



Association for Women Lawyers
of Greater Kansas City

link

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President's Message

Phyllis Norman

Wow this year is going GREAT!! I couldn't ask for a better board and we have more committee member participation than any other year. This first half of the year we have done so much. Just to give the members a recap, our community support committee has participated in Read Across America; Food from the Bar (Hamburger Mary's kick-off party was too much fun) and has raised money for several charities at our social events. We have had our annual Judicial Reception with over 175



Phyllis Norman



AWL teams up with KWAA for the 2012 Food from the Women's Bar Campaign

The fourth annual Food from the Women's Bar Food Drive was held April 30 – May 25, 2012. Food from the Bar is an anti-hunger campaign mobilizing the legal profession as a whole to help alleviate hunger in our communities. This four week effort encouraged law firms and legal offices to participate by contributing money, donating food, and volunteering time at the local food banks. The program is sponsored nationally by the National Conference of Women's Bar Association. Locally, the Association for Women Lawyers of Greater Kansas City and the Kansas Women Attorneys Association sponsored the food drive. The collective efforts of these two organizations produced outstanding results for Harvesters Community Food Network, Cross-lines Community Outreach, and the Blue Valley Multi-Service Center Food Pantry

in attendance and held our annual Step-Up event at the municipal courthouse on July 13th, followed by a social event at Bar Louie. Finally, we held two Ethics CLE's in May and June where we had over 60 people participate. Don't forget to sign up for the Golf Tournament, set for September 28th at Swope Park and get online and check out all the new updates to the website and Facebook page. Be looking for announcements regarding our upcoming "CLE in the CITY" as well. Please let me know if you would like to get involved in anything by shooting me an email at pnorman@langdonemison.com. Thanks to all of our members for the continued support of AWL!

AWL THANKS OUR 2012 SPONSORS

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Additional sponsorship opportunities are still available. Get in on the action now and get the most for your money! If you are interested, please contact Brianna Thomas at bthomas@boydkenterlaw.com.

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AWL Spotlight Article: THE ROLLINS LAW FIRM



The Rollins Law Firm consists of two well-known and very experienced trial attorneys: John Rollins and Paul Kavanaugh. John is an AWL member who is a staple at AWL festivities and has often sponsored AWL events in the past. This year, the firm is really showing its support of AWL and has generously become an AWL PLATINUM SPONSOR.

The firm is unique in that, while it handles all types of serious personal injury cases, the overwhelming majority of its practice, approximately 95%, is dedicated to representing patients and their families in medical malpractice cases involving serious injuries and wrongful death. Between John and Paul, they have over 50 years of experience in handling serious medical malpractice cases. This depth of ex-

perience allows them to evaluate, prepare and prosecute medical malpractice cases efficiently and very successfully for their clients.

Outside of their practice of law, John and Paul are both avid travelers and are actively involved in supporting not just their local community but also the areas to where they have traveled. Locally, John is a former Chairman of the KCMBA Solo/Small Firm Committee and was recently honored with the 2011 KCMBA Solo & Small Firm Practitioner of Distinction Award. He has been instrumental in the development of the UMKC School of Law's Solo/Small Firm Incubator Program and sits on the Incubator Admissions Committee. He also chairs the UMKC Law Foundation Solo/Small Firm Committee which is responsible for raising money and obtaining sponsorships for UMKC School of Law students to attend the annual Missouri Bar Solo/Small Firm Conference.

John was particularly inspired by a trip he took to the Galapagos Islands in 2007. As a result of the trip, he became a member of the Galapagos Conservancy which was formed to advance and support the conservation of the unique biodiversity and ecosystems of the Galapagos Archipelago through directed

research, informed public policy and building a sustainable society. A trip to Uganda and Rwanda in 2008 to see and photograph critically endangered mountain gorillas and golden monkeys led to John's support of the Uganda Wildlife Authority's conservation efforts.

Paul has given back both locally and globally through the charitable foundation he established with his wife Debbie. The Kavanaugh Charitable Trust has fully endowed need-based scholarships at Westminster College, the University of Missouri – Kansas City School of Law, and the University of Missouri – Kansas City School of Pharmacy. Paul also serves on Westminster College's Board of Trustees. Paul was honored with Westminster's Alumni Achievement Award in 2008.

On a global scale, Paul and Debbie built, from the ground up, a fully funded middle school in Cambodia. The school provides a garden for food and a clean well for the children's water. An English teacher is funded, as well as computers with access to the internet, and solar panels for energy. All this, in a village without electricity, gas or regular clean water. (For more on the school, go to http://www.camnet.com.kh/cambodiaschools/school_map4/school_350_open.htm). Paul and Debbie also spearheaded a fundraising drive to purchase wheelchairs for mobility impaired children and adults in Argentina. Many in the local legal community, including many AWL members, contributed to the wheelchair fundraising project. To date, over 400 wheelchairs have been purchased and distributed in Argentina.

AWL is privileged to have such amazing members, who are not only leaders in the local legal community and are giving of their money and time but who also are helping to improve conditions on a global scale. John and Paul, AWL thanks you for your continued support!

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AWL MENTOR, Sherri Watternbarger WINS NATIONAL AWARD

By: Kelly McCambridge

On June 1, 2012, Sherri L. Wattenbarger received the U.S. Attorney General's Volunteer Award for Community Service at a ceremony in the Great Hall at the Robert F. Kennedy, Jr. Main Justice Building in Washington, D.C. The recipients of the Attorney General's Volunteer Awards are selected annually from nominations among the more than 100,000 DOJ employees nationwide. The Attorney General's Volunteer Awards are intended to recognize those employees who are pro bono legal volunteers, employees who volunteer with community service and faith-based organizations, and employees involved with activities sponsored by the Department of Justice.

