

BRIAN S. CLARKE

CHARLOTTE SCHOOL OF LAW
201 SOUTH COLLEGE STREET, SUITE 400
CHARLOTTE, NORTH CAROLINA 28244
(704) 971-2110 (office) bclarke@charlottelaw.edu (704) 724-9429 (cell)

ACADEMIC APPOINTMENTS

CHARLOTTE SCHOOL OF LAW, Charlotte, North Carolina
ASSISTANT PROFESSOR OF LAW, 2011 to present.

Experiential/Skills Based Teaching:

- **Advanced Problems in Practice: Employment Law (5 credits):** An intensive practice simulation course for third-year students in which students research and draft briefs and legal memoranda, negotiate settlements, confront ethical issues and perform other work required of practicing lawyers.
- **Employment Agreement Drafting**
- **Covenant Not To Compete Litigation:** A skill-building simulation of the litigation of a covenant not to compete case from intake and the drafting of the complaint through the hearing on a motion for preliminary injunction.

Doctrinal Teaching:

- **Civil Procedure (both single semester and full year versions)**
- **Employment Discrimination**

Other Teaching:

- **Appellate Advocacy/Moot Court Program**
 - *Wagner National Labor & Employment Law Moot Court Team* (Coach, 2012-present) [National Champions, 2012 (co-coach); National Quarterfinalists, 2014]
 - *Zehmer National Workers Compensation Moot Court Team* (Coach, 2013-present)

Committee Service:

Current: Curriculum (2012-present; Chair, 2013-present)
Coordinator of Practical Skills Curriculum (2013-present)

Past: ABA Self Study (2012-13); Professionalism (2012); Faculty Development (2011-12)

WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW, Lexington, Virginia
ADJUNCT PROFESSOR OF LAW, 2009 to 2011.

Courses Taught:

- **Employment Practices, Spring 2011.**
- **Labor & Employment Law Practicum (5 credits), Fall 2009 (with Prof. Mark Grunewald):** Part of W&L's experiential-learning based Third Year Curriculum.

ACADEMIC PUBLICATIONS

- *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 J. LEGAL ED. ____ (2015) (forthcoming)(peer reviewed).
- *The Gross Confusion Deep in the Heart of Univ. of Texas S.W. Med. Ctr. v. Nassar*, 4 CAL. L. REV. CIRCUIT 75 (2013).

Appeared on a dozen SSRN Top 10 lists (including multiple #1 rankings)

- ***A Better Route Through the Swamp: Causal Coherence in Disparate Treatment Doctrine*, 65 RUTGERS L. REV. 723 (2013).**

Selected Citations:

(1) *Mendoza v. Western Medical Center Santa Ana*, 166 Cal. Rptr.3d 720, 724 (Cal. App. 4 Dist. 2014).

(2) Amicus Brief of Lawyers' Committee for Civil Rights Under Law at 9, *Univ. of Tex. S.W. Med. Ctr. v. Nassar*, No. 12-484 (U.S. Supreme Court) (filed April 10, 2013).

Appeared on multiple SSRN Top 10 lists (including at least one #1 ranking).

- ***Grossly Restricted Pleading: Twombly/Iqbal, Gross and Cannibalistic Facts in Compound Employment Discrimination Claims*, 2010 UTAH L. REV. 1101 (2011).**

Selected Citations:

(1) Deborah A. Widiss, *Undermining Congressional Overrides: The Hydra Problem In Statutory Interpretation*, 90 TEX. L. REV. 859, 917 (2012).

(2) Charles A. Sullivan, *Plausibly Pleading Employment Discrimination*, 52 WM. & MARY L. REV. 1613, 1622 (2011).

Appeared on multiple SSRN Top 10 lists (including various #1 rankings).

- ***In Search of Capital Clemency Procedures We Can Live With: What Process is Due in Capital Clemency After Ohio Adult Parole Authority v. Woodard*, 11 CAP. DEF. J. 5 (1998).**

Selected Citation:

Beau Breslin and John J.P. Howley, *Defending The Politics Of Clemency*, 81 OR. L. REV. 231, 240, 245 (2002).

ACADEMIC WORKS IN PROGRESS

THE IMPACT OF JUDICIAL NOMINATIONS ON COURT IDEOLOGY: A Quantitative Analysis of the Labor and Employment Decisions of the U.S. Courts of Appeals for the Fourth and Eighth Circuits from 2004 to 2012.

