

2016

**Terry R. Spencer, Et Al., Plaintiffs/Appellants vs. Stephen M.
Glover, Et Al., Defendants/Appellees**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *Spencer et al v Glover*, No. 20150892 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3440

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

TERRY R. SPENCER, et al.,

Plaintiffs/Appellants,

VS.

STEPHEN M. GLOVER, et al.,

Defendants/Appellees.

Appeals Case No. 20150982 CA
Third District Court No. 150903279

BRIEF OF APPELLANTS

APPEAL FROM THE ORDER OF THE THIRD JUDICIAL DISTRICT COURT
COUNTY OF SALT LAKE, STATE OF UTAH
THE HONORABLE L. DOUGLAS HOGAN, PRESIDING.

GAVIN G. COLLIER
 TERRY R. SPENCER, Ph.D.
 TR Spencer & Associates, P.C.
 140 West 9000 South, Suite 9
 Sandy, Utah 84070
 Attorneys for Appellant

ROBERT B. CUMMINGS
10 Exchange Place, Suite 622
Salt Lake City, Utah 84111

Attorney for Appellee

FILED
UTAH APPELLATE COURTS

MAY - 9 2016

TERRY R. SPENCER, et al.,

VS.

Defendants/Appellees.

BRIEF OF APPELLANTS

GAVIN G. COLLIER
TERRY R. SPENCER, Ph.D.
TR Spencer & Associates, P.C.
140 West 9000 South, Suite 9
Sandy, Utah 84070
Attorneys for Appellant

Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
DESIGNATION OF THE PARTIES	1
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS	3
STATEMENT OF THE CASE	4
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	14
ARGUMENT	15
I. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER’S MOTION TO DISMISS ON THE DEFAMATION CAUSE OF ACTION BY INCORRECTLY CONCLUDING THAT GLOVER’S FALSE AND DEFAMATORY STATEMENTS WERE “MERE OPINION” AND NOT ACTIONABLE UNDER UTAH’S DEFAMATION STATUTE.	15
II. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER’S MOTION TO DISMISS BY INCORRECTLY CONCLUDING THAT THE FALSE AND DEFAMATORY STATEMENTS PUBLISHED BY GLOVER DID NOT, AS A MATTER OF LAW, AMOUNT TO OUTRAGEOUS AN INTOLERABLE BEHAVIOR THEREBY DISMISSING SPENCER’S CLAIM OF INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS.	25
III. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER’S MOTION TO DISMISS BY INCORRECTLY CONCLUDING THAT THE FALSE AND DEFAMATORY STATEMENTS PUBLISHED BY GLOVER DID NOT, AS A MATTER OF LAW, AMOUNT TO IMPROPER MEANS THEREBY DISMISSING SPENCER’S CLAIM FOR INTERFERENCE WITH ECONOMIC ADVANTAGE.	25
CONCLUSION	26
ADDENDA.	30

- “A” Ruling and Order, dated September 28, 2015
- “B” Federal Constitution, 1st Amendment
- “C” Utah Constitution, Article 1 § 11
- “D” Statutory Provisions Cited in This Brief
- “E” Screening Panel Memorandum, dated March 30, 2016.

TABLE OF AUTHORITIES

Cases

<u>Eldridge vs. Johndrow</u> , 2015 UT 21	22
<u>Hogan vs. Winder</u> , 2012 WL 4356326 (D. Utah 2012).	17, 23
<u>Scott vs. Utah Cnty.</u> , 2015 UT 64	2, 3
<u>West vs. Thomson Newspapers</u> , 872 P. 2 999 (Utah 1994)	16, 17, 20

Constitutional Provisions

<u>U.S. Const.</u> , 1 st Amendment	1, 16
<u>Utah Const.</u> Art. 1 §11	1, 14

Statutes

<u>U.C.A.</u> §45-2-2	3,16
<u>U.C.A.</u> §78A-3-102	3

Rules

UT. R. APP. P. 3(a)	1
Ut. R. App. P. 4(a)	1
UT. R. APP. P. 24(d)	1
UT. R. APP. P. 24(f)(1)	27
UT. R. APP. P. 27(b)	27
UT. R. CIV. P. 12(b)(6)	1, 3, 4, 5, 14, 15, 19

DESIGNATION OF THE PARTIES

Pursuant to Rule 24(d) of the Utah R. App. P., Plaintiffs and Appellants Terry R. Spencer and TR Spencer & Associates, P.C., the Utah Corporation under which Terry R. Spencer performs legal services for the general public, will be referred to herein as "Spencer;" Defendant and Appellee, Stephen M. Glover, will be referred to herein individually as "Glover."

STATEMENT OF JURISDICTION

Rules 3(a) and 4(a) of the Ut. R. App. P., and U.C.A. §78A-4-103(2)(h), confer jurisdiction upon this Court to hear this appeal.

STATEMENT OF ISSUES & STANDARD OF REVIEW

ISSUE #1: *Did the Trial Court err in its Ruling and Order, dated September 28, 2015, in granting Glover's Motion to Dismiss under Rule 12(b)(6) of the Utah Rules of Civil Procedure, by concluding that the false and defamatory statements made by Glover, in the form of on-line comments, were "mere opinion" and thus, were not actionable under Utah's defamation statute?*

STANDARD OF REVIEW: A Trial Court's grant or denial of a Motion to Dismiss is reviewed for correctness, granting no deference to the decision of the Trial Court. In its review of the Trial Court Ruling and Order, this Appellate Court must accept as true the facts contained in the Spencer Complaint. However, this Appellate Court need not accept extrinsic

facts not pleaded or legal conclusions reached by the Trial Court in contradiction to the pleaded facts. See Scott vs. Utah Cnty, 2015 UT 64, ¶ 13.

PRESERVATION OF ISSUE: This Defamation issue was directly addressed in the “Ruling and Order” issued September 28, 2015. (R00431-00442)

ISSUE # 2: *Did the Trial Court err in its granting of Defendant’s Motion to Dismiss in its Ruling and Order, dated September 28, 2015, by summarily concluding that the false and defamatory statements published by Glover did not, as a matter of law, amount to outrageous and intolerable behavior thereby dismissing, under Rule 12(b)(6), Spencer’s claim of Intentional Infliction of Emotional Distress?*

STANDARD OF REVIEW: A Trial Court's grant or denial of a Motion to Dismiss is reviewed for correctness, granting no deference to the decision of the Trial Court. In its review of the Trial Court Ruling and Order, this Appellate Court must accept as true the facts contained in the Spencer Complaint. However, this Appellate Court need not accept extrinsic facts not pleaded or legal conclusions reached by the Trial Court in contradiction to the pleaded facts. See Scott vs. Utah Cnty, 2015 UT 64, ¶ 13.

PRESERVATION OF ISSUE: This Intentional Infliction of Emotional Distress issue was directly addressed in the “Ruling and Order” issued September 28, 2015. (R00431-00442)

ISSUE # 3: *Did the Trial Court err in its granting of Defendant's Motion to Dismiss in its Ruling and Order, dated September 28, 2015, by summarily concluding that the false and defamatory statements published by Glover did not, as a matter of law, amount to an "improper means" thereby dismissing, under Rule 12(b)(6), Spencer's claim of Intentional Interference with Prospective Economic Relations?*

STANDARD OF REVIEW: A Trial Court's grant or denial of a Motion to Dismiss is reviewed for correctness, granting no deference to the decision of the Trial Court. In its review of the Trial Court Ruling and Order, this Appellate Court must accept as true the facts contained in the Spencer Complaint. However, this Appellate Court need not accept extrinsic facts not pleaded or legal conclusions reached by the Trial Court in contradiction to the pleaded facts. See Scott vs. Utah Cnty, 2015 UT 64, ¶ 13.

PRESERVATION OF ISSUE: This Intentional Interference with Prospective Economic Relations issue was directly addressed in the "Ruling and Order" issued September 28, 2015.
(R00431-00442)

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS WHOSE INTERPRETATION IS DETERMINATIVE OF APPEAL

Federal Constitution, 1st Amendment

Utah Constitution, Article 1 § 11

Utah Code Ann. §45-2-2

Utah Code Ann. §78A-3-102

Utah R. Civ. P. 12(b)(6)

The constitutional provisions, statutes, ordinances, rules, regulations or case law whose interpretation is determinative, are set out verbatim in the Addenda to Brief of Appellee.

STATEMENT OF THE CASE

This case arises out of the provision of legal services by Attorney Spencer to Glover in Glover's Divorce Case, and Glover's subsequent on-line comments made on the YELP.com Website about Spencer and the services Spencer provided to Glover. The existence of the subject comment on YELP.com has been commented on by various potential clients, who subsequently sought legal services elsewhere. (R0004, ¶ 14). The comment made by Glover is false, without foundation, and is an attempt to impeach the honesty, integrity, virtue, or reputation of Spencer (Terry R. Spencer individually and TR Spencer & Associates, PC). (R00034, ¶12).

After unsuccessful attempts were made to have Glover remove the false and defamatory comment from the YELP.com, Spencer filed suit against Glover claiming causes of action for Defamation, Intentional Infliction of Emotional Distress, Intentional Interference with Prospective Economic Relations and other claims not at issue in the Appeal. The relief sought with the filing of this was to prohibit Glover (or anyone acting on his behalf or in concert with him) from his/their efforts to further destroy the reputation and good will of Spencer in the Utah legal community.

The Trial Court subsequently granted Glover's Motion to Dismiss, under Rule 12(b)(6) of the Utah Rules of Civil Procedure, and in doing so held that the defamation perpetrated by Glover against Spencer was not actionable as a matter of law. It is Spencer's position that the Trial Court was incorrect in its "as a matter of law" dismissal of the three relevant causes of action contained in Spencer's Complaint. (The parties agreed to arbitrate the breach of contract claim contained in Spencer's Complaint, and it will not be further discussed herein.) (R00001-00002 & R00417 – 00418).

This is an appeal from the September 28, 2015 "Ruling and Order" of the Third District Court, West Jordan Department, Salt Lake County, granting Defendants' Motion to Dismiss for failure to state a cause of action, pursuant to Rule 12 (b)(6) of the Utah Rules of Civil Procedure. (R000417 – 00047).

STATEMENT OF FACTS (WITH CITATION TO THE RECORD)

1. Kayla Glover filed for divorce from Glover on October 10, 2013, under case number 134402482. Because Glover was living and working overseas, he was served pursuant to an order of alternative service. On Glover's behalf, Spencer filed an Answer and Counterclaim on January 1, 2014. (R00018, ¶ 1-3).

2. On January 6, 2014, a Temporary Orders hearing was held before Commissioner Thomas Patton in the Provo, Utah Fourth District Court. Commissioner Patton found that Glover's gross monthly income for the purposes of setting child support and alimony was

\$23,964.00 per month. Based on this very large monthly income, Commissioner Patton recommended that Glover pay alimony and child support in the total sum of \$8,000.00 per month. (R00018-00019).

3. At the request of Glover, Spencer filed an objection to Commissioner Patton's Recommendation on January 15, 2014. Notwithstanding this objection, the Trial Court issued a Temporary Order in conformance with Commissioner Patton's recommendation on March 7, 2014. In conformance with the recommendation of Commissioner Patton, Spencer informed Glover that Glover could have the amount of child support and alimony revisited once Glover obtained local employment and could produce documents demonstrating a new "historical income." (R00019, ¶5-7).

4. From March 2013 to December 2014, Glover neither provided his current local income information nor requested Spencer to otherwise attempt to modify his temporary alimony and child support obligation without new income information. (R00019, ¶8).

5. On December 29, 2014, Kayla Glover's legal counsel propounded discovery requests upon Spencer. A copy of these discovery requests was sent by Spencer to Glover. On January 2, 2015, Spencer sent an email to Glover to ensure that Glover had received the propounded discovery requests. There was no response, via email or otherwise, from Glover to Spencer. (R00019, ¶10; 00027-00028).

6. On January 6, 2015, a third copy of the propounded discovery requests was sent to Glover by email by Spencer. There was no email response, via email or otherwise, from Glover. (R00020, ¶11; 00029-00038).

7. On February 3, 2015, Kayla Glover's legal counsel served a Deposition Notice upon Spencer, with a Deposition date of February 17, 2015. An email specifying the date and time of that Deposition was emailed by Spencer to Glover. (R00012, ¶12; 00039-00041). A response to this email was received from Glover on February 10, 2015. This Glover email response simply stated "*Thank you Melissa. What do I need to have with me and/or be prepared to answer?*" (R00012, ¶12; 00043-00047).

