

**KAHN, DEES, DONOVAN & KAHN, LLP**  
ATTORNEYS & COUNSELORS AT LAW

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**"ABUSIVE" SUPERVISOR HAS TO STAND TRIAL FOR CONDUCT**

Some employees are taking legal action against "abusive" supervisors. A recent Indiana case illustrates the point.

A former at-will employee sued her supervisor for intentional infliction of emotional distress and intentional interference with contractual relations. The female supervisor was alleged to have harassed the employee, shouted at her and criticized her in front of other employees.

After the employee had complained to her supervisor's immediate superior; the supervisor gave the employee a poor performance review and the relationship deteriorated further. The supervisor reprimanded the employee about her work. On several occasions the supervisor inquired about the employee's menopause and once asked if her husband was sexually impotent due to his diabetes. The supervisor also told the employee that her position might be eliminated and she should apply for other positions within the company.

Eventually the employee took a medical leave due to depression. She received a medical release six months later, but was not allowed to return to work and remained on leave until she was terminated pursuant to a company policy limiting leave to one year.

**INTERFERENCE WITH CONTRACTUAL RELATIONSHIP**

The elements of intentional interference with a contractual relationship are: (1) the existence of a valid relationship; (2) the defendant's knowledge of the existence of the relationship; (3) the defendant's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from defendant's wrongful interference with the relationship.

Even the parties in an employment at-will relationship have no less of an interest in the integrity and security of their contract than do the parties in any other type of contractual relationship, the court said.

In response to the supervisor's claim that she was acting within the scope of her employment, and thus under a qualified privilege, the court said that this defense would depend on the nature and scope of the supervisor's duties and that it was not persuaded that the supervisor was at all times acting as an agent of the employer.

**INFLECTION OF EMOTIONAL DISTRESS**

The elements of intentional infliction of emotional distress are: defendant (1) engages in "extreme and outrageous" conduct that (2) intentionally or recklessly (3) causes (4) severe emotional distress to another. The court said that whether the supervisor's conduct was "extreme and outrageous" depends upon "prevailing cultural norms and values."

The court concluded that the supervisor should stand trial on the two counts.

This case serves as a warning to supervisors who may engage in extreme conduct that they may be held accountable even if the employees working under them are at-will. The best defense to such claims is to

adhere to employee policy and act appropriately and respectfully, even when dealing with difficult situations or conducting difficult conversations.

Lee Baker's article on governmental liability under 42 U.S.C. 1983 was published in the Winter 2000 edition of the Tort and Insurance Practice, Governmental Liability Committee, "Committee News." If you would be interested in a reprint of this article, please contact Jacie Tomes, at 812-423-3183.

## **NEW PARTNERS AT KDDK**

### **Kent Brasseale and Chris Lee became KDDK partners on January 1, 2000.**

**Kent**, a 1985 alumnus of Harrison High School, graduated from Purdue University in 1990 with a degree in Chemical Engineering and Political Science, and from Indiana University Law School at Bloomington in 1993. His practice includes representation of commercial and residential developers and individuals, including negotiation and drafting of contracts, representation in zoning and tax abatement matters, including environmental phase I and II assessments. Kent's practice also includes construction, business and intellectual properties law. Kent teaches real estate licensing courses as an instructor for the Real Estate Certification Program. He also maintains extensive community involvement, including serving on the boards of Southwestern Indiana Easter Seals Society, Inc., Meals on Wheels, Inc., the Old Courthouse Preservation Society, Metropolitan Evansville Chamber of Commerce Environmental Committee, Town of Newburgh Drainage Board and Wish Upon A Star, Inc.

Kent and his wife, Elyse, have two sons, Trey and Webb, and live in historic Newburgh.

**Chris** graduated from DePauw University in 1989 and Indiana University Law School in 1993. Chris is a graduate of the Indiana Leadership Forum (1994) and is a Trustee of the Evansville Building Authority. He is also the attorney for the Vanderburgh County Election Board. Chris is a member of the Defense Research Institute (Asbestos, Mass Tort, Automotive and Product Liability Practice Sections), National Institute of Trial Advocacy, Indiana Defense Lawyers Association, and Inns of Court. His areas of practice include commercial and tort litigation, insurance defense and mass tort litigation.

Chris is an avid traveler and has visited over eighty countries. When he's not traveling, Chris enjoys spending time with his wife, Laura, and their two sons, Nicholas and Joseph.

## **KDDK ATTORNEY RUNS FOR JUDGE**

KDDK attorney Lee Baker has announced that he is running in the November 2000 election for Judge of the Pike Circuit Court. The current Pike Circuit Judge, Marvin Stratton, has indicated he will step down from the bench at the end of his term this year and possibly seek appointment as Senior Judge. Lee is a Pike County native. He graduated from Pike Central High School in 1982.

Bank Financing Documents are often expressed in preprinted forms and package deals. While a lender may not be willing to negotiate certain terms, lawyers can assist by summarizing the key points of the lending documents and determining whether you should select a different financing package. Many lending agreements contain strict penalties and default provisions. A future business transaction could unintentionally result in a default under the terms of the lending documents. The lender may then "accelerate" the agreement requiring full immediate payment. The attorney-prepared summary can be used as a future reference tool to avoid events of default.

In Indiana, Residential Lease Agreements are governed by specific landlord-tenant laws. Indiana law provides specific instructions as to dealing with residential tenants on security deposits, evictions, storage of left belongings, and the collection of attorney fees. Commercial Leases are customarily negotiated as to lease fees, term, renewal, assignment and subleasing, manner and right to terminate, build out provisions, common area maintenance charges, and environmental and Americans with Disabilities Act (ADA) responsibility.

## **OTHER TRAPS FOR THE UNWARY**

- *Not all agreements are written.* In some instances, an oral contract will be enforceable. When negotiating the terms of a prospective agreement, agreement drafts should be exchanged in writing with a specific designation that the terms are for discussion purposes only.
- *Negotiating the best terms of a deal is often more easily done through attorneys.* In many instances, a client is negotiating an agreement with a familiar, friendly party. Due to the friendly nature of the relationship, that party may prefer loose terms or expect waivers of important provisions. Dealing through attorneys simplifies the process of arriving at strong but necessary provisions.
- *Non-compete Agreements can be deemed unenforceable due to overbroad geographic limitations or because of unreasonably long time limits.* Non-compete Agreements can also be unenforceable if they do not accompany another contract. Current legal research applicable to the underlying contract should be undertaken to ensure an effective Non-compete Agreement.
- *A popular but mistaken belief is that there is a three-day right of rescission in contracts.* This is only true in limited circumstances involving consumer financing.

***Do not sign a contract if the terms are not clear !*** Chances are it was poorly or unfavorably written. In either case, the parties will inevitably arrive at differing interpretations and frustrated expectations unless a clear document is constructed.

