

Distance Learning and Jurisdiction Issues

The dawning of the Internet age has challenged our judicial system by requiring the application of traditional rules of jurisdiction to new circumstances. When an organization located in one state carries out activities through the Internet, reaching and interacting with individuals in other states, do the courts of those states acquire jurisdiction over the organization that will allow their citizens decide to bring suit against it? The prospect of having to defend lawsuits in jurisdictions other than the organization's home-state simply because the Internet was used as a communication and "connection" tool presents a sobering new reality for businesses and non-profit entities (including colleges and universities).

Southern Christian University (SCU), a private Alabama university with a main campus in Montgomery, was recently sued in Delaware in regard to claims arising out of its distance learning (DL) program. The plaintiff, Kloth, was a Delaware resident who took a number of master's level courses from SCU online through its DL program. When she was unable to secure a site for the required clinical portion of the degree program, she sued SCU in federal district court in Delaware (the "forum" state) for breach of an implied contract to provide her a complete education. She also sued for religious discrimination. SCU was successful in urging the trial court to dismiss the action for lack of jurisdiction over SCU, and Kloth appealed to the U.S. Court of Appeals for the Third Circuit.

The appellate court noted the generally recognized rule that a forum state may possess "specific jurisdiction" over a non-resident defendant where the claim relates to conduct by the defendant intended to interact with citizens of the forum state. It acknowledged that SCU's web site did involve a degree of interactivity with DL students but said the inquiry must go further to determine whether SCU specifically targeted its web site to Delaware residents. Since only Kloth and one other Delaware resident were enrolled in SCU's DL program, and there was no evidence of any other activity by SCU aimed at Delaware residents, the evidence did not support a finding of specific jurisdiction. Delaware law also recognizes "general jurisdiction" over a non-resident if the latter regularly does or solicits business in the state, engages in any other persistent course of conduct there, or derives substantial revenue from services performed there. The appellate court again agreed with the trial court that SCU's "maintenance of a web site that posts information about the school and is accessible to potential students in foreign jurisdictions is insufficient to subject a non-resident defendant to general jurisdiction." *Kloth v. Southern Christian Univ.*, 320 Fed. Appx 113 (3rd Cir. 2008).

Though SCU was successful in avoiding suit in Delaware, it did, of course, remain subject to suit on these claims in Alabama. And it is clear that, in a case like this, evidence of substantial recruitment efforts directed at prospective students in another state and the enrollment of more than a few of that state's students may result in a university having to go to courts in that state to defend claims brought by one or more of those students. The benefits of the web to a university in its educational activities is evident to all, but university administrators should be aware that the web also brings at least potential exposure to suit in every state from which the university's web site is accessible online.