



PART E.

RESPONDING

TO A

DEFAMATION

LAWSUIT

WHAT IF YOU ARE WORRIED about speaking out because you could be sued for **defamation**? What if you already spoke out and your abuser is now suing you or threatening to sue you for **defamation**? The legal process can be intimidating, especially for victims of **sex-based harassment**. Here are some things you should know:

- What should I do if I receive a cease-and-desist letter? (**Q20**)
- What if my abuser is famous? What if they're not? (**Q21**)
- What happens if I get sued? How do defamation lawsuits work? (**Q22**)
- What are possible legal defenses against a defamation lawsuit? (**Q23**)
- I've been sued. How do I find a lawyer? (**Q24**)
- Does my state have protections against retaliatory defamation lawsuits? (**Q25**)

Q20. WHAT SHOULD I DO IF I RECEIVE A CEASE-AND-DESIST LETTER?

Before suing you, your abuser may send you a cease-and-desist letter from their **lawyer**. This is often the first way an abuser contacts a survivor to make them stop talking or writing about the abuse. The letter will ask you to stop speaking out or take back what you said about your abuser. It may also say that if you do not stop, they will sue you.

Keep in mind:

- A cease-and-desist letter is not an order from a court. You are not legally required to do what it says. It is up to you whether you want to continue speaking out. But if you decide to continue speaking out, it is possible your abuser will **file a lawsuit** against you, and you should prepare for that.
- The letter may tell you that you have a limited amount of time to respond to the letter, but you do not have to respond right away (or at all).
- Whether you want to respond, are not sure if you should respond, or don't want to respond, you should talk to a **lawyer** about your situation first. This is important for many reasons, including because your abuser could use any response you make against you in a later **defamation lawsuit**. A lawyer can explain your options to you, so you can decide together on what's best for you. See **Q9** to learn more about finding free or low-cost lawyers.

Q21. WHAT IF MY ABUSER IS FAMOUS? WHAT IF THEY'RE NOT?

The law makes it easier for a **private figure** than a **public figure** to sue someone for **defamation**. This is because public figures are often in the news, and other people have an interest in public figures. If reporters got in trouble for every wrong statement about a public figure, they might stop reporting on important topics. Also, public figures can correct wrong things said about them in the news more easily than private figures can.

A private figure is someone who is not widely known by the public. If a private figure sues you for defamation, they have to prove that you acted "negligently" in making a false statement about them. **Negligence** means even if you didn't know for sure that your statement was false, you can still be in trouble for defamation if you *should have known*. In other words, negligence means you didn't check to make sure your statement was true.

A public figure is someone who is widely known by the public. A public figure might be a politician, celebrity, or, in some cases, even a teacher, professor, or school administrator. They don't have to be nationally famous to be a public figure. If a public figure sues you for defamation, they have to prove you acted with actual malice. **Actual malice** means either you knew for sure that your statement was false, or you didn't care that your statement was very likely false. It is harder to prove actual malice than **negligence**.

A limited purpose public figure is someone who willingly creates or participates in a public issue and becomes a **public figure** for the purposes of statements about that issue. If a limited purpose public figure sues you for defamation, they have to prove you acted with **actual malice**. Some courts have said that **sex-based harassment** is a public issue. So, if you speak out about sex-based harassment, and your abuser publicly attacks or victim-blames you before later suing you for defamation, then they have willingly created or participated in a public issue, which means they have become a limited purpose public figure.

Who is a limited purpose public figure?

Here are some examples based on how some courts have decided defamation cases:

- Let's say someone writes an op-ed in a major newspaper about **Title IX**, education, "traditional values," "cancel culture," or some other related topic. They would be a **limited purpose public figure** regarding the topic of their op-ed because they willingly wrote and published it. So, if you name them as an abuser around the time the op-ed is published and they sue you for **defamation**, they would probably have to prove you acted with **actual malice**. But let's say they disappear from the news after that. If you name them as an abuser a few years later and they sue you, they would probably be a **private figure** and would only have to prove you acted with **negligence**.
- Let's say a regular person in your city goes to a city council meeting (or posts on Facebook) to say "#MeToo has gone too far." They would probably be a **limited purpose public figure** regarding #MeToo in your city because they willingly made this public statement. So, if you name them as an abuser and they sue you for **defamation**, they would probably have to prove you acted with **actual malice**.

