

EXHIBIT 7A

Restatement of the Law — Torts
Restatement (Second) of Torts
Current through June 2009

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Division 5. Defamation
Chapter 25. Defenses To Actions For Defamation
Topic 2. Absolute Privileges
Title B. Absolute Privilege Irrespective Of Consent

§ 587. Parties To Judicial Proceedings

[Link to Case Citations](#)

A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding.

Comment:

a. The privilege stated in this Section is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. It protects a party to a private litigation or a private prosecutor in a criminal prosecution from liability for defamation irrespective of his purpose in publishing the defamatory matter, of his belief in its truth or even his knowledge of its falsity. One against whom civil or criminal proceedings are initiated may recover in an action for the wrongful initiation of the proceedings, under the rules stated in §§ 674 to 680, if the proceedings have terminated in his favor and were initiated without probable cause and for an improper purpose.

b. The rule stated in this Section is applicable to protect parties to any action before a judicial tribunal. It is immaterial whether the action is criminal or civil in character. Thus the rule applies to a litigant in a civil action, a defendant in a criminal prosecution, or one who, as private prosecutor, formally initiates a criminal action or applies for a search warrant by a written complaint under oath, made to the proper officer, charging another with crime. It applies to communications made by a client to his attorney with respect to proposed litigation as well as to information given and informal complaints made to a prosecuting attorney or other proper officer preliminary to a proposed criminal prosecution whether or not the information is followed by a formal complaint or affidavit.

c. Relation of statement to proceedings. It is not necessary that the defamatory matter be relevant or material to any issue before the court. It is enough that it have some reference to the subject of the inquiry. Thus, while a party may not introduce into his pleadings defamatory matter that is entirely disconnected with the litigation, he is not answerable for defamatory matter volunteered or included by way of surplusage in his pleadings if it has any bearing upon the subject matter of the litigation. The fact that the defamatory publication is an unwarranted inference from the alleged or existing facts is not enough to deprive the party of his privilege, if the inference itself has some bearing upon the litigation.

d. Party as pleader or witness. The rule stated in this Section affords to a party to litigation the same protection from liability for defamatory statements made in his pleadings as that accorded to an attorney under the rule stated in [§ 586](#). If the party takes the stand as a witness, he is accorded the privilege under the rule stated in [§ 588](#).

e. As to communications preliminary to a proposed judicial proceeding, the rule stated in this Section applies only when the communication has some relation to a proceeding that is contemplated in good faith and under serious consideration. The bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered.

f. Judicial proceedings include all proceedings in which an officer or tribunal exercises judicial functions as to which see [§ 585](#), Comments *c* and *f*. As indicated there, an arbitration proceeding may be included.

Case Citations

[Reporter's Notes, Case Citations & Cross References Through December 1977](#)

— June 1987 [Case Citations 1978 — June 1987](#)

— June 1998 [Case Citations July 1991 — June 1998](#)

— June 2009 [Case Citations July 1998 — June 2009](#)

[Reporter's Notes, Case Citations & Cross References Through December 1977:](#)

REPORTER'S NOTE

See in support of the rule stated, [Boulton v. Clapham, Jones, W.](#), 431, 82 Eng.Rep. 227 (1640); [Trotman v. Dunn](#), 4 Camp. 211, 171 Eng.Rep. 67 (1815); [Twyford v. Twyford](#), 63 Cal.App.3d 916, 134 Cal.Rptr. 145 (1976); [Matthis v. Kennedy](#), 243 Minn. 219, 67 N.W.2d 413 (1954); [Wiener v. Weintraub](#), 22 N.Y.2d 330, 292 N.Y.S.2d 667, 239 N.E.2d 540 (1968); [Binder v. Triangle Pubs., Inc.](#), 442 Pa. 319, 275 A.2d 53 (1971); [Lann v. Third Nat. Bank in Nashville](#), 198 Tenn. 70, 277 S.W.2d 439 (1955).

See also, as to pleadings, [Taliaferro v. Sims](#), 187 F.2d 6 (5 Cir.1951); [Fletcher v. Maupin](#), 138 F.2d 742 (4 Cir.1943), certiorari denied, 322 U.S. 750, 64 S.Ct. 1153, 88 L.Ed. 1581; [Talley v. Alton Box Co.](#), 37 Ill.App.2d 137, 185 N.E.2d 349 (1962); [Di Blasio v. Kolodner](#), 233 Md. 512, 197 A.2d 245 (1964); [Greenberg v. Aetna Ins. Co.](#), 427 Pa. 511, 235 A.2d 576 (1967), certiorari denied, 397 U.S. 907, 88 S.Ct. 2063, 20 L.Ed.2d 1336, rehearing denied 393 U.S. 899, 89 S.Ct. 72, 21 L.Ed.2d 187; [McClure v. Stretch](#), 20 Wash.2d 460, 147 P.2d 935 (1944).

On relevancy to the judicial proceeding, see [Ritchey v. Maksin](#), 71 Ill.2d 470, 17 Ill.Dec. 662, 376 N.E.2d 991 (1978); [Dachowitz v. Kranis](#), 61 A.D.2d 783, 401 N.Y.S.2d 844 (1978); [Binder v. Oregon Bank](#), 284 Or. 89, 585 P.2d 655 (1978).

COURT CITATIONS TO RESTATEMENT, SECOND

C.A.2, 1977. Cit. in sup. Plaintiff, an elementary school teacher allegedly discharged in violation of her due process rights, appealed summary judgment entered in favor of defendants, a school board, superintendent, district principal, and various members of the town's board of education. The court affirmed on appeal. On the issue of subject matter jurisdiction the court held that although there was no federal jurisdiction under the Civil Rights Act against a school board in its official capacity, the plaintiff stated a cause of action supporting federal question ju-