"When I was in law school I decided that I wanted to work for the Department of Justice, in part because of my admiration for Robert F. Kennedy, Jr., so receiving this award and thinking of the way he inspired me and many others means a great deal to me." SW

Ms. Wattenbarger, who is a trial attorney with the Office of the U.S. Trustee in Kansas City, Missouri, was recognized for exemplary community service for her sustained volunteerism and leadership in the legal community and the Kansas City metropolitan area. Her volunteer efforts in the legal community include serving on the advisory boards for the Kansas City Bankruptcy Bar Association, the American Bankruptcy Institute's Midwestern Bankruptcy Institute, and the Credit Abuse Resistance Education (CARE) Program for the Western District of Missouri and the District of Kansas. She is also the immediate past chair of the Attorney Advisory Committee for the Bankruptcy Court for the Western District of Missouri, a former adjunct professor of law for UMKC School of Law, and a volunteer for a wide variety of programs for the Association of Women Lawyers of Greater Kansas City and the Kansas Women Attorneys Association.

Ms. Wattenbarger's community volunteerism includes serving on the boards of the Women's Foundation of Greater Kansas City, the UMKC Athletic Foundation, and, formerly, the Women's Intersport Network of Kansas City (WIN for KC). Ms. Wattenbarger currently is chairing Benefit 2012 for the Kansas City Friends of Alvin Ailey, co-chaired the Women's Foundation luncheon in 2010 and 2011, and is the director of an annual workshop for novice women triathletes for WIN for KC. She also founded and organizes a group called FEDS (Federal Employees Donating and Sharing), a group of employees at the federal courthouse in Kansas City, Missouri, who volunteer one lunch hour per month for community service activities. Collectively, FEDS has donated more than 250 hours to community service since 2010.

"I have a passion for the activities I do, and I certainly don't do them for the purpose of winning an award. However, I am very grateful to be honored. It provides a little boost, like getting your jet pack refueled." SW

Can We Talk?

Ethical Communications with Clients, Lawyers and Judges

On May 18, 2012, AWL, in conjunction with KCMBA, hosted their annual lunchtime ethics CLE at the new KCMBA headquarters. The turnout for this event was very good with approximately 30 people in attendance. The panel of speakers gave an excellent presentation on ethical considerations that face practicing attorneys in everyday situations. The 2 hour CLE fulfilled both Kansas and Missouri annual ethics CLE requirements in a relaxed, open-question forum. Judge Cindy Martin and Judge Beth Phillips gave excellent insight on communicating in the courtroom and with judges while Danny Thomas, Teresa Woody, Kelly McCambridge and Betsy Lynch discussed various aspects of client and opposing counsel communication issues.

What do I do now? Ethics in your litigation practice

On June 26, 2012, AWL, in conjunction with KCMBA, hosted their second lunchtime ethics CLE. This CLE was presented by Brett Emison and David Rose of Langdon and Emison. The use of humorous internet videos of depositions gone awry kept the learning fun. Turnout was very good with approximately 30 people in attendance.

Proceeds from registration fees at our CLE's support AWL programs. Thanks to CLE Chair Annette Griggs for all of her hard work in coordinating these events. If you are interested in joining the AWL CLE Committee to help plan the AWL "CLE in the City" event this fall please contact Vice Chair Kelly McCambridge at kmccambridge@hslawllc.com.



Thank you for funding BranVegas, it was amazing...even with the mustard yellow LPGA polo.

Thank You To AWL and AWLF

By: Nicole Fisher and Samantha Horner

"A big thank you to AWLF for generously sponsoring law student Samantha Horner and lawyer Nicole Fisher to the annual Missouri Bar Solo and Small Firm Conference that recently took place in Branson, Missouri. Both enjoyed attending informational CLE's while networking with other solo and small firm practitioners. AWLF awards scholarships to various conferences throughout the year to provide attorneys and law students with opportunities to attend conferences that they otherwise might not have the financial means to attend. Thanks for your support!!!!"

THE HONORABLE BETH PHILLIPS

By: Tricia Scaglia



Beth Phillips

AWL Member Mary Elizabeth “Beth” Phillips received her commission as District Judge for the U.S. District Court for the Western District of Missouri in March 2012. Judge Phillips fills the vacancy of Judge Ortrie B. Smith, who took senior status in 2011.

President Barack Obama nominated four members to the judiciary on June 7, 2011, one of which was Judge Beth Phillips. “Throughout their careers these individuals have shown a dedication to justice,” said President Obama. “I am

proud to nominate them to serve the American people from the district court bench.”

Prior to her appointment, Judge Phillips served as the U.S. Attorney for the Western District from 2009-2012. She was the first woman to serve in this office in the Western District. She worked as an Assistant U.S. Attorney from 2008 to 2009, in computer crimes and child exploitation.

Before joining the U.S. Attorney’s Office, Judge Phillips worked at Bartimus, Frickleton, Robertson & Gorny from 2001 to 2008. During that time, she also served as a court-appointed special prosecutor

for Jackson County, Missouri. Judge Phillips served as an Assistant Prosecutor with the Jackson County Prosecutor’s Office from 1997 to 2001. During her tenure as an Assistant Prosecutor, she worked with newly appointed fellow District Judge, Brian C. Wimes. Both preside on the Seventh Floor of Charles Evans Whittaker U.S. Courthouse.

