaintiff must prove age was but for – despite this distinction the underlying principles of agency upon which subordinate bias theories are based apply equally to all types of employment discrimination – “In age discrimination cases . . . the relationship between a subordinate’s animus and the ultimate employment decision must be more closely linked.” (647 F.3d at 949) – plaintiff must show that the subordinate’s animus was a “but for” cause of the adverse employment action, “it was the factor that made a difference,” (*id.* at 950) – examples are indicative of but for causation – if the biased supervisor falsely reported violations which led to the termination, or wrote a series of unfavorable reviews that served as the basis for the disciplinary action, it would be a but for cause – “But where a violation of company policy was reported through channels independent from the biased supervisor, or the undisputed evidence in the record supports the employer’s assertion that it fired the employee for its own unbiased reasons that were sufficient in themselves to justify termination, the plaintiff’s age may very well have been in play – and could even bear some direct relationship to the termination if, for instance, the biased supervisor participated in the investigation or recommended termination – but age was not a determinative cause of the employer’s final decision.” (*id.*) – in this case neither of the biased subordinates caused the investigation to begin, which was instigated by an aggrieved unbiased employee – the allegedly biased supervisors did direct a full investigation, did interview witnesses, including the plaintiff, and did recommend termination – but the undisputed facts show the company would have fired the plaintiff in any

event because from its perspective she violated company policy and could not be trusted with confidential information.

Haigh v. Gelita USA, Inc., 632 F.3d 464, 111 FEP 614 (8th Cir. 2011) – Summary judgment affirmed – engineer hired at age 60 and discharged at age 66 – new supervisor gave him subpar ratings and sent memo describing deficiencies and stating improvement required – employee responded that it was impossible to meet the supervisor’s expectations and that he could not continue working for the supervisor – he was then terminated – no inference of age discrimination – moreover, fact that he was hired at an age well over 40 creates a presumption against discrimination that he failed to rebut.

Schoonmaker v. Spartan Graphics Leasing LLC, 595 F.3d 261, 108 FEP 695 (6th Cir. 2010) – Summary judgment affirmed in RIF case despite fact that employer RIF’d the two oldest employees (58 and 65) in the department – decisionmaker acknowledged he did not consider company’s policies which stated that if qualifications were relatively equal, seniority would govern – decisionmaker chose 65-year-old employee (who is not a plaintiff) in part because she was retiring at the end of the year anyway – decisionmaker retained 29-year-old employee over plaintiff because coworkers agreed that younger employee would be the better team player – plaintiff was not replaced – plaintiff has shown nothing more than an age differential between a retained employee and herself – that is insufficient – she would have to show that she possessed superior qualities in order to establish a prima facie case in the context of a work force reduction – the fact that the two oldest employees in the department were let go is insufficient because of the small statistical base – failure to follow its own criteria is not additional evidence of discrimination.

General Issues

Karlo v. Pittsburgh Glassworks, LLC, ___ F.R.D. ___, 2012 WL 2975400 (W.D. Pa. May 9, 2012) – Court certifies class of age 50 and over workers – Third Circuit has not yet addressed whether age discrimination permits collective actions by “subgroups” – courts are divided – “[A]ge discrimination does not stop at 40.” (2012 WL 2975400, at *6).

Gross v. F.B.L. Fin. Servs., Inc., 557 U.S. 167, 106 FEP 833 (2009) – Standard of proof in ADEA disparate treatment cases is “but-for” – the burden of persuasion never shifts even when a plaintiff has produced some evidence that age was one motivating factor – Title VII and the ADEA are materially different – Title VII’s burden-shifting framework is not applicable to the ADEA – when Congress added the “mixed motive” amendments to Title VII, it did not do so to the ADEA – ordinary meaning of ADEA requirement that the employer took adverse action “because of” age is that age was the “reason” the employer decided to act – the plaintiff retains the burden of persuasion at all times under the “but-for” test – contention that *PriceWaterhouse* applies to ADEA rejected – mixed-motive jury instruction never proper in an ADEA case - not at all clear Court today would apply *PriceWaterhouse* to Title VII – its burden-shifting framework is difficult to apply – 5-4 decision – dissent contended that Supreme Court should not answer a question not presented by the petition for certiorari – whether a mixed-motive case is ever appropriate under the ADEA – dissent contended that “because of” is totally consistent with “motivating factor” – Court should have simply held that direct evidence was not necessary to obtain a mixed-motive instruction – dissent contended that in employment decisions, there will frequently be multiple motives, and the statute prescribes using age as one of the motives – burden should switch to employer to prove same result if plaintiff establishes that one of the motivations was age.

Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 102 FEP 1057 (2008) – Tenth Circuit decision holding that “me-too” testimony in RIF case is *per se* admissible reversed – plaintiff in individual RIF case wanted to call five other older RIF’d employees who did not report to the same supervisor/decisionmaker – trial court rejected the testimony – “Rules 401 and 403 do not make such evidence *per se* admissible or *per se* inadmissible” (552 U.S. at 388) – relevance under Rule 401 “depends on many factors, including how closely related the evidence is to the plaintiff’s circumstances and theory of the case” (*id.*) - Rule 403 “also requires a fact-intensive, context-specific inquiry” (*id.*) – case remanded to trial court to clarify basis for its ruling.

Walczak v. Chi. Bd. of Educ., ___ F.3d ___, 121 FEP 506, 2014 WL 92234 (7th Cir. Jan. 10, 2014) – Public school teacher sued for wrongful discharge, and lost in state court – her subsequent federal court ADEA suit was dismissed – claim preclusion – both suits involved the same parties and the causes of action in both cases arose from a single group of operative facts regardless of different theories.

Northwest Airlines, Inc. v. Phillips, 675 F.3d 1126, 114 FEP 1215 (8th Cir. 2012) – Money purchase retirement plan upheld against claim of age discrimination – age is simply one of many factors used to calculate pilots’ benefits – it does not reduce older pilots’ benefits in violation of federal law – many factors could reduce an older pilot’s projected final average earnings, including seniority and number of pay increases – it is natural that a younger pilot who remains with the airline until retirement would receive more promotions and pay increases than an older pilot hired at the same time.

Shelley v. Geren, 666 F.3d 599, 114 FEP 303 (9th Cir. 2012) – Summary judgment reversed 2-1 – district court relied on *Gross v. FBL Financial Services* and found insufficient facts that age was the “but for” cause of non-selection for promotion – district court declined to analyze the motion in accordance with *McDonnell Douglas v. Green* – prior to *Gross* Ninth Circuit applied *McDonnell Douglas* to motions for summary judgment on ADEA claims – district court’s belief that *Gross* changes this framework rejected – *Gross* involved a case that had already progressed to trial – other circuits since *Gross* have continued to utilize *McDonnell Douglas* and we join them – *McDonnell Douglas* shifts only the burden of production – at summary judgment plaintiff must demonstrate that there is a material genuine issue of fact as to whether the employer’s purported reason is a pretext – at trial must meet the “but for” test – triable issue of pretext raised because members of panel deciding on promotion inquired about projected retirement dates – factual dispute as to whether plaintiff was better qualified than successful candidate – conflicting explanations given for reasons of non-selection – reversed and remanded for trial – Fletcher and District Judge Wilken in majority.

Mitchell-White v. Northwest Airlines, Inc., 446 Fed. Appx. 316, 113 FEP 1026 (2d Cir. 2011) – Pension plan reduces retiree’s pension benefits to offset workers’ compensation benefits she received upon reaching age 65 – no ADEA violation.

Dediol v. Best Chevrolet, Inc., 655 F.3d 435, 113 FEP 353 (5th Cir. 2011) – ADEA covers harassment and hostile environment claims – conduct has to create “an objectively intimidating, hostile, or offensive work environment,” (*id.* at 441) – district court summary judgment reversed – plaintiff claimed manager called him names such as “old mother _____,” “old man,” and “Pops” half a dozen times daily and steered deals toward younger salespersons – reasonable jury could find that harassment was severe or pervasive and that a reasonable person would resign.

Neely v. Good Samaritan Hosp., 345 Fed. Appx. 39, 106 FEP 1741 (6th Cir. 2009) (unpublished) – Over-40 employee claimed race discrimination but never claimed age discrimination – district court dismissed all claims except race discrimination and referred matter to mediation – parties reached a settlement which they confirmed on the record – parties never discussed age or right to revoke in mediation – defendant prepared settlement agreement which waived rights under the ADEA and contained a clause allowing employee 21 days to consider and seven days to revoke – employee signed agreement but revoked within seven days – district court rejected revocation on ground that there was a verbal settlement – court of appeals reversed, holding that it did not matter that there was no age issue – the written agreement expressly allowed revocation – employer clearly wanted to protect itself against any theoretical age claim since plaintiff was over 40 – does not matter that right to revoke was not bargained for – once there was an ADEA release right to revoke was required by law.

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Leonard Court is a graduate of Oklahoma State University (B.A., 1969) and Harvard Law School (J.D., 1972). He joined Crowe & Dunlavy in 1972.

