

**IN THE CIRCUIT COURT OF TENNESSEE FOR THE TWENTY-NINTH
JUDICIAL DISTRICT, AT DYERSBURG**

| | | |
|---------------------------|---|---------------------|
| DARRELL SELLS, | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | Case No.: 2021-cv-7 |
| | § | |
| DAVID SWIFT; JOSEPH BRYAN | § | JURY DEMANDED |
| BRANDON; AND HEATHER M. | § | |
| COHEN, | § | |
| | § | |
| <i>Defendants.</i> | § | |

**DEFENDANT DAVID SWIFT’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS AND TENN. CODE ANN. § 20-17-104(a) PETITION TO
DISMISS THE PLAINTIFF’S COMPLAINT PURSUANT TO THE TENNESSEE
PUBLIC PARTICIPATION ACT**

I. INTRODUCTION

This is a Strategic Lawsuit Against Public Participation (a “SLAPP suit”) filed by Plaintiff Darrell Sells—a public figure—on a matter of public concern against Defendant David Swift based on a statement:

(1) That the Plaintiff’s own Complaint admits is true, *see* Compl. ¶ 12 (pleading that “Heather M. Cohen . . . alleg[ed] that Darrell Sells and members of his family were involved in the death of Karen Swift.”);

(2) That the Plaintiff’s own Complaint admits did not mention him, *see* Compl. ¶ 17 (“The written Complaint filed by David Swift . . . did not mention Darrell Sells.”);

(3) That the Plaintiff does not even allege injured him, *see generally* Compl.;
and

(4) That no reasonable observer would or even could have understood to be referring to the Plaintiff, and which could not plausibly have injured him as a result.

Further, the publisher of the statement at issue and the entity that controls the broadcast regarding which the Plaintiff complains—the Tennessee Private Investigation and Polygraph Commission—is not a defendant in this action, and thus, the Plaintiff has failed to sue a necessary party. Compounding matters, referring to someone as a “suspect” alone is not even plausibly defamatory. Under the circumstances, a finding of actual malice is also necessarily foreclosed by the allegations in the Plaintiff’s Complaint. Further still, the statement over which the Plaintiff has sued Mr. Swift is privileged from defamation liability in multiple respects due to the application of, at minimum, the testimonial privilege, the litigation privilege, the conditional public interest and common interest privileges, and the qualified statutory immunity afforded to Mr. Swift by the Tennessee Anti-SLAPP Act of 1997. *See* TENN. CODE ANN. § 4-21-1003(a). As a consequence, because the Plaintiff’s defamation claim is not actionable—and because the Plaintiff has also failed to plead a conspiracy with the requisite specificity and failed to plead injury—the Plaintiff’s civil conspiracy claim fails as a matter of law as well.

For all of these reasons—and for the additional reasons detailed below—all of the Plaintiff’s claims against Mr. Swift are meritless, and they must be dismissed pursuant to Tennessee Rule of Civil Procedure 12.02(6), Tennessee Rule of Civil Procedure 12.02(7), and Tennessee Code Annotated § 20-17-105(b)–(c).

II. SUMMARY OF ARGUMENT

Even at this early juncture, the Plaintiff’s claims against Mr. Swift must be dismissed for at least five independent reasons:

First, the Plaintiff’s defamation claim against Mr. Swift fails to satisfy multiple threshold elements of defamation. To begin, the Plaintiff’s own Complaint admits that it is *true* that the Plaintiff is “suspected” of being involved in the death of Karen Swift, *see*

Compl. ¶ 12 (pleading that “Heather M. Cohen . . . alleg[ed] that Darrell Sells and members of his family were involved in the death of Karen Swift.”), which precludes the statement from being deemed defamatory and also precludes a finding of actual malice. The Plaintiff’s own Complaint further admits that Mr. Swift’s statement did not even mention him, *see* Compl. ¶ 17 (“The written Complaint filed by David Swift . . . did not mention Darrell Sells.”), and the Plaintiff also does not claim to have been injured by the statement. As a consequence, no reasonable person would or even could have understood the statement at issue to have referred to Mr. Sells; it fails to satisfy colloquium; it cannot reasonably be construed as defaming the Plaintiff; the Plaintiff does not claim that it damaged him; and the statement could not plausibly have damaged him. Further still, as a matter of law, accurately identifying someone as a “suspect” is not defamatory.

Second, any defamation claim against Mr. Swift that is premised upon statements made by Mr. Swift in his written complaint to the Tennessee Private Investigation and Polygraph Commission is barred by both Tennessee’s absolute testimonial privilege, *see Goetz v. Autin*, No. W2015-00063-COA-R3-CV, 2016 WL 537818, at *10 (Tenn. Ct. App. Feb. 10, 2016), *perm. to app. denied* (Tenn. June 24, 2016); *Lambdin Funeral Serv., Inc. v. Griffith*, 559 S.W.2d 791, 792 (Tenn. 1978), and by the absolute litigation privilege, which extends to communications preliminary to litigation. *See Phillips v. Woods*, No. E2007-00697-COA-R3-CV, 2008 WL 836161, at *8 (Tenn. Ct. App. Mar. 31, 2008), *no app. filed*.

Third, the actual publisher of the statement at issue and the entity that broadcasted and continues to broadcast it—the Tennessee Private Investigation and Polygraph Commission—is not a defendant in this action, and the Commission is a necessary party to it.

Fourth, because: (1) the Plaintiff's defamation claim against Mr. Swift is not actionable; (2) civil conspiracy requires an underlying predicate tort; (3) the Plaintiff's civil conspiracy claim is not pled with the requisite specificity; and (4) the Plaintiff has not even alleged that he was injured as a result of the (imagined) conspiracy at issue, the Plaintiff's civil conspiracy claim must be dismissed as a matter of law as well. *See generally Watson's Carpet & Floor Coverings, Inc. v. McCormick*, 247 S.W.3d 169, 180 (Tenn. Ct. App. 2007) ("Civil conspiracy requires an underlying predicate tort allegedly committed pursuant to the conspiracy."); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002) ("As to civil conspiracy, this Court has stated that '[i]t is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim[.]'" (quoting *Haynes v. Harris*, No. 01A01-9810-CV-00518, 1999 WL 317946, at *2 (Tenn. Ct. App. 1999))); *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006) (identifying "resulting injury" as an essential element of conspiracy).

Fifth, in addition to failing to state a claim for which relief can be granted, for multiple reasons, the Plaintiff's Complaint must additionally be dismissed with prejudice under the Tennessee Public Participation Act (TPPA). *See* Tenn. Code Ann. §§ 20-17-104 and 20-17-105. In particular: (1) the Plaintiff's claim against Mr. Swift is barred by the conditional public interest and common interest privileges, which immunize from defamation liability good-faith reports to law enforcement, *see, e.g., Pate v. Serv. Merch. Co.*, 959 S.W.2d 569, 576-77 (Tenn. Ct. App. 1996); (2) Tennessee Code Annotated § 4-21-1003(a) affords Mr. Swift statutory immunity from all claims alleged in this action, *see id.* ("Any person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental

issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.”); (3) given his poor reputation, the Plaintiff is libel-proof; and (4) barring the Plaintiff’s satisfaction of his evidentiary burden as to each claim, all of the Plaintiff’s claims must be dismissed pursuant to Tennessee Code Annotated § 20-17-105(b).

For all of these reasons, all of the Plaintiff’s claims against Mr. Swift are meritless, and they must be dismissed pursuant to Tennessee Rule of Civil Procedure 12.02(6), Tennessee Rule of Civil Procedure 12.02(7), and Tennessee Code Annotated § 20-17-105(b)–(c).

III. LEGAL STANDARDS

A. MR. SWIFT’S MOTION TO DISMISS

“A motion to dismiss a complaint for failure to state a claim pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure asserts that the allegations in the complaint, accepted as true, fail to establish a cause of action for which relief can be granted.” *Conley v. State*, 141 S.W.3d 591, 594 (Tenn. 2004). Generally, a motion to dismiss is resolved by examining the pleadings alone. *See Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010) (citing *Cook ex rel. Uithoven v. Spinnaker’s of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994)). This Court, however, may also consider “items subject to judicial notice, **matters of public record**, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned . . . without converting the motion into one for summary judgment.” *W. Exp., Inc. v. Brentwood Servs., Inc.*, No. M2008-02227-COA-R3-CV, 2009 WL 3448747, at *3 (Tenn. Ct. App. Oct. 26, 2009) (emphasis added) (quoting *Ind.*

State Dist. Council of Laborers v. Brukardt, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at *8 (Tenn. Ct. App. Feb.19, 2009), *perm. to app. denied* (Tenn. Aug. 24, 2009)), *no app. filed*. (in turn quoting WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE, CIVIL § 1357, at 376 (3d ed.2004)).

Thereafter, where—as here—“the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief[,]” a defendant’s motion to dismiss for failure to state a claim must be granted. *See Crews v. Buckman Labs. Int’l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

B. THE TENNESSEE PUBLIC PARTICIPATION ACT

The Tennessee Public Participation Act (TPPA)—which the legislature enacted in 2019 to deter, expediently resolve, and punish SLAPP-suits like this one—provides that “[i]f a legal action is filed in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action” subject to the specialized provisions of Tennessee Code Annotated §§ 20-17-104 and 20-17-105. *See* TENN. CODE ANN. § 20-17-104(a). The TPPA “provide[s] an additional substantive remedy to protect the constitutional rights of parties” that “supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure.” TENN. CODE ANN. § 20-17-109. As such, nothing in the Act “[a]ffects, limits, or precludes the right of any party to assert any defense, remedy, immunity, or privilege otherwise authorized by law[.]” TENN. CODE ANN. § 20-17-108(4).

In enacting the TPPA, the Tennessee General Assembly forcefully established that:

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for

demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by Article I, §§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

See TENN. CODE ANN. § 20-17-102. Substantively, the TPPA also provides, among other things, that:

(1) When a party has been sued in response to the party's exercise of the right of free speech or the right to petition, he or she "may petition the court to dismiss the legal action" pursuant to Tennessee Code Annotated § 20-17-104(a);

(2) "All discovery in the legal action is stayed" automatically "until the entry of an order ruling on the petition" pursuant to § 20-17-104(d); and

(3) "The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals." See TENN. CODE ANN. § 20-17-106.

A TPPA petition to dismiss "may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper." TENN. CODE ANN. § 20-17-104(b). Under the TPPA, "[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." TENN. CODE ANN. § 20-17-105(a). Thereafter, the Court "shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action." TENN. CODE ANN. § 20-17-105(b). Separately, "[n]otwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action." TENN. CODE ANN. § 20-17-105(c). "If the court dismisses a legal

action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.” TENN. CODE ANN. § 20-17-105(e).

C. THRESHOLD ISSUES OF LAW GOVERNING DEFAMATION CLAIMS

To establish a prima facie case of defamation in Tennessee, a plaintiff must plead and prove that: “(1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement.” *Davis v. Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). Additionally, damages cannot be presumed; instead, a plaintiff is “required to prove actual damages in all defamation cases.” *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005) (citing *Handley v. May*, 588 S.W.2d 772, 776 (Tenn. Ct. App. 1979)).

Critically, “the Supreme Court of the United States has constitutionalized the law of [defamation].” *Press, Inc. v. Verran*, 569 S.W.2d 435, 440 (Tenn. 1978). *See also N.Y. Times v. Sullivan*, 376 U.S. 254, 269 (1964). Thus, defamation claims present several threshold and outcome-determinative questions of law that do not require any deference to the Plaintiff’s own characterizations of the statements over which he has sued. *See, e.g., Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at *3 (Tenn. Ct. App. Apr. 10, 1997) (“If the [allegedly defamatory] words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.” (citing *Stones River Motors, Inc. v. Mid-South Publ’g Co.*, 651 S.W.2d 713, 719 (Tenn. App. 1983), *abrogation on other grounds recognized by Zius v. Shelton*, No. E1999-01157-COA-R9-CV, 2000 WL 739466, at *3 (Tenn. Ct. App. June 6, 2000), *no app. filed*)), *no app. filed*. *See also Brown v. Mapco Express, Inc.*, 393 S.W.3d 696, 708 (Tenn. Ct. App. 2012); *McWhorter v. Barre*, 132 S.W.3d 354, 364 (Tenn. Ct. App. 2003).

Put differently: Given the constitutional limitations that govern defamation claims, “ensuring that defamation actions proceed only upon statements which may actually defame a plaintiff is an essential gatekeeping function of the court.” *Pendleton v. Newsome*, 772 S.E.2d 759, 763 (Va. 2015) (internal quotation omitted). With this “essential gatekeeping function” in mind, *see id.*, both our Court of Appeals and our Supreme Court have instructed that in defamation cases, “the issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance[.]” *Brown*, 393 S.W.3d at 708. *See also Aegis Scis. Corp. v. Zelenik*, No. M2012-00898-COA-R3CV, 2013 WL 175807, at *6 (Tenn. Ct. App. Jan. 16, 2013) (“[T]he preliminary question of whether a statement ‘is capable of conveying a defamatory meaning’ presents a question of law.” (quoting *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000))), *no app. filed*; *McWhorter*, 132 S.W.3d at 364 (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.’” (quoting *Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978))). If an allegedly defamatory statement is not capable of being understood as defamatory as a matter of law, then a plaintiff’s complaint must be dismissed for failure to state a claim. *McWhorter*, 132 S.W.3d at 364.

Here, the Plaintiff’s Complaint alleges that Mr. Swift recklessly made a single statement regarding him, *see* Compl. ¶ 20(a); ¶ 29, which the Plaintiff asserts was “false and defamatory.” *Id.* at ¶ 32. In keeping with the heightened constitutional requirements that govern defamation claims, though, and to safeguard access to the judicial process and ensure that witnesses, litigants, and citizens generally are not subjected to baseless

retaliatory lawsuits like this one, Tennessee courts have adopted multiple categorical bars that prevent claimed defamations from being actionable as a matter of law, several of which are outcome-determinative here:

First, an allegedly defamatory statement “must be factually false in order to be actionable.”¹ *Moman*, 1997 WL 167210, at *4. Thus, any statement that is not capable of being proven false as a matter of fact cannot serve as the basis of a defamation claim. *See id.*

Second, a claimed defamation must satisfy colloquium and “be directed to or concerning the charging party.” *Stones River Motors*, 651 S.W.2d at 717.

Third, merely unpleasant or embarrassing statements are not capable of conveying a defamatory meaning as a matter of law. *Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at *3 (Sept. 30, 2015), *perm. to app. denied* (Tenn. Feb. 18, 2016). Instead,

[f]or a communication to be [defamatory], it must constitute a serious threat to the Plaintiffs’ reputation. A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element “of disgrace.”

Id. (quoting *Brown*, 393 S.W.3d at 708).