She received her Juris Doctor from the University of Missouri-Columbia. Prior to law school, Judge Phillips attended the University of Chicago, where she received both a Bachelor of Arts and a Master of Arts.

Judge Phillips has been a tireless advocate for women and children during her entire career. In addition to volunteering her time to AWL by speaking at CLEs, she has supported AWL events and its mission by her service to the community. She served on the board of directors of the Metropolitan Organization to Counter Sexual Assault (MOCSA), a non-profit organization in Kansas City, Missouri that exists to lessen the ill effects of sexual assault and violence through intervention, advocacy, education and treatment. She also served on the board of directors of the Child Protection Center, (CPC), a child advocacy center in Kansas City, Missouri that conducts forensic interviews and provides crisis intervention to children who have disclosed sexual abuse and their families.

Judge Phillips is married to fellow Judge Brent Powell, who serves as a Circuit Judge in Jackson County. Both honorable Judges are members of AWL and frequently attend our events and support our endeavors. AWL congratulates Judge Phillips on her appointment and we look forward to seeing her at future AWL events.



THE HONORABLE BRIAN WIMES

By: Tricia Scaglia



Brian Wimes

The Hon. Brian C. Wimes received his commission for the U.S. District Court for the Eastern and Western District of Missouri in April 2012. The appointment fills the vacancy created by the retirement of Judge Nanette Kay Laughrey. “I am proud to nominate this outstanding candidate to serve on the United States District Court bench,” said President Obama. “Judge Wimes has a long and distinguished record of service, and I am confident he will serve on the federal bench with distinction.”

Judge Wimes previously served as a Circuit Judge for the Sixteenth Judicial Circuit of Missouri in Division 18 from 2007 to his appointment to the Western District. Prior to his appointment as a Circuit Judge, he served as Drug Court Commissioner from 2001 to 2007.

Judge Wimes received his juris doctor from Texas Southern, Thurgood Marshal School of Law. After graduation, he worked for the

Litigation Branch of the U.S. Department of Justice, Bureau of Prisons. Then, Judge Wimes joined the Jackson County, Missouri Prosecutor’s Office serving as an Assistant Prosecutor from 1995 to 2001. During this time, he served as an Assistant Prosecutor with fellow District Judge, Beth Phillips.

An avid KU fan, Judge Wimes received a Bachelor of Political Science from the University of Kansas. Prior to attending law school, Judge Wimes taught in the Kansas City, Missouri School District.

Judge Wimes’ chambers is on the Seventh Floor of the Charles Evans Whittaker U.S. Courthouse, just down the hall from his former colleague Judge Phillips, who is an MU fan and AWL member.

“Brian Wimes has been a steady fixture in this courthouse for close to two decades,” said Presiding Judge Charles E. Atwell. “He is a valued colleague and friend to all of us on the Jackson County Court, and he will be missed.”

Missouri Governor Jay Nixon has been presented with three (3) nominees to fill the vacancy in Division 18. Governor Nixon has until August 11, 2012 to appoint one (1) of the nominees for this vacancy.

Judge Wimes has been a long time supporter of AWL attending the Judicial Reception, Annual Meeting, and other events. AWL Congratulates Judge Wimes on his appointment. We look forward to his continued support of AWL.



Awards

AWL Congratulates Its Award Winners

Please take a moment to congratulate your AWL colleagues for the following honors. If you would like to nominate yourself or a peer for an award, please submit your nomination to the AWL Awards and Scholarship Committee by emailing its Chair, Jenny Redix Jordan at redixjordanj@umkc.edu.

2012 Bench Bar Awards – Presented by the Kansas City Metropolitan Bar Association

LUJANA COUNTS, AWL Member, U.S. Attorney’s Office, Western District of Missouri

Lujana was awarded the Distinguished Counselor Award, which is awarded for a KCMBA member who demonstrates professional gallantry, peacemaking, harmony and friendship.

NIKKI CANNEZZARO, AWL Executive Officer, Franke Shultz & Mullen, PC

Nikki was honored as the Thomas J. Conway award recipient. One recipient is selected annually for outstanding trial skills and the ability to be a fierce advocate while simultaneously being a friend to opposing counsel.

KELLY MCCAMBRIDGE, AWL Board Member, Holman Schiavone, LLC

Kelly was selected as the Young Lawyer of the Year, which honors a lawyer age 36 or younger for significant community, civic and professional work.

2012 Women Who Mean Business – Presented by the Kansas City Business Journal

KIM JONES, AWL Member, Seyferth Blumenthal & Harris LLC

RACHEL SMITH, AWL Member, Smith Coonrod Mohlman LLC

Kim and Rachel were selected as part of a group of 25 women honored as the area’s top corporate executives and entrepreneurs.

AWL’s Annual Judicial Reception

On April 18, 2012 over 100 AWL members gathered at Californos in Westport to honor our judiciary at AWL’s annual Judicial Reception. Many local judges, state and appellate, were in attendance. Many thanks to our generous sponsors for such a wonderful event! And congratulations to Caroline Zuschek, a 3L at UMKC, who was the chosen recipient for the 2012 Roxanne Conlin Barton Scholarship. Congrats Caroline!

2012 Women’s Justice Awards – Presented by Missouri Lawyers Weekly

TIFFANIE SEARS, AWL Member, University of Missouri-Kansas City School of Law (2012 Graduate)

Tiffanie was selected for the Leaders of Tomorrow Award which is presented to a law student who demonstrates leadership, professionalism and a passion for making a difference in the justice system or the legal profession.

ASHLEY BAIRD, AWL Member, Dollar, Burns & Becker, L.C.

