September 2026 Vol. 195

FRATERNAL LAW™

A Fraternity Law Periodical Published by Fraternal Partners, a Division of Manley Burke, a Legal Professional Association

Clean Sweep: New York Court Dismisses Every Claim Against the Sigma Alpha Mu Defendants in Adult Survivors Act Suit

William T. "Toby" Eveland, Manley Burke LPA, teveland@manleyburke.com
Andrew E. Bollinger, Manley Burke LPA, andrew.bollinger@manleyburke.com
Logan Caudill, Manley Burke LPA, logan.caudill@manleyburke.com

A complete defense win for fraternal organizations. In *Van Hooser v. Fine, et al.*, the Onondaga County Supreme Court in New York dismissed the amended complaint in its entirety against the Sigma Alpha Mu Fraternity defendants — Sigma Alpha Mu Fraternity, Inc. (the "National Fraternity"), ETASAM, Inc. (the "House Corporation"), and the Sigma Alpha Mu/Eta Chapter. The plaintiff alleged that a former Syracuse University basketball coach who also served as the Chapter's advisor (the "Chapter Advisor") engaged in repeated, nonconsensual sexual conduct with him between 2008 and 2011 at the Chapter Advisor's campus office and at the off-campus Chapter House where the plaintiff was employed. After the Appellate Division, Fourth Department, reversed an earlier statute-of-limitations dismissal and remanded the case to address alternative grounds, Justice Joseph E. Lamendola granted the Fraternity defendants' motion to dismiss in its entirety.

Premises Liability Failed at the Threshold

The court found that a tenant's liability for a third party's criminal acts arises only where the conduct was reasonably foreseeable from similar prior crime at or near the location. Critically, none of the Fraternity defendants owned the house, as it belonged to an unrelated entity, and the

House Corporation merely leased it. The plaintiff's theory — that 2002 media reports involving other alleged victims of the Chapter Advisor/Basketball Coach supplied that notice — was held conclusory. The court specifically ruled that the 2008–2011 Eta Chapter members were not yet in college when those reports circulated, so the alleged knowledge could not be attributed to the Fraternity defendants through any claimed agency relationship with them or the Chapter. It was too attenuated.

Vicarious Liability and Ratification Fared No Better

In denying the plaintiff's claims, the court further held the Chapter Advisor's alleged abuse fell "well beyond the scope of his agency" because it served no fraternity business and was not otherwise authorized or ratified by the Fraternity defendants. In fact, it was specifically prohibited.

The result stands in sharp relief against the balance of the decision: the court allowed an intentional infliction of emotional distress claim to proceed against the University and denied the Chapter Advisor's own motion to dismiss. For the Sigma Alpha Mu defendants, by contrast, all claims against them were dismissed.

Why it Matters

This is a significant win for national organizations, house corporations, and local chapters facing lookback-window claims built on an advisor's alleged personal misconduct and stale publicity. The decision confirms that ownership and leasehold must be analyzed entity by entity; that decades-old media reports do not automatically become constructive notice to a later undergraduate chapter; and that criminal sexual conduct by an advisor remains outside the scope of agency absent facts showing actual knowledge and participation.

The full order can be found HERE.

The Fraternity defendants are represented by ***Manley Burke, LPA (lead attorney William T. "Toby" Eveland)****, whose defense secured the dismissal of every claim.*

Kappa Kappa Gamma Case Continues

Timothy M. Burke, Fraternal Law Partners, tburke@manleyburke.com
Haellie M. Gordon, Fraternal Law Partners, hgordon@manleyburke.com

On September 14, 2026, the United States Court of Appeals for the Tenth Circuit, sitting in Denver, Colorado and consisting of a three-judge panel, heard oral arguments on the appeal brought by various members of Kappa Kappa Gamma ("Plaintiffs-Appellants") challenging the decision of Kappa Kappa Gamma's chapter at the University of Wyoming to admit a transgender member. This case is already three and a half years old and is before the Tenth Circuit for the second time. Additionally, a second suit was previously filed in Ohio, the corporate home of Kappa Kappa Gamma ("Kappa"), which was later transferred to a Federal District Court in Wyoming.