Fourth, “[i]t is a well-settled proposition of law in this jurisdiction that the testimony of a witness given in a judicial proceeding is absolutely privileged.” *Wilson*, 778 S.W.2d at 453 (collecting cases). “Therefore, no civil action for damages may lie against a witness based upon his testimony in a case, though his testimony may have been

¹ In Tennessee, defamatory implications regarding an allegedly tortious publication are governed by a distinct and independent tort. *See Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at *5–6 (Tenn. Ct. App. Apr. 20, 2018) (describing Tennessee’s independent recognition of “defamation by implication or innuendo”), *no app. filed*.

damaging to one of the parties of the lawsuit in which he testified.” *Id.* (collecting cases). Further, under the related but distinct litigation privilege, “[s]tatements made in judicial proceedings are absolutely privileged.” *Jones v. State*, 426 S.W.3d 50, 57 (Tenn. 2013) (citing *Lea v. White*, 36 Tenn. 111 (1856)). As such, “statements made in the course of a judicial proceeding that are relevant and pertinent to the issues involved are absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy.” *Lambdin Funeral Serv.*, 559 S.W.2d at 792 (collecting cases). Critically, the absolute litigation privilege also immunizes not only statements made during judicial proceedings; instead, it immunizes “communications preliminary to . . . proposed litigation” as well. *See Phillips*, 2008 WL 836161, at *8 (“*Myers* also expressly stands for the proposition that ‘communications preliminary to proposed or pending litigation’ are absolutely privileged.” (quoting *Myers v. Pickering Firm, Inc.*, 959 S.W.2d 152, 161 (Tenn. Ct. App. 1997))); *Kilgore v. State*, No. E201801790COAR3CV, 2019 WL 6002126, at *5 (Tenn. Ct. App. Nov. 13, 2019), *no app. filed*.

Fifth, because “[t]he interests of the public in preventing crime and punishing criminals outweigh the interest of any plaintiff concerning statements of accusation,” as long as an accusation is made in good faith and without express malice, statements made to law enforcement are protected by the conditional “public interest privilege.” *Pate*, 959 S.W.2d at 576. Under the public interest privilege, a publication is privileged from defamation liability

if the circumstances induce a correct or reasonable belief that

(a) there is information that affects a sufficiently important public interest, and

(b) the public interest requires the communication of the defamatory matter to a public officer or a private citizen who is authorized or

privileged to take action if the defamatory matter is true.

Id. (quoting Restatement (Second) of Torts § 598 (1977)).

Sixth, given “the intent of the general assembly to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies”—and because “[i]nformation provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government”—Tennessee confers an additional layer of statutory immunity regarding communications to government agencies under the Tennessee Anti-SLAPP Act of 1997. *See* TENN. CODE ANN. § 4-21-1002(a). The express purpose of Tennessee Code Annotated § 4-21-1002(a) is to counteract both “[1] the threat of a civil action for damages in the form of a ‘strategic lawsuit against political participation’ (SLAPP), and [2] the possibility of considerable legal costs” associated with retaliatory lawsuits like this one. TENN. CODE ANN. § 4-21-1002(b). As a result, absent the circumstances set forth in § 4-21-1003(b):

Any person who in furtherance of such person’s right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

TENN. CODE ANN. § 4-21-1003(a).

Seventh, because defamation claims are contingent upon actual damage to one’s reputation, a libel-proof plaintiff who lacks a good reputation to begin with cannot assert a defamation claim. *See Looper v. News Channel 5 Network*, No. CIV.A.6197C, 2002 WL 32163526, at *1 (Tenn. Cir. Ct. May 7, 2002) (citing *Davis*, 83 S.W.3d 125), *no app. filed*; *Coker v. Sundquist*, No. 01A01-9806-BC-00318, 1998 WL 736655 (Tenn. Ct. App. Oct. 23, 1998), *perm. to app. denied* (Tenn. May 10, 1999).

IV. FACTS

For purposes of Mr. Swift's Motion to Dismiss, but not for purposes of his TPPA Petition, the allegations set forth in the Plaintiff's Complaint—however contrived—are accepted as true. *See Conley*, 141 S.W.3d at 594.

According to paragraph 20 of the Plaintiff's Complaint, the Plaintiff is suing Mr. Swift for defamation because he made the following statement, which the Plaintiff alleges was then republished by a non-party and broadcast to the internet: "[T]he Respondent [Chastity Brandon] now appears to be working for a suspect who was allegedly involved in the murder of the Complainant's [David Swift's] wife[.]" *See* Compl. ¶ 20(a). The Plaintiff's Complaint specifically characterizes this as the "*Statement from David Swift*" at issue in this lawsuit. *Id.*

Self-evidently, though, the above-mentioned "*Statement from David Swift*" does not mention Plaintiff Darrell Sells. *Id.* The Plaintiff's Complaint also candidly admits as much. *See* Compl. ¶ 17 ("The written Complaint filed by David Swift . . . did not mention Darrell Sells."). The transcript of the hearing from which the Plaintiff's claims arise further confirms that the Plaintiff's name was never mentioned. *See Ex. 1.*

Critically, the Plaintiff's Complaint also admits that it is *true* that the Plaintiff is considered a suspect by at least two individuals. *See* Compl. ¶ 12 (pleading that "Heather M. Cohen . . . alleg[ed] that Darrell Sells and members of his family were involved in the death of Karen Swift."); Compl. ¶ 20(b) (recounting statement from Joseph Bryan Brandon). The Plaintiff also does not assert that Mr. Swift is the source of the allegation at issue. *See* Compl. ¶ 21 (pleading that "[t]he use of the 'suspect' language is believed to flow directly from Heather M. Cohen . . ."). Cursory review of local news articles also confirms that this theory has long been widely discussed within the jurisdiction. *See Ex.*

V. ARGUMENT

A. THE PLAINTIFF HAS FAILED TO STATE A COGNIZABLE CLAIM FOR DEFAMATION.

1. The Plaintiff has sued Mr. Swift based on a statement that is not defamatory as a matter of law.

To survive a motion to dismiss, a claimed defamation must, at minimum, be capable of conveying a defamatory meaning. *See Brown*, 393 S.W.3d at 708. Crucially, “whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance[.]” *Id.* *See also Aegis Scis. Corp.*, 2013 WL 175807, at *6 (“[T]he preliminary question of whether a statement ‘is capable of conveying a defamatory meaning’ presents a question of law.” (quoting *Revis*, 31 S.W.3d at 253)); *McWhorter*, 132 S.W.3d at 364 (“The question of whether [a statement] was understood by its readers as defamatory is a question for the jury, but the preliminary determination of whether [a statement] is ‘capable of being so understood is a question of law to be determined by the court.’” (quoting *Memphis Publ’g Co.*, 569 S.W.2d at 419)). As such, the Plaintiff’s allegation that Mr. Swift’s statement to the Tennessee Private Investigation and Polygraph Commission was defamatory presents a question of law that must be decided by this Court without any deference to the Plaintiff’s characterizations of it. *See Brown*, 393 S.W.3d at 708–09 (“The issue of whether a communication is capable of conveying a defamatory meaning is a question of law for the court to decide in the first instance . . . To make this determination, courts ‘must look to the words themselves and are not bound by the Plaintiffs’ interpretation of them.’” (quoting *Stones River Motors, Inc. v. Mid-S. Pub. Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983), *abrogated on other grounds by Zius v. Shelton*, No. E199901157COAR9CV, 2000 WL 739466, at *1 (Tenn.

Ct. App. June 6, 2000), *no app. filed*); *Moman*, 1997 WL 167210, at *3 (“If the words are not reasonably capable of the meaning the plaintiff ascribes to them, the court must disregard the latter interpretation.” (citing *Stones River Motors*, 651 S.W.2d at 719)). Further, every statement that the Plaintiff insists is defamatory “should be read as a person of ordinary intelligence would understand it in light of the surrounding circumstances.” *Aegis Scis. Corp.*, 2013 WL 175807, at *6 (quoting *Revis*, 31 S.W.3d at 253) (cleaned up).

Here, the Plaintiff’s Complaint alleges that Mr. Swift defamed the Plaintiff by making the following statement, which the Plaintiff alleges was then republished by a non-party: “[T]he Respondent [Chastity Brandon] now appears to be working for a suspect who was allegedly involved in the murder of the Complainant’s [David Swift’s] wife[.]” *See* Compl. ¶ 20(a). As detailed below, however, this statement is incapable of conveying a defamatory meaning as a matter of law for several reasons. The Plaintiff’s defamation claim against Mr. Swift must be dismissed for failure to state a claim as a consequence.

- a. *Mr. Swift’s statement—which the Plaintiff admits is true—cannot be defamatory, because true and substantially true statements are not actionable.*

“Truth is an absolute defense to a claim for defamation when the otherwise defamatory meaning of the words used turns out to be true.” *Sullivan v. Wilson Cty.*, No. M2011-00217-COA-R3CV, 2012 WL 1868292, at *12 (Tenn. Ct. App. May 22, 2012), *perm. to app. denied* (Tenn. Sept. 18, 2012). Tennessee also recognizes “the substantial truth doctrine” in defamation cases. *See Isbell*, 2000 WL 1817252, at *5. As such, defamation claims that are premised upon inaccurate but insignificant distinctions are inactionable, *see id.*; *see also Spicer v. Thompson*, No. M2002-03110-COA-R3-CV, 2004

WL 1531431, at *7 (July 7, 2004), *perm. to app. denied* (Tenn. Dec. 20, 2004)—a result that the United States Supreme Court has compelled as a matter of constitutional law.

Specifically, in *Masson*, 501 U.S. at 516, the U.S. Supreme Court noted that “[t]he common law of libel takes but one approach to the question of falsity, regardless of the form of the communication.” (citing Restatement (Second) of Torts § 563 cmt. c (1977); WILLIAM LLOYD PROSSER ET AL., PROSSER AND KEETON ON LAW OF TORTS 776 (5th ed. 1984)). “It overlooks minor inaccuracies and concentrates upon substantial truth.” *Id.* As a result, the *Masson* Court held that a statement “is not considered false unless it ‘would have a different effect on the mind of the reader from that which the pleaded truth would have produced.’” *Id.* at 517 (quoting ROBERT D. SACK, LIBEL, SLANDER, AND RELATED PROBLEMS 138 (1980)). Further, the *Masson* Court explained, “[o]ur definition of actual malice relies upon this historical understanding.” *Id.*

Here, the Plaintiff’s own Complaint admits that it is *true* that the Plaintiff is, in fact, “suspected” of being involved in the death of Karen Swift by at least two individuals. *See* Compl. ¶ 12 (pleading that “Heather M. Cohen . . . alleg[ed] that Darrell Sells and members of his family were involved in the death of Karen Swift.”); Compl. ¶ 20(b) (recounting a similar statement from Joseph Bryan Brandon). These allegations also constitute binding judicial admissions that are conclusive against the Plaintiff. *See First Tenn. Bank, N.A. v. Mungan*, 779 S.W.2d 798, 801 (Tenn. Ct. App. 1989) (“The general rule is that factual statements in pleadings are judicial admissions being conclusive against the pleader in the proceedings in which they are filed”); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 653 (Tenn. Ct. App. 1988). As such, Mr. Swift’s alleged reference to the Plaintiff as “a suspect who was allegedly involved in the murder of” Karen Swift is true or substantially true based on the Plaintiff’s own admissions in his

Complaint. See Compl. ¶ 12; ¶ 20(b). The statement over which the Plaintiff has sued Mr. Swift is inactionable as defamation as a consequence. See *Isbell*, 2000 WL 1817252, at *5.

b. *The Plaintiff has failed to satisfy colloquium with respect to Mr. Swift's statement.*

As the Court of Appeals explained in *Stones River Motors*, 651 S.W.2d at 717:

As an essential element of a cause of action for defamation, the plaintiffs must prove a false and defamatory statement *concerning another*. RESTATEMENT (SECOND) OF TORTS § 558 (1977). Otherwise stated at common law, one of the required elements of proof was the “colloquium,” a showing that the language was directed to or concerning *the charging party*.”

(partial emphasis added). Thus, the Plaintiff cannot prosecute a defamation claim based on statements that do not contain language directed to or concerning him, *see id.*, and any defamation claim premised upon such statements must be dismissed as a matter of law for failure to satisfy colloquium. See *Steele v. Ritz*, No. W2008-02125-COA-R3-CV, 2009 WL 4825183, at *3 (Tenn. Ct. App. Dec. 16, 2009) (citations omitted), *no app. filed*. (“This [colloquium] requirement—often referred to as the ‘of and concerning’ requirement—confines actionable defamation to statements made against an ‘ascertained or ascertainable person, and that person must be the plaintiff.’” (quoting 53 C.J.S. LIBEL AND SLANDER; INJURIOUS FALSEHOOD § 35 (2005))).

Here, at least as far as the Plaintiff's claim against Mr. Swift is concerned, the Plaintiff's own Complaint concedes that colloquium is not established. See Compl. ¶ 17 (“The written Complaint filed by David Swift . . . did not mention Darrell Sells.”). As noted above, this defect is fatal. *Stones River Motors*, 651 S.W.2d at 717; *Steele*, 2009 WL 4825183, at *3. The Plaintiff's defamation claim against Mr. Swift must be dismissed as a matter of law as a consequence.

- c. *No reasonable person would or even could view Mr. Swift's statement as defaming the Plaintiff.*

In order to determine, in the first instance, whether a claimed defamation is even capable of conveying a defamatory meaning, an allegedly defamatory statement “should be read as a person of ordinary intelligence would understand it in light of the surrounding circumstances.” *See Aegis Scis. Corp.*, 2013 WL 175807, at *6. *See also Brown*, 393 S.W.3d at 708–09 (instructing that “courts ‘must look to the words themselves and are not bound by the plaintiff’s interpretation of them’”). Here, no person of ordinary intelligence would or even could understand the statement over which the Plaintiff has sued Mr. Swift as one that is defaming to the Plaintiff, because, again—*as the Plaintiff’s own Complaint concedes*—“[t]he written Complaint filed by David Swift . . . did not mention Darrell Sells.” Compl. ¶ 17.

This defect, too, is fatal. It simply is not possible for an objective observer to conclude that the statement over which Mr. Swift has been sued “constitute[d] a serious threat to [Mr. Sells’] reputation,” *see Davis*, 2015 WL 5766685, at *3, when the statement at issue “did not mention Darrell Sells.” Compl. ¶ 17. Accordingly, the Plaintiff’s defamation claim against Mr. Swift must be dismissed for this reason as well.

- d. *As a matter of law, the statement at issue was not made with actual malice.*

“To prevail on a defamation claim where the actual malice standard applies, the plaintiff ‘must prove by clear and convincing evidence that [the] defendant acted with actual malice.’” *Finney v. Jefferson*, No. M2019-00326-COA-R3-CV, 2020 WL 5666698, at *5 (Tenn. Ct. App. Sept. 23, 2020) (quoting *Jones v. State*, 426 S.W.3d 50, 57 (Tenn. 2013) (citing *New York Times v. Sullivan*, 376 U.S. at 285-86)). Although the term “actual malice” is not referenced in the Plaintiff’s Complaint, *see generally* Compl., given

that the Plaintiff is a public figure, and given that the subject matter of the Plaintiff's lawsuit is one of indisputable public importance, the Plaintiff's Complaint correctly appears to contemplate that the actual malice standard applies to this action. *See, e.g.*, Compl. ¶ 29 (asserting that the claimed defamation was made “recklessly” and “maliciously”); Compl. ¶ 12 (complaining of “reckless and false allegations”).

