

LAM | LYN | PHILIP

LAM LYN PHILIP WELCOMES BARBARA GARDNER

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Community & People

- **Noelle Hicks** recently joined Lam Lyn Philip as a Senior Associate.
- **Carlos Peniche** attended the National Hispanic Bar conference in Atlanta in March
- **Lam Lyn Philip** is a proud supporter of the Houston Area Women Center
- **Sherly Philip** was guest speaker at the South Asian Law Students Association (SALSA) meeting at South Texas College of Law in Houston.

Lam Lyn Philip is pleased to announce that **Barbara Gardner** has joined our firm as a partner to head the firm's newly established Employment Practice Group. This new section of the firm was created in response to the repeated requests from existing clients for this service.

After graduating first in her law school class in 1981, Ms. Gardner served as a judicial clerk for the Honorable Carl Bue, United States District Judge. Ms. Gardner then worked for Bracewell & Patterson (now "Bracewell & Giuliani") before going to Mandell & Wright where she became a partner. In 2004, the lawyers closed Mandell & Wright and put their names on the door - Tucker, Vaughan, Gardner & Barnes.

During her 30 years of practice, Ms. Gardner has represented both employers and employees, giving her a balanced view from both sides of the courtroom. Ms. Gardner has frequently represented high-level executives, which has provided her with a unique perspective regarding business operations and financial matters. Ms. Gardner is board certified in Labor & Employ-

ment Law by the Texas Board of Legal Specialization. Additionally, Ms. Gardner is an accomplished author and teacher, having presented many continuing legal education courses to other lawyers. Also, she taught several years as an adjunct professor at the University of Houston Law Center. Most recently, Ms. Gardner was a candidate for the 14th Court of Appeals, and her many endorsements for that position included the Houston Chronicle.

Kurt Lyn, Managing Partner of the firm, has stated, "We are extremely fortunate to have someone as highly qualified as Barbara to head our Employment Practice Group. We are confident that we will be able to offer the same high level of service in the employment arena as we have in the commercial litigation and collection areas."

Ms. Gardner believes that going to trial is a last resort, and she has an abundance of experience in negotiating settlements of disputes. However, when trying a case is the only choice, Ms.

Gardner is a passionate advocate for her client. She is at ease in the courtroom and quickly establishes a good rapport with the jury. It has been suggested that this is because Ms. Gardner performed on stage for four years before going to law school. Most important, adds Lyn, Ms. Gardner has a high rate of success in trying employment cases.

Ms. Gardner has been rated the highest possible level, "Preeminent," by Martindale Hubbell. She has been chosen by her peers to be included in "Best Lawyers of America" since 2007. Other awards include one of "Top 100 Trial Lawyers in Texas," one of "Texas' Super Lawyers" for a number of years, and one of the "Top Lawyers" in *Corporate Counsel*. Additionally, Ms. Gardner has been interviewed several times as an expert in her field on Houston's Fox 26 News TV.

"I am pleased to be joining a firm with an already accomplished, bright group of attorneys. And the efficiency of the law practice is rather amazing. This is a well-oiled machine," says Ms. Gardner.



ALWAYS DOING OUR BEST

Growing up our parents and teachers taught us to always do our best. "Kurt, you just never know who might be watching" is what managing partner, Kurt Lyn, fondly remembers his mother saying. Here at Lam Lyn Philip we assume that our clients and others are always watching and try to instill a

culture of always doing our best.

Always doing our best is of course easier said than done. As a firm that focuses largely on commercial collections matters it is often easy and perhaps unavoidable to categorize files as "dead on arrival". This may be further reinforced if the file is contingency based since not many profession-

als are interested in working on matters for which they are not being compensated. It is in these situations that it becomes particularly important to excel and do our best because mediocrity will stand out like a sore thumb. Excellence in these situations shapes an attorney's reputation and provides an opportunity to shine.