Angela Lavin of the Cleveland, Ohio law firm, Wegman Hessler Valure, argued for Plaintiffs-Appellants. Natalie McLaughlin from the Columbus office of Vorys, Sater, Seymour and Pease LLP argued the case on behalf of Kappa and the other related Defendants-Appellees.

As is usual in federal appeals, each side was limited to 15 minutes for their arguments before the Tenth Circuit. Both sides were permitted some additional time to field questions from the three-judge panel.

The fact that Kappa was headquartered in Ohio was important as the Tenth Circuit was clear in indicating that Ohio law was going to be applied when it came to interpreting the ability, or lack thereof, of the Kappa Fraternity Council ("Council") to interpret undefined terms in Kappa's governing documents. "Woman" was an undefined term and the Council exercised

authority specifically granted to it in the Standing Rules of the Fraternity to interpret "the Fraternity Bylaws and Standing Rules." The Council interpreted the term "woman" to include all people who identify as women.

Even Plaintiffs-Appellants' counsel appeared to concede that Kappa's governing documents gave the Council the ability to interpret undefined terms but argued that the Council could not use that right to make a fundamental change in the nature of the organization.

McLaughlin, on behalf of Kappa, made it clear to the three-judge panel that Plaintiffs-Appellants, if they did not like what the Council had done, had the ability to attempt to change the Council's determination by proposing amendments to the Rules and Bylaws or electing a new Council, either of which could occur at one of Kappa's conventions.

Questions from the three-judge panel directed at both counsels most frequently dealt with Ohio rules that make it clear that courts generally will not interfere with the business judgements of a corporate board, describing that rule alternatively as the Ohio non-interference or business judgement rule.

McLaughlin's toughest question was with regard to Plaintiffs-Appellants' fraudulent inducement claim. More specifically, one of the judges asked if Plaintiffs-Appellants could not claim that it was a bait and switch to invite women to join Kappa without telling them that "biological men" might also be invited to membership. Lavin's most difficult challenge appeared to be one judge's suggestion that the Council's interpretation of the meaning of the term "woman" to include transgender women was reasonable. The judge went on to agree that Plaintiffs-Appellants' interpretation of the term "woman" was also reasonable, but it was up to the Council to decide which interpretation to apply.

The argument before the Tenth Circuit drew significant interest. Toby Eveland, managing partner of Manley Burke's Chicago office, who attended the argument, observed, "The courtroom was packed and the judges were well-prepared with plenty of thoughtful questions for both sides." Hundreds of people listened to the argument on livestream. Fox News covered it in advance. Following the argument, Plaintiffs-Appellants and their supporters held a press conference/demonstration outside of the Byron White United States Courthouse, which was scheduled to run for two hours with 15 speakers led by Riley Gaines, a Fox News contributor and the host of *The Riley Gaines Show*.

Predicting what the court will decide is something most lawyers will hesitate to do, but a hint might come from one reporter's interpretation. On behalf of *The Center Square*, which describes itself as "America's Nonpartisan accountability newswire built for taxpayers," Joelle Webb wrote in her article on the argument that "the main premise of the defendant's argument was that the counsel (sic Council) did not violate their contract because they are vested with the authority to interpret and implement the organization's bylaws. All three federal judges appeared to agree with this claim…"[1]

It is impossible to predict when the Tenth Circuit will issue a decision. It is not likely to be issued for several months.

An audio recording of the argument is available on the Tenth Circuit's web site at **http://www.ca10.uscourts.gov/oralargument/search**.

[1] The Center Square, *Sorority tells federal judge that allowing biological man violates their rights* (Sept. 14, 2026) https://www.thecentersquare.com/colorado/article_7e3d36b9-cd86-43f8-bc60-05d8fc6a673a.html

Can They Keep Their Houses?

