



Andrew Mowery <andrew.p.mowery@gmail.com>

Harassment and Per Se Slander.

Andrew Mowery <andrew.p.mowery@gmail.com>

Thu, Jun 6, 2019 at 9:08 AM

To: fischetd@co.larimer.co.us

Cc: Maryann Goyn <goynm@outlook.com>, walker flanary <wgflanary@gmail.com>, Ben Johnson <WindsorBen@gmail.com>, "Jones, Gloria" <jonesgjpohoa@gmail.com>, Buck Hammond <buck.hammond@gmail.com>

Bcc: matt clark <wmattclark@hotmail.com>, Colocampbell <colocampbell@gmail.com>, Kevin Brucker <kevinb371@gmail.com>, Linda Brucker <linda.brucker@gmail.com>

Deputy Fischer,

As we discussed last night, I am continuing to document the situation, as you have recommended.

Mr. Hammond has chosen to deny that he's made an accusation of criminal harassment. This occurred by email on 5/28 (you already have a copy), then I was confronted by Mr. Lanny Goyn on the morning of 6/1 (with Mr. Goyn referencing Mr. Hammond's pronouncement), then later that day on Mr. Hammond's front porch, and then again on Mr. Hammond's front porch on 6/4 (which is a recorded conversation).

Mr. Hammond advised me on 6/4 that he had contacted the District Attorney on 6/3/19 and that I was "an inch" away from him contacting the police (presumably because he believes I would be arrested/confronted). Less than 48 hours later, the police are on my doorstep due to an "anonymous" phone call.

Mr. Hammond is incorrect about a threat. I've pointed out to him that accusing someone of a crime falsely is per se slander, not libel, which is a civil matter. I've furnished him both with a citation of the law, the pattern jury instructions, and an explanation about why I believe his behavior is correctly identified. I've done so with the intent that he recognize and admit the behavior, and to take corrective actions short of requiring me to file suit. He is adamantly denying things for which I have documented proof, and he's escalated the matter by forwarding the email exchange to the other members of the Board.

I do believe this will, once again, motivate and incite Mr. Goyn into repeating his actions on Saturday - when he waited until no one was around to witness his words and behavior. I wish to have no further contact from any of these individuals until the matter is settled in an orderly manner:

Buck Hammond
Maryann Goyn
Lanny Goyn
Walker Flanary
Irve Denenberg

It appears from Mr. Hammond's actions this morning that he believes it is necessary for the Association to use its resources to defend his actions, and I do not think that is proper - unless, of course, the rest of the board is looking to join in his accusation. That was the heart of my question last night, and it's hard to know whether his response this morning is or is not confirmation of his feeling. However, I do not believe Mr. Hammond, on his own, gets to determine whether the Board is advocating, warranting, or directing Mr. Hammond to do the things he's done (such as contacting the D.A.'s office, or to even threaten to call the police, let alone actually do so).

I would kindly ask that you remind the other members of our HOA Board that your advice to me was to "document, document, document". When I told you about the details of what is going on, you did affirm that in spite of some members being upset that I am insisting a review of Board member actions in 2018 that may have been non-compliant with CCIOA and our governing, you told me I was doing the right thing. It appears that documenting such behavior is both the right thing to do, and the basis of their complaints. That's an odd juxtaposition.

Please make sure to review the documents forwarded to you last night.

In the meantime, I do find Mr. Hammond's behavior to fit the definition of harassment, and therefore would like to formalize a complaint so that you may get each of our statements.

Sincerely,

Andrew Mowery

On Thu, Jun 6, 2019 at 8:21 AM Buck Hammond <buck.hammond@gmail.com> wrote:

To the Board:

Andy Mowery has threatened to file a libel lawsuit against me. If he does so I will require legal representation.

Buck Hammond

Treasurer, Poudre Overlook HOA

----- Forwarded message -----

From: **Buck Hammond** <buck.hammond@gmail.com>

Date: Thu, Jun 6, 2019 at 7:34 AM

Subject: Re: Harassment and Per Se Slander.

To: Andrew Mowery <andrew.p.mowery@gmail.com>

Andy:

Once again, I have precisely zero clue as to why they were there, I did not accuse you of a misdemeanor at any time, I merely pointed out what I read. Andy, I don't feel I have slandered any one.

Buck

On Wed, Jun 5, 2019 at 11:23 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

I find it quite coincidental that at 1040pm, an hour after this email, I have police knocking on my door after an anonymous complaint. We had a good talk. They are fully briefed on the situation.

This has gone way too far, Buck. Way too far.

Andy

On Wed, Jun 5, 2019 at 9:39 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Buck,

I didn't get a response from you yet on this.