As a matter of law, though—at least as to Mr. Swift—the Plaintiff cannot establish actual malice. The Plaintiff's own Complaint accurately admits and confirms that Mr. Swift is did not originate the allegation regarding which the Plaintiff now complains. *See* Compl. ¶ 21 (“The use of the ‘suspect’ language is believed to flow directly **from Heather M. Cohen**, who **separately** has pursued a campaign of baseless accusations and innuendo against Darrell Sells and members of his family attempting to implicate them as ‘suspects’ or perpetrators in the death of Karen Swift.”) (emphases added). This allegation is also fatal to a claim of actual malice, because even if Mr. Swift failed to investigate the accuracy of Ms. Cohen's claim, the Court of Appeals has repeatedly made clear that “[f]ailing to investigate information provided by others before publishing it, even when a reasonably prudent person would have done so, is not sufficient by itself to establish reckless disregard.” *Finney*, 2020 WL 5666698, at *5 (quoting *Lewis*, 238 S.W.3d at 301) (citing *Harte-Hanks*, 491 U.S. at 688; *McCluen v. Roane Cty. Times, Inc.*, 936 S.W.2d 936, 941 (Tenn. Ct. App. 1996))). Thus, “[w]hat matters for purposes of actual malice—a subjective standard that ‘focuses on the defendant's state of mind’—is what [Mr. Swift] thought was true, even if it was not actually true.” *Id.* at *6 (citing *Eisenstein v. WTVFTV*, No. M2015-00422-COA-R3-CV, 2016 WL 2605752, at *11 n.15 (Tenn. Ct. App. May 3, 2016); *Harte-Hanks*, 491 U.S. at 688). *See also Higgins v. Kentucky Sports Radio, LLC*, 951 F.3d 728, 739 (6th Cir. 2020) (“Merely repeating potentially false reviews

generated by other users may be in bad taste. But it cannot by itself constitute defamation. And good thing too. If it could, any news article discussing a tendentious Twitter exchange could land its author in front of a jury. That would make the authors of the First Amendment cringe.”).

Critically, the Plaintiff’s Complaint is devoid of anything even resembling an allegation that Mr. Swift did not think it was true that Chastity Brandon “now appears to be working for a suspect who was allegedly involved in the murder” of his wife. *See generally* Compl. As a matter of law, this defect precludes a finding of actual malice, *Finney*, 2020 WL 5666698, at *5, particularly given the Plaintiff’s own repeated admissions that other individuals made that claim. *See* Compl. ¶ 12; ¶ 20(b); ¶ 21. The Plaintiff’s defamation claim against Mr. Sells must be dismissed accordingly.

e. *Mr. Swift’s statement could not plausibly have damaged the Plaintiff, and the Plaintiff does not claim to have been injured by it.*

To be actionable as defamation, an allegedly defamatory statement must clear a high bar of contemptuousness. *See Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at *3 (Sept. 30, 2015), *perm. to app. denied* (Tenn. Feb. 18, 2016). Specifically,

[f]or a communication to be [defamatory], **it must constitute a serious threat to the Plaintiffs’ reputation.** A [defamation] does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. **The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element “of disgrace.”**

Id. (emphases added) (quoting *Brown*, 393 S.W.3d at 708).

Thus, in addition to plausibly alleging that a defendant’s statement carried an element of “disgrace,” *see id.*, a plaintiff must also plead and prove actual damages.

Hibdon v. Grabowski, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005) (holding that a plaintiff is “required to prove actual damages in all defamation cases.”) (citing *Handley v. May*, 588 S.W.2d 772, 776 (Tenn. Ct. App. 1979)).

At least as to the Plaintiff’s claim against Mr. Swift, the Plaintiff’s Complaint makes clear that these requirements are not established, for two reasons:

First, as noted above, the Plaintiff admits that the statement over which he has sued Mr. Swift “did not mention Darrell Sells.” Compl. ¶ 17. As a consequence, it could not plausibly have held Mr. Sells “up to public hatred, contempt or ridicule” as required. *See Davis*, 2015 WL 5766685, at *3.

Second, a close reading of the Plaintiff’s Complaint reveals that ***the Plaintiff does not even claim that he was damaged by the statements at issue.*** *See generally* Compl.; *but see Hibdon*, 195 S.W.3d at 68 (holding that the record must contain “material evidence of impairment of reputation and standing in the community, personal humiliation, or mental anguish and suffering.”); *see also Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818 (Tenn. 1994) (“The basis for an action for defamation, whether it be slander or libel, is that the defamation has resulted in an injury to the person's character and reputation.”) (quoting *Little Stores v. Isenberg*, 26 Tenn.App. 357, 172 S.W.2d 13, 16 (1943)). To be sure, the Plaintiff’s Complaint seeks massive compensatory damages, but the Plaintiff does not actually plead that any underlying injury supports them. Thus, review of the Plaintiff’s Complaint confirms that he is not alleging any injury to his reputation or business, any emotional injury, or any other damage of any kind. *See generally* Compl. Instead, the Plaintiff seeks \$1 million in compensatory damages and an additional \$1 million in punitive damages regarding a statement that he does not claim injured him, and which he candidly admits “did not

mention” him. Compl. ¶ 17.

For both of these reasons, Mr. Swift’s statement could not plausibly have injured the Plaintiff, and the Plaintiff does not even *allege* that it did. *See generally* Compl. Accordingly, for these reasons, too, the Plaintiff’s defamation claim against Mr. Swift must be dismissed as a matter of law. *See Davis*, 83 S.W.3d at 128 (“Damages from false or inaccurate statements cannot be presumed; actual damage must be sustained and proved.”); *Pate v. Serv. Merch. Co.*, 959 S.W.2d 569, 574 (Tenn. Ct. App. 1996) (noting that under Tennessee law, a plaintiff must “plead and prove injury from the alleged defamatory words, whether their defamatory meaning was obvious or not.”) (citing *Memphis Publishing Co. v. Nichols*, 569 S.W.2d 412, 418–19 (Tenn.1978)).

f. *Accurately identifying someone as a “suspect”—as opposed to a perpetrator—is not defamatory.*

The Plaintiff’s defamation claim against Mr. Swift also fails for yet another reason: As a matter of law, accurately identifying someone as a “suspect”—as opposed to a perpetrator—is not defamatory.

For understandable reasons, there are critical differences between claiming that a person is guilty of a crime and claiming that a person is a “suspect” who was “allegedly involved.” *See* Compl. ¶ 20(a). *Cf. Miles v. Ramsey*, 31 F. Supp. 2d 869, 880 (D. Colo. 1998) (“as Plaintiff conceded in his deposition, the Enquirer did not directly suggest that he killed JonBenet.”). And here, although the Plaintiff vigorously maintains that he did not murder Karen Swift, he also admits that there are individuals other than Mr. Swift who suspect otherwise. *See* Compl. ¶ 12; ¶ 20(b); ¶ 21. The Plaintiff does, however, assert that any suggestion of his involvement in the death of Karen Swift is not “credible.” Compl. ¶ 26. This acknowledged distinction is outcome-determinative, though, and the

Plaintiff's defamation claim against Mr. Swift fails accordingly. *See Miles*, 31 F. Supp. 2d at 880. *See also Wilson v. Sparrow Health Sys.*, 290 Mich. App. 149, 155, 799 N.W.2d 224, 228 (2010) ("Because Wilson was, in fact, a suspect in the indecent-exposure incidents when the memorandum was created and circulated and **the memorandum specifically stated that he was a suspect, not the person who had committed the acts, defendants' statement was not defamatory**. Therefore, the trial court did not err when it held that plaintiffs were not entitled to relief on their defamation claim.") (internal citation omitted) (emphasis added); *Wilson v. Freitas*, 121 Haw. 120, 131–32, 214 P.3d 1110, 1121–22 (Ct. App. 2009), *as amended* (Aug. 4, 2009) ("Accurately identifying someone as a suspect in a criminal investigation does not constitute an accusation of guilt and cannot support a claim for defamation, even if the plaintiff proves he is not guilty.") (citing *Basilus*, 711 F.Supp. at 551–52 (rejecting argument that a publication's materially accurate report of murder allegations implied that plaintiff had actually committed the murder); *Foley v. Lowell Sun Publishing Co.*, 404 Mass. 9, 533 N.E.2d 196, 197 (1989) (holding that a newspaper article's report that the plaintiff had been arrested and charged with assaulting a police officer could not reasonably be construed as accusing the plaintiff of actually committing the assault)).

g. Additionally preserved claims that preclude the Plaintiff's defamation claim against Mr. Swift from being actionable.

In the event that the Plaintiff's defamation claim against Mr. Swift is not dismissed outright and in its entirety for the reasons set forth above, Mr. Swift additionally preserves the following claims and moves this Court for permission to take an immediate interlocutory appeal pursuant to Tenn. R. App. P. 9(a) on the following specific issues:

1. Whether Tennessee should adopt the incremental harm doctrine;

2. Whether Tennessee should adopt the subsidiary meaning doctrine; and
3. Whether the Tennessee Supreme Court's decision in *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 424 (Tenn. 2011), in which the Tennessee Supreme Court "decline[d] to adopt the new *Twombly/Iqbal* 'plausibility'" pleading standard, should be reconsidered. *Id.*

Mr. Swift submits that an interlocutory appeal regarding these issues is appropriate: (1) to prevent irreparable injury; (2) to prevent needless, expensive, and protracted litigation; (3) to enable a net reduction in the duration and expense of the litigation—to wit: dismissal of the Plaintiff's entire individual claim against Mr. Swift—if the challenged order is reversed; and (4) to facilitate the development of a uniform body of law. *See* Tenn. R. App. P. 9(a).

2. The Plaintiff's defamation claim against Mr. Swift—which is premised upon a statement made by Mr. Swift in a written complaint to the Tennessee Private Investigation and Polygraph Commission—is barred by the absolute testimonial privilege and the absolute litigation privilege.

The Plaintiff has sued Mr. Swift for defamation on the basis that he filed a complaint with the Tennessee Private Investigation and Polygraph Commission regarding the social media page of a woman named Chastity Brandon, *see* Compl. ¶ 15, which the Plaintiff alleges was "then read by the attorney for the Tennessee Private Investigation and Polygraph Commission, recorded by the video conference software, and published on the world wide web[.]" *See* Compl. ¶ 20. Regardless of the absent merit of the Plaintiff's defamation claim against Mr. Swift, though, for the reasons detailed below, the claim is categorically barred by both the absolute testimonial privilege, *see Wilson*, 778 S.W.2d at 453, and by the absolute litigation privilege. *See Lambdin Funeral Serv., Inc.*, 559 S.W.2d

at 792 (“[S]tatements made in the course of a judicial proceeding that are relevant and pertinent to the issues involved are absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy.”). Accordingly, it must be dismissed for failure to state a claim upon which relief can be granted. *See Crews*, 78 S.W.3d at 857.

Tennessee affords witnesses absolute immunity for testimony given during a judicial proceeding. *See Wilson*, 778 S.W.2d at 453 (“It is a well-settled proposition of law in this jurisdiction that the testimony of a witness given in a judicial proceeding is absolutely privileged. Therefore, no civil action for damages may lie against a witness based upon his testimony in a case, though his testimony may have been damaging to one of the parties of the lawsuit in which he testified.”) (collecting cases). Indeed, based on this “well-settled” body of law, *see id.*, Tennessee has categorically and continuously forbidden such claims for nearly two centuries. *See Lea*, 36 Tenn. at 114; *Cooley v. Galyon*, 70 S.W. 607, 607 (Tenn. 1902).

Without exception, “statements made in the course of a judicial proceeding that are relevant and pertinent to the issues involved are absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy” based on the litigation privilege. *Id.* (quoting *Jones*, 426 S.W.3d at 57) (in turn quoting *Lambdin Funeral Serv.*, 559 S.W.2d at 792)). The litigation privilege, too, is among those absolute privileges that the Tennessee Supreme Court “has long accepted” as settled law. *See Simpson-Strong Tie Co. v. Stewart, Estes & Donnell*, 232 S.W.3d 18, 23 (Tenn. 2007) (“[T]his Court has long accepted the litigation privilege as an important tool in the pursuit of justice.”). Being absolute in nature, the litigation privilege also “holds true even when the statements are made maliciously or corruptly.” *Goetz*, 2016 WL 537818, at *10. As

the Tennessee Court of Appeals has explained:

Underlying the litigation privilege is the policy that access to the judicial process and the freedom to institute an action without fear of being sued based on statements made in the course of the proceeding is “so vital and necessary to the integrity of our judicial system that it must be made paramount to the right of an individual to a legal remedy where he [or she] has been wronged thereby.”

Id. (citing *Issa v. Benson*, 420 S.W.3d 23, 28 (Tenn. Ct. App. 2013) (in turn quoting *Jones v. Trice*, 360 S.W.2d 48, 51 (Tenn. 1962))).

Here, the Plaintiff’s own Complaint reflects that he is suing Mr. Swift based on a formal complaint submitted to the Tennessee Private Investigation and Polygraph Commission, *see* Compl. ¶ 16, which was “then read by the attorney for the Tennessee Private Investigation and Polygraph Commission, recorded by the video conference software, and published on the world wide web[.]” *See* Compl. ¶ 20. Critically, pursuant to the Commission’s regulations, submitting a written complaint is also the *only* way to present evidence to the Commission as a complaining witness. *See* RULES OF TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION, RULES OF PROFESSIONAL CONDUCT AND STANDARDS OF PRACTICE § 1175-01-.07(2), <https://publications.tnsosfiles.com/rules/1175/1175-01.20160202.pdf> (“Upon receipt of any written complaint against a licensee, the Commission may transmit a copy of such complaint to the accused party. Such party shall, within fourteen (14) days, file a written answer to the complaint with the Commission.”). As a consequence, any claim premised upon Mr. Swift’s statements to the Commission as a complaining witness are barred by the absolute testimonial privilege. *See Wilson*, 778 S.W.2d at 453.

So, too, does the absolute litigation privilege bar the Plaintiff’s claims against Mr. Swift. As noted, the absolute litigation privilege guarantees all litigants “the freedom to

institute an action without fear of being sued based on statements made in the course of the proceeding[.]” *Goetz*, 2016 WL 537818, at *10. *See also Lambdin Funeral Serv., Inc.*, 559 S.W.2d at 792 (“[S]tatements made in the course of a judicial proceeding that are relevant and pertinent to the issues involved are absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy.”). And again, Commission regulations provide that the only way to institute an enforcement action with the Tennessee Private Investigation and Polygraph Commission—a legal regulatory proceeding that is subject to judicial review—is by filing a written complaint. *See* RULES OF TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION, RULES OF PROFESSIONAL CONDUCT AND STANDARDS OF PRACTICE § 1175-01-.07(2), <https://publications.tnsosfiles.com/rules/1175/1175-01.20160202.pdf>. Consequently, Mr. Swift’s allegedly defamatory statement was made as part of an official Commission proceeding, and it is absolutely privileged as a consequence. *See Lambdin Funeral Serv., Inc.*, 559 S.W.2d at 792 (“[S]tatements made in the course of a judicial proceeding that are relevant and pertinent to the issues involved are absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy.”).

Critically, the absolute litigation privilege also is not limited to communications made *during* litigation. Instead, it is hornbook law that the absolute litigation privilege immunizes “communications *preliminary to* proposed or pending litigation” as well. *Myers*, 959 S.W.2d at 161 (emphasis added). *See also Henrick*, 2019 WL 3027013, at *3 (“Having determined that the allegedly defamatory statements were made preliminary to proposed litigation and were relevant to the litigation, the Court concludes the litigation privilege applies to bar the defamation counterclaim.”). Specifically, in *Myers v.*

Pickering, the Tennessee Court of Appeals explained that:

In *Jones v. Trice*, 210 Tenn. at 535, 360 S.W.2d at 48, our Supreme Court strongly endorsed a liberal application of the absolute privilege accorded to publication of defamatory matters in connection with judicial proceedings. . . . The Court’s reliance in *Jones* on the Restatement of Torts also indicates its willingness to extend the doctrine to **communications preliminary to** proposed or pending litigation. Therefore, we hold that Pickering’s Report as published to LSSM is absolutely privileged.”