Q22. WHAT HAPPENS IF I GET SUED? HOW DO DEFAMATION LAWSUITS WORK?

If you are sued, it's important to know that most courts only give you **30 days** to respond. So, if you are looking for a **lawyer**, you should look for one as soon as possible. If you need more time to find a **lawyer**, it is possible the court can give you an extension if you **file** a formal request with the court asking for one.

Every **lawsuit** looks different, but here are the things that stay the same in every case. (Remember, it is your **lawyer's** job to guide you through the lawsuit.)

Parties: The **plaintiff** is the person who starts, or **files**, the lawsuit (your abuser). The **defendant** is the person being sued (in a defamation lawsuit, that would be you). Together, the plaintiff and defendant are the **parties**.

Service: A person called a process server will **serve** you papers informing you of the lawsuit. The process server may serve you at your home, school, workplace, or other place you often go, or give the papers to someone you live with. The papers will include the **complaint**, a document that explains your abuser's legal **claims** and version of the facts. Don't ignore the lawsuit once you are served, because your abuser can win by default if you don't respond in time.

Motion to dismiss: Your lawyer will probably **file** a **motion** to **dismiss** the lawsuit. In a motion to dismiss, you could argue that even if your abuser's version of the facts were true, you would still win the lawsuit. Depending on your state, you may also be able to file an **anti-SLAPP motion** (often called a "special motion to strike"). If the **judge** grants your motion to dismiss or anti-SLAPP motion, the lawsuit is over unless your abuser **appeals**. See **Q25** and the **Appendix** for more information on **anti-SLAPP laws**.

Answer: If the lawsuit is not **dismissed**, you will have to answer the **complaint**. In the **answer**, you can tell the court why your abuser's claims are wrong. You can also file a counterclaim, which is a legal **claim** against your abuser that you want to add to the lawsuit.

Settlement: At any time during the **lawsuit**, you and your abuser can **settle** the case. This means you agree to do certain things (such as paying your abuser), and your abuser agrees to do certain things, including dropping the lawsuit.

Discovery: If your case is not **settled** or **dismissed**, the next step is **discovery**. This is where both sides have a chance to ask each other for information to collect **evidence** for the lawsuit. Discovery can be deeply invasive. Your abuser may ask to see your emails, text messages, and other documents. You may have to do a **deposition**, which means your abuser's lawyer will ask you questions under oath and your answers can be used at **trial**. Your abuser will not be able to ask you questions directly (unless they are acting as their own lawyer).

Note: We encourage you to reach out to a friend, family member, medical provider, or mental health provider to get support. But keep in mind that if your abuser later sues you for **defamation**, there is a risk that they could ask to see your communications with your family and friends during **discovery**. Even so, regardless of what state you're in and what your situation is, your abuser should not be allowed to see your communications with your therapist, psychologist, or other mental health provider unless you agreed to it or you brought the topic of your mental health into the lawsuit. And, depending on your state and situation, your abuser may also not be able to see your communications with your doctor, nurse, or other medical provider.

Motion for summary judgment: After **discovery**, you can file a **motion** for summary judgment. This motion asks the court to throw out the lawsuit because based on all of the **evidence** collected during discovery, your abuser would not be able to win at **trial**. Your abuser may also file a motion for summary judgment against you, arguing that the evidence collected during discovery shows that there is no way they could lose at trial.

