

BEFORE THE GWINNETT COUNTY ETHICS BOARD

STATE OF GEORGIA

D. A. KING,
Petitioner,
vs

*

*

CASE NO. _____

MARLENE FOSQUE,
Respondent.

*

ANSWER TO COMPLAINT

Comes now the Respondent, MARLENE FOSQUE, by and through counsel and answers the Complaint in the above-styled matter as follows:

FIRST DEFENSE

Petitioner's Complaint fails to state a claim under the applicable Gwinnett County Ordinance.

SECOND DEFENSE

Petitioner's Complaint fails to state a claim for "defamation" or any defamatory comments by Respondent under Georgia law, as Petitioner is a limited purpose public figure having imposed himself over many years into the public domain and public controversies as to immigration issues, specifically issues as to the treatment of undocumented immigrants. Petitioner would therefore have to prove by clear and convincing evidence actual malice by Respondent and prove that Respondent made defamatory statements with actual knowledge of their falsity and with reckless disregard for the truth. To sustain Petitioner's Complaint, the evidence would have to show that Respondent in fact had serious doubts as to the truth of her statements. Petitioner is unable to prove any actual malice on the part of Respondent. (See Rosser v. Clyatt, 348 Ga. App. 40, Atlanta Journal et al v.

Jewell, 251 Ga. App. 808, Ladner v. New World Communications of Atlanta, Inc., 343 Ga. App. 449.)

THIRD DEFENSE

Petitioner's Complaint does not state a claim for which relief can be granted under the subject Gwinnett County ordinance as none of the allegations set out in the Complaint constitute a violation of the ordinance nor of O.C.G.A. section 51-5-4 as to defamation.

FOURTH DEFENSE

Petitioner's Complaint does not state a claim for which relief can be granted as it does not state a claim for any violation of the subject Gwinnett County ordinance. Further, the referenced statements by Respondent are privileged communications under O.C.G.A. 51-5-7 in that the statements were made in good faith as part of an act in furtherance of Respondent's right of free speech under the United States Constitution and the Constitution of the State of Georgia in connection with an issue of public interest or concern as defined in subsection (c) of O.C.G.A. section 9-11-11.1. Respondent's comments were comments upon the acts of a public man, Petitioner DONALD ARTHUR KING, who has consistently sought public attention for himself as to the subject issues, in Petitioner's own public capacity. Respondent's subject comments therefore are privileged under O.C.G.A. section 51-5-7, including but not limited to subsections 1, 2, 3, 4, and 9, and are not defamatory.

Respondent's remarks are protected as free speech under O.C.G.A. 9-11-11.1(c)(4), as regards the issue of treatment of undocumented immigrants and the 287(g) program as utilized by the Gwinnett County Sheriff, both issues as to which Petitioner has made himself a public figure and repeatedly forced himself into public discussion and debate.

FIFTH DEFENSE

Under Georgia law, “the expression of opinion on matters about which reasonable people might differ is not libelous.” (See Davis v. Sherwin-Williams Co., 242 Ga. App. 907.) Respondent’s statements of opinion and her reference to statements of the Southern Poverty Law Center as to Petitioner DONALD ARTHUR KING, are opinions based upon Petitioner’s own public comments and acts. The statements were not defamatory or even provably false nor do they constitute an “assault” verbal or otherwise, and are not a violation of the subject ordinance nor of Georgia law. Rather, Petitioner’s allegations constitute a disagreement over the opinions of the parties and of others as to a very public controversy based on Petitioner’s own words, acts, and associations, and are not actionable under the Gwinnett County ordinance.

Mr. King’s own personal feelings of annoyance or personal offense taken by him are not actionable under the Gwinnett County ordinance.

SIXTH DEFENSE

None of the Respondent’s actions have “misled the public” nor “incited division and hatred in this community” as alleged by Petitioner. In fact, **Petitioner DONALD ARTHUR KING is not a member nor resident of the Gwinnett County community** and has himself by his own actions in this matter intentionally inserted himself into the public affairs of this community of which he is not a resident, and therefore his allegations of incitement are unfounded on their face.

Notwithstanding the foregoing, the Respondent does answer the particular paragraphs of Petitioner’s Complaint as follows:

1.

Respondent admits paragraphs “1.”, “2.”, and “3.” of Petitioner’s Complaint.

2.

Respondent admits paragraph "4." of Petitioner's Complaint as to the accuracy of those limited portions referenced, and answers further that the ordinance must be construed in its entirety and speaks for itself.

3.