KELLY MCCAMBRIDGE, AWL Board Member, Holman Schiavone, LLC

Ashley and Kelly were recognized with the Rising Star Award, which is awarded to women lawyers 40 or under or within the first 10 years of practice who have already made a difference in the justice system or the profession and who appear on a path toward even greater accomplishment.

PROFESSOR WANDA TEMM, AWL Nominee, University of Missouri-Kansas City School of Law

Professor Temm was awarded the Legal Scholar Award, which is awarded to women faculty members or administrators at area law schools who make a difference through their research or scholarship, or through teaching and inspiring others.

SISTER BERTA SAILER, AWL Nominee, Operation Breakthrough

Sister Berta was awarded the Citizenship Award for her efforts as co-founder and leader of Operation Breakthrough.

NANCY KENNER, AWL Member, Kenner Schmitt Nygaard LLC

Nancy received the Litigation Practitioner Award, which is awarded to women trial practitioners who work to improve the quality of justice or contribute to the betterment of the profession.

JUDGE NANETTE LAUGHREY, AWL Member, U.S. District Court, Western District of Missouri

The Honorable Nanette Laughrey was recognized with the Public Official Award, which is awarded to women judges and other public officials for their outstanding public service.

SHERRI WATTENBARGER, AWL Member, U.S. Department of Justice, Office of the U.S. Trustee

Sherri received the Public Service Practitioner Award, which is awarded to women in government and non-profit lawyers for their noteworthy accomplishments in the public sector.



At the Women’s Justice Awards celebration in St. Louis are Tiffanie Sears, who received the Leaders of Tomorrow Award, and Kelly McCambridge, who was recognized as a Rising Star.

The Latest In FLSA/Wage And Hour Class Actions



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I. Identifying Wage and Hour Claims.

If your legal practice involves representing a substantial number of individuals—criminal defense, personal injury, workers' compensation, bankruptcy, divorce—many of your current and former clients probably have suffered violations of their wage and hour rights and don't even know it. Many of those clients could leverage their wage and hour claim into a class or collective action against their current or former employer. In sum, there is probably gold in your client list waiting to be mined.

With employers demanding employees to work longer and longer hours, violations of employees' wage and hour rights, typically unpaid overtime but in some cases unpaid minimum wages, have become surprisingly common, for both small and large employers. A single plaintiff can bring a "collective action" under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA") whereby "similarly situated" employees and former employees can "opt in" to the case. Unlike a typical class action, there is no "numerosity" requirement, so that an FLSA collective action can be maintained even if the putative class involves only a handful of employees. In the case of a large employer, one or more plaintiffs can bring an FLSA collective action, and if the case arose in Missouri, the plaintiff(s) can also assert an "opt out" Rule 23 class action claim under the Missouri Minimum Wage Act, R.S.Mo. §§ 290.500 et seq., ("MMWA").

Very importantly, both the FLSA and the MMWA include mandatory "fee shifting" provisions. 29 U.S.C. § 216(b); R.S.Mo. § 290.527.

Under both the FLSA and the MMWA, unless an employee's work falls under an overtime exemption, the employer must pay the employee one and a half times the employee's "regular rate of pay" for all hours over 40 during a workweek. 29 U.S.C. § 207; R.S.Mo. § 290.505. Overtime claims typically fall into one of two categories: 1) "misclassification" claims where employees are treated as exempt from overtime rights, so that they are not paid an overtime premium for work in excess of 40 hours during workweeks; and 2) "off the clock" claims where hourly employees are not paid for all of their compensable time, resulting in a failure to pay overtime.

Minimum wage violations occur with some frequency regarding "tipped employees" in the restaurant and hospitality industries.

Most employees whose wage and hour rights have been violated are unaware of their claims. Usually, a prospective client contacts my firm to inquire about something else, such as an adverse employment action—typically a termination—which might or might not give rise to a legal cause of action. Whether or not an employee has a claim related to the concerns that prompted the employee to call an attorney, the attorney

can begin to discern whether the employee might otherwise have a wage and hour claim by asking the following questions:

1. Are you paid by the hour or are you salaried?
2. If the employee is salaried, ask the following:
 - Did you supervise at least two other full-time employees?
 - What types of decisions did you make for the employer, and what independent discretion did you have in making such decisions?
 - Did your position require at least a four-year college degree?

Answers to these questions will begin the analysis of the three most commonly applicable exemptions to FLSA and MMWA overtime rights—the "executive," "administrative" and "professional" exemptions under 29 U.S.C. § 213(a)(1). See 29 C.F.R. §§ 541.100 through 541.106 (DOL regs defining "executive employees"); 29 C.F.R. §§ 541.200 through 541.204 (DOL regs defining "administrative employees"); 29 C.F.R. §§ 541.300 through 541.304 (DOL regs defining "professional employees").

3. If the employee is paid hourly, ask the following:
 - Were you paid for all of your "compensable" time? You will probably need to offer the employee some explanation concerning "compensable" time, as follows:

Compensable time typically includes time spent on any work-related matters (e.g. reviewing or drafting emails or texts, discussing work instructions) whether on-site or anywhere else. Compensable time typically includes any time required to be spent at the employer's facility, including most waiting time (other than breaks that last at least 20 minutes). Compensable time typically includes work-related travel time, unless it is part of commuting time at the beginning or end of work shifts. See 29 C.F.R. §§ 785.11 through 785.19, 785.33 through 785.41 (DOL regulations concerning "hours worked"); 29 C.F.R. §§ 790.6 through 790.12 (DOL regulations defining "continuous workday" and compensable "principle activities").

