

# BUSINESS LAW NOTES

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Our law firm has provided exceptional legal services to clients throughout the state and the U.S. for more than 45 years. A full-service firm founded in 1955, we have built a reputation for helping clients solve difficult problems with sound counsel, sophisticated analysis and superior performance.

A hallmark of our firm is personalized client service. Recognizing that each of our clients has a unique set of issues, objectives and needs, our firm is committed to individualized attention and works as an integrated team to respond to our clients' needs. We serve diverse clients, including Fortune 500 companies, government agencies, professional associations, closely held corporations, limited liability companies, partnerships and individuals.

## JHVGG FORMS AFFILIATION WITH TURNER & YATES LAW FIRM IN BOONE

By F. Stephen Glass

JHVGG is pleased to announce an affiliation with the law firm of Turner & Yates, P.A., located in Boone, North Carolina. The affiliation will provide a relationship that will enable both firms to increase their capabilities in quality service to their respective clients.

Although each firm will maintain its separate entity status, there will be opportunities for clients of one firm to receive the benefit of the professional experience and skill of the other. Through the use of state-of-the-art technology, attorneys and clients of one office can have virtual conferences with attorneys in the other office.

The initial focus of the affiliation will be business, business succession planning, estate planning, estate tax and administration services.

Turner & Yates, P.A., is located at 136 North Water Street in Boone. John A. Turner and David W. Yates are partners in the firm, and Tricia L. Wilson is Of Counsel to the firm. She formerly practiced in Raleigh with F. Stephen Glass. She is a highly experienced attorney and has authored an article (page 2) in this issue of *Business Law Notes*.

Clients of both firms should benefit from this affiliation in many ways.



## JHVGG Welcomes P. Lee Craven, III

We are pleased to announce the association of P. Lee Craven, III, with our firm. Mr. Craven is a graduate of the University of North Carolina (B.A., 1998) and its School of Law (J.D., 2002), where he was a member of The Order of Barristers and the Holderness Moot Court.

Mr. Craven comes to our firm with more than three years of experience in civil litigation with a Durham law firm. He will concentrate his practice with our firm in the areas of general business and commercial civil litigation. Mr. Craven practices in the firm's Raleigh office.

The addition of Mr. Craven as an associate attorney with our firm is an example of our commitment to the delivery of quality legal services to our clients.

## BUSINESS LAW NOTES

### REGISTER YOUR TRADEMARK AND PROTECT YOUR INVESTMENT

By Tricia L. Wilson, Turner & Yates,

Have you recently developed a unique product or innovative service which you plan to market and sell? Did your creative team come up with a great new name, design or logo for your product? Why not protect your investment, and avoid future litigation and unwarranted expense by trademarking your product or service? Trademarks are distinctive words, symbols or pictures affixed by a seller to distinguish and “brand” a product or service. Products have trademarks and services have service marks. Trademark status may be given to distinctive or unique packaging, to names or logos, and may even include sounds, smells, and architectural designs. The purpose of trademark law is to protect consumers who rely on such marks in selecting their preferences by prohibiting competitors from using identical or similar marks in a manner that creates confusion about the source of goods or services. Those who infringe a registered trademark face costly litigation expenses, immediate renaming of their product, recall of products, forfeiture of profits, and the expense of remarketing the product under a new name.

In the United States, trademarks may be protected by both Federal statute and by the various states’ common law and statutory laws. Under federal law, a seller applies to register a trademark or service mark with the U.S. Patent and Trademark Office (PTO). The mark can already be in commercial use or may be one that will be used in the future, for which protection is sought prior to introducing the product into commerce. This is called an “Intent-to-Use” Trademark Application.

The N.C. Secretary of State registers and renews trademarks and service marks. Currently, more than 13,500 trademarks and service marks are registered in North Carolina, and the fee for registration is \$50.

Without registration with the U.S. PTO for federal marks, or with the N.C. Secretary of State for state marks, common law will govern, and rights are granted to those who have been using the mark for the longest time within the mark’s geographic trade area. In order to claim common law rights, use must be substantial and in the ordinary course of business. Mere internal use by a company will not suffice. Placing marks on the goods and using the mark in commerce or in connection with the sale and advertising of goods and services will generally suffice.

There are essentially four different categories of trademark protection. At one end of the spectrum are generic terms, which can claim no protection. At the other end are arbitrary or fanciful terms which can almost always claim protection as a result of the uniqueness. In the middle range, where most marks fall, are suggestive or descriptive marks. A qualified trademark attorney can generally provide a legal opinion as to whether the mark or word group will qualify for protection.

There are many benefits associated with registering a trademark with the U.S. PTO. Not only is the seller given exclusive ownership rights for the mark within its industry, the owner has the right to expand nationwide, even if the mark is only being used in one or two states. If another mark is infringing upon the protected mark, access to federal courts is available, as well as a greater chance of recovering monetary damages. An owner of a protected mark can stop the importation of infringing goods into the United States. Other entities will more readily accept your trademark and right of first use common law rights when you have a federal, registered trademark.

