

Roanoke newspaper and former sportswriter settle dueling claims

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Readers will recall that last year we reported on the Roanoke Times' lawsuit against its former sportswriter Andy Bitter over ownership of the [@AndyBitterVT](#) Twitter account and its followers (see "Who owns your company's social media accounts?" on pg. 3 of our September 2018 issue and "Update on Roanoke Times' Twitter lawsuit" on pg. 3 of our November 2018 issue). The newspaper first sued Bitter in Roanoke federal district court last August. The lawsuit sought to gain access to and use of the Twitter account. He had inherited the account from his predecessor on the beat but significantly increased the number of followers with his own reporting. He countersued the newspaper for defamation. It looked as though this would be a long, drawn-out dispute. But in a sudden turnaround, both sides have now agreed to a settlement.

Court's ruling

The settlement may have been prompted by the federal court's decision to deny the *Roanoke Times'* attempt to prevent Bitter from using the disputed Twitter account while the case was being litigated. That ruling came after a seven-hour evidentiary hearing. Following the hearing, the court found two things—first, that the evidence failed to clearly establish that the newspaper was likely to prevail on the merits, and second, that irreparable harm would not result if he continued to use the account.

Regarding the likelihood of success, the court said the *Roanoke Times* had failed to prove by the high standard of clear and convincing evidence that it was the owner of the Twitter account or that it was a *Roanoke Times*-branded account, as opposed to a personal Twitter account owned by Bitter. Further, the court found that, given the public nature of the Twitter content and followers, the paper had failed to establish that the account contained any trade secrets under federal or state law.

Next, the court noted that the *Roanoke Times* hadn't provided any evidence of irreparable harm should Bitter continue to use the account. This especially was the case because the account's followers are publicly known. Additionally, the court found significant the paper's "remarkable self-imposed ban on its own reporters' use of Twitter to cover Virginia Tech football."

Although the court expressed skepticism about the merit of the *Roanoke Times'* legal arguments, it acknowledged there was a certain equity to the paper's position. Indeed, it noted that the balance of equities somewhat favored the paper based on the evidence that the Twitter account was developed while Bitter was employed as a sports reporter and that this activity, at a minimum, was encouraged as part of his sports-coverage responsibilities. Given the strengths of each side of the dispute, the court ordered them to attend a settlement conference to attempt to resolve the matter.

Settlement

After the court issued its order, a settlement conference was convened. As a result of discussing the strengths and weaknesses of their respective cases, Bitter and the paper decided to settle, and the court, therefore, dismissed the dueling claims. The terms of the settlement haven't been made public, but the federal court docket indicates that it was reached on mutually agreeable terms.

As part of the settlement, it appears that Bitter will retain access to the account, which uses the handle [@AndyBitterVT](#). Indeed, following the court's dismissal, he posted a statement to that effect, directing readers to the *Roanoke Times'* new Virginia Tech-focused account. As he tweeted, "The *Roanoke Times* and I have agreed to drop our claims against each other and get on with our lives. I'll continue to tweet from my account as I always have since I started covering Virginia Tech. If you're inclined, consider following my successor at the *Roanoke Times*, Mike Niziolek, at [@VTSportsRT](#). I look forward to continuing to report Virginia Tech football for *The Athletic* is his new employer. *BH Media Group, Inc. v. Bitter*, Case No. 7:18-cv-00388 (W.D. Va.)."

Takeway

Significantly, the *Roanoke Times* apparently has learned from the legal dispute with Bitter the dangers of allowing a reporter to use his name as part of a Twitter handle. That's because his successor at the paper will be using the handle [@VTSportsRT](#), which references the name of the newspaper and sports team but not the reporter.

If you are facing a similar situation, where one or more of your employees uses Twitter or another social media platform as part of the job, you may want to have the Twitter handle or

account name be in your company's name, not the employee's name. That will help to clarify that you own and control the account, not your employee.

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