

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Legal Malpractice

Plaintiffs filed this legal malpractice action after attending a mediation in a case filed against them in state court. In the federal action, plaintiffs alleged that their attorney failed to assess and advise them of the risk of going to trial, discounted and contradicted the mediator's assessment of the likelihood of success of the claims against them, and failed to advise of the consequences of a loss at trial. After a bench trial, the state judge entered a judgment against plaintiffs for \$364,503. Judge King granted summary judgment to defendants after concluding that a draft settlement agreement from the mediation is inadmissible in this action because of ORS 36.222, which prohibits admission of mediation communications. Without the draft settlement agreement, plaintiffs did not have the evidence needed to prove their malpractice claim.

Fehr v. Kennedy,
CV 08-1102-KI
(Opinion, July 24, 2009)
Plaintiffs' Counsel: Philip
Lebenbaum

Defense Counsel: Janet Schroer,
Matthew Kalmanson

Employment/Free Speech

Plaintiff Mary Shultz alleged Defendants Multnomah County and Cecilia Johnson discriminated and retaliated against her by eliminating her position. Plaintiff alleged (1) the County and Johnson in her individual and official capacities retaliated against plaintiff for exercising her right of free speech under 42 U.S.C. § 1983, (2) the County wrongfully discharged her, and (3) the County retaliated against her by eliminating her position after she reported conduct by the County that she believed to be unlawful under Oregon Revised Statute § 659A.200, *et seq.*, against the County.

Defendants moved for summary judgment on Shultz's § 1983 claim on the grounds that (1) Shultz was unable to establish liability against the County or against Johnson in her official capacity because the allegedly unlawful decision was not made by a person with final policymaking authority nor ratified by a person

with final policymaking authority, and (2) Johnson was entitled to absolute legislative immunity in her individual capacity. Judge Brown concluded the County's final policymaker with respect to employment policy was the County Chair and that he did not delegate his authority to Johnson nor ratify her allegedly wrongful conduct. The Court also concluded Johnson was entitled to absolute legislative immunity in her individual capacity against Shultz's claim because the decision to eliminate Shultz's position was part of the County's budget-making process. Judge Brown, therefore, granted defendants' Motion as to Shultz's § 1983 claim.

Defendants also moved for summary judgment on Shultz's wrongful-discharge claim on the ground that she had adequate remedies available under Oregon Revised Statute § 659A.200, *et seq.*, and § 1983. Judge Brown concluded § 659A.200, *et seq.*, did not preclude Shultz's wrongful-discharge claim because the Oregon legislature has clearly and affirmatively

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expressed its intention that statutory claims do not supersede common-law claims. *Olsen v. Deschutes County*, 204 Or. App. 7, 14 (2006). In addition, the Court concluded available remedies under § 1983 did not preclude Shultz's wrongful-discharge claim. Judge Brown, therefore, denied defendants' Motion as to Shultz's wrongful-discharge claim.

Finally, Judge Brown granted defendants' motion for summary judgment on Shultz's whistleblowing claim under § 659A.200. Judge Brown concluded Shultz made two disclosures as defined by the statute, but could not establish, as a matter of law, any causal link between those disclosures and the decision to eliminate her position. Shultz v. Multnomah County and Cecilia Johnson,

08-866-BR

(Opinion, May 26, 2009)

Plaintiff's Counsel: Richard Busse

Defense Counsel: Jenny M. Morf

Employment

Plaintiff brought this action against Lane County and various County employees, asserting violations of state and federal law related to his termination from his position working at the Lane County Health and Human Services animal shelter. Defendants filed a motion to dismiss pursuant to Fed.

R. Civ. P. 12(b)(6).

Judge Aiken granted defendants' motion to dismiss plaintiff's claims for free speech retaliation under the Oregon Constitution; retaliation under the Family Medical Leave Act; dismissed all claims against individual defendants in their official capacities; and all claims against Lane County Health and Human Services. Judge Aiken further granted defendants' motion to dismiss plaintiff's claims for intentional interference with economic relations and for aiding and abetting discrimination against the individual named defendants; to substitute the County as the defendant in said claims; and to dismiss plaintiff's claim for intentional interference with economic relations.

Finally, Judge Aiken denied defendants' motions to dismiss plaintiff's § 1983 claims against the County and Fleenor Wellington v. Lane Co., et al.

Cv 09-6063-AA

(Opinion, July 27, 2009)

Plaintiff's Counsel: Thomas Doyle

Defense Counsel: Jens Schmidt

Jury Trial:

Dimon v. State of Oregon,

CV 08-6152-HO

Judge Hogan presided over this 6-day employment discrimination trial where plaintiff alleged discrimination based on gender. The jury returned a verdict for the defendant.

Plaintiff's Counsel: Dana Sullivan
Defense Counsel: Elizabeth Bonucci, Steve Dingle

Of Interest:

Chief Judge Ann Aiken will introduce former Oregon Supreme Court Justice, Susan Leeson, who will speak at the monthly Federal Bar Association Luncheon on the District Court's emerging ADR program. The luncheon is scheduled to begin at Noon on Thursday, September 17, 2009 at the University Club, 1225 SW 6th Avenue, Portland. Please email your registration to Ann Fallihee, afallihee@barran.com, or you may simply show up!

Reminder: Oregon Historical Society Annual Picnic - this Sunday

August 16, 2009: United States District Court of Oregon Historical Society Annual Picnic. 1:00 p.m. until sundown at the Leavy Farm located at 22675 Butte Ville Road, N.E., in Aurora, Oregon. This year the picnic will honor the tribal representatives and lawyers who have been involved in Native American issues in the federal courts in Oregon. Please RSVP to 503-326-8150 or mary_ellis@ca9.uscourts.gov