Giving Lawful and Helpful Job References—Without Fear

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Public employers often feel caught in a dilemma when providing references for an employee.[1] If they give a negative reference, they fear that the employee may sue them for defamation.[2] If they give a positive reference and the employee later misbehaves in his or her new position, they fear that the new employer may sue them for negligent referral.[3] As a consequence, many employers adopt a "name, rank, and serial number" or "just the facts" approach, confirming objective employment information without personally interpreting the employee's performance.

This article addresses employers' concerns by discussing both the legal protections that North Carolina has extended to employers and the ethical issues that they must consider when providing references. The article also offers administrative recommendations for giving protected employment references.

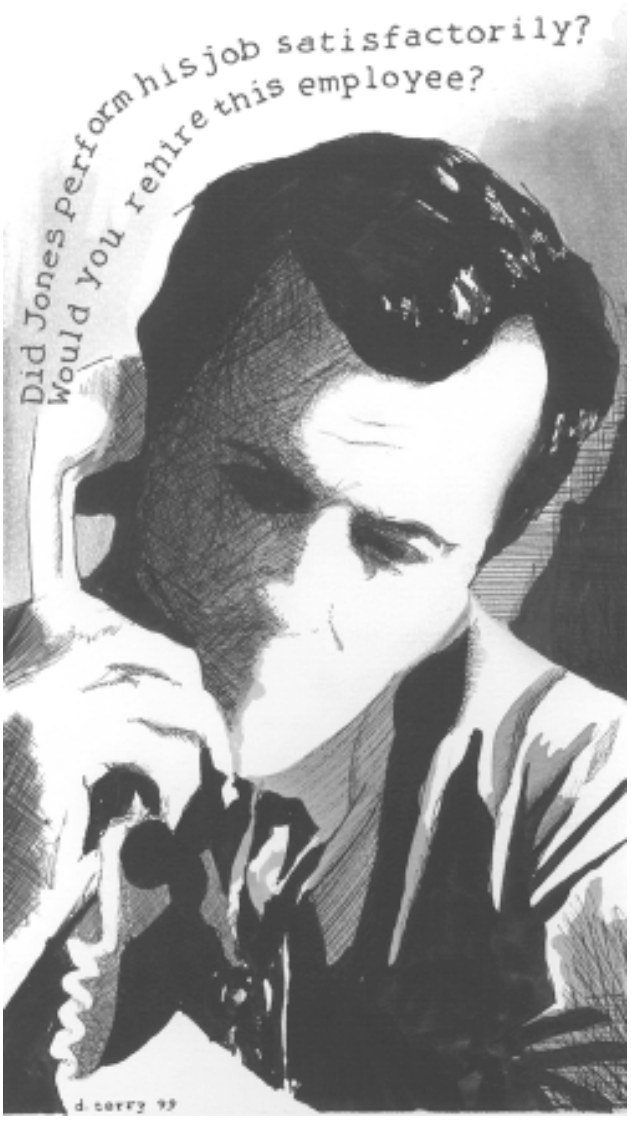

Illustration by David Terry

NORTH CAROLINA STATUTORY FRAMEWORK

In determining what personnel information is public and available for release generally and what information is confidential, public employers in North Carolina must look to the statutes governing employee personnel files (hereafter referred to as "personnel records acts"). Under the statutes nine personnel items about a public employee are public information and may be disclosed to anyone: name, age, date of original employment or appointment to service, current

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position, title, current salary, date and amount of most recent change in salary, date of most recent position change, and office or station to which currently assigned.[4] Unless a special set of circumstances exists, the employer may not release other information in an employee's personnel file to the public.[5]

In giving employment references, many public employers have felt that their safest route is to reveal only the public items under the personnel records acts. They have done so despite decisions by the North Carolina courts giving employers a qualified privilege to disclose more information to prospective employers.[6] They also have done so even though the personnel records acts do not prohibit a supervisor from speaking to a prospective employer about an employee's performance or skills based on the supervisor's direct experience or personal observation. (The acts prohibit only disclosure of confidential information directly from personnel records.)