8. On February 13, 2015, Spencer sent two emails to Glover with a fourth set of the propounded discovery requests received from counsel for Kayla Glover. (R00020, ¶13; 00048-00057). Glover's Deposition, which was scheduled for February 2015, was cancelled due to Glover's failure to provide answers to the propounded discovery requests. (R00020, ¶14).

9. On March 3, 2015, a fifth copy of the propounded discovery requests was sent by email by Spencer to Glover. (R00020; 00058 – 00072). There was no response, via email or otherwise, from Glover.

10. On March 4, 2015, a blank Financial Declaration was sent by Spencer to Glover so that Glover could prepare for his Deposition. There was no response, via email or otherwise, from Glover. (R00021; 00073 – 00082)

11. On March 4, 2015, an additional request for the receipt of answers to the propounded discovery requests was sent by Spencer to Glover. (R00021, ¶ 17; 00077 – 00082). In response, Glover sent his last email to Spencer. This email stated: “*No deposition tomorrow?*” How much trouble is this going to cause me?” (R00021, ¶ 18; 00083 – 00090).

12. Each time Glover was sent an email, during the period of December 29, 2014 to March 12, 2015, Glover also received a telephone call from a member of Spencer’s staff. On March 4, 2015, Spencer responded to Glover’s email sent earlier that day telling Glover that the Deposition had been cancelled (again) due to the failure of Glover to provided answers to the propounded discovery requests. (R00021, ¶19-20; 00091 – 00098). Glover’s Deposition, which was scheduled for March 5, 2015, was cancelled due to Glover’s failure to provide his answers to the propounded discovery requests. On March 5, 2015, a document entitled “Second Amended Deposition Notice” (a third notice) was sent by Spencer to Glover referencing a rescheduling of Glover’s deposition to March 30, 2015. (R00021, ¶ 21-22; 00099 – 00105).

13. On March 12, 2015, a final request was sent by Spencer to Glover requesting his answers to the December, 2014 propounded discovery requests. (R00022, ¶23; 00106 –

00109). As stated above, each time an email was sent to Glover, a call was also placed to Glover by Spencer's staff. On one occasion, Spencer's staff spoke to Glover who stated that "*thinking about his divorce case was too painful.*" This was the only reason Glover provided to Spencer for Glover's refusal to respond to the repeated requests for answers to the propounded discovery requests. (R00022, ¶24).

14. On March 18, 2015, a Withdrawal of Counsel was filed by Spencer, after Spencer learned that Glover had hired new legal counsel. Spencer received notice that Glover had hired new counsel from the Green Filing system, as Glover failed and refused to contact Spencer by telephone or email. (While a phone call is not required, it was expected, given the multiple attempts Spencer has made to contact Glover from December 2014 to March 2015.) (R00022, ¶25).

15. On April 29, 2015, the false and defamatory comment in question was placed on YELP.com by Glover. (The exact language of the comment is provided in the Argument Section of this Brief.) On May 14, 2015, Spencer requested, in writing, for Glover to remove the false and defamatory YELP.com Website comment. (R00022, ¶26-27; 00110 – 00112).

16. On May 15, 2015, Glover refused to remove the false and defamatory comment from YELP.com and threatened to post additional false and defamatory comments. (R00022, ¶28; 00113 – 00117).

17. On May 5, 2015, Spencer filed the subject Complaint in the Third District Court against Glover. This Complaint contained causes of action for Defamation, Intentional infliction of Emotional Distress, and Intentional Interference with Prospective Economic Relations. (R0001 – 00011).

18. On May 15, 2015, Spencer filed a Motion, Affidavit and Memorandum in support of the issuance of a Temporary Restraining Order against Glover. Within these documents, Spencer provided a timeline of events related to his interaction with Glover and a request that the Trial Court issue a Temporary Restraining Order compelling the removal of the defamatory comment from YELP.com and a prohibition against the posting of any further defamatory comments about Spencer on public websites during the pendency of the action. (R00013 – 00014, R00118-00121, R00017-R00117).

19. On May 27, 2015, Glover was served with a Summons/Complaint. (R00140 – 00142).

20. On June 2, 2015, Spencer filed a proposed order Granting Temporary Restraining Order. (R00126 – 00129).

21. On June 2, 2015, Spencer sent Glover's counsel initial disclosures. (R00130 – 00135).

22. On June 3, 2015, the Trial Court sent Spencer and Glover a Notice of Hearing related to Spencer's Motion for Temporary Restraining Order. This hearing was to be held on June 8, 2015 at 3:00 before Trial Court Judge Hogan. (R00136 – 00138).

23. On June 3, 2015, Glover filed an action with the Utah State Bar Office of Professional Conduct claiming that the filing of the Complaint and the filing of pleadings related to the Temporary Restraining Order amounted to a "breach of attorney-client privilege." (The case law related to Glover's waiver of attorney-client privilege via his comment post on YELP.com is addressed in Spencer's Screening Panel Memorandum attached hereto as Addendum "E.") Glover failed to provide a timely response to this Screening Panel Memorandum.

24. On June 8, 2015 the Trial Court entered minutes for the Temporary Restraining Order Hearing which the Trial Court declined to proceed in the absence of Glover. The Trial Court set a new hearing date. (R00148 – R00149).

25. On June 8, 2015, the Trial Court sent Spencer and Glover a Notice of Hearing related to Spencer's Motion for Temporary Restraining Order. The revised hearing date was scheduled for June 15, 2015 at 4:00 pm before Trial Court Judge Hogan. (R00148 – 00150).

26. On June 15, 2015 the Trial Court entered its minutes for the Temporary Restraining Order hearing in which the Trial Court denied Spencer's requested Temporary Restraining Order and ordered the case sealed at the request of Glover. (R00152 – 00153).

27. On June 25, 2015, Robert B. Cummings, Esq. filed a Notice of Appearance to appear as counsel for Glover. (R00190 – 00194).

28. On June 26 2015, Glover's Counsel submitted a Request/Notice to submit proposed Order Denying Spencer's Motion for Temporary Restraining Order.¹ (R00196 – 00198).

29. On June 26, 2015, Glover's Counsel submitted a proposed Order denying Spencer's Motion for Temporary Restraining. (R00199 – 00204).

30. On June 29, 2015, Spencer filed an Objection to Glover's Notice to Submit due to improper service of the proposed Order. (R00206 – 00210).

31. On June 29, 2015, Glover filed a Rule 12(b)(6) Motion to Dismiss. Within this Motion, Glover sought the following relief: (1) a dismissal of the first, second, third, and fourth causes of action; and (2) a dismissal and/or stay of the remaining claims pending arbitration for the fifth cause of action. (R00221 – 00272).

32. On July 13, 2015, Spencer filed his Memorandum in Opposition to Glover's Rule 12(b)(6) Motion, together with Affidavits from Spencer, Phil Wilson, Jeff Rifleman, Esq.,

¹ The Notice memorialized the conversation between the parties. [Spencer] stated "*I can't agree to the proposed order. It contains your argument and not necessarily the findings of the Court. I would agree to an order, which simply states that the TRO was denied along with the specific findings of the Court.*" [Glover] responded by stating, "*. . . I believe the order as written includes the Courts findings. If there were a specific part of the order that you believe the court did not state, please let me know so I can compare your recollection with my notes.*"

and Ryan Mills. These third-party Affidavits discussed the damage caused by Glover's false and defamatory on-line comment posted on YELP.com. (R00328 – 00341).

33. On July 14, 2015, Spencer submitted an Affidavit of Randy Harrison to further demonstrate the damage caused by Glover's false and defamatory on-line comment posted on YELP.com. (R00371 – 00375).

34. On July 15, 2015 Spencer submitted an Affidavit of Dan Thomas to further demonstrate the damage caused by Glover's false and defamatory on-line comment posted on YELP.com. (R00376 – 00380).

35. On July 17, 2015, Glover submitted his Reply to Spencer Opposition to Glover's Rule 12(b)(6) Motion to Dismiss. (R00394 – 00407).

36. On September 3, 2015 the Trial Court took the issues raised in Motion to Dismiss under advisement. (R00416).

37. On September 28, 2015 the Trial Court issued its Ruling and Order. Specifically, the Trial Court: (1) granted Glover's Motion to Dismiss, and (2) refused to utilize any of the third-party affidavits which described the scope of the damage to Spencer's reputation from the false and defamatory comment posted on YELP.com. (R00417 – 00427).

38. On October 23, 2015, Spencer filed his Notice of Appeal. (R0428 – 00430).

///

///

SUMMARY OF THE ARGUMENT

In summary, it is Spencer's position that the Trial Court improperly concluded, in the context of Glover's Rule 12(b)(6) Motion to Dismiss, that the false defamatory comment made by Glover about Spencer on YELP.com was not actionable, as a matter of law, because the comment was a "matter of opinion" and was not thereby subject to being "verified." It is Spencer's position that this "matters of opinion" characterization made by the Trial Court was incorrect, and has in essence foreclosed Spencer's ability to address a wrong through the Utah Court System.² Because the findings of the Trial Court are built on this improper characterization of Glover's comment, the findings related to the causes of action for Defamation, Intentional Infliction of Emotional Distress and Intentional Interference with Economic Relations were also flawed and incorrect.

///

///

///

///

///

² Utah Constitution Article 1, § 11: "*All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.*"

ARGUMENT

I. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER'S MOTION TO DISMISS ON THE DEFAMATION CAUSE OF ACTION BY INCORRECTLY CONCLUDING THAT GLOVER'S FALSE AND DEFAMATORY STATEMENTS WERE "MERE OPINION" AND NOT ACTIONABLE UNDER UTAH'S DEFAMATION STATUTE.

Text of Defamatory Statement Posted On-Line by Glover 4/29/2015

If you are reading this, and in any way considering contracting with Terry Spencer for legal . . . Worst ever. Had to fire him after I gave him a chance for well over a year. Paid him his \$2,500 retainer. Then paid him another \$2,500 shortly after . . . and I still owe him another several thousand dollars. . . . all of his hunt-and-peck filing typing b.s. while he makes me watch I'd be willing to wager that he was sitting on it and running the bill up until I produced money that she had not gotten her hands on. There was none that she had not gotten her hand on. She admitted he spent the \$40k in the safe. My order is _ still _ based on substantially higher income earned the hard way in the Middle East supporting my family by supporting those who protect our freedom. The arrears has become astronomical and ORS is threatening to take my license and passport. Yelled at me once when I called to ask him about something his office has sent me that day. Told me to GOOGLE IT. Worst ever. Filed a complaint with the Utah State bar and strongly considering suing him. Just have to find someone who will do it.

Required Inferences in a Rule 12(b)(6) Motion

1. Here, the Trial Court recognized, as an undisputed fact, that Glover published the statements about Spencer. (R00434, ¶2). Further, for the purpose of ruling on the Motion to Dismiss, the Trial Court accepted that the comment made by Glover about Spencer on YELP.com was both false and defamatory and resulted in damage to Spencer. (R00434, ¶2)

///

///

Discussion of the Law Related to “Defamation”

1. To state a claim for defamation under Utah law,³ Spencer is required to demonstrate: “that [Glover] published the statement concerning him [either in print or by spoken words], that the statements were false, defamatory, and not subject to any privilege that the statements were published with the requisite degree of fault, and that their publication resulted in damage.” West v. Thomson Newspapers, 872 P.2d 999, 1007-1008 (Utah 1994) (footnotes omitted)).

2. “Under Utah law, a statement is defamatory if it impeaches an individual’s honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule.” Id. “In determining whether a particular statement fits within the rather broad definition of what may be considered defamatory, the guiding principle is the statement’s tendency to injure a reputation in the eyes of its audience.” Id.

3. The Trial Court must also determine whether the statement was in fact understood as defamatory by the audience. See West v. Thomson Newspapers, 872 P.2d 999, 1007-08

³ Utah Code Ann. §45-2-2 states as follows: “*As used in this chapter: (1) “Libel” means a malicious defamation, expressed either by printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule. (2) “Slander” means any libel communicated by spoken words.*”

Note: It is Spencer’s position that false statements which defame a non-public figure are actionable under state defamation laws and not protected by the free speech provisions of the 1st Amendment to the U.S. Constitution.

(Utah 1994): “Thus, the threshold issues are whether the statements are capable of sustaining a defamatory meaning and whether any qualified or absolute privileges preclude plaintiff’s claim.” Id. Whether a statement is capable of sustaining a defamatory meaning is a question of law.” Id.

4. In the case of Hogan v. Winder, No. 2:12-CV-123 TS, 2012 WL 4356326, at *7 (D. Utah Sept. 24, 2012) aff’d 762 F.3d 1096 (10th Cir. 2014) (quoting Thomson at 1008), the U.S. District Court for the District of Utah provided the following four prong test for determining whether a statement or comment is defamatory:

“To determine whether a statement is fact or opinion the Court considers the following four factors: (i) the common usage or meaning of the words used; (ii) whether the statement is capable of being objectively verified as true or false; (iii) the full context of the statement – for example, the entire article or column – in which the defamatory statement is made; and (iv) the broader setting in which the statement appears.”

