

# Community Association Board Members Can Be Considered Limited Purpose Public Figures In Defamation Cases

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There is a growing body of case law around the country which would make it more difficult for an allegedly defamed community association board member to successfully pursue his or her day in court. Is a community association board member an average, private citizen or is a community association board member really a special category of public figure open to more scrutiny?

Can a community association board member be considered a limited purpose public figure and therefore held to the higher standard of actual malice when bringing a defamation claim in Florida? If so, what are the criteria for establishing a community association board member as a limited purpose public figure for defamation purposes?

To state a cause of action for defamation in Florida, a plaintiff must allege that: 1) the defendant published a false statement; 2) the statement was made about the plaintiff; 3) the statement was made to a third party; and 4) the falsity of the statement caused injury to the plaintiff.<sup>1</sup>

There are two basic types of figures in regard to defamation cases –private figures and public figures. Those who are not classified as public figures are considered private figures.<sup>2</sup> Assuming the four prongs needed to file a cause of action are met, defending a defamation lawsuit filed by a public figure is typically much easier than defending one filed by a private figure. There are two types of public figures recognized under defamation law: “public officials or public figures” and “limited-purpose public figures.”<sup>3</sup>

All-purpose public figures are private individuals who occupy “positions of such persuasive power and influence that they are deemed public figure for all purposes. . . . They invite attention and comment.”<sup>4</sup> Examples of such figures would include President Trump, Governor Scott, Bill Gates, Paris Hilton, any candidate for elected public office, etc.

The second category of public figures is called “limited-purpose” public figures. These are individuals who are not typically known outside their own sphere of friends, colleagues and their industry or community, but who “have thrust themselves to the forefront of particular controversies in order to influence the resolution of the issues involved.”<sup>5</sup> A limited-purpose public figure is either one who voluntarily becomes a key figure in a particular controversy or one who has gained prominence in a particular, limited field, but whose celebrity has not reached an all-encompassing level. Such figures include a retired general who advocated on national security issues,<sup>6</sup> a nationally known college football coach accused of

fixing a football game;<sup>7</sup> and would include local newscasters, local civic leaders and elected school board officials in regard to school board issues.

To support a claim for defamation, a private figure need only show negligence by the alleged defaming party, while a public figure must show “actual malice.” Actual malice in the defamation context is defined as publishing a statement while either knowing that it is false or with reckless disregard as to the statement’s truth or falsity. Not only are “public officials” subject to the actual malice standard in a defamation suit, but so are “limited purpose public figures.”<sup>8</sup> Whether or not a defamation plaintiff is a limited purpose public figure is a matter of law for the court to decide.<sup>9</sup>

No Florida appellate court case has ruled precisely on whether a community association board member is a limited purpose public figure as a matter of law. However, jurisdictions outside of Florida have applied the limited purpose public figure status to community association board members. A New Jersey Court ruled that a “person invites the application of the actual malice standard by voluntarily and knowingly engaging in conduct that one in his position should reasonably know would implicate a legitimate public interest, engendering the real possibility of public attention and scrutiny.”<sup>10</sup>

In that case, a townhouse owner brought action against his homeowners association alleging that the association lacked authority to enforce parking regulations, defamed the owner, and wrongfully removed him from the association’s architectural advisory committee. The issue in regard to the defamation revolved around the owner’s board candidacy. The board disseminated information about all the candidates to unit owners concerning the November 30, 1999 board election. This information for the six candidates for the three available seats contained a description of the candidates’ past or current violations of the association’s rules; whether the violations were “resolved or unresolved”; and whether the candidates were in “good standing and entitled to vote.” The information stated that three of the candidates had not committed any violations; it also indicated that two others had violated rules, both of which were “resolved.” As for the plaintiff, the information mentioned his “parking of commercial vehicles on Links ‘property,’ including driveway ... 1997–1999,” and indicated that these violations were not resolved. The owner alleged that the information provided to the membership was defamation by the Association. The court stated:

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As a candidate for election to the association's board of directors, plaintiff thrust himself into a spotlight which justified viewing him as a public figure for the limited purpose of his candidacy. A prime example of this type of public figure can be found in *Lawrence v. Bauer Publ'g*, supra, where our Supreme Court held that the president of a privately-organized taxpayers association became a limited purpose public figure by "inject[ing] himself into the forefront" of a public controversy about what his organization believed was an excessive appropriation for a city firehouse and which formed the background for the alleged defamation. In a similar vein, candidates for public office, who never achieve the status of public official because of lack of success at the polls, nevertheless take on the garb of public figures for the limited purpose of their candidacy. This not only includes candidates for public office on a national level, but also candidates for public office on a local level (for such offices as sheriff, school board, city council, doctor seeking appointment to medical board; citations omitted).

