

# DO THE RULES MATTER IN POLITICAL LIBEL CASES?

By: Jack Greiner on January 24, 2020 on [graydon.law](https://graydon.law)

The statement I'm about to make is by no means based on scientific data. But I think I'm right when I say there's been an uptick in libel suits filed by politicians recently. Among current high profile political libel plaintiffs are Sarah Palin, Devin Nunes, Roy Moore. Now add presidential candidate Tulsi Gabbard to the list. This week Ms. Gabbard filed a libel suit against Hillary Clinton in a federal court in New York City based on comments Ms. Clinton made on a podcast in which she referred to Ms. Gabbard as a "Russian asset."

I suspect Ms. Gabbard will have about as much success in the litigation as she has had in the polls. Ms. Clinton's comment was hyperbolic political commentary that is typically protected by the First Amendment. The fact that Ms. Gabbard is a public figure who must prove actual malice makes her case that much more challenging. But we'll let the court sort all of that out.

The aspect of Ms. Gabbard's case that bothers me even more than its substantive defects is the way her attorneys drafted the complaint. They include lots of political arguments and inflammatory language designed, I guess, to appeal to some political base. That appears to be a common feature in these political cases. And that's a problem, because that type of drafting violates [Rule 8 of the Federal Rules of Civil Procedure](#). Rule 8 says a complaint must contain

- 1) a **short and plain** statement of the grounds for the court's jurisdiction . . . ;
- (2) a **short and plain** statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

I added the bold to section 1 and 2. But the operative words are “short and plain.” Rule 8 is the “less is more” section of the civil rules. And it exists to avoid the bluster and invective that appears to be a part of these cases. Look at the [complaint attached here](#). I put in yellow the verbage that would be cut if the court enforced Rule 8. Most courts don’t seem to bother with the rule, but as these political cases multiply, maybe they will. They certainly should.

A plaintiff should file a lawsuit to recover damages for harm inflicted by the defendant. A libel case is well suited to Rule 8. Here’s the template:

1. Defendant said \_\_\_\_\_ about plaintiff.
2. That statement is false.
3. Defendant published the statement with knowledge it was false or with reckless disregard for the truth or falsity of the statement.
4. The statement damaged plaintiff’s reputation.
5. Plaintiff sustained reputational damage as a direct result of the statement.
6. Plaintiff is entitled to recover damages in the amount of \_\_\_\_\_.

A lawsuit is not supposed to be a soapbox. And Rule 8 is designed to ensure that it isn’t used for that purpose. It would be nice if courts would enforce it.