POSTJUDGMENT REMEDIES: ADDING VALUE TO A JUDGMENT

In litigation we often think of winning a judgment as the ultimate goal of our efforts. However, simply winning a judgment often does not satisfy a client's aim. Indeed, most clients are seeking not just a judgment but to collect the damages associated with the judgment which they have worked so diligently to obtain.

To help clients achieve this goal and add value to a judgment, an attorney should advise clients of any available post judgment remedies. The most commonly used remedies are post judgment discovery, judgment liens, executions and garnishments.

Post judgment discovery functions much like pretrial dis-

covery in that the familiar tools of depositions, interrogatories and production of documents are available. However, many of the limitations on these tools that existed in pretrial discovery are removed. For example, questions regarding financial information may be appropriate. These tools may provide the plaintiff with information regarding assets which may satisfy a judgment.

A judgment lien is created when an abstract is properly filed and indexed in the county records where the real property is located. Judgment liens create a lien against non-exempt real property of the defendant in that county. The lien continues for ten years and may be extend-

ed.

An execution is accomplished by requesting the clerk to issue a Writ of Execution. The writ directs the sheriff or constable to levy on a defendant's non-exempt property. The property is sold at a public auction and the proceeds of the sale are delivered to the plaintiff.

A garnishment allows the plaintiff (garnisher) to collect property of the defendant held by a third party (garnishee). Financial institutions are the most common group of garnishees. However any third party holding property or owing a debt to a defendant potentially can be a garnishee. Garnishments may be filed as soon as a judgment is signed.

ORGANIZATIONS WE SUPPORT

Lam Lyn Phillip is committed to supporting organizations that strive to inspire and serve our community - The Houston Area Women's Center (HAWC) is a great example of that. The HAWC provides shelter, counsel and advocacy to individuals affected by domestic and sexual violence.

HAWC's 24 hour hotline is perhaps one of the most utilized

tools to those affected by domestic violence. Advocates at HAWC will provide immediate assistance and discuss safety planning, shelter options, and counseling opportunities to allow the survivors to make informed decisions.

HAWC also offers long-term support programs helping victims rebuild their life. Realizing

that emotional support is the key to moving forward, HAWC holds individual and group counseling for those in need.

Lam Lyn Phillip recognizes the tremendous contribution HAWC adds to our community and is proud to support HAWC.

For more info, visit www.hawc.org

*Helping Those in
Need*

OUR PEOPLE: MEETA THAKUR

Meeta Thakur is our hard working and reliable Chief Administrative Officer who began working with **Lam Lyn Phillip** in April 2006.

Question: What have you found most rewarding since working at LLP?

MT: Working at LLP has been great because the people are wonderful to work with. They are filled with energy, have a great outlook, positive attitude and optimistic about the future. Being surrounded by this kind of energy makes working an easy task.

Question: What are you excited for in 2013?

MT: New challenges and spending more time with my family.

Question: What do you value most in life?

MT: My family. The strength that they give me lets me aim for that extra mile.

Question: What do you believe are your biggest strengths?

MT: Being a numbers person you have a different way of looking at things. Also, I believe I am organized and detail oriented and I see that positively reflect-

ed in my professional as well as my personal life.

Question: Who is your favorite sports team?

MT: Houston Texans.

Question: What do you enjoy doing in your spare time?

MT: In my spare time I watch TV. I love watching the Food Network, Sci Fi and Indian soap operas.

Question: What is the most outrageous thing you have done in your life?

MT: Bungee jumping. I really enjoyed it!

EXEMPTIONS FROM GARNISHMENTS

A post judgment garnishment proceeding may be brought against any third party who possesses property, money or credits belonging to the judgment debtor. Unlike a pre-judgment garnishment it is not necessary to post a bond for a post judgment garnishment.

Some of the most common debts subject to garnishment are bank accounts, safe deposit boxes, stocks, promissory notes and judgments (where the debtor has an interest).

There are several exemptions to garnishment. *Real Property* is not subject to garnishment. Further, the proceeds from the sale of a homestead property are exempt for six (6) months after a sale. Tex. Prop. Code § 41.001(b).

