

## TOPICAL INDEX

**DISTRIBUTION—Contd.**

"Newsrack" ordinances, ▶ 25.13  
Print media, ▶ 25.01 et seq.

**E****EDITORIALS**

Defamation, ▶ 11.0506

**ELECTRONIC MEDIA**

*See also* BROADCAST MEDIA; TELEVISION AND RADIO

FCC. *See* FEDERAL COMMUNICATIONS COMMISSION

Ownership, ▶ 69.01

Student media. *See* STUDENT MEDIA

**EMOTIONAL DISTRESS**

*See* INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

**EQUAL TIME**

Broadcast media regulation, ▶ 20.15

**EXECUTIONS**

Access to, ▶ 40.1103

**F****"FAIR COMMENT"**

Defamation, ▶ 11.4502

**FAIR TRIAL, FREE PRESS**

Access to information, restraints on, ▶ 50.17

Access to law enforcement records, ▶ 38.1701 et seq.

Access to trials

—Courtrooms, ▶ 40.1105.01 et seq.

—Judicial records, ▶ 38.1501 et seq.

—Restraints on access to information, ▶ 50.17

—Restrictive orders, in general, ▶ 8.01

—Trial participants, restraints on contact with, ▶ 5.1005

Broadcast media restrictions, ▶ 8.01; ▶ 8.0301 et seq.

Camera guidelines, broadcast media, ▶ 8.0303

Judicial authority, ▶ 8.02

Judicial review

—In general, ▶ 8.2501 et seq.

—Burden of proof necessary, ▶ 8.2505

—Contempt, ▶ 8.2504

—Mootness, ▶ 8.2503

—Standing, ▶ 8.2502

Post-trial restrictions, ▶ 8.0505

Pre-trial restrictions, ▶ 8.0501

Prior restraints, ▶ 5.1001 et seq.

Protective measures, alternatives, ▶ 8.20

Restraints on access to information, ▶ 50.17

Restrictive orders

—In general, ▶ 8.01

—Civil proceedings, ▶ 8.07

—Criminal proceedings, ▶ 8.0501 et seq.

**"FALSE LIGHT"**

Privacy, common law right, ▶ 13.0104

**FALSITY**

Actual malice, ▶ 11.3002

Deceptive advertising, ▶ 15.15

**FEDERAL COMMUNICATIONS COMMISSION**

*See also* BROADCAST MEDIA

In general, ▶ 20.0301

Authority, ▶ 20.0302

Licensing, ▶ 20.0305

**FEDERAL TRADE COMMISSION**

Advertising, ▶ 15.01 et seq.

**FICTION**

Defamation, ▶ 11.0505.01

**FILMS**

*See* MOTION PICTURES

**FIRST AMENDMENT**

*See* FAIR TRIAL, FREE PRESS; NEWSGATHERING; PRIOR RESTRAINTS

Defamation. *See* DEFAMATION

Obscenity. *See* OBSCENITY

Student media. *See* STUDENT MEDIA

**FOIA**

*See* FREEDOM OF INFORMATION ACT

**FREE PRESS**

*See* FAIR TRIAL, FREE PRESS

**FREEDOM OF INFORMATION ACT**

In general, ▶ 44.1001

Exemptions, ▶ 44.1005 et seq.

Scope of coverage, ▶ 44.1003

**FTC**

*See* FEDERAL TRADE COMMISSION

**G****"GAG" ORDERS**

*See* PRIOR RESTRAINTS

**GOVERNMENT IN SUNSHINE ACT**

Statutory right of access, ▶ 44.15

**GRAND JURY**

Records, access to, ▶ 38.1503.02

**GROSS IRRESPONSIBILITY**

Defamation, ▶ 11.3003

**H**

► **11.0503 (Contd.)**

with a woman while on the job and is still employed by police department, since there is no indication from article that there was only allegation that plaintiff had sex with woman while on job, and since comparison of plaintiff to officer who was found to have had sex with mayor while on duty, and who pled true to engaging in conduct unbecoming officer and willful disregard of department rules, negates any innocent interpretation. — *Young v. Gannett Satellite Information Network Inc.* (S.D. Ohio, 11/30/2011) 1197

► **11.0506 Editorials**

Summary judgment is denied, in defamation action brought by former head of high school English department against newspaper defendants based on article and editorial asserting that plaintiff misappropriated funds by collecting fees from students for workbooks that were already paid for, since New York Supreme Court, Appellate Division, determined that defendants failed to set forth necessary elements to dismiss action, since defendants have offered no new evidence to show that plaintiff collected workbook fees without school district's knowledge, or that funds collected did not benefit students, since appellate court determined that amended complaint set forth legally cognizable cause of action to recover damages for libel, and that defendants' evidence was insufficient to establish truth of facts in article and editorial, and no evidence submitted since then establishes that facts are true, and since questions of fact remain as to whether publications were libelous, and as to whether defendants complied with proper standards for verifying facts. — *Matovcik v. Times Beacon Record Newspapers* (N.Y. Sup. Ct., 3/28/2012) 1678

**Pre-trial procedures**

► **11.1201 In general**

Federal rule of civil procedure applies in face of conflicting state law if federal rule, fairly construed, answers or covers question in dispute, and if federal rule is not invalid. —

