

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

S.V.

Plaintiff,

vs.

Case No.: 10-919

KENNETH KRATZ

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Kenneth Kratz, by his attorneys, Hammett, Bellin & Oswald, LLC, answers Plaintiff's Complaint as follows:

To the extent Plaintiff's Complaint makes general and conclusory allegations that Defendant violated the Plaintiff's Constitutional Rights or any rights under Chapter 950, Wis. Stats., Defendant denies and puts the Plaintiff to her proof.

I. JURISDICTION AND VENUE

1. Admit paragraph 1.
2. Admit paragraph 2.

II. PARTIES

3. Answering paragraph 3, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
4. Deny that Defendant is currently living in Outagamie County. Further answering paragraph 4, admit.

III. FACTUAL ALLEGATIONS

5. Admit paragraph 5.
6. Answering paragraph 6, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
7. Answering paragraph 7, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

8. Deny paragraph 8. Further answering paragraph 8, affirmatively allege that S.V. requested an opportunity to make her wishes known in the criminal proceeding, and Defendant accommodated that request in accordance with his duties as a prosecutor.
9. Answering paragraph 9, admit that S.V. was informed that the Defendant would be the prosecutor of S.K. Further answering paragraph 9, deny all other allegations.
10. Answering paragraph 10, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
11. Answering paragraph 11, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
12. Deny paragraph 12.
13. Deny paragraph 13.
14. Deny paragraph 14.
15. Deny paragraph 15.
16. Answering paragraph 16, admit that Defendant sent a text message to S.V. Further answering paragraph 16, deny any allegations attempting to interpret or mischaracterize the text message, and affirmatively allege that the text message speaks for itself.
17. Answering paragraph 17, admit that Defendant sent a text message to S.V. Further answering paragraph 17, deny any allegations attempting to interpret or mischaracterize the text message, and affirmatively allege that the text message speaks for itself.
18. Answering paragraph 18, admit that Defendant sent a text message to S.V. Further answering paragraph 18, deny any allegations attempting to interpret or mischaracterize the text message, and affirmatively allege that the text message speaks for itself.
19. Deny paragraph 19.
20. Answering paragraph 20, admit that Defendant was the elected District Attorney for Calumet County. Further answering paragraph 20, deny any mischaracterization or attempts to interpret his official duties therein.
21. Answering paragraph 21, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.

22. Deny paragraph 22.
23. Deny paragraph 23.
24. Answering paragraph 24, admit that Defendant received access and made contact with S.V. through and by virtue of his position as District Attorney. Further answering paragraph 24, deny all other allegations therein.
25. Answering paragraph 25, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and in particular, the mental state of S.V. including her beliefs and fears, and therefore, denies the same.
26. Admit paragraph 26.
27. Answering paragraph 27, admit that the Defendant recused himself from acting as prosecutor, and Defendant specifically requested a special prosecutor from the Department of Justice. Further answering paragraph 27, deny all other allegations therein.
28. Answering paragraph 28, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
29. Admit paragraph 29.
30. Deny paragraph 30.
31. Deny paragraph 31.
32. Answering paragraph 32, admit that Defendant self-reported his conduct to OLR. Further answering paragraph 32, deny all other allegations therein.
33. Deny paragraph 33.
34. Deny paragraph 34. Further answering paragraph 34, note that the allegations are a legal conclusion to which no answer is required, and the CPR provisions speak for themselves.
35. Admit that Chapter 950 of the Wisconsin Statutes provides a list of "Rights" available to a witness, however, to the extent that the allegations attempt to interpret or characterize such Chapter, deny.
36. Deny paragraph 36.
37. Deny paragraph 37.
38. Deny paragraph 38.

39. Deny paragraph 39.
40. Answering paragraph 40, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
41. Answering paragraph 41, lacks information and knowledge necessary to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies the same.
42. Admit paragraph 42.
43. Admit that the Crime Victims Rights Board released a public statement, and affirmatively allege that the statement speaks for itself.
44. Answering paragraph 44, admit that a removal proceeding was initiated by the Governor of the State of Wisconsin. Further answering paragraph 44, deny the remaining allegations therein.
45. Deny paragraph 45.

AFFIRMATIVE DEFENSES

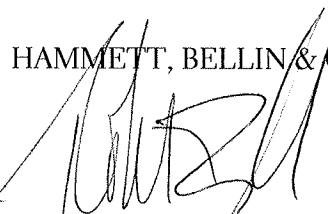
46. As a first affirmative defense, Plaintiff's Complaint against the Defendant, Kenneth Kratz, fails to state a claim upon which relief can be granted.
47. As a second affirmative defense, if any injuries were suffered by the Plaintiff, all such injuries and damages were caused by her own conduct, negligence and behavior, or through the conduct and behavior of third parties and through no fault or conduct on the part of the Defendant.
48. As a third affirmative defense, the Defendant is entitled to the defense of absolute immunity.
49. As a fourth affirmative defense, the Defendant is entitled to the defense of qualified immunity.
50. As a fifth affirmative defense, all statements made by the Defendant were privileged.
51. As a sixth affirmative defense, Plaintiff has failed to mitigate her damages as required by law.
52. As a seventh affirmative defense, the Defendant acted in a manner that was proper, reasonable, lawful and in exercise of good faith and reasonable standards of conduct at all relevant times. Any actions of the Defendant in this matter were made without malice, and in furtherance of his duties as a District Attorney for Calumet County, State of Wisconsin.

53. As an eighth affirmative defense, the actions of the Defendant were discretionary or quasi-judicial or quasi-legislative in nature.
54. As a ninth affirmative defense, the Plaintiff's Complaint fails to set forth any well established federal Constitutional or federal statutory right upon which Plaintiff's 42 U.S.C. §1983 claim may be based.
55. As a tenth affirmative defense, to the extent that the Plaintiff's Complaint relies upon Chapter 950 Wisconsin Statutes, the rights and remedies available under Chapter 950 are exclusive and do not provide the basis for any federal claim under 42 U.S.C. §1983.
56. As an eleventh affirmative defense, to the extent that the Plaintiff's Complaint relies upon Chapter 950 Wisconsin Statutes, the Plaintiff has failed to comply with the requirements of Wis. Stats. §893.82.
57. As a twelfth affirmative defense, Plaintiff has failed to exhaust remedies available under Chapter 950, Wis. Stats.

WHEREFORE, Defendant requests judgment as follows:

1. Dismissing the Complaint of the Plaintiff on its merits, together with costs and disbursements, as well as attorney's fees in favor of the Defendant;
2. For such other and further relief as the Court may deem just and equitable and to which the Defendant is entitled.

Dated this 14 day of January, 2011.

HAMMETT, BELLIN & OSWALD L.L.C.


ROBERT E. BELLIN, JR.
Attorney for Defendant
675 Deerwood Avenue
Neenah, Wisconsin 54956
(920) 720-0000
State Bar No.: 1023945