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DID YOU KNOW?

All attorneys are lawyers but not all lawyers are attorneys. So, what's the difference? While the terms are often used interchangeably, lawyers have graduated law school but did not take or pass the bar examination. On the other hand, attorneys have passed the bar examination and, unlike lawyers, may practice law.

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303 Creative LLC – Government Interference With Protected “Creative Expression”

By: Attorney Alyssa LaCourse

A place of public accommodation generally may not deny the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations based on a person's protected class, such as race, color, religion, sex, national origin, age, or disability. However, anti-discrimination laws seeking to protect against discrimination in places of public accommodation must also be weighed against rights afforded under the U.S. Constitution. On June 30, 2023, the U.S. Supreme Court issued a ruling on *303 Creative LLC et al. v. Elenis et al.*, holding that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs with which the designer disagreed.

303 Creative LLC is a graphic design business intending to provide custom wedding websites for couples. The owner of 303 Creative, Ms. Smith, was worried Colorado would use the Colorado Anti-Discrimination Act (“CADA”) to compel her to create wedding websites for same-sex couples. Under CADA, all public accommodations are prohibited from denying the full and equal enjoyment of services to any customer based on, among other protected characteristics, sexual orientation. Ms. Smith filed a lawsuit in federal court seeking an injunction to prevent Colorado from forcing her to create websites for same-sex marriages. The district court and the Tenth Circuit ruled in favor of Colorado, and Ms. Smith appealed to the U.S. Supreme Court.



The Supreme Court has long held that the thinking for ourselves and expressing thoughts freely are among our most cherished liberties. The Court found that CADA would deny this opportunity and promise. The Court recognized public accommodations laws play a vital role in the civil rights of all Americans, and governments across the country have a compelling interest in eliminating discrimination in public accommodations. The opinion noted that states may “protect gay persons, just as [they] can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions as are offered to other members of the public.” However, no public accommodations law is immune from the U.S. Constitution.

The Supreme Court reasoned that Ms. Smith's refusal to make wedding websites for same-sex couples did not amount to discrimination on the basis of sexual orientation. Ms. Smith only objected to endorsing certain messages but not to serving certain customers. Ms. Smith was willing to serve all customers other products, and she would deny any customer a product that defied her sincerely held beliefs. In effect, CADA would be compelling Ms. Smith to speak messages she did not want to speak and requiring Ms. Smith to speak in a way that aligns with Colorado's views but defies Ms. Smith's conscience.

The Supreme Court reversed the judgment of the lower courts and held that Colorado's CADA would compel an individual to create speech he/she did not believe thereby violating the First Amendment of the U.S. Constitution. It is important to note that this ruling does not give a green light for businesses to systematically turn away certain individuals if based on a protected class, such as same-sex couples, and such a situation should be reviewed closely by legal counsel.

If you have questions about your business's obligations under public accommodation laws, contact Attorneys Spencer Pittman at spencer@wintersking.com or Alyssa LaCourse at alacourse@wintersking.com.



Prenuptial Agreements: Not What You May Think

By: Attorney Ronald Fraley

An antenuptial or prenuptial agreement (also called a “prenup”) is a legal agreement between couples entered into before marriage. These agreements can be uncomfortable or even taboo because discussing or planning for division of property before marriage may suggest the couple does not think the marriage will last. However, contrary to common belief, prenuptial agreements are not exclusively intended for anticipating divorce.

In general, prenuptial agreements are strongly favored under Oklahoma law, and can be beneficial for certain couples. The agreement provides financial protection for both spouses and allows couples to determine how assets and debts acquired during a marriage will be divided in the event of divorce. A prenuptial agreement can help avoid costly legal battles over property, debt division, and spousal support, and may also help protect one spouse’s assets from the other spouse’s debts or liabilities. If there is no prenuptial agreement in place, the couple’s assets and debts acquired during marriage will be divided according to state law. This usually means property and debt acquired during marriage will be considered marital property, and debt will be divided equitably between the spouses.

A prenuptial agreement can also address other financial matters such as spousal support (alimony), inheritance, and the statutory rights of a spouse if their husband or wife passes away during the marriage. Without a prenuptial agreement, these issues will be decided by the court based on state law.

However, prenuptial agreements are not exclusively for financial protection in the event of divorce. The agreement can assist in estate planning and purposeful segregation of what would otherwise be marital property in the event a spouse passes away. A prenuptial agreement may provide that certain assets (e.g. money or personal/real property) brought into marriage by one spouse are intended to remain separate property and not converted to marital property. In this instance, if one of the spouses were to pass away, a prenuptial agreement may help delineate which assets should remain outside the spouse’s estate and not subject to distribution to heirs in the event of probate.

Prenuptial agreements are not just for wealthy individuals. Anyone entering into a marriage who wants to protect their assets and avoid costly legal battles should consider this type of agreement. If you want more information on prenuptial agreements, contact Attorney Ronald Fraley at rfraley@wintersking.com

Is Your Ministry Jeopardizing Its Tax-Exempt Status by Paying Too Much (or Not Enough) in Wages?

By: Shareholder Spencer Pittman

There are limits on what a church or nonprofit organization can pay its employees, including its pastors or executive staff. Most tax-exempt and charitable nonprofit organizations must also adhere to wage and hour regulations and laws. According to the IRS, compensation paid by a nonprofit entity must be reasonable and not excessive. Paying more than reasonable compensation can risk a nonprofit’s tax-exempt status.

“Reasonable compensation,” when describing what a church or nonprofit should pay its staff, is not an easy standard to evaluate. The IRS defines “reasonable compensation” to mean “the value that would ordinarily be paid for like services by like enterprises under like circumstances.” To make the evaluation more difficult, the “reasonable compensation” is not solely the employees’ wages, but also “all items of compensation provided by an applicable tax-exempt organization in exchange for the performance of services are taken into account in determining the value of compensation,” such as certain insurance premiums, bonuses, deferred and noncash compensation, foregone interest on loans, or fringe benefits.

The Firm of Winters & King is nationally recognized for its compensation surveys, which allow churches and nonprofit boards to confidently set salaries, compensation, and other benefits appropriately.

If your church or nonprofit is interested in a formal compensation study that satisfies state and federal governmental requirements, contact Founding Shareholder, Tom Winters, at reception@wintersking.com.



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