Myers, 959 S.W.2d at 161 (emphasis added). Subsequent decisions interpreting *Myers* confirm beyond dispute that the case “expressly stands for the proposition that ‘communications preliminary to proposed or pending litigation’ are absolutely privileged.” See *Phillips*, 2008 WL 836161, at *8 (quoting *Myers*, 959 S.W. at 161). See also *Kilgore*, 2019 WL 6002126, at *5; *Phillips*, 2008 WL 836161, at *8; cf. *Simpson Strong-Tie Co.*, 232 S.W.3d at 24 (noting that “the privilege applies only when there is a reasonable nexus between the publication in question and the litigation under consideration.”). Thus, even to the extent that Mr. Swift’s statement was made preliminary to—rather than during—the official Commission proceeding at issue, it still remains absolutely privileged from defamation liability based on the application of the absolute litigation privilege.

For all of the foregoing reasons, the absolute testimonial privilege and the absolute litigation privilege compel dismissal of the Plaintiff’s defamation claim against Mr. Swift as a matter of law. Consequently, pursuant to Tennessee Rule of Civil Procedure 12.02(6), the Plaintiff’s defamation claim against Mr. Swift should be dismissed with prejudice.

3. The Plaintiff has failed to sue a necessary party.

Even if the statement over which the Plaintiff has sued Mr. Swift were actionable as defamation and were not privileged from liability—and as detailed above, neither is

true—the Plaintiff’s claim against Mr. Swift would *still* have to be dismissed, because *Mr. Swift was not the person who made and broadcasted it*. Instead, as the Plaintiff’s own Complaint reflects, the publication at issue was made “by the attorney for the Tennessee Private Investigation and Polygraph Commission, recorded by the video conference software, and published on the world wide web” by the Commission thereafter. *See* Compl. ¶ 20. *See also id.* at ¶¶ 18–20.

Again, this defect is fatal to the Plaintiff’s claim against Mr. Swift. As a matter of law, Mr. Swift cannot be held responsible for a defamatory publication by a third-party, because “[i]f a person receives a letter containing libelous matter, he will not be justified in publishing it.” *Sullivan v. Baptist Mem’l Hosp.*, 995 S.W.2d 569, 572 (Tenn. 1999) (quoting *Sylvis v. Miller*, 33 S.W. 921, 922 (Tenn. 1896)). *Cf. id.* (noting that a “defendant is not answerable for anything the plaintiff may choose to do with the letter after it has once safely reached his hands”). Instead, to the extent that it were otherwise actionable, the Plaintiff’s claim would be against the publisher of the statement—the “attorney for the Tennessee Private Investigation and Polygraph Commission”—and the Commission itself, which purportedly caused his unspecified injury when it “published [it] on the world wide web.” *See* Compl. ¶ 20.

Neither the Commission nor its attorney, however, has been made a party to this action. These non-defendants also have an obvious interest relating to the subject matter of this action, which arises from their own public, still-available broadcast—a broadcast that purportedly caused the Plaintiff a massive and ongoing injury that Mr. Swift, for his part, is wholly unable to prevent or mitigate. As a consequence,

the disposition of the action in [the Commission’s and its attorney’s] absence may (i) as a practical matter impair or impede [their] ability to protect [their] interest[s], or (ii) leave [Defendant Swift] subject to a

substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest.

Tenn. R. Civ. P. 19.01.

Thus, at least in its current form, the Plaintiff's Complaint must be dismissed for "failure to join a party under Rule 19[.]" See Tenn. R. Civ. P. 12.02(7).

B. THE PLAINTIFF HAS FAILED TO STATE A COGNIZABLE CLAIM FOR CIVIL CONSPIRACY.

Tennessee law does not recognize any freestanding tort for civil conspiracy. Instead, to be actionable, a civil conspiracy requires an underlying predicate tort committed pursuant to the conspiracy. See *Watson's Carpet & Floor Coverings, Inc. v. McCormick*, 247 S.W.3d 169, 180 (Tenn. Ct. App. 2007) (citations omitted). See also *id.* ("Since liability for civil conspiracy depends on the performance of some underlying tortious act, the conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort" (quoting *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983))).

Additionally, "[a]n essential element of a conspiracy claim is that the conspiring parties intend to accomplish an unlawful purpose, or a lawful purpose by unlawful means." *Kincaid*, 221 S.W.3d at 39 (citing *Morgan v. Brush Wellman, Inc.*, 165 F. Supp.2d 704, 720 (E.D. Tenn. 2001)). As such, the absence of any unlawful purpose or means is fatal to a civil conspiracy claim.

Separately, given their highly fact-dependent nature, civil conspiracy claims are subject to heightened pleading standards and must be pleaded with some degree of specificity. See *McGee*, 106 S.W.3d at 64 ("As to civil conspiracy, this Court has stated that '[i]t is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be

sufficient to state such a claim[.]” (quoting *Haynes v. Harris*, No. 01A01–9810–CV–00518, 1999 WL 317946, at *2 (Tenn. Ct. App. 1999))). To be actionable, a civil conspiracy must also result in injury. *Kincaid*, 221 S.W.3d at 38 (“The elements of a cause of action for civil conspiracy are: (1) a common design between two or more persons, (2) to accomplish by concerted action an unlawful purpose, or a lawful purpose by unlawful means, (3) an overt act in furtherance of the conspiracy, and (4) **resulting injury.**”) (citing *Morgan*, 165 F.Supp.2d at 720).

For the reasons that follow, none of these requirements is satisfied. Accordingly, the Plaintiff’s civil conspiracy claim must be dismissed as a matter of law.

1. Because there was no underlying tortious act, the Plaintiff’s civil conspiracy claim fails as a matter of law.

Tennessee law does not recognize civil conspiracy as its own freestanding tort. Instead, a civil conspiracy requires an underlying tortious act committed pursuant to the conspiracy. *See Watson’s Carpet*, 247 S.W.3d at 180 (citations omitted). As a result, the absence of an underlying predicate tort is fatal to a civil conspiracy claim. *Id.*

Here, for the reasons set forth above, the Plaintiff has not stated a cognizable claim for defamation by Mr. Swift, and his defamation claim is not otherwise actionable. *See supra*, pp. 14 –28. As such, the Plaintiff’s civil conspiracy claim is not premised upon any actionable underlying tort involving Mr. Swift. Thus, the Plaintiff’s civil conspiracy claim against Mr. Swift is necessarily foreclosed—and must be dismissed—as a matter of law.

2. The Plaintiff’s civil conspiracy claim is not pleaded with the requisite specificity.

“As to civil conspiracy, [the Tennessee Court of Appeals] has stated that ‘[i]t is well-

settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim.” *McGee*, 106 S.W.3d at 64 (quoting *Harris*, 1999 WL 317946 at *2). Here, the Plaintiff’s civil conspiracy claim is based entirely upon conclusory legal allegations—rather than material factual allegations—that are nowhere near sufficient to sustain the cause of action. *See Kincaid*, 221 S.W.3d at 38 (“Conclusory allegations, however, unsupported by material facts will not be sufficient to state such a claim.”). Further, the actual publisher of the allegedly defamatory statements at issue has *not even been sued* and is not alleged to have participated in the conspiracy at issue, rendering the entire premise of the Plaintiff’s civil conspiracy claim farcical.

Critically, the Plaintiff’s Complaint also admits that rather than being grounded in anything resembling specific or known facts regarding the alleged conspiracy at issue, the Plaintiff’s theory of conspiracy is, instead, premised upon outright, undefined speculation. *See* Compl. ¶ 13 (“Upon information and **belief**, a connection and relationship exists [sic], **(the exact extent of which is not known at this time)**, between Heather M. Cohen, on the one hand, and David Swift and Joseph Bryan Brandon, on the other hand: the filing of complaints with the Tennessee Private Investigation and Polygraph Commission; the appearance of similar information from Cohen, Swift, and Brandon; and the determination of Cohen to baselessly implicate Darrell Sells in the death of Karen Swift all **indicate a connection** between Swift, Cohen, and Brandon.”) (emphases added). These allegations are precisely the sort of “vague and conclusory allegations unsupported by material facts” that are manifestly insufficient to state a civil conspiracy claim and require dismissal. *See McGee*, 106 S.W.3d at 64. The Plaintiff’s lack of specificity is also particularly prejudicial in the instant case, where the Plaintiff has

sued Mr. Swift not only over his own statements, but also over statements made by others and published by non-parties. The Plaintiff's civil conspiracy claim fails and compels dismissal as a matter of law due to this fatal defect as well. *See id.*

3. The Plaintiff's civil conspiracy claim fails for lack of injury.

“Resulting injury” is an essential element of any claim for civil conspiracy. *See Kincaid*, 221 S.W.3d at 38. As detailed above, though, despite asserting an entitlement to damages, the Plaintiff has not alleged injury anywhere in his Complaint. *See supra*, pp. 20–22. Neither is injury plausible under the circumstances, given the Plaintiff's concession that “[t]he written Complaint filed by David Swift”—Mr. Swift's only asserted contribution to the supposed conspiracy at issue—“did not mention Darrell Sells.” Compl. ¶ 17. Accordingly, at least as it pertains to Mr. Swift, the Plaintiff's civil conspiracy claim fails as a matter of law for lack of either an allegation of injury and any plausible injury at all. *See Kincaid*, 221 S.W.3d at 38.

C. THE PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO THE TENNESSEE PUBLIC PARTICIPATION ACT.

1. Applicability of the Tennessee Public Participation Act

The TPPA provides that “[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action” subject to the TPPA's specialized provisions. TENN. CODE ANN. § 20-17-104(a).² Under Tennessee Code Annotated § 20-17-103(3), “[e]xercise of the right of free speech’ means a communication made in connection with

² The petition “may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper.” TENN. CODE ANN. § 20-17-104(b). As a consequence, having been filed within sixty (60) days of service, Mr. Swift's Tennessee Public Participation Act petition to dismiss this action is timely filed. *See id.*

a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution[.]” In turn, Tennessee Code Annotated § 20-17-103(6) provides that:

“Matter of public concern” includes an issue related to:

- (A) Health or **safety**;
- (B) Environmental, economic, or **community well-being**;
- (C) **The government**;
- (D) A public official or **public figure**;
- (E) A good, product, or **service in the marketplace**;
- (F) A literary, musical, artistic, political, theatrical, or audiovisual work;
or
- (G) **Any other matter deemed by a court to involve a matter of public concern[.]**

Id. (emphases added).

Additionally, pursuant to Tennessee Code Annotated § 20-17-103(4):

“Exercise of the right to petition” means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

- (A) **Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body**; or
- (B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body[.]

Id. (emphases added).

2. Grounds for Granting Mr. Swift’s TPPA Petition

“The petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s

exercise of the right to free speech, right to petition, or right of association.” TENN. CODE ANN. § 20-17-105(a). Here, given that the written complaint to a regulatory agency over which Mr. Swift has been sued, at minimum: (1) involved health or safety; (2) involved community well-being; (3) involved the government; (4) involved a public figure; (5) involved a service in the marketplace; and (6) was intended to encourage consideration and review of an issue by a state or local legislative executive, judicial, or other governmental body (and succeeded in doing so), this action qualifies as one filed in response to Mr. Swift’s “exercise of the right of free speech” and his “exercise of the right to petition” under the TPPA in several independent respects. *See* TENN. CODE ANN. §§ 20-17-104(a); 20-17-103(3); 20-17-103(4)(A); 20-17-103(6)(A), (B), (C), (D), (E) and (G). *Cf. Gleason v. Smolinski*, 319 Conn. 394, 415, 125 A.3d 920, 938 (2015) (“Indeed, [p]ublic allegations that someone is involved in crime generally are speech on a matter of public concern.”) (quoting *Obsidian Finance Group, LLC v. Cox*, 740 F.3d 1284, 1292 (9th Cir.), cert. denied, --- U.S. ----, 134 S.Ct. 2680, 189 L.Ed.2d 223 (2014)); *Ogara v. St. Germain*, 77 N.E.3d 870, 877 (Mass. Ct. App. 2017) (“When a person reports suspected criminal activity to the police, she is engaging in constitutionally-based petitioning activity for purposes” of the state’s anti-SLAPP law); *Hindu Temple & Cnty. Ctr. Of the High Desert, INC. v. Raghunathan*, 714 S.E.2d 628, 632 (Ga. Ct. App. 2011). *See also Cornelius v. The Chronicle, Inc.*, 206 A.3d 710, 715 (Vt. 2019) (noting that articles describing criminal allegations “were exercises of free speech and connected to a public issue because they concerned public safety, law enforcement activity, possible criminal behavior, and the reporting of arrests.”); *California Transport v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (holding allegations made to administrative agencies implicate the right to petition, because “the right to petition extends to all departments of the

Government.”); *Okorie v. L.A. Unified Sch. Dist.*, 14 Cal. App. 5th 574, 594 (2017). Thus, Mr. Swift having met his initial burden of production under Tennessee Code Annotated § 20-17-105(a), this Court “shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.” TENN. CODE ANN. § 20-17-105(b).

a. *Evidence Supporting Defenses Raised in Mr. Swift’s Motion to Dismiss*

“Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.” TENN. CODE ANN. § 20-17-105(c). Mr. Swift expressly incorporates into this Petition each defense set forth above in support of his motion to dismiss. Further, to the extent that the Plaintiff’s Complaint successfully alleges any claim for relief on its face, Mr. Swift has appended outcome-determinative evidence to support his above defenses that relief cannot be granted as to any of them. In particular, Mr. Swift has introduced:

(1) As **Exhibit #1** to this petition a transcript of the public hearing at which the allegedly defamatory statements at issue were made; and

(2) As **Exhibit #2** to this petition an article published on December 5, 2019 indicating that it has been reported and is a matter of widespread public knowledge that: “For years, there have been rumblings that the Sells family was somehow connected to the 2011 unsolved murder of Karen Swift.” See Jeni Diprizio, *TBI says lawyer tried to extort money relating to unsolved murder of Karen Swift*, LOCAL ABC 24, <https://www.localmemphis.com/article/news/crime/tbi-says-lawyer-tried-to-extort-money-relating-to-unsolved-murder-of-karen-swift/522-ed8eb785-80b8-4563-9e25-faaa65504b66> (last updated December 5, 2019);

(3) As **Exhibit #3** to this petition statements by numerous individuals,

published in April 2019, implying or speculating about Mr. Sells' involvement; and

(4) As **Exhibit #4** to this petition an additional, recent article reflecting that the theory that the Sells family was involved in the murder of Karen Swift is widely discussed. *See As anniversary of unsolved murder nears, questions remain*, STATE GAZETTE (October 11, 2020), <https://www.stategazette.com/story/2840677.html> (“Now, let’s fast-forward a little bit and discuss a couple of theories regarding the case. **The one most have heard of by now involves a local family, the Sells family. This theory spread like an uncontrolled wildfire . . .**”) (emphasis added).

b. *Valid and outcome-determinative defenses preclude the Plaintiff’s claims against Mr. Swift.*

Pursuant to TENN. CODE ANN. § 20-17-105(c), Mr. Swift also asserts and relies upon the following additional valid and outcome-determinative defenses to this action:

1. Mr. Swift is immune from liability based on the conditional public interest and common interest privileges.

Mr. Swift maintains and preserves the defense that he was protected by an absolute privilege immunizing reports to a legal and regulatory enforcement agency from defamation liability, which Tennessee should adopt.³ Independently, however, Mr. Swift’s complaint to the Tennessee Private Investigation and Polygraph Commission is immunized from liability under the conditional public interest privilege, which Tennessee

³ Other jurisdictions have adopted an absolute privilege regarding reports made to the police. *See, e.g., Johnson v. Symantec Corp.*, 58 F. Supp. 2d 1107, 1109 (N.D. Cal. 1999) (“The line of cases cloaking police reports with the absolute privilege of section 47(b)(3) may be traced to *Williams v. Taylor*, 129 Cal. App. 3d at 745, 181 Cal. Rptr. 423. The *Williams* court expressed a dual rationale for finding an absolute privilege. First, police reports were found to satisfy the ‘official proceeding’ requirement of section 47 because ‘a communication [d]esigned to prompt action by [an official] entity is as much a part of an “official proceeding” as a communication made after an official investigation has commenced.’ *Id.* at 753, 181 Cal. Rptr. 423. Second, the court opined that as a matter of public policy, members of the community should feel at liberty to report suspected criminal activities without fear of civil liability.”). Mr. Swift expressly raises and preserves his claim that that absolute privilege should be adopted in Tennessee as well.

has already adopted very clearly. *See Pate*, 959 S.W.2d at 576.