Timothy M. Burke, Fraternal Law Partners, tburke@manleyburke.com
Danielle E. Bechard, Manley Burke LPA, danielle.bechard@manleyburke.com

On August 17, 2026, Attorney General of Pennsylvania, David Sunday, announced the arrests of fourteen people related to a cocaine ring operating out of two fraternity houses at Penn State University.[1] This announcement became nationally reported news overnight. Among the most shocking of the announcement by Attorney General Sunday was his statement that "[i]n fact, according to the evidence uncovered, cutting and packaging cocaine was, for some pledges, an indoctrination into the fraternities."[2]

Who could have predicted that requiring pledges to take part in a cocaine ring would become a form of hazing?

Thirteen of those arrested were either current or former Penn State students at the time of their arrests. The statement released by Attorney General Sunday, reports that "[a]ccording to the investigation and a grand jury presentment, two members of the organization —Agostino Abbatiello and Thomas Robinson — were the main suppliers for the group, making regular trips to Philadelphia and New York for large quantities of cocaine. The cocaine was then cut and packaged — primarily at the Delta Upsilon and Sigma Chi fraternity houses — and distributed mainly to Penn State University students."[3]

---

[1] Office of the Pennsylvania Attorney General, *AG Sunday, State College Police Announce Charges Against 14 People in Cocaine Trafficking Ring Involving Penn State U. Students, Fraternities* (Aug. 17, 2026) https://www.attorneygeneral.gov/taking-action/ag-sunday-state-college-police-announce-charges-against-14-people-in-cocaine-trafficking-ring-involving-penn-state-u-students-fraternities/

[2] *Id.*

[3] *Id.*

Four of those arrested are charged with felony corrupt organizations, conspiracy, dealing in proceeds of unlawful activity and related offenses. A fifth person was charged with felony conspiracy and criminal use of a communication facility and related misdemeanors. Eight other student-aged defendants are facing misdemeanor counts of possession and paraphernalia of drugs. The fourteenth defendant, the father of one of the alleged ringleaders, who is also a lawyer, according to the Attorney General, is charged with "felony tampering, hindering apprehension for taking steps to conceal evidence, including a safe containing drugs and cash, and obstructing the investigation."[4] At this point, the crime of hazing is not included in any of the charges described by the Attorney General.

However, one issue not addressed in the massive amount of publicity associated with these arrests, is the question of what could happen to the two off-campus fraternity houses. It is certainly possible that either the United States government through the Justice Department, or the State of Pennsylvania could attempt to seize the houses.

Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act provides for that possibility:

> "The following shall be subject to forfeiture to the commonwealth and no property right shall exist in them: (6)(i)(C) real property used or intended to be used to facilitate any violation of the Controlled Substance, Drug, Device and Cosmetic Act…. including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used or intended to be used in any manner or part to commit or facilitate a commission of a violation." 42 PA Cons Stat Sec. 5802(6)(i)(C).
> Federal law has similar provisions allowing for the seizure of property, including 21 U.S.C.

Section 881(a)(7) which allows any real property "used, or intended to be used in any manner of part to commit, or to facilitate the commission of a violation of" federal drug laws subject to

[4] *Id.*

forfeiture. Also, The Asset Forfeiture Policy Manual, which is available online, published by the Criminal Division of the United States Department of Justice provides a 230-page detailed instruction on how to properly forfeit assets that had been involved in violations of the criminal law.[5]

If the two houses involved in this case were subject to seizure, it would not be the first time that fraternity houses which had become the locus for the operation of a drug ring were seized. For example, as was reported in the September 1991 issue of Fraternal Law in the article, "Busted! Consequences of the Drug Raid at UVA," three University of Virginia fraternity houses were seized by the federal government a week before classes were scheduled to commence for the fall term in the 1991-92 academic year. The UVA fraternities involved were later able to recover their fraternity houses, however, that is not always a possibility. The federal government has the choice to sell or to retain possession of the seized property. 21 U.S. Code Section 881(e)(1)(A). Also see "Drug Raid Results in Seizure of Fraternity House," Fraternal Law, March 1997 describing the seizure of the Phi Gamma Delta house at Ohio University.

