



ON LAW

A MONTHLY PUBLICATION FROM CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

TO OPEN SECOND CALIFORNIA OFFICE

Cummings, McClorey, Davis & Acho is pleased to announce that our firm is opening a second office in California. The office is opening in Riverside since we have been requested to handle the governmental immunity defense matters for San Bernardino County.

Our relationship with the County Representative dates back to the time when he was located in Flint, Michigan and was the representative of a member of the Michigan Municipal Risk Management Association (MMRMA). We are very excited about this development and are already receiving substantial assignments from San Bernardino County for their defense work. The office will open within the next six months.



Kurt L. Heise

Kurt Heise joined our firm in January as an associate. He works out of our Livonia office and focuses his practice on Environmental Law, Labor and Employment Law and Municipal Law. Prior to joining the firm, Kurt served as the Executive Assistant to Mayor Ruth A. Canfield in Dearborn Heights, Michigan.

Kurt received his Bachelor of Arts, cum laude, in Political Science (1998) from the University of Michigan; his Juris Doctorate degree (1991) and his Master of Laws degree in Labor Law (1993) from Wayne State University.

He is Chairman of the Michigan Department of Environ-

mental Quality's Rouge River Remedial Action Plan Advisory Committee (RRAC), a member of the Rouge River Watershed Steering Committee and the State Bar of Michigan (Public Corporation Law Section).

Congratulations go out to Patrick Moritz who became a partner on December 17, 2001. Pat's experience, dedica-



Patrick A. Moritz

tion, client relations and contributions to the firm, especially in matters emanating out of our Battle Creek office, contributed to his nomination as a partner. He works out of our Livonia and Battle Creek offices and concentrates his practice on Civil Litigation, Personal Injury Defense, Municipal Law, Insurance Coverage Analysis, Police Misconduct and Employment Discrimination.

Pat received his Bachelor of Science degree, cum laude, in Psychology (1973) from Oakland University/University of Michigan and his Juris Doctorate degree, cum laude, (1977) from the Detroit College of Law.

He is a member of the Oakland County Bar Association, State Bar of Michigan, Detroit Bar Association, Michigan Defense Trial Counsel and the Defense Research Institute.

Timothy Young, Executive Committee

FEBRUARY, 2002

IMPORTANT INFORMATION
EVERY EMPLOYER
SHOULD READ

"RIGHT SIZING" WITH THE RIGHT LEGAL PROTECTION

Are you an employer that has determined you must adjust the size or job composition of your work force? Are you merging with another company and/or restructuring? Did you lose state or federal revenue? Are you closing a location? Are potential layoffs or early retirements on the horizon? Here are some of the ways to meet your restructuring objectives while reducing your risk of exposure to employee related lawsuits.

- If the positions to be affected are covered by collective bargaining agreements, review and follow all relevant contract language. Also, bargain the impact of the layoffs with the Union.
- If you are a private employer, confirm whether or not your work force reduction or location closure is covered by the Federal and/or State Worker Adjustment and Retraining Notification Act (WARN). If so, timely comply with all notice requirements of the WARN laws prior to implementing your reduction.