Presenting at New Voices in Labor & Employment Law, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS ANNUAL MEETING (Aug. 4, 2014) (forthcoming).

Presented as an early stage work-in-progress at EIGHTH ANNUAL COLLOQUIUM ON CURRENT SCHOLARSHIP IN LABOR & EMPLOYMENT LAW, William S. Boyd School of Law, University of Nevada-Las Vegas (September 27, 2013).

The Assumption of Truth Rule: From Blackstone's Commentaries to Cannibalistic Pleadings.

***Causal Confusion in the Wake of Gross, Nassar and Burrage* (essay).**

ACADEMIC PRESENTATIONS

***WORKSHOP ON TEACHING: Incorporating Simulations into Law School Courses*, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS ANNUAL MEETING (Aug. 1, 2014) (forthcoming) (Other Speakers: Prof. Todd Peppers, Washington & Lee [moderator]; Prof. John Lande, University of Missouri School of Law; Prof. Paula Schaefer, University of Tennessee College of Law; Prof. Alexander Scherr, University of Georgia School of Law; Prof. Heather Way, University of Texas School of Law; Prof. Ronald Wright, Wake Forest University School of Law).**

Inconsistent Truth? The Assumption of Truth Rule as Plausibility Pleading's Poison Pill, THE 2013 NORTHEAST REGIONAL SCHOLARSHIP AND TEACHING DEVELOPMENT WORKSHOP, Albany School of Law (February 2, 2013).

A Better Route Through the Swamp: Causal Coherence in Disparate Treatment Doctrine [under the title *Grossly Impractical Causation*] SEVENTH ANNUAL COLLOQUIUM ON CURRENT SCHOLARSHIP IN LABOR & EMPLOYMENT LAW, Loyola Chicago School of Law (September 14, 2012).

Inconsistent Truth: A Works in Progress Paper Presentation, Cumberland School of Law, Samford University, Birmingham, AL (March 5, 2012).

PRIMARY AREAS OF RESEARCH & TEACHING INTEREST

Civil Procedure Torts Employment & Labor Law Administrative Law

OTHER AREAS OF TEACHING INTEREST

Remedies Federal Courts Evidence Appellate Advocacy Mental Health & Law

EDUCATION AND ACADEMIC HONORS

WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW, Lexington, Virginia
Juris Doctor, magna cum laude, 1999.

HONORS: **ORDER OF THE COIF**
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LAW JOURNALS: CAPITAL DEFENSE JOURNAL, 1997-1999 (*Executive Editor [co-Editor-in-Chief]*, 1998-1999; *Staff Writer*, 1997-1998)
 ENVIRONMENTAL LAW DIGEST, 1996-1998 (*Case Notes Editor*, 1997-1998; *Staff Writer*, 1996-1997)

LEGAL CLINIC: Virginia Capital Case Clearinghouse, 1997-1999.

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, Chapel Hill, North Carolina
Bachelor of Arts in History (dual concentration in Ancient Greek and American), December 1995.

LAW AND LEGAL EDUCATION RELATED BLOG POSTS

THE FACULTY LOUNGE, Guest Blogger (March 2014-present).

- *The Challenge for “Lower Tier” Law Schools* (June 4, 2014), available at <http://www.thefacultylounge.org/2014/06/nyt-article-on-infilaw-purchase-of-charleston-law.html>
- *Law Professors, Law Students and Depression . . . A Story of Coming Out (Parts 1, 2 and 3)* (March 31, April 2, and April 7, 2014), available at <http://www.thefacultylounge.org>
 - This series of blog posts received considerable media and blog coverage.
Selected for publication at *Law Professors, Law Students and Depression . . . A Story of Coming Out (Parts 1, 2 & 3)*, 4 Journal of Law (4 The Post) ____ (2014) (forthcoming).
 - *The Post is a sub-journal of the Journal of Law dedicated to “showcasing the best of legal blogging.” See Anna Ivey, An Introduction to The Post, 1 J.L. (1 The Post) 367, 367 (2011).*
- *Religious Marriage And Legal Marriage And Freedom* (May 3, 2012), available at <http://www.thefacultylounge.org/2012/05/clarke-guest-post-religious-marriage-and-legal-marriage-and-freedom.html>.

BUSINESS INSIDER, Guest Columnist (March-April 2014)

PRACTICE EXPERIENCE

LITTLER MENDELSON, P.C., CHARLOTTE, NORTH CAROLINA, APRIL 2007 TO MARCH 2011

NEXSEN PRUET, LLC, GREENSBORO, NORTH CAROLINA, SEPTEMBER 1999 TO APRIL 2007.

