About the Author

Tod F. Schleier is a partner in the law firm of Schleier Law Offices, P.C. (www.schleierlaw.com) in Phoenix, Arizona. He has practiced as a plaintiff’s employment lawyer for thirty-five years.

Mr. Schleier graduated from Brown University, magna cum laude, Phi Beta Kappa and with honors in 1973, with a B.A. in Political Science and Religion. He then graduated from Arizona State University Law School in 1976 and was a member of the Arizona State University Law Journal.

Mr. Schleier has litigated virtually every type of employment case against private employers and public entities in the state and federal courts of Arizona. He has handled: wrongful discharge, whistleblowing and statutory retaliation claims; Title VII claims for sexual, racial, and ethnic harassment and constructive discharge; gender, religion, age and disability discrimination claims; First Amendment free speech and due process claims; and disputes concerning non-competition covenants, trade secrets, wages and executive employment contracts. Mr. Schleier has fifteen years’ experience as a mediator and arbitrator in employment disputes and is listed on the American Arbitration Association’s mediator/arbitrator panels.

Mr. Schleier obtained one of the largest employment jury verdicts in Arizona on a sexual harassment claim, in December 1991, for $2,385,000, in Schallock v. Heinze et. al, which was televised on Court TV. He handled the landmark case of State of Arizona v. Schallock, 189 Ariz. 250, 941 P.2d 1275 (1997), which established legal principles for vicarious liability of employers in sexual harassment and employment cases. In May 1999, Mr. Schleier obtained a jury verdict against Best Western International, Inc. in a whistleblower claim, for $1,750,000; the verdict was upheld in Murcott v. Best Western International, 198 Ariz. 349, 9 P.3d 1088 (App.2000), which clarified legal principles for whistleblowing in Arizona.

Best Lawyers, the oldest and most respected peer review publication in the legal profession, has named Mr. Schleier as the “Phoenix Best Lawyers Employment Law—Individuals, Lawyer of the Year” for 2012. Mr. Schleier was also named “Phoenix Best Lawyers’ Labor and Employment Lawyer of the Year” for 2010 by Best Lawyers in America, has been recognized by Chambers as one of the top employment lawyers in Arizona, has an AV rating in Martindale Hubbell, and was ranked as one of Arizona’s Top 50 Super Lawyers in 2009. In 2001, he was inducted as a Fellow in The College of Labor and Employment Lawyers for his career-long achievements as an employment lawyer.

Mr. Schleier is a frequent presenter at seminars and conferences on topics of wrongful discharge, sexual harassment, and retaliation claims to public entities, human resources organizations, bar associations (including the American Bar Association Mid-Winter Employment and Civil Rights Conference 2002) for the past fifteen years. He is a member of several labor and employment law organizations including the National Employment Lawyers Association and the Arizona Employment Lawyers Association. Mr. Schleier has been licensed to practice in all Arizona state and federal courts since 1976, as well as the Ninth Circuit Court of Appeals and the United States Supreme Court. He was the first Chairman of the State Bar of Arizona Sub-Committee for Employment Law Jury Instructions.

He lives in Phoenix with his wife Lisa and two dogs, and is an avid sports fan and marine aquarium hobbyist.
Dedication

Franz Kafka wrote that writing is utter solitude, the descent into the cold abyss of oneself. In my case, however, during my descent I had several guiding lights to show me the path. My late parents, Stanley and Lila, taught me the value of hard work, education, perseverance, and a job well done. My late sister, Madeleine, taught me about human courage while she valiantly faced insurmountable obstacles during her two battles with breast cancer. Brad, my brother and law partner, provided constant encouragement, and his wit ensured that I did not take myself too seriously during the task. Finally, Lisa, my best friend, wife and soul mate for now 35 years, encouraged me to write this book, sacrificed countless weekends while I toiled away and shared her extraordinary intellect, perspective, sense of humor and love each day during this journey. So although Kafka was correct about writing being solitude, I have been blessed because during this descent I have never been truly alone.

Acknowledgments

My first acknowledgment is to my editor, Lisa Dunne, who first suggested that I write this book and who provided superb editing, encouragement, positive reinforcement, and constructive criticism during the past two years. Her contribution was incalculable. This book’s Editorial Advisory Board deserves the next acknowledgment—their contributed time and accumulated knowledge of employment law from the employee and management sides provided excellent perspective and suggestions for each chapter.

Looking back at thirty years of practice, it would be impossible to acknowledge each of my colleagues and peers who have provided insight, feedback and perspective on what makes a successful trial attorney, but a few deserve specific mention. Ronald Rubin, Melvin Sternberg and Sheldon Sternberg took a chance and hired me to work at their law firm when I was just a first year law student in 1974. Ron Rubin was my first mentor and taught me the invaluable lesson that a trial lawyer cannot over-prepare—a lesson I meticulously practice to this day. Melvin and Sheldon Sternberg taught me the practical and business side of practicing law, which unfortunately is not taught in law school. The unselfish tutelage and guidance these attorneys gave in my formative years provided priceless insights into what it is to be a trial lawyer.

I have learned much from the following plaintiff and management-side attorneys over the years, sometimes the hard way: Hon. Lawrence Anderson, Charles Chester, Richard Cohen, Amy Gittler, David Gomez, Douglas Grimwood, William Hayden, Kelly Hocker, James Jellison, Lawrence Katz, Amy Langerman, Kraig Marton and Bradley Schleier.

And I thank my paralegals of two decades, Cindy J. Anderson and Mary H. Portillo. Finally, I want to acknowledge my clients, especially Colleen Schallock who had the courage to do the right thing.
Preface

“The only real lawyers are trial lawyers, and trial lawyers try cases to juries.” Clarence Darrow

I tell my clients that trying cases to a jury is very similar to rolling the dice at a Las Vegas craps table. In Vegas, blind chance determines whether you or the house wins. In the courtroom, six or eight total strangers determine which side wins. In both cases, certainty of outcome is never guaranteed.

The pages that follow contain the lessons, knowledge and experience I have acquired over thirty years of being a trial lawyer. Some of the lessons were learned from cases I was certain I would win, but lost, and cases I should have lost, but won. The lessons, techniques and random ruminations come from decades of learning in the School of Hard Knocks.

This book is designed to be a practical day-to-day resource for employment litigation and trial strategy. I am proud to be a plaintiff’s employment lawyer; the book, however, attempts to provide practical suggestions for both the plaintiff and management side. Although the pages that follow are black and white, the techniques clearly are not. They are suggestions and ideas which each practitioner can think about, experiment with, accept or reject. Trying cases is an art, not a science.

August 2007

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