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- If possible, select positions to be redefined or eliminated, not people.
- If you are conducting a group layoff, provide each laid off employee a list of all the affected positions and provide the ages of the persons who held those positions without providing the names of the employees.
- When more than one person occupies a position to be eliminated, make the selection based on as much objective criteria as possible. Consider things like longevity, skill experience and education that meet your business plan. Avoid heavy reliance on subjective criteria. Use the same criteria for each employee in a job category.
- Conduct a disparate impact analysis prior to executing the reduction to determine if any legally protected group is being more adversely impacted than a non-protected group. For example, will the percentage of females, minorities, persons over age 40 and/or disabled employees that comprise your work force decrease as a result of the reduction? If so, you may need to revise your selections and/or ensure that you have strong objective reasons to support your selections.
- Identify from your selection employees who may already have a potential claim against you and review the situation with legal counsel. This should be considered when determining whether or not severance pay with a release of claims is appropriate. It is also significant to determining the amount of severance to be offered.
- Follow your existing severance plan or consider implementing a severance plan that complies with ERISA law and includes, without limitation, a release of all claims against you. Also include in your separation agreement a statement from the employee that he/she has not suffered a work-related injury. Require that employees do not disclose confidential proprietary information. Provide adequate time for employees to consider packages per applicable law to ensure the enforceability of the release. Your severance plan should also reserve the right for you to amend or terminate it.
- If you are considering a reduction through early retirement for certain positions, consider doing it in phases. Voluntary first, followed by involuntary. If you use a voluntary program be prepared for some employees that you would like to stay to accept the packages.
- Prior to terminating any agency leases, independent contractors, arrangements or other commitments, review the termination language of your contract with your legal counsel to comply with any notice requirements and built-in pay-outs or damages for early termination. These may need to be negotiated.
- Address survivor morale. Share your revitalization plans for the future to maintain good morale, productivity and loyalty.
- Be aware of remaining employees who may be looking to “set up” a future claim against the company to secure their job or future income. For example, has an employee recently threatened to make a workers’ compensation claim, complained about discrimination or sexual harassment claims? Take proactive steps with proper documentation and appropriate disciplinary action to avoid the “set up” and increase your chances of successfully defeating such a claim.
- Protect your competitive business position by controlling the media with your own press releases. Do not wait for the press to report on you with misinformation or inadequate information. This is also important to dissuade Plaintiff’s attorneys looking for employee cases against you.
- Timely comply with your COBRA notice obligation to laid off employees and their families.
- When hiring after layoffs, follow any applicable Union contract recall provisions. Be careful not to recreate a position you just eliminated. This could create the appearance that your business or economic reasons for eliminating the position are untrue or that your selection criteria is suspect.

Eileen Husband heads our firm’s Labor and Employment Law Division. For more information about severance programs and releases, the WARN laws or for assistance in planning or implementing your restructure, please give CMDA a call.

Eileen K. Husband

Attorney Profile

Eileen K. Husband



Eileen Husband started her legal career at Cummings, McClorey, Davis & Acho 15 years ago and returned as a partner in charge of our Labor and Employment Law Division in 2000. Her practice areas include Labor and Employment Law, Franchise Law, Commercial Transactions and Litigation and Gaming Law. She received her Juris Doctorate degree from Detroit College of Law in 1985.

Before returning to the firm, she served as General Counsel for Little Caesar Enterprises, Inc. She is a member of the State Bar of Michigan and the American Bar Association. She was a contributing writer to "Employment Law in Michigan, An Employer's Guide" for the Michigan Institute for Continuing Legal Education. Eileen received her Bachelor of Arts in Economics from University of Michigan in 1982. She can be reached at ehusband@cmda-law.com or by calling (734) 261-2400.

PRACTICE AREAS HIGHLIGHTED

Learn more about our Domestic Relations, Plaintiff's Personal Injury and Probate Law Practice Groups

Cummings, McClorey, Davis & Acho is one of Michigan's premier full-service law firms with attorneys specializing in Appeals; Bankruptcy and Insolvency; Civil Litigation; Commercial Litigation; Compensation Defense; Corporate and Business Law; Domestic Relations; Environmental Law; Estate Planning; Franchise Law; General Liability and Prevention; Government, Municipal and Administrative Law; Insurance and Reinsurance Coverage, Defense and Subrogation; Mergers and Acquisitions; Personal Injury Litigation and Defense; Plaintiff Personal Injury; Probate Law; Public Official Liability; Real Estate; Sports and Entertainment Law; Technology and Computers; Turnaround and Financial Consulting and Employment and Labor Law.

In this article, our Domestic Relations, Plaintiff's Personal Injury and Probate Law practice areas are highlighted. We hope you enjoy learning more about these specialized practice areas. Look for additional practice areas to be highlighted in future articles.

Domestic Relations



Michele A. Ricci

Divorce is an unfortunate reality that many married couples must face. Attorneys in our domestic relations group are dedicated to the well being of our clients and work hard for their best interests. We recently received a letter from a client that had just completed his divorce and suggested we share it with you.

