

Policing the Rink

by CHARLES
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Using “off-duty” police officers as security guards

Many recreational facilities choose to utilize “off-duty” police officers as security guards. These officers are typically in uniform and even carrying their side arms. From a legal perspective, however, the use of off-duty police officers as security guards can lead to tricky issues related to liability arising from their actions.

Consider the following real-life example:

An “off-duty” police officer is working one evening at an ice rink as a security guard. The rink has a bar where players tend to hang out. One of the customers spends several hours drinking beer at the bar and becomes visibly intoxicated to the point where the bartender cuts him off. The customer loudly complains about being cut off and begins to antagonize another customer. The police officer, who happens to be positioned in the bar, asks the intoxicated customer to calm down and back off. The customer responds by saying that he will not back off and that if the officer really wishes him to do so, the officer will need to handcuff the customer and remove him from the bar. After another warning and

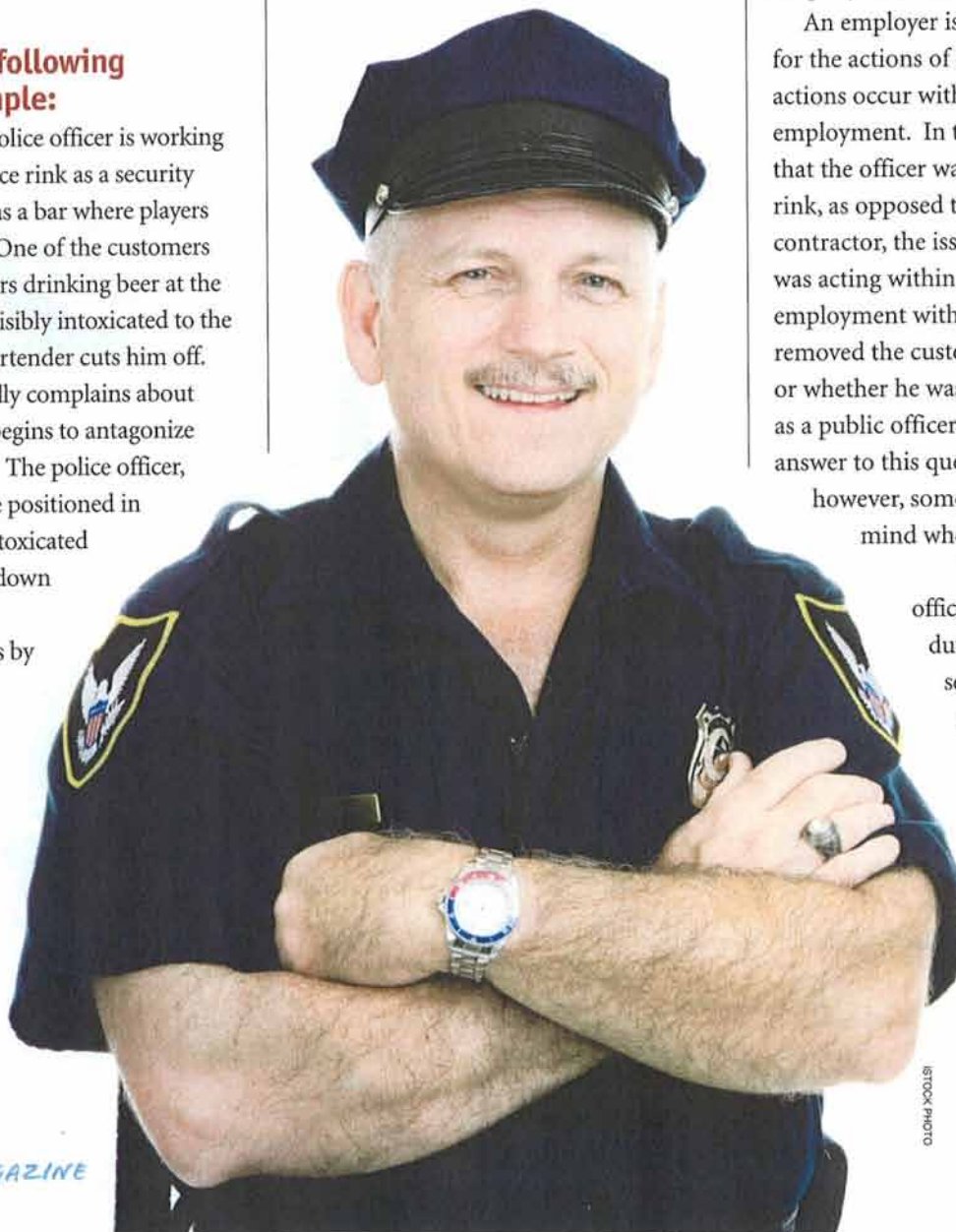
similar response, the officer proceeds to handcuff the customer and remove him from the premises. In the process, the customer attempts several times to evade the officer, which leads to physical action by the officer against the customer, allegedly causing physical injuries. The customer subsequently files a lawsuit

against the rink alleging, among other things, that the rink is vicariously liable for the actions of its “employee” – the officer. From the perspective of the rink, the primary issue is whether the officer was acting within the scope of his employment as a security guard or, in fact, as a police officer for the public good when he allegedly caused the injuries.

An employer is generally responsible for the actions of its employees when the actions occur within the scope of employment. In this example, assuming that the officer was an employee of the rink, as opposed to an independent contractor, the issue is whether the officer was acting within the scope of his employment with the rink when he removed the customer from the facility or whether he was acting in his capacity as a public officer. There is no definitive answer to this question. There are,

however, some guidelines to keep in mind when faced with this issue.