Because “[t]he interests of the public in preventing crime and punishing criminals outweigh the interest of any plaintiff concerning statements of accusation,” as long as an accusation is made in good faith and without express malice, statements made to law enforcement are protected by Tennessee’s “public interest privilege.” *Id.* Under the public interest privilege, a publication is privileged from defamation liability

if the circumstances induce a correct or reasonable belief that

(a) there is information that affects a sufficiently important public interest, and

(b) the public interest requires the communication of the defamatory matter to a public officer or a private citizen who is authorized or privileged to take action if the defamatory matter is true.

Id. (quoting Restatement (Second) of Torts § 598 (1977)).

Critically, violating the rules promulgated by the Tennessee Private Investigation and Polygraph Commission is a criminal offense. *See* Tenn. Code Ann. § 62-26-230 (“Any person violating this part or any rule promulgated under this part commits a Class A misdemeanor.”). *See also* RULES OF TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION, RULES OF PROFESSIONAL CONDUCT AND STANDARDS OF PRACTICE § 1175-04-.03(3),

<https://publications.tnsosfiles.com/rules/1175/1175-04.20120508.pdf> (“In providing services, the licensee shall take into account all applicable laws and regulations. The licensee shall not knowingly provide services resulting in the violation of such laws and regulations.”). The Tennessee Private Investigation and Polygraph Commission also has authority to assess “penalties” up to \$2,000.00, *see id.* at § 1175-01-.15—punitive enforcement authority that is properly characterized as being criminal in substance, even

if not in form. *See generally Metro. Gov't of Nashville & Davidson Cty. v. Dreher*, No. M2020-00635-COA-R3-CV, 2021 WL 942872 (Tenn. Ct. App. Mar. 12, 2021).

Here, Mr. Swift is being sued because he “made a complaint to the Tennessee Private Investigation and Polygraph Commission regarding the social media page administered by Chastity Brandon.” *See* Compl. ¶ 16. Significantly, Mr. Swift’s complaint was also *sustained*. *See Ex. 1*, p. 16, lines 1 – 11 (“The respondent is subject to discipline for failure to cooperate with our investigation. The respondent also appears to be subject to discipline for running an investigation company without licensure for that company, for making public statements that are not completely truthful, and revealing information for a client obtained in an investigation for another client. Therefore the recommendation would be to authorize formal charges, and offer to settle this matter with voluntary license revocation.”); *id.* at p. 17, line 25 – p. 18, line 1 (“The motion carries, Mr. Chairman, to accept the recommendation of counsel.”). There is thus no serious doubt that his complaint “affect[ed] a sufficiently important public interest,” *see Pate*, 959 S.W.2d at 576. *Cf. State v. Pulley*, 863 S.W.2d 29, 34 (Tenn. 1993) (noting “the public interest served by . . . the prevention of violent crime”).

As such, “the public interest require[d] the communication of the defamatory matter to a public officer or a private citizen who [wa]s authorized or privileged to take action if the defamatory matter [wa]s true.” *See Pate*, 959 S.W.2d at 576. Accordingly, the Plaintiff’s defamation claim against Mr. Swift is foreclosed from liability by the public interest privilege. *See id.* As such, Mr. Swift’s petition to dismiss that claim should be granted. *See* TENN. CODE ANN. § 20-17-105(c).

Alternatively, but for similar reasons, the Plaintiff’s defamation claim against Mr. Swift is foreclosed from liability by the qualified common interest privilege. *See McGuffey*

v. Belmont Weekday School, No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at *15 (Tenn. Ct. App. May 27, 2020) (“Tennessee courts have recognized a common interest privilege as one type of conditional privilege.”).

Our Supreme Court has described the communications covered by a conditional privilege as follows:

‘Qualified privilege extends to all communications made in good faith upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty to a person having a corresponding interest or duty; and the privilege embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation. . . . The rule announced is necessary in order that full and unrestricted communication concerning a matter in which the parties have an interest or a duty may be had. It is grounded in public policy as well as reason.’

Id. (citing *S. Ice Co. v. Black*, 189 S.W. 861, 863 (Tenn. 1916)). *See also Trotter v. Grand Lodge F. & A.M. of Tenn.*, No. E2005-00416-COA-R3-CV, 2006 WL 538946, at *7 (Tenn. Ct. App. Mar. 6, 2006); *Pate*, 959 S.W.2d at 576.

Here, Mr. Swift had an interest in protecting himself and his family from a private investigator who was acting unlawfully and harassing him and his minor children. Further, as a victim of Ms. Brandon’s improper campaign and unsanctioned investigative tactics, which ran afoul of applicable professional regulations, *see Ex. 1* p. 16–18 (recommending that Ms. Brandon’s license be voluntarily surrendered due to her misbehavior), Mr. Swift acted in good faith to alert the appropriate regulatory authority that was empowered to take action. Put another way: Mr. Swift filed a complaint in good faith in order to ensure that Ms. Brandon was held accountable for her professional misconduct, and upon review of that complaint by the regulatory authority that was responsible for licensing Ms. Brandon, she was. Consequently, even if Mr. Sells could establish a *prima facie* case for defamation, Mr. Swift’s statements to the Tennessee

Private Investigation and Polygraph Commission were protected by the qualified common interest privilege, and the TPPA compels their dismissal as a result.

2. Mr. Swift is immune from liability under the Tennessee Anti-SLAPP Act of 1997.

Decades ago, the General Assembly enacted the Tennessee Anti-SLAPP Act of 1997 “to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies.” TENN. CODE ANN. § 4-21-1002(a). The statute recognizes that “[i]nformation provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government.” *Id.* Additionally, in enacting the Tennessee Anti-SLAPP Act of 1997, the General Assembly determined

that the threat of a civil action for damages in the form of a “strategic lawsuit against political participation” (SLAPP), and the possibility of considerable legal costs, can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. SLAPP suits can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for redress of grievances.

TENN. CODE ANN. § 4-21-1002(b). For its part, Tennessee’s judiciary has excoriated such lawsuits as a form of abuse that is properly regarded as “evil[.]” *See Residents Against Indus. Landfill Expansion, Inc. v. Diversified Sys., Inc.*, No. 03A01-9703-CV-00102, 1998 WL 18201, *3 n.6 (Tenn. Ct. App. Jan. 21, 1998) (“The legislature has recently recognized the evils of this type of lawsuit.”), *no app. filed; id.* at *3 (“Their lawsuit fits all of the characteristics of a lawsuit filed to intimidate a citizen into silence regarding an issue of public concern.”).

With respect to the immunity afforded by the Tennessee Anti-SLAPP Act of 1997, Tennessee Code Annotated § 4-21-1003(a) provides that subject to the strictures of § 4-21-1003(b):

Any person who in furtherance of such person’s right of free speech or

petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

Id.

Here, Mr. Swift filed a complaint with a government agency concerning a member of a state-licensed profession who was violating the regulatory rules that govern private investigators licensed in Tennessee. *See Ex. 1*, p. 13, line 23 – p. 14, line 9. Mr. Swift’s complaint was also substantiated upon review, and it generated formal enforcement action by the Tennessee Private Investigation and Polygraph Commission. *See id.* at p. 16, lines 1 – 11 (“The respondent is subject to discipline for failure to cooperate with our investigation. The respondent also appears to be subject to discipline for running an investigation company without licensure for that company, for making public statements that are not completely truthful, and revealing information for a client obtained in an investigation for another client. Therefore the recommendation would be to authorize formal charges, and offer to settle this matter with voluntary license revocation.”); *id.* at p. 17, line 25 – p. 18, line 1 (“The motion carries, Mr. Chairman, to accept the recommendation of counsel.”). Mr. Swift thus complied with and navigated the Tennessee Private Investigation and Polygraph Commission’s established complaint process, and following an investigation of Mr. Swift’s complaint, the Private Investigation and Polygraph Commission took appropriate enforcement action.

This is precisely the process that the Tennessee Anti-SLAPP Act of 1997 exists to encourage, protect, and immunize from retaliatory abuse like the Plaintiff’s. Consequently, Mr. Swift’s speech is statutorily immune from civil liability. Under these circumstances, “[i]n order to protect the free flow of information from citizens to their

government, an agency receiving a complaint or information under § 4-21-1003 may [also] intervene and defend against any suit precipitated by the communication to the agency.” TENN. CODE ANN. § 4-21-1004(a). Further, “[i]n the event that a local government agency does not intervene in and defend against a suit arising from any communication protected under this part, the office of the attorney general and reporter may intervene in and defend against the suit” instead. *Id.* Accordingly, counsel for the Tennessee Private Investigation and Polygraph Commission and the Tennessee Attorney General are all being served notice of this filing. *See id.*

Independent of these agencies’ participation, though, Mr. Swift is immune from the Plaintiff’s claims under Tennessee Code Annotated § 4-21-1003(a). The record of the hearing that gives rise to the Plaintiff’s Complaint reflects unmistakably that Mr. Swift petitioned a government agency regarding a matter of concern to that agency and with good cause for doing so. *See Ex. 1.* Accordingly, Mr. Swift is immune from all claims asserted in this lawsuit based on the statutory immunity afforded to him by Tennessee Code Annotated § 4-21-1003(a), and the Plaintiff’s claims against him must be dismissed accordingly. *See TENN. CODE ANN. § 20-17-105(c).*

3. The Plaintiff’s defamation claims are not cognizable, because the Plaintiff is libel-proof.

Tennessee recognizes the libel-proof plaintiff doctrine, which provides that a plaintiff with a severely tarnished reputation may not maintain a defamation action. *See Rogers v. Jackson Sun Newspaper*, No. CIV. A. C-94-301, 1995 WL 383000, at *1 (Tenn. Cir. Ct. Jan. 30, 1995) (“This Court finds and holds, as a matter of law, Plaintiff’s reputation in the community at the time of the article’s publication was so severely tarnished, he is ‘libel-proof’ and may not maintain this defamation action for an allegedly

erroneous report of his criminal record.”), *no app. filed*. The doctrine “essentially holds that ‘a notorious person is without a “good name” and therefore may not recover for injury to it.’” *Davis*, 83 S.W.3d at 128 (quoting ROBERT D. SACK, SACK ON DEFAMATION: LIBEL, SLANDER AND RELATED PROBLEMS 35 (Cum. Supp. 1998)).

The libel-proof plaintiff doctrine is premised upon the notion that “[t]o suffer injury to one’s standing in the community, or damage to one’s public reputation, one must possess good standing and reputation for good character to begin with.” *Id.* at 130. As a consequence, in defense of his claim that the Plaintiff is libel-proof, Mr. Swift notes that there is significant affirmative evidence within the Plaintiff’s community indicating that the Plaintiff lacks a good reputation in the first place. *See, e.g., Collective Ex. 5*, Bill Hiles, *Burnett fears threat by Sells over loan accounting: Attorney*, STATE GAZETTE (Sep. 7, 2005), <https://www.stategazette.com/story/1117082.html> (“Dyersburg businessman Frank Burnett is willing to testify in a lawsuit brought against him by Darrell Sells, but needs to be assured Sells won't harm him, his lawyer said Friday.”); Bill Hiles, *Joslin Oklahoma company sues Sells over nonpayment of debt*, STATE GAZETTE (June 30, 2005), <https://www.stategazette.com/story/1107959.html> (“A company partially owned by defendants in a lawsuit filed earlier this month by Dyersburg restaurant owner Darrell Sells has filed a \$2.9 million complaint against Sells. The lawsuit against Sells, filed June 16 in Dyer County Circuit Court, accuses Sells of having agreed in August 2002 to purchase the Pasteur Medical office building in Oklahoma City for \$2,996,000 and failing to make any payments on the purchase. The complaint also alleges fraud in that Sells never intended to pay the note.”). Critically, the Plaintiff also demonstrably lacks a good reputation in his community with respect to the matter of Karen Swift’s murder in particular, *see Ex. 2; Ex. 3; Ex. 4*.

VI. COSTS, ATTORNEY'S FEES, & SANCTIONS

Under Tennessee Code Annotated § 20-17-107(a):

If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

- (1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition; and
- (2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.

Sanctions are overwhelmingly warranted here. Whether due to an improper purpose or otherwise, the Plaintiff has filed a baseless lawsuit seeking a ridiculous \$2 million against Mr. Swift that not only fails to meet threshold elements of the torts asserted for multiple reasons, but which is also premised upon theories that are barred by multiple forms of immunity and based on a series of events that is not even alleged to have caused the Plaintiff to suffer an injury. *Cf. McMillin v. Realty Executives Assocs., Inc.*, No. E2018-00769-COA-R3-CV, 2019 WL 1578704, at *4 (Tenn. Ct. App. Apr. 12, 2019) (“Plaintiff had filed and maintained an action for slander when he either knew or should have known that he suffered no damages and that such a claim was, therefore, without merit. Plaintiff failed to address either of the Trial Court's findings of a violation of Tenn. R. Civ. P. 11. We find no error in the Trial Court's entry of its April 11, 2018 order sanctioning Plaintiff for his violation of Tenn. R. Civ. P. 11 and ordering Plaintiff to pay \$19,983.94 to Defendants' counsel.”). As a result, over and above the complete attorney's fee and cost award that is mandated by § 20-17-107(a)(1), sanctions are “necessary to deter repetition of the conduct” and should issue pursuant to § 20-17-107(a)(2). As a consequence, sanctions of not less than 3% of the amount that the Plaintiff has placed in controversy—equating to \$60,000—should issue against the Plaintiff to deter him and

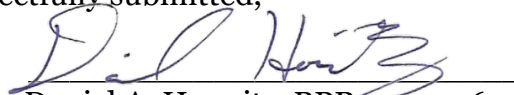
others who are similarly situated from filing a SLAPP-suit of this sort ever again.

