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The Lawyers of Triquetra Law focus our practice on ACE

Appeals

Civil Rights

Employment Law & Policy

Race Discrimination in Employment

Title VII of the historic Civil Rights Act of 1964 makes it unlawful for an employer to discriminate based upon an individual's race, color, religion, sex, or national origin. Title VII covers a full range of employment actions including:

- hiring; recruitment; promotion;
- wages; performance evaluations; training opportunities; work schedules; and
- transfers; termination; and retaliation

Title VII does not explicitly define race, but interpretations include discrimination based on a person's ancestry associated by physical and cultural commonalities of skin color, hair texture and styles, or facial features. "Color" discrimination involves intentional and different treatment of employees based upon skin pigmentation.

Basically, everyone working for an employer with more than 15 employees is protected from race and color discrimination under Title VII.

Story continues on pg. 4.

Find an excellent fact sheet by the Equal Employment Opportunity Commission at: www.eeoc.gov

Triquetra Networks with Black Law Student Association at PSU Dickinson School of Law

Andrea Farney attended *Networking: How to Build Relationships for Professional Success*, at the PSU Dickinson School of Law. Dianne Nichols, Co-Vice Chair of the Minority Bar Committee of the PBA and Craig A. Thompson, Esq., partner with Venerable LLP, gave entertaining speeches on marketing. Andrea offered law students a glimpse of life beyond law school and also warm greetings from the LBA's Diversity Committee. Triquetra looks forward to future events supporting law school and law firm connections.

Diane Nichols, Esq., Co-Vice Chair, Minority Bar Committee of the PBA; Craig Thompson, Esq., Partner, Venable LLP; Kandi Morris (1L),BLSA

Section 1983: Civil Rights Enforcement

By Andrea C. Farney, Attorney at Law

A number of federal civil rights statutes provide the basis for an individual's federal lawsuit against government actors. Section 1983, (42 U.S.C. § 1983), is perhaps the most well known. In a relevant part, §1983 states:

> "Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State…, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured…"

By enacting §1983, Congress created a private right of action to enforce the 14th Amendment of the U.S. Constitution. A main purpose of the law, part of which was titled the Ku Klux Klan Act, was to remedy oppressive police and individual group attacks targeting Southern blacks. In its first almost one hundred years, however, Section 1983 was rarely invoked and was restrictively interpreted by the U.S. Supreme Court. Then came the watershed case of *Monroe v. Pape*. *Monroe* shed light on the need for §1983 litigation. *Monroe* said that §1983 was necessary because "by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies."

To make a Section 1983 claim, plaintiffs must show that:

1. They have been deprived of a federal statutory or constitutional right
2. By someone acting under color of state law.

Whether a state actor was acting under color of state law is a threshold issue. A common example of a state actor in Section 1983 cases involves police engaging in police misconduct. Some examples of police misconduct include excessive force, false arrest, or unreasonable search and seizure.

Court opinions commonly explain that Section 1983 does not create any new civil rights, but is a means or a vehicle to enforce existing constitutional rights.

Section 1983 can also address intentional race motivated misconduct by the police. A now recognized phenomenon is racial profiling, sometimes referred to as "driving while black." In *Whren v. U.S.* the U.S. Supreme Court upheld the use of pretextual stops by police under the 4th Amendment, but held that racially motivated stops could be actionable under the equal protection

clause of the 14th amendment. In such a §1983 case, a person of color proves intentional discrimination with evidence that they were treated differently than similarly situated white persons. Plaintiffs must also show some evidence of "racial animus" in addition to disparate treatment. Racial animus can be shown by the use of derogatory statements, tone, or racial slurs. An example of this is *Carrasca v. Pomeroy,* where the court held a claim was sufficient where a park ranger referred to "Mexicans" in a derogatory tone.

Section 1983 corrects abuse of state power that both intentionally targets people of color as well as disproportionately affects them. In Pennsylvania, the statute of limitations for § 1983 is two years.

If you suspect you are a victim of a civil rights violation, contact Triquetra Law Offices for a § 1983 assessment.

Section 1983 corrects abuse of state power that . . . targets people of color . . .

Legal Notes:

Triquetra Lawyers Hear Race and School Choice SCT Arguments

Triquetra lawyers made our latest trip to the U.S. Supreme Court on December 3, 2006 to hear oral argument in two high profile public high school racial integration cases: *Parents Involved in Community Schools v. Seattle School District* and *Meredith v. Jefferson County Board of Education.*

We arrived at the Court in time to witness the end of a Howard University student-sponsored march supporting race diversity in schools. Inside the building, our Supreme Court Bar memberships got us into the Lawyers Lounge, but not into the overflowing courtroom. We settled in with our feet up to hear live argument piped into the room—and we counted ourselves lucky to experience contemporaneous history in the making.