No one wants to get a divorce, but sometimes that may be the only option for a family with long standing unresolved conflict between parents. After many years of marriage, I came to the realization that the discord between my wife and I had placed our children in severe distress. Based on a referral from my family lawyer, I contacted Michele Ricci. Ms. Ricci understood my personal situation as well as my desire to be close to my children. She was able to arrange a divorce agreement that addressed my children's well being as well as my financial security. Through Michele's efforts, I have been able to move on to another chapter of my life.

Michele Ricci and Greg Shanaberger are part of our domestic relations group, and they can assist clients with divorces, child support and custody matters, post-judgment domestic relation's matters and any other domestic relation's matter. Michele Ricci, whose client wrote the letter, has focused her practice on domestic relations since 1987. Both

Michele and Greg work out of our Farmington Hills office and can be reached at (248) 737-3333.

Plaintiff's Personal Injury



Robert L. Blamer

Personal Injury Defense continues to be one of our largest practice areas and therefore we naturally refer to it frequently within our newsletter. Several decades ago, however, we realized that in order to meet all our client's specific needs, implementing a plaintiff's practice, in addition to our defense practice, was essential. The plaintiff's practice was primarily created because even our defense clients, their families and/or friends from time-to-time need legal representation from a plaintiff's attorney.

Robert Blamer heads the group and brings with him over 23 years of experience handling personal injury matters. Jonas Sniokaitis and Vahan Vanerian are also part of the plaintiff's personal injury group. They are all extremely knowledgeable on the law and can help with any plaintiff's personal injury matter that may arise. The group can be reached at (734) 261-2400.

Probate Law



Owen J. Cummings

With the ever changing economy and political climate, the start of a new year is often a good time for people to create a will, to update their existing will and/or to evaluate their estate planning needs to maximize the future security of their loved ones. Although Owen Cummings concentrates his practice on municipal law, one of his greatest joys as an attorney is helping clients with probate law matters. In fact, he's been helping clients with probate law matters since 1965. Mr. Cummings can be reached at (734) 261-2400.

Other attorneys who handle probate law matters include Linda Davis Friedland (Farmington Hills), Alan Jablin (Phoenix), Christopher Schultz (Farmington Hills), Jonas Sniokaitis (Livonia) and Gregory Ulrich (Livonia).

CUMMINGS, McCLOREY, DAVIS & ACHO
OFFICE LOCATIONS

MICHIGAN

Livonia

33900 Schoolcraft
Livonia, MI 48150
Telephone: 734.261.2400
Fax: 734.261.4510

Battle Creek

25 West Michigan Ave.
Suite 909
Battle Creek, MI 49017
Telephone: 616.963.7800
Fax: 616.963.4707

Farmington Hills

30555 Northwestern Hwy.
Suite 200
Farmington Hills, MI 48334
Telephone: 248.737.3333
Fax: 248.737.3330

Marquette

307 South Front Street
Marquette, MI 49855
Telephone: 906.228.8263

Roseville

25509 Kelly Road
Suite C
Roseville, MI 48066
Telephone: 586.775.5200
Fax: 586.777.6896

Traverse City

3939 M-72 East
Williamsburg, MI 49690
Telephone: 231.938.2888
Fax: 231.938.2988

ARIZONA

Phoenix

1850 North Central
Suite 1450
Phoenix, AZ 85004
Telephone: 602.207.2829
Fax: 602.207.6943

CALIFORNIA

Woodland Hills

21031 Ventura Blvd.
Suite 1200
Woodland Hills, CA 91364
Telephone: 818. 884.6666
Fax: 818.884.8677

GERMANY

Berlin, Germany

Manquen, Lokau & Partner
Rechtsanwälte
Rheinstraße 45
12161 Berlin

Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or comments to the editor should be addressed to the attention of Jennifer Sherman.

CMDA- ON LAW
33900 Schoolcraft
Livonia, Michigan 48150
1-800-865-7222 ext. 223
www.cmda-law.com
E-Mail: cmda@cmda-law.com

Editor-in-Chief/Graphic Designer:
Jennifer L. Sherman

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