

## Defamation - Yes or No?

No one welcomes criticism and accusations in the workplace. But when do such communications amount to actionable defamation?

Harstad was a professor at Ashbury College, a Christian institution with high moral and ethical standards for faculty and students. For faculty, entering into a relationship with a student that is or may be perceived as amorous could lead to termination. A number of complaints about Harstad's relationship with a graduate student were presented to the provost by students, faculty, and staff personnel. Despite admonitions from the provost and from Harstad's department chair to change his behavior, he refused. He was ultimately terminated for behavior that was perceived as involving an inappropriate relationship with a student.

Harstad filed suit, claiming, among other things, that his chair, the provost, and a faculty member interfered with his employment relationship and defamed him by making statements about his conduct regarding the student. These claims were dismissed after the defendants filed a motion for summary judgment. The basis for the trial court's dismissal was its conclusion that the statements were protected by a qualified privilege, a conclusion that was sustained by the Kentucky appellate court. *Harstad v. Whiteman*, No. 2009-CA-000190 (Ky.App. Mar. 4, 2011).

According to the appellate court, the statements in question were made in the context of a need by college officials to evaluate Harstad's behavior and the appropriateness of a decision to terminate his employment. In such a situation, a privilege exists that protects the "speakers" from liability. The privilege is qualified, however, and may be lost by a showing of abuse. Abuse occurs when a speaker acts with "malice," that is, with knowledge that a statement is untrue or an attitude of reckless regard of its truth or falsity; when he/she makes it for an improper purpose; or when he/she disseminates the statement beyond those who have a reasonable need for it. Inconsistencies in the statements of the several defendants and others may provide, as Harstad argued, some indication of factual inaccuracy or even falsity, but that is not sufficient to show malice. An erroneous statement may be based on mistaken observations as well as on malice, and the court would not assume the latter to be present in the absence of some supporting evidence.

Every university official and employee should obviously exercise great care to insure communications about others are true and correct. The law protects, however, those whose utterances, even if containing some inaccuracy, are made without "malice" and in the furtherance of recognized, institutional purposes.