We conclude that plaintiff, as a candidate for the board of directors of the association, should be deemed a limited purpose public figure since he was a candidate for a position essentially indistinguishable from a member of a town's governing body. The board of this association performs many quasi-municipal functions in order to provide the owners with what they sought upon purchasing their townhouses—a stable, planned environment. Accordingly, the application of the actual malice standard is appropriate in these circumstances so there may be the opportunity, in the community, for free and robust communications regarding an individual's candidacy to the body which governs life in the community.<sup>11</sup>

Based on the above analysis, the New Jersey community association board member candidate was deemed to be a limited purpose public figure.

A "significant factor" in the public figure analysis "is whether an individual's position makes one a public figure because the individual invites public attention and comment by virtue of the position and the nature of the business."<sup>12</sup> In *Bossert*, the plaintiff was deeply involved in high profile civic affairs within his homeowners' association. The court stated:

In the present case, appellant was chairperson of the Civic Committee. The Civic Committee, which was partially funded with money from the community association, was in the process of separating itself from the community association. Appellant thus freely chose to participate in a leadership capacity in an organization which was involved in the community and was funded in part with money derived from the community. Appellant's high-profile community volunteerism is commendable. But it necessarily placed him in the status of a limited purpose public figure.<sup>13</sup>

The scope of the "public controversy" in such a setting includes the Plaintiff's "credibility and honesty" in his public role, just as a real "public official" submits to scrutiny of his or her fitness for office.<sup>14</sup> For instance, in a California case, over the course of several years, there was an ongoing dispute regarding the quality of services provided by the association's general manager.<sup>15</sup> Each side published newsletters, one in favor of the manager and one against the manager, alleging that the manager was incompetent and complaining about his management policies. When a new Board was elected, the manager tendered his resignation and filed a defamation lawsuit against numerous owners who submitted negative letters about him to the newsletter, the Board members and

the Journalism Club, which was a private homeowners club that published its newsletter to the community and local businesses. The Court provided that:

Although the allegedly defamatory statements were made in connection with the management of a private homeowners association, they concerned issues of critical importance to a large segment of our local population. For many Californians, the homeowners association functions as a second municipal government.<sup>16</sup>

Similarly, in a New Jersey case, a candidate in a run-off election for a seat on a condominium association board of directors brought defamation claims against the opposing candidate, author of an e-mail message sent to opposing candidate, and three supporters of opposing candidate, relating to the e-mail message accusing plaintiff of dishonesty and lack of integrity when selling one of his condominium units, which message was posted by one of opposing candidate's supporters on an online message board accessible only to unit owners and residents, and which message allegedly was included in flyers handed out by the other two supporters of opposing

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candidate.<sup>17</sup> The court held that a member of a community association board is a public figure as a matter of law because he “thrust himself into a spotlight which justified viewing him as a public figure for the limited purpose of his candidacy.”<sup>18</sup>

It is likely that given the well-established body of Florida community association case law, Florida appellate courts will render similar rulings when the question of a board member’s insulation from defamation is presented. As in California, Florida laws governing community associations contain provisions that “parallel” the “open meeting laws regulating government officials, agencies and boards,” and the “statutory schemes” governing local governments. These parallels to open government in California were a factor in the California Court’s determination that association board members were limited purpose public figures. There is no reason to believe that such parallels in Florida community association law would not lead to the same conclusion in Florida, as in California. Florida community associations mandate open governance meetings, with notice, agenda and minutes requirements, and strictly limit closed executive sessions.<sup>19</sup> Community association unit owners “comprise a little democratic sub society.”<sup>20</sup> As in New Jersey, Florida community associations “perform many quasi-municipal functions.”<sup>21</sup>

In analyzing whether a defamation plaintiff is a limited purpose public figure, a “court must (1) isolate the public controversy, (2) examine the plaintiff’s involvement in the controversy, and (3) determine whether the alleged defamation was germane to the plaintiff’s participation in the controversy.”<sup>22</sup> Applying this analysis, a court could almost always find a board member of a community association to be a limited purpose public figure in the context of statements made between and among residents, management and perhaps even vendors of the community association about the plaintiff’s conduct as an elected board member, to the extent the conduct was germane to the governance of the association, including the plaintiff’s general fitness to be a director in the association.

