

FOLLOW THE "PAPER" TRAIL

The following is a reprint of an article that appeared in the May 24, 2002 edition of The Los Angeles Daily Journal. Written by Eron Ben-Yehuda as a feature in his Keys to Victory column, the article discusses the strategies used by Robert L. Rediger in a recent case he litigated on behalf of an employer to convince a Solana County Superior Court to dismiss the plaintiff's lawsuit before the case would have been submitted to the jury. Reprinted with permission.

The defense attorney said he relied on documentary evidence to establish a plaintiff's poor job performance, which undercut her claim of wrongful termination. The one-time social worker also accused her former employer of defaming her. But defense attorney **Robert L. Rediger** that the unflattering statements were legal protected.

FACTS

On Oct. 28, 1999, Maria I. Torres, 36, was fired from her job as a social worker at Dixon Family Services, where she had worked for 10 years. Tones claimed that her employer had terminated her in retaliation for blowing the whistle on the company's alleged misuse of funds. She also had filed a complaint, two months before losing her job, with the state's Department of Fair Employment and Housing. In the department complaint, Tones had accused the Dixon-based company of discriminating against Hispanics. In her subsequent lawsuit, the plaintiff claimed that she had been an excellent employee who had received several promotions. But by 1999, her supervisors had accused her of insubordination and substandard job performance.

CONTENTIONS

Plaintiff- Her former employer fired her in retaliation for complaining about the misuse of funds and race discrimination. Her supervisors also defamed her by calling her insubordinate and by giving her critical performance evaluations.

Defendant- The plaintiff lost her job because her work was unsatisfactory and she had refused to follow her supervisors' directions.

NOTHING FOR THE JURY

The trial judge granted a motion for nonsuit before

jury deliberations, **Rediger of Sacramento's Rediger, McHugh & Hubbert** says. To prevail on the motion, Rediger convinced the judge that the plaintiff hadn't presented enough evidence to satisfy the essential elements of her claims of retaliatory termination and defamation. "There is nothing for the jury to consider," Rediger says. The defense presented a "paper trail" that showed legitimate business reasons for firing Tones, he says. "The plaintiff was unable to show that these reasons given by the defendant to justify her termination were false," he says. Rediger submitted memos from supervisors of Torres that detailed her acts of insubordination. For example, she allegedly had called her company's executive director a "dictator" and refused to take direction from her, Rediger says.

Opposing counsel Richard J. Davis of Sacramento denies that the documentary evidence hurt his client's case. "The paper trail showed her an excellent employee," Davis says. "She received numerous promotions." Davis suspects that he lost the motion because the judge allegedly didn't consider as evidence of potential retaliation the fact that the plaintiff lost her job only two months after complaining about her employer's purported misconduct. "I guess he believed it wasn't short enough," Davis says.

CASE CLOSED

Torres alleged that her former supervisors had defamed her by calling her insubordinate and an unfit employee. But Rediger claims that case law proves her wrong. "As a matter of law, work-related statements in a performance evaluation do not establish defamation," he says. Such legal protections for employers weakened the plaintiff's chances of overcoming the defense motion, Davis concedes. Nevertheless, her supervisors' namecalling did harm the plaintiff's reputation, he says. "It was still a lie," he says.

- **Eron Ben-Yehuda**