Does the government have a compelling interest in remedying de facto – as opposed to de jure – segregation?

The Seattle School District's lawyer described Seattle's "open choice" assignment plan allowing students entering high school to rank their top three school choices. If a school was oversubscribed, the district looked at several tiebreakers, including whether the school was "racially imbalanced."

The Jefferson County Kentucky district, once under a mandatory federal court desegregation order, described their voluntary plan to promote integrated schools. The plan allowed the school district to consider a student's race in determining whether or not to grant a transfer to another school. While students generally receive one of their top choice schools, it is possible that a student's choice will be rejected based on the student's race.

Parents sued the school districts in both cases claiming that the Kentucky guidelines and Seattle's race tiebreaker were unconstitutional. The Supreme Court's task is to determine whether the schools are violating the parties' equal protection rights under the 14th Amendment.

The Court may consider whether the districts' plans were impermissible "quotas." A bottom line question that could dictate the result is whether the plans unduly burden members of a racial or ethnic group by denying preferred school choice as opposed to an education itself.

The Court's own makeup is significantly different than the last time the issue of race and education was decided in the University of Michigan affirmative action cases a/k/a *Grutter*. Justice O'Connor has retired and Chief Justice Roberts and Justice Alito are new to the bench. Justice O'Connor provided the fifth vote to uphold the constitutionality of the plan in *Grutter*. Will the new Court

Can a public school district consider race to support racially diverse schools?

distinguish postsecondary education on one hand, and K-12 schools when looking at whether race can be used to pursue integration? The Court must closely examine the social and education benefits that come from racial and ethnic diversity in secondary education, balanced against the consequences of using race as an isolated factor in classifying and identifying students. Yet at argument, some justices wanted to know how to achieve racial integration in the absence of race as a consideration. A decision is expected by June 2007.

To learn more about the case go to www.supremecourtus.gov or contact Triquetra Law Offices.

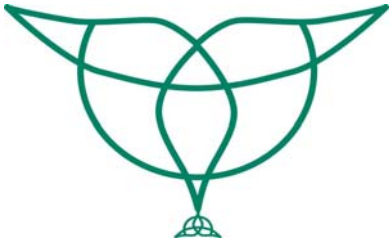
Triquetra Law Offices

Mailing address:
The Offices at Marion Court
35 East Orange Street, Suite 301
Lancaster, PA 17602

Phone: 717-299-6300
Fax: 717-299-6338

Visit us on the web:

http://triquetralaw.com



Dedicated to justice - Responsive to you

Our mission:
The lawyers of Triquetra Law embrace our responsibility as legal engineers of social change by providing zealous, high quality legal services.

We believe:
We believe that justice sometimes requires an advocate, and in the immortal words of Dr. Martin Luther King Jr.:
"Laws only declare rights; they do not deliver them."
Where Do We Go from Here: Chaos or Community? (1968).

How we practice law:
- We partner with clients by listening and providing options
- We problem-solve with clients in response to their identified needs
- We zealously pursue worthy legal claims and remedies on behalf of our clients
- We offer full representation through appeal, where appropriate
- We view our advocacy as a means to give clients a voice in our justice system

Triquetra Law Offices

"A progressive law firm dedicated to justice and responsive to you"

Race Discrimination in Employment cont'd

Cont'd from page 1—

Meeting the short deadlines in employment cases is critical. A non-federal employee must bring a discrimination charge to the EEOC within 180 days from notice of the adverse employment action. It is possible to file a charge with the EEOC within 300 days, but the claimant may forfeit state law remedies. A claimant can sue in federal court after obtaining a right to sue notice from the EEOC, or within 90 days from the EEOC's decision to close the case and issuance of the right to sue notice.

Race and color-based discrimination claims fall into four types:

- Disparate treatment; intentional discrimination; harassment; and retaliation.

Disparate treatment occurs when an employer acts differently toward an employee or group of employees because of race or color. *Intentional discrimination* occurs where an employer takes an adverse action against an employee and intends to do so because of that person's skin color or racial makeup. *Racial harassment* claims arise where an employer allows or cultivates a racially hostile environment or neglects to take prompt action to investigate and redress complaints of racial harassment. A *retaliation* claim occurs when an employer does things such as switching shifts, firing, or denying opportunities to an employee because the employee made a complaint about racial harassment or discrimination, or participated in an EEOC investigation.

"Meeting the short deadlines in employment cases is critical."

At Triquetra Law we concentrate on employee discrimination cases. We urge attorneys and claimants to contact us as soon as possible for referrals, case assessments, information, and remedies.