Application to The Law to The Facts of This Case

5. Common Usage Prong: The first prong of the Hogan case test is that of “common usage.” The words contained in the Glover YELP.com comment, when taken in their “most common usage or meaning,” clearly convey that Glover was upset and that Glover wanted to purposefully financially injure Spencer, because in Glover’s eyes Spencer had somehow failed to zealously advocate for him. This conclusion is supported by the first line of April 29, 2015 Glover comment which states: “*if you are reading this, and in any way considering*

contracting with Terry Spencer for legal... Worst ever.” This “worse ever” statement is clearly false and defamatory and was intended to be defamatory so by Glover.⁴

6. The common meaning of other words such as the word “had” before the words “to fire him” suggest that Glover has no other choice but to fire Spencer due to Spencer’s inability or unwillingness to perform. However, from the Statement of Facts contained in this Brief, that fact is anything but true and it was Spencer that was pushing Glover to act.

7. Next, Glover uses the word “over” to give the clear impression to the reader of Glover’s comment that Glover gave Spencer a long period of time to advocate for Glover and Spencer failed to do so. Like with the word “had” discussed in immediately prior paragraph, the Statement of Facts also do not support this conclusion because it was objective demonstrated in the Statement of Facts contained in this Brief that it was Spencer who was pushing Glover to act.

8. Objective Verification Prong: The second Hogan case prong is that of “objective verification.” Here the Trial Court concluded that the following portions of the Glover Comment were objectionable:

⁴ It would not be difficult to demonstrate by various measures the truthfulness or falsity of this statement. For example, if the Trial Court would have looked at the fact such as: (1) the Utah State Bar Office of Professional Conduct has never disciplined Spencer, or (2) Spencer has 25 years of experience as an attorney, the Court could easily determine that Spencer is not the “worst ever” Utah Attorney.

(1) “all for his hunt-and-peck filing typing B.S. while he makes me watch []; (2) I’d be willing to wager that he was sitting on it and running the bill up until I produced money []; and (3) Yelled at me once when I called to ask him about something his office had sent me that day. Told me to ‘GOOGLE IT!’ Worst. Ever.” (R00435).

9. As to the “hunt-and-peck” comment and the “running up the bill” comment, the Trial Court may have been correct that these two portions of the Glover comment may not be able to be objectively verified because the meaning of those phrases is not subject to objective verification.

10. However, as to the “yelled at me” portion of the Glover comment, the “worse ever” portion of the Glover comment, the “astronomical arrearage” portion of the Glover comment, the “had to fire him” portion of the Glover comment, and the “Bar Complaint” reference in the Glover comment, each of these items is subject to objective verification. (R000010)

11. In his Complaint, Spencer did not break the Glover comment into its component parts and determine whether each portion or component of the comment was defamatory or not. (R00434, ¶1) There is no statutory or case law authority which requires this type of segmented defamation analysis. Even without this segmented analysis, the Trial Court did, however, recognize that portions of the comment were “objectionable,” and the Trial Court was required, under its Rule 12(b)(6) analysis, to assume the language of the YELP.com comment by Glover was defamatory for the purpose of its ruling on Glover’s Motion to Dismiss.

12. Full Context Prong: The third Hogan case prong is that of looking at the Glover comment in its “full context.” This prong requires a Trial Court to evaluate the entire comment as a whole to determine whether it is defamatory, rather than looking at the comment’s component parts. In completing this analysis, the Trial Court quoted the Thompson case at 1009:

“A court simply cannot determine whether a statement is capable of sustaining a defamatory meaning by viewing individual words in isolation; rather, it must carefully examine the context in which the statement was made, giving the words their most common and accepted meaning.”

13. While the Trial Court started down the right path by quoting Thompson, the Trial Court left the rails when it began to overtly sympathize with Glover by restating that Glover was in the midst of an acrimonious divorce, that he had fired Spencer, that he still owed Spencer several thousand dollars, that Glover faced “astronomical” support arrears, and that the Office of Recovery Services was threatening to take Glover’s “license and passport.” (R00010). These external “mental-health-related facts or claims” are irrelevant in determining whether the Glover comment as a whole is defamatory.

14. The Trial Court improperly took all of these additional facts or claims into consideration,” in concluding that the Glover YELP.com comment was “mere opinion.” The conclusion reached by the Trial Court was in direct opposition to the “paper trail” of attempted communication by Spencer with Glover, as that “paper trail” related to literally months of written and telephonic attempts by Spencer to contact Glover concerning Glover’s

failure to respond to propounded discovery requests, and the scheduling and rescheduling of Glover's Deposition, based on Glover's multiple failures to respond to propounded discovery requests. (R00026, 00028, 00030, 00041, 00045, 00050, 00060, 00075, 00079, 00081, 00085, 00087, 00093, 00097, 00100, 00102 – 00104, 00108).

15. The focus of the Trial Court on Glover's questionable mental health, as an excuse for classifying his defamatory YELP.com comment as "mere opinion" is both misplaced and inappropriate. In evaluating what weight should be given to Glover's mental health in determining whether his comment should be deemed "mere opinion," two questions should be asked by the Appellate Court:

a. Should Glover's biased and diminished state of mind be used as reason to classify on-line defamatory comments as mere opinion, rather than fact?

b. If the answer to the first question is yes, how would the average person who reads an on-line comment, such as the one made by Glover, objectively conclude that Glover is biased, unreliable or mentally ill; and based thereon, Glover's comments should be understood as mere "hyperbole or rhetorical flourish?"

16. Spencer attempted to answer these two questions for the Trial Court with the submission of various third-party affidavits (which were unused by the Trial Court according to its September 2015 Ruling and Order). Not a single individual who provided one of these an affidavit concluded that the comment by Glover was not defamatory simply because they

has come to believe that Glover may have been mentally ill at the time the comment was posted on YELP.com..

17. Broader Setting Prong: The fourth Hogan case prong is that of looking at the Glover comment in its “broader setting” in which the statement appears. (R00436, ¶1). Here, Glover placed his defamatory comment on YELP.com, a website where individuals review businesses. Glover successfully attempted to hide behind the pretext that his defamatory comment was mere “opinion.” However, a false statement or assertion of fact does not constitute an opinion simply by claiming that the comment is an opinion. In the broader setting, the comment should be seen through the eyes of those who read the comment, not the person who authored the comment.

18. Further, Glover’s comment fail the “improper means” test, under Utah law, which requires Spencer to prove: (1) that Glover intentionally interfered with Spencer’s existing or potential economic relations, (2) . . . by improper means, (3) causing injury to Spencer. See Eldridge v. Johndrow, 2015 UT 21, 345 P.3d 553.

19. Glover intentionally used his YELP.com comment to intentionally interfere with the marketing of Spencer’s legal services. This conclusion appears to be undisputed and is reached with the following language of Glover’s comment: *“If you are reading this, and in any way considering contracting with Terry Spencer for legal . . . Worst ever.”* From this line, Glover intent to harm is clear.

20. “Improper means” is shown with the use of a public website to publish a clearly defamatory comment. There can be no doubt, from the language of the comment itself, that Glover intended to harm Spencer financially by making his false and defamatory comment on a public website, where any discussion of his mental illness or mental state is absent. The Trial Court states that YELP.com is a “*necessarily subjective online review of a particular business, published in the review section of a website commonly used by customers to rank their experiences with businesses of all kinds – suggest that the statements are opinion.*” (R00436, ¶2). The Trial Court further stated that “*the reasonable reader would realize not only that the accusation was made in the heat of a nasty legal dispute*” but also that “*the objectionable terms were merely hyperbole and rhetorical flourish.*” Hogan v. Winder, No. 2:12-CV-123 TS, 2012 WL 4356326, at *7 (D. Utah Sept. 24, 2012) *aff’d* 762 F.3d 1096 (10th Cir. 2014) (quoting Thomson at 1008).

21. While the Trial Court was incorrect when it classified comments,⁵ such as Glover’s as “subjective,” hyperbole,” and/or “rhetorical flourish,” the Trial Court clearly understood that comments of this type, on websites of this type, are clearly intended to financially impact the subject of such comments, and therefore, the author should be required to meet some level of objective truthfulness to avoid a claim of Defamation. (R00422, ¶2).

⁵ Spencer respectfully disagree with the Trial Court’s classification of Glover’s YELP.com defamatory comment as mere opinion on the part of Glover. The Trial Court’s Ruling and Order was avoid of any objective analysis to support this classification.

22. In the broader sense, while some reader may indeed realize that there “was a nasty legal dispute” involving the author when the on-line defamatory was posted, other reader may not reach that conclusion. Those readers who fail to recognize that Glover may have been “temporarily stressed” or “temporarily mental ill” when posting his comment, will be impacted by such a comment and will likely look elsewhere for legal services, without the ability of Spencer to discuss with the potential client Glover’s diminished mental state.

23. In summary, The Trial Court erred in its defamation analysis of the Glover comment. Based on that err, the Trial Court improperly granted Glover’s Motion to Dismiss on the Defamation. Based on the statements made by the Trial Court in its September 2015 Ruling and Order, this analytical err also directly impacted the Trial Court’s ruling on both the Intentional Infliction of Emotional Distress claim and the Intentional Interference with Prospective Economic Advantage claim. These two claims are discussed further below.⁶

///

///

///

⁶ Spencer’s claim of Intentional Infliction of Emotional distress was dismissed due to “writing and publishing a critical online review does not amount to outrageous and intolerable behavior, particularly where there is no defamation.” Spencer’s claim for Intentional Interference with Economic Relations was dismissed due to the fact that “the [Trial Court] has already determined that the review did not amount to defamation, and no other impropriety is apparent.

II. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER'S MOTION TO DISMISS BY INCORRECTLY CONCLUDING THAT THE FALSE AND DEFAMATORY STATEMENTS PUBLISHED BY GLOVER DID NOT, AS A MATTER OF LAW, AMOUNT TO OUTRAGEOUS AND INTOLERABLE BEHAVIOR THEREBY DISMISSING SPENCER'S CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

1. In its Ruling and Order issued September 28, 2015, the Trial Court relied on its finding of fact and conclusion of law on the issue of Defamation to find that Glover's comment was not, as matter of law, defamatory and thus, cannot be said to "offend against the generally accepted standards of decency and morality."

2. Based on that finding alone, the Trial Court dismissed this case of action.

3. For reasons stated in Argument Section I, the conclusion reached by the Trial Court was incorrect as a matter of law. Spencer hereby incorporates his argument from that section as through fully set forth herein.

III. THE TRIAL COURT ERRED IN ITS GRANTING OF GLOVER'S MOTION TO DISMISS BY INCORRECTLY CONCLUDING THAT THE FALSE AND DEFAMATORY STATEMENTS PUBLISHED BY GLOVER DID NOT, AS A MATTER OF LAW, AMOUNT TO "IMPROPER MEANS" THEREBY DISMISSING SPENCER'S CLAIM FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

1. In its Ruling and Order issued September 28, 2015, the Trial Court relied on its finding of fact and conclusion of law on the issue of Defamation to find that Glover's comment did not amount to "improper mean," as Glover's comment was not defamatory.


2. Based on that finding alone, the Trial Court dismissed this case of action.

3. For reasons stated in Argument Section I, the conclusion reached by the Trial Court was incorrect as a matter of law. Spencer hereby incorporates his argument from that section as through fully set forth herein.

CONCLUSION

Based on the preceding, this Court should over turn the Ruling and Order issued by Judge Hogan and send this matter back to the Trial Court. There is no basis for an award of attorney's fees and costs to either party.

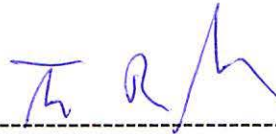
DATED this 9th day of May, 2016.



Terry R. Spencer
Attorney for Plaintiffs/Appellants
Terry R. Spencer et. al

CERTIFICATE OF COMPLIANCE

I certify that in compliance with Rule 24(f)(1), Ut. R. App. P., this Brief contains 6768 words, excluding the Table of Contents, Table of Authorities and Addenda. I further certify that in compliance with Rule 27(b) Ut. R. App. P., this Brief has been prepared in proportionally spaced type face using WordPerfect 6.0(a) times roman type face.