I want to make sure I understand the deal you were offering on Saturday when we were on your front steps. You told me that because you felt I had committed a misdemeanor, I should bargain with you and considering resigning from the Board if you, Walker, Maryann, and Irve did. You backed that up with a text emphasizing my "culpability". Then, you told me to my face you contacted the D.A. - which you still haven't responded regarding in whose capacity.

I really need to know whether you still think that is a deal you'd like to promote given an actual review of the facts in the emails I've delivered to you (Tuesday, by handing them to you in print) from the last 3 interactions with Heather. Which directly contradict her claim that I never admit I'm wrong.

Because if it's not those 3 emails, then it's just the general board emails - and you know my intentions. It's completely ironic that the volume of information that articulates my intentions in exquisite detail are the very same emails that you are describing as oppressive. Because you prefer not to deal with topics that are important to many community members (including enforcing the rules on Board members) doesn't make it harassment. I mean, you've literally admitted to me that you aren't even reading them. Are you saying you are harassed by emails you don't read?

What is real, however, is that what you did is, by literal statutory definition, per se slander. And, it's a summary judgement case. And, you don't seem to be motivated to acknowledge it, show remorse, undo the damage by telling those you broadcast it to that it's not true, or ask for forgiveness. Instead, you double down AFTER I send you this email, and call the D.A. - when you can't possibly be the personal victim.

It's hard to imagine how I or anyone else in this neighborhood should ever trust you again, Buck. Others are sharing their experiences, and there's a pattern forming. You say one thing to our faces, and then another behind our back. Classic betrayal.

I know where I stand with you, and feel completely and utterly disrespected.

This isn't going to be swept under the rug, Buck. If I don't get a sense you are going to deal with this squarely, then I simply need to know if you are or are not representing the Board in what you've done. I do not think you are putting the needs of the community first.

My offer to go together to the D.A. stands. But, I don't have indefinite time. You'll have to make up your mind by tomorrow, one way or the other. I cannot allow the defamation to continue day after day.

Sincerely,

Andy

On Sat, Jun 1, 2019 at 10:46 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Buck,

I'm sending this to you after a review of the laws for harassment and per se slander. I am not a lawyer, nor am I giving you legal advice. I am informing you so you can make good decisions going forward.

Since you intimated that I'm guilty of a misdemeanor and therefore should resign, please go ahead and review the actual law.

<https://codes.findlaw.com/co/title-18-criminal-code/co-rev-st-sect-18-9-111.html>

Key phrase is "**with intent** to harass, annoy, or alarm another person". You know that is not true. If you'd like to go over the email sent to Heather, and demonstrate what rises to this level, I'm happy to hear your legal theory of the case.

In the meantime, the case I've referred to as settled recently involves this law:

<http://kellywarnerlaw.com/colorado-defamation-laws/>

Per se slander is when persons falsely accuse someone of a crime in public. The key is whether or not the claim is false.

<http://kellywarnerlaw.com/colorado-defamation-laws/>

In Colorado, **some statements are so egregious they're considered inherently defamatory.**

These statements are referred to as libel or slander *per se*, and ***per se plaintiffs don't have to prove material harm, as its assumed.***

Colorado typically recognizes four types of statements as *per se* defamatory:

1. ***Criminal accusations;***
2. Accusations of professional misconduct or misconduct while in public office;
3. Accusations of a loathsome disease;
4. Accusations of sexual misconduct, including adultery.

I know this is dense, but if you want to understand how such a thing is prosecuted, you look at the standard pattern jury instructions. Here are the standards used for jury instruction in Colorado. I believe 22:4 and 22:7 applies:

22:4 LIBEL OR SLANDER PER SE — IN A PRIVATE MATTER WHERE PLAINTIFF IS A PRIVATE PERSON — ELEMENTS OF LIABILITY The plaintiff, (name), claims that **the defendant, (name), (published)** (or) (caused to be published) the following statement(s):

(Insert the text of the statement[s] determined by the court to be defamatory.)

For the plaintiff to recover from the defendant on (his) (her) claim for (libel) (slander), you must find by a preponderance of the evidence that **the defendant (published) (or) (caused to be published) the statement(s) set forth above in the same or substantially similar words.** If you find that this has not been proved, then your verdict must be for the defendant. On the other hand, **if you find that this has been proved, (then your verdict must be for the plaintiff)** (then you must consider the defendant's affirmative defense(s) of [insert any affirmative defense that would be a complete defense to the plaintiff's claim]). If you find that (this affirmative defense has) (any one or more of these affirmative defenses have) been proved by a preponderance of the evidence, then your verdict must be for the defendant. (In determining whether the affirmative defense of privilege [describe privilege] has been proved, you must also determine whether the defendant abused that privilege as explained in Instruction No. [insert instruction number that corresponds with 22:18].) However, if you find that (this affirmative defense has not) (none of these affirmative defenses have) been proved, then your verdict must be for the plaintiff.

