

June 28, 2016

Via Electronic Mail and U.S. Mail

Re: Sheriff Arpaio Defamatory Campaign Advertisement

To whom it may concern:

We represent the Penzone for Sheriff Campaign Committee. We recently learned that Sheriff Arpaio provided one or more reporters with a link to a YouTube video of one of the Sheriff's 2012 election campaign advertisements, which falsely states that Paul Penzone committed an act of domestic violence against his ex-wife 13 years ago. Arpaio's campaign aired this ad at the 11th hour of the 2012 campaign (just as early ballots were received). Apparently, the Sheriff again plans to entice media outlets to spread his knowingly false and damaging campaign message for him during this 2016 campaign cycle.

The purpose of this letter is to ensure that you know of the damaging falsity of the statements in his advertisement. Sheriff Arpaio plainly intends to deceive the public once again into believing that Mr. Penzone was an abusive husband. Of course, nothing could be further from the truth. Indeed, the advertisement is so misleading and inaccurate about Mr. Penzone that his ex-wife, Susan Hubbard, felt compelled to prepare a sworn affidavit attesting to Arpaio's banal and desperate deception. We have enclosed a copy of that affidavit with this correspondence.¹ In addition to describing the advertisement as "inaccurate" and "misleading," Susan also swears that the media coverage of her relationship with Mr. Penzone was "unfair, overwhelming and intimidating." Contrary to what the Arpaio campaign would conjure, Susan and Mr. Penzone have an amicable relationship and she is fully supportive of the Penzone for Sheriff Campaign, which she affirms in her affidavit.

We are unaware of anyone at your organization having aired, republished, or made reference to, this advertisement in 2016. We can only assume that you gave it the credence it deserves—none—and that this letter will merely reinforce your lack of interest in being an unwitting ally to Arpaio's false and defamatory attacks. As you are no doubt aware, media outlets that publish or republish content about public figures can be held liable for defamation or false light invasion of privacy if they know the content to be false, or entertain serious doubts as to its accuracy.² It makes no difference whether the content has been published before. "Under the republication rule, one who repeats a defamatory statement is as liable as the original defamer."³ Although certain publications by media defendants are privileged,⁴ those privileges do not extend to publication of defamatory political campaign

¹ A copy of Ms. Hubbard's affidavit has been provided to Sheriff Arpaio personally, to his 2016 campaign committee, and to Chad Willems (his 2016 Campaign Manager).

² See generally *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

³ *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 712 (4th Cir. 1991).

⁴ Arizona reporters have a privilege to publish under certain enumerated circumstances, including: fair and accurate summaries of official proceedings, *Bailey v. Superior Court*, 130 Ariz. 366 (App. 1981); statements contained in public records, *Carlson v. Pima County*, 141 Ariz. 487 (1984); statements made by speakers who

advertisements. And in any event, a media outlet may not air one candidate's political advertisement free-of-charge without extending the same treatment to that candidate's opponents.⁵

We are sure that at minimum the combination of Ms. Hubbard's affidavit and your institutional knowledge of Arpaio's widely acknowledged lack of credibility should cause you to consider carefully the serious personal, professional, ethical, and community consequences that would attend the publication or republication of any Arpaio-produced attack ad reporting that Mr. Penzone was ever physically abusive with Susan. As you know, Arpaio was recently reprimanded by District Court Judge Snow in his May 13, 2016 Findings of Fact in *Melendres v. Arpaio*. Judge Snow found that Arpaio had lied under oath and made "intentional misstatements of fact to [his] own investigators and to the court-appointed Monitor."⁶ Thus, Arpaio's known dedication to dishonesty is widely known in our community. The fact that many Maricopa County residents support him in spite of his wasteful/illicit antics, his civil rights violations, and their knowledge of his dishonesty provides no license to ignore his dishonesty here.

The Penzone for Sheriff Campaign Committee is dedicated to running a dignified and courteous campaign that demonstrates Paul Penzone's superior qualifications for the role of Sheriff of Maricopa County. The Committee has not and will not make baseless, personal, or family attacks on Sheriff Arpaio. It is only by focusing on the issues that citizens and media outlets can preserve the integrity of our electoral process. We hope that all media outlets will do their part in making this campaign one of which all Arizonans can be proud.

Sincerely,

STINSON LEONARD STREET LLP



Michael C. Manning

MCM:tmj

Enclosure

communicate information pursuant to a legal, moral, or social duty, *Aspell v. Am. Contract Bridge League*, 122 Ariz. 399 (App. 1979); statements made in editorials published in the "public interest," *Klahr v. Winterble*, 4 Ariz. App. 158 (1966); statements made by union officials acting pursuant to official duties, *Ross v. Duke*, 116 Ariz. 298 (App. 1976); and statements made to others who share a common interest in the subject matter, *Hirsch v. Cooper*, 153 Ariz. 454 (App. 1986). None of those circumstances exist here. Nor would the "neutral reportage" privilege, even if it were recognized in Arizona, offer any protection. It does not contemplate instances in which a media defendant voluntarily and free-of-charge airs a four-year-old defamatory advertisement. It applies only to the neutral reporting of accusations made by a respectable individual or organization. *See, e.g., Condit v. Dunne*, 317 F. Supp. 2d 344, 370 (S.D.N.Y. 2004).

⁵ See 47 U.S.C. § 315(a) ("If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.").

⁶ See Doc. 1677 in Case No. 2:07-cv-02513-GMS.

**AFFIDAVIT OF CLARIFICATION,
AND SUPPORT OF PAUL PENZONE
FROM SUSAN HUBBARD**

I, Susan Hubbard, swear or affirm:

Paul Penzone and I were married for 12 years. In 2003 we had an incident at our home resulting in Paul filing a police report. There were a lot of highly emotional issues going on at the end of the marriage placing strain on both of us.

Sheriff Arpaio's campaign commercial portraying Paul as physically aggressive during our marriage was inaccurate and misleading. It was, in my opinion, dirty politics and the use of family against an opponent is totally off-base.

In 2012, when this occurred, the coverage was unfair, overwhelming and intimidating. Although I wanted to clarify the record at the time, I did not believe my personal life should be a public topic. I cannot allow this dishonest representation to repeat itself; therefore I have chosen to provide this statement. This letter will serve as my only public statement as my privacy and the wellbeing of my family is an absolute priority.

Paul and I are very proud of the mutual commitment we have in co-parenting our son during our marriage and since the divorce. We always put his interest in our decision-making first and, like many other divorced parents, we worked through challenging moments.

I wish Paul the very best as he campaigns. He was a great policeman and will be a great sheriff.

Further affiant saith not.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

4/20/2016 *Susan Hubbard*
Date Susan Hubbard

STATE OF ARIZONA
COUNTY OF MARICOPA

I, the undersigned Notary Public, do hereby affirm that Susan Hubbard personally appeared before me on the 20th day of April 2016, and signed the above Affidavit as his free and voluntary act and deed.

Daniel S. Hartley

Notary Public