Terry R. Spencer
Attorney for Plaintiffs/Appellants
Terry R. Spencer, et. al

CERTIFICATE OF SERVICE

Terry R. Spencer, counsel for Appellant, hereby certifies that I personally caused to be mailed by first class mail, postage pre-paid thereon, two correct copies of the foregoing Brief of Appellee to the following on the 9th day of May, 2016:

Robert B. Cummings
Attorneys for Appellee -- Stephen M. Glover
10 Exchange Place
Salt Lake City, Utah 84111


Terry R. Spencer
Attorney for Plaintiffs/Appellants
Terry R. Spencer et. al

ADDENDUM "A"

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
WEST JORDAN DEPARTMENT, STATE OF UTAH**

**TERRY R. SPENCER, an individual, et
al.,**

Plaintiffs,

vs.

**STEPHEN M. GLOVER, an individual,
et al.,**

Defendants.

RULING AND ORDER

Case No. 150903279

Judge Douglas Hogan

Pending before the court is Defendant Stephen M. Glover's ("Glover") Motion to Dismiss. The court reviewed the moving and opposition papers, and heard oral argument on September 3, 2015. Following oral argument, the court took the matter under advisement, and now rules on the motion as follows.

BACKGROUND

This case arises out of legal services provided by Plaintiffs Terry Spencer, *et al.*, ("Spencer") to Glover, and Glover's subsequent online review of those services. Spencer is an attorney. Glover retained Spencer as his divorce counsel on October 25, 2013. On April 29, 2015, Glover posted a review of Spencer's services on the website Yelp.com ("Yelp."). The review expressed his dissatisfaction with Spencer's work in strong terms. At about the same time, Glover retained new divorce counsel. On May 15, 2015, Spencer filed suit against his former client, asserting claims of

defamation, intentional infliction of emotional distress, intentional interference with prospective economic relations, declaratory relief, and breach of contract.

Defendant asks the court to 1) dismiss the first, second, third, and fourth causes of action and 2) stay any remaining claims pending arbitration of the fifth cause of action.

DISCUSSION

Glover has asked the court to dismiss Spencer's tort-based causes of action for failure to state a claim upon which relief can be granted, pursuant to Utah R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion to dismiss admits the facts alleged in the complaint but challenges the plaintiff's right to relief based on those facts." *State v. Apotex Corp.*, 2012 UT 36, ¶ 42, 282 P.3d 66, 77 (quoting *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226 (internal quotation marks omitted). Plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S., 544, 547, 127 S.Ct. 1937, 167 L.Ed.2d 929 (2007). This requires "more than an unadorned, the-defendant-unlawfully harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (alteration in original). Therefore, in reviewing a motion to dismiss, the court looks to whether the facts asserted in a complaint are capable of supporting the claims asserted. As the Court in *Iqbal* stated,

"only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged "but it has not show[n]" that the pleader is entitled to relief."

Id., 556 U.S. at 679 (alteration in original) (internal quotation marks and citations omitted)

Finally, "if 'a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.'" *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 13, 104 P.3d 1226, 1231 (quoting *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir.2002)). Here, Spencer attached a copy of the relevant publication to his complaint. Spencer's claim for breach of contract is premised on the parties' Attorney/Client Agreement. Glover has submitted an indisputably authentic copy of that document to be considered on this motion to dismiss. All other proffered matters outside the pleadings are hereby excluded by the court pursuant to Utah R. Civ. P. 12(b). They have not been considered in the court's decision on this motion to dismiss. The motion, therefore, is not converted to a motion for summary judgment.

1. Defamation

In order to state a claim for defamation under Utah law, a plaintiff must show:

"that defendants published the statements concerning him [either in print or by spoken words], that the statements were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault, and that their publication resulted in damage."

West v. Thomson Newspapers, 872 P.2d 999,1007–08 (Utah 1994) (footnotes omitted)). “Under Utah law, a statement is defamatory if it impeaches an individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule.” *Id.* “In determining whether a particular statement fits within the rather broad definition of what may be considered defamatory, the guiding principle is the statement's tendency to injure a reputation in the eyes of its audience.” *Id.*

Here, it is undisputed that Glover published the statements and that they concerned Spencer. For purposes of this motion, the court must accept that the statements were false and that they resulted in damage to Spencer. “Thus, the threshold issues are whether the statements are capable of sustaining a defamatory meaning and whether any qualified or absolute privileges preclude [Spencer's] claim.” *West v. Thomson Newspapers*, 872 P.2d 999, 1008 (Utah 1994). “Whether a statement is capable of sustaining a defamatory meaning is a question of law.” *Id.* “If the court determines that the statement is capable of sustaining such a meaning as a matter of law, the trier of fact must then determine whether the statement was in fact so understood by its audience.” *Id.* “Furthermore, ‘[b]ecause expressions of pure opinion fuel the marketplace of ideas and because such expressions are incapable of being verified, they cannot serve as the basis for defamation liability.’” *Hogan v. Winder*, No. 2:12-CV-123 TS, 2012 WL 4356326, at *7 (D. Utah Sept. 24, 2012) *aff'd*, 762 F.3d 1096 (10th Cir. 2014) (quoting *Thomson* at 1008).

In this case, Spencer's complaint did not identify specific objectionable portions of the short Yelp review. Nevertheless, the potentially objectionable statements appear to be:

1. "all for his hunt-and-peck filling typing b.s. while he makes me watch [];
2. "I'd be willing to wager that he was sitting on it and running the bill up until I produced money[]; and
3. "Yelled at me once when I called to ask him about something his office had sent me that day. Told me to 'GOOGLE IT' Worst. Ever."

(Complaint, at Ex. A.)

"A court simply cannot determine whether a statement is capable of sustaining a defamatory meaning by viewing individual words in isolation; rather, it must carefully examine the context in which the statement was made, giving the words their most common and accepted meaning." *Thomson* at 1009. "To determine whether a statement is fact or opinion the Court considers the following four factors:

"(i) the common usage or meaning of the words used; (ii) whether the statement is capable of being objectively verified as true or false; (iii) the full context of the statement—for example, the entire article or column—in which the defamatory statement is made; and (iv) the broader setting in which the statement appears."

Hogan, 2012 WL 4356326, at *8 (D. Utah Sept. 24, 2012) *aff'd*, 762 F.3d 1096 (10th Cir. 2014) (quoting *Thomson* at 1018).

As to the first factor, the words "hunt-and-peck", "b.s.", "yelled", and "worst ever" are words commonly used to convey one's subjective belief about another's ability or behavior. Similarly, the words "I'd be willing to wager" indicate that the

following statement reflects one's subjective beliefs. Additionally, because the words convey a subjective belief, it is not possible – under the second factor – to objectively verify whether the statements are true or false. Thus, these factors weigh heavily in favor of finding that the statements constitute opinion.

The context of the Yelp review also shows that the statements were made by a biased, and therefore potentially unreliable, individual. The review communicates that Glover was in the midst of an acrimonious divorce, that he had fired Spencer, that he still owed Spencer several thousand dollars, that Glover faced “astronomical” support arrears, and that the Office of Recovery Services was threatening to take Glover’s “license and passport.” Taking all of these additional comments into consideration, it appears clear that the context of the statements, that is, the full review, makes clear that the statements are based in opinion, rather than fact. Finally, the broader setting in which the article appears – a necessarily subjective online review of a particular business, published in the review section of a website commonly used by customers to rank their experiences with businesses of all kinds – suggests that the statements are opinion. The reasonable reader would realize not only that the accusation was made in the heat of a nasty legal dispute but also that “the objectionable terms were merely hyperbole and rhetorical flourish.” *Hogan v. Winder*, 762 F.3d 1096, 1108 (10th Cir. 2014). The court is of the opinion that any review which is either emphatically positive or emphatically negative is hyperbole. Furthermore, during oral argument, even Spencer identified Glover’s remarks as “ranting and raving” and the “beliefs” of one individual. In other words, the Yelp review is a hyperbolic opinion.

In sum, these factors compel the court to find that the statements are mere opinion. Therefore, the court will dismiss Spencer's claim for defamation.

2. Intentional Infliction of Emotional Distress

"In order to state a claim for intentional infliction of emotional distress, a plaintiff must plead facts that demonstrate that the defendant 'intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable person would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality.' "

Bennett v. Jones, Waldo, Holbrook & McDonough, 2003 UT 9, ¶ 58, 70 P.3d 17, 30.

Here, the facts pleaded in Spencer's complaint cannot be said to "offend against the generally accepted standards of decency and morality." Writing and publishing a critical online review does not amount to outrageous and intolerable behavior, particularly where there is no defamation. Spencer has not pleaded facts alleging any other objectionable behavior on Glover's part. Therefore, the court will dismiss the claim for intentional infliction of emotional distress.

3. Intentional Interference with Economic Relations

Utah law on the elements of intentional interference with prospective economic relations has recently changed. For many years, the law was that

"in order to recover damages [for tortious interference], the plaintiff must prove (1) that the defendant intentionally interfered with the plaintiff's existing or potential economic relations, (2) for an improper purpose or by improper means, (3) causing injury to the plaintiff."

Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293, 304 (Utah 1982) overruled by *Eldridge v. Johndrow*, 2015 UT 21, 345 P.3d 553. The Utah Supreme Court has recently modified the rule, holding that "a claim for tortious interference may only

succeed where the defendant has employed an improper means," thus abandoning the improper-purpose rule. *Eldridge* at ¶ 14.

Here, even if Glover intentionally interfered with Spencer's prospective economic relations, and even if such interference resulted in injury to Spencer, the facts alleged in Spencer's pleading do not demonstrate that writing an online review amounts to an "improper means". The court has already determined that the review did not amount to defamation, and no other impropriety is apparent. Therefore, the court will dismiss the claim for intentional interference with prospective economic relations.

4. Declaratory Relief

There are four elements that must be satisfied for a court to proceed with a declaratory judgment action: (1) a justiciable controversy, (2) parties whose interests are adverse, (3) a legally protectable interest residing with the party seeking relief, and (4) issues ripe for determination. See *Miller v. Weaver*, 2003 UT 12, ¶ 15, 66 P.3d 592.

Here, Spencer claims that a justiciable controversy exists based on the statements published on Yelp by Glover. The court has already determined, however, that Spencer's claims for defamation, intentional infliction of emotional distress, and intentional interference with prospective economic relations based on those statements fail. No justiciable controversy remains. The court will therefore dismiss Spencer's claim for declaratory relief.

5. Breach of Contract

Glover has requested that the court order the parties to arbitration on Spencer's breach of contract claim. Utah law favors alternative dispute resolution. "The [Utah Uniform Arbitration] Act provides that in the event of a disagreement about whether there is an applicable agreement to arbitrate a dispute, 'the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.'" *Mariposa Exp. Inc. v. United States Shipping Solutions, LLC*, 2013 UT App 28, ¶ 16, 295 P.3d 1173 (citing Utah Code Ann. § 78B-11-1081(b)) (affirming order compelling arbitration). "Utah courts have consistently recognized Utah's policy of favoring arbitration." *Id.*

"[I]f there is any question as to whether the parties agreed to resolve their disputes through arbitration or litigation, i.e., through the filing of a complaint and recording of a *lis pendens*, we interpret the agreement keeping in mind our policy of encouraging arbitration. It is the policy of the law in Utah to interpret contracts in favor of arbitration, in keeping with our policy of encouraging extrajudicial resolution of disputes when the parties have agreed not to litigate."

Id. at ¶ 17.

There appears to be an enforceable arbitration agreement between the parties in this case, found in part 15 of their Attorney/Client Agreement. Under a heading of "Arbitration & Limitation of Client Claims," the agreement states that "the parties agree to arbitrate any dispute."

Whether there is really any question as to whether the parties agreed to resolve their disputes through arbitration is less clear; although Spencer brought this action in

court rather than taking it to arbitration, he has stated that he "would agree to arbitrate this contract claim after the litigation on remaining non-contract claims."

(Memorandum in Opposition at 26). Spencer presumably drafted the contract containing the arbitration clause, but has not sought to enforce it. This inconsistency leads the court to determine that there is, indeed, a question regarding whether the parties agreed to arbitrate.

In any case, this ruling dismisses Spencer's contract claim, without prejudice, and the parties are ordered to arbitration on this claim.

RULING AND ORDER

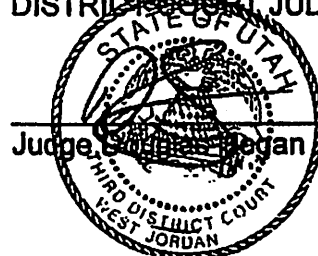
The court agrees with Defendant.

Based on the foregoing, Defendant's Motion to Dismiss is GRANTED. Plaintiff's tort claims are dismissed with prejudice. The parties are ordered to arbitration regarding Plaintiff's claim for breach of contract and said claim is dismissed without prejudice.

This Ruling and Order is the order of the court, and no additional order is required. Utah R. Civ. P. 7(f).