22:7 PUBLISHED — DEFINED **A statement is "published" when it is communicated (orally) (in writing) to and is understood by some person other than the plaintiff.**

Now, my intent here is to inform you that, at the moment, we have Heather sending an email to the Board announcing her resignation. In her resignation, I presume (because I have not read this), she's made some sort of harassment charge over receiving an email. So far, you, Lanny, and Maryann are treating this as true, and are apparently in discussions with one other about using this as a bargaining chip to avoid the consequences of their own actions, or the actions of Walker and/or Irve.

No, **perception isn't everything** outside of the HR departments that comprise your experience. The merits of the case are more important than creating a false facade. And, in this case, there are no merits. More importantly, not only are there not merits, repeating them as though they are true is, in fact, a form of slander. It needs to stop without any more discussion or delay. All persons, period. Enough.

And, this is where it gets to be a big issue. Today, I have LANNY accusing me of harassment out in public, and, while he managed to do this out of earshot of the rest of the people who came out to plant some plants, clearly he was attempting to provoke disorderly conduct to then make that an issue. Unfortunately for Lanny, I was deploying deescalation techniques to get him to consider bringing his issue to a proper forum, and to have an open mind, consider facts, and consider the possibility that the characterization passed along to him by Maryann may be false. In fact, a false accusation of a crime, passed along to another person, her husband.

But, looking at that statute for harassment above (thank you for making me look), guides me to this interesting section:

(h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

That's a **very accurate description** of what Lanny did. Of course, he was careful to do so in an isolated manner, which I believe was calculated, so it would be difficult to prove. So, don't mistake this, again, for a threat or accusation. I'm recounting my experience, and now recognizing (not that I was looking to do so, but you made me look up the statute because you have determined, again without impartial fact-finding, that I've committed a misdemeanor criminal offense) that, in fact, I've got TWO aggressive actions taken against me - both per se slander AND harassment.

Someone who plays a game like this is dangerous, in my opinion. Particularly when I call him out on it, and he does a 180 and denies what he just did. And, as for intent, please tell me if you can think of any good reason for Lanny to bring up Heather, Pete Dauster, or any other information that should, by all accounts, remain within the circle of the Board members. It's hard to imagine what other intent there may be than the above, as he did not respond positively to my suggestion that he set a time and place to discuss this with all parties present, and with the physical documents or evidence available to look over at the same time.

Please go ahead and let me know if I did OK, or if you have another way to find fault with me. I don't think it's wrong to research this, and state what I've found. But, lately, that turns into yet another of Lanny's accusations: That I'm LOOKING to create a legal case.

And, there's the even bigger problem - Why is Maryann communicating a claim of "harassment", as though it's true, without an actual review of the law, and without, once again, impartial fact-finding. A simple reading of the emails sent to Heather demonstrate no such intent as required in the statute, and therefore, she cannot be victimized by emails she can simply ignore. Are you aware that her issue was that I ruined her MORNING, on an email sent to her at 7:36pm the night before? Really, is that reasonable in any sense of the word?

Emails from a fellow board member that is writing about board business (and why she's not responding) are exactly that, and jumping to the conclusion that it is, in fact, rising to the occasion of criminal harassment (because you did say "misdemeanor", which I don't know if that's your or Maryann's conclusion) is irresponsible, and poor judgment.

But, more importantly, why is she sharing this to ANY person outside of the board - even her spouse? Is this retaliation for reporting the dishonesty of Walker and Irve, and asking that it be looked into officially?

How much farther has this accusation traveled?

Now, it's not a matter of me being a lawyer, attempting to advise, or any such thing. You simply know that I can read and understand statutes, and I am perfectly capable of looking up case law. That informs me. I can share that information without giving advice. Or having this sharing being turned into a "threat".

It's just a matter of reading it, realizing it's crossing a boundary, and then finding a way to resolve the dispute in a MUTUALLY AGREEABLE manner. Not where the threat of "this is a misdemeanor, Andy" is held over my head to intimidate me into resignation when I'm the one actually defending the HOA from persons who are, in fact, acting in an inappropriate manner on a number of issues.

But, what I can tell you is that because I've just recently had this experience, there wasn't court, and there wasn't a debate - but the insurance company refused to include a possibility the offending employees be reprimanded or fired. They simply wanted to settle for money. At the moment, they've done their fact finding, and they know that it was a falsehood. But, they don't want to turn over the results of their impartial fact-finding because they claim it's "work product". There's literally 6 citations that demonstrate they can't do this, and now I have hired a lawyer to finish the job.