If an employee is paid hourly, the employee is typically entitled to overtime rights, even if the employee's duties might otherwise fall under the executive, administrative or professional employee exemption. See 29 C.F.R. § 541.100(a)(1) (executive exemption applies only if employee is paid on a "salary basis"); 29 C.F.R. § 541.200(a)(1) (administrative exemption applies only if employee is paid on a "salary basis"); 29 C.F.R. § 541.300(a)(1) (professional exemption applies only if employee is paid on a "salary basis"); 29 C.F.R. § 541.602 (detailing the requirements of compensation on a "salary basis" for purposes of executive, administrative and professions exemptions to overtime).

II. Commonly "Misclassified" Employees—employees treated as "salaried," as "independent contractors" or paid by commissions, who are nonetheless entitled to overtime premium pay when they work over 40 hours during a workweek.

Here is a list of commonly "misclassified" employees who are usually entitled to overtime rights:

- A. Mortgage Loan Officers. *Casas v. Conseco Finance Corp*, 2002 WL 507059, 2002 U.S. Dist. LEXIS 5775 (D. Minn. 2002) (loan officers not exempt administrative employees); *Pontius v. Delta Fin.*

FLSA/Wage And Hour Class Actions Continued...

- Corp., 12 Wage & Hour Cas.2d (BNA) 986, 2007 W.L. 1496692 (W.D. Pa. Mar. 30, 2007) (same); *Wong v. HSBC Mortgage Corp.*, 2010 U.S. Dist. LEXIS 10312 (D. Minn. Sept. 29, 2010) (same); DOL Wage & Hour Opinion Letter, FLSA2010-1 (March 24, 2010) (opining that mortgage loan officers described therein had a “primary duty” of sales, and therefore did not qualify as exempt “administrative” employees under section 13(a)(1) of the FLSA).
- B. Insurance Underwriters and Adjusters. E.g., *Davis v. J. P. Morgan Chase & Co.*, 587 F.3d 529 (2nd Cir. 2009) (applying “production/administration dichotomy” to conclude that underwriters were production employees, rather than exempt administrative employees); *Fenton v. Farmers Insurance Exchange*, 663 F. Supp. 2d 718 (D. Minn. 2009) (insurance claims investigators held non-exempt; distinguishing *McAllister v. Transamerica Occidental Life Ins. Co.*, 325 F.3d 997 (8th Cir. 2003) where insurance claims coordinators were found to be exempt administrative employees).
- C. Installation and Service Technicians, and Delivery Drivers. Such employees are frequently misclassified as “independent contractors” and/or paid on a “piece rate” basis. Amendments to the Motor Carrier Act in 2005 and 2008 had the effect of creating overtime rights of employees whose work involves driving vehicles with a gross vehicle weight rating of 10,000 pounds or less. E.g., *Kautsch v. Premier Communications*, 502 F. Supp. 2d 1007 (W.D. Mo. 2007); *Hernandez v. Alpine Logistics, Inc.*, 2011 W.L. 3800031 (W.D.N.Y. Aug. 29, 2011).

III. Employees With Common “Off the Clock” Claims—employees not paid for all of their compensable time, resulting in employer’s failure to pay them overtime.

Here is a list of employees whose employers frequently fail to pay them for all of their weekly compensable time, resulting in overtime violations.

- A. Food Production Employees. E.g., *IBP, Inc. v. Alvarez*, 546 U.S. 21, 126 S. Ct. 514, 163 L. Ed. 2d 299 (2005) (applying the “continuous workday” rule to find that, in addition to unpaid compensable time spent engaged in the “principle activities” of donning and doffing sanitary clothing and protective gear, post-doffing and pre-doffing walking and waiting time were also compensable for overtime purposes).
- B. Health Care Workers (Nurses, Nurses Aides, Physical Therapy Assistants, etc.). *Beasley v. Hillcrest Medical Center*, 78 Fed. Appx. 67, 2003 W.L. 22317403 (10th Cir. 2003) (automatic time clock deduction for “meal breaks” during time employees allegedly spent “predominantly for employer’s benefit” could result in unpaid overtime claims); *Norceide v. Cambridge Health Alliance*, 2011 W.L. 3895125 (D. Mass. Aug. 28, 2011) (conditionally certifying multi-facility class of health care employees claiming unpaid overtime resulting from time clock deductions for “meal breaks” not received and compensable pre-shift and post-shift meetings).

- C. Call Center Employees. E.g., *Kernats v. Comcast Corp.*, 2010 W.L. 4193219 (N.D. Ill. Oct. 20, 2010) (certifying Rule 23 class for pendant state law overtime claims based on unpaid pre-shift time booting up computers and opening programs, and meal break and post-shift time spent finishing telephone calls).
- D. Construction Workers. E.g., *Gortat v. Capala Brothers*, 257 F.R.D. 353 (E.D.N.Y. 2009) (if proven, alleged failure to pay for travel time from employer’s shop after required meetings to construction sites would result in overtime violation under “continuous workday” rule).

IV. Minimum wage issues involving “Tipped” Employees.

The MMWA requires Missouri employers to pay tipped employees at least one-half of the Missouri minimum wage rate—currently that amount is \$3.625 per hour. See R.S.Mo. § 290.512. Thus, the effective Missouri minimum wage rate for tipped employees is \$1.495 per hour more than the effective minimum wage rate under the FLSA where the employer properly claims a “tip credit.” See generally *Whitehead v. Hidden Tavern, Inc.*, 765 F. Supp. 2d 878, 880 (S.D. Tex. 2011) (effective FLSA minimum wage of tipped employees is \$2.13 per hour if “tip credit” is properly applied and combined wages and tips satisfy federal minimum wage rate of \$7.25 per hour).