DATED this 28th day of September, 2015.

DISTRICT COURT JUDGE



00440

ADDENDUM “B”

First Amendment - U.S. Constitution

First Amendment - Religion and Expression

Amendment Text | [Annotations](#)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

1st Amendment Annotations

- See more at: <http://constitution.findlaw.com/amendment1.html#annotations>

ADDENDUM “C”

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 11

Sec. 11. [Courts open--Redress of injuries]

Currentness

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Notes of Decisions (179)

U.C.A. 1953, Const. Art. 1, § 11, UT CONST Art. 1, § 11
Current through 2015 First Special Session

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

ADDENDUM “D”

ADDENDUM "D"

45-2-2. Libel and slander defined.

As used in this chapter:

(1) "Libel" means a malicious defamation, expressed either by printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

(2) "Slander" means any libel communicated by spoken words.

78A-3-102. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the School and Institutional Trust Lands Board of Trustees;
 - (iv) the Board of Oil, Gas, and Mining;
 - (v) the state engineer; or
 - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
- (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;
- (j) orders, judgments, and decrees of any court of record over which the Court of

Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

ADDENDUM "D"

45-2-2. Libel and slander defined.

As used in this chapter:

(1) "Libel" means a malicious defamation, expressed either by printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

(2) "Slander" means any libel communicated by spoken words.

78A-3-102. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the School and Institutional Trust Lands Board of Trustees;
 - (iv) the Board of Oil, Gas, and Mining;
 - (v) the state engineer; or
 - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
- (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;
- (j) orders, judgments, and decrees of any court of record over which the Court of

Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

ADDENDUM "E"

TERRY R. SPENCER, Ph.D. #6335
Attorney at Law
140 West 9000 South, Suite 9
Sandy, Utah 84070
Telephone: (801) 566-1884
Fax: (801) 748-4022
E-mail: terry@trspencer.com
Respondent Pro Se

RECEIVED

MAR 30 2016

Utah State Bar

BEFORE THE ETHICS & DISCIPLINE COMMITTEE

In the matter of the Complaint by

RESPONDENT'S SCREENING PANEL BRIEF

STEPHEN GLOVER,

Complainant,

OPC File No: 15-0895

-vs-

Screening Panel Date:

TERRY R. SPENCER,

Respondent.

INTRODUCTION

COMES NOW Terry R. Spencer (hereinafter "Mr. Spencer") and pursuant to Rule 14-510(b)(2) of the Utah Rules of Professional Conduct, hereby submits his required Screening Panel Brief. This Screening Panel Brief is filed concurrently with his "Request for Permission to File an Over Length Brief."

It is the position of Mr. Spencer that he did not violate the Rules of Professional Conduct, as alleged by Stephen Glover (hereinafter "Mr. Glover"), and he respectfully requests that this Screening Panel dismiss each and every allegation that he violated the Rules of Professional

Conduct.

SUMMARY OF MR. GLOVER'S REMAINING ALLEGATIONS

From a review of the materials initially filed by Mr. Glover with the Utah State Bar Office of Professional Conduct (hereinafter the "OPC"), it appears that Mr. Glover has raised only a single remaining issue: whether Mr. Spencer's Defamation Lawsuit filed in the Third District Court against Mr. Glover amounted to a release of Mr. Glover's confidential information by Mr. Spencer. In other words, did the actions of Mr. Glover, by publishing false and defamatory information about Mr. Spencer, waive any claim of attorney-client privilege?

BURDEN OF PROOF

The submission of this matter to this Screening Panel does not mean, and should not be interpreted by the Panel to mean, that Mr. Spencer has in any way violated the Rules of Professional Conduct. The Complainant is Mr. Glover not the OPC. The OPC is merely the administrative assistant and secretary to the Screening Panel in this matter.¹ The OPC has referred this matter to the Screening Panel for its review, as is its duty. Mr. Glover, as the named Complainant in this matter, **has the sole burden of proof to establish by a preponderance of evidence** that Mr. Spencer violated the specified Rules of Professional Conduct. See prior version of the Rules of Lawyer Discipline and Disability Rule 14-510; Prosecution and Appeals (b)(5)(D) and (b)(5)(E)

¹ Rule 14-503(h)(i): Committee and OPC as screening panel secretary. OPC counsel shall be the secretary to the Committee and is charged with the responsibility of the administrative affairs of the Committee, the handling of the screening panel calendars, giving notice to screening panel members and members of the Bar whose attendance is requested, notifying those who have filed informal complaints of the times and dates their matters will be heard, and otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels. Except as otherwise provided in this article, whenever OPC counsel may be present before a screening panel during a hearing, the respondent may also be present.

which state as follows:

(b)(5)(D) . . . Such screening panel recommendations shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded by a preponderance of evidence that the respondent should be admonished . . .

(b)(5)(E) . . . Such screening panel recommendation shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded by a preponderance of evidence that the respondent should be admonished . . .

See also, In re Richard Worthen, 926 P.2d 853 (Utah 1996)(holding, in deciding between the various standards of proof, misconduct shall be established by a preponderance of evidence; the only exception is where the lawyer proposes a threat of irreparable harm to the public, in which the clear and convincing evidence standard is to be utilized).

Thus, it is Mr. Glover's sole obligation to "marshal the evidence"² against Mr. Spencer, and to prove to this Screening Panel by a preponderance of evidence, that Mr. Spencer violated the Rules of Professional Conduct. The burden is not on Mr. Spencer to prove he did not violate the Rules of Professional Conduct. If Mr. Glover fails to marshal the evidence and/or prove his allegations by a preponderance of evidence, this Screening Panel must dismiss the Complaint.³

The Rules of Lawyer Discipline and Disability Rule 14-501. Purpose, authority, scope and structure of lawyer disciplinary and disability proceedings in relevant part is as follows:

2 In order to properly discharge the duty of marshaling the evidence, the Complainant must present, in a comprehensive manner, all evidence which supports the conclusion sought. See e.g. AWD Sales & Service vs. Supranaturals, LLC, 2010 UT 202.

3 The newly adopted version of the Rule is even stronger and states that if "The preponderance of evidence presented does not establish that the respondent was engaged in unprofessional conduct, in which case, the informal complaint shall be dismissed."

(c) All disciplinary proceedings shall be conducted in accordance with this article and Article 6, Standards for imposing Lawyer Sanctions. Formal disciplinary proceedings are civil in nature. These rules shall be construed so as to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the court, and the legal profession all require that disciplinary proceedings at all levels be undertaken and constructed to secure the just and speedy resolution of every complaint.

Mr. Spencer's due process rights under the United States Constitution and the Utah Constitution, as described in Rule 14-501, would be violated if the Screening Panel did not require Mr. Glover to prove his alleged violations of the Rules of Professional Conduct by a preponderance of evidence. The Utah Supreme Court, in reviewing a decision by the Chair of the Ethics and Discipline Committee following a screening panel hearing considered the standard of "substantial justice and fairness." In Nemelka vs. Ethics and Discipline Committee of the Utah Supreme Court, 2009 UT 33, at paragraph 18, held in pertinent part:

Having clarified the procedure for calling a complainant at an exception hearing, we must determine whether Nemelka should be afforded an opportunity to follow it. Rule 14-501(c) states that the applicable Rules of Professional Practice "shall be construed so as to achieve substantial justice and fairness in disciplinary matters." Id. 14-501(c). In ensuring substantial justice and fairness, balance must be maintained; the seriousness of alleged violations of a lawyer's professional responsibility requires that a lawyer be afforded an opportunity to defend his or her good professional standing.

STATEMENT OF FACTS

1. Kayla Colleen Glover filed for divorce from Mr. Glover on October 10, 2013 under case number 134402482.
2. Because Mr. Glover was living and working overseas, he was served pursuant to an order of alternative service.

3. Mr. Spencer caused an answer and counterclaim to be filed on Mr. Glover's behalf on January 1, 2014.

4. On January 6, 2014, a Temporary Orders hearing was held before Commissioner Thomas Patton in the Provo, Utah Fourth District Court. The Court found that Mr. Glover's gross monthly income for the purposes of child support and alimony was \$23,964.00 per month. Based on this very large monthly income, the Court ordered Mr. Glover to pay to his spouse the sum of \$8,000.00 per month in total support.

5. At the request of Mr. Glover, Mr. Spencer filed an objection to the Commissioner's recommendation on January 15, 2014.

6. Notwithstanding the objection, the Court issued a temporary order in conformance with the Commissioner's recommendation on March 7, 2014.

7. In conformance with the recommendation of the Commissioner, Mr. Spencer informed Mr. Glover that he could have the support issue revisited once he obtained local employment and could produce documents related to his new "historical income." From March 2014 to March 2015, Mr. Glover provided no updated or new historical income.

8. From March 2014 to December 2014, Mr. Glover neither provided his current income information nor requested Mr. Spencer to otherwise attempt to modify his support obligation with new income information.

9. On December 29, 2014, Kayla Colleen Glover's legal counsel propounded discovery upon Mr. Glover. A copy was sent to Mr. Glover upon receipt.

10. On January 2, 2015, Mr. Spencer sent an email to Mr. Glover to make sure that Mr. Glover Glover had received the discovery. A copy of this email is attached hereto as Exhibit "A."

There was no email response from Mr. Glover.

11. On January 6, 2015, a third copy of the discovery was sent to Mr. Glover by email. A copy of this email is attached hereto as Exhibit "B." There was no email response from Mr. Glover.

12. On February 3, 2015, Kayla Glover's legal counsel served a deposition notice upon Mr. Spencer with a deposition date of February 17th. An email specifying the date and time of that deposition was emailed by Mr. Glover. A copy of this email is attached hereto as Exhibit "C." A response to this email was received from Mr. Glover on February 10, 2015. This email simply stated "Thank you Melissa. What do I need to have with me and/or be prepared to answer?" A copy of this responsive email and a second email sent by Mr. Spencer are attached hereto as Exhibit "D."

13. On February 13, 2015, Mr. Spencer sent two emails to Mr. Glover with a fourth set of the discovery propounded by counsel for Kayla Glover. A copy of these emails are attached hereto as Exhibit "E."

14. Mr. Glover's Deposition scheduled for February 2015, was cancelled due to Mr. Glover's failure to provide propounded discovery answers.

15. On March 3, 2015, a fifth copy of the discovery was sent to Mr. Glover by email. A copy of this email is attached hereto as Exhibit "F." There was no email response from Mr. Glover.

16. On March 4, 2015, a blank Financial Declaration was sent to Mr. Glover by Mr. Spencer so that Mr. Glover could prepare for his deposition. A copy of this email is attached hereto as Exhibit "G." There was no email response from Mr. Glover.

17. On March 4, 2015, an additional request for the receipt of discovery answers from Mr. Glover was sent to Mr. Glover by Mr. Spencer. A copy of this email is attached hereto as

Exhibit "H."

18. On March 4, 2015, Mr. Glover sent his last email to Mr. Spencer. This email stated: "No deposition tomorrow? How much trouble is this going to cause me." A copy of this email is attached hereto as Exhibit "I."

19. Each time Mr. Glover was sent an email, during the period December 29, 2014, to March 12, 2015, Mr. Glover also received a telephone call from a member of the staff of Mr. Spencer.

20. On March 4, 2015, Mr. Spencer responded to Mr. Glover's email of earlier that day telling Mr. Glover that the deposition had been cancelled (again) due to no discovery answers. A copy of this email is attached hereto as Exhibit "J."

21. Mr. Glover's Deposition scheduled for March 5, 2015, was cancelled due to Mr. Glover's failure to provide discovery answers.

22. On March 5, 2015, a document entitled "Second Amended Deposition Notice" (a third notice) was sent by Mr. Spencer to rescheduling the deposition to March 30, 2015. A copy of this email is attached hereto as Exhibit "K."

23. On March 12, 2015, a final request was sent to Mr. Glover requesting his answers to the December 2014 discovery. A copy of this email is attached hereto as Exhibit "L."

24. Each time an email was sent to Mr. Glover, a call was also placed to Mr. Glover by the staff of Mr. Spencer. On one occasion, Mr. Spencer's staff spoke to Mr. Glover who stated that "thinking about his divorce case was too painful." This was the reason Mr. Glover gave for his refusal to respond to the repeated requests for information by Mr. Spencer.

25. On March 18, 2015, a withdrawal was filed by Mr. Spencer after Mr. Spencer learned

that Mr. Glover had hired new legal counsel. This notice was received from the Green Filing system. No phone call was ever received before Mr. Glover hired new counsel. While a phone call is not required, it was expected, given the multiple attempts by Mr. Spencer to contact Mr. Glover from December 2014 to March 2015.