VII. CONCLUSION

For the foregoing reasons, the Defendant's Motion to Dismiss and his Tennessee Code Annotated § 20-17-104(a) Petition to Dismiss the Plaintiff's Complaint should be **GRANTED**, and the claims set forth in the Plaintiff's Complaint should be **DISMISSED WITH PREJUDICE** pursuant to Tennessee Rule of Civil Procedure 12.02(6), 12.02(7), and Tennessee Code Annotated §§ 20-17-105(b) and (c). An order dismissing the Plaintiff's Complaint should issue as a result; the Defendant should be awarded his reasonable costs and attorney's fees associated with defending this action pursuant to § 20-12-119(c); the Plaintiff should be ordered to pay the Defendant's court costs, reasonable attorney's fees, and discretionary costs pursuant to § 20-17-107(a)(1); this Court should assess sanctions against the Plaintiff as necessary to deter repetition of his conduct pursuant to § 20-17-107(a)(2); and the Plaintiff should be ordered to pay the Defendant's costs and reasonable attorney's fees pursuant to Tennessee Code Annotated § 4-21-1003(c).

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2021, a copy of the foregoing was served via UPS and/or via email upon the following:

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By: 
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Exhibit #1

TENNESSEE PRIVATE INVESTIGATION AND POLYGRAPH COMMISSION

OCTOBER 15, 2020

Webex platform based at Davy Crockett Tower

500 James Robertson Parkway

Nashville, Tennessee 37243

Transcribed from a digital file by:

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A P P E A R A N C E S

COMMISSIONERS:

- Walt Valentine
- Stuart Bayne
- Cody Vest
- David Brown
- Ashley Thomas
- Robin Johnston
- Doug Shanks
- Charles Barham
- Charles Bradley

STAFF:

- Jesse Gentry
- Shauna Balaszi-Williams
- Carol McGlynn
- Mark Amick
- Tiffaney Hopkins

1 DIRECTOR VEST: Dustin, are you ready to start?

2 COMMISSIONER BARATI: Yeah, go ahead.

3 DIRECTOR VEST: All right.

4 Go ahead, Mr. Chairman.

5 CHAIRPERSON VALENTINE: Okay. Good morning,

6 fellow commission members. Today's date is

7 October the 15th, 2020. And it's approximately 9:02 a.m.

8 And I'm Walt Valentine, Commission Chair.

9 I'll now call the -- to order the meeting of the
10 Tennessee Private Investigation and Polygraph Commission.

11 Executive Director Cody Vest, please call the
12 roll.

13 COMMISSIONER VEST: All right. Thank you,
14 Mr. Chairman. But before I call the roll, I'd like to turn
15 this over to -- to our staff attorney, Ashley Thomas.

16 MS. A. THOMAS: Good morning. Can you all hear
17 me?

18 CHAIRPERSON VALENTINE: Yes, we can.

19 MS. A. THOMAS: All righty. I just need to read
20 the Statement of Necessity into the record.

21 (As read:) "This is the regularly scheduled
22 meeting of the Tennessee Private Investigation and Polygraph
23 Commission, which is taking place via Webex, in accordance
24 with Executive Order 60, which is in response to the novel
25 coronavirus pandemic.

1 Notice of this meeting was posted to the
2 commission website on October 12th, 2020. If there is not a
3 physical quorum present, a statement of necessity will be
4 read into the record.

5 Pursuant to Tennessee Code Annotated
6 8-44-108(b)(2), which states: "If a physical quorum is not
7 present at the location of a meeting of a governing body,
8 then in order for a quorum (Unintelligible)" --

9 (Sound cuts in and out
10 for several seconds
11 during Ms. Thomas'
12 reading.)

13 MS. A. THOMAS: -- "(Unintelligible) necessity
14 (Unintelligible) must include a recitation of the facts and
15 circumstances on which it was based.

16 Further, Tennessee Code Annotated 8-34-108(a)(3)
17 defines 'necessity' as 'matters to be considered by the
18 governing body at that meeting requiring timely action by
19 the body, the physical presence by a quorum of the members
20 is not practical within the period of time requiring action,
21 and that participation by a quorum of members by electronic
22 or other means of communication as necessary.' i"

23 Again, this is the regularly scheduled meeting of
24 the Tennessee Private Investigation and Polygraph
25 Commission. The purpose of the meeting with members

1 attending the video conference is to discuss the agenda as
2 posted to the Commission website. And voting will be
3 conducted by roll call.

4 Thank you.

5 DIRECTOR VEST: Thank you, Attorney Thomas. But
6 would you -- you kind of faded in and out on us, so would
7 you please send me a copy of that so I make sure I include
8 that in the minutes?

9 MS. A. THOMAS: Absolutely.

10 DIRECTOR VEST: All right. Thank you.

11 Now, if you're ready, Mr. Chairman, I'll do a roll
12 call.

13 CHAIRPERSON VALENTINE: I am ready.

14 DIRECTOR VEST: All right.

15 Walt Valentine?

16 COMMISSIONER VALENTINE: Here, present.

17 DIRECTOR VEST: David Brown?

18 COMMISSIONER BROWN: Present.

19 DIRECTOR VEST: Stuart Bayne?

20 COMMISSIONER BAYNE: Present and accounted for.

21 DIRECTOR VEST: Robin Johnston?

22 COMMISSIONER JOHNSON: (Unintelligible).

23 DIRECTOR VEST: Okay. Somebody needs to -

24 (Unintelligible voices.)

25 DIRECTOR VEST: -- put their cell phone on mute.

1 I'm having difficulty -- okay.

2 (Unintelligible voices.)

3 COMMISSIONER VEST: Okay. Commissioner Rousseau?

4 UNIDENTIFIED MAN: No.

5 COMMISSIONER VEST: Kendall Barham?

6 COMMISSIONER BARHAM: Present.

7 COMMISSIONER VEST: Charles Bradley?

8 CHAIRPERSON VALENTINE: He's coming on right now.

9 COMMISSIONER VEST: Oh, he's having difficulty?

10 CHAIRPERSON VALENTINE: Yes. He'll be there in
11 just a second.

12 COMMISSIONER VEST: Okay. So I got one, two,
13 three, four -- let the record show I don't have
14 Alan Rousseau. I don't see -- well, there's Doug Shanks.

15 See, I didn't hear you, Mr. Shanks.

16 COMMISSIONER SHANKS: I didn't hear you, either.

17 COMMISSIONER VEST: Oh, I'm sorry.

18 COMMISSIONER SHANKS: So I'm here.

19 COMMISSIONER VEST: So and -- has Charlie come on
20 yet? All right.

21 CHAIRPERSON VALENTINE: I don't see him.

22 COMMISSIONER VEST: So what'd I -- you do have a
23 quorum, but let the record show at the moment Alan Rousseau
24 is not present, and Charles Bradley is not present. If
25 Charles comes on, we'll correct the minutes.

1 So you do have a quorum, Mr. Chairman.

2 CHAIRPERSON VALENTINE: Very good.

3 The next item is the agenda. I'd like to ask each
4 commission member if they've received and had time to review
5 a copy of the agenda, and if so, is there a motion to adopt
6 this agenda?

7 COMMISSIONER BROWN: Chairman Valentine,
8 Commissioner Brown. I recommend we adopt the agenda.

9 CHAIRPERSON VALENTINE: And I -

10 COMMISSIONER BAYNE: Second.

11 COMMISSIONER SHANKS: Second.

12 CHAIRPERSON VALENTINE: Okay.

13 All in favor say "aye" -- I guess we'll do a roll
14 call, won't we?

15 COMMISSIONER VEST: Yes, sir. We'll be doing a
16 roll call. But let me make sure I heard that. The motion
17 was made by Commissioner Brown, seconded by Mr. Shanks, to
18 adopt the agenda. Is that correct?

19 CHAIRPERSON VALENTINE: Seconded by Stuart Bayne.

20 COMMISSIONER VEST: Seconded, Stuart. Oh, I
21 thought I heard -

22 COMMISSIONER BAYNE: Well, we both spoke over each
23 other.

24 CHAIRPERSON VALENTINE: I think they both did.
25 Okay.

1 COMMISSIONER VEST: Okay. I'm going to leave it
2 Mr. -- Commissioner Shanks. I -- that's who I heard. All
3 right.

4 Walt Valentine?

5 COMMISSIONER VALENTINE: Yes.

6 COMMISSIONER VEST: David -- David Brown?

7 COMMISSIONER BROWN: Aye.

8 COMMISSIONER VEST: Stuart Bayne?

9 COMMISSIONER BAYNE: Aye.

10 COMMISSIONER VEST: Robert [sic] Johnston?

11 COMMISSIONER JOHNSON: Aye.

12 COMMISSIONER VEST: Doug Shanks? For some reason
13 we're not hearing -

14 COMMISSIONER SHANKS: Aye.

15 COMMISSIONER VEST: Okay. Thank you.

16 Kendall Barham?

17 COMMISSIONER BARHAM: Aye.

18 COMMISSIONER VEST: All right. The "ayes" have
19 it, Mr. Chairman.

20 CHAIRPERSON VALENTINE: Very good.

21 The next item is the minutes. Approval of the
22 minutes for the last Educational Committee Commission
23 meeting. Has each member -- commission member received and
24 had time to review the copy of these minutes? And if so, is
25 there a motion to adopt these minutes?

1 COMMISSIONER BAYNE: I have read those minutes. I
2 move we adopt them.

3 CHAIRPERSON VALENTINE: Do I hear a second?

4 COMMISSIONER BROWN: Commissioner Brown seconds
5 it.

6 CHAIRPERSON VALENTINE: Okay. It's been moved and
7 seconded that we approve the minutes.

8 Any discussion?

9 Hearing none, all in favor?

10 Cody Vest, if you call the roll?

11 COMMISSIONER VEST: Was made by Commissioner Bayne
12 and seconded by Commissioner Brown.

13 CHAIRPERSON VALENTINE: Commissioner Bayne.

14 COMMISSIONER VEST: Yes. All right. That's
15 better.

16 CHAIRPERSON VALENTINE: Bayne and Brown.

17 COMMISSIONER VEST: I got it.

18 All right. Walt Valentine?

19 COMMISSIONER VALENTINE: Aye.

20 COMMISSIONER VEST: David Brown?

21 COMMISSIONER BROWN: Aye.

22 COMMISSIONER VEST: Stuart Bayne?

23 COMMISSIONER BAYNE: Aye.

24 COMMISSIONER VEST: Robin Johnston?

25 COMMISSIONER JOHNSON: Aye.

1 COMMISSIONER VEST: Doug Shanks?

2 COMMISSIONER SHANKS: Aye.

3 COMMISSIONER VEST: Kendall Barham?

4 COMMISSIONER BARHAM: Aye.

5 COMMISSIONER VEST: The "ayes" have it,
6 Mr. Chairman.

7 CHAIRPERSON VALENTINE: Okey-doke. Next will be
8 the Legal Report.

9 MR. GENTRY: All right. Good morning. I hope
10 everyone has got a chance to review the Legal Report. The
11 first two cases on here are related, as they are the same
12 respondent, but two separate complaints.

13 And then Nos. 3 and 4, was the same complainant,
14 but the respondent was -- one of them was the PI and the
15 other one was the company. So I just thought I'd give that
16 background. I'll -- I'll reference that when we get to 3
17 and 4 as well, just for clarification.

18 The first case on here, Complaint No. 2020045141.
19 The summary is that the respondent worked as an intern to
20 obtain her PI license at a licensed private investigation
21 company in 2011.

22 While she was with this company, the company was
23 investigating the death of the complainant's wife. It is
24 unclear the exact amount of work the respondent actually did
25 with this company, on the case. But that company also made

1 a complaint against the respondent. See Bullet No. 2 on
2 this report, Case No. 2020039531.

3 After receiving her license, the respondent
4 started her own company, and she also started a podcast in
5 or about April 2020, in which she began to share details of
6 the complainant's case.

7 The complainant stated respondent also has a
8 Facebook page under a different name that she's used to
9 harass him and his family. The Facebook page for
10 respondent's company has a name that is not licensed with
11 the commission.

12 It does not appear that the respondent works for a
13 licensed company at this time. The respondent did not fully
14 cooperate with our investigation on this case. Respondent
15 admitted to being one of several administrators that used
16 the Facebook page that was allegedly harassing the
17 complainant; however, she, the respondent, would not provide
18 a response to any of the questions asked of her by our
19 investigator.

20 In respondent's (Unintelligible) she discusses the
21 complainant's (Sound cuts out) --

22 COMMISSIONER VEST: Okay. Let's hold just a
23 moment here. It looks like we're having some technical
24 difficulty, with Jesse. He might have lost the website
25 there -- I mean, the connection.

1 If he's not able to connect -- Ashley, are you
2 still out there?

3 Yes, I see you're still connected.

4 MS. A. THOMAS: I am. I'm going to pull up the
5 Legal report now, if he can't connect it in a couple of --
6 in -- in -

7 COMMISSIONER VEST: Okay. Thank you.

8 MS. A. THOMAS: And I'll keep reading.

9 COMMISSIONER VEST: Uh-huh. Thank you.

10 It's just that kind of day, Commission Members.

11 COMMISSIONER BARHAM: This has been going on the
12 whole year.

13 COMMISSIONER VEST: Oh, yes. I think we're all
14 kind of used to this. We just -- we'll just adapt the best
15 way we can, move on.

16 COMMISSIONER BAYNE: I'll just be looking over
17 Cody's shoulder.

18 COMMISSIONER VEST: Okay.

19 CHAIRPERSON VALENTINE: That's good, Stuart.
20 That's good.

21 MS. A. THOMAS: Okay. Cody, if you want, I have
22 the Legal Report pulled up. I'll (Unintelligible) reading
23 just the (Unintelligible).

24 COMMISSIONER VEST: Here he is. Looks like he's
25 come back on.

1 also appears to be subject to discipline for
2 (Unintelligible) an investigation company without licensure
3 for that company, which would be Tennessee Code Annotated
4 62.26.204; and potentially for making public statements that
5 weren't completely objective and truthful, which would be
6 Tennessee Rules and Regulations 1175.04-.04; and revealing
7 information for a client obtained an investigation into
8 another individual -- another individual Tennessee Code
9 Annotated, 62.26" (Sound cuts out) --

10 The recommendation of counsel would be to
11 authorize formal charges with the offer to settle this
12 matter with voluntary license revocation.

13 COMMISSIONER VEST: Okay. Jesse, I'm sorry. Can
14 you go back and read the paragraph that started, "The
15 complainant was never a client"? I believe that's -

16 MR. GENTRY: I will.

17 COMMISSIONER VEST: -- where we left off.

18 COMMISSIONER BAYNE: Actually, where you left off
19 was -

20 COMMISSIONER VEST: Where was it?

21 COMMISSIONER BAYNE: -- "She would not provide a
22 response to any of the questions" and previous -- halfway
23 through the previous paragraph.

24 MR. GENTRY: I'll -- I'll -

25 COMMISSIONER VEST: Okay.

1 MR. GENTRY: I'll just start at the beginning of
2 that paragraph.

3 "The respondent did not fully cooperate with our
4 investigator on this case. The respondent admitted to being
5 one of the several administrators who used the Facebook page
6 that was allegedly harassing the complainant. However, she
7 would not provide a response to any of the questions asked
8 to her by our investigator.

9 In the respondent's podcast, she discusses the
10 complaint's medical records which it is unclear as to how
11 she got them, and makes multiple statements that the
12 complainant stated were false."

13 Do you want the rest of it, or -

14 COMMISSIONER VEST: Yes. You need to read the
15 next paragraph.

16 MR. GENTRY: Okay.

17 "The complainant wasn't a client of the
18 respondent, nor of the company she previously worked for.
19 However, the respondent now appears to be working for a
20 suspect who was allegedly involved in the murder of the
21 complainant's wife, as the respondent's ex-husband has
22 stated that the respondent is receiving payments from this
23 other suspect, and the respondent's statements on her
24 podcast seem to advocate for the innocence of the other
25 suspect, while alleging the complainant was the actual

1 murderer of his deceased wife.

