The following information comes from this website:

http://www.dmlp.org/legal-guide/what-defamatory-statement

What is a Defamatory Statement

A defamatory statement is a false statement of fact that exposes a person to hatred, ridicule, or contempt, causes him to be shunned, or injures him in his business or trade. Statements that are merely offensive are not defamatory (e.g., a statement that Bill smells badly would not be sufficient (and would likely be an opinion anyway)). Courts generally examine the full context of a statement's publication when making this determination.

In rare cases, a plaintiff can be “libel-proof”, meaning he or she has a reputation so tarnished that it couldn’t be brought any lower, even by the publication of false statements of fact. In most jurisdictions, as a matter of law, a dead person has no legally-protected reputation and cannot be defamed. Defamatory statements that disparage a company's goods or services are called trade libel. Trade libel protects property rights, not reputations. While you can't damage a company’s "reputation," you can damage the company by disparaging its goods or services.

Because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. For example, the statement that Bill is a short-tempered jerk, is clearly a statement of opinion because it cannot be proven to be true or false. Again, courts will look at the context of the statement as well as its substance to determine whether it is opinion or a factual assertion. Adding the words "in my opinion" generally will not be sufficient to transform a factual statement to a protected opinion. For example, there is no legal difference between the following two statements, both of which could be defamatory if false:

- "John stole $100 from the corner store last week."
- "In my opinion, John stole $100 from the corner store last week."

For more information on the difference between statements of fact and opinion, see the section on Opinion and Fair Comment Privileges.

Defamation Per Se
Some statements of fact are so egregious that they will always be considered defamatory. Such statements are typically referred to as defamation "per se." These types of statements are assumed to harm the plaintiff's reputation, without further need to prove that harm. Statements are defamatory per se where they falsely impute to the plaintiff one or more of the following things:

- a criminal offense;
- a loathsome disease;
- matter incompatible with his business, trade, profession, or office; or
- serious sexual misconduct.

See Restatement (2d) of Torts, §§ 570-574. Keep in mind that each state decides what is required to establish defamation and what defenses are available, so you should review your state's specific law in the State Law: Defamation section of this guide for more information.

It is important to remember that truth is an absolute defense to defamation, including per se defamation. If the statement is true, it cannot be defamatory. For more information see the section on Substantial Truth.

The following information comes from this web-site:

http://www.dmlp.org/legal-guide/opinion-and-fair-comment-privileges

Opinion and Fair Comment Privileges

The right to speak guaranteed by the First Amendment to the U.S. Constitution includes the right to voice opinions, criticize others, and comment on matters of public interest. It also protects the use of hyperbole and extreme statements when it is clear these are rhetorical ploys. Accordingly, you can safely state your opinion that others are inept, stupid, jerks, failures, etc. even though these statements might hurt the subject's feelings or diminish their reputations. Such terms represent what is called "pure opinions" because they can't be proven true or false. As a result, they cannot form the basis for a defamation claim.

This is not to say that every statement of opinion is protected. If a statement implies some false underlying facts, it could be defamatory. For example, stating that "in my opinion, the mayor killed her husband" is not likely to be a protected opinion. Couching false statements of fact as opinion or within quotes from other sources generally won't protect you either. Nor will trying to cover yourself by saying that a politician "allegedly" is a drug dealer, or that your neighbor said the politician "is a drug dealer," or that in your opinion, the politician is a drug dealer. A reader may well assume you have unstated facts to base your conclusion on, and it would be a defamatory statement if the implied facts turn out to be false.

All opinions that rely on underlying facts, however, are not necessarily outside the opinion privilege. If you state the facts on which you are basing your opinion, and the opinion you state could be reasonably drawn from those truthful facts, you will be protected even if your opinion turns out to be incorrect. For example, if you were to say "In my opinion, Danielle is failing out of school" it would likely lead your readers to assume that there are some unstated facts you relied on to draw your conclusion. Such a statement would not be protected, as the privilege does not protect back door entry of facts as "opinion" through innuendo. On the other hand, if you state "In my opinion, Danielle is failing out of school because she is a blond and the only thing I ever see her do at the library is check Facebook," this provides the reader with the information you are basing the opinion on, and allows the reader to come to his own conclusion.

