

RISKY BUSINESS? WHAT MARKETING EDUCATORS SHOULD KNOW ABOUT WRITING REFERENCE LETTERS FOR STUDENTS

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ABSTRACT

As marketing educators and employees of higher education institutions, we have two responsibilities and objectives: educate our students and provide industry with a competent and skillful workforce. Employment references are an important tool that benefits employers with their hiring decisions and assists them to predict the future level of performance for their prospective employees. References also help them in obtaining additional information about job candidates, which cannot be retrieved from any other source. Over the past two decades, the demand for letters of reference has increased considerably. Approximately fifty to ninety percent of employers ask for them and utilize them (Ziegler, 2000). Employment reference information requested generally includes: (1) the applicant's prior employment and educational background; (2) assessment of the applicant's personality and character; (3) assessment of the applicant's work skills and capabilities; and (4) whether or not the reference providers would hire or continue to employ the applicant. Not only employers are asked to provide reference letters but also university professors and other educators are frequently called upon to furnish student reference letters to employment recruiters. Candid and truthful references by professors to potential employers of students serve the dual purpose of assisting a deserving student to get a desired job as well as helping the employer to make the right choice of applicant for a particular position. However, authors of letters of references have been subject to a variety of legal actions by both students and their prospective employers. While honest and forthright references serve the best interest of the society, the authors can face litigation by students on claims of defamation, violation of privacy, and misrepresentation of facts.

Educators and other authors of reference letters who may have attempted to circumvent the potential for lawsuit by providing references bare of basic information, or who have provided glowing recommendations that inflate the status of a poor

student, have not escaped liability. Such wrongful actions have been subject to claims by the hiring institution for negligent referral and intentional misrepresentation [987 P.2d 1172, *Davis v. The Board of County Commissioners of Dona Ana County*]. While a reference letter that appears neutral on its face may seem to reduce the risk of potential legal action for the author, it can have an adverse effect for the potential employer and on the competency level of employees within the workforce. For example, if a school district hires employees with neutral references, it can be subject to a claim of negligent employment if the person hired demonstrates serious misconduct while on the job. A neutral recommendation could also undermine sought after personal assets such as intelligence and work ethic of a deserving student, and make him appear to be unworthy. Professors are challenged to author meaningful letters of recommendation that serve the best interest of both their students and the prospective employers. This challenge is thwarted by the specter of legal action.

To date, limited academic research is available to aid professors in the process of writing recommendation letters (Barr and Mcneilly, 2002). Brief guidelines on the specifics of writing reference letters are available in trade journals, professional magazines, popular press (e.g., Schneider, 2000; Weiss, 2004), and more recently, through online resources. These resources focus mainly on how to write an efficient recommendation letter. Other research has focused on the legal aspects of writing (or not providing) reference letters (Compton and Scribner, 1990; Dannin, 2004; Hirschfeld, 2004; McRae, 2007; Peschiera, 2003). To aid marketing educators further, the authors examine and conduct an analysis of the formal defenses of Absolute Privilege to defame and Qualified Privilege to defame that can protect the author of a reference from lawsuit. Additionally, issues relating to the potential for recovery based on Invasion of Privacy and the concern for student confidentiality are explored.