Recognizing employers' concerns, the General Assembly has followed the lead of other states by ensuring that the release of otherwise confidential information will be protected in the limited context of providing employment references.[7] In 1997 the legislature enacted a statute providing both public and private employers with immunity from civil liability for disclosing certain information to prospective employers (see text of statute, below).[8] This statute protects employers who provide information about an employee's job history or job performance at the request of a prospective employer or at the request of the employee. The statute covers employees, agents, and other representatives of the current or former employer who are authorized to provide and actually do provide information in accordance with the statute's provisions. The statute grants this immunity only if employers provide the reference information to prospective employers, so public employers must assure themselves of the legitimacy of the request before releasing any information indicated by the statute.[9]

The statute uses but does not define the term "job history." It defines "job performance" as including the employee's suitability for reemployment; the employee's skills, abilities, and traits as they relate to his or

IMMUNITY STATUTE

§ 1-539.12. Immunity from civil liability for employers disclosing information.

(a) An employer who discloses information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or upon request of the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when a claimant shows by a preponderance of the evidence both of the following:

(1) The information disclosed by the current or former employer was false.

(2) The employer providing the information knew or reasonably should have known that the information was false.

(b) For purposes of this section, "job performance" includes:

(1) The suitability of the employee for re-employment;

(2) The employee's skills, abilities, and traits as they may relate to suitability for future employment; and

(3) In the case of a former employee, the reason for the employee's separation.

(c) The provisions of this section apply to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section. For the purposes of this section, "employer" also includes a job placement service but does not include a private personnel service as defined in G.S. 95-47.1 or a job listing service as defined in G.S. 95-47.19 except as provided hereinafter. The provisions of this section apply to a private personnel service as defined in G.S. 95-47.1 and a job listing service as defined in G.S. 95-47.19 only to the extent that the service conveys information derived from credit reports, court records, educational records, and information furnished to it by the employee or prior employers and the service identifies the source of the information.

(d) This section does not affect any privileges or immunities from civil liability established by another section of the General Statutes or available at common law.

(1997-478, s. 1.)

Note: This statute applies to causes of action arising on or after Oct. 1, 1997.

her suitability for future employment; and the reason for the employee's separation.[10] The immunity does not apply if the employer provided false information and knew or should have known that it was false.[11] Thus the statute provides an explicit measure of support for employers who provide thorough employment information in good faith.

The immunity statute does not expand the personnel information available to the public. The personnel records acts still permit public disclosure only of the most recent personnel actions, not the reasons for those actions. However, the immunity statute carves out a niche for disclosure of additional relevant performance information to a specific group—prospective employers. By enacting this statute, the legislature has clarified the existing public policy of providing full and relevant performance information to employers before they make hiring decisions.

CONSIDERATIONS IN MAKING REFERENCES

In making policy decisions about how to handle requests for employment references, public employers must balance competing legal, ethical, and administrative considerations.

Legal Considerations

Two employment-related claims that are important in this context are defamation and negligent referral. A "defamation claim" is a common-law claim that arises when an employer provides a referral that falsely impugns a present or past employee's professional reputation. A "negligent-referral claim" is a common-law claim that arises when an employer with a problem employee sues the former employer for not providing sufficient referral information before the hiring decision. Courts across the country have only recently begun to recognize negligent-referral claims, so not much case law exists yet.

Defamation

A defamation claim allows a person to recover damages from someone who "harms [his] reputation so as to lower him in the estimation of the community or deters third persons from associating or dealing with him."[12] As a practical matter, a defamation claim arises when employee X (or former employee X) of agency A tries to get a job at agency B and is not hired based on something agency A's representative either says or writes about her. The employee then sues agency A for compensatory and punitive damages.[13]

Employers sued for defamation who have the documentation to back up their statements should win in court: truth is an absolute defense to defamation.[14] Perhaps even more important, North Carolina courts have long held that employers have a "qualified privilege" (a limited right) to make statements to prospective employers. As long as the statements are (1) made in good faith, (2) on a subject that the source of the statement has a valid interest in upholding, and (3) to a person having a corresponding interest, right, or duty, the employer will not be liable for defamation. Even if a statement turns out to be false, the person making the statement is protected as long as he or she did not know or have reason to know that the statement was false.[15] The 1997 immunity statute in effect codifies this common-law privilege. Although the statute does not expand the defenses that already were available to employers, it certainly clarifies employers' protection.