Compare the following two statements:

- "During the last six months I've seen Carol in her backyard five times at around 1:30pm on a weekday seated in a deck chair with a beer in her hand. I think Carol must be an alcoholic."
- "I think Carol must be an alcoholic."

The first example states true, non-defamatory facts upon which a reasonable conclusion (that Carol is an alcoholic) is based, and also emphasizes the limits of your knowledge (that you only saw Carol five times). It would be protected as a statement of opinion. Under the second example, readers would likely assume that there are unstated, defamatory facts upon which your conclusion is based. Therefore it would likely fall outside of the privilege.

Keep in mind that even if you state the facts you are relying on for your opinion, but those facts turn out to be false, the privilege will not apply. For example, if you say that "In my opinion, Danielle is failing out of school because she failed biology," the privilege would not apply if she got a C in biology.

To determine whether a statement is an opinion or a fact, courts will generally look at the totality of the circumstances surrounding the statement and its publication to determine how a reasonable person would view the statement. Under this test, the difference between an opinion and a fact often comes down to a case-by-case analysis of the publication's context.

Distinguishing Between Statements of Fact and Opinion

In general, facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. For example, "Chris is a thief" can be proven false by showing that throughout his entire life Chris never stole anything. Compare that statement with "Chris is a complete moron." The latter is an opinion (or, technically, "a pure opinion"), as what constitutes a moron is a subjective view that varies with the person: one person's moron is not necessarily the next person's moron. Put another way, there would be no way to prove that Chris is not a moron. If a statement is a "pure opinion," it cannot be the basis for a defamation claim.

Of course, it is not always easy to determine whether a statement is a pure opinion. As we noted above, opinions that imply false underlying facts will not be protected. For example, stating that "Chris is insane" could be both a fact and an opinion. It could mean Chris has been diagnosed with psychosis and needs to be hospitalized in a mental institution; this could be proven false. It could also mean that Chris has wacky ideas that one doesn't agree with, which is an opinion. In determining which meaning the statement should be given, courts often rely on context and common-sense logic (or to phrase it in legalese, the "totality of circumstances" of the publication). For example, if one called Chris insane in a forum post as part of a heated argument over politics, the statement would likely be interpreted as an opinion.

Some examples of protected opinions include the following:

- Statements in the "Asshole of the Month" column in Hustler magazine that described a feminist leader as a "pus bloated walking sphincter," "wacko," and someone who suffers from "bizarre paranoia" were protected opinion because the context of the magazine and column made it clear that the statements were "understood as ridicule or vituperation" and "telegraph to a reader that the article presents opinions, not allegations of fact." Leidholdt v. L.F.P. Inc., 860 F.2d 890 (9th Cir. 1988).

- Statement in the New York Post that referred to the plaintiff as a "fat, failed, former sheriff's deputy" was protected opinion because it was hyperbole and had an "alliterative quality" with a "rhetorical effect indicative of a statement of opinion." Jewell v. NYP Holdings, Inc., 23 F. Supp.2d 348 (S.D.N.Y. 1998).

- Statements on a radio talk show that described the plaintiff as a "chicken butt," "local loser" and "big skank" were not defamatory because they were "too vague to be capable of being proven true or false" and had "no generally accepted meaning." Seelig v. Infinity Broadcasting, 97 Cal. App. 4th 798 (Cal. Ct. App. 2002).

- A cartoon of a noted evangelist leader fornicating drunk in an outhouse with his mother because the parody was so outrageous it could not "reasonably be understood as describing actual facts" about Falwell or events in which he participated. Hustler Magazine v. Falwell, 485 U.S. 46, 53 (U.S. 1988).

Keep in mind, however, that you can't make a statement an opinion merely by prefacing it with "in my opinion." Saying that "in my opinion, Alex stole ten dollars from the church collection basket" would lead

most listeners to conclude you had evidence that Alex had indeed stolen the money, and that you intend the statement as one of fact rather than opinion. The courts do not give protection to false factual connotations disguised as opinions.