26. On April 29, 2015, the false and defamatory comment was placed on YELP by Mr. Glover. (See Complaint with its own Exhibit "A.")

27. On May 14, 2015, a request to remove the false and defamatory YELP comment was made by Mr. Spencer to Mr. Glover. A copy of this email is attached hereto as Exhibit "M."

28. On May 15, 2015, Mr. Glover refused to remove the false and defamatory comment and threatened to post additional comments. A copy of Mr. Glover's email is attached hereto as Exhibit "N."

29. The Defamation Complaint was then filed to address the statements made by Mr. Glover about Mr. Spencer.

30. Mr. Glover continues to post additional comments on websites related to the undersigned. A copy of the latest two posting are attached hereto as Exhibit "O."

ANALYSIS OF ALLEGED VIOLATION

There Is Not A Preponderance of Evidence To Establish That Mr. Spencer Violated Rule 1.6(a), As It Relates to Information Contained in the Complaint filed by Mr. Spencer Against Mr. Glover with the Third District Court:

31. Mr. Glover cannot establish by a preponderance of evidence that Mr. Spencer violated Rule 1.6(a) of the Utah Rules of Professional Conduct, as it relates to the filing of the Defamation Complaint against Mr. Glover in the Third District Court. Rule 1.6(a) states as follows:

A lawyer shall not reveal information relating to the representation of a client unless the client gives consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b)."

Paragraph (b)(5) of Rule 1.6 states as follows:

A lawyer may reveal information related to the representation of a client to the extent the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client . . . (emphasis added)

32. Comment 14 to Rule 1.6 of the Utah Rules of Professional Conduct provides the following clarification:

Where practical, the lawyer should first seek to persuade the client to take suitable action to obviate the need for the disclosure . . . if made in a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders . . . Should be sought . . .

33. Rule 504(d)(3) of the Utah Rules of Evidence, which according to the Advisory Committee Note, was intended to be consistent with the ethical obligations of confidentiality set forth in Rule 1.6 of the Utah Rules of Professional Conduct, provides the following language:

(d) Exceptions to the privilege. Privilege does not apply in the following circumstances: (d)(3) Breach of duty by lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to the client. (Emphasis added)

34. The Rule 504 Advisory Committee Further noted that:

*The Committee felt that exceptions to the privilege should be specifically enumerated, and further endorsed the concept that in the area of exceptions, the rule should simply state that **no privilege existed, rather than expressing the exception in terms of a "waiver" of the privilege.** The Committee wanted to avoid any possible clashes with the common law concepts of "waiver." (Emphasis added)*

35. Rule 510(a)(1) of the Utah Rules of Evidence provides as follows:

(a) Waiver of privilege. A person who holds a privilege under these rules waives the privilege if the person or a previous holder of the privilege: (a)(1) voluntarily discloses or consents to the disclosure of any significant part of the matter or communication. (Emphasis added)

36. The Rule 510(a) Advisory Committee Note further states:

. . . the privilege should end when the purpose is no longer served because the holder of the privilege has allowed disclosure or made disclosure. . . . although Rule 37 [of the Utah Rules of Civil Procedure] required a knowing waiver of the privilege, Rule 510(a) as drafted does not require such knowledge. . . . (Emphasis added)

37. The following attorney-client case law is also instructive:

a. Gold Standard vs. American Barrick Resource Corp., 805 P.2d 164 (Utah 1990): Whether or not attorney-client privilege has been waived is determined on a case by case basis, as set forth in Lois Sportswear, U.S.A., Inc. Vs. Levi Strauss & Co., 104 F.D.R. 103 (S.D.N.Y. 1985). Please note that this case decision predated the December 1, 2011, effective date for the current version of Rule 504 of the Utah Rules of Evidence as stated above herein.

b. Doe vs. Helfer, 1999 UT 74: Under Rule 504 of the Utah Rules of Evidence, there is no attorney-client privilege where the lawyer and client are themselves in a dispute regarding an issue of breach of duty. (Clearly, Mr. Glover and Mr. Spencer were and are in a dispute over a breach of duty in the litigation involving Mr. Glover, as this matter is now before the Court of Appeals.)

c. Spratley vs. State Farm, 2003 UT 39, Footnote 3: “. . . our interpretation of Rule 1.6 . . . is in harmony with Rule 504(d)(3) of the Utah Rules of Evidence, which *exempts from privilege "communications relevant to an issue of breach of duty . . . by the client to the lawyer."*

See Utah Rules of Evidence 504 advisory committee's note (Rule 504 "is intended to be consistent with the ethical obligations of confidentiality set forth in Rule 1.6 of the Utah Rules of Professional Conduct."). (Emphasis added) (Thus, under Spratley, any communication between Mr. Glover and Mr. Spencer, which is related to or relevant to the issue of the alleged breach of duty by Mr. Spencer, as claimed by Mr. Glover on the public website YELP, IS NOT PRIVILEGED in the first place, and is not subject to the attorney-client privilege requirements contained in Rule 1.6 of the Utah Rules of Professional Conduct.)

d. State vs. Johnson, 2008 UT App 5, ¶ 7 and 22: Where a client publishes a statement which is not published for the purpose of obtaining legal services from his attorney, that publication is not subject to attorney-client privilege. Therefore the *attorney-client privilege does not bar an attorney from testifying about the substance of the underlying client statement*. See ¶ 7. In other words, publication by a client waives attorney-privilege, and an attorney is permitted to testify concerning the substance of the statement. See ¶ 22. (Again, Mr. Glover is not entitled to claim attorney-client privilege after he waived the privilege with his publication of defamatory statements about Mr. Spencer.⁴)

e. Terry vs. Bacon, 2011 UT App 432 ¶¶ 14-17 and 25: Whether a party has waived attorney-client privilege is an issue of law and not an issue of fact. Rule 504 of the Utah Rules of Evidence specifies various circumstances where the attorney-client privilege is "*inapplicable*," and Utah Courts have recognized a waiver of that privilege. One circumstances in which the attorney-client privilege is "inapplicable" is where *the holder voluntarily discloses*

⁴ For the Screening Panel to find otherwise would also appear to be a violation of the open court provision of the Utah Constitution.

privileged information or materials. This is the circumstance where a *client has disclosed or published a communication relevant to the breach of duty by a lawyer to a client* or a communication relevant to breach of a duty by a client to a lawyer. See ¶ 14. Utah Court also recognize that a client waives attorney-client privilege where the client places attorney-client communications at the heart of a case. Further, where a client “places privileged matters at issue” that client has *implicitly consented to the disclosure of matters related to the client disclosure.* See ¶ 16. A party is not permitted to use attorney-client privilege as both a sword and a shield. A client is not permitted to disclose information that would otherwise be subject to the attorney-client privilege and then claim the privilege as a means to prohibit the lawyer from responding to the disclosure. “*To prevent such abuses, we recognize that when [a client] disclos[es] an attorney-client communication, [that client] waives the privilege as to all such communications regarding the same subject matter.*” See ¶ 17. “*We conclude that the Terrys waived their attorney-client privilege when they directly placed the communications they had with their attorney at the heart of this dispute.*” See ¶ 25. The findings in the Terry case are consistent with previous Utah Supreme Court decisions going back as far as 1909. See State vs. Hoben, 36 Utah 186 (Utah 1909), and Anderson vs. Thomas, 108 Utah 252 (Utah 1945). Both of these cases equated the publication of attorney-client privileged communications by a client with a waiver of the privilege. (Again, Mr. Glover is not entitled to claim attorney-client privilege once he discloses attorney-client privileged information.)

f. State vs. Patterson, 2013 UT App 11, ¶ 15: Pursuant to Rule 510 of the Utah Rules of Evidence, it is not necessary to show that a client intended to waive attorney-client privilege by disclosing privileged information, rather it only need be shown that the client intended to make

the disclosure. The knowing disclosure of communications between a lawyer and client by that client acts as an independent waiver of whatever right of confidentiality the party may have been able to assert.

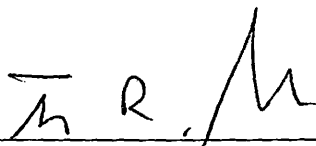
38. Thus, from the discussion above, it should be clear to this Screening Panel that Mr. Glover's publication of false and defamatory statements about Mr. Spencer caused a waiver or termination of attorney-client privilege held by Mr. Glover to the extent deemed necessary by Mr. Spencer to establish a claim of defamation against Mr. Glover in the Third District Court matter.

CONCLUSION

Mr. Spencer respectfully requests that the Screening Panel review this Brief, as well as his Statement of Facts and associated exhibits on file herein, together with his testimony at the Panel Hearing, and dismiss all allegations of alleged violations of the Rules of Professional Conduct.

Mr. Spencer thanks the members of the Panel for their time and efforts in reviewing this Brief and the entire record in this matter.

Dated this 30 day of March, 2016.



Terry R. Spencer
Respondent Pro Se

CERTIFICATE OF SERVICE

On March 30, 2016, I caused a copy of the foregoing Respondent's Screening Panel Brief to be hand delivered to:

Office of Professional Conduct
645 South 200 East, Suite 205
Salt lake City, Utah 84111-3834

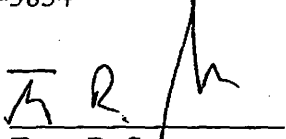

Terry R. Spencer

EXHIBIT "A"

[Print](#)[Close](#)

Discovery Requests

From: **Terry Spencer** (trspencer@live.com)
Sent: Fri 1/02/15 1:46 PM
To: **steve glover** (stephenmglover@gmail.com)

Dear Steve:

On December 29, 2014, opposing counsel served my office with Interrogatories, Requests for Production of Documents and Requests for Admissions. The answers are due by January 28th. First I wanted to make sure you received your copy. Second, if the Requests for Admissions are not timely answered, the requests are deemed admitted as true. Please provide your answers to these requests to my office by January 10th.

Terry R. Spencer

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "B"

[Print](#)[Close](#)

Interrogatories

From: **Terry Spencer** (trspencer@live.com)

Sent: Tue 1/06/15 10:43 AM

To: **steve glover** (stephenmglover@gmail.com)

1 attachment

glover, stephen - interrogatories.pdf (161.7 KB)

Please see attached.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Kasey L. Wright, Bar No. 9169
Cherylyn M. Egner, Bar No. 15129
HANSEN WRIGHT EDDY & HAWS, P.C.
233 South Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
Facsimile: (801) 796-0984
Email: kwright@centralutahlaw.com
Attorneys for Petitioner

**DISTRICT COURT OF THE STATE OF UTAH
FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY**

KAYLA GLOVER
Petitioner,

v.

STEPHEN MICHAEL GLOVER
Respondent.

**PETITIONER'S INTERROGATORIES,
REQUEST FOR PRODUCTION OF
DOCUMENTS, AND REQUEST FOR
ADMISSIONS TO RESPONDENT**

Case No 134402482
Judge Steven L. Hansen
Commissioner Thomas Patton

Petitioner, Kayla Glover, through her counsel of record, Kasey L. Wright of Hansen Wright Eddy & Haws, P.C., hereby submits the following Interrogatories, Request for Production of Documents, and Request for Admissions to Respondent. Pursuant to Rules 33, 34 and 36 of the Utah Rules of Civil Procedure, the following Interrogatories, Request for Production of Documents, and Request for Admissions are to be answered separately, fully in writing, and under oath within 28 days after service of the same upon Respondent.

INTERROGATORIES

INTERROGATORY NO. 1: List all gross income you or any business in which you have an interest, have received from every source for the calendar years of 2009 to present.

INTERROGATORY NO. 2: Please state in detail all degrees, certificates of training, and government clearances that you have or have had since October 1, 2009.

INTERROGATORY NO. 3: Please state in detail your basis for claiming that Petitioner is capable of earning over \$100,000 a year.

INTERROGATORY NO. 4: Have you disposed of any asset within one year of the time the divorce action was filed? If so, describe the asset sold, the sale price, and the date when sold?

INTERROGATORY NO. 5: Please identify in detail each job, contract, work contract, and any other employment opportunity that you have applied for since January 1, 2011.

INTERROGATORY NO. 6: Please identify in detail the compensation, including benefits, associated with each employment opportunity referenced in your response to Interrogatory No. 5.

INTERROGATORY NO. 7: Please identify in detail any job, contract, work contract, or other employment opportunity that you were made aware of and were qualified for, but have declined to pursue since October 1, 2013.

INTERROGATORY NO. 8: Please identify in detail the compensation, including benefits, associated with each employment opportunity references in your response to Interrogatory No. 7.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce a copy of all documents and exhibits that you will use or may use at the trial of this matter.

REQUEST NO. 2: Please produce a copy of all documents you relied on in responding to Respondent's Interrogatories and Request for Admissions.

