To: Professor Fink

From: Kelli P. Rawlinson

Date: January 15, 2019

Re: The Canine Trainer

The potential legal issues with Cal’s employment claim against J.C. Bellows and Academy K9 according to his description of his problem is whether Cal is an employee or independent contractor of Academy K9; his rights to medical leave; and how a non-compete agreement effects Cal’s relationship with Academy K9.

Further, The factual questions that need to be asked to the client that will be most relevant to these issues is: whether Cal was an independent contractor or an employee with Academy K9; whether or not he signed a non-compete clause upon commencement of his employment; were there any clearly articulated rights or policies surrounding medical leave from work or how long on-site would be allowed before demanding he drive again.

We do not know if Cal is for sure an independent contractor, aside from him mentioning that J.C. Bellows, who was in charge told him that he was a contractor. To clarify whether Cal was an employee or an independent contractor we must look at K9 Academy’s right to control the scope of Cal’s employment. If there is a lack of control over the work that is being done and how it is being done, then Cal is likely an independent contractor. The facts do not indicate more than Cal was a tracking and trailing dog specialist, but does not state the manner and means of his performance with K9 Academy. Using a reasonable basis test, showing that J.C. Bellows treated Cal as an independent contractor and is likely to presume that Cal is indeed an independent contractor.

Here, we do not know if there is an written agreement between Cal and K9 Academy or, more specifically if there is a non-compete clause within the agreement. In an independent contractor relationship, there should be an independent contractor agreement that will state results that need to be achieved, and the manner and method of accomplishing the results, which are fully determined by the independent contractor. However, the rule is that if a person is an independent contractor, a non-compete clause or non-compete agreement will not be enforceable against the independent contractor. Thus, Cal can be hired at Greenwood because any non-compete clause with K9 Academy is unenforceable as Cal is an independent contractor.

Cal was told by J.C. Bellows that since he was contractor he was not entitled to medical leave, due to his neck injury which forbade him from driving. Generally, independent contractors not entitled to company benefits such as leave, healthcare, etc. Providing benefits are used to clearly indicate an employee-employer relationship. Here, it seems Cal was not offered any real benefits with K9 Academy because he was told he could not take leave. However, J.C. did attempt to accommodate Cal by saying that he could do on-site only for as long as he needed, and that he would not be made to drive. This is likely not to be considered a medical leave that employee could benefit from.

In conclusion, Cal was likely an independent contractor with K9 Academy, which did not entitle to him to any benefits or leave; which made J.C. Bellow’s statement was factual. Further, Greenwood can hire Cal because he would not be competing with them as there would be no valid non-compete agreement, if there was one.