Context and the Totality of the Circumstances

In general, courts will look at the context and medium in which the alleged defamation occurred. For example, a statement is more likely to be regarded as an opinion rather than a fact if it occurs in an editorial blog as opposed to a piece of investigative journalism. The wider context may also provide a framework for the court: during the McCarthy-era witch hunts of the 1950s, for example, courts routinely held that referring to someone as a "Communist" was defamatory; in the present day, "communist" has taken on a more generalized (if still often derogatory) political meaning, and courts would almost certainly find use of the word to be a protected opinion.

The Internet presents particular issues for the courts, as it is a medium where the lack of face-to-face contact can often make judging the actual meaning and context of a publication difficult. Courts are likely to take into account the particular social conventions of the Internet forum at issue in evaluating a statement's context.

But much remains to be determined, such as how the courts would handle the nature of many discussion forums. A 2001 case that dealt with the opinion privilege is worth quoting at length as an indication of the approach courts may well take in determining whether an online posting is a statement of opinion or fact. In regards to a post on a financial bulletin board site the court noted:

Here, the general tenor, the setting and the format of [the] statements strongly suggest that the postings are opinion. The statements were posted anonymously in the general cacophony of an Internet chat-room in which about 1,000 messages a week are posted about [the particular company]. The postings at issue were anonymous as are all the other postings in the chat-room. They were part of an on-going, free-wheeling and highly animated exchange about [the particular company] and its turbulent history. . . . Importantly, the postings are full of hyperbole, invective, short-hand phrases and language not generally found in fact-based documents, such as corporate press releases or SEC filings. Global Telemedia International, Inc. v. Doe 1, 132 F.Supp.2d 1261, 1267 (C.D.Cal., 2001).

In short, the court concluded that "the general tone and context of these messages strongly suggest that they are the opinions of the posters." *Id*. at 1267. It is likely that other courts will take a similarly broad view regarding Internet forums for purposes of the opinion privilege.

To summarize, the factors courts often use to determine whether a statement is a protected opinion are:

- What is the common usage and specific meaning of the language used?
- Is the statement verifiable? Can it be proven false?
- What is the full context of the statement?
- What are the social conventions surrounding the medium the statement occurred in?

Note that each state decides what is required to establish defamation and what defenses are available, so you should review your state's specific law in the State Law: Defamation section of this guide to determine how the opinion privilege operates in your jurisdiction.

The following information comes from this web-site:

http://www.dmlp.org/legal-guide/substantial-truth

Substantial Truth

"Truth" is an absolute defense against defamation. See New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and Time Inc. v. Hill, 385 U.S. 411 (1967). Consequently, a plaintiff has to provide convincing evidence of a defamatory statement's falsity in order to prove defamation.

The law does not require that a statement must be perfectly accurate in every conceivable way to be considered "true." Courts have said that some false statements must be protected for the wider purpose of allowing the dissemination of truthful speech. The resulting doctrine is known as "substantial truth." Under the substantial truth doctrine, minor factual inaccuracies will be ignored so long as the inaccuracies do not materially alter the substance or impact of what is being communicated. In other words, only the "gist" or "sting" of a statement must be correct.

The substantial truth defense is particularly powerful because a judge will often grant summary judgment in favor of a defendant (thus disposing of the case before it goes to trial) if the defendant can show that the statement the plaintiff is complaining about is substantially true, making the defense a quick and relatively easy way to get out of a long (and potentially expensive) defamation case.

Substantial truth can also be a flashpoint for libel cases involving public figures and officials who must show actual malice by the defendant in order to recover. In Masson v. New Yorker Magazine, 501 U.S. 496 (1991), the plaintiff tried to argue that inaccurate quotations were evidence of actual malice. The Supreme Court refused to adopt such a stringent rule, noting the difficulty of taking notes and translating from recordings and the need to edit a speaker's comments into a coherent statement. The Court stated:

We conclude that a deliberate alteration of the words uttered by a plaintiff does not equate with knowledge of falsity for purposes of New York Times Co. v. Sullivan and Gertz v. Robert Welch, Inc., unless the alteration results in a material change in the meaning conveyed by the statement. (citations omitted)

The Court went on to note the use of quotation marks to directly attribute inaccurate statements to the speaker "bears in a most important way on [this] inquiry, but it is not dispositive in every case." Generally speaking, a publisher is given more leeway for inaccuracies when he is interpreting his sources than when he is purporting to be providing a "direct account of events that speak for themselves." Time, Inc. v. Pape, 401 U.S. 279 (1971).