Negligent Referral

Another potentially contentious situation arises when agency A wants employee Y to leave because of marginal performance or questionable conduct but has not figured out how to get him to leave quietly. Serendipitously a call comes from agency B: "Employee Y has applied for a position here. What can you tell me about him?" Tempted by the possibility that employee Y will leave on his own and concerned about a potential lawsuit from employee Y if he does not receive a good reference, agency A provides only minimal employment information to agency B. But if employee Y injures someone in his new position, agency A may find itself in court defending a negligent-referral claim brought by agency B.[16] Although there are not yet any reported appellate decisions on negligent referral in North Carolina, the California Supreme Court recently recognized that employers have some duty to prospective employers. In a case in which the employer passed on information that was highly positive but completely untrue, and thus fraudulently misled the new employer, the court said the following:

> [T]he writer of a letter of recommendation owes to third persons a duty not to misrepresent the facts in describing the qualifications and character of a former employee, if making these misrepresentations would present a substantial, foreseeable risk of physical injury to the third persons.[17]

Although such a claim may arise infrequently, it nevertheless might be pursued in some circumstances. A negligent-referral claim against agency A will help agency B insulate itself from a negligent-hiring claim brought by the person whom employee Y injures.[18] If agency B can prove that agency A did not disclose information that would have affected its initial hiring decision, it might recover damages from agency A or be indemnified for its liability.[19] By limiting references to information deemed public, public employers have a good argument that they are not misrepresenting any qualifications. However, because the new immunity statute now clarifies the common-law protection for employers who disclose information about an employee's job performance, public employers may have less justification than before for not revealing such information.

Ethical Considerations

In addition to examining their legal obligations in providing employment references, public employers ought to consider their ethical obligations of protection and care. They have an immediate obligation to their current and former employees to protect confidential personnel information. They have a corresponding obligation to provide favorable references when warranted by employees' performance, as a reward for and a recognition of such performance. At the same time, public administrators must recognize their responsibility to the public at large by encouraging hiring of the most qualified public servants and by promoting honest and truthful behavior.[20]

Persons in public service should remember their status as "especially responsible citizens" based on their dual roles as public employees and citizens.[21] As public employees, they must consistently guard the public's interest. In this role they act as policy makers and must remember that "ethical policy making requires citizens [to] hold one another accountable for what they know and value."[22] As citizens, they should hold themselves to a greater awareness than citizens who are not public administrators in managing public funds and providing quality service. They set an example for all citizens to follow and should recognize their accountability for decisions they make. They must strive both to uphold a higher standard of honesty when making comments on matters of public concern and to maintain credibility by their actions.[23] Although focusing on immediate problems may be easier, responsible public administrators cannot forget their duty to the general, albeit amorphous, public when providing references or making hiring decisions.[24]

So how does an ethical public administrator approach employment references? When faced with a question from a potential employer about an employee's job performance or job history, a public administrator should ask himself or herself the following questions:[25]

1. *Have I used "discernment"?* A responsible supervisor ensures that he or she understands what specific information is being sought and why. To help determine the level of information needed, the supervisor should seek clarification of questions posed by the prospective employer, the job duties in the position for which the employee has applied, and the stage of the hiring process.
2. *Have I interpreted the question correctly?* Rather than reacting out of habit and not providing information, a responsible supervisor will take time to evaluate the question and the context in which the information is being sought. For example, if the request has come in a telephone call, it is permissible to call the prospective employer back after due consideration of the matter or to send a written response, rather than feeling pressure to respond immediately.
3. *Will my action (response) fit the situation?* An employment reference should provide enough substantive performance information to help a prospective employer evaluate a prospective employee without either violating the supervisor's responsibilities to the employee or exceeding the direct experience of the supervisor.
4. *Will my action support my commitments?* A supervisor should know his or her values as a public administrator—for example, honesty, concern for the community, personal accountability, integrity, and upholding of laws—and let them guide him or her in providing reference information.
5. *Is my action congruent with my roles?* Again, public administrators have many roles. Does the information provided in an employment reference reflect the supervisor's roles as a taxpayer, a public servant, and a hiring supervisor?
6. *Have I used my imagination?* In other words, has the supervisor responsibly considered the effect of either providing or not providing information on the employee to the prospective employer?
7. *Am I willing to go public?* A responsible supervisor will consider the effect on himself or herself

if someone openly revealed the reference information.

