Proposed law would 'SLAPP' libel plaintiffs

Many of you reading this column have never had to experience the damage of a libel lawsuit filed against your paper. For those of you who have, you know the stress it causes you in terms of continuing to run your business while worrying about what the eventual outcome might be.

The lawyers who have experience defending libel cases across the country have several techniques that inevitably are used to defend such cases. For example, we file motions to "lock down" what words in the story are alleged to be defamatory, so the facts before the court are narrowed significantly.

And often, in cases where the plaintiff is a "public figure" or "public official," the media attorney will file a Motion for Summary Judgment, where the lawyer argues that there is no evidence of "actual malice" — evidence of "known falsity" or "reckless disregard for the truth," because of the long-standing principle from the case of New York Times v. Sullivan that if no evidence of actual malice exists, then the case should be terminated in favor of the defendant.

Often such a motion cannot be made until the plaintiff is deposed. Or maybe there must be a substantial amount of discovery done before such a motion can be filed. Either of those processes can be time-consuming and, consequently, expensive in terms of attorneys fees. The sooner the case gets to resolution, the sooner the cost of the defense can be contained.

But there's a second process in some states that offers an alternative technique to getting a quick resolution in such cases. The laws that govern such technique are called "anti-SLAPP" statutes. The term "SLAPP" refers to "strategic lawsuits against public participation." An anti-SLAPP statute can be applied in cases where a defamation suit is filed to stop a defendant that is opposed to the plaintiff's actions. In such cases, the plaintiff is seeking to silence the defendant from speaking against the plaintiff's actions or from criticizing the plaintiff's proposals.

An anti-SLAPP statute allows the defendant to argue that there is no likelihood the plaintiff will win and also requires the court to make an early assessment about whether the plaintiff has sufficient evidence to even support their claim of defamation. It does require that the dispute revolve around a matter of public concern.

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Missouri has had a version of an "anti-SLAPP" statute for a number of years, but it has had very limited application because the statute only applied in situations where the speech that is alleged to be defamatory occurred in a "public hearing or public meeting" or in a "quasi-judicial proceeding before a tribunal or decision-making body of the state".

But the Missouri legislature has two bills before it, one in the Senate and one in the House, scheduled for hearings in mid-April. As you know, the Missouri legislature will end this year's session on May 13, so time will be short for either bill to go through the legislative process, given that any bill must be heard in a committee, then be sent to the floor, debated and then passed by one legislative body (House or Senate, respectively), before it goes to the other body and repeats the entire process there.

The language in the two bills is nearly identical. Senate Bill 1219 was scheduled for hearing on April 11, while House Bill 2624 was scheduled for hearing on April 13. It generally takes at least a week, and often longer, for a bill to be passed out of committee and referred on to either another committee or on to the floor for debate by the entire body.

It could happen, but such an event would be remarkable — the deliberative, law-making process is designed to move slowly. Still, the fact that these two bills have reached the point of having hearings is remarkable for this session.

Missouri Press has been interested in seeing a bill related to this issue come up for hearing, but in recent years that hasn't happened. Similar bills have been among the many bills that are filed each year but they have never make it to the hearing process. So, the fact that a hearing was scheduled was a favorable move.

This is an issue that you as a publisher will want to watch. It is a proposal that would benefit the media. It would benefit politicians in your community who may be sued by the opposition over language said in the heat of an election. It would benefit community activists who find themselves sued over their contribution to public discussion of important issues.

Keeping our fingers crossed as we watch this bill!

Jean Maneke,
is MPA's Legal Hotline attorney.
Contact her at (816) 753-9000;
jmaneke@manekelaw.com.