Some examples of statements that courts have found to be "substantially true":

- A statement that a boxer tested positive for cocaine, when actually he had tested positive for marijuana. See Cobb v. Time Inc. 24 Media L. Rep. 585 (M.D. Tenn 1995).

- A statement that an animal trainer beat his animals with steel rods, when actually he had beaten them with wooden rods. See People for Ethical Treatment of Animals v. Berosini, 895 P.2d 1269 (Nev. 1995).

- A statement that a father sexually assaulted his stepdaughter 30-50 times, when the stepdaughter testified he had done so only 8 times. See Koniak v. Heritage Newspapers, Inc., 198 Mich. App. 577 (1993).
- A statement that a man was sentenced to death for six murders, when in fact he was only sentenced to death for one. See Stevens v. Independent Newspapers, Inc., 15 Media L. Rep. 1097 (Del. Super. Ct. 1998).
- A statement that Terry Nichols was arrested after the Oklahoma City Bombing, when actually he had only been held as a material witness. See Nichols v. Moore, 396 F. Supp. 2d 783 (E.D. Mich. 2005).
- A statement that a man was charged with sexual assault, when actually he had only been arrested but not arraigned. See Rouch v. Enquirer & News of Battle Creek, 440 Mich. 238 (1992).

The following information comes from this web-site:

http://www.dmlp.org/legal-guide/washington-defamation-law

Washington Defamation Law

Note: This page covers information specific to Washington. For general information concerning defamation, see the general Defamation Law section of this guide.

Elements of Defamation

According to Washington law, defamation claims have four elements:

1. falsity;
2. an unprivileged communication;
3. fault on the part of the defendant; and
4. damages.

These elements of a defamation claim in Washington are for the most part similar to the elements listed in the general Defamation Law section. However, in Washington, the elements of a defamation claim have two characteristics that differ slightly from the general section's description of defamation law.

Public and Private Figures

Washington courts rely heavily on the "vortex" notion of a limited-purpose public figure. See Camer v. Seattle Post-Intelligencer, 723 P.2d 863 (Wash. 1986). The definition of a limited-purpose public figure is covered in the general Actual Malice and Negligence section of this guide under the limited-purpose public figures discussion (scroll down to the topic heading "limited-purpose public figures"). The guide states a person becomes a limited-purpose public figure only if he voluntarily "draw[s] attention to himself" or uses his position in the controversy "as a fulcrum to create public discussion." Wolston v. Reader's Digest Association, 443 U.S. 157, 168 (1979). He must, therefore, "thrust himself into the vortex of [the] public issue [and] engage the public's attention in an attempt to influence its outcome." See Gertz v. Robert Welch, Inc., 418 U.S. 323, 352 (1974).

For example, a businessman who was involved in a commercial real-estate development project was considered a limited-purpose public figure in a defamation lawsuit against a newspaper which had printed articles about the development project that stated he was a tax felon. The court reasoned the businessman was a limited-purpose public figure because he "thrust himself into the vortex of [the] public issue" when he sent letters to residents of the real-estate development area telling the residents about the development project and advising them he would be updating them on its progress. Clardy v. Cowles Pub. Co., 912 P.2d 1078 (Wash. Ct. App. 1986).

Actual Malice and Negligence

Washington courts apply a negligence standard to defamation claims brought by private figures seeking compensatory damages when the allegedly defamatory statement makes substantial danger to reputation apparent.

Public officials, all-purpose public figures, and limited-purpose public figures must prove that the defendant acted with actual malice, i.e., knowing that the statements were false or recklessly disregarding their falsity. See the general page on actual malice and negligence for details on the standards and terminology mentioned in this subsection.