8. *Am I willing to accept the consequences?* The answer to this question reveals whether the supervisor feels truly accountable for providing the employment reference.

If a public administrator can answer these questions affirmatively, he or she can feel confident of providing the prospective employer with a responsible, ethical reference that supports his or her values and commitments as a public employee.

Administrative Considerations

By protecting employers from civil liability for disclosing information about an employee's (or former employee's) job performance, the General Assembly has clarified the types of references that public employers may provide. With this codification, however, comes responsibility to answer reference questions thoughtfully. Public employers must ensure that their supervisors and personnel staff understand the statute's requirements and limitations.

First, a public employer must determine who will provide references. Currently, many agencies limit this authority to their personnel departments, which then release only the information authorized by the personnel records acts. By limiting references to their personnel departments, agencies maintain greater control over the release of information. But because the immunity statute explicitly authorizes release of information to prospective employers regarding the employee's suitability for reemployment and the reason for a former employee's separation, agencies may want to allow direct supervisors to provide references. Direct supervisors usually are more familiar with an employee's performance than the personnel department is. Alternatively, agencies may want to have direct supervisors submit a written evaluation to the personnel department containing information protected by the immunity statute, and continue to have the personnel department respond to requests for references. Such an approach recognizes the managers' knowledge about the daily performance of their employees. (For a sample form for this purpose, see Exhibit 1.)[26]

Second, a public employer must determine to whom it should release a reference under the immunity statute. The statute does not define "prospective employer."[27] Before revealing information protected by

EXHIBIT 1

[AGENCY NAME]

Performance Evaluation Form

(to be submitted to the personnel department for the purpose of providing information to a prospective employer)

Background Information

_____
(FORMER) EMPLOYEE NAME

_____
EMPLOYING DEPARTMENT

_____
POSITION(S) HELD

_____
PROSPECTIVE EMPLOYER

_____
DATE COMPLETED

Performance Evaluation Information

1. What is the former employee's suitability for reemployment?
   - ❍ I would reemploy this person in the same position.
   - ❍ I would reemploy this person in a position that better matches his or her skills, abilities, and traits.
   - ❍ I would not reemploy this person in the same position because of his or her lack of the following (check one or more and explain):
     - ❍ Skills _____
     - ❍ Abilities _____
     - ❍ Traits _____

2. What are the employee's skills, abilities, and traits as they may relate to suitability for future employment?
   This includes information about the employee's ability to perform the essential functions of the position, such as handling a multiline telephone system, analyzing and interpreting applicable policies and regulations, regularly following reasonable work instructions, regularly attending work, and fulfilling other performance responsibilities.

   _____
   _____
   _____
   _____

3. What is the reason for the former employee's separation?
   - ❍ Retirement
   - ❍ Resignation
   - ❍ Termination
   - ❍ Reduction-in-force
   - ❍ Other (please specify) _____

_____
SUPERVISOR'S SIGNATURE DATE

Your signature indicates that, to the best of your knowledge, the information provided is true and that there is no reason for you to know that the information is false.

This information is provided in accordance with Section 1-539.12 of the North Carolina General Statutes, effective October 1, 1997.

the immunity statute that is otherwise confidential personnel information, the agency must require specific verification from the prospective employer, such as written authorization from the employee or a signed copy of the employment application. A written request for a reference on the prospective employer's letterhead may suffice as well.

Third, a public employer should create and disseminate a written policy on references. The policy should reflect the agency's values and put all employees on notice about what information will be shared and with whom. The policy should include a section that articulates to whom the agency sees its obligations and why, and how the agency is balancing competing obligations. An established policy helps guide supervisors and personnel representatives when they are asked for employment references.