REQUEST NO. 3: Please produce an updated Financial Declaration including attachments as required by Rule 26(c) of the Utah Rules of Civil Procedure.

REQUEST NO. 4: Please produce a copy of your most updated resume.

REQUEST NO. 5: Please produce a copy of all requests for proposal, applications, applications for employment, or any other request to provide employment or services that you have completed and/or submitted since January 1, 2011.

REQUEST NO. 6: Please produce any and all documentation showing that you have attended a parent-teacher conference, doctor appointment, dentist appointment, or any other activity with any of your minor children since January 1, 2009.

REQUEST NO. 7: Please produce any and all documentation in your possession supporting your claim that Petitioner is capable of earning over \$100,000 a year.

REQUESTS FOR ADMISSION

Pursuant to Rule 36, you are required to answer under oath and in writing, each of the following Requests for Admission. Pursuant to Rule 36(a), the matters in each request shall be deemed admitted unless a response to each request is served upon Petitioner's counsel, Hansen Wright Eddy & Haws, P.C., within 30 days after service of these requests. If any of your responses to the following requests for admission are anything less than an unqualified admission, please state in detail your reason for the denial.

REQUEST NO. 1: Admit that for the majority of the marriage you have been the primary breadwinner for the family.

DATED December 29, 2014.

HANSEN WRIGHT EDDY & HAWS, P.C.

/s/ Kasey L. Wright

KASEY L. WRIGHT
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2014 I emailed a true and correct copy of the foregoing **Petitioner's Interrogatories, Request for Production of Documents, and Request for Admissions to Respondent** to the following:

Terry R Spencer PhD PC
TR SPENCER & ASSOCIATES
140 West 9000 South, Suite 9
Sandy, Utah 84070
tspencer@live.com
Attorney for Respondent

/s/ Debra Domenici

EXHIBIT "C"

[Print](#)[Close](#)

Deposition

From: **Terry Spencer** (trspencer@live.com)
Sent: Tue 2/03/15 11:32 AM
To: steve glover (stephenmglover@gmail.com)

Steve,

The deposition

(The testimony of a party or witness in a civil or criminal proceeding taken before trial, usually in an attorney's office, will take place on February 17, 2015 at 3:30 p.m. at the office of Casey Wright located at 233 S. Pleasant Grove Blvd., Pleasant Grove Utah. Terry will be there with you.

Melisa
Secretary for Terry

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

◀ [REDACTED] ▶

EXHIBIT "D"

[Print](#)[Close](#)

Re: Notice of Deposition

From: **Steve Glover** (stephenmglover@gmail.com)

Sent: Tue 2/10/15 9:38 AM

To: Terry Spencer (trspencer@live.com)

Thank you, Melisa. What do I need to have with me and/or be prepared to answer?

Thank you,

Steve Glover

stephenmglover@gmail.com

View my profile on [LinkedIn](#)

Mobile: +1-801-787-0129

Skype: "steveglover" or +1-801-788-4380

Google Voice: +1-925-456-4356

On Tue, Feb 10, 2015 at 10:37 AM, Terry Spencer <trspencer@live.com> wrote:

Stephen,

Notice the Date is now the 16th at 9:00 am, instead of the 17th.

Melisa


Secretary for Terry

Please see attached.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

[Print](#)[Close](#)

Notice of Deposition

From: **Terry Spencer** (trspencer@live.com)
Sent: Tue 2/10/15 9:37 AM
To: steve glover (stephenmglover@gmail.com)
 1 attachment
glover, stephen - nod.pdf (54.2 KB)

Stephen,

Notice the Date is now the 16th at 9:00 am, instead of the 17th.

Melisa
Secretary for Terry

Please see attached.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "E"

[Print](#)[Close](#)

FW: Interrogatories

From: **Terry Spencer** (trspencer@live.com)
Sent: Fri 2/13/15 8:27 AM
To: steve glover (stephenmglover@gmail.com)
1 attachment
glover, stephen - interrogatories.pdf (161.7 KB)

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

From: trspencer@live.com
To: stephenmglover@gmail.com
Subject: Interrogatories
Date: Tue, 6 Jan 2015 10:43:20 -0800

Please see attached.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

[Print](#)[Close](#)

New date for deposition

From: **Terry Spencer** (trspencer@live.com)
Sent: Fri 2/13/15 8:31 AM
To: steve glover (stephenmglover@gmail.com)
1 attachment
glover, stephen - anod.pdf (54.8 KB)

Please see attached.

The information contained in this e-mail is legally privileged and **CONFIDENTIAL** and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Kasey L. Wright, Bar No. 9169
HANSEN WRIGHT EDDY & HAWS, P.C.
233 South Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
Facsimile: (801) 796-0984
Email: kwright@centralutahlaw.com
Attorneys for Petitioner

**DISTRICT COURT OF THE STATE OF UTAH
FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY**

KAYLA GLOVER
Petitioner,

v.

STEPHEN MICHAEL GLOVER
Respondent.

AMENDED NOTICE OF DEPOSITION

Case No 134402482
Judge Steven L. Hansen
Commissioner Thomas Patton

PLEASE TAKE NOTICE that on **Thursday, March 5, 2015** counsel for Petitioner,
pursuant to Rule 30 of the Utah Rules of Civil Procedure, will take the deposition of
Respondent, **Stephen Michael Glover** at **9:00 a.m.** The deposition will take place at the office
of Hansen Wright Eddy & Haws, P.C., 233 South Pleasant Grove Blvd., Suite 202, Pleasant
Grove, Utah.

//

//

The depositions will be taken upon oral examination before a certified court reporter or other person authorized by law to take depositions and may be continued from time to time until completed. The content of the depositions will relate to the current dispute between the parties.

DATED February 13, 2015.

HANSEN WRIGHT EDDY & HAWS, P.C.

/s/ Kasey L. Wright

KASEY L. WRIGHT
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015 I electronically filed through JudicialLink a true and correct copy of the foregoing Subpoena on the following:

Terry R Spencer PhD PC
TR SPENCER & ASSOCIATES
140 West 9000 South, Suite 9
Sandy, Utah 84070
tspencer@live.com
Attorney for Respondent

/s/ Debra Domenici

EXHIBIT "F"

[Print](#)[Close](#)

Initial Disclosures

From: **Terry Spencer** (trspencer@live.com)
Sent: Tue 3/03/15 2:47 PM
To: steve glover (stephenmglover@gmail.com)
1 attachment
glover, steven - pirfpodarfatr.pdf (217.8 KB)

Steve,

Please find attached the Petitioners initial disclosures. I need you to answer all the interrogatories and get the documents asked for. These are due to opposing counsel tomorrow March 4. If you have any questions please call the office at 801-566-1884. Your deposition is on Thursday.

Melisa
Secretary for Terry Spencer

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Kasey L. Wright, Bar No. 9169
Cherylyn M. Egner, Bar No. 15129
HANSEN WRIGHT EDDY & HAWS, P.C.
233 South Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
Facsimile: (801) 796-0984
Email: kwright@centralutahlaw.com
Attorneys for Petitioner

**DISTRICT COURT OF THE STATE OF UTAH
FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY**

KAYLA GLOVER
Petitioner,

v.

STEPHEN MICHAEL GLOVER
Respondent.

**PETITIONER'S INTERROGATORIES,
REQUEST FOR PRODUCTION OF
DOCUMENTS, AND REQUEST FOR
ADMISSIONS TO RESPONDENT**

Case No 134402482
Judge Steven L. Hansen
Commissioner Thomas Patton

Petitioner, Kayla Glover, through her counsel of record, Kasey L. Wright of Hansen Wright Eddy & Haws, P.C., hereby submits the following Interrogatories, Request for Production of Documents, and Request for Admissions to Respondent. Pursuant to Rules 33, 34 and 36 of the Utah Rules of Civil Procedure, the following Interrogatories, Request for Production of Documents, and Request for Admissions are to be answered separately, fully in writing, and under oath within 28 days after service of the same upon Respondent.

INTERROGATORIES

INTERROGATORY NO. 1: List all gross income you or any business in which you have an interest, have received from every source for the calendar years of 2009 to present.

INTERROGATORY NO. 2: Please state in detail all degrees, certificates of training, and government clearances that you have or have had since October 1, 2009.

INTERROGATORY NO. 3: Please state in detail your basis for claiming that Petitioner is capable of earning over \$100,000 a year.

INTERROGATORY NO. 4: Have you disposed of any asset within one year of the time the divorce action was filed? If so, describe the asset sold, the sale price, and the date when sold?

INTERROGATORY NO. 5: Please identify in detail each job, contract, work contract, and any other employment opportunity that you have applied for since January 1, 2011.

INTERROGATORY NO. 6: Please identify in detail the compensation, including benefits, associated with each employment opportunity referenced in your response to Interrogatory No. 5.

INTERROGATORY NO. 7: Please identify in detail any job, contract, work contract, or other employment opportunity that you were made aware of and were qualified for, but have declined to pursue since October 1, 2013.

INTERROGATORY NO. 8: Please identify in detail the compensation, including benefits, associated with each employment opportunity references in your response to Interrogatory No. 7.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce a copy of all documents and exhibits that you will use or may use at the trial of this matter.

REQUEST NO. 2: Please produce a copy of all documents you relied on in responding to Respondent's Interrogatories and Request for Admissions.

REQUEST NO. 3: Please produce an updated Financial Declaration including attachments as required by Rule 26(c) of the Utah Rules of Civil Procedure.

REQUEST NO. 4: Please produce a copy of your most updated resume.

REQUEST NO. 5: Please produce a copy of all requests for proposal, applications, applications for employment, or any other request to provide employment or services that you have completed and/or submitted since January 1, 2011.

REQUEST NO. 6: Please produce any and all documentation showing that you have attended a parent-teacher conference, doctor appointment, dentist appointment, or any other activity with any of your minor children since January 1, 2009.

REQUEST NO. 7: Please produce any and all documentation in your possession supporting your claim that Petitioner is capable of earning over \$100,000 a year.

REQUESTS FOR ADMISSION

Pursuant to Rule 36, you are required to answer under oath and in writing, each of the following Requests for Admission. Pursuant to Rule 36(a), the matters in each request shall be deemed admitted unless a response to each request is served upon Petitioner's counsel, Hansen Wright Eddy & Haws, P.C., within 30 days after service of these requests. If any of your responses to the following requests for admission are anything less than an unqualified admission, please state in detail your reason for the denial.

REQUEST NO. 1: Admit that for the majority of the marriage you have been the primary breadwinner for the family.

DATED December 29, 2014.

HANSEN WRIGHT EDDY & HAWS, P.C.

/s/ Kasey L. Wright

KASEY L. WRIGHT
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2014 I emailed a true and correct copy of the foregoing Petitioner's Interrogatories, Request for Production of Documents, and Request for Admissions to Respondent to the following:

Terry R. Spencer PhD PC
TR SPENCER & ASSOCIATES
140 West 9000 South, Suite 9
Sandy, Utah 84070
tspencer@live.com
Attorney for Respondent

/s/ Debra Domenici

Kasey L. Wright, Bar No. 9169
HANSEN WRIGHT EDDY & HAWS, P.C.
233 South Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
Facsimile: (801) 796-0984
Email: kwright@centralutahlaw.com
Attorneys for Petitioner

**DISTRICT COURT OF THE STATE OF UTAH
FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY**

KAYLA GLOVER Petitioner, v. STEPHEN MICHAEL GLOVER Respondent.	AMENDED NOTICE OF DEPOSITION Case No 134402482 Judge Steven L Hansen Commissioner Thomas Patton
--	---

PLEASE TAKE NOTICE that on **Thursday, March 5, 2015** counsel for Petitioner, pursuant to Rule 30 of the Utah Rules of Civil Procedure, will take the deposition of Respondent, **Stephen Michael Glover** at **9:00 a.m.** The deposition will take place at the office of Hansen Wright Eddy & Haws, P.C., 233 South Pleasant Grove Blvd., Suite 202, Pleasant Grove, Utah.

//

//

The depositions will be taken upon oral examination before a certified court reporter or other person authorized by law to take depositions and may be continued from time to time until completed. The content of the depositions will relate to the current dispute between the parties.

DATED February 13, 2015.

HANSEN WRIGHT EDDY & HAWS, P.C.

