

## MEMORANDUM

**TO:** MASA General file  
**FROM:** Briggs & Morgan P.A.  
**DATE:** February 10, 2005  
**RE:** **Elements of a Defamation Claim**

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This memorandum will discuss the elements necessary for a public official to prevail on a claim of defamation.

### **Elements of Defamation**

In order to prevail on a defamation claim, a plaintiff must prove the following four elements:

**1. The statement must be defamatory.**

Minnesota courts have recognized that a communication is defamatory "if it causes enough harm to a person's reputation to lower the community's estimation of the individual or to deter others from associating or dealing with the individual... Epithets or adjectives can constitute defamation if they imply a specific type of reprehensible conduct." *Weissman v. Sri Lanka Curry House, Inc.*, 469 N.W.2d 471, 473 (Minn. App. 1991). In *Weissman*, the court upheld a claim of defamation based on a statement that an individual was "dishonest."

However, other cases have held that statements such as "[plaintiff] has poisoned the board," "[plaintiff is] out of control," "[plaintiff is] a bad influence," "[plaintiff is] not a team player," and "[plaintiff is] a troublemaker" are not actionable because they "do not contain facts or factual connotations that can be proven false." *McGrath v. TCF Bank Savings, FSB*, 502 N.W.2d 801 (Minn. App. 1993).

**2. The statement must be false.**

The plaintiff bears the burden of proving a statement to be false.

**3. The statement must refer to the plaintiff.**

**4. The statement must be published.**

Publication simply means that the statement is communicated to someone other than the plaintiff.

### **Defamation of a Public Official**

If the plaintiff in a defamation case is a public official, the plaintiff must prove "actual malice" by clear and convincing evidence in order to recover. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). "Actual malice" is established by showing that the publication was made with knowledge of the falsity of the statement or in reckless disregard of the truth or falsity of the statement. Reckless disregard means publication with substantial doubts about the truth of the matter. *St. Amant v. Thompson*, 390 U.S. 727 (1968).

### **Notice of Claim**

Under Minnesota law, any person claiming damages from any municipality or municipal employee acting within the scope of employment for any loss or injury arising from a tort action must provide notice to the governing body of the municipality within 180 days after the alleged loss or injury is discovered. Minn. Stat. § 466.05, subd. 1. The notice must state the time, place, and circumstances of the alleged loss or injury, and must state the names of the municipal employees known to be involved. *Id.* Further, the notice must include the amount of compensation or other relief the party is demanding. *Id.*

### **Statute of Limitations**

Minnesota law provides that an action for defamation must be commenced within two years. Minn. Stat. § 541.07(1).

***THIS MEMORANDUM IS NOT INTENDED TO PROVIDE LEGAL ADVICE APPLICABLE TO ANY SPECIFIC SITUATION, BUT IS ONLY INTENDED TO BE AN OVERVIEW OF BASIC LEGAL CONCEPTS.***