Fourth, a public employer should provide training to its personnel representatives and supervisors on the limitations of the immunity statute, its interplay with the relevant personnel records acts, and their responsibility as ethical public administrators to provide truthful, informative references based on an employee's job history and job performance. Necessary components of this training are explaining and defining language such as "suitability for re-employment"; helping staff determine the appropriate skills, abilities, and traits for a given position; and assisting staff in recognizing how much to share about an employee's separation. Training also should detail the information that the agency will require from a prospective employer to verify the legitimacy of the request; explain the agency's philosophy on and process for providing references; and review any forms that the agency has developed as a result of its new policy to help document the release of reference information. Even if an agency determines that its personnel department is the only appropriate channel for references and recommendations, it still may want to offer training to supervisors, who may be asked to submit information to the personnel department.

As an additional measure of protection, agencies may want to require that employees sign an authorization to release performance information either before their supervisor's disclosure of information or on their separation from service. (For a sample form, see Exhibit 2.)

Finally, those who provide references must be aware of any settlement agreement with the employee that expressly limits the type of reference information that they may release.[28]

EXHIBIT 2

[AGENCY NAME]

Employee's Authorization to Release Job Performance Information to Prospective Employer

Background Information

_____
EMPLOYEE NAME

_____
EMPLOYING DEPARTMENT

_____
POSITION(S) HELD

_____
PROSPECTIVE EMPLOYER (IF KNOWN)

Authorization to Release Performance Information

I, _____, understand that North Carolina law allows my employer to release certain information about my job history and job performance to a prospective employer. This information includes my suitability for reemployment with the agency or governmental body; my skills, abilities, and traits as they may relate to my suitability for future employment; and the reason for my separation.

I hereby authorize *(check one or both)*

❍ my supervisor_____
(NAME)

❍ a representative from the Personnel Department

to release this information. I ask that this information be provided when any prospective employer requests reference information.

_____
EMPLOYEE'S SIGNATURE DATE

This information is provided in accordance with Section 1-539.12 of the North Carolina General Statutes, effective October 1, 1997.

SUGGESTIONS FOR IMPROVING THE IMMUNITY STATUTE

The immunity statute provides support for public employers who are concerned about their exposure to legal action if they provide more candid information to prospective employers than the state's personnel records acts authorize for disclosure to the general public. However, the statute might be refined by the legislature in three ways. First, the legislature might incorporate the protections of the immunity statute into the personnel records acts. This would help public employers reconcile their governing statutes. Second, the legislature might expand immunity to encompass information provided to current employers as well as information provided to prospective employers. Some employers cannot verify an applicant's job history or performance information before making hiring decisions, but they may want to do so afterward. Third, the legislature should define "prospective employer" and "job history" in the immunity statute. This would preclude different interpretations of the terms across agencies.

NOTES

1. This dilemma is not unique to public employers. The *Raleigh News & Observer* has published at least two articles in the past year on providing references in employment and education contexts. Diana Kunde, "References Best Given Carefully," *Raleigh News & Observer*, Feb. 28, 1999, p. 6E; Ethan Bronner, "Guidance Counselors, Fearful of Litigation, Cautious in Recommendations," *Raleigh News & Observer*, March 15, 1998, p. 12A.

2. Defamation is defined and discussed in more depth later in this article under the heading "Legal Considerations."

3. Negligent referral is defined and discussed in more depth later in this article under the heading "Legal Considerations."

4. State employees' personnel records are covered by N.C. Gen. Stat. § 126-23 (hereinafter G.S.), county employees' records by G.S. 153A-98, and city employees' records by G.S. 160A-168. Public information is essentially the same for local governments and state agencies.

5. Any information not defined as public is considered confidential personnel information. G.S. 126-24 (state employees), 153A-98(c) (county employees), 160A-168(c) (city employees). Most information considered confidential may be released only to the following persons: the employee or someone with the employee's written permission; the employee's supervisor; a person with an order from a court of competent jurisdiction; or an official of a state or federal agency when inspection is deemed by an official having custody of a personnel file to be necessary and essential to pursuance of the proper function of the inspecting agency. G.S. 126-24, 153A-98(c), 160A-168(c).