A trial court in Miami-Dade County ruled accordingly.<sup>23</sup> In that case, a community association board member alleged that defamatory statements were made about him in a letter that was sent to the membership. The alleged defamatory statements included allegations that the board member disrupted board meetings and had to be restrained by the police at board meetings. The defendants argued that under the facts of the case, the board member was a limited purpose public figure in regard to whether or not the actual malice standard would apply. Upon filing a Motion for Partial Summary Judgment, the trial court agreed that the community association board member was a limited purpose public figure in regard to the alleged defamatory statements and the actual malice standard would apply. That ruling was not appealed, and the case is still pending.

To determine if the community association board member was a limited purpose public figure, the court engaged in a three-step process.<sup>24</sup> The court first began by determining that a “public controversy” existed.<sup>25</sup> The public controversy must arise out of a matter of public interest or concern. The court stated:

At the most rudimentary level, a community association is a “democratic sub society;” and as such, any action that arises out of its board of directors is inherently an interest, concern or controversy to its residents. *White Egret Condo., Inc. v. Franklin*, 379 So. 2d 346, 350 (Fla. 1979) (quoting *Hidden Harbor Estates, Inc. v. Norman*, 309 So. 2d 180, 181-82 (Fla. 4th DCA 1975).

The court went on to state “[i]n a community association setting, if the plaintiff has chosen to run for elected office and serve as an elected officer, he or she is the equivalent of a public official for purposes of the public figure determination.”

Finding that a public controversy existed, the court next evaluated whether the plaintiff played a central role in that public controversy. The plaintiff must have either “been purposely trying to influence the outcome or could realistically have been expected, because of his position in the controversy, to have an impact on its resolution.”<sup>26</sup> Under the facts of the case, the court determined it was evident in the record that the plaintiff was intimately involved in the controversy, by “purposely trying to influence the outcome.”<sup>27</sup>

Limited purpose public figures can also be discerned if they have “thrust themselves to the forefront of particular public controversies.”<sup>28</sup> The court stated that the plaintiff voluntarily decided to run and serve for an elected position on the association board of directors. By choosing to do this, the plaintiff thrust himself to the front of the controversy. Even if the plaintiff was involuntarily caught in the controversy, “unless he rejects any role in the debate, he too has ‘invited comment’ relating to the issue at hand.”<sup>29</sup>

Finally, the court must determine if the alleged defamation was “germane” to the plaintiff’s involvement in the controversy.<sup>30</sup> The court found that it was axiomatic that the alleged defamation was germane to the plaintiff’s participation in the controversy as the alleged defamation was based on the plaintiff’s activities at board meetings.

The court ruled that there was no genuine dispute of material facts as to the determination that the plaintiff is a limited purpose public figure, and the actual malice standard applied in regard to the defamation cause of action.

If a Florida community association board member brings an action for defamation can he or she expect to be challenged on the grounds that he or she is a limited purpose public figure? It appears the answer is “yes.” For this reason, it is important to discuss with board members the difference between the actual malice standard as applied to a limited purpose public figure

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and the defamation standard as applied to private figures early on in representation of the community. Far too many directors may be unaware that their service on the board may expose them to more than just the usual criticism.<sup>41</sup>



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**Howard J. Perl** is a shareholder in the Becker & Poliakoff's Ft. Lauderdale office. Mr. Perl is involved in all aspects of community association law, including transactional, mediation, arbitration, construction defects, and litigation. Mr. Perl holds the AV Preeminent rating from Martindale-Hubbell. An active member of the Community Associations Institute (CAI), he has been designated a Professional Community

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### Endnotes

1 *Valencia v. Citibank International*, 728 So. 2d 330, 330 (Fla. 3d DCA 1999). See also *Miami Herald Publishing Company v. Ane*, 423 So.2d 376, 388 (Fla. 3d DCA 1982), affirmed, 458 So.2d 239 (Fla. 1984):

Without dispute, the plaintiff Ane was a private individual who was neither a public official nor a public figure. Under the First Amendment and applicable Florida law, he was entitled to recover in his libel action if he established at trial that the defendant Miami Herald published (1) false and defamatory statements of and concerning him, (2) without reasonable care as to whether those statements were true or false, (3) resulting in actual damage to himself.