Failure to investigate is not sufficient to prove actual malice. You should be aware that when you do investigate and facts come to light that either do not support or rebut your factual assertion, the jury may infer recklessness and thus find actual malice if you go ahead and publish the information and it turns out to be false and defamatory. See Herron v. KING Broad. Co., 776 P.2d 98, 106 (Wash. App. Ct. 1989).

Privileges and Defenses

Washington courts recognize a number of privileges and defenses in the context of defamation actions, including substantial truth, the opinion and fair comment privileges, and the fair report privilege. The status of the neutral reportage privilege is unclear and CMLP has not identified any cases in Washington concerning the wire service defense.

There also is an important provision under section 230 of the Communications Decency Act that may protect you if a third party – not you or your employee or someone acting under your direction – posts something on your blog or website that is defamatory. We cover this protection in more detail in the section on Publishing the Statements and Content of Others.

Most of the privileges and defenses to defamation can be defeated if the plaintiff proves that the defendant acted with actual malice. The fair report privilege is the exception to this rule; it cannot be defeated by a showing of actual malice. Alpine Indus. Computers, Inc. v. Cowles Pub. Co., 57 P.3d 1178, 1188 (Wash. App. Ct. 2002).

Fair Report Privilege

Washington recognizes the fair report privilege. The privilege extends to accurate reports of court proceedings, as well as documents filed in those proceedings. See Mark v. Seattle Times, 635 P.2d 1081 (Wash. 1981). A plaintiff cannot defeat the fair report privilege by a showing othat the defendant acted with actual malice. Alpine Indus. Computers, Inc. v. Cowles Pub. Co., 57 P.3d 1178, 1188 (Wash. App. Ct. 2002).

Neutral Reportage Privilege

It is unclear whether the neutral reportage privilege exists in Washington.

The Washington Supreme Court noted the existence of the neutral reportage doctrine and that there was a "modern" trend towards rejecting it, but declined to rule on the privilege as neither party had raised the issue. Herron v. Tribune Publ'g Co., 736 P.2d 249, 260 (Wash. 1987).

However, at least one lower court recognized the neutral reportage privilege in a case involving a newspaper publishing defamatory allegations concerning a businessman made by anonymous union sources. Senear v. Daily Journal American, 8 Media L. Rep. 2489, 2492-93 (Wash. Super Ct. 1982).

Wire Service Defense

CMLP has not identified any cases in Washington concerning the wire service defense. If you are aware of any cases, please contact us.

Statute of Limitations for Defamation

The statute of limitations for defamation in Washington is two (2) years. See Wash. Rev. Code sec. 4.16.100.

The Washington Supreme Court has adopted the single publication rule. Herron v. KING Broad. Co., 746 P.2d 295 (Wash. 1987). For a definition of the "single publication rule," see the Statute of Limitations for Defamation section.

The CMLP could not locate any cases in Washington that apply the single publication rule in the context of a statement published on the Internet. If you are aware of any Washington cases that acknowledge the single publication rule in the Internet context, please notify us.

The following information comes from this web-site:

http://www.dmlp.org/legal-guide/proving-fault-actual-malice-and-negligence

Proving Fault: Actual Malice and Negligence

Unlike other countries that hold a publisher liable for every defamatory statement regardless of what steps he or she took prior to publication, under U.S. law a plaintiff must prove that the defendant was at fault when she published the defamatory statement. In other words, the plaintiff must prove that the publisher failed to do something she was required to do. Depending on the circumstances, the plaintiff will either need to prove that the defendant acted negligently, if the plaintiff is a private figure, or with actual malice, if the plaintiff is a public figure or official.

Celebrities, politicians, high-ranking or powerful government officials, and others with power in society are generally considered public figures/officials and are required to prove actual malice. Unlike these well-known and powerful individuals, your shy neighbor is likely to be a private figure who is only required to prove negligence if you publish something defamatory about her. Determining who is a public or private figure is not always easy. In some instances, the categories may overlap. For example, a blogger who is

a well-known authority on clinical research involving autism may be considered a public figure for purposes of controversies involving autism, but not for other purposes.