- Concentrated practice in the areas of Employment, Labor and ERISA Law and Litigation.
- Significant experience litigating employment matters before state and federal courts including single plaintiff, multi-plaintiff and class/collective actions.
- Significant appellate experience including oral arguments before the North Carolina Supreme Court and North Carolina Court of Appeals and appearances before the U.S. Fourth Circuit Court of Appeals and U.S. Supreme Court in employment litigation matters.
- Significant experience representing employers before federal and state administrative agencies throughout the eastern U.S., including in, *inter alia*, Maine, Massachusetts, Virginia, North Carolina, South Carolina and Georgia.
- Representative Cases: *Shaw v. U.S. Airways, Inc.*, 665 S.E.2d 449 (N.C. 2008)(argued case before N.C. Supreme Court); *Freeman v. Duke Power Co.*, 114 Fed. Appx. 526 (4th Cir. 2004), *cert. denied*, 125 S. Ct. 1733 (U.S. 2005); *Enoch v. Alamance County Dep't of Social Services*, 595 S.E.2d 744 (N.C. Ct. App. 2004)(argued case before N.C. Court of Appeals).

OTHER PUBLICATIONS

- EMPLOYMENT ARBITRATION AGREEMENTS: A PRACTICAL GUIDE (Aspen 2008 & 2009 Supp.)(co-author).
- *Highlights (or Lowlights) of the Proposed Unemployment Insurance Overhaul*, LABOR & EMPLOYMENT, vol. 31, no. 2, p. 1 (N.C. Bar Ass'n Feb. 8, 2013).
- *Religious Marriage, Legal Marriage & Freedom*, Durham (N.C.) Herald Sun (May 4, 2012) (guest column).
- *Religious vs. Legal Marriage*, Fayetteville (N.C.) Observer (May 6, 2012) (op-ed).
- *Guest Post – Religious Marriage, Legal Marriage and Freedom*, NC Amendment One Truth (May 3, 2012) (available at <http://ncamendmentonetruth.wordpress.com/2012/05/03/guest-post-religious-marriage-legal-marriage-and-freedom/>) (shared nearly 1,000 times on Facebook).
- EMPLOYEE BENEFITS LAW, 2d ed., 2008 Cumulative Supp. (BNA Books 2008) (contributor).
- *Demise of Employment Arbitration Greatly Exaggerated*, Triad Business Journal (Jan. 25, 2002) (op-ed).

OTHER PRESENTATIONS, LECTURES, AND WORKSHOPS

Fourth Circuit Year in Review, North Carolina Bar Association & South Carolina Bar, 24th Annual through 30th Annual N.C./S.C. Labor & Employment Law Update and Annual Meeting (2008 through 2014).

- Presented an annual review of the Fourth Circuit's labor and employment law decisions for seven consecutive years for the Labor & Employment Sections of the N.C. Bar Association and the S.C. Bar.
- A highly regarded presentation with a detailed manuscript of approximately 100 pages discussing each of the Fourth Circuit's labor and employment law opinions from the prior year.

Regular Presenter on Mental Health, Professionalism and Quality of Life Issues for the North Carolina Bar Association and the North Carolina State Bar.

PROFESSIONAL HONORS AND AWARDS

Legal Elite – Employment Law, BUSINESS NORTH CAROLINA (2014, 2013, 2011, 2009).

Super Lawyer – Rising Star, NORTH CAROLINA SUPER LAWYERS MAGAZINE (January 2011).

“40 Leaders Under 40,” CHARLOTTE BUSINESS JOURNAL (March 2010).

PROFESSIONAL ACTIVITIES

North Carolina Bar Association, Labor & Employment Law Section

Chair (2009-2010); Vice Chair (2008-2009); Section Council (2004-2011); Executive Committee (2006, 2008-present)

North Carolina Bar Association

Lawyer Effectiveness & Quality of Life Committee (2010-present); Lawyer on the Line Pro Bono Program, Attorney Volunteer (2011-present); 4ALL Pro Bono Service Day, Attorney Volunteer (2008-present).

BAR ADMISSIONS

North Carolina (1999)

United States Supreme Court (2005)

U.S. Court of Appeals for the Fourth Circuit (2001); U.S. District Courts for the M.D.N.C. (1999), E.D.N.C. (2000), and W.D.N.C. (2000)