2 The respondent is subject to discipline for
3 failure to cooperate with our investigation. The respondent
4 also appears to be subject to discipline for running an
5 investigation company without licensure for that company,
6 for making public statements that are not completely
7 truthful, and revealing information for a client obtained in
8 an investigation for another client.

9 Therefore the recommendation would be to authorize
10 formal charges, and offer to settle this matter with
11 voluntary license revocation.

12 CHAIRPERSON VALENTINE: Okay. Any questions for
13 Jesse?

14 I have one, Jesse. Has this been shared with law
15 enforcement?

16 MR. GENTRY: I believe the complainant has talked
17 to law enforcement. I know when we jump onto No. 2, the
18 complainant, which is the company that this respondent used
19 to work for, has talked to law enforcement, and has also
20 contemplated bringing a defamation lawsuit as well.

21 CHAIRPERSON VALENTINE: Okay. Very good.

22 Do we need a motion on -

23 COMMISSIONER VEST: Yes.

24 CHAIRPERSON VALENTINE: Oh, okay. You've heard
25 that the first complaint in the Legal Report.

1 Do I hear a motion?

2 COMMISSIONER BAYNE: Given the fact that the --
3 the information just surfaced that law enforcement was in
4 some measure involved, I move we accept this recommendation.

5 CHAIRPERSON VALENTINE: Do I hear a second?

6 COMMISSIONER BROWN: Commissioner Brown seconds
7 it.

8 CHAIRPERSON VALENTINE: Okay. It's been moved and
9 seconded.

10 Any discussion?

11 Hearing none, Executive Director Cody Vest, would
12 you call the roll?

13 COMMISSIONER VEST: Walt Valentine?

14 COMMISSIONER VALENTINE: Aye.

15 COMMISSIONER VEST: David Brown?

16 COMMISSIONER BROWN: Aye.

17 COMMISSIONER VEST: Stuart Bayne?

18 COMMISSIONER BAYNE: Aye.

19 COMMISSIONER VEST: Robin Johnston?

20 COMMISSIONER JOHNSON: Aye.

21 COMMISSIONER VEST: Doug Shanks?

22 COMMISSIONER SHANKS: Aye.

23 COMMISSIONER VEST: Kendall Barham?

24 COMMISSIONER BARHAM: Aye.

25 COMMISSIONER VEST: The motion carries,

1 Mr. Chairman, to accept the recommendation of counsel.

2 CHAIRPERSON VALENTINE: Okay. Mr. Gentry, do you
3 have a second?

4 MR. GENTRY: I do. It's No. 2 on this
5 Legal Report. Like I said earlier, it's the same
6 respondent, it's the same individual. This complaint was
7 made, though, by the company that initially sponsored her
8 for her PI license.

9 This is Complaint No. 2020039531. This complaint
10 covers the same private investigator and facts presented
11 above; however, this complainant was the company that the
12 respondent interned for.

13 This complainant alleged that respondent used
14 details in the investigation of the murdered wife's case,
15 and disclosed them on the respondent's podcast without
16 permission.

17 The respondent initially came to the complainant
18 as a potential witness to the above discussed homicide case.
19 And after working together and providing testimony regarding
20 the case, the complainant sponsored the respondent for her
21 PI licensure, and allowed her to work for her as an
22 apprentice.

23 Additionally, this complainant stated while the
24 respondent worked for her, the complainant received notice
25 that the respondent had accessed client files in the

1 business Dropbox that the respondent should not have had
2 accessed. The complainant told her that if she disclosed
3 this information to any other party, she will report her to
4 the Commission.

5 The complainant was contacted by other individuals
6 shortly after this incident, saying that the complainant had
7 contacted them to, quote "dig up dirt," end quote, on the
8 complainant.

9 Further, the complainant became aware that the
10 respondent was allegedly working as an investigator for one
11 of the homicide case's suspects after leaving employment
12 with the complainant.

13 The complainant also stated that the respondent
14 had previously offered testimony against these suspects, and
15 was now on her podcast recanting statements that she made
16 against these suspects.

17 The respondent has also apparently contacted
18 several suspects, who the complainant investigated and has
19 told them to, quote "fight back," end quote, against the
20 complainant.

21 Like the above complaint, the respondent did not
22 cooperate into the investigation of this complaint, and
23 appears to be working for and running an unlicensed private
24 investigation company.

25 The respondent is subject to the same grounds for

1 discipline as noted above, but from the knowledge and
2 statements of this complainant, there appear to be more
3 facts and firsthand knowledge regarding the information
4 accessed by and then disclosed by the respondent.

5 This complainant has also stated the respondent
6 has multiple DUIs and arrests. But she alleged that the
7 respondent has provided different Social Security numbers
8 and names to avoid these cases being added together.

9 There was one DUI that we received information on,
10 however, the complainant was not able to provide the other
11 copies that she stated were uncovered.

12 And I will add that since drafting this summary, I
13 believe we may have received some other information, but we
14 haven't been able to fully investigate that. But that is
15 still something that is -- is being investigated.

16 So the recommendation at this point is to
17 authorize formal charges and the offer to settle this matter
18 with voluntary license revocation, as with the -- the first
19 complaint as well.

20 CHAIRPERSON VALENTINE: Okay.

21 Do I hear a motion on this?

22 COMMISSIONER BROWN: Commissioner Brown moves to
23 accept counsel (Unintelligible).

24 CHAIRPERSON VALENTINE: Do I hear a second?

25 COMMISSIONER SHANKS: Commissioner Shanks seconds

1 it.

2 CHAIRPERSON VALENTINE: Moved by Brown, seconded
3 by Shanks.

4 Any discussion?

5 DIRECTOR VEST: I do. I have a question. I might
6 have got lost here.

7 So is this the company that hired the woman -

8 MR. GENTRY: Yeah.

9 UNIDENTIFIED WOMAN: -- or is this the woman
10 who -

11 MR. GENTRY: Oh -

12 DIRECTOR VEST: Oh, okay. I don't understand
13 that.

14 MR. GENTRY: I'm sorry. I'm sorry. Not the --
15 not the second company. That's right. That's something
16 that should be clarified.

17 DIRECTOR VEST: Okay.

18 MR. GENTRY: This was the additional company she
19 worked for while she was apprenticing. After she left there
20 -- Cody Vest and I had -- had discussed -- she was working
21 for another company while also running this unlicensed
22 company and podcast.

23 And then shortly thereafter this other company
24 that she was working for, Ms. Vest, that was reported on her
25 license that she was working for, she's no longer working

1 for. But that's -- that's not this company. This is the
2 company she apprenticed for initially, and sponsored her.

3 DIRECTOR VEST: So we're holding that company
4 responsible for her behavior?

5 MR. GENTRY: Well, she left -- she left
6 employment, or left after, you know, apprenticing with this
7 company, and then started doing this activity. So I don't
8 think that they would be responsible for her activity.

9 DIRECTOR VEST: Okay. I'm just making --
10 clarifying that.

11 Shauna, are you on the line? It seems like
12 Charlie is trying to call in.

13 Oh, all right. I'll get -

14 MS. BALASZI-WILLIAMS: Yes. I'm on the line. I'm
15 watching.

16 DIRECTOR VEST: Okay. How about try to call
17 Charlie? He's trying to get online.

18 MS. BALASZI-WILLIAMS: Okay.

19 DIRECTOR VEST: Thank you.

20 All right. Are you ready for me to take a roll
21 call vote, Mr. Chairman?

22 CHAIRPERSON VALENTINE: Well, one other question.

23 Mr. Gentry -

24 DIRECTOR VEST: Okay.

25 CHAIRPERSON VALENTINE: -- it seems like instead

1 of a voluntary -

2 MR. GENTRY: Yes, sir?

3 CHAIRPERSON VALENTINE: -- it seems like we ought
4 to just revoke their license.

5 MR. GENTRY: Well, if we do that we would have to
6 have the formal hearing. This is her offer to settle it.
7 If we wanted to revoke her license -- if she doesn't settle
8 with the voluntary revocation, we would then set it for a
9 hearing -

10 CHAIRPERSON VALENTINE: Okay.

11 MR. GENTRY: -- like -- likely in January, I
12 believe, the next commission meeting, so...

13 CHAIRPERSON VALENTINE: All right. If -- well,
14 okay, as long as we get her out of the business, that's --
15 that's the goal.

16 COMMISSIONER BAYNE: And she -- you know, license
17 ex -- oh, I'm sorry. Never mind.

18 CHAIRPERSON VALENTINE: Okay.

19 Director Vest, we're ready for a roll call.

20 DIRECTOR VEST: Excuse me.

21 Walt Valentine?

22 COMMISSIONER VALENTINE: Aye.

23 DIRECTOR VEST: David Brown?

24 COMMISSIONER BROWN: Aye.

25 DIRECTOR VEST: Stuart Bayne?

1 COMMISSIONER BAYNE: Aye.

2 DIRECTOR VEST: Robin Johnston?

3 COMMISSIONER JOHNSON: Aye.

4 DIRECTOR VEST: Doug Shanks?

5 I'm sorry, Doug, I didn't hear you.

6 COMMISSIONER SHANKS: Aye. I didn't hear my name.

7 Sorry.

8 DIRECTOR VEST: Kendall Barham?

9 COMMISSIONER BARHAM: Aye.

10 DIRECTOR VEST: All right. The "ayes" have it,
11 Mr. Chairman, to agree with the counsel.

12 CHAIRPERSON VALENTINE: Okay.

13 Mr. Gentry, is there any further -

14 MR. GENTRY: There are. There are two more, and
15 -- and I did before, number -- Nos. 3 and 4, it's the same
16 complainant, but we have two different complaints. One is
17 against the private investigator as an individual, and the
18 second is against his company.

19 So I'll start with No. 3. It's
20 Complaint No. 2020060241. The complainant inquired about
21 services from the respondent in April 2020, regarding the
22 respondent being able to locate a person of interest, and
23 sent her the information on fees and procedures (Sound cuts
24 out) discussed the next steps in the information the
25 respondent would need to get started.

1 The respondent stated that the complainant
2 contacted him a few weeks later, and was upset that there
3 were no -- not faster results. The respondent stated that
4 he made the complainant's case a priority at that point.
5 The complainant stated she had concerns with the
6 investigation. And the respondent offered to cancel the
7 investigation without any comp to the complainant.

8 The complainant (Sound cuts out) to the
9 respondent, then used profanity, and called her a racial
10 slur. The respondent did not deny using the words.
11 However, he stated he believed he was no longer on the phone
12 with the -- the complainant.

13 Surprisingly, the parties reconciled and continued
14 to work together over the next month. The respondent
15 provided the address of the missing person to the
16 complainant, and the complainant then hired the respondent
17 to serve legal process on the person as well as other
18 individuals.

19 After the respondent served the documents. The
20 complainant was arrested for violating a court order.
21 Apparently there was a no-contact order between the
22 complainant and this missing person's children. And the
23 complainant had included a personal letter to this child
24 with the legal documents.

25 The complainant stated that she was arrested due

1 to a conspiracy between the respondent, the district
2 attorney, and the Judge, and that the respondent had
3 unlawfully told her she could serve the paperwork without
4 violating the order.

5 The respondent stated the order was violated due
6 to the complainant going to this person's home. According
7 to the documents (Sound cuts out) the Court, the order was
8 violated due to the included letter by the complainant. The
9 respondent's actions of serving legal service would not
10 violate a no-contact order.

11 However, it is unclear whether he knew the
12 additional letter was included in the envelope given him by
13 the complainant. Overall, it does not appear that there is
14 any evidence of misconduct or grounds to discipline the
15 respondent regarding the issue with the complainant's arrest
16 and violation of the no-contact order.

17 The Commission could decide to discipline the
18 respondent for using a racial slur against the complainant,
19 as applicants for licensure are to be of good moral
20 character and are to remain of good moral character.
21 However, if the Commission decided this was -- warranted
22 discipline, a letter of warning would be the most
23 appropriate form of discipline.

24 It's concerning that the respondent would use this
25 language; however, as the complainant reconciled after the

1 language that was used and continued working together, it
2 did not appear too egregious in the mind of the complainant.

3 So the recommendation would be to close.

4 CHAIRPERSON VALENTINE: Okay. Do I hear a motion?

5 COMMISSIONER SHANKS: Commissioner Shanks makes a
6 motion to accept the recommendation.

7 CHAIRPERSON VALENTINE: Do I hear a second?

8 COMMISSIONER BAYNE: Second. Bayne seconds.

9 CHAIRPERSON VALENTINE: Okay. Shanks approved and
10 Bayne seconded. Good.

11 Any discussion?

12 Hearing none, Director Vest, would you call the
13 roll?

14 DIRECTOR VEST: Walt Valentine?

15 COMMISSIONER VALENTINE: Aye.

16 COMMISSIONER VEST: David Brown?

17 COMMISSIONER BROWN: Aye.

18 COMMISSIONER VEST: Stuart Bayne?

19 COMMISSIONER BAYNE: Aye.

20 COMMISSIONER VEST: Robin Johnston?

21 COMMISSIONER JOHNSON: Aye.

22 COMMISSIONER VEST: Doug Shanks?

23 Commissioner Shanks?

24 COMMISSIONER SHANKS: Aye.

25 DIRECTOR VEST: That was an "aye," for -- in case

1 you didn't hear.

2 Kendall Barham?

3 COMMISSIONER BARHAM: Nay.

4 DIRECTOR VEST: Kendall votes "no."

5 All right.

6 CHAIRPERSON VALENTINE: Charlie is on the line.

7 COMMISSIONER VEST: All right. Thank you.

8 The motion carried, Mr. -- Mr. Chairman, to agree
9 with counsel.

10 CHAIRPERSON VALENTINE: Okay.

11 Mr. Gentry, do you have any further?

12 MR. GENTRY: I just -- just one more case, No. 4
13 in the Legal Report, Complaint No. 2020060781. This case is
14 essentially the same. Within the Legal Report,
15 Case 2020060241, except the respondent named this complaint
16 as the company and the respondent in the other case was the
17 individual investigator.

18 There were no new facts alleged in this filed
19 complaint. Whether the Commission decides to close the
20 other case or issue a letter of warning, this case should
21 close. It does not appear that there was any violations by
22 the actual company. And the issue regarding the racial slur
23 used by the individual investigator may not be attributed to
24 the company.