A department head in a state agency, a county manager with the concurrence of the county commissioners, or a city manager with the concurrence of the city council members may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action if, before releasing the information, that official determines in writing that the release is essential to maintain public confidence in the administration of the agency's or government's services or to maintain the level and the quality of its services. This written determination becomes a public record and a part of the employee's personnel file. *See* G.S. 126-24 (state employees), 153A-98(c)(7) (county employees), 160A-168(c)(7) (city employees).

6. The qualified privilege is discussed in more depth later in this article under the heading "Legal Considerations."

7. As of 1997, 26 other states provided immunity for certain employment references. *See* Fred Hartmeister, "Handling Requests for Employment References: Elevating Awareness among the Pitfalls and Pendulums," *Education Law Reporter* 119 (Aug. 1997): 1. *See also* Alan M. Koral, "Avoiding Workplace Litigation: When You Write, You May Be Wrong," *Practicing Law Institute Litigation and Administrative Practice*, Litigation Course Handbook Series, no. 562 (April 1997): 352.

8. G.S. 1-539.12. The act, which became effective on October 1, 1997, applies prospectively, not retrospectively. Further, it protects employers from civil liability only under state causes of action. Employers are not immune from liability under federal causes of action, such as discrimination claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Age Discrimination in Employment Act.

9. If a public employee releases or allows access to confidential personnel information without proper authority to do so, he or she is guilty of a Class 3 misdemeanor. On conviction, the employee may be fined in the discretion of the court up to $500. G.S. 126-27 (state employees), 153A-98(e) (county employees), 160A-168(e) (city employees).

10. G.S. 1-539.12(b).

11. G.S. 1-539.12(a)(1)–(2).

12. Prosser and Keeton, *On Torts* 111 (5th ed. 1984), *cited in* Stephen Allred, *Employment Law: A Guide for North Carolina Public Employers*, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1995), 29. There are five elements to a defamation claim: (1) publication (2) to a third party (3) of a written or spoken statement concerning the plaintiff (4) that is false and (5) harms the plaintiff's relationships with others. *See, e.g.*, Tallent v. Blake, 57 N.C. App. 249, 291 S.E.2d 336 (1982). The harm can be demonstrated by showing that the statement (1) tends to subject the plaintiff to ridicule, public hatred, contempt, or disgrace; (2) tends to impeach the plaintiff in his or her trade or profession; (3) charges the plaintiff with committing a punishable offense; or (4) charges the plaintiff with having a loathsome disease. Renwick v. The

News and Observer Publishing Co. (Raleigh) and Renwick v. Greensboro News Co., 310 N.C. 312, 317, 312 S.E.2d 405, 409, *reh'g denied*, 310 N.C. 749, 315 S.E.2d 704, *cert. denied*, 469 U.S. 858 (1984). *See* Gibby v. Murphy, 73 N.C. App. 128, 131, 325 S.E.2d 673, 675 (1985).

13. Compensatory damages reimburse a person for his or her actual monetary loss, including lost wages or medical expenses. Punitive damages punish the defendant for the intentional malice of his or her act and/or serve as a deterrent to other potential defendants.

14. *See Restatement (Second) of Torts*, § 573 (1977).

15. *See* Presnell v. Pell, 298 N.C. 715, 720, 260 S.E.2d 611, 614 (1979). In this case the employer lost because its representative shared information about the terminated employee with co-workers, outside the scope of his qualified privilege.

16. This emerging claim follows the general requirements of negligence: (1) agency A owed a duty of care to agency B and (third-party) employees or customers of agency B; (2) agency A breached that duty by not disclosing relevant employment information; and (3) agency B (or third parties) suffered an injury (4) as a foreseeable result of agency A's failure to disclose the information. For a good general discussion of the policy reasons for this claim, *see* Janet Swerdlow, Note, "Negligent Referral: A Potential Theory for Employer Liability," *Southern California Law Review* 64 (Sept. 1991): 1645.