I think it would be a good idea to read this article:

<https://altitude.law/resources/newsletter/harassment-hoas-defining-and-preventing-unacceptable-behavior/>

But, please don't bring up the topic of harassment any longer as though it has anything to do with the problem we have with Walker and Irve's behavior. They are completely and entirely separate issues. One is not a bargaining chip for the other.

You'll have to judge whether the information I've provided to you is correct and relevant, or you could discuss it with an attorney if you don't have that confidence. But, it's pretty simple and straightforward - Maryann and Lanny need to stop promoting the concept of criminality and attributing it to me. Not one more time, not one more person. It must stop immediately.

I will need an apology without further delay.

Sincerely,

Andy

PS I was wrong about recordings. I do have a recording of my sole contact with Pete by phone on 5/22, out of the concern that once again, Maryann or someone else would make false characterizations. It's pretty boring, but I reserve that for defending any such charges that I caused Pete to quit or "harassed" him. Since that is what Lanny accused me of today, I am glad I have the recording, honestly.

There is also a recording of the ACC meeting. I had told Deb about saying I wanted to record the meeting, and she took it as instruction. Sorry if that was misleading when we spoke earlier. Again, however, I'm not regretful that there is an objective record of what was said, while we have Irve stating that every single thing I say is a "blatant falsehood". However, I would advise against disclosure of this information. I'm volunteering it to let you know that I can defend my actions at the ACC meeting, if necessary. As for what others have said, there's no intent to use this offensively. It simply stops the game of mischaracterizations, which is a pattern.

And, as you know, I have recordings of the entirety of the episode with Bill Sullivan and David Pond in July through September of 2016.

PPS These are the pattern jury instructions for harassment of the two types discussed above.

9-1:39 HARASSMENT (REPEATED COMMUNICATION) The elements of the crime of harassment (repeated communication) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
5. made repeated communications,
6. at inconvenient hours,
7. that invaded the privacy of another and interfered in the use and enjoyment of another's home, private residence, or private property. [
8. and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] ____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (repeated communication). After considering all the evidence, if you decide the prosecution has failed to

prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (repeated communication). COMMENT 1. See § 18-9-111(1)(g), C.R.S. 2018. 2. See Instruction F:185 (defining “with intent”). 2599 3. See People ex rel. VanMeveren v. County Court In and For Larimer County, 551 P.2d 716, 720 (Colo. 1976) (“‘Repeatedly’ is a word of such common understanding that its meaning is not vague. It simply means in the context of this statute that the defendant use insulting, taunting or challenging language more than one time.”). 4. The terms “annoy” and “alarm” are not defined by statute. See Bolles v. People, 541 P.2d 80, 82-83 (Colo. 1975) (“According to Webster’s New International Dictionary of the English Language, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’”); see also People v. McBurney, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in Bolles not because of the mere presence of the words ‘annoy’ and ‘alarm,’ but because these words were applied to all forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”). 2600

9-1:40 HARASSMENT (PROVOCATION) The elements of the crime of harassment (provocation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with intent,
4. to harass, annoy, or alarm another person,
5. repeatedly insulted, taunted, challenged, or made communications in offensively coarse language to another,
6. in a manner likely to provoke a violent or disorderly response. [
7. and that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] ____.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harassment (provocation). After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harassment (provocation).

COMMENT 1. See § 18-9-111(1)(h), C.R.S. 2018. 2. See Instruction F:185 (defining “with intent”). 3. See People ex rel. VanMeveren v. County Court In and For Larimer County, 551 P.2d 716, 720 (Colo. 1976) (“‘Repeatedly’ is a word of such common understanding that its meaning is not vague. It simply means in 2601 the context of this statute that the defendant use insulting, taunting or challenging language more than one time.”). 4. The terms “annoy” and “alarm” are not defined by statute. See Bolles v. People, 541 P.2d 80, 82-83 (Colo. 1975) (“According to Webster’s New International Dictionary of the English Language, (3d ed. Unabridged, 1961), ‘annoy’ means ‘to irritate with a nettling or exasperating effect.’ ‘Nettling’ means ‘to arouse displeasure, impatience, or anger in: provoke, vex.’ ‘Alarm’ means ‘to arouse to a sense of danger; to put on the alert; to strike with fear; fill with anxiety as to threaten danger or harm.’”); see also People v. McBurney, 750 P.2d 916, 919 (Colo. 1988) (“In fact, we found the previous section 18-9-111(1)(e) overbroad in Bolles not because of the mere presence of the words ‘annoy’

and ‘alarm,’ but because these words were applied to all forms of communication, which obviously contained no particularized standards to limit the scope of the offense.”).

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Ciao,
Buck

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