

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2008

PHILADELPHIA, FRIDAY, MAY 23, 2008

VOL 237 • NO. 101 \$3.00

ALM

VOL P. 3519

FRIDAY, MAY 23, 2008

THE LEGAL INTELLIGENCER • 5

EMPLOYMENT LAW

Discrimination Claim Extends to Employee's Personal Relationship

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Special to the Legal

On April 1, the 2nd U.S. Circuit Court of Appeals joined the 5th, 6th and 11th Circuits in holding that an "employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race." Depending on one's view of the analysis utilized by these courts, this type of cause of action may seem obvious. To many employers, however, it is not.

Craig Holcomb, a Caucasian male, was an assistant basketball coach for the Iona Gaels. His employment with Iona started in 1995. At that time, he reported to head coach Tim Welsh and Iona's Athletic Director Richard Petriccione. Petriccione, a Caucasian male, was subsequently promoted to vice president for advancement and external affairs of Iona — one of the three vice presidential positions at the school. The athletic director position vacated by Petriccione was taken over by Shawn Brennan, a Caucasian male.

In 1998, Welsh was replaced by Jeff Ruland. Ruland is a Caucasian male. At that time, Holcomb became the associate head coach, although his job responsibilities did not change noticeably, if at all.

In 2000, Holcomb married an African-American woman. One year later, Ruland started a relationship with a friend of Holcomb's wife who is also an African-American woman. In fact, Holcomb's wife and her friend would often attend games and post-game functions together.

In 2001, Iona signed Ruland to an eight-year contract that made Ruland Iona's highest paid employee. Ruland supervised three assistant coaches — Holcomb, Tony Chiles (an African-American male), and Rob O'Driscoll (a Caucasian male).

After a fair amount of success from 1997 to 2001, the Iona men's basketball teams started a skid. The skid was evidenced by their win-loss record from 2001 to 2004 and by some off-the-court exploits of the players. In an effort to rectify the situation, Iona directed Brennan to prepare a report about the basketball team's problems. That report was then submitted to the president of the college and his three vice presidents, one of whom was Petriccione. Although Brennan's report did not recommend that Holcomb be



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terminated while other coaches were retained, the report remarked favorably on only one assistant coach — O'Driscoll.

Following submission of the report, the president and his three vice presidents decided to terminate the employment of Holcomb and Chiles, but retain Ruland and O'Driscoll. The president testified that O'Driscoll was allowed to stay because of, in part, the positive reference in Brennan's report. Although, it was not documented anywhere, Ruland was apparently allowed to remain due to the hefty economic impact his termination would have on the college.

Thereafter, Holcomb claimed that Iona terminated his employment because of his marriage to an African-American woman. To that end, Holcomb claims that two of the five individuals involved in the decision to terminate his employment were racially motivated. Those two people — Petriccione and Brennan — allegedly had significant instances of racial animus in their past.

For instance, Iona alumni had a fundraising and social organization named the Goal Club. The Goal Club routinely held post-

game receptions for players and coaches of the basketball team and alumni of the college. Holcomb's wife regularly attended Goal Club events with Holcomb. Holcomb claims that Brennan barred Holcomb's wife and African-American friend, who was dating Ruland, from Goal Club events starting in November 2003. According to Holcomb, the only reason that his wife was barred from these receptions was because she was African-American, and the college was trying to appeal to its predominantly Caucasian alumni base.

Brennan also allegedly directed a request to Ruland that the African-American members of the men's basketball team dress more like the Caucasian members of the team. It should be noted that Iona denies the incidents as recalled by Holcomb. The 2nd Circuit, however, was reviewing the case on an appeal from summary judgment and, thus, was construing the evidence in the light most favorable to Holcomb.

With respect to Petriccione, Holcomb made certain allegations that Petriccione had been known to refer to African-Americans with derogatory terms. To that end, Holcomb obtained affidavits and deposition testimony to support such claims.

Thus, to summarize the decision Iona made — of the four people being considered for termination, one Caucasian and one African-American were terminated while two Caucasians were allowed to remain. The Caucasian who was terminated, Holcomb, was married to an African-American woman. One of the Caucasians who was allowed to remain, Ruland, was in a relationship with an African-American woman but was also Iona's highest paid employee with a contract through 2008 or 2009 — 4 to 5 years after the termination decision was made.

The trial court granted summary judgment in favor of Iona on the grounds that Holcomb could not establish that his termination was "the product of improper discriminatory motives." Holcomb appealed to the 2nd Circuit. The 2nd Circuit reversed.

In reversing the lower court, the 2nd Circuit specifically acknowledged "an employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race."

In so holding, the court noted the lan-

guage of Title VII. Specifically, "an unlawful employment practice is established when the complaining party demonstrates that race ... was a motivating factor for any employment practice, even though other factors also motivated the practice."

The court then went on to discuss the burden shifting analysis under the McDonnell Douglas standard. In a racial discrimination claim, the four elements of a plaintiff's prima facie case are: (1) that the individual belonged to a protected class; (2) that the individual was qualified for the position; (3) that the individual suffered an adverse employment action; and (4) that the adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent. Iona challenged the first and fourth elements of Holcomb's case.

With respect to the first element of Holcomb's claim, which is the focus of this article, Holcomb contended that he was discriminated against because he was married to an African-American woman. In interpreting Holcomb's contention, the 2nd Circuit held that "where an employee is subject to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee's own race." As such, the 2nd Circuit, in agreement with the 5th, 6th and 11th Circuits, held that Holcomb satisfied the first element of his prima facie case of racial discrimination. As such, the 2nd Circuit now specifically acknowledges racial discrimination claims when an employer takes action against an employer because of the employee's association with a person of another race.

This is not the end of the game for Holcomb, however. He still needs to convince a finder of fact that Iona discriminated against him. For other employers, this decision highlights that race, whether of the individual employee or of someone associated with the individual employee, cannot be considered in making an employment decision. To consider the race of anyone associated with the individual employee runs the risk that such act will be considered discriminatory. This holding should warn employers that personnel decisions cannot be based on the race of the employee or the race of an individual associated with the employee. •