Generally, under the FLSA only employees who are informed that the employer will take a “tip credit” against the full minimum wage and who directly interface with and serve customers can be paid the lower “tipped” minimum wage, and all tips must be paid out to such “tipped employees” for the employer to claim the tip credit. See 29 C.F.R. §§ 531.50 through 531.60. It follows that a “tip pool” which results in payments therefrom to any “non-tipped employees” (i.e. those who don’t directly serve the public), to any owners of the business, or to certain high level managers of the business, nullifies the employer’s right to the tip credit. If the tip credit is nullified, all of the “tipped employees” become entitled to be paid the full minimum wage from the employer (i.e. \$7.25 rather than \$2.13) for their effected hours of work. *Barcelona v. Tiffany English Pub, Inc.*, 597 F.2d 464 (5th Cir. 1979) (employer’s failure to inform waiters of tip credit as well as failure to pay out all tips to tipped employees nullified tip credit, entitling waiters to full minimum wage for every effected hour worked); *Doty v. Elias*, 733 F.2d 720 (10th Cir. 1984) (employees were entitled to full minimum wage for all hours worked due to employer’s failure to inform them that employer would take a tip credit to satisfy minimum wage); *Whitehead*, 765 F. Supp. 2d at 882-83 (restaurant owner participated in tip pool so that tipped employees didn’t receive all tips, nullifying tip credit); *Roussell v. Brinker International, Inc.*, 2011 W.L. 4067171 (5th Cir. Sept. 14, 2011) (affirming trial court’s deference to DOL position that whether employee interfaces with public is “highly relevant” to whether employer can lawfully include such employee in tip pool).

A tipped employee is entitled to be paid the full minimum wage by the employer for time spent performing “non-tipped” work (commonly called “side work” by restaurant servers) such as food prep, stocking and

FLSA/Wage And Hour Class Actions Continued...

cleaning, if such non-tipped work exceeds 20 percent of hours worked during a workweek. *Fast v. Applebee's International, Inc.*, 638 F.3d 872 (8th Cir. 2011) (deferring to DOL reg., 29 C.F.R. § 531.56(e)).

The federal minimum overtime rate of tipped employees (for hours exceeding 40 in a workweek) is \$5.76 per hour, not \$3.195. That is, the minimum overtime rate for tipped employees is the regular minimum wage of \$7.25 times the overtime premium of 1.5, minus the tip credit of \$5.12. If the employer pays the minimum overtime rate at one and a half times \$2.13, or \$3.195 per hour, the employee is underpaid for overtime hours in the amount of \$2.565 per overtime hour. See 29 C.F.R. § 531.60.

V. Conclusion.

If your list of current and former clients includes individuals who have been employed in any of the above-discussed industries within the past three years, there is a decent probability that they have suffered violations of their wage and hour rights and are completely unaware of it. An individual's claim might only be a few thousand dollars, but to the typical family, that's nothing to sneeze at. Even relatively small cases can be attractive to plaintiffs' attorneys who handle wage and hour claims because the relevant statutes include mandatory fee shifting provisions, and many such claims can be certified as collective or class actions on behalf of numerous similarly situated employees of the employer violating their minimum wage or overtime rights.

NEWS

DANA ALTIERI was appointed to the 2012 Charter Review Task Force by County Executive Mike Sanders. She is one of seven people that review term limits and other electoral issues that could be put before the Jackson County voters in November.

BRANDEE BOWER has joined a new firm, Brady & Associates. She handles mainly employment law, personal injury and business litigation matters.

BRAD KAVANAUGH has joined a new firm, Brady & Associates. He handles employment law, personal injury and wrongful death matter.

RACHEL KIBLER-MELBY has started her own firm, Vesta Legal. She handles estate planning, adoption law and elder law.

ELIZABETH TASSI and her husband Sean welcomed a baby girl, Greta Mae Tassi. She was born three weeks early on May 14, 2012 weighing 5 pounds 13 ounces and measuring 18.25 inches long. They are very happy new parents.

BEVERLY WEBER was selected as Intern to the Chairwoman of the Board of the Central Exchange for the 2012-2014 term.

LUCY'S KIDS FOR PEACE

Started in January, 2012 by BEVERLY WEBER and her husband in honor of their daughter Lucy, who they lost at 17 months to a brain tumor in November 2010. This is the only local Missouri and Kansas chapter of Kids for Peace (www.kidsforpeaceglobal.org) a national organization for kids that encourages them to foster peace, kindness, etc. through cross-cultural experience, hands on arts, services and environmental projects. It is a family-oriented, kid-run, community-based organization. Lucy's Kids for Peace is the Weber's way to give back to the community and remind them of what Lucy did most in her short time here was bring out kindness, support, compassion and caring. For information, email lucyskidsforpeace@yahoo.com or "Like" them on Facebook.

OFFICE SPACE FOR RENT

Heather Counts Garrett and Jean Maneke have available office space on the 9th floor of 4435 Main Street and are looking for one or two additional lawyers to share the space. Rent is approximately \$1000 per month and includes huge windows, a view of downtown and the Plaza, a spacious conference room and kitchen. Access to a phone system and copier is a possibility, plus they'll share their knowledge on using technology. There is also space for an assistant or additional file storage. Contact Jean Maneke at jmaneke@manekelaw.com or (816) 753-9000.



