

The Gavel

Issue 1/98 June, 1998

A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
42657 Garfield, Suite 211, Clinton Township, Michigan 48038 (810) 263-5690

The Gavel is Back!

Way later than originally planned, *The Gavel* is back, as our office's word processing system changeover is finally complete. *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

DEFAMATION & DAMAGES

At some time or another, many people have been the victim of a defamatory comment. Aside from hurt feelings or embarrassment, the injured person may have said (or wanted to say) to the defamer: "I'll see you in Court" or "You'll be hearing from my attorney!". Yet often, very little comes of it, almost always because the damages are so hard to prove. It's similar to the age-old childhood saying: "Sticks and stones may break my bones, but names will never hurt me."



A Defamatory comment is one that is communicated to a third party and injures a reputation, holding a person (or business!) up to scorn, ridicule or contempt. A defamatory statement may either be in writing (libel) or oral (slander). In either case, the defamatory statement must be a statement of (false) facts, and not merely a statement of opinion. To call someone a "**lousy, no good, yellow bellied, two bit horse thief**" is only defamatory if the listener could reasonably believe you are (falsely) accusing someone of being a horse thief - the rest of the statement is just opinion, or 'hot air'.

Even if defamed, a plaintiff has a hard time proving damages. Usually, a person must show that she suffered a monetary loss as a consequence of a diminished reputation.

Certainly, economic damages resulting from the defamation can be awarded (e.g. loss of earnings because fired from job due to co-worker's defamation), and if the loss of reputation can be easily translated into economic losses (e.g. loss of credit, or when sales lost because competitor spread falsehoods about you), they can also be compensated. But, **damages for hurt feelings are hard to prove, and even more difficult to get awarded.** Generally, only when the defamer acted with malice (in

bad faith or with ill will) can the Plaintiff recover for hurt feelings.

Exceptions to the monetary loss requirement are accusations of criminal conduct, loathsome disease, conduct incompatible with one's business, and serious sexual misconduct. For example, John states to Jim that Lisa (a meter maid) "drinks a lot" and "cheats on her husband". Since John's drinking comment probably doesn't impact Lisa's job, Lisa can only sue John on the later statement, as it imputes a lack of chastity. Lisa would not be required to prove monetary loss in this case.

The best advice: if you must say something about another, first make sure it is true, and make sure it is necessary to pass it along to someone else.

Thanks to Douglas C. Wozniak, Esq. for his contributions to this article. Doug is a former student who went on to Law School and was admitted to the Bar just last month. Congratulations!

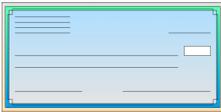
CHILD SUPPORT: how to get the bum to pay!

When parents divorce, or a child is born out of wedlock, the non-custodial parent is legally expected to help pay for the expenses of the minor child until the child is no longer a minor, often upon high school graduation. The amount of support is dependent upon both parent's income, the number of children involved and to some extent the amount of time each parent spends with the children. Unless the parents agree to vary it, the amount of child support payments is determined from a handbook called the Michigan Child Support Formula Manual.



One of the truisms in Child Support is that neither parent thinks the amount to be paid is fair. The custodial (receiving) parent thinks that the amount is not nearly enough to cover the actual costs of raising the children. The non-custodial (paying) parent thinks that the amount he has to pay is unfair, especially considering (a) what other people he knows pay (always less) and (b) the conviction that the custodial parent is just taking the money and blowing it on herself. To some extent, both are right and wrong.

Nonetheless, the child support payments must be paid regularly (weekly) to the Friend of the Court ("FOC"), an agency of the circuit court in which the original order or child support was issued. All FOCs are armed with an arsenal of tools to help get delinquent payors up to date. Whether it's

mandatory paycheck 

withholding, reaching across state lines and jurisdictions, tax refund interception, or show cause hearings, the FOC can use these devices and more to force child support payments.

