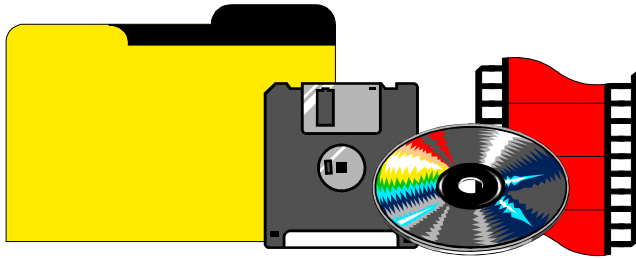


DataWatch



**Keeping An Eye On
Government and
Business Documents**

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Attorneys At Law

Winter, 2001

DEFAMATION PRIVILEGES EXTENDED BY MINNESOTA COURTS

*City Council Meetings, Post-Litigation Statements by Counsel,
and Workplace Investigations Addressed in Recent Rulings*

A trio of recent rulings of the Minnesota Supreme Court and Court of Appeals have applied privileges to various types of defamation lawsuits. The three cases are significant because they make it more difficult for defamation claimants to pursue claims arising out of disparaging statements that injured their reputations.

The threesome reflects the diverse dimensions in which defamation can arise: public governmental meetings, litigation-related settings, and investigations of workplace wrongdoing.

Here is a summary of the three cases and their impact upon the communication of data that may be alleged to be defamatory:

Data Watch Fact

*Recent Minnesota Rulings Regarding
Defamation Privileges*

Moreno v. Crookston Times Printing Co.

Newspaper has absolute privilege to publish "fair" and "accurate" account of City Council meetings.

Plack v. Stempel

Attorney has absolute privilege to make disparaging statements to his client concerning expert witness after conclusion of litigation.

Rudebeck v. Paulson

Business has qualified privilege for disparaging statements made during investigation of employee wrongdoing if made upon "reasonable grounds or probable cause" and without malice.

● **City Council Comments:** A police officer who was accused of dealing drugs by a citizen at a city council meeting in Crookston, Minnesota cannot pursue a claim against the newspaper that reported the citizen's comments. In **Moreno v. Crookston Times Printing Co.**, 610 N.W.2d 321 (Minn. 2000), the Minnesota Supreme Court earlier this year reversed the determination of the Appellate Court that had allowed the officer to proceed with a lawsuit against the newspaper that accurately reported accusations of "drug dealing" made against the officer by a citizen at a City Council meeting. See "Malice Can Overcome Fair Reporting Privilege," **DATA WATCH**, Summer 1999, p. 1. The Court ruled that reporting of comments made at public events, like city council proceedings, are absolutely privileged from defamation, even if the statements are false and made with malice, provided the reporting of the comments is "accurate" and "fair." The Court did, however, allow the officer to proceed with a claim against the newspaper concerning a portion of the article that summarized an interview with the police chief about "rumors" that the police officer had been arrested, since those comments are not subject to the same absolute privilege as the reporting was not made during an official governmental proceeding.

● **Libel Litigation:** Lawyers are generally privileged to make defamatory statements during the course of litigation. The doctrine, known as Judicial Privilege, was extended to post-litigation statements made by an attorney to his client in **Plack v. Stempel**, 2000 WL 890456 (unpublished). The case arose when an attorney made disparaging comments to his own client about an expert witness following a settlement of litigation. The expert claimed he had been libeled by the statements, but the

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...Three Major Arbitration Cases Pending

(continued from page 1)

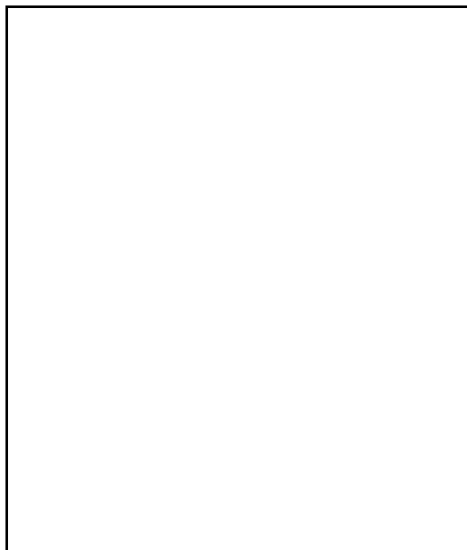
Appellate Court ruled that the privilege that exists during the course of litigation also applies to an attorney's post-litigation comments to his client concerning the terminated litigation.

● **Investigative Inquiry:** Statements made in an investigation of alleged wrongdoing in the workplace are subject to a qualified privilege from defamation. In **Rudebeck v. Paulson**, 612 N.W.2d 450 (Minn. App. 2000), an employee who had been charged with sex harassment was investigated by his employer. Defamatory statements were made in the investigation, and the employee sued for defamation after he was exonerated of the charges. The Appellate Court, however, ruled the employer was privileged to make the statements as part

of an inquiry into the allegations, provided the statements were made on "reasonable grounds or probable cause" and without malice. The Court did, however, require the employee to be indemnified for his legal expenses incurred in successfully defending himself against the charges.

These three cases create additional defenses from defamatory statements and make claims of libel for written defamation and slander for oral defamation difficult to pursue. The absolute privilege, as in the **Moreno** and **Plack** cases, forbids lawsuits altogether, while the qualified privilege, as in the **Rudebeck** case, precludes litigation unless the claimant can show that the statements were made improperly and with malice, meaning ill will or other wrongful motivation.

DIFFICULT DATA DISCIPLINARY DILEMMAS DISCUSSED



Marshall H. Tanick of **MANSFIELD, TANICK & COHEN, P.A.** discussed the subject of "Difficult Disciplinary Data Dilemmas" at a recent Continuing Legal Education (CLE) program sponsored by the Minnesota Institute of Legal Education. Mr. Tanick spoke to a group of attorneys, human resources personnel, and other professionals as part of a day-long seminar at the Radisson South Hotel dealing with the Minnesota Government Data Practices Act, the statute that regulates access to and confidentiality of government records. **Mr. Tanick's** presentation focused on the rights and obligations of public sector employees with respect to disciplinary data. "Disciplinary data remains private under the law until there is a final disposition of the disciplinary action," **Mr. Tanick** summarized. "But the public can get access to the nature of any disciplinary charges or complaints against public sector employees, as well as the reasons and data underlying the grounds, before any disciplinary action is taken," he said. Written materials prepared by **Mr. Tanick** for the presentation are available without charge by contacting the law firm's Special Events Coordinator, **April Fruechtl**, at (612) 339-4295, by facsimile at (612) 339-3131, or by e-mail at mtinfo@mansfieldtanick.com.

DataWatch is a complimentary service of the law firm of **MANSFIELD, TANICK & COHEN, P.A.**, providing analysis and review of recent legal developments concerning access to data, meetings, and other public sector information. It examines developments in connection with the Minnesota Government Data Practices Act, the Minnesota Open Meeting Law, the Federal Freedom of Information Act, and similar provisions of interest and importance to Minnesota and surrounding areas. For further information, contact the law firm at (612) 339-4295, or by FAX at (612) 339-3161.

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