

Navigating Employment Law Issues for High Profile Restaurants, Hotels and Lounges

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Presenter



- **Carolyn D. Richmond | Partner, Fox Rothschild LLP**
- Carolyn is co-chair of the Hospitality Practice Group at Fox Rothschild LLP. Her practice largely consists of representing and counseling employers in the hospitality industry, specifically restaurants, hotels, caterers, night clubs, lounges and fitness centers.
- Carolyn has extensive experience litigating wage and hour class actions, restrictive covenants and employment discrimination cases.
- Carolyn is also counsel to a number of employers in the retail, financial services, healthcare and manufacturing industries. She frequently provides union avoidance and sexual harassment training, and represents employers before a variety of state and federal agencies.

Presenter



- **Darrell D. Miller | Partner, Fox Rothschild LLP**
- Darrell serves as co-chair of the Entertainment and Sports Law Practice and is a prominent entertainment lawyer with more than 20 years experience in entertainment law.
- As a former singer and performer, Darrell has a deep understanding of the creative talent he represents, as well as the knowledge and savvy of a seasoned entertainment attorney.
- Darrell's commitment to providing superior personal service has resulted in long-standing relationships with studio executives and creative personnel, representation of actors, writers, directors and producers associated with a variety of television programs and motion pictures.

Part II: Introduction and Scope of Presentation

- “In the future everyone will be world-famous for fifteen minutes.” – Andy Warhol, 1968
- The reality television takeover of primetime programming
- Intersections between reality TV and the hospitality industry include
 - Bravo Channel’s “Top Chef”
 - “Hell’s Kitchen” on Fox
 - Fox Network’s and Gordon Ramsey’s new show entitled, “Hotel Hell”
 - Lounges and restaurants in the celebrity spotlight that are owned and frequented by the stars of the “Real Housewives” franchise

Part II: Introduction and Scope of Presentation (cont'd)

- Privacy, Confidentiality and Location Agreement issues are hot topics for high profile hospitality businesses the same as they are for the reality television business
- Goal: Tips and Strategies for owners and human resources professionals on how to protect your businesses and/or brands when dealing with privacy, confidentiality and location agreement issues, especially when your venue has been tapped to be part of the reality television explosion

Privacy: Understanding the Rights Granted in Various Employment Agreements

- Typical Hospitality Employers: scope of rights granted in employment contracts, assuming there even is an employment contract, often do not adequately protect high profile employers
 - Employment: limited waiver of privacy and no grant to use name and likeness
- High Profile Employers: scope of rights generally necessary are the same as the rights granted in the reality TV business
 - Reality TV: these waivers generally include all rights and releases of all claims relating to privacy as well as unlimited rights to use name and likeness

Privacy: Understanding the Rights Granted in Various Employment Agreements – (cont'd)

- According to Neilson, since 2003, reality TV has consistently captured the largest percentage of audience watching top 10 broadcast programs
 - Some of the top shows among the reality television business include shows designed around celebrity chefs, restaurants, hotels and lounges

Right of Publicity: Use of a Person's Name, Likeness or Identity

- Grey area of law, as there is no federal statute and the individual states must to determine whether or not to address this issue
- The right of publicity has been recognized either by statute or by common law in at least thirty states, including California, Florida, New York and Texas
- One example of the most favorable law in this area is the State of Indiana which survives a person 100 years after their death and applies to all persons' harmed in the state of Indiana regardless of their domicile [\[i\]](#)

[\[i\]](#) Ind. Code. § 32-36-1-1

Right of Publicity: Use of a Person's Name, Likeness or Identity – (cont'd)

- Even though states that recognize this right appear to extend such protection to all persons, celebrities are more protected because it is easier to prove that they are recognizable and have suffered damages as a result of the misappropriation of their name, image or likeness
 - Example: the venue has little, if anything, to gain from using an image of an anonymous person to promote the venue and the anonymous person has nothing to lose because such use would hardly tarnish their brand

Confidentiality Agreements

- Confidential information can be a commodity in the high profile hospitality and reality television businesses
- It is critical for all business in these areas to have a clear policy on how to protect confidential information
- Who should sign a confidentiality agreement?

Basic Terms Covered in Confidentiality Agreements Related to Celebrity Chefs and High Profile Establishments

- Definition of confidential information (proprietary information, marked or unmarked, information made public or compelled by law)
- Explanation of purpose of disclosure
- Agreement not to disclose, publish or sell confidential information
- No use aside from use intended
- Term
- Limitation of remedies for breach

Breach of Confidentiality Agreements

- The most effective confidentiality agreements include provisions that allow for injunctive and equitable relief as well as liquidated damages

Examples include

- \$1,000,000 or more in penalties;
 - Disgorgement of profits;
 - Injunctive relief when there is threatened breach of the confidentiality agreement
- Confidentiality agreements also include enforceability clauses that facilitate enforcement
 - An example of when such a provision is helpful: if a court determines that a particular clause in the agreement is unenforceable, they'll strike that portion and enforce the rest of the agreement

Location Agreements:

Great Publicity vs. Increased Expenses and Other Potential Liability

- High profile events and reality television shows use and sometimes abuse locations. Before filming commences, the property owner or leaseholder should do a risk benefit analysis
- Location Agreements include at least the following basic terms
 - The location
 - The term
 - Fee
 - Permission to enter the property along with equipment to film
 - Permission to film from underlying rights holder
 - Agreement to use efforts to prevent damage to the property
 - Indemnification provision
 - Remedy for breach

Negotiating Location Agreements; Beware of Non-Obvious Issues

- Factors to consider when negotiating a fee
 - The Term
 - The uniqueness of property
 - Opportunity costs
- Beware of unanticipated increase in cost of utilities during filming
- Proof of insurance
- Restrictions and/or limitations in the lease agreement
- Owner may obtain footage but must negotiate use for marketing or commercial purposes
- Use of location in a false light, whether intentional or not, could damage the Owner's business and reputation

Conclusion

- Andy Warhol's prolific statement, after 43 years, is still as true today as it was then
- Reality television is being filmed in restaurants, hotels and lounges bringing the venue into the spotlight along with all of the good and bad issues that may arise as a result
- From at-will employees to employees with written employment agreements, employers should understand that these issues are here to stay for the foreseeable future

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