There are defenses that the owners of a house may have and protections that may be available for mortgage holders. As discussed in "Busted! Consequences of the Drug Raid at UVA," if the board of directors of the house corporation which owns the property had neither knowledge of nor gave consent for illegal drug activity, there is a good chance that a fraternity house may be returned to the fraternity owners. However, if the board of directors of the housing corporation were put on notice of illegal drug use and/or operation, the board of directors have an affirmative duty to take various steps, including consulting an attorney and conducting an investigation. If the

[5] Asset Forfeiture Policy Manual 2025, Chap. 5, Real Property.

board of directors failed to properly take the necessary action, the fraternity house would likely need to be bought back, that is, if the governmental entity decides to sell the house after seizure.

Washington Supreme Court Finds University Owed Duty of Care in Fraternity Hazing Death

Megan Suckow, Manley Burke LPA, megan.suckow@manleyburke.com

The Washington Supreme Court recently held a state university owed a duty of care to a fraternity member who died following an alcohol-related hazing event, allowing his family's wrongful death lawsuit against the university to proceed.[1] The divided court concluded the university's longstanding relationship with a recognized fraternity, together with the university's knowledge of prior hazing and alcohol-related concerns and its ability to exercise control over the chapter, created a "special relationship" sufficient to impose a duty to protect fraternity members from foreseeable harm.[2]

The case arose from the November 2019 death of 19-year-old Washington State University ("WSU") freshman Sam Martinez ("Martinez").[3] Martinez was a new member of Gamma Chi, the WSU chapter (the "Chapter") of Alpha Tau Omega Fraternity ("ATO").[4] During the Chapter's annual "Big-Little" event, pledges consumed alcohol as part of the initiation ritual.[5] Martinez became heavily

[1] *Martinez & Houtz v. Wash. State Univ.*, No. 104108-0, slip op. at 2 (Wash. July 30, 2026).
[2] *Id.* at 17.
[3] Monique Merrill, *Washington high court finds state university can be held liable over hazing death*, COURTHOUSE NEWS SERV. (July 30, 2026), https://www.courthousenews.com/washington-high-court-finds-state-university-can-be-held-liable-over-hazing-death.
[4] *Id.*
[5] *Martinez*, No. 104108-0, slip op. at 15.

intoxicated and later died from acute alcohol poisoning.[6] His blood alcohol concentration was approximately 0.375.[7] Following his death, WSU revoked its recognition of the Chapter, and ATO later revoked the Chapter's charter.[8]

Martinez's parents subsequently sued WSU, alleging WSU failed to protect Martinez from foreseeable hazing and alcohol-related misconduct.[9] The trial court initially granted summary judgment in WSU's favor, concluding WSU did not owe Martinez the asserted duty.[10] The Washington Court of Appeals reversed in 2025, finding a duty arose from WSU's special relationship with the Chapter.[11] The Washington Supreme Court affirmed that ruling on July 30, 2026, in a 5-4 decision.[12]

WSU's Relationship with the Fraternity Was Central to the Court's Decision

The Washington Supreme Court analyzed the case under *Restatement (Second) of Torts* § 315(a).[13] Under that framework, a defendant may owe a duty to protect foreseeable victims from the conduct of a third party when the defendant has (1) a "definite, established, and continuing relationship" with that third party and (2) some ability to control the third party's conduct.[14]

The majority found both elements present.[15] WSU had recognized the Chapter since 1911 and entered into annual relationship agreements with the Chapter.[16] Through its fraternity and sorority life system, WSU imposed requirements concerning alcohol, hazing, housing, education, and