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Mr. Court has served as a member of the United States Chamber of Commerce Labor Relations Committee since 1997. He has served as chairman of the Wage, Hour and Leave Subcommittee since 1999.

Mr. Court was inducted as a Fellow of the American College of Labor and Employment Lawyers in 1997. He serves on the selection review panel for the Tenth Circuit.

Mr. Court was named the "Oklahoma City Best Lawyers Labor and Employment Lawyer of the Year" for 2010, the first year that Best Lawyers has made such a designation for Oklahoma City. He received similar recognition for 2012, 2013 and 2014.

Mr. Court has received the highest ranking by *Chambers, USA America's Leading Business Lawyers* every year since it was first published in 2006.

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Mr. Court serves on the Steering Committee for The Employment and Labor Law Forum for 2014.

Mr. Court served as the Employer Vice-Chair of the Task Force on Sponsorships, Donations and Grants of The ABA Section of Labor and Employment Law in 2009.

Mr. Court has served as Chairman of the board of elders and member of the Memorial Christian Church, Oklahoma City, 1980, 2000, and president of the board for 2013 and 2014; co-chairman of sustaining fund raising drive for Oklahoma City downtown YMCA, 1989, member of board of management 1994-96; participant of Leadership Oklahoma City, 1987-88; Oklahoma City Ronald McDonald House, 1990-93, member executive committee 1991-93; co-chairman of the annual teleparty fund raising drive American Heart Assn., Oklahoma City, 1996-98, board of

directors 1996-98; Oklahoma State University Foundation Board of Governors 1990-2002, and 2011 - present.

He served as an adjunct professor of labor law at the University of Oklahoma Law School and Oklahoma City University School of Law.

Mr. Court speaks at seminars throughout the nation for organizations such as The American Bar Association, LEI/BNA and the Council for Education in Management.

RECENT PUBLICATIONS

Associate Editor (Chapters 2, 8, 16, 29 & 33), *Employment Discrimination Law – Fifth Edition – First Supplement* 2014.

Chapter Update Chair (Chapter 29 – Title VII Litigation Procedure), *Employment Discrimination Law – Fifth Edition* (BNA 2012)

McBride and Court, "Labor Regulation, Union Avoidance and Organized Labor Relation Strategies in the Wake of Sand Manuel Band of Indians, NLRB", 40 *The John Marshall Law Review* 1259 (Summer 2007)

Court, "The Labor Union Movement: A Rebirth or a Funeral," *Sovereignty Symposium XX* 2007 I-1 (2007)

Court (Coauthor), *Winning Legal Strategies for Employment Law*, Aspatore (2005).

Chapter Editor; Wage and Hour Laws, A State-by-State Survey, (BNA 2004 through 2009)

Court and Warmington, "The Workplace Privacy Myth: Why Electronic Monitoring Is Here to Stay," 29 *OCU Law Review* 15 (Spring, 2004)

Court, "Offensive Discovery Strategies in Employment Cases," Winning the Federal Case Before Trial (Thomson - West, 2003)

Court, "Effective Appellate Advocacy - A Lost Art," 2003 National CLE Conference Labor and Employment, p. 788 (LEI 2003)

Court, "Closing Argument Tips for Defending the Employment Case," 13 *The Practical Litigator*, Vol. 3, p. 29 (ALI/ABA May, 2002)

Court, "Defendant's Motions *In Limine* - Winning The Battle That Can Win The War," 2003 National CLE Conference Labor and Employment Law, p. 255 (LEI, 2002)

Court, "Tips for Examining/Cross-Examining the Expert Witness," 2002 National CLE Conference Labor and Employment, p. 291 (LEI, 2002)

Court, "The Opening Statement - The Preview To Victory or The Beginning Of Defeat?" 2002 National CLE Conference Labor and Employment, p. 333 (LEI, 2002)

Court, "The Art of Direct and Cross-Examination and Mastering The Closing," 2001 National CLE Conference Labor and Employment Law, p. 179 (LEI 2001)

Court, "Litigating Damages: Punitive Damages - Liquidated Damages - The Expert Witness," 2001 National CLE Conference Labor and Employment Law, p. 355 (LEI 2001)

Chapter Chair, *Employment Discrimination Law - 2000 Cumulative Supplement*, ABA Section of Labor and Employment Law (BNA 2000)

VIDEO

171 Ways to Improve Your Discovery Techniques, ABA Section of Labor and Employment Law and the ABA Center for Continuing Legal Education - one of thirty "leaders of the Section" featured on the video. (ABA 2003)