Throughout the years, AWL has continually supported Jackson County CASA, an organization where community volunteers speak for abused and neglected children's best interests in court. At AWL's 2012 Judicial Reception, we again collected money to support CASA. On Saturday, September 15, 2012, CASA is holding its 7th Annual Carnival for CASA fundraiser at Paradise Park in Lee's Summit, Missouri from 11am to 4pm. All AWL members are invited to attend and encouraged to volunteer. Ticket prices are \$20 in advance, \$25 at the door for participating adults, \$10 for non-participating adults and children under 2 are free. For more information or to purchase tickets and t-shirts, please see the CASA website at www.jacksoncountycasa-mo.org. Please mark this date on your calendar and plan to bring your family out to enjoy a great day for a great cause.

AWLF's Practice Development Program to be Accepting Applicants for Upcoming Program.

AWLF's Practice Development Program began in March, 2011 funded by AWLF's Second Annual Posh Nosh event. This program was the brainchild of Denise Henning and is currently co-chaired by Mira Mdivani and Annette Griggs. With the help and guidance of our program advisors, which included judges and established practicing attorneys, the flagship class of 2011-2012 was a great success. The graduates of the program have benefited by receiving group instruction, attending seminars and developing valuable relationships through a one-on-one mentoring plan. We are currently contemplating another two year program for 2013-2014. The program provides practical ad-

vice and guidance to women lawyers who are serious about developing profitable law practices or starting up their own law firm. The program is open to a set number of women lawyers who are building practices in their own firms or in existing firms. For more information or to apply for the 2013-2014 class, go to www.awl-kc.org and click on the AWL Foundation, Practice Development Program link. Information on applications will be available in mid-August, 2012. Also, look for upcoming information on an exciting fundraising event expected to be held in November! For more information contact program coordinator, Karan Garrison, at kgarrison@offmyplatter.com or (816) 304-3799.

AWLF Connections Update:

Aubrey Gann-Redmon

First and foremost, AWLF Connections wishes to extend their deepest condolences to Denise Henning for the sudden loss of her husband, Tim Henning. Denise's dedication to this Program and its mentees has been invaluable and life changing for all those involved, and if there is way any of us can be of assistance to Denise, we encourage her not to hesitate to enlist us.

The Class of 2011 recently held a baby shower for one of their mentees, Ashley Felton. Additionally, Gillian Ruddy (2011) is engaged to marry Andrew Wilcox of Polsinelli in July 2012 in Des Moines, Iowa. Kendra Ayuk

(2010) gave birth to Cameron Emmanuel Takaw Ayuk on March 26 at 6:40 a.m. Cameron came in weighing 8 pounds, 10 ounces, and is 18.5 inches. Kendra and baby are doing just fine, and McKenzie is fascinated by her baby brother. Samara Zaman (2010) gave birth to her first son, Faizan Zaman on March 12, 2012. Mother and baby are doing great!

Congratulations are also in order to Kelly McCambridge (Class of 2009) for her recent KCMBA Young Lawyer of the Year Award! Monica Webster (Class of 2012) has achieved the Competent Leader award from Toastmasters International. Toastmasters is

an organization that focuses on public speaking and leadership skills. Sherri Wattenbarger (Class of 2012) was named recipient of the Women's Justice Award for Public Service on April 16, 2012. This award recognizes women government and nonprofit lawyers who improve the quality of the justice system or contribute to the betterment of the legal profession. Additionally, on May 18, 2012, Sherri was announced as a recipient of the 26th Annual Attorney General's Volunteer Award for Community Service. This very prestigious award recognizes Sherri's exemplary community service efforts. Sherri will be presented with this award at a ceremony to be held in Washington D.C. on June 1, 2012.

Congratulations to our mentors and mentees on all of these personal and professional milestones!

All Connections Groups participated in the CureSearch walk to raise money for the treatment of childhood cancer. Since pictures are worth a thousand words, Erica Briscoe of the 2012 Class has been kind enough to share them with us:

Meredith Webster (Class of 2012) also reports that Team AWL Connections 2012 successfully raised \$2,445.00 for children's cancer research and services and in memoriam of Lucy Weber through its participation in CureSearch Walk on April 21st. The 2012 Class thanks the thirty-one team participants for all their efforts and support, as well as Bev Weber and the rest of Lucy's family for allowing them to be there to honor Lucy's memory. The walk was a little chilly and windy, but team members were in good spirits as they formed a cancer-fighting, purple-adorned army with Team Lucy Goose. The walk around Community America Ballpark began around 10:00 a.m., following opening ceremony. Teams donned lime bandanas honoring the brave children battling cancer and stood behind decorated banners with their team names as they proceeded around the stadium to theme music. The walk was short but poignant.

Way to go AWLF for another spring packed with good deeds!



Roxanne Barton Conlin Scholarship



Caroline Zuschek

Caroline Zuschek, a student at the University of Missouri – Kansas City School of Law, will begin her 3rd year of law school in the fall of 2012. Caroline was selected by the AWL Awards and Scholarship Committee from a strong pool of can-

didates to receive the 2012 Roxanne Barton Conlin Scholarship. She was presented the scholarship at the AWL Judicial Reception.

Awarded annually to a female law student who is entering her 2nd or 3rd year of studies, the scholarship honors academic excellence, community service and involvement in activities promoting women. The scholarship award was in the amount of \$2000, and also included a complimentary AWL membership as a student and for the first 3 years of practice.

Caroline has been a longtime advocate for women's issues. In college, Caroline worked the night shift at Avalon's Safe House, which is a center for women and children of domestic violence. She also served as an intern Sexual Assault Awareness Volunteer & Education Coordinator and interned as a Sexual Violence Hotline Counselor. It was through these experiences that Caroline decided to become a lawyer. She wanted to do more than listen to these women, she wanted to act on their behalf.

