

# Avoiding Defamation/Invasion of Privacy Lawsuits

Teri L. Henning

General Counsel

Pennsylvania Newspaper Association

(717) 703-3076

# Defamation

- False, Defamatory Statement
- Identifiable Person
- Published to a third party
- Causing injury to the person's reputation

# What is Defamatory?

- Any communication that tends to harm a person's reputation or injure the person in his or her business or profession

# Things to Consider

- Defamation by implication, innuendo
- Potential innocent interpretation vs. alternate defamatory interpretation – CASE WILL GO TO JURY
- TEST: What would the average reader understand this article to be saying
- Headline or photograph can be defamatory
- Letters to the Editor

# Falsity

- Statement must be false to be actionable
- Substantial truth is sufficient

# Identifiable Plaintiff

- Individual plaintiff
- Plaintiff not named but ascertainable
- Large groups (e.g., 25+)

# Standards of Fault

- Public Figures and Public Officials
  - Actual malice – published with knowledge of falsity or reckless disregard for the truth
- Limited Purpose Public Figures
  - Actual malice where subject matter involves person in “public figure” capacity
- Private Figures
  - Negligence

# Opinion vs. Fact

- Is statement capable of being proven true or false?
- Is statement based on facts or does it presume underlying false/defamatory facts?

# Defenses

- Fair Report Privilege
  - Official Proceedings or records
  - Conditional Privilege – can be lost
- Consent
- Statute of Limitations

# Not a Defense

- No neutral reportage privilege in Pennsylvania
  - False statements/allegations made by one person/public official against another and merely “quoted” or “repeated” in newspaper

# Avoiding Defamation Lawsuits

- Check sources
- Get independent corroboration
- Verify accuracy
- Be careful with the details
- Getting the “other side of the story”
- Be cautious when editing story/crafting headline
- Photographs
- “Red alert” words
- Retractions

# Handling Complaints

- Be polite
- Listen, explain that you will look into it and that someone will get back to him/her
- Do not admit error or fault in initial conversation
- Talk to editor, supervisor, attorney
- FOLLOW NEWSPAPER'S PROCEDURE

# Invasion of Privacy

- Public Disclosure of Private Facts
  - Publicity given to
  - Private Facts
  - Which would be highly offensive to a reasonable person, and
  - Are not of legitimate concern to the public

# Invasion of Privacy (cont.)

- False light in the public eye
  - Publicity which
  - Places the plaintiff
  - In a false light before the public
  - In a manner that is “highly offensive”
- Similar, but not the same as, defamation
- Newsworthiness/Matters of Legitimate Public Interest
- Often brought where facts published are literally true, but are selectively disclosed in a manner creating a false impression

# Invasion of Privacy (cont.)

- Right of Publicity
  - Misappropriation of
  - Plaintiff's name or likeness
  - Without consent
- Common law
- Pennsylvania Statute

# Invasion of Privacy (cont.)

- Intrusion upon seclusion
  - Highly offensive
  - Intrusion
  - On the plaintiff's solitude or seclusion
- Must have reasonable expectation of privacy
- Public places
- Accident scenes

# Invasion of Privacy Checklist

- Consent from the Subject
  - Adults vs. Children
  - Public vs. private figures
- Method of Obtaining Information
  - Public places vs. private places
  - Information in public records
- Content
  - Would publication offend community standards of decency?
  - Is information of public interest?
  - Is information true?
  - Is information vital to story?

# Taping of Conversations

- Two-party consent required in Pennsylvania

# Trespass/Entry into private property