

10 October 2014

**RETRACTION DEMAND PURSUANT TO  
TEXAS CIVIL PRACTICES AND REMEDIES CODE § 73.055**

Ken Martin  
THE AUSTIN BULLDOG  
P.O. Box 4400  
Austin, Texas 78765

Re: Teaser email and article regarding Don Zimmerman, titled "Candidate Lost Custody Over Abuse," published in weblog dated October 9 2014 at 3:10 pm.

Dear Mr. Martin,

My office represents Don Zimmerman, both individually and on behalf of Austinites for Zimerman. This letter serves as notice of defamation and a demand, under Texas Civil Practices and Remedies Code § 73.055.

You serve as "editor," and likely are the author, of the aforementioned commentary/article that appeared both as a teaser email (hereinafter "email" or "the email") on your weblog (hereinafter "blog" or "the blog"). As such, you are responsible for the content of that blog. You spoke with me directly and with Don Zimmerman directly, as well as reviewing the court files you found at the courthouse.

**Preliminary Statement**

As a journalist, you have exposed Mr. Zimmerman's daughter's name and personal medical information recklessly and without any redaction of her name. This is highly unprofessional and completely inappropriate as she is a minor. One would assume that your experience should have informed you to redact the name of a minor on anything before you publish it on the Internet.

**False Statements in the Email and Blog**

Your blog makes multiple defamatory statements. The legal standard, explained below, makes you liable for these false statements. The defamatory statements are:

Email

- The email title "Candidate Lost Custody Over Abuse" is a false statement. Mr. Zimmerman did not "lose custody." Texas is a state that utilizes the conservatorship model, and not the custody model. You are referencing legal pleadings, which are specific. No abuse was ever testified to in court. This title is defamatory because it fails the "juxtaposition" test for defamation identified below. You are demanded to retract that statement. Mr. Zimmerman did not lose custody over abuse.

- The email subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. Documents maintained by a district clerk are of various kinds. Yet simply because a court case involved a medical record does not make something a court record. No court opinion or order of any kind positively states that Zimmerman injured or alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman was never found by a court or a doctor to have injured his daughter.
- The email subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter.
- The email states that “aggression in disciplining his daughter” “resulted in documented physical and emotion damage and permanent loss of parental rights through civil court action.” This is a false statement. First, there was never any finding that Mr. Zimmerman was too aggressive in disciplining his daughter. Second, there was never a cause/effect connection between discipline and physical or emotional damage in any court finding. Third, Mr. Zimmerman did not “permanent[ly]” lose parental rights. This is repeated in the sidebar column as well. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. You are demanded to retract this statement. Mr. Zimmerman did not permanently lose parental rights and there was never an occasion where a court found that any discipline resulted in any physical or emotional damage.
- The email states that the doctor reports literally state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.’” This is a false statement. At no point does your email express that these statements are not the doctor’s conclusions but are pure allegations, that they are hearsay transcribed by the doctor, and you fail to identify or follow up on the outcome of a CPS investigation, if any. This could lead the ordinary, reasonable person to believe that the doctor actually confirmed the abuse when it was truly only hearsay.<sup>1</sup> You are demanded to retract that statement. There was no confirmed abuse.

#### Blog

- The blog title “Candidate Lost Custody Over Abuse” is a false statement. Mr. Zimmerman did not “lose custody.” Texas is a state that utilizes the conservatorship model, and not the custody model. You are referencing legal pleadings, which are specific. No abuse was ever testified to in court. In fact, as Mr. Zimmerman identified in your discussion with him, the abuse allegations are lies. Please see the enclosed full transcript documenting the mother’s alienation of the minor child. Further, the doctor’s statements are reprinted hearsay as the doctor did not observe any abuse.

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<sup>1</sup> See legal standard for “could” regarding the ordinary, reasonable person, *infra*.