If the child support payments are delinquent, let your FOC know. Be persistent. Any information you gather regarding current employers, assets, even present location, etc. will help the FOC collect the delinquent payments. Be persistent. It is more productive to appear in person at the FOC counter and present your information than just talking over the phone.

Also, either party can petition to have the payments changed if there has been a change in circumstances; the rule of thumb is that this motion can be brought every two years.

Remember, until the Judge orders that the support payment amount will be changed, the

obligation remains the same, even if circumstances (e.g. lost job) changes.

LIABILITY FOR EMPLOYEE WORKPLACE VIOLENCE

All of us have heard stories on radio or TV about workplace violence, and such stories seem to catch our attention since they appear to be so random and unusual. Whether the story is about some spurned paramour who guns down a victim at her job or a 'disgruntled' postal worker randomly firing away at the post office (now known colloquially as "going postal"), such stories seem to be random and infrequent.



Actually, such violence is more frequent than commonly known. **According to the *American Management Association*, every year there are about 750 workplace homicides, and approximately 110,000 non-lethal violent incidents in the work environment.** Employers can be liable for the resulting injuries to its employees if the employer does not exercise the right amount of care. The employer's duty of care to customers, employees and business associates is to take reasonable steps to prevent violence on their premises and by their employees, though there are many catches in the law (e.g. an employer is not responsible for the consequences of a random violent act, such as a customer being mugged in the parking lot).

There are steps that an employer can take. It is unrealistic to assume that an employer can simply screen out potentially violent employees. Because of various laws, psychological screening and polygraph testing are often not viable options. However, to screen out the bad actors, an employer can take the following steps:

- ▶ Ask applicants whether they have any prior criminal convictions. Do an intensive background check of all prospective employees with prior employers.
- ▶ Include a section on the employment application stating that false statements can be grounds for termination.
- ▶ Adopt a written policy that prohibits violence, threats of violence and intimidation.

Before trouble starts, all reports of threatened violence must be thoroughly and promptly investigated, just as with reports of sexual harassment (see *The Gavel*, issue 2/97). Employees should be encouraged to report incidents that could spark workplace violence, whether the incident is work or domestic related. The results of the investigation may range from moving co-workers away from each other to adding security measures to the premises. Finally, **employees should be trained and know what to do in the event of a violent incident, just as they are trained for fires and other emergencies (the employees are trained for that, aren't they?).** Source: The American Management Magazine, March, 1994.

CASES IN POINT:

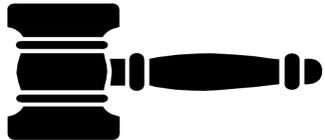
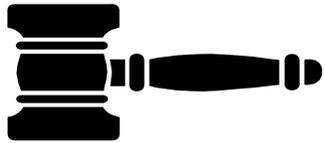


Police chases

As some of you may have read, the U.S. Supreme Court recently ruled that the police are not liable for accidents and injuries that result from the police chase of a suspected criminal. In a case originating from California, the justices ruled that resulting injuries are actionable only if the police officer acted to cause harm (unrelated to the legitimate purpose of arresting a suspect). Source:

Reuters Limited.

However, just weeks previous the Michigan Supreme Court ruled that under Michigan law, police agencies are liable for tort liability if the jury finds that the negligence of the pursuing (police) vehicles caused injuries to the innocent bystanders. Rogers v Detroit. **How can the two rulings be reconciled? It appears that they cannot, leaving us with conflicting laws under different jurisdictions.**



REFERRALS

If you have been pleased with the **service and professionalism** you have received from our office, it would be greatly appreciated if you passed the good word along. **Referrals are always appreciated and encouraged**, and we look forward to the opportunity to serve your associates and friends. If we can not immediately service their needs, we will be happy to **refer them to the appropriate attorney specializing** in their specific area of need.

However, if you have not been pleased, contact us directly!

David B. Forest, JD, MBA
Attorney and Counselor at Law
(810) 263-5690