Trial: If the court denies all motions for summary judgment and the case is not **settled**, then your case will go to trial. It may be at least several months from the time you are served until you go to trial. At trial, you will attend court with your lawyer. You can also bring others to support you, such as friends or family members. You will likely have to testify, which means answering questions under oath in court that your lawyer and abuser's lawyer

will ask. Your abuser will not be able to ask you questions directly (unless they are acting as their own lawyer). Either a **judge** or a **jury** (a group of six to 12 people) will decide who should win the lawsuit.

Appeal: The losing side can **appeal** at each stage when a decision is made. "Appeal" means asking a higher court to change the original court's decision. After all appeals are over, the lawsuit is done. If you lose, you will probably have to pay your abuser. If you win, in some states, you can ask the court to order your abuser to pay for your lawyer's fees.

Q23. WHAT ARE POSSIBLE LEGAL DEFENSES AGAINST A DEFAMATION LAWSUIT?

DEFAMATION LAW is different in each state, but these are some common **defenses** against a defamation claim:

Truth: You can't be punished for defamation if you can prove you were telling the truth. It can be empowering for you to take back the narrative about the harassment you faced. But proving the truth can often be hard, so you may need to use other **defenses** if it is too hard to prove that your statements were true.

Opinion:

- The U.S. Supreme Court has said that you can't be punished for an opinion that can't be proven as false or that is subjective, figurative, or hyperbolic. For example, you could say, "[abuser's name] is a monster." This is an opinion that can't be proven true or false. (But it might be considered **defamation** if you give an opinion alongside other statements about sex-based harassment.)

- In many states, you can't be punished for defamation if you were only sharing an opinion based on **nondefamatory** facts that you share along with your opinion. For example, you could say, "XYZ fraternity is dangerous [*this is your opinion*]. Last night, I saw 3 XYZ frat members take a woman who was very drunk upstairs during their frat party, and then today one of the guys told me that he had had group sex last night [*each of these facts is not defamatory on its own*]."

Consent: You can't be punished for defamation if your abuser explicitly said it was okay for you to make that statement. For example, if your abuser said to you in a text or email, "You can tell everyone! No one will believe you," you would have proof of their consent. But if your abuser simply didn't react when you started speaking out, that would not mean they consented to you continuing to speak out.

Timing: You can't be liable for defamation if too much time has passed since you made the statement. Each state has a **statute of limitations** of between **six months and three years** to **file** a defamation lawsuit after a statement is made. After that amount of time has passed, your abuser can't sue you for that statement.

ANOTHER DEFENSE is that the statement was **privileged**. This means the statement was made in a situation that generally deserves protection against **defamation** lawsuits. You should talk to a **lawyer** about these privilege defenses because they are different in every state.

Absolute privilege means you can never be liable for defamation based on your statement. Depending on your state's laws, an absolute privilege **might** cover statements made:

- In court
- By high-level elected and appointed public officials
- In speeches by a politician
To your spouse

Qualified privilege means that you can't be liable for defamation unless you made your statement with **actual malice**. Depending on your state's laws, a qualified privilege **might** cover statements made:

- In a meeting with a lawmaker
- By lower-level government officials
- While testifying in a legislative proceeding
- In a **complaint** to your school, employer, or other organization
- To someone who has an interest in protecting you or others from your abuser and an ability to do so. If you have an existing relationship with that person, you can tell them what your abuser did even if that person doesn't ask. If you don't otherwise have a relationship with this person, they would have to ask you about your abuser before you could tell them. This is often called a "common interest privilege."

What is a common interest privilege?

Here are some examples:

- Let's say your friend tells you that she matched with your abuser on a dating app, so you tell her that your abuser harassed you. If your state has a common interest privilege, then your statements to your friend are likely to be protected. This is because you had an existing relationship with your friend (so she didn't have to ask you about your abuser first), and she has both an interest in keeping herself safe and an ability to keep herself safe by unmatching with your abuser.
- Let's say your abuser is interviewing for a job and lists you as a reference. The employer asks you about your abuser, so you tell them that your abuser harassed you. If your state has a common interest privilege, then your statements to the employer are likely to be protected. This is because you made your statements to the employer after it asked you about your abuser, and it has both an interest in keeping its employees safe and an ability to keep its employees safe by not hiring your abuser.

