

## DEFAMATION DIFFICULT TO PROVE FOR PUBLIC FIGURES

Every Year the ACSA Member Assistance & Legal Support Team responds to questions and concerns from more than 700 ACSA members.

One of the areas the Member Assistance Advocates receive questions about is defamation. Members call with a statement that a colleague, staff member, parent or member of the public have defamed them or made slanderous and libelous remarks about them in public. These members want to know what their rights are.

In the following article, ACSA asked Member Assistance Advocates Lloyd Wamhof and Rod Todd to respond to a series of questions about defamation.

**Question: What is defamation?**

Wamhof: Defamation is a generic word for false statements that injure a person's reputation. As a general rule, libel is written and slander is oral.

**Question: Does the ACSA Member Assistance & Legal Support Team receive calls from members asking what they can do if someone has slandered or defamed them?**

Todd: Yes, in fact several years ago we asked one of our panel attorneys, Jay-Allen Eisen, to write a brief on defamation because we felt there was a general misunderstanding by our members of what it really means to be defamed. Many of our responses in this article are based on his brief.

**Question: What is the most critical misunderstanding about whether you have been defamed?**

Wamhof: Clearly, the First Amendment guarantees every person the "right to criticize public men (and women) and measures – and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." This right has been substantiated by many court cases over the years.

**Question: So, does this mean a member of the public may stand up in a school board meeting and say things about the superintendent or any other administrator?**

Todd: As a general rule, yes. The courts have been very consistent about "free speech" being protected by the First Amendment. To assure that a defamation lawsuit is not used to stifle speech protected by the First Amendment, the court has imposed another limitation.

**Question: What is that limitation?**

Wamhof: A public figure cannot sue for libel or slander unless the defendant made the defamatory statement with malice.

**Question: So proving malice may be difficult by a public figure?**

Todd: That's right. The plaintiff has the burden to prove malice, and prove it with convincing evidence.

**Question: Are there any other hurdles that make it difficult for a public figure to sue for defamation?**

Wamhof: Yes, California's Free Speech Clause in the California Constitution, Articles 1 & 2. The California Supreme Court has held that the State Constitution is broader and more protective of free speech than the Federal Constitution.

**Question: Does California provide any other limitations for a public figure suing for defamation?**

Todd: Yes, California Civil Code 47. Under subdivision (b) of Civil Code 47, statements made in the course of a judicial proceeding or any other official proceeding, such as the meeting of a school board, are absolutely privileged. Statements in these proceedings cannot constitute defamation, since libel and slander are defined as "unprivileged" statements (Civil Code 45, 46).

**Question: So the loudmouth who rants about an administrator during a school board meeting cannot be held liable for defamation?**

Wamhof: Yes, that is generally correct, even if the loudmouth charges the administrator with misconduct or impugns the administrator's fitness for office; even if the charges are completely false; even if they were made with the intent to harm; and even if the administrator is actually harmed. In fact, statements made in the course of an official proceeding cannot be the basis for a defamation suit, even if they were completely irrelevant to the proceeding.

**Question: Are the basis of your answers to these questions based on court decisions?**

Todd: On court decisions, the First Amendment of the U.S. Constitution, the California Constitution and California Civil Code.

**Question: Does this mean that a school administrator may never win on a defamation issue?**

Wamhof: No, However, what it does mean is California public officials, including school administrators, have to clear some high hurdles of California Civil Code 47, the First Amendment, California's Free Speech Clause, and findings in court cases in order to sue a member of the public for defamation based on accusations about the official's performance of duties or fitness to serve. There are some very rigorous requirements to meet. If someone makes false statements about you or criticizes you in public, it's likely the courts are going to come down on the side of free speech. As a public figure you need to develop a thick skin; this comes with the territory.

If you have questions about administrator rights or other concerns, call the ACSA Member Assistance & Legal Support Team at 800-608-2272 and ask to speak with an Advocate!