

Can you Be Sued for A Social Media Posting?

Defamation of Character in Today's Electronic World

Legal View

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Next time you make a hasty on-line (and potentially false) comment toward someone or a business, you may consider the consequences of being sued for defamation of character. In today's world of immediate access to potentially countless recipients, such as on Facebook or Twitter, a few reckless keystrokes on your smartphone may risk exposure to a law suit. Posting your thought on Facebook for instance, if false, essentially "publishes" a "statement" which may cause "injury" or damages to the other party, hence a defamation of character occurs. The "victim" must show the defamatory statement (verbal or written) was false, caused them injury and was not a privileged communication. False written statements are referred to as "libel" as compared to verbal falsehoods are considered "slander." Defamation claims by public figures, such as celebrities and politicians must show a higher standard of actual "malice" to prevail in a defamation action.

Is Your Posting Private or Public?

Social media sites are not always "private forums" to air grievances with reckless abandon. In addition to various groups created for a social purpose, some news agencies maintain popular social media sites, inviting public comment on current topics. Hundreds of comments can be posted within minutes on a single topic or story, and it only takes a single (false) comment to be posted and viewed by others and a claim of defamation may spring up. Postings on social media sites have been held to *not* be a "private" conversation, and thus, there is no reasonable expectation of privacy in making the comment. It's not required to show many people saw the post (although it's likely the case), just one comment or tweet may be a sufficient for a claim of libel.

Did Your Posting Cause Injury?

A posting or emailed statement can cause injury to the reputation of an individual or a business. The victim must show he or she was damaged financially or even socially by the statement. There are certain statements that have long been considered presumptuously "per se" slanderous such as stating someone committed a crime, was promiscuous or the carrier of a disease. These statements are presumed to damage the character of another. False statements, that are purported facts, and not opinion, can ostracize someone from a social group (such as a club or church), or cause loss of business income due to a diminution of reputation. Financial injury may be obvious or require an expert witness to support a claim of financial injury as a result of the defamatory statement.

Truth - The Ultimate Defense

Truth is a time-tested defense to a defamation lawsuit. It is not libelous or slanderous for a person to make a *truthful* statement about someone, even if the statement may attack that person's (or business') reputation. Sometimes "re-tweeting" or "re-posting" an original statement is not considered to be the original statement of falsehood, such that it will not be considered the publisher of the original statement. If not supported by truth, even a brief posting of a falsehood could subject a "publisher" to liability, if the other elements of defamation are proven. It is prudent to be careful when posting on Facebook or "tweeting" about trending topics, particularly if a person is familiar with the involved person or business. However, one who brings a *frivolous* action for defamation of character may be subject to sanctions (an adverse award of attorney fees and costs) if their case is tossed out of court before a trial.

In short, our electronic communications have evolved into instantaneous and far reaching publishing that if false, could result in unexpected consequences. Think and take pause before you tweet or post online comments, it may save you money in the long run.

Do you have a legal question? Send your inquiry question to Jeff@klfpc.com. Appointments are available in both Black Hawk and Denver offices.

Note: While very effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.