ADDITIONAL DEVELOPMENTS—CYBERLAW

RICHERSON V. BECKON

337 Fed. Appx. 637(9th Cir. 2009)

Goodbye diary, hello blog! The proliferation of blogging has created new challenges for employers and workers. One common challenge is the tension between the free speech rights of employees to post online and the rights of employers to set and enforce workplace policies as well as to manage employees.

In *Richerson v. Beckon,* a school district demoted a teacher, who was responsible for mentoring other teachers, after she wrote about her co-workers, employer, and union representatives on her personal blog. The teacher's job description included providing her mentees with "honest, critical, and private feedback" and expressly required her to develop trusting and confidential relationships with them. The teacher criticized her co-workers on the blog and while she did not identify them by name, her descriptions of them and their work made them easily identifiable. The school district reassigned the teacher to a classroom position so she would no longer be in a mentoring role. The teacher sued, claiming constitutional protection for the personal speech on her blog.

The District Court for the Western District of Washington granted the school district's motion for summary judgment, holding that the speech did not meet the "public concern" test from *Connick v. Myers*, which provided that public employees do not lose their rights as citizens to participate in public debate by virtue of their government employment so long as their speech addresses matters of "public concern." Here, the teacher's blog posting was not protected when it disrupted relationships between co-workers, interfered with the employee-speaker's performance of their duties, and undermined a close working relationship based upon personal loyalty and confidentiality.

The Ninth Circuit agreed, holding that the school district was correct in demoting the employee because of the "highly personal and vituperative comments" she made about other school employees on her blog. Here, the school district's legitimate administrative interests outweighed the employee's First Amendment rights. The Ninth Circuit upheld the District Court's finding that the teacher's speech was not protected under the balancing test of *Pickering v. Bd. of Educ.*, which assesses whether an employee's free speech

rights are outweighed by an employer's right to an efficient, disruptive-free workplace.

The Ninth Circuit's opinion in *Richerson v. Beckon* is not published and is not precedent future cases regarding whether employees can be disciplined for comments made on blogs or other internet venues such as Facebook, Twitter, and Google Buzz outside of 9th Cir. R. 36-3.

TENENBAUM V. SONY BMG MUSIC ENTERTAINMENT
130 S. Ct. 126 (2009)

On October 5, 2009, the United States Supreme Court denied a petition for writ of certiorari requesting appeal of the First Circuit's decision in *Tennenbaum*, which denied the broadcasting of courtroom oral arguments via the Internet.

Several record companies, including Sony BMG, had brought copyright infringement suits against individuals who allegedly downloaded music without paying. Joel Tenenbaum, one of the defendants, moved to permit the webcast of some courtroom proceedings. The district court allowed the motion, rooting its ruling on public interest and Local Rule 83.3 of Massachusetts federal district court, which provided that "no person shall take any photograph, make any recording, or make any broadcast by radio, television, or other means, in the course of or in connection with any proceedings in this court, on any floor of any building on which proceedings of this court."

On appeal, the First Circuit held that the district court misread Rule 83.3 and that the rule specifically prohibited the webcasting of civil proceedings. The appeals court reasoned that the intention of the rule was to "forbid all broadcasting of federal district proceedings in civil cases, except for the enumerated exceptions." Tabling the issue of the constitutionality of prohibiting courtroom webcasting, the court emphasized that the was not a case about free speech or public access to courts but the correct interpretation of controlling Massachusetts law. In his Petition for Writ of Certiorari, Tenenbaum urged the Court to decide on the constitutional questions surrounding the use of the Internet and webcasting in federal civil courtroom proceedings. These included whether a total ban on the Internet broadcasting of open-court sessions of civil actions in federal courts violated the First and Fifth Amendments. Because the writ was denied, these questions remain unanswered.