Current wages also are exempt. However once the funds are deposited into a bank account they are no longer exempt. *Am. Express Travel related Services vs. Harris*, 831 S.W. 2d 531 (Tex. App. -Houston[14th Dist.] 1992, no writ).

Welfare and Social Security benefits also are exempt. Unlike wages, which lose their exemption status when deposited into a bank account, the exemption continues even after the benefits are deposited into bank accounts. In fact, recent federal regulations appears to require financial institutions that receive a garnishment to review the bank account history for the 60 days prior to receiving the writ for any direct deposit of government benefits.

THE ART OF HIRING AND FIRING

Hiring well is a talent and firing effectively is a skill. If you hire well, you will have to engage your firing skill less frequently. Eagerness to fill an opening should not prevent you from performing a thorough consideration process to hire the best choice for your business.

Lam, Lyn & Philip can offer practical pointers regarding the hiring process and a variety of forms for use in hiring a new employee. However, because of the limited space, this article focuses on the more difficult action - termination.

FIRING - AVOID LITIGATION

Avoid a Finding of Pretext

Many employment terminations, especially discrimination cases which are quite common, turn on the issue of pretext. It is not likely that an employer will document a personnel file, "Fired because of age." Therefore, most discrimination cases are proven by circumstantial evidence. And proof of pretext is among the strongest type of circumstantial evidence. The United States Supreme Court explained this principle well:

"In appropriate circum-

stances, the trier of fact can reasonably infer from the *falsity* of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is *entitled to consider a party's dishonesty about a material fact as affirmative evidence of guilt*. Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000) (emphasis supplied). And, as a practical matter, if the jury becomes convinced that the employer has falsified the reason to get rid of the employee, the jury can become angry, many times increasing the damages. So how does one avoid the finding of pretext?

Ten Things to Avoid

1. Ignoring issues and signs of trouble.
2. Failing to adequately investigate claims.
3. Retaining problem supervisors.
4. Failing to properly document

events.

5. Keeping unorganized, inadequate files.
6. Failing to give employees adequate notice and opportunity to remedy their deficiencies.
7. Failing to follow through with consequences.
8. Not documenting the file with business reasons for the termination.
9. Failing to issue a termination letter which states the reason for termination.
10. Not considering a severance payment to obtain a release.

CONCLUSION

Attorneys at Lam, Lyn & Philip have years of experience with regard to proper hiring and firing and Ms. Gardner has given this presentation to lawyers at continuing legal education seminars. Also, we have forms to help you. If you would like a copy of the entire paper, which has an expanded section for the hiring process and explanations for each of the 10 problems listed, please contact Barbara Gardner, Partner & Head of the Employment Law Practice Group.

"Many employment terminations, especially discrimination cases which are quite common, turn on the issue of pretext."

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Results Oriented

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Lam Lyn Philip is a Texas-based law firm. Lam Lyn Philip's core area of practice is the handling of Commercial Collection Litigation matters. The firm also specializes in Employment, Insurance Defense and Business Immigration law. Among the firm's clients are Governmental entities and private companies, including more than a third of the Fortune 100. Our representation spans across a broad range of industries, including oil & gas, power, financial institutions, and manufacturing companies.

The firm has a uniquely flexible and entrepreneurial culture that fosters mutually-beneficial relationships with our clients. Our attorneys make it their job to understand our clients' business goals while utilizing the law to achieve real results. We have consistently earned a reputation for being a trusted business partner who is willing to share the risks of litigation. Our commitment to superb client service is unyielding and permeates throughout the firm. We are cognizant of the fact that we are often the face of our client in the eyes of the public and we must carry and conduct ourselves in a manner that reflects the expectations of our clients.

Consistent with the principles of the founding partners, the firm **requires** its attorneys to actively participate in bar associations and community-based organizations. The firm has funded scholarships for numerous local schools, not-for-profit entities, and other organizations in Houston.