17. Randi W. v. Muroc Joint United School District, 929 P.2d 582, 591 (Cal. 1997).

18. The prospective employer's responsibilities in obtaining references are beyond the scope of this article. However, a general overview of a negligent-hiring or -retention claim may be helpful. In North Carolina such a claim is recognized when the plaintiff proves "(1) the *specific negligent act* on which the action is founded; (2) [the employee's] *incompetency*, by inherent unfitness or previous specific acts of negligence, from which *incompetency* may be inferred; . . . (3) either *actual notice* to the employer of such unfitness or bad habits, or *constructive notice*, by showing that the employer could have known the facts had he used ordinary care in oversight and supervision; and (4) that the *injury* complained of resulted from the incompetency proved." Moricle v. Pilkington, 120 N.C. App. 383, 386, 462 S.E.2d 531, 533 (1995), *citing* Medlin v. Bass, 327 N.C. 587, 591, 398 S.E.2d 460, 462 (1990).

19. Cases from other jurisdictions demonstrate that third parties also may establish standing to bring a negligent-referral claim. *See, e.g., Randi W.*, 929 P.2d 582; Jerner v. Allstate Insurance Co., 193 Daily Labor Report (BNA) D17 (Fla. Cir. Ct. 1995). In *Jerner* the defendant (Allstate) was sued for fraud and misrepresentation, among other charges, after an employee whom it positively recommended shot five co-workers at his subsequent workplace. Allstate had fired the employee after he carried a gun to work. The employee also had made threats to co-workers, claimed that he was an alien, and used his computer for devil worship. Once the court ruled that the plaintiffs (families of the victims) could seek punitive damages, the parties reached a confidential settlement.

20. In the 1997–98 session, the North Carolina General Assembly enacted laws limiting political hirings in state employment in order to reaffirm the state's commitment to select from a pool of the most qualified applicants. G.S. 126-14.2, -14.3 (effective Sept. 17, 1997). Although these statutes address the selection criteria and standards to be used in making hiring decisions, not those to be used in giving or receiving job references, they reinforce the importance of public employers making objective, defensible hiring decisions that will hold up to outside review.

21. The phrase "especially responsible citizens" is borrowed from Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics for the Administrative Role* (3d ed.) (San Francisco: Jossey-Bass, 1990), 40.

22. Thomas E. McCollough, *The Moral Imagination and Public Life: Raising the Ethical Question* (Chatham, N.J.: Chatham House, 1991), 16.

23. *See* McCollough, *The Moral Imagination*, 84–85, for a discussion of the importance of standing by one's words and not getting lost in "officialese."

24. As the North Carolina Supreme Court has stated, "[P]ublic office is a public trust." Lexington Insulation Co. v. Davidson County, 243 N.C. 252, 255, 90 S.E.2d 496, 498 (1955), *cited in* A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1997), 45.

25. The questions come directly from Lewis Smedes, *Choices: Making Right Decisions in a Complex World* (San Francisco: Harper & Row, 1986), 91–114. For this article I have summarized the author's points, but I recommend the whole chapter to those interested in a thoughtful discussion of the steps involved in making responsible decisions.

26. As well as giving such a form to a prospective employer, the public employer must place a copy in the employee's personnel file so that the employee has access to the supervisor's comments.

27. A bill similar to the 1997 immunity statute was introduced in the State House of Representatives in March 1997. It defined a "prospective employer" as a "recipient of a prospective employee's interest in employment, placement, or reassignment" and a "prospective employee" as "a person who has expressed to an employer, its agents, or job placement service an interest in employment, placement, or reassignment." This bill, which protected more detailed disclosure than G.S. 1-539.12 does, was not enacted into law. H.R. 538, 1997 Sess.

28. Settlements involving public agencies are presumed to be public records unless the judge, the administrative judge, or the administrative hearing officer finds by a written order that (1) the presumption of openness is overcome by an overriding interest and (2) such overriding interest cannot be protected by any measure short of sealing the settlement. The order must clearly state the overriding interest and include sufficiently specific findings of fact for a reviewing court to determine whether the order was proper. G.S. 132-1.3.