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EXTENDING THE VIRTUAL OFFICE TO THE EMPLOYEE'S HOME OFFICE DOES NOT NECESSARILY MEAN AGREEING TO LITIGATE IN HER LIVING ROOM

With advances in information technology, businesses are increasingly discovering the economic efficiencies of allowing employees to work from home. This practice, also known as "telecommuting," can also help employers comply with state and federal requirements. For example, the Clean Air Act encourages telecommuting because it reduces the carbon emissions associated with travel. Similarly, the Americans with Disabilities Act facilitates by accommodating workers who cannot otherwise work in traditional office environments. In Florida, the state legislature has even required state agencies to implement a telecommuting program for state employees.

Despite its benefits, one potential hazard employers risk when allowing workers to telecommute is the possibility of exposure to litigation in far-flung jurisdictions where the workers may live. For small businesses especially, this can be a tremendous hardship. Fortunately, a Florida court has recently decided a case that reduces the legal risk confronting employers with telecommuting workers.

In *Software Techniques, Inc. v. Kent*, 959 So.2d 347 (Fla. 2d DCA May 25, 2007), reh'g

denied, June 12, 2007,* Christopher Kent sued his former employer, Software Techniques, a leader in the field of computer assisted mass appraisal systems. Kent brought suit in Pinellas County. Software Techniques is located in Orange County, but it had allowed Kent to occasionally work from his home nearly a hundred miles away in Pinellas County. Kent also claimed that the bank account into which Software Techniques had direct deposited his paychecks was in Pinellas County. Other than Kent himself, Software had never maintained any representative or done business in Pinellas County.

Overruling the trial court that had allowed Kent to sue in his home county, the Second District Court of Appeals held Orange County, not Pinellas County, was the proper venue for the lawsuit. The appellate court found that Kent's claim, if any, against Software Techniques was for breach of his employment contract, which requires suit to be brought in the jurisdiction where the purported breach occurred. Regardless of where Kent worked or where his check was deposited, the court said "if STI has failed to perform, it has done so by failing to issue commission payments to Kent from its office in Or-

ange County." Software Techniques, 959 So.2d at 348. In other words, a lawsuit brought against an employer by a telecommuting worker for an alleged failure to pay under an employment contract must be brought in a jurisdiction where the employer is located.

The Software Techniques case and others like it clear some of the remaining obstacles from the road to an efficient, telecommuting workforce. Employers in Florida are now free to allow their employees to work from home without simultaneously submitting to litigating disputes over employment agreements in each employee's hometown.

*The law firm of Litchford & Christopher represented Software Techniques, Inc. in this appeal.

CORPORATE POLITICAL ADS: SLAMMING A POLITICIAN COULD WIND YOU UP IN THE SLAMMER!

We have once again reached the time of the year where our televisions, radios, and the Internet proceed to inundate us with political ads, election debates, and partisan bickering. Yes, the political season is fast approaching. While the 2008 Presidential Election is scheduled for November of next year, with the amount of campaigning that has already taken place, it probably feels more like the 2008 Presidential Election is scheduled for next week. Many corporations find themselves at the center of today's most pressing political issues, and resolve to participate in the political process by supporting one or more candidates running for office. The reasons for providing such support are varied and numerous. Regardless of a corporation's reasons for engaging in these activities, however, a company should only move forward knowledgeably.

On June 25, 2007, the United States Supreme Court issued its decision in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S.Ct 2652 (2007), wherein the Court addressed Section 203 of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). The BCRA makes it a federal crime for a corporation to use its general treasury funds to pay for any "electioneering communications." 2 U.S.C. § 441b (b)(2). "Electioneering communications" are broadly defined as any broadcast that refers to a candidate for federal office and is aired within 30 days of a federal primary election or within 60 days of a federal general election in the jurisdiction where that candidate is running. § 434(f)(3)(A). In *Wisconsin Right to Life,*

the corporation at issue was a nonprofit, non-stock, ideological advocacy corporation recognized by the Internal Revenue Service as tax exempt under § 501(c)(4). However, as Justice Roberts made clear in his opinion, the BCRA "makes it a crime for any labor union or corporate entity – whether the United Steelworkers, the American Civil Liberties Union, or General Motors – to use its general treasury funds to pay for any electioneering communication." This statement of the law makes clear that all corporations must be mindful of the implications of the BCRA when it comes to the funding of political broadcasts during the statutorily prescribed "blackout periods."