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- The blog subtitle reads that that “District 6 Council candidate Don Zimmerman injured, alienated daughter, court records state.” This is a false statement. No court order or opinion of any kind ever states that Zimmerman alienated his daughter. You are demanded to retract that statement. Mr. Zimmerman never alienated his daughter.
- The blog states that “aggression in disciplining his daughter” “resulted in documented physical and emotion damage and permanent loss of parental rights through civil court action.” This is a false statement. First, there was never any finding that Mr. Zimmerman was too aggressive in disciplining his daughter. Second, there was never a cause/effect connection between discipline and physical or emotional damage in any court finding. Third, Mr. Zimmerman did not “permanent[ly]” lose parental rights. Mr. Zimmerman is still a conservator of his daughter. Permanent loss of parental rights prevents any parenting whatsoever. You are demanded to retract this statement. Mr. Zimmerman did not permanently lose parental rights and there was never an occasion where a court found that any discipline resulted in any physical or emotional damage.
- The blog states that the doctor reports literally state that Mr. Zimmerman “on separate occasions” “inflicted bruises, pulled Marina’s hair, pushed her, and ‘threatened to kill her.’” This is a false statement. At no point does your email express that these are allegations, that they are hearsay by the doctor, and you fail to identify or follow up on the outcome of a CPS investigation, if any. This leads the ordinary, reasonable person to believe that the doctor actually confirmed the abuse when it was only hearsay. You are demanded to retract that statement. There was no confirmed abuse or threats.
- The three statements regarding the doctor’s reports never state that the statements of alleged abuse by the doctor are repeated hearsay. It never makes the distinction that these are all reported by the daughter but never confirmed by any external investigation, and that the doctor’s opinion is based solely on the child’s allegations.

### **Legal Standard for Defamation**

To prove the offense of defamation, a party must demonstrate five (5) elements.<sup>2</sup>

1. Defendants published a statement of fact.
2. The statement referred to the Plaintiff.

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<sup>2</sup> See *Neely v. Wilson*, 418 S.W.3d 52 (Tex. 2013).

3. The statement was defamatory (false).
4. With regard to the truth of the statement, the defendant was (a) acting with malice, (b) negligent, or (c) strictly liable—per se defamation.
5. The plaintiff suffered injury.

Even if the publication of the statements was correct in the details (which yours was not) but got the gist of the story wrong by **juxtaposing facts in a misleading way, the publication is still false.**<sup>3</sup>

Here, the email and blog both (1) make utterly false statements, and (2) juxtapose statements in a misleading way. And the instruction from the Court in *Neely* is instructive. The plaintiff in *Neely* was found to prevail because “a person of ordinary intelligence **could** conclude” that the plaintiff had been disciplined in his practice for operating on patients while under illegal drug influence.<sup>4</sup> The reasonable person viewing the broadcast by the defendant could have believed the Plaintiff to be a drug user.<sup>5</sup> There just needed to be the potential for that to happen, not that it was going to happen.

Here, your actions are defamatory *per se* (including, *inter alia*, accusations of a criminal offense) and accuse Mr. Zimmerman of abuse and threats to kill his daughter. Those are actionable without any proof of damages or malice, even for limited purpose public figures.<sup>6</sup> The law regarding malice, which is required for this type of case, is clear, too. You have omitted many facts and cherry-picked many documents of the hundreds of pages in this case to defame Mr. Zimmerman. Your awareness of this constitutes malice.<sup>7</sup>

Damages for defamation *per se* actions are presumed. Even still, damages for harm to his reputation can be proven and will be proven if you do not retract your statements.

**You have twenty-four (24) hours to retract your defamation.** The retraction must be published in the same email forum and the same blog forum on your website and the earlier blog must be taken down. If it is not done within twenty-four (24) hours, my office will advise my client to take further legal action. Failure to retract will entitle my client to punitive damages.

If you have any further questions, please do not hesitate to contact my office.

Have a blessed day,

  
Stephen Casey

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