Fed. R. Civ. P. 12 and 56, and thus anti-SLAPP statute cannot be applied in federal court sitting in diversity, since defendant's special motion to dismiss pursuant to anti-SLAPP statute requires court to grant motion and dismiss claim with prejudice if defendant makes prima facie showing that plaintiff's claim arises from act in furtherance of right of advocacy on issues of public interest and plaintiff fails to show that claim is likely to succeed on merits, but Rule 12(d) provides that, if matters outside pleadings are presented on motion to dismiss under Rules 12(b)(6) or 12(c), then motion must be treated as one for summary judgment under Rule 56, and all parties are given opportunity to present material pertinent to motion, since, therefore, federal rules do not permit district court to dismiss complaint that is sufficiently pleaded with detailed and plausible factual allegations, and assessment of factual merits of complaint is for factfinder, unless defendant can prevail on motion for summary judgment governed by Rule 56 standards, since Section 16-5502's special motion to dismiss procedure squarely attempts to answer same question that Rules 12 and 56 cover, since anti-SLAPP statute's requirement that plaintiff show likelihood of success with little to no discovery places higher procedural burden on plaintiff than is required to survive motion for summary judgment under Rule 56, and since Rule 12(d) covers any situation in which sufficiency of claim is challenged with support beyond pleadings, such that labeling motion as special motion to dismiss does not change fact that it squarely conflicts with federal procedures. — *Id.*

District of Columbia's anti-SLAPP statute, D.C. Code 16-5502(c), cannot be applied in federal court sitting in diversity, and thus defendants' special motions to dismiss plaintiff's commercial defamation, tortious interference, and other claims must be denied, since anti-SLAPP statute mandates that dismissal must be with prejudice, which would strip federal court of discretion it otherwise has to determine whether claim will be dismissed with or without prejudice. — *Id.*

eny County Department of Administrative Services, one's personal security is a serious matter "that deserves thoughtful consideration on a complete record." 13 A.3d at 1042. The trial court shall then determine whether the exemption applies based on the record evidence.<sup>13</sup>

Based on the foregoing, this Court vacates that portion of the trial court's order which pertains to home addresses and remands the matter for further proceedings consistent with this opinion. The trial court's order is affirmed in part, insofar as it held that dates of birth are exempt. Jurisdiction is relinquished.

### ORDER

AND NOW, this 22nd day of March, 2012, the portion of the Court of Common Pleas of Delaware County's order which pertains to home addresses is vacated in part. The matter is remanded for further proceedings regarding home addresses. The Order is affirmed in part, insofar as it held that dates of birth are exempt. Jurisdiction is relinquished.

## Matovcik v. Times Beacon Record Newspapers

New York Supreme Court  
Suffolk County

GERARD MATOVCIK v. TIMES BEACON RECORD NEWSPAPERS, THE VILLAGE BEACON RECORD, VILLAGE TIMES INC., and PETER C. MASTROSI-MONE

Index No. 04-12283

March 28, 2012

2012 BL 99818

"[t]hough we see nothing in the record to indicate that ASCI was somehow prevented from developing a record on the personal security exemption, we see no harm in allowing it another opportunity to do so on remand. If ASCI's employees' physical safety and personal security could truly be at risk if the information sought is placed into the public domain, it is a serious matter that deserves thoughtful consideration on a complete record." 13 A.3d at 1042.

<sup>13</sup> Based on this Court's disposition and remand, it is unnecessary to address Schaefer's final issue which was whether the trial court erroneously issued its decision without briefing, oral argument, hearing or notice of its

## REGULATION OF MEDIA CONTENT

### [1] Defamation — Defamatory content — Editorials (§ 11.0506)

#### Defamation — Truth — In general (§ 11.4001)

Summary judgment is denied, in defamation action brought by former head of high school English department against newspaper defendants based on article and editorial asserting that plaintiff misappropriated funds by collecting fees from students for workbooks that were already paid for, since New York Supreme Court, Appellate Division, determined that defendants failed to set forth necessary elements to dismiss action, since defendants have offered no new evidence to show that plaintiff collected workbook fees without school district's knowledge, or that funds collected did not benefit students, since appellate court determined that amended complaint set forth legally cognizable cause of action to recover damages for libel, and that defendants' evidence was insufficient to establish truth of facts in article and editorial, and no evidence submitted since then establishes that facts are true, and since questions of fact remain as to whether publications were libelous, and as to whether defendants complied with proper standards for verifying facts.

Defamation action against newspaper defendants. Action was dismissed, but New York Supreme Court, Appellate Division reversed (36 Med.L.Rptr. 2439). On parties' cross-motions for summary judgment.

Denied.

John Ray, Miller Place, N.Y., for plaintiff.

Henry R. Kaufman, New York, N.Y., for defendants.

#### Martin, J.:

Upon the following papers numbered 1 to 43 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-32; Notice of Cross Motion and supporting papers 33-37; Answering Affidavits and supporting papers 38-40; Replying Affidavits and supporting papers 41-43; it is,

**ORDERED** that the motion by defendants for an order pursuant to CPLR 3212 granting summary judgment in their favor dismissing the amended complaint is denied; and, it is