In holding that *Wisconsin Right to Life, Inc.*, ("WRTL") did not violate the BCRA, the Supreme Court drew a distinction between campaign advertisements amounting to "express advocacy" versus those qualifying as "issue advocacy." The Court held that an ad is the functional equivalent of "express advocacy" only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." As the Court ruled, express advocacy is properly prohibited by the BCRA, but issue advocacy is not. In discussing the content of the WRTL ads, the Court stated, "[f]irst, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention

an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office."

The Federal Election Commission had argued that WRTL produced the ads with the true purpose of advocating for the defeat of the politicians specifically named in the ads – even if the ads did not expressly say as much. In response to this argument, the Court held that the subjective intent of a corporation is irrelevant to the question of whether an ad qualifies as express advocacy or issue advocacy.

The teaching of this case is that corporations contemplating the funding of political ads, which are aimed at either issues or candidates in the upcoming elections, should proceed with caution. There is a real and substantial risk of criminal liability if you act outside the bounds of either state or federal laws governing such conduct. Please consult with a professional before developing the content of any ad you intend to fund, and definitely seek professional advice prior to broadcasting the ad.

"[T]he Supreme Court drew a distinction between campaign advertisements amounting to 'express advocacy' versus those qualifying as 'issue advocacy.'"

WILL COURTS ENTRUST YOUR AFFAIRS TO A COMPLETE STRANGER?

In Florida, pursuant to Chapter 744, a court may appoint a guardian for any person who is adjudged "incapacitated." A person is incapacitated if he lacks the capacity to manage at least some of his property or to meet at least some of the essential health and safety requirements for himself. § 744.101, Fla. Stat. The person for whom a guardian is to be appointed is called the "ward." There are several different types of guardianships - from a plenary guardianship, through which a court gives the guardian the right to exercise all delegable legal rights and powers of the ward, to a limited guardianship, through which a court specifically designates only certain powers and rights to the guardian.

Once a court has determined that the ward is incapacitated and the type of guardianship that is required, it must then determine who it will appoint as the guardian. Section 744.312(a), Fla. Stat., gives the courts the power to appoint "any person" who is fit and proper and qualified to act as guardian, regardless of his relationship to the ward. The court is to give preference to the appointment of a person

who (a) is related by blood or marriage; (b) has educational, professional, or business experience relevant to the guardianship; (c) has the capacity to manage the financial resources; and (d) has the ability to meet the requirements of law and the unique needs of the case. Three of the four factors emphasize the guardian's qualifications over the relationship with the ward.

In the recent case of *In re Guardianship of Sallie B. Stephens*, 965 So.2d 847 (Fla. 2d DCA 2007), the Second District Court of Appeals was confronted with the question of whether a probate court should appoint a family member or a stranger as guardian. Sallie B. Stephens was a successful woman, holding real estate, owning cars, and a family restaurant that generated a million dollars a year. On appeal, two of Ms. Stephens' nine children, Jabessa Major and David Stephens, argued that the probate court had erred in appointing Lutheran Services Florida, Inc. as "public guardian." Family members were willing to serve as guardian and Ms. Stephens had expressed an intention that she wanted a guardian to be appointed from her family.

In analyzing the best interests of Ms. Stephens, the probate court had found that the siblings were unable to get along with one another and not able to cooperate in taking care of their mother. They had frequent arguments over the family restaurant. Their decisions had threatened Ms. Stephens' financial stability, such as setting up a questionable irrevocable trust. Accordingly, the Second District found that "[i]n view of family dynamics, appointing one of the siblings as a guardian for any purpose would clearly not be in the Ward's best interests." While the court would generally prefer for a family member to be appointed guardian, "that preference can be overcome if they, intentionally or unintentionally, engage in conduct detrimental to a ward's best interests." The Second District accordingly affirmed the probate court's appointment of Lutheran Services Florida, Inc. as guardian for Ms. Stephens. The key factor in the court's analysis was the ward's best interests. In conclusion, although a court may entrust your affairs to a complete stranger, it will only do so with your best interests in mind.

"While the court would generally prefer for a family member to be appointed guardian, that preference can be overcome if they, intentionally or unintentionally, engage in conduct detrimental to a ward's best interests."

**LITCHFORD & CHRISTOPHER
WISHES YOU AND YOUR
LOVED ONES A SAFE AND
HAPPY HOLIDAY SEASON!**



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