

Picture Worth More Than a Thousand Words to Plaintiff in Rhode Island Case

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Arguably the two most significant challenges for any employer involve hiring and terminating employees. In both processes, employers are faced with substantive and administrative concerns. On the substantive level, employers routinely ask themselves questions such as: Will the applicant be a good fit with office culture? Did the employee meet core competencies? Likewise—and perhaps more daunting—are the employer's administrative tasks, which range from submitting completed I-9 Forms and setting up email accounts to providing COBRA notices and collecting company issued devices. To be sure, a great deal of employment litigation stems from the way in which employers tend to administrative affairs upon an employee's separation.

In a case of first impression for Rhode Island, the state's Superior Court recently addressed the legal ramifications associated with an employer's continued maintenance of a website profile and photographs of a former employee. The plaintiff in *Rompf v. Intern. Tennis Hall of Fame, Inc.*, was employed by the International Tennis Hall of Fame as its Head Tennis Professional. 2016 WL 4534211 (R.I. Super. Ct., Stone, J., 2016). In that role, Rompf oversaw the organization's educational and instructional programs until the Hall of Fame dismissed her on November 6, 2014. *Id.* at *1. After Rompf's termination, the Hall of Fame allegedly "continued to identify Rompf in her previous role and used photographs of her on its website until the middle of May 2015." *Id.* Subsequently, Rompf sued her former employer. The plaintiff asserted, in part, that the Hall of Fame misappropriated her "name and likeness for its own purposes and benefit without her permission or approval" to achieve a commercial advantage while simultaneously violating her right to privacy pursuant to Rhode Island General Law § 9-1-28.1. *Id.*

The Hall of Fame returned Rompf's serve by filing summary judgment. The organization argued that "Rompf had no expectation of privacy in her name and likeness because it was used in conjunction with her employment." *Id.* at *2. That is, the Hall of Fame maintained that Rompf's suit was meritless because one cannot have a privacy interest in activities that relate to one's employment. *Id.* at *4. The court found, however, that the Hall of Fame failed to hit a winner in its summary judgment motion. It reasoned that Rompf would advance to the next set because: (1) Rompf's Complaint established that she did not consent to the use of her name and image following termination; (2) there was a question of fact as to whether the Hall of Fame used her image in a false light by publishing the existence of a relationship that no longer existed; and (3) a jury would need to determine whether the Hall of Fame used Rompf's image to "entice individuals to utilize the services she offered as the Head Tennis Professional." *Id.*

Although Rompf's legal match is far from over, the results of the court's summary judgment ruling are profound for those supervisors and human resource professionals charged with navigating an employee's separation. In addition to calculating final paychecks, conducting exit interviews, and cancelling benefits, employers would be wise to inspect their media footprint within a reasonable time of an employee's departure. For example, employers who wait to update their websites until new hires are in place risk misappropriating the former employee's image as well as offending his or her statutory right to privacy.

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