Respondent admits paragraph "5." of Petitioner's Complaint to the limited extent that Petitioner DONALD ARTHUR KING was invited by the Sheriff of Gwinnett County to speak during a July 31, 2019 panel discussion regarding the 287(g) program and answers further that she is without any information that suggests Petitioner "is an expert" regarding the 287(g) program or any other matter, and therefore does deny same.

4.

Respondent admits paragraph "6." of Petitioner's Complaint to the extent that Petitioner participated in the discussion at the invitation and behest of Gwinnett County Sheriff Butch Conway and stated Petitioner's own beliefs as to the 287(g) program and does deny the remainder thereof.

5.

As to paragraph "7." of Petitioner's Complaint, Respondent admits that she organized a community panel discussion on the 287(g) program, but did not herself invite nor encourage the Petitioner to attend. Respondent denies that she "chose to verbally attack and repeatedly denigrate (Petitioner) from her seat on the Board," and answers further that she instead referenced in a public statement comments and references to DONALD ARTHUR KING by the Southern Poverty Law Center.

6.

Respondent denies that she has defamed Petitioner under Georgia law, and therefore denies paragraph "8." of Petitioner's Complaint.

7.

Respondent denies that she has defamed Petitioner under Georgia law, and therefore denies paragraph "9." of Petitioner's Complaint.

8.

As to paragraph "10." of Petitioner's Complaint, Respondent denies that any of the referenced exhibits are "supporting evidence for the allegations contained in paragraph "9." and states further that the remainder of paragraph "10." does not require an admission or denial.

9.

As to paragraph "11." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "10." of the Complaint above as if set forth verbatim.

10.

Respondent denies paragraph "12." of Petitioner's Complaint, and states further that she has not defamed the Petitioner but has referenced matters of public record in her public comments about Petitioner.

11.

Respondent denies paragraph "13." of Petitioner's Complaint.

12.

Respondent denies paragraph "14." of Petitioner's Complaint.

13.

As to paragraph "15." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "14." of the Complaint above as if set forth verbatim.

14.

Respondent denies paragraphs "16." and "17." of Petitioner's Complaint.

15.

As to paragraph "18." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "17." of the Complaint above as if set forth verbatim.

16.

Respondent denies paragraph "19." of Petitioner's Complaint.

17.

Respondent denies paragraph "20." of Petitioner's Complaint and answers further that she is without knowledge as to Petitioner's family members and close friends and his representation as to same.

18.

Respondent denies paragraph "21." of Petitioner's Complaint.

19.

As to paragraph "22." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "21." of the Complaint above as if set forth verbatim.

20.

Respondent admits paragraph "23." of Petitioner's Complaint and answers further that she works each day to do same.

21.

Respondent denies paragraph "24." of Petitioner's Complaint.

22.

As to paragraph "25." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "24." of the Complaint above as if set forth verbatim.

23.

Respondent denies paragraph "26." of Petitioner's Complaint and answers further that she did not "verbally assault" nor make "false allegations" against Petitioner.

24.

Respondent denies paragraph "27." of Petitioner's Complaint.

25.

As to paragraph "28." of Petitioner's Complaint, Respondent reincorporates her responses set out above to paragraphs "1." through "27." of the Complaint above as if set forth verbatim.

26.

Respondent denies paragraph "29." of Petitioner's Complaint.

27.

Respondent denies any and all other averments of Petitioner's Complaint not otherwise set out above.

WHEREFORE, Respondent prays that the Complaint be DENIED and DISMISSED.

This 27th day of November, 2019.



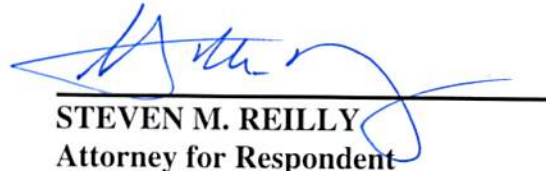
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CERTIFICATE OF SERVICE

This is to certify that I have this day served DONALD ARTHUR KING, 2984 Lowe Trail, Marietta, Georgia 30066 by ~~placing in the United States Mail~~ ^{overnight delivery ^{SMR}} a copy of same in a properly addressed envelope with adequate postage thereon, and MICHAEL P. LUDWICZAK, Gwinnett County Department of Law, 75 Langley Drive, Lawrenceville, Georgia 30046 by hand delivery with a copy of this **ANSWER TO COMPLAINT**.

This 27th day of November, 2019.



STEVEN M. REILLY
Attorney for Respondent
State Bar No. 600190

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