FINALLY, depending on your specific situation, some other **defenses** might be helpful against **defamation**:

No damage: You might be able to argue that your statement did not harm your abuser's reputation. For example, they could have already had a bad reputation, so your statement did not change that. Or your statement could be about behavior that is seen as bad by some people but not so bad by other people, with the result that it didn't really harm your abuser's reputation.

Mostly true: If you can prove that most of your statement was true, and that the true parts of your statement were the most harmful to your abuser's reputation, then the court could decide to throw out the lawsuit.

Retraction: Most states have laws that allow a **defendant** in a defamation lawsuit to retract (take back) their statement to end the lawsuit or to reduce the amount of money they might owe if they lose. You may want to do this as a last resort.

See this [Defamation Guide](#) to learn more about your state's defamation laws.

Helpful Tip: You may want to prepare **evidence** for these **defenses** before you speak out. If you have already spoken out, you should collect and save documents and other evidence in case you are sued (or in case you want to sue your abuser). If you have been sued, it is a crime to destroy documents related to your **lawsuit**.

Q24. I'VE BEEN SUED. HOW DO I FIND A LAWYER?

You should try to get a **lawyer** if you've been sued. As you can see from **Part E** of this FAQ, defending against a **defamation lawsuit** is very complicated. Having a **lawyer** will help you follow the rules, meet strict deadlines, and present the best arguments to defend yourself given the laws that apply in your specific situation. This will improve your chances of getting a good outcome. (You do have the choice of representing yourself in court without a lawyer, but it is really not recommended.) See **Q9** for more information on how to find free or low-cost lawyers.

When you talk to potential **lawyers**, you may want to bring the following:

- A short summary of the key issues in your case and what you'd like a lawyer to help you with
- A copy of any letters, complaints, and other legal documents from your abuser
The names and contact info of any of your past lawyers and your abuser's lawyers
- Names of witnesses, important dates, key news articles, or any other background information about your case or your abuser
- A list of questions for the lawyer, including about their experience with defamation suits against survivors of sex-based harassment

Note: The U.S. government gives **lawyers to defendants** in criminal cases if they can't afford one. But **defamation** is typically a civil (not criminal) law, meaning you can't go to jail or prison for it. So, the government will not give you a lawyer to defend yourself against a defamation lawsuit, even if you can't afford one.

Q25. DOES MY STATE HAVE PROTECTIONS AGAINST RETALIATORY DEFAMATION LAWSUITS?

An **anti-SLAPP law** is a law that protects against SLAPPs. **SLAPP** stands for Strategic Litigation Against Public Participation. A SLAPP is a **lawsuit** aimed at intimidating someone so they don't speak out about misconduct or **retaliating** against them for speaking out. People who **file** SLAPPs don't necessarily expect to win in court, but SLAPPs are still effective at silencing victims. This is because defending against even the most pointless defamation lawsuit can still require a lot of time and money, and SLAPP filers tend to have more money and power than their victims. For example, an abuser may sue you for **defamation** knowing they cannot win but hoping to scare you out of speaking out.

An **anti-SLAPP law** protects your right to speak out about misconduct without being targeted by a **SLAPP**. Not all states have an anti-SLAPP law, and not all states' anti-SLAPP laws are strong enough. Your state may have an anti-SLAPP law that can end your abuser's **defamation lawsuit** against you if they don't have enough evidence to support their claim against you. Depending on your state's laws, you may be able to use an anti-SLAPP law to file an **anti-SLAPP motion** (often called a "special motion to strike"). If the court agrees with you and **dismisses** the lawsuit, the anti-SLAPP law usually requires your abuser to pay your **lawyer's** fees and court costs. See the **Appendix** for more information about the anti-SLAPP law in your state.