In many states, police officers, even when “off-duty” and acting as private security guards, cannot be separated from their roles as public servants charged with maintaining the peace and enforcing the law. This means police officers are, often times, acting in a dual role as private security guard and public law



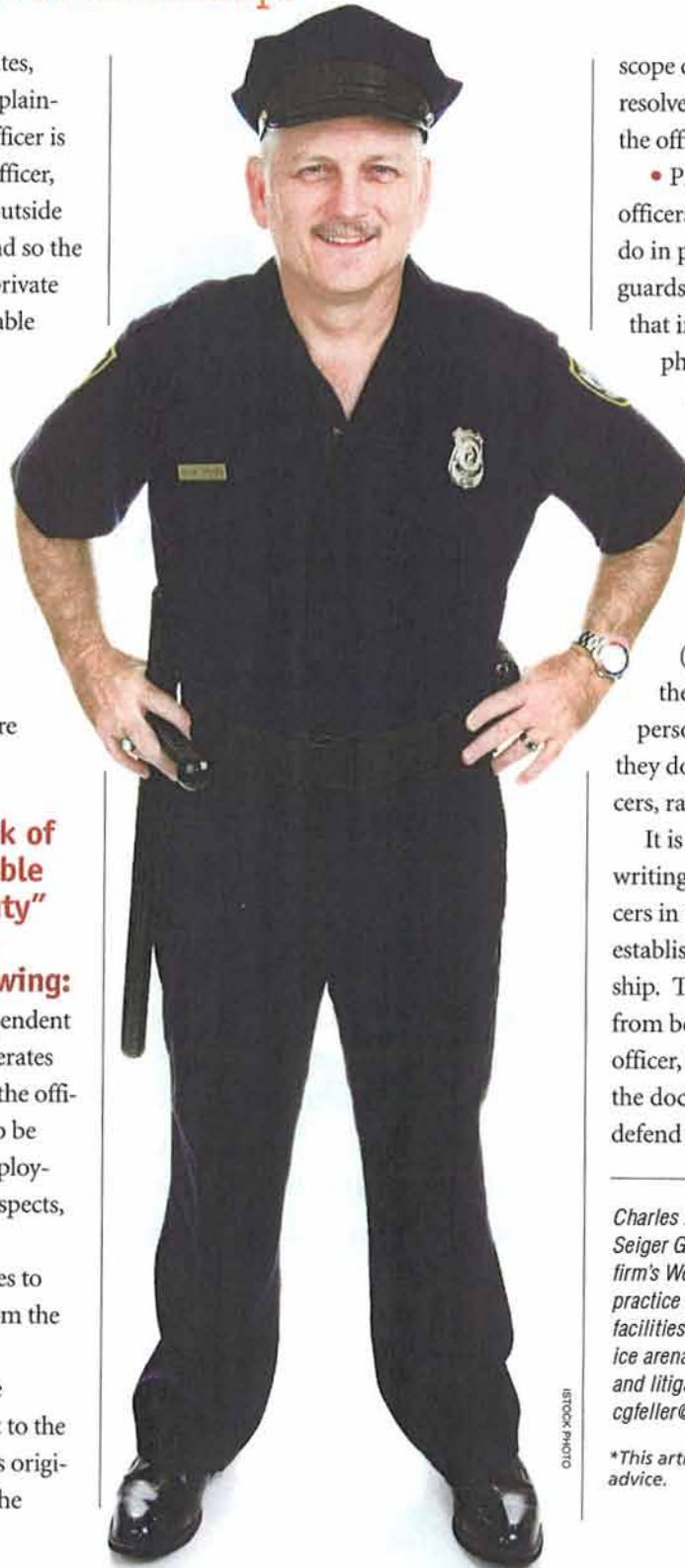
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enforcement official. In certain states, where the acts complained of by a plaintiff/injured party occur while an officer is performing his duties as a public officer, the officer is deemed to be acting outside of the scope of his employment, and so the facility, which employed him as a private security guard, is not vicariously liable for his actions. Some states draw bright lines in making the distinction as to when an officer is carrying out his duties as a police officer, finding that making an arrest or chasing a suspect are within the role of a public police officer, not that of a private security guard. However, many times, incidents occur and people are injured under circumstances that are no so clear.

In order to reduce the risk of being held vicariously liable for the actions of "off-duty" police officers, facilities should consider the following:

- Have the officers sign an independent contractor agreement, which enumerates certain circumstances under which the officers will be considered by the rink to be acting outside the scope of their employment (ie: making arrests, chasing suspects, using handcuffs, firearms or other weapons, and/or using police vehicles to detain and/or remove customers from the premises).
- Provide an advance copy of the Independent Contractor Agreement to the municipality from which the officers originate, so there is no ambiguity as to the



scope of employment. Negotiate and resolve any issues in advance of the use of the officers.

- Provide written instructions to the officers defining what they can and cannot do in performing their duties as security guards. For example, instruct the officers that in the event a customer becomes physically confrontational, the officers should immediately call for back-up by "on-duty" police officers, so that any physical contact that occurs is between the customer and the on-duty officers who arrive as back-up. Also, have the officers acknowledge in writing (prior to their use) that in the event they decide to handle such a situation personally, rather than call for back-up, they do so in their capacity as public officers, rather than as private security guards.

It is important to communicate in writing with the municipalities and officers in advance of the use of the officers to establish the boundaries of the relationship. This may not prevent the facility from being sued for the actions of an officer, but it will provide the facility with the documentation it needs to better defend against the claim. ★

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**This article is not intended to provide legal advice.*