We discuss both of these standards and when they apply in this section.

Actual Malice

In a legal sense, "actual malice" has nothing to do with ill will or disliking someone and wishing him harm. Rather, courts have defined "actual malice" in the defamation context as publishing a statement while either

- **knowing that it is false**; or
- acting with **reckless disregard** for the statement's truth or falsity.

It should be noted that the actual malice standard focuses on the defendant's **actual state of mind at the time of publication.** Unlike the negligence standard discussed later in this section, the actual malice standard is not measured by what a reasonable person would have published or investigated prior to publication. Instead, the plaintiff must produce clear and convincing evidence that the defendant actually knew the information was false or entertained serious doubts as to the truth of his publication. In making this determination, a court will look for evidence of the defendant's state of mind at the time of publication and will likely examine the steps he took in researching, editing, and fact checking his work. It is generally not sufficient, however, for a plaintiff to merely show that the defendant didn't like her, failed to contact her for comment, knew she had denied the information, relied on a single biased source, or failed to correct the statement after publication.

Not surprisingly, this is a very difficult standard for a plaintiff to establish. Indeed, in only a handful of cases over the last decades have plaintiffs been successful in establishing the requisite actual malice to prove defamation.

The actual malice standard applies when a defamatory statement concerns three general categories of individuals: public officials, all-purpose public figures, and limited-purpose public figures. Private figures, which are discussed later in this section, do not need to prove actual malice.

Public Officials

The "public officials" category includes politicians and high-ranking governmental figures, but also extends to government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs. Courts have interpreted these criteria broadly, extending the public figure classification to civil servants far down the government hierarchy. For example, the supervisor of a county recreational ski center was held to be a "public official" for purposes of defamation law. See Rosenblatt v. Baer, 383 U.S. 75 (1966). Some courts have even extended the protection to all individuals engaged in matters of public health, such as hospital staff, given the importance of health issues for the general public. See Hall v. Piedmont Publishing Co., 46 N.C. App. 760, 763 (1980).

In general, if an individual is classified as a public official, defamatory statements relating to any aspects of their lives must meet the actual malice standard of fault for there to be liability. Moreover, even after passage of time or leaving office, public officials must still meet the actual malice standard because the public has a continued interest in the misdeeds of its leaders.

Public Figures

There are two types of "public figures" recognized under defamation law: "all-purpose" public figures and "limited-purpose" public figures.

All-purpose public figures are private individuals who occupy "positions of such persuasive power and influence that they are deemed public figure for all purposes. . . . They invite attention and comment." Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1972). For these individuals, the actual malice standard extends to virtually all aspects of their lives.

This category includes movie stars, elite professional athletes, and the heads of major corporations. Tom Cruise is one; that character actor you recognize instantly but can't quite name is probably not an all-purpose public figure.

As with public officials, the passage of time does not cause this class of individuals to lose their public figure status as long as the original source of their fame is of continued interest to the public.

Limited-Purpose Public Figures

The second category of public figures is called "limited-purpose" public figures. These are individuals who "have thrust themselves to the forefront of particular controversies in order to influence the resolution of the issues involved." Gertz v. Robert Welch Inc., 418 U.S. 323 (U.S. 1974). They are the individuals who deliberately shape debate on particular public issues, especially those who use the media to influence that debate.

This category also includes individuals who have distinguished themselves in a particular field, making them "public figures" regarding only those specific activities. These limited-purpose public figures are not the Kobe Bryants, who are regarded as all-purpose public figures, but rather the journeymen basketball players of the league.

For limited-purpose public figures, the actual malice standard extends only as far as defamatory statements involve matters related to the topics about which they are considered public figures. To return to our basketball example, the actual malice standard would extend to statements involving the player's basketball career; however, it would not extend to the details of his marriage.

As regards figures who become prominent through involvement in a current controversy, the law is unfortunately rather murky. In general, emphasis is placed not on whether the controversy is a subject of public interest, but rather:

- The depth of the person's participation in the controversy.
- The amount of freedom he or she has in choosing to engage in the controversy in the first place (e.g., if they were forced into the public light). See Wolston v. Reader's Digest Association, 443 U.S. 157 (1979).
- Whether he has taken advantage of the media to advocate his cause. See Time, Inc. v. Firestone, 424 U.S. 448 (U.S. 1976).

