



Public Employee's Criticism of Superiors Not Protected as Free Speech

In Kaye v. Board of Trustees of the San Diego County Public Law Library (Nov. 10, 2009, D053644) __ Cal.App.4th __ [2009 WL 3738795], a law librarian was discharged for sending a scathing e-mail criticizing his superiors. In his lawsuit, the librarian alleged that his e-mail was protected speech under the free speech clause of the California Constitution. The Court of Appeal disagreed.

The librarian's invective e-mail, which included a lengthy denunciation of the librarian's superiors, was sent in response to an assignment by his immediate supervisor and received by all of the full-time staff in the department. The librarian was placed on suspension the day after he sent the e-mail, and was later terminated by the library board, which found that the e-mail was "intentionally calculated to disrupt the office, undermine the authority of the Director, and impinge upon working relationships within the Library."

In evaluating the librarian's claim of a violation of California's free speech clause, the Court looked to the United States Supreme Court's decision in Garcetti v. Ceballos (2005) 547 U.S. 410. In Garcetti, the Supreme Court held that a memorandum written by a public employee in the regular course of his duties was not protected speech. In that case, the Supreme Court found that the first inquiry is "whether the employee spoke as a citizen on a matter of public concern," or simply as an employee. Applying this test to the e-mail, the Court held that the librarian was not speaking as anything other than a librarian.

The librarian did not contend otherwise. Rather, he challenged the applicability of the Garcetti decision to the free speech protection set forth in California's Constitution. Although the Court acknowledged that California's protection of free speech is, in some instances, broader than that of the federal First Amendment clause, it held that there was no reason to depart from the Supreme Court's analysis of public employee speech. The Court held that there was nothing in the language or history of California Constitution's free speech clause suggesting Garcetti should not apply, and that California courts have consistently followed U.S. Supreme Court decisions in addressing public employee speech. As such, no violation of California's free speech clause occurred.

The Court's decision makes clear that a public employee can be disciplined or terminated for speech that is made in the course of his or her professional responsibilities. However, districts must carefully evaluate the context of employee speech to ensure Garcetti will apply.

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