

Defamation Law: Just the Facts

Q Someone is making derogatory statements about our association. Can we sue for defamation?

A That depends. “Defamation” is a catch-all term for any statement that hurts another’s reputation. Written defamation is called “libel,” and spoken defamation is called “slander.” Defamation is not a crime, but it is a “tort” (a civil wrong), allowing a person or organization who has been defamed to sue the person who did the defaming. While the law broadly defines defamation, certain elements must be met for an actual claim of defamation.

False Statements

The law of defamation varies from state to state, but generally requires proof that a false statement that appears to be fact about another person or organization was negligently or intentionally published or communicated to a third person(s), and that the statement caused harm to the person or organization who is the subject of the statement.

The key factor that makes a statement defamatory is that it be false. Mean or disparaging statements about another are not defamatory if they are true. Most importantly, opinions are not defamatory, because they are just that—opinions. The statement, “The association board has stolen thousands of dollars of member dues,” is a statement of fact and potentially actionable (if false). In contrast, the statement, “The association doesn’t care

about the membership and the board is misspending our money,” is an opinion and is not defamatory.

That said, implying that someone did something bad by phrasing it as “an opinion” can be defamatory. “I think the association board stole money.” Adding “I think” does not automatically turn a statement into a non-actionable opinion. The statement implies the board stole money and, as a result, could be found to be defamatory.

Private vs. Public Communication

Another important element of the law is that a statement is not defamatory if it was made in private—a single member who writes a complaint letter to the board full of erroneous accusations is not defaming the board if the letter is intended to be a private communication. However, if that letter were posted online or shared with others, it would be defamatory if it stated what appeared to be facts that were, in fact, false statements.

In a similar manner, statements made in a board meeting about individuals or organizations will not be defamatory unless those statements were published in minutes or a board member breached the confidentiality of board discussions to those outside the board. To be defamatory, the statement must have been “published” or communicated to a third party (someone other than the person who made the statement or the person the statement was about). A statement will be considered published

if it is in print, social media or email, and also will be “published” if made in a speech, gossip or even loud conversation, among other ways.

Injuries to Reputation

To be defamatory, a statement also must cause harm to the person or organization who is the subject of the statement. Since the purpose of defamation law is to compensate for injuries to reputation, those suing for defamation must show that their reputations were hurt by the false statement. A person could show they lost work or their standing in the community was impaired. A organization could show loss of members, donors or exhibitors; that participants withdrew from association programs or meetings; or that the organization’s goodwill or reputation were tarnished.

Public Official vs. Private Person

It also is important to note that simply because someone makes a defamatory statement does not automatically mean that the person will be liable for defamation. The standard of conduct required to hold a person liable for defamation depends on who was defamed. If the person defamed was a private person or organization, in most states, the person making the defamatory statement can be held liable for defamation if he or she did not bother to determine in advance whether the statement was true or false. If the person defamed was a public figure (public official or famous person), the

person making the defamatory statement can only be held liable for defamation if he or she made the statement knowing it was false or “recklessly disregarding” whether the statement was true or false.

Privileged vs. Unprivileged

Finally, to qualify as a defamatory statement, the offending statement must be “unprivileged.” For example, witnesses who testify falsely in court or at a deposition cannot be sued (although they could be prosecuted for perjury). Lawmakers enjoy a similar privilege and are not liable for statements made in the legislative chamber or in official materials, even if they say or write things that otherwise would be defamatory.

Conclusion

Defamation law aims to strike a balance between allowing information, ideas and opinions to be freely distributed without fear of litigation and protecting people and organizations from harm caused by untrue statements. ❏

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.