/s/ Kasey L. Wright

KASEY L. WRIGHT
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015 I electronically filed through JudicialLink a true and correct copy of the foregoing Subpoena on the following:

Terry R Spencer PhD PC
TR SPENCER & ASSOCIATES
140 West 9000 South, Suite 9
Sandy, Utah 84070
tspencer@live.com
Attorney for Respondent

/s/ Debra Domenici

EXHIBIT "G"

[Print](#)[Close](#)

FINANCIAL DECLARATION

From: **Terry Spencer** (trspencer@live.com)

Sent: Wed 3/04/15 10:27 AM

To: **steve glover** (stephenmglover@gmail.com)

2 attachments

financial declaration.pdf (422.9 KB) , 01_Financial_Declaration.wpd (162.2 KB)

Steve,

Please fill out the attached form and get it back to me as soon as you can. We will need the documents to support it as well. Any documents you have that will be used in court I will also need.

Melisa

Secretary for Terry

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "H"

[Print](#)[Close](#)

RE: Initial Disclosures

From: **Terry Spencer** (trspencer@live.com)
Sent: Wed 3/04/15 12:20 PM
To: **steve glover** (stephenmglover@gmail.com)

Steve,

I need all supporting documents for your answers to the interrogatories and the request for documentation no later than March 11, so I can get them to Opposing Counsel. Your deposition has been rescheduled for March 30th at 9 am, due to them not having these documents.

Melisa
Secretary for Terry

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Date: Wed, 4 Mar 2015 09:49:13 -0700
Subject: Re: Initial Disclosures
From: stephenmglover@gmail.com
To: trspencer@live.com

11. Insert HealthEquity 2014 income here. Still trying to obtain the remainder of this detail as Home of Record to which my records were sent was always the home I provided for your client.

12.

- a. CCNA certification maintained and current.
- b. CCNP Voice certification maintained and current.
- c. Two week CCIE Routing and Switching "Boot-Camp" completed in London, UK, September, 2012.
- d. Secret clearance from Defense Industry Security Clearance Office.

5/15/2015

Outlook.com Print Message

I3. Her resumé/CV/experience matched with the appropriate job category in BLS data.

I4. No.

I5. Everything I've applied for I've obtained and is, therefore, represented in my resumé.

I6. A few offer letters are attached. I'll do my best to locate the others.

I7.

I8.

On Tue, Mar 3, 2015 at 3:47 PM, Terry Spencer <trspencer@live.com> wrote:

Steve,

Please find attached the Petitioners initial disclosures. I need you to answer all the interrogatories and get the documents asked for. These are due to opposing counsel tomorrow March 4. If you have any questions please call the office at 801-566-1884. Your deposition is on Thursday.

Melisa

Secretary for Terry Spencer

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "I"

[Print](#)[Close](#)

Re: Initial Disclosures

From: **Steve Glover** (stephenmglover@gmail.com)

Sent: Wed 3/04/15 12:34 PM

To: Terry Spencer (trspencer@live.com)

No deposition tomorrow? How much trouble is this going to cause me?

On Wednesday, March 4, 2015, Terry Spencer <trspencer@live.com> wrote:

Steve,

I need all supporting documents for your answers to the interrogatories and the request for documentation no later than March 11, so I can get them to Opposing Counsel. Your deposition has been rescheduled for March 30th at 9 am, due to them not having these documents.

Melisa

Secretary for Terry

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Date: Wed, 4 Mar 2015 09:49:13 -0700

Subject: Re: Initial Disclosures

From: stephenmglover@gmail.com

To: trspencer@live.com

11. Insert HealthEquity 2014 income here. Still trying to obtain the remainder of this detail as Home of Record to which my records were sent was always the home I provided for your client.

12.

- a. CCNA certification maintained and current.
- b. CCNP Voice certification maintained and current.
- c. Two week CCIE Routing and Switching "Boot-Camp" completed in London,

UK, September, 2012.

d. Secret clearance from Defense Industry Security Clearance Office.

13. Her resumé/CV/experience matched with the appropriate job category in BLS data.

14. No.

15. Everything I've applied for I've obtained and is, therefore, represented in my resumé.

16. A few offer letters are attached. I'll do my best to locate the others.

17.

18.

On Tue, Mar 3, 2015 at 3:47 PM, Terry Spencer <trspencer@live.com> wrote:

Steve,

Please find attached the Petitioners initial disclosures. I need you to answer all the interrogatories and get the documents asked for. These are due to opposing counsel tomorrow March 4. If you have any questions please call the office at 801-566-1884. Your deposition is on Thursday.

Melisa

Secretary for Terry Spencer

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

--


Thank you,

5/15/2015

Outlook.com Print Message

Steve Glover

stephenmglover@gmail.com

View my profile on [LinkedIn](#) 

Mobile: +1-801-787-0129

Skype: "steveglover" or +1-801-788-4380

Google Voice: +1-925-456-4356

EXHIBIT "J"

[Print](#)[Close](#)

RE: Initial Disclosures

From: **Terry Spencer** (trspencer@live.com)
Sent: Wed 3/04/15 12:37 PM
To: steve glover (stephenmglover@gmail.com)

No deposition tomorrow.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Date: Wed, 4 Mar 2015 13:34:42 -0700
Subject: Re: Initial Disclosures
From: stephenmglover@gmail.com
To: trspencer@live.com

No deposition tomorrow? How much trouble is this going to cause me?

On Wednesday, March 4, 2015, Terry Spencer <trspencer@live.com> wrote:

Steve,

I need all supporting documents for your answers to the interrogatories and the request for documentation no later than March 11, so I can get them to Opposing Counsel. Your deposition has been rescheduled for March 30th at 9 am, due to them not having these documents.

Melisa
Secretary for Terry

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Date: Wed, 4 Mar 2015 09:49:13 -0700
Subject: Re: Initial Disclosures
From: stephenmglover@gmail.com
To: trspencer@live.com

11. Insert HealthEquity 2014 income here. Still trying to obtain the remainder of this detail as Home of Record to which my records were sent was always the home I provided for your client.

12.

- a. CCNA certification maintained and current.
- b. CCNP Voice certification maintained and current.
- c. Two week CCIE Routing and Switching "Boot-Camp" completed in London, UK, September, 2012.
- d. Secret clearance from Defense Industry Security Clearance Office.

13. Her resumé/CV/experience matched with the appropriate job category in BLS data.

14. No.

15. Everything I've applied for I've obtained and is, therefore, represented in my resumé.

16. A few offer letters are attached. I'll do my best to locate the others.

17.

18.

On Tue, Mar 3, 2015 at 3:47 PM, Terry Spencer <trspencer@live.com> wrote:

Steve,

Please find attached the Petitioners initial disclosures. I need you to answer all the interrogatories and get the documents asked for. These are due to opposing counsel tomorrow March 4. If you have any questions please call the office at 801-566-1884. Your deposition is on Thursday.

Melisa

Secretary for Terry Spencer

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

--

Thank you,
Steve Glover
stephenmglover@gmail.com

View my profile on [LinkedIn](#)

Mobile: +1-801-787-0129
Skype: "steveglover" or +1-801-788-4380
Google Voice: +1-925-456-4356

EXHIBIT "K"

[Print](#)[Close](#)

SANOD

From: **Terry Spencer** (trspencer@live.com)
Sent: Thu 3/05/15 9:07 AM
To: steve glover (stephenmglover@gmail.com)
1 attachment
glover, steve - sanod.pdf (57.5 KB)

Please see attached.

The information contained in this e-mail is legally privileged and **CONFIDENTIAL** and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

Kasey L. Wright, Bar No. 9169
HANSEN WRIGHT EDDY & HAWS, P.C.
233 South Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
Facsimile: (801) 796-0984
Email: kwright@centralutablaw.com
Attorneys for Petitioner

**DISTRICT COURT OF THE STATE OF UTAH
FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY**

KAYLA GLOVER
Petitioner,

v.

STEPHEN MICHAEL GLOVER
Respondent.

**SECOND AMENDED NOTICE OF
DEPOSITION**

Case No 134402482
Judge Steven L Hansen
Commissioner Thomas Patton

PLEASE TAKE NOTICE that on Monday, March 30, 2015 counsel for Petitioner,
pursuant to Rule 30 of the Utah Rules of Civil Procedure, will take the deposition of
Respondent, Stephen Michael Glover at 9:00 a.m. The deposition will take place at the office
of Hansen Wright Eddy & Haws, P.C., 233 South Pleasant Grove Blvd., Suite 202, Pleasant
Grove, Utah.

//

//

The depositions will be taken upon oral examination before a certified court reporter or other person authorized by law to take depositions and may be continued from time to time until completed. The content of the depositions will relate to the current dispute between the parties.

DATED March 4, 2015.

HANSEN WRIGHT EDDY & HAWS, P.C.

/s/ Kasey L. Wright

KASEY L. WRIGHT
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2015 I electronically filed through JudicialLink a true and correct copy of the foregoing **Subpoena** on the following:

Terry R Spencer PhD PC
TR SPENCER & ASSOCIATES
140 West 9000 South, Suite 9
Sandy, Utah 84070
tspencer@live.com
Attorney for Respondent

/s/ Debra Domenici

EXHIBIT "L"

[Print](#)

[Close](#)

RE: Response to Interrogatories and Admissions

From: **Terry Spencer** (trspencer@live.com)
Sent: Thu 3/12/15 10:45 AM
To: **steve glover** (stephenmglover@gmail.com)

Steve,

Please call the office, today, at your earliest convenience; your documentation for the above-referenced matter is due.

Kind regards,

Ryan M.
Clerk to Terry R. Spencer, Esq.
Main Office: (801) 566-1884

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "M"

[Print](#)[Close](#)

Notice of Intent to Sue

From: **Terry Spencer** (trspencer@live.com)
Sent: Thu 5/14/15 3:05 PM
To: steve glover (stephenmglover@gmail.com)

Dear Mr. Glover:

This email will put you on notice of my intent to sue you for the **false** and **defamatory** comments you have placed on the YELP website. You refused to cooperate with my office and dozens of calls from myself and my staff to you went unanswered from December 2014 forward. If those comments are not removed by May 15th at 5:00 p.m. a civil law suit will be filed against you and damages will be sought. This will be your only warning.

Terry R. Spencer
TR Spencer & Associates, P.C.

The information contained in this e-mail is legally privileged and **CONFIDENTIAL** and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

EXHIBIT "N"

[Print](#)[Close](#)

Re: Notice of Intent to Sue

From: **Steve Glover** (stephenmglover@gmail.com)

Sent: Fri 5/15/15 8:08 AM

To: Terry Spencer (trspencer@live.com)

Terry,

First of all, that assertion that you called me, your alleged timeline, and the word "dozens" are all bold faced lies.

Second, any hesitation on my part stemmed from the fact that you had represented me so poorly in the previous full year that I felt I had no choice but to wait until my bonus in order to fire you and retain someone else who cared at all to attempt to represent and defend me well.

Third, it's clear that the only reviews of your "services" (to use the term loosely) are positive because you bullied others into retracting theirs.

Fourth, the petitioner gets in excess of \$40,000 of my income per year and the arrears is still building up at ~\$4,600 per month.

The central issue is that, for well over a year, you completely failed to properly advise me in my divorce proceeding and and "fix" (for lack of a better word) my alimony and child support--and bring it in line with my now well-established, income history working for an enterprise company on U.S. soil. Because of your failures in the aforementioned, I now have an arrears with ORS of over \$100,000. It was your responsibility as my attorney to defend me in the proceeding, submit filings and motions and schedule hearings and/or do whatever it is you people are supposed to do in order to properly represent your clients. If you're admitting that you failed to properly represent me because I failed to return a few phone calls, then this shouldn't be a problem for me. Nothing about what I've written is either false or defamatory. If you have the facts on your side, you pound the facts. If you have the law on your side, you pound the law. If you have nothing on your side, you pound the table.

I'm an honest man, make an honest living, and expect people I hire to provide something closely approximating what I paid for.

Can you think of another, more constructive way of resolving this with me. If not, I'll sell my crappy 2004 4runner... it will sell in no time because people like crappy 2004 4runners... retain someone to defend me, file a counter-suit, proceed with my complaints to the Utah Bar about you and your horrible legal services, and find as many websites to warn legal "services" consumers as possible. I'll miss my 4 runner, but I'd miss my strong, well developed spine more.

5/15/2015

Outlook.com Print Message

~SG

+1-801-787-0129

On Thu, May 14, 2015 at 4:05 PM, Terry Spencer <tjspencer@live.com> wrote:

Dear Mr. Glover:

This email will put you on notice of my intent to sue you for the **false** and **defamatory** comments you have placed on the YELP website. You refused to cooperate with my office and dozens of calls from myself and my staff to you went unanswered from December 2014 forward. If those comments are not removed by May 15th at 5:00 p.m. a civil law suit will be filed against you and damages will be sought. This will be your only warning.

Terry R. Spencer
TR Spencer & Associates, P.C.

The information contained in this e-mail is legally privileged and CONFIDENTIAL and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify us by telephone and delete this message from any and all locations.

