



NONPROFIT ADVISOR

For DAV Departments and Chapters

Volume 5, No. 4

DEFAMATION
What's It All About?

Fall 2013

WHY IS ONE OF THESE NEWSLETTERS BEING DEVOTED TO DEFAMATION?

In any fraternal organization, there are bound to be personality disputes. It is a virtual certainty that some of these disputes will lead to name-calling, accusations and maybe worse. Often, these imbroglios give rise to formal or informal claims of “defamation,” e.g., “Smith impugned my character!!!” It is therefore important to know what defamation is – and isn’t.

WHAT IS DEFAMATION?

Defamation is the publication (i.e., transmission to a third party) of a false statement that harms the reputation of a person or organization. If the statement is written, the defamatory utterance is typically called “libel.” If the statement is oral, the proper label is “slander.”

Does defamation have to be intentional? What if the person making the statement makes an honest mistake?

A defense to defamation might be that the person making the statement had a good faith belief that it was true. Nonetheless, in close cases, one may certainly have a duty to investigate before making a statement that could harm the reputation of another person.

Suppose that someone makes a statement that is true, but highly injurious to the reputation of another. Is that defamation?

No. Truth is an absolute defense to a claim of defamation. Nonetheless, one cannot go around making true but harmful statements about others in an indiscriminate fashion. Even though such statements are not defamatory, they may still produce liability. Some laws prohibit making – without a compelling reason – statements that “blacken the memory of the dead” or “expose the natural defects of one who is alive.”

What are the possible defenses to a claim of defamation?

There are many such defenses. Some of the more common ones are touched on below.

1. **Opinion.** Some courts will dismiss a claim of defamation on the ground that the statement was just an “opinion” and was not therefore harmful to the reputation of the subject. However, more and more jurisdictions are recognizing that the distinction between ‘statement’ and ‘opinion’ is murky, so this defense is losing favor.



2. **No injury.** If a potentially defamatory statement causes the subject no injury, the claim will normally fail. The most common way of raising the defense is to state something along the lines of “Yes, I called him a thief, an embezzler and a rapist, but no one believed me.” If one can prove that no one took the communication seriously, the defamation claim will probably not succeed.
3. **No defamation possible.** This defense does not appear too often, but it is the most amusing one. It is based on the idea that “I could not possibly have defamed Smith. His reputation is so bad already, nothing that I could do would make it worse.” Rare as it is, there are some cases where it has succeeded. It would not be prudent to count on this defense, though, unless the statement in question is about a serial killer or some other enemy of society!
4. **Mere vulgarity.** This is a common defense in defamation cases in fraternal organizations. Most such cases are based on statements made in the course of a heated argument. The accusation that someone is a jackass or some other less flattering epithet is generally regarded by the courts as just blowing off steam and not as a defamatory utterance.

Is there any such thing as “mass defamation” or can I say what I want about groups?

Mass defamation is alive and well. Just because a statement is about a group of persons does not mean that it cannot be defamatory. An 80 year-old New York decision on this issue is still taught in law schools. In *Gross v. Cantor*, a radio comedian (Cantor) published a letter accusing all the radio columnists in New York City “except one” of behavior that contravened the standards of morality and journalism. At the time, there were twelve radio columnists in New York. In a separate interview, Cantor identified the “one” honest columnist. Gross was not the “one” and he sued Cantor for defamation. The court rejected Cantor’s defense that he had not named Gross specifically and thus had not defamed him. Rather, the court held, where it is possible to identify the specific persons who are the subject of a statement, and the class of such persons is small, “mass defamation” is a viable cause of action.

The implication for DAV? It would probably not be defamatory to say “all DAV members are dishonest.” However, a statement that “the officers of Chapter 36 are all crooks” would be a different story. As your mother may have told you: “Keep a civil tongue in your head!”

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.