

COA Opinion: Arbitrary time limit for witness testimony constitutes an abuse of discretion

1. September 2010 By Jason Byrne

On August 31, 2010, the Court of Appeals published its per curiam decision in *Barksdale v. Bert's Marketplace*, No. 290329, where plaintiff challenged the conduct of a sexual harassment trial where the judge limited the testimony of the owner of the defendant business to a half-hour per side, and ended plaintiff counsel's direct examination of that witness at the end of that time, not allowing re-direct or an offer of proof. The Court of Appeals found the time limitation to be arbitrary under the circumstances of this case, as it was unrelated to the complexity of the case or the time taken for other witnesses. Additionally, the Court of Appeals found that the trial court's failure to take an offer of proof meant that there was no record that would permit a finding of harmless error, meaning the case would have to be reversed and remanded for a new trial as a result of the trial court's abuse of discretion.