2 See generally *Gertz v. Robert Welch Inc.*, 418 U.S. 323 (U.S. 1974) (differentiating private individuals from public officials and public figures).

3 *Little v. Breland*, 93 F.3d 755 (11th Cir. 1996).

4 *Gertz*, 418 U.S. 323.

5 *Id.*

6 *Secord v. Cockburn*, 747 F.Supp. 779 (D.D.C. 1990).

7 *Curtis Publ'g Co. v. Butts*, 388 U.S. 130 (1967).

8 *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841 (Fla. 4th DCA 2002).

9 *Id.*

10 *Verna v. The Links at Valleybrook Neighborhood Ass'n, Inc.*, 852 A.2d 202, 213, 371 N.J. Super. 77, 95-96 (N.J. App. 2004).

11 *Id.*

12 *Bossert v. Schamber*, 2001 Westlaw 1357018, \*5 (Cal. App. 2d Nov. 06, 2001).

13 *Id.*

14 *Id.*

15 *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468 (Cal. App. 2000).

16 *Id.* at 479 (citations and internal quotation marks omitted).

17 *Gulrajany v. Petricha*, 885 A.2d 496, 381 N.J. Super. 241, 256-57 (N.J. App. 2005).

18 *Id.*

19 *Fla. Stat.* § 718.112 (2016).

20 *White Egret Condo., Inc. v. Franklin*, 379 So. 2d 346, 350 (Fla. 1979), quoting *Hidden Harbour Estates, Inc. v. Norman*, 309 So. 2d 180, 182 (Fla. 4th DCA 1975).

21 *Verna v. The Links at Valleybrook Neighborhood Ass'n, Inc.*, 852 A.2d 202, 214, 371 N.J. Super. 77, 98 (N.J. App. 2004).

22 *Silvester v. Am. Broad. Companies, Inc.*, 839 F.2d 1491, 1494 (11th Cir. 1988).

23 *Gill v. Eden Roc, et al*, Case No. 12-20653 CA02, 11th Judicial Circuit, Miami-Dade County, Florida.

24 *Friedgood v. Peters Pb. Co.*, 521 So. 2d 236, 239 (Fla. 4th DCA 1988).

25 *Gertz*, 418 U.S. at 345.

26 *Waldbaum v. Fairchild Pub'n, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980); see *Silvester*, 839 F.2d at 1496.

27 *Silvester*, 839 F.2d at 1496.

28 *Gertz*, 418 U.S. at 345.

29 *Waldbaum*, 627 F.2d at 1298.

30 *Gertz*, 418 U.S. at 345; *Friedgood*, 521 So. 2d at 239; *Silvester*, 839 F.2d at 1497.

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16 *Id.* at 925.

17 *Supra* note 11, at 11.

18 *Supra* note 8, at 914.

19 *Id.* at 921.

20 *Id.*

21 *Id.*

22 *Supra* note 11.

23 The disciplinary action was filed on July 31, 2008. The declaratory action was ultimately resolved on November 18, 2009.

24 *Supra* note 11, at 1-2.

25 *Id.* at 34.

26 *Id.*

27 *Id.*

28 *In re: Lawrence Francis Patterson*, Attorney Number 2153718, Case Number 08PR0074 (Filed May 7, 2013), [https://www.iardc.org/rd\\_database/rulesdecisions.html](https://www.iardc.org/rd_database/rulesdecisions.html).

29 *Id.* at 15.

30 *Supra* note 8, at 923, 919.

31 *Supra* note 34, at 16.

32 *Id.*

33 *Id.*

34 See *Everett v. State*, 831 So. 2d 738 (2002); *Ellison v. State*, 983 So. 2d 1205 (2008).

35 188 So.3d 886 (2016).

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