[6] *Id.*
[7] Merrill, *supra*.
[8] *Id.*
[9] *Martinez*, No. 104108-0, slip op. at 15-16.
[10] *Id.* at 2.
[11] *Id.*
[12] *Id.* at 2, 31.
[13] *Id.* at 17.
[14] *Id.* at 19.
[15] *Id.*
[16] *Id.* at 19-20.

continued recognition.[17] WSU could require meetings and educational programming, investigate alleged misconduct, impose sanctions, place conditions on continued recognition, and ultimately revoke recognition.[18] The Court emphasized absolute control was unnecessary; rather, the relevant inquiry was whether WSU possesses sufficient ability to address the foreseeable harm.[19]

The majority also focused heavily on foreseeability.[20] According to the Court, WSU had received reports of alcohol misuse and hazing involving the Chapter before Martinez's death and had previously investigated and addressed concerns involving the Chapter.[21] WSU had also identified first-year fraternity members, particularly men, as a population at heightened risk of harm from alcohol misuse.[22] Shortly before Martinez's death, WSU officials, Chapter representatives, and representatives of ATO had discussed concerns involving alcohol and first-year students.[23] Based on that history, the majority concluded Martinez was a foreseeable potential victim of the type of harm associated with the Chapter's hazing practices.[24]

The Court identified several mechanisms through which WSU could exercise control over the Chapter, including imposing alcohol- and hazing-related conditions on recognition, requiring meetings with WSU advisors, communicating with Chapter and ATO leadership, requiring risk-management and educational programming, investigating reported violations, imposing sanctions, and revoking recognition.[25] Those mechanisms, the majority concluded, gave WSU enough control

[17] *Id.* at 23-24.
[18] *Id.*
[19] *See id.* at 22-27.
[20] *See id.* at 19-22.
[21] *See id.* at 9-10.
[22] *Id.* at 21.
[23] *Id.* at 10.
[24] *Id.* at 22.
[25] *Id.* at 23.

over the Chapter to support a duty to take reasonable steps to protect foreseeable victims from hazing-related harm.[26]

The Court Distinguished Its Prior Decision Limiting University Liability

WSU relied heavily on the Washington Supreme Court's 2024 decision in *Barlow v. State*.[27] There, the Court declined to impose a duty on WSU to protect a student from another student's conduct at an off-campus party, reasoning in part WSU lacked sufficient control over the individual student who committed the alleged assault.[28]

The *Martinez* majority found the circumstances materially different.[29] Rather than relying on the general relationship between WSU and its students, Martinez's family relied on WSU's specific and longstanding relationship with the WSU-recognized Chapter.[30] The Court found WSU had substantially more information about the Chapter's history and substantially greater ability to influence the Chapter's conduct than it possessed over the individual student in *Barlow*.[31]

A Closely Divided Court

The 5-4 decision produced a significant dissent. Justice Barbara Madsen, writing for the dissenters, disagreed that WSU's relationship with the Chapter qualified as the type of "special relationship" traditionally recognized under *Restatement (Second) of Torts* § 315(a).[32] In the dissent's view, WSU and the Chapter shared what was better characterized as a contractual business

---

[26] *Id.* at 27.
[27] Mitchell Roland, *WSU can be held liable for Sam Martinez hazing death, state Supreme Court rules*, SPOKESMAN-REV. (July 30, 2026), https://www.spokesman.com/stories/2026/jul/30/wsu-can-be-held-liable-for-sam-martinez-hazing-dea.
[28] *Id.*
[29] *Id.*
[30] *See Martinez*, No. 104108-0, slip op. at 19-22.
[31] *See id.* at 20-21.
[32] *See Martinez*, No. 104108-0, slip op. at 1-4 (Madsen, J., dissenting).

relationship that provided mutual benefits, rather than the type of relationship involving sufficient control traditionally associated with duties to control third parties.[33]