The right to use the © symbol notifies others of your federal trademark rights when finally registered. While a mark is pending registration, the ™ symbol is used for products and the SM symbol is used for services. Use of these symbols shows others that you claim protection to your name or logo. Federal trademark registration is recommended if the business is offering its goods or services in at least two states, plans to expand, so there is geographic room for growth. The cost of registering a Federal trademark can vary depending on the complexity and scope of the legal research involved, usually performed by a law firm which specializes in this area of practice. The fee for registering a federal trademark is \$325 per class of goods or services when registering online (\$50 more for a paper application). To register a trademark with the U.S. Patent and Trademark Office the owner must first use it in interstate commerce, which means that the mark must be used in products or services that cross state, national or territorial lines, or that affect commerce crossing such lines—for example, a restaurant or motel that caters to interstate or international customers. If a product or service is only used in one state and cannot qualify for federal protection, state registration is still a good idea in that it notifies anyone who checks that state’s list that the mark is owned by the registrant. This fact may lead most would-be users of the same trademark to select another mark rather than risk a legal dispute with the mark’s registered owner.



**BUSINESS LAW NOTES**

**Application of Federal Employment Laws to Private Employers**

By P. Devan Culbreth

<b>Law or Act</b>	<b>Brief Description</b>	<b>Threshold # Employees</b>
<b>ADA</b>	<b>Americans with Disabilities Act:</b> Prohibits employers from discrimination against a “qualified individual with a disability” who can perform the “essential functions of the job” with or without a “reasonable accommodation.”	<b>15 or More</b>
<b>Title VII</b>	<b>Civil Rights Act of 1964:</b> Prohibits covered employers from discriminating against employees on the basis of race, color, religion, sex or national origin.  <b>Pregnancy Discrimination Act:</b> Part of Title VII, this act prohibits covered employers from discriminating on the basis of pregnancy, childbirth or complications related to pregnancy or delivery of a baby.	<b>15 or More</b>
<b>ADEA</b>	<b>Age Discrimination in Employment Act:</b> Prohibits covered employers from discrimination against employees age 40 and over because of their age.	<b>20 or More</b>
<b>FMLA</b>	<b>Family &amp; Medical Leave Act of 1993:</b> Applies to employers with 50 or more employees within a 75-mile radius of the employer’s facility. FMLA provides eligible employees with up to 12 work weeks of unpaid leave of absence during any 12-month period for the following reasons: (1) The birth of a child; (2) The placement of an adopted or foster child; (3) To care for a child, spouse or parent of the employee who has a “serious health condition;” and (3) For the employee’s own “serious health condition.”	<b>50 or More</b>
<b>FLSA</b>	<b>Fair Labor Standard Act:</b> Governs payment of at least minimum wage to all employees, payment of time and a half to employees who are “non-exempt,” as defined by numerous FLSA regulations, and regulates the employment of youth.	<b>Virtually All Employers Covered!</b>

**The North Carolina Workers' Compensation Act** requires that any employer who employs three (3) or more employees provide worker's compensation coverage. *Even part-time employees or seasonal workers must be counted in the tally if such workers are "regularly" employed.*

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**F. Stephen Glass** is the author of *The Legal Handbook for North Carolina Businesses; Your Estate Planning and Administration Handbook; Limited Liability Companies Update 2004 (Formation and Operation); State LLC Law Issues; LLC Tax Issues; LLC Securities Law Issues; Special Uses of LLCs; Contract Preparation: Drafting Complete and Unambiguous Contracts; North Carolina Family Limited Partnership Update*. His practice is concentrated in the areas of business, employment and corporate law, business succession planning and estate planning. He serves on the Cary board of Capital Bank.

**Tricia L. Wilson** is Of Counsel in the Boone law firm of Turner & Yates, P.A. She is a graduate of UNC at Chapel Hill, with honors, and a graduate of Duke Univ. School of Law, with honors. She is active in her community through service on the Boone Chamber of Commerce and the United Way. Her practice concentrates in estate planning and business and corporate law.

**P. Devan Culbreth** is an associate with JHVGG. She is a graduate of Wake Forest University, cum laude, and of its law school. Her practice concentrates on estate planning, business and corporate law, and automobile dealer legal transactions.

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# BUSINESS TAX LAW



By F. Stephen Glass

**Richardson v. Commissioner (2006) TC Memo 2006-69.** In this case a sole proprietor and his wife's capital loss carry-forward claim was denied by the IRS. The taxpayers offered no explanation of when/from whom what loss was generated. The IRS also determined that the taxpayers had unreported capital gain in the year at issue in the full amount of the proceeds received on the sale of stock that they held in a sham trust and with respect to which they showed no basis. The IRS positions were upheld by the Tax Court.

**Jordan v. U.S., DC, Dis. MN, 97 AFTR 2d (2006-6620).** The airline pilot taxpayer's expenses failed the "away from home" rule because his Alaska jobsite at which he worked for over a year was his regular place of abode for tax purposes, regardless of his maintenance of a home in another state. Also, the expenses failed the "ordinary and necessary" requirement since they were incurred solely for taxpayer's personal convenience and his desire to keep his home elsewhere, not to accommodate his employer or as a result of business exigencies. The court held that the expenses were not working condition fringe benefits excludable from wages since they were not qualified as deductible business expenses.