While in law school, Caroline has worked with Professor Nancy Levit on her gender and justice primer, championed women's issues and the rights of many as an intern with the American Civil Liberties Union of Kansas and Western Missouri. Additionally, she has interned for the Honorable Sarah Hays of the United States District Court for the Western District of Missouri.

This summer, Caroline is working as a summer associate in the litigation department at Stinson Morrison Hecker in Kansas City. Although Caroline is undecided whether she will pursue public interest or private practice after graduation in May 2013, it is her goal to continue her personal crusade against discrimination in all of its forms and to help those who lack the financial means to fight injustice on their own.

Please join AWL in congratulating Caroline Zuschek!



Association for Women Lawyers
of Greater Kansas City

AWL/AWLF "I'M NOT SERIOUS ABOUT GOLF" Tournament

September 28, 2012

**SWOPE MEMORIAL GOLF COURSE,
6900 SWOPE PARK PARKWAY,
KANSAS CITY, MO
816-513-8910**

Lunch at 11:30 and Tee Off at 12:45
Lunch and Golf (9 holes) - \$75.00; Lunch Only - \$15.00

GOLFER/LUNCH REGISTRATION

Please submit a registration for each golfer or lunch guest.
Payment must be received by September 21st.

Please check the appropriate option: Lunch and Golf _____ Lunch Only

Name _____

Are you an AWL member? Yes _____ NO _____

Firm/Organization Name: _____

Phone _____ Email: _____

If paying by check, Check No. _____

I have played golf _____ times in the past two years. In keeping with the spirit of the tournament, teams will comprise players with varying frequency of play. NO PRE-ARRANGED TEAMS.

**Please submit registration, registration fees,
and monetary sponsorships to
Elizabeth S. Lynch, 1308 NE Windsor Drive, Lee's Summit, MO 64086
by September 21, 2012.**

Please make checks payable to AWLF.
Questions? Call Betsy Lynch at 816.434.6616 or email at lynch@lynchsharp.com.



Association for Women Lawyers
of Greater Kansas City

AWL/AWLF “I’M NOT SERIOUS ABOUT GOLF” Tournament

September 28, 2012

**Swope Memorial Golf Course, 6900 Swope Park Parkway, Kansas City, MO
816-513-8910**

Lunch at 11:30am and Tee Off at 12:45pm SHARP!

SPONSOR REGISTRATION

Be a proud HOLE SPONSOR for AWL/AWLF’s premier 2012 sporting event! Contributions to raffle, goodie bags, drink carts, or other services are also encouraged. All sponsors will be recognized for their generosity. Please indicate your sponsorship below.

- _____ \$200 “NOT SERIOUS” Hole Sponsor
- _____ \$300 “COMPLETELY NOT SERIOUS” Hole Sponsor
- _____ \$500 “SERIOUSLY NOT SERIOUS” Hole Sponsor
- _____ \$1,000 “SOLE HOLE” Hole Sponsor

- _____ Drink Cart Sponsor: Contribution Amount:
- _____ Raffle Prize Donation: Contribution Description:
- _____ Goodie Bag Donation: Contribution Description:

Contact Person: _____ Phone Number: _____
Name (as you would like it to appear on acknowledgement): _____
Address: _____

AWLF is a registered 501(c)(3) organization. Donations MAY be tax deductible. Please consult your tax advisor. AWLF’s Tax ID Number: is 26-3040532. By submitting a registration, you grant AWL/AWLF permission to use your name, photo, video, likeness, professional affiliation, and quotes for AWL/AWLF promotional purposes, waive any right to inspect or approve the manner of such use, and waive all rights to privacy or publicity with regard to your participation or such use.

**Please submit registration, registration fees, and monetary sponsorships to
Elizabeth S. Lynch, 1308 NE Windsor Drive, Lee’s Summit, MO 64086 by September 21, 2012.**

Please make checks payable to AWLF.

Questions? Call Betsy Lynch at 816.434.6616 or email at lynch@lynchsharp.com.

SAVE THE DATE for the 2012 AWL GOLF TOURNAMENT

We hope you will join us on September 28, 2012 at Swope Memorial Park for AWL’s 2012 “I’m Not Serious About Golf” tournament. If you’ve never participated in our tournament before, it is a jovial event with lunch and 9 holes of golf for only \$75! We welcome first time golfers. We are not serious about golf...just fun!

If you are looking for a GREAT way to get more involved with AWL, please consider joining the GOLF COMMITTEE! The beauty of the Golf Committee is that you can be as little or as much involved as you’d like. Volunteer opportunities exist for all our members, including but not limited to: Soliciting donations, Requesting raffle prizes, Contacting firms for sponsorships, Asking your friends to play in the tournament, Helping stuff goodie bags, Working the sign-in table, etc. **The golf committee holds its committee meetings on the second Tuesday of every month from May through September** at Charlie Hooper’s Bar & Grill located at 12 West 63rd Street Kansas City, MO 64113 from 5:30-6:30pm. Meeting Dates are: 7/24/12, 8/14/12, 9/11/12 **Bag Stuffing: 9/27/12 @ 5pm @ Swope Memorial Golf Course**Tournament: 9/28/12 **if you’d like to help with the tournament but are unable to attend the committee meetings**, please contact Betsy Lynch at 816.434.6616 or lynch@lynchsharp.com for more information on how to get involved despite any conflicts you have with these meetings!