The dissent also stressed the Chapter operated off-campus and its agreement with WSU expressly recognized WSU and the Chapter as separate entities.[34] While WSU could discipline the Chapter or withdraw recognition after violations, the dissent questioned whether those disciplinary tools amounted to sufficient preventative control over the Chapter's off-campus activities.[35]

What the Decision Means for the Fraternal Industry

The decision does not establish WSU breached its duty or WSU is ultimately responsible for Martinez's death.[36] The Washington Supreme Court expressly limited its holding to the threshold question of duty and remanded the case for further proceedings.[37] A factfinder may therefore still have to address breach, causation, damages, and other remaining issues.

Nevertheless, *Martinez* is significant for colleges, universities, and fraternal organizations because the Court looked beyond the physical location of the incident and focused instead on the nature of the relationships among WSU, the Chapter, and students. The fact the Chapter's activities occurred in privately operated, off-campus locations did not eliminate WSU's potential duty where WSU maintained an ongoing recognition relationship, possessed information concerning prior risks, and retained mechanisms for influencing the Chapter's conduct.

For fraternal organizations, the decision also underscores the importance of clearly defining the respective responsibilities of universities, national organizations, local chapters, alumni or housing entities, and undergraduate members. Recognition agreements, housing arrangements, risk-

[33] *Id.* at 10-11.
[34] *Id.* at 7.
[35] *See id.* at 4-8.
[36] *Martinez*, No. 104108-0, slip op. at 30.
[37] *Id.*

management communications, prior disciplinary history, and coordination between university officials and national organizations can become important evidence when a court later evaluates who knew of a risk, who possessed authority to address it, and what reasonable preventive measures were available.

The ultimate outcome of the *Martinez* litigation remains unresolved, as the case was remanded to the trial court for further proceedings consistent with the holding. The Washington Supreme Court's decision, however, makes one point clear: when an institution has a longstanding relationship with a recognized organization, knowledge of recurring risks, and meaningful mechanisms to respond to those risks, an off-campus location alone may not insulate that institution from a duty of care.

Delaware Annual Franchise Fees Increase

Alison T. Moore, Fraternal Law Partners and Manley Burke Compliance, LLC,
ali.moore@compliancemb.com

The Delaware General Assembly **passed a bill** to increase various filing fees with the Delaware Secretary of State's Division of Corporations, including a 33.33% increase to the annual franchise tax fee for limited liability companies, among other registered entity types.

While it is not uncommon for states to increase filing fees from time to time, the significant increase in Delaware, a state where many entities have chosen to organize or incorporate subordinate entities, may have a dramatic impact on an organization's state filing fee budget for the coming reporting year. Entities which organize subordinate limited liability companies to hold individual

properties may be most impacted, as the annual franchise tax fee per limited liability company increases from $300 to $400 beginning with the 2026 franchise tax due by June 1, 2027.

Other Delaware annual franchise taxes will increase for general partnership, limited partnerships and registered series. The annual franchise tax for corporations remains unchanged, although initial registration fees for domestic corporations and foreign corporation registration fees increased effective August 1, 2026.

Expedited service fees significantly increased, in some cases as much as 300%. This will impact filing fees for services which require immediate action, such as reinstatements.

Contact Manley Burke Compliance, LLC with questions regarding your organization's specific filing obligations and fees in Delaware.

The purpose of Fraternal Law is to provide a discussion of fraternity law and legal issues impacting Greek organizations. Its contents are not intended to provide legal advice or address individual legal matters. Contact an attorney for legal advice regarding your organization's individual questions or concerns.

Fraternal Law is published four times a year as a non-profit service of Manley Burke, LPA, 225 West Court Street, Cincinnati, Ohio 45202, (513) 721-5525. Please address all editorial inquirers and all subscription correspondence to this address or Alison T. Moore, attorney at Manley Burke, LPA and editor of Fraternal Law, at ali.moore@fraternallaw.com.