



UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

- A Summary -

A legal action for defamation seeks remedy for loss of reputation based upon a publication of false information about a person. The remedy traditionally comes in the form of money damages. Unlike other kinds of injury, however, lost reputation can be repaired by correction or clarification of the information that is defamatory – if the publication of the correction or clarification reaches the same audience or public as the original defamation did. In fact, restoration of reputation by correcting or clarifying the original publication may be the best remedy.

Moreover, under current law few persons who claim to be defamed recover any damages because of the difficulties in bringing such actions. This is true notwithstanding the very few large defamation awards that are reported in the news and media. A remedy may be denied because a publisher has immunity under the First Amendment to the U.S. Constitution. The First Amendment guarantees a free press and freedom of speech. There is inevitable tension between the First Amendment and defamation law. If a defamed person does lose because the publisher asserts a First Amendment privilege, the result is too often taken as confirmation of the underlying statement about the defamed person.

If correction or clarification of the original publication is an adequate remedy – maybe even a more just remedy than money damages – wouldn't it make sense to encourage corrections or clarifications of a defamatory publication as an alternative to damages? Wouldn't a defamed person, also, be more likely to obtain a remedy?

Because negotiations between the parties might lead to a correction or clarification of the defamatory statement which will restore the defamed person's reputation, the Uniform Law Commission promulgated the Uniform Correction or Clarification of Defamation Act (UCCDA) in 1993. The purpose of the UCCDA is to create significant incentives for the parties to explore a correction or clarification as an alternative to pursuing a lawsuit.

Several states adopted retraction statutes prior to 1993, but these efforts have been largely unsuccessful. Most apply only to an alleged defamation by newspapers whereas the UCCDA applies to all defamations. Most of these pre-UCCDA retraction statutes not only do not create sufficient incentives for correction or clarification but may create risks for the parties in any subsequent legal action. The UCCDA tries to extract the best principles from prior efforts and to provide a uniform method of achieving these objectives.

To maintain a defamation action, UCCDA requires a person who alleges a defamation to make a timely and adequate request to the publisher for a correction or clarification. A request is timely if made within the period of limitation for defamation actions, but, to preserve a right to

damages that exceed economic losses (exemplary and punitive damages), the request must be made within 90 days of publication of the defamatory material.

The publisher of an alleged defamation may ask the defamed person for information respecting the falsity of the published information. The recovery of a defamed person, if that person unreasonably fails to disclose requested information going to the falsity of the publication, will be limited to economic losses.

If the publisher responds with an adequate, timely correction or clarification, the person who has been defamed may recover only economic losses incurred before the correction or clarification was published. A correction or clarification is timely if it is published within 45 days after the request for clarification or correction is received, or 25 days after the publisher receives requested information from the defamed person going to the issue of falsity, whichever is longer. It is sufficient if “published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication” of the defamation.

The publisher sued in a defamation action can, also, offer a correction or clarification before trial, but after the 45-day period has passed. The offer must be in writing and accepted by the defamed person in writing. Part of the offer is a commitment to pay the legal costs of the defamed person. If accepted, the lawsuit terminates. If it is not accepted, the defamed person can recover only economic losses and reasonable expenses of litigation.

The principal effect of the UCCDA is to encourage the correction or clarification of a defamation where it is appropriate to do so. The substantive elements that a person must plead and prove in a legal action for defamation are unaffected. The person claiming defamation, who properly requests a correction and is unsuccessful in obtaining one, retains his or her full rights of recovery. The publisher of a defamation who decides to stand on the alleged defamatory statement without issuing a correction remains fully subject to liability.

For further information about the Uniform Correction or Clarification of Defamation Act, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.