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The National Association of Women Lawyers Files Amicus Curiae Brief in Support of Professor who was Stalked on Campus Based on “Gender Profiling”– or “Working while Female”

Washington, D.C. – On October 22, 2007, the *National Association of Women Lawyers (NAWL)* filed an *Amicus Curiae* Brief in the U.S. Court of Appeals for the D.C. Circuit, in *Martin v. Howard University* (see <http://www.dvmartinlaw.com/MartinvHowardU.html>). Prof. Dawn Martin was stalked on Howard’s law school campus by a delusional, homeless stranger with a criminal record, Leonard Harrison. Harrison targeted African-American female professors, searching for a “wife,” based on his obsession with a fictitious character, Geneva Crenshaw, in a book, written by NYU law professor, Derrick Bell. Harrison targeted persons who fit the “Geneva profile,” which necessarily meant that they were female. *Martin* is the first case considering the concept of “gender profiling” in employment, under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex. Martin and NAWL also argue that stalking constitutes sex discrimination since more than 80% of stalking victims are women. Workplace stalking may therefore be an occupational hazard of “*working while female*.”

Martin will also shape the law for racial, ethnic, religious, age and disability cases where only members of a protected group are targeted for harassment (e.g., *Maupin v. Howard County Board of Education, Howard County, Maryland Circuit Court* (July 2, 2007) (an African-American teacher received intimidating calls at work from a purported member of Ku Klux Klan and her request for security was denied). See *Martin* Brief.

In 1999, the district court set precedent in *Martin* by adopting the EEOC Regulations holding that an employer can be held liable for the sexual harassment of an employee, by a non-employee, if the employer knew or should have known of the harassment and failed to take reasonable steps to stop it. *NAWL* asks the Court to affirm this holding and to establish the framework for analyzing harassment cases by non-employees. An employee harasser may be disciplined, reassigned and/or even fired, after an EEO investigation; however, these options are not available for non-employee harassers. Security measures are generally necessary to prevent sexual harassment in the workplace by non-employees. The employer’s “reasonable” response to the complaint will vary depending upon the employer’s business, the victim’s job duties, the physical workplace and available resources.

Martin will also help define actionable retaliation under Title VII. After Prof. Martin complained that she was being stalked in her workplace, the law school Dean, Alice Gresham Bullock, withheld and concealed vacant faculty positions from the Faculty Appointments Committee to preclude Prof. Martin’s selection for any vacant position. The district court held that these actions did not constitute actionable adverse actions under Title VII. *NAWL* argues that the dismissal of these actions constitutes reversible error, particularly in light of the Supreme Court’s 2006 decision in *Burlington Northern v. White*. The Court of Appeals will now decide whether an employer can legally cancel or convert a position in order to prevent an employee who has protested unlawful discrimination from being considered for the vacancy.

Finally, *NAWL* asks the Court to define the circumstances under which Title VII plaintiffs may be ordered to pay the litigation costs of the defendant employer. The *National Organization of Women (NOW)* recently ran a campaign protesting the 11th Circuit’s assessment of costs against the plaintiff in *Ledbetter v. Goodyear*, after the Supreme Court ruled against her in her sex discrimination claim. *NOW* and *NAWL* have argued that such assessments unfairly punish women who file sex discrimination lawsuits, in good faith, in the public interest.

NAWL intends to supplement its Brief with additional *amici*. Groups interested in joining *NAWL’s Brief* should contact Roberta Wright, Esq., counsel for *NAWL*, at (301) 526-0474.