25 So the recommendation for this one was to close.

1 CHAIRPERSON VALENTINE: Do I hear a motion?

2 COMMISSIONER SHANKS: Mr. Shanks makes a motion to
3 accept the recommendation.

4 DIRECTOR VEST: I didn't -- couldn't hear that.
5 Who was that?

6 COMMISSIONER SHANKS: Dr. Shanks.

7 CHAIRPERSON VALENTINE: It was -

8 DIRECTOR VEST: Oh, okay.

9 CHAIRPERSON VALENTINE: Do I hear a second?

10 COMMISSIONER JOHNSON: Commissioner Johnston
11 seconds.

12 CHAIRPERSON VALENTINE: Johnston seconds.

13 Any discussion?

14 Hearing none, Director Vest, would you call the
15 roll?

16 DIRECTOR VEST: Excuse me.

17 Walt Valentine?

18 COMMISSIONER VALENTINE: Aye.

19 COMMISSIONER VEST: David Brown?

20 COMMISSIONER BROWN: Aye.

21 COMMISSIONER VEST: Stuart Bayne?

22 COMMISSIONER BAYNE: Aye.

23 COMMISSIONER VEST: Robin Johnston?

24 COMMISSIONER JOHNSON: Aye.

25 COMMISSIONER VEST: Doug Shanks?

1 COMMISSIONER SHANKS: Doug Shanks. Aye.

2 COMMISSIONER VEST: Aye.

3 Kendall Barham?

4 COMMISSIONER BARHAM: Aye.

5 COMMISSIONER VEST: And let the record show that
6 Charlie -- Charlie Bradley has joined us.

7 So Charlie, what is your vote?

8 COMMISSIONER BRADLEY: Aye.

9 DIRECTOR VEST: All right. Thank you.

10 Mr. Chairman, the ayes have it to agree with
11 counsel.

12 CHAIRPERSON VALENTINE: Okay.

13 Anything further, Mr. Gentry?

14 MR. GENTRY: There's nothing further on the
15 Legal Report. I will add that we have one other case that
16 the Commission reviewed previously. We've been trying to
17 settle it. The respondent had been in the hospital for
18 a while. But in the event that he doesn't settle it, or if
19 either of the other previous cases need to have a hearing at
20 the next commission meeting, that would likely be in
21 January.

22 So I'm not sure if everyone has participated in
23 the training from the Administrative Office of Courts -- or
24 the Administrative Procedures Division regarding the hearing
25 to be a Webex. But if they offer another one and you

1 haven't taken it, I would recommend, you know, participating
2 in that, so any questions you might have about (Sound cuts
3 out) can be answered. I've heard that was beneficial to
4 some of the board members that participated in that, and
5 commission members.

6 CHAIRPERSON VALENTINE: Okay. Thank you very
7 much, Mr. Gentry.

8 Okay. The next item is appearances.

9 Director Vest, do we have anyone wanting to
10 appear?

11 DIRECTOR VEST: No, sir. We don't have an
12 appearance. I have one under the correspondence. The
13 gentlemen did want to discuss it.

14 Mr. Culver, are you with us?

15 I don't see his name on there, so we'll leave it
16 down there with correspondence to discuss.

17 CHAIRPERSON VALENTINE: Okay.

18 And if it's okay with you, Mr. Chairman, we'll
19 move on to my section there, of Administrative Matters.

20 CHAIRPERSON VALENTINE: Yes.

21 DIRECTOR VEST: But I did want to tag onto the end
22 of what Attorney Gentry said. There was only three
23 commissioners that I -- that I remember, now, that actually
24 took this -- this course with the judges -- that's what I'm
25 going to call it. It -- it was very beneficial.

1 still do have some vacancies. Yes, again, I have sent the
2 information up about the vacancies, and I understand that
3 they are actively working on that.

4 The -- of course, it said our next meeting was
5 today. We have no legislation as of yet from The Hill, that
6 I'm aware of.

7 We had our monthly meeting. We had a monthly
8 finance meeting. Haven't had any media contact or marketing
9 outreaches, with -- with the Covid whatever. And in the
10 month of September there was not any complaints.

11 So if you'd like we can just move right on to the
12 budget. And I'm going to read that for you.

13 It looks like in the month of January you ended
14 with 6,986 -- I'm -- I'm sorry. Let me rethink this. I
15 said January.

16 July starts your new fiscal year. And as of July
17 it was 6,986. August was 1,874. So you ended up with
18 \$8,860 to the black.

19 We had -- you heard the written reports that we've
20 -- that must have something to do with the increase in
21 investigations and legal costs there -- any time we have to
22 do those.

23 So if we stay on this trend, we -- we could end
24 up, again, in the black. We -- we don't have the, what --
25 one, five, ten, fifteen -- about 20,000, I believe it was,

1 that we had for the exams. We won't have that this year,
2 because it's every five years. So I don't anticipate any
3 large expense as of right now.

4 So we are -- we're looking good as far as our
5 budget's concerned. Not too much, and just enough.

6 CHAIRPERSON VALENTINE: I had a question about
7 that, Dr. Vest.

8 DIRECTOR VEST: Okay.

9 CHAIRPERSON VALENTINE: Well, I noticed that most
10 -- the largest expense we have for the two months, July and
11 August, was the Edison expense. That was even more than the
12 salaries. What are -- what benefits are we getting from
13 Edison?

14 DIRECTOR VEST: Edison -- Edison is our computer
15 system, where we do -- and Core is also our system. When
16 you say "what benefits?" it's just the system that we use
17 for payroll, and -- and other items. Whenever we use it,
18 whenever we pay our commissioners for attending the board
19 meetings, whatever expenses we have, it comes out of Edison.

20 COMMISSIONER BAYNE: My goodness, that seems like
21 an awful lot when it's even more than what we pay out in
22 salaries. I presume that Edison came from The Hill rather
23 than from within.

24 DIRECTOR VEST: That is the system that the entire
25 state is using, yes, sir. It's a program.

1 COMMISSIONER BAYNE: Somebody got ripped off.

2 (Unintelligible voices.)

3 COMMISSIONER BAYNE: Okay. That's enough -

4 DIRECTOR VEST: Then -- okay.

5 COMMISSIONER BAYNE: -- as far as the

6 (Unintelligible.)

7 DIRECTOR VEST: We -- well, anyway, the
8 PI Commission has done good in July and August. If you --
9 if you kind of -- if you look at it a little bit -- just to
10 give you an idea, let's look at August:

11 The license revenue was \$15,070. Last year --
12 come down to the bottom -- you didn't take in that month
13 but 13,410. The month before -- the year before that, you
14 took in just a little bit -- 15,408.

15 So I think we're on track there. Looks like we're
16 staying -- I think -

17 CHAIRPERSON VALENTINE: Yeah.

18 DIRECTOR VEST: -- staying pretty even there for
19 -- that's what I'm anticipating, anyway.

20 CHAIRPERSON VALENTINE: Okay. Very good.

21 DIRECTOR VEST: All right.

22 CHAIRPERSON VALENTINE: Thank you.

23 DIRECTOR VEST: We do not have any legislative
24 update, do we, Ashley? I don't believe there's any
25 legislative update.

1 MS. A. THOMAS: There is not. I do not have
2 anything.

3 DIRECTOR VEST: All right. We don't have any
4 application in reviews.

5 What you have now is your correspondence.

6 And Walt Culver, C-u-l-v-e-r, sent in an email.
7 And I did send him the link because he wanted to appear
8 today. He may have had technical difficulties.

9 If you would go to the second page you will see he
10 asked three questions, and he wanted the board to give him
11 an answer on these three questions.

12 I will read the questions -- we'll -- one at a
13 time, and we'll have a discussion, if that's all right with
14 you, Mr. Chairman.

15 CHAIRPERSON VALENTINE: Yes, please do.

16 DIRECTOR VEST: All right.

17 "Question No. 1: Based on background above" --
18 hopefully you've read all his background, what he wants to
19 do -- "and if the commissioner -- if it's the Commission's
20 opinion that a company domiciled in Tennessee that locates
21 and/or recovers lost property for clients (Unintelligible)
22 exclusively located out of state, neither in Tennessee, does
23 not require Tennessee Private Investigators License
24 under 6226."

25 Well, you have to go back up and look, actually,

1 to see what he's saying he wants to do. He's recently
2 located here to set up a supply chain consultancy company,
3 focusing on the location, disposition and/or recovery of
4 lost property using online and other sources.

5 The clients and property bulk will be located out
6 of state. And the client will primarily be a commercial
7 business and their property."

8 CHAIRPERSON VALENTINE: Yeah.

9 DIRECTOR VEST: My question is: If I give you a
10 PI license, and you're telling me that you're not to be
11 doing any work in Tennessee, if you have a PI license or a
12 company license, you can do any work in Tennessee. Your
13 clients could be in Tennessee and do whatever you need to
14 do.

15 It's hard to say, "I'm not going to be doing --
16 I'm just going to be located in Tennessee, I'm not going to
17 do any business." Then -- then why did you need a PI
18 license? It's to open up a business.

19 But that's my opinion, so I would like to ask the
20 commission members what their opinion is.

21 CHAIRPERSON VALENTINE: What do our attorneys
22 think?

23 MS. A. THOMAS: In reading his scenario, it
24 appears that he's just going to be living here, but all of
25 his business is taking place outside the state. So I'm not

1 seeing where that business would touch Tennessee, requiring
2 a license.

3 CHAIRPERSON VALENTINE: Okay. Do -- do we need a
4 motion on this, Dr. Vest?

5 DIRECTOR VEST: I think we can probably do it all
6 at the end -

7 CHAIRPERSON VALENTINE: Okay.

8 DIRECTOR VEST: -- if it's okay.

9 CHAIRPERSON VALENTINE: All right.

10 DIRECTOR VEST: All right. The reason I said what
11 I said is the next one.

12 Okay. No. 2, secondly, at some point this
13 one-person business may wish to acquire a Tennessee Private
14 Investigators License to -- to add in-state clients, but not
15 initially.

16 If this company is structured as sole
17 practitioner, I assume it would be sufficient to only file
18 for an individual PI license on a 62.26.206, and not for
19 both an individual PI license plus a corporate PI license.

20 Is this the commissioner's view also?

21 CHAIRPERSON VALENTINE: No, that's not what the --
22 the rule says. You know, you've got to have -- every
23 PI license has to have a PI company.

24 COMMISSIONER BAYNE: Bayne agrees also.

25 Regarding Question 1, I don't believe -- I may be

1 wrong, but I don't believe 62.26.202 or 204 states
2 specifically that a company can be -- a company can be
3 located in Tennessee, domiciled in Tennessee, and -- and do
4 work out of state. It doesn't specifically address whether
5 you're out of -- working out of state or working in state.
6 So -- and I concur on -- on Question 2, with -- with Walt.

7 COMMISSIONER BROWN: I have a question about
8 No. 1. And once again, I think he's operating a business.
9 It sounds like he's operating a business in Tennessee. He's
10 not definitive on that. But I -- I've got some concerns
11 about that. I know it said he's living in Tennessee, but it
12 also says that they may start a business in Tennessee.

13 DIRECTOR VEST: Well, I think the point of --
14 anybody can open a business in Tennessee. I mean, you just
15 go to the Secretary of State and open it up, or go to your
16 county or city and get your business licenses. Anybody can
17 open a business. So we already answered No. 1.

18 And No. 2, I thought we had answered that he would
19 need to have a company license. That's what the statute
20 says. At present, the statute says: If you're going to be
21 a PI, you either become a PI for yourself, or you kind --
22 find a company to be affiliated with. Correct? That's what
23 I -

24 MR. JOE STAINBACK (phonetic): Yes, ma'am.
25 This -

1 DIRECTOR VEST: Yeah.

2 MR. JOE STAINBACK: -- this is Joe Stainback. I
3 was -- can I comment here as a practitioner in this area?

4 DIRECTOR VEST: Well, sure.

5 CHAIRPERSON VALENTINE: Sure.

6 MR. JOE STAINBACK: Oh, that's great.

7 I do unclaimed property as part of my PI business.
8 And I've done out-of-state ones. In fact, I just had a
9 client in Arizona. I got a -- she had a very large
10 unclaimed property. It took about 8 months to get it
11 resolved and have it complete.

12 As -- as a person who's doing this, it would be my
13 opinion -- of course, I'm just expressing an opinion as --
14 as a PI in practice, who has both an individual license and
15 a company license -- it would seem to be unfair to a person
16 like me who's doing all the things that are proper in terms
17 of a PI training to investigate.

18 Because that -- the reason that unclaimed property
19 is -- it's originating in the state of Tennessee because you
20 start with State of Tennessee stuff, like you know, the --
21 the companies -- if it -- if it was a company that had funds
22 here, or somebody was living here, in this case.

23 In this case, I'm going to court records. I'm
24 doing things that are Tennessee-like in order to get to the
25 person who just happens to be living out of state. So I'm

1 going through all of the same PI themes that I'm trained to
2 do.

3 And so it would be sort of unfair, because I, you
4 know, worked hard to get the PI license, and now you're just
5 going to give away -- you know, "I don't have to have a
6 license if it's only out of state." But they're doing the
7 same things that I'm doing.

8 So I just wanted to express that opinion, if I'm
9 making any sense.

10 DIRECTOR VEST: Yes, sir. Thank you.

11 And -- and Mr. Stainback, he is a new PI, and I
12 believe also a polygraph examiner, if I'm not mistaken.

13 Thank you. Appreciate you.

14 MR. JOE STAINBACK: Yes, ma'am.

15 COMMISSIONER BROWN: Commissioner Brown.

16 That was my line of thinking. If we've got people
17 here in the state, follow -- someone comes in outside and
18 does basically the same thing, shouldn't they be licensed?

19 MS. A. THOMAS: Cody, my -

20 DIRECTOR VEST: Uh-huh?

21 MS. A. THOMAS: -- my -- my -- my analysis is
22 under the guise of: It appeared that Mr. Culver was living
23 in Tennessee.

24 DIRECTOR VEST: Right.

25 MS. A. THOMAS: Any investigation he would be

1 conducted would have been done under the regulations of
2 another state. For us to license him says that we are going
3 to regulate his activity in another state, and that's
4 overreaching. So that's why I -

5 DIRECTOR VEST: Sure.

6 MS. A. THOMAS: -- voiced the opinion that I did.

7 COMMISSIONER SHANKS: Well, I think -

8 DIRECTOR VEST: (Unintelligible).

9 COMMISSIONER SHANKS: I have a question, Ms. Vest.
10 I -- I -- maybe I was confused. I thought the unclaimed
11 property was a Tennessee unclaimed property -- I think. Is
12 that correct?

13 DIRECTOR VEST: No. He said that domicile -- his
14 company would be domiciled in Tennessee, but "locates and/or
15 recovers lost property for clients, those exclusively
16 located out of state."

17 COMMISSIONER SHANKS: Oh, okay. So that might be
18 a little different, to Ms. Thomas' point.

19 What my point was was only Tennessee unclaimed
20 property.

21 COMMISSIONER BROWN: If it's only Tennessee
22 unclaimed property, then they'd have to have a license. If
23 it's out of state, then that -- we don't have any
24 regulations for out of state businesses.

25 COMMISSIONER SHANKS: Yes. I -- I would -- yes,

1 and -- Mr. Brown. I would agree to Ms. Thomas' point and
2 Mr. -- Mr. Brown's point, I would -- I would agree to that,
3 as an outsider, a second opinion (Unintelligible) another
4 state's unclaimed property, then, yes.

5 DIRECTOR VEST: Oh, all right. Let me go back
6 here. To No. 1, we said, no, you don't need a company just
7 to live in Tennessee. No. 2, yes, he must have a company.
8 It's a requirement. It is a requirement. So we're ready to
9 go to No. 3.

10 COMMISSIONER BROWN: I -- can I go back on No. 1?

11 DIRECTOR VEST: Yes.

12 COMMISSIONER BROWN: I think I (Sound cuts out)
13 license, but I think we need to put language to it in
14 answering that: If you do work in Tennessee, you must be --
15 must be licensed to -- to -- to -- so we don't go down a
16 slippery slope, and he's assuming -- do you follow what I'm
17 saying?

18 DIRECTOR VEST: Yes. Whenever we corresponded we
19 would caution him if he does business in Tennessee he would
20 be required to be a licensed private investigator and have a
21 company affiliation or start his own.

22 COMMISSIONER BROWN: Okay.

23 DIRECTOR VEST: We'll make -- make sure of that.

24 All right.

25 