Keeping in mind the difficulty of making the determination of who is a limited-purpose public figure, we've collected the following cases which might be helpful. Courts have found the following individuals to be limited-purpose public figures:

- A retired general who advocated on national security issues. See Secord v. Cockburn, 747 F.Supp. 779 (1990).
- A scientist who was prominent and outspoken in his opposition to nuclear tests. See Pauling v. Globe-Democrat Publishing Co., 362 F.2d 188 (1966).
- A nationally-known college football coach accused of fixing a football game. See Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

- A professional belly dancer for a matter related to her performance. See James v. Gannet Co., 40 N.Y.2d 415 (1976).
- A Playboy Playmate for purpose of a parody. See Vitale v. National Lampoon, Inc., 449 F. Supp 442 (1978).

Courts have found the following individuals not to be limited-purpose public figures (and therefore private figures):

- A well-known lawyer and civic leader engaged in a very public trial involving police brutality. See Gertz v. Robert Welch Inc., 418 U.S. 323 (1972).
- A socialite going through a divorce who both collected press clippings on herself and held press conferences regarding the divorce. See Time, Inc. v. Firestone, 424 U.S. 448 (U.S. 1976).
- A Penthouse Pet for purposes of parody. See Pring v. Penthouse Int'l Ltd., 695 F.2d 438 (1982).

Individuals who are considered to be limited-purpose public figures remain so as long as the public has an "independent" interest in the underlying controversy. Unlike all-purpose public figures, it is relatively easy for a limited-purpose public figure to lose his status if the controversy in which he is involved has been largely forgotten. But most will still maintain their status. For example, a woman who had publicly dated Elvis Presley over a decade earlier, but who had since married and returned to "private" life, was found to remain a public figure for stories related to her relationship with Presley. See Brewer v. Memphis Publishing Co., 626 F.2d. 1238 (5th Cir. 1980).

Evaluating Public Officials, Public Figures, and Limited-Purpose Public Figures

A **public official** is a person who holds a position of authority in the government and would be of interest to the public even if the controversy in question had not occurred.

- The actual malice standard extends to statements touching on virtually any aspect of the public official's life.
- Even after passage of time or leaving office, public officials must still meet the actual malice standard because the public has a continued interest in the misdeeds of its leaders.
-

All-purpose public figures are those whose fame reaches widely and pervasively throughout society.

- The actual malice standard extends to statements involving virtually any aspect of their private lives.
- Passage of time does not affect their status as public figures as long as the source of their fame is of continued interest to the public.
-

A **limited-purpose public figure** is either:

1.
    1. One who voluntarily becomes a key figure in a particular controversy, **or**
    2. One who has gained prominence in a particular, limited field, but whose celebrity has not reached an all-encompassing level.

- The actual malice standard applies only to subject matter related to the controversy in question or to the field in which the individual is prominent, not to the person's entire life.
- Passage of time does not affect an individual who has achieved fame through participation in a controversy as long as the public maintains an "independent" interest in the underlying controversy.

See this Chart of Public vs Private Individuals for additional examples.

Defining who is a public figure for purposes of First Amendment protections is a question of federal constitutional law, and therefore the federal courts say on the matter is decisive and binding on state courts. Accordingly, state courts *cannot* remove public-figure status from those who have been deemed public figures by the federal courts, but states *can* broaden the scope of the the classification. For example, while the Supreme Court has not spoken on the status of educators, most states have

recognized teachers as a class of public figures. But some states, for example California, have not done so. Consult your State Law: Defamation section for specific guidelines on your jurisdiction.

Negligence Standard and Private Figures

Those who are not classified as public figures are considered private figures. To support a claim for defamation, in most states a private figure need only show negligence by the publisher, a much lower standard than "actual malice." Some states, however, impose a higher standard on private figures, especially if the statement concerns a matter of public importance. You should review your state's specific law in the State Law: Defamation section of this guide for more information.

A plaintiff can establish negligence on the part of the defendant by showing that the defendant did not act with a reasonable level of care in publishing the statement at issue. This basically turns on whether the defendant did everything reasonably necessary to determine whether the statement was true, including the steps the defendant took in researching, editing, and fact checking his work. Some factors that the court might consider include:

- the amount of research undertaken prior to publication;
- the trustworthiness of sources;
- attempts to verify questionable statements or solicit opposing views; and
- whether the defendant followed other good journalistic practices.

While you can't reduce your legal risks entirely, if you follow good journalistic practices you will greatly reduce the likelihood that you will be found negligent when publishing a defamatory statement. Review the sections in this guide on Practical Tips for Avoiding Liability Associated with Harms to Reputation and Journalism Skills and Principles for helpful suggestions.

The following information comes from this web-site:

http://www.dmlp.org/legal-guide/who-can-sue-defamation

Who Can Sue For Defamation

In order to be actionable, a defamatory statement must be "of and concerning" the plaintiff. This means that a defamation plaintiff must show that a reasonable person would understand that the statement was referring to him or her. Of course, if a blog post or online article identifies the plaintiff by name, this requirement will be easily met. The plaintiff need not be specifically named, however, if there are enough identifying facts that any (but not necessarily every) person reading or hearing it would reasonably understand it to refer to the plaintiff. For example, a statement that "a local policeman who recently had an auto accident had been seen drinking alcohol while on duty" would likely be actionable because the policeman could be identified based on his recent accident.

Group Libel

Accordingly, defamatory statements about a group or class of people generally are not actionable by individual members of that group or class. There are two exceptions to this general rule that exist when:

- the group or class is so small that the statements are reasonably understood to refer to the individual in question; or
- the circumstances make it reasonable to conclude that the statement refers particularly to the individual in question.

See Restatement (2d) of Torts, § 564A (1977).

As to the first exception -- statements about a small group -- courts have often held that an individual group member can bring a claim for defamation for statements directed at a group of 25 or fewer people. The 25-person line is not a hard-and-fast rule, but rather the way courts commonly distinguish between a group small enough for statements about the whole group to be imputed to individual members and one that is too large to support such an imputation.

The case of Neiman-Marcus v. Lait, 13 F.R.D. 311 (S.D.N.Y. 1952), provides a good illustration of this general rule. In that case, the defendants wrote that "most of the [Neiman-Marcus] sales staff are fairies" and that some of the company's saleswomen were "call girls." Fifteen of the 25 salesmen and 30 of the 382 saleswomen at the store brought suit for defamation. Applying New York and Texas law, the court held that the salesmen had a valid cause of action, but the saleswomen did not. Even though the statement referred to "most of" the salesmen, without naming names or specifying further, the statement could be understood to refer to any individual member of this small group. The group of saleswomen, however, was so large that a statement that some of them were "call girls" would not be understood as referring to any individual member of the group.

As to the second exception to the rule against group libel -- when circumstances point to a particular individual -- courts have allowed defamation claims where the statement is facially broad, but the context makes it clear that it referred to the plaintiff. For example, Bill Blogger may be able to claim defamation based on the statement "all bloggers who attended the most recent city council meeting payed bribes to the mayor," where Bill is the only blogger who attended the meeting and readers will therefore understand the statement as being a thinly veiled indictment of him.

A company or organization can be a defamation plaintiff. In fact, the largest jury verdict every awarded in a libel case came in a case brought by a business plaintiff.

Note that each state decides what is required to establish defamation, so you should review your state's specific law in the **State Law: Defamation** section of this guide for more information.

Fictional Works

A person may claim defamation by a literary or dramatic work intended as fictional if the characters in the work resemble actual persons so closely that it is reasonable for readers or viewers to believe that the character is intended to portray the person in question. A disclaimer that the work is fiction and does not depict any persons living or dead will not automatically foreclose a defamation claim, but it is still a good idea and may be used as evidence as to whether readers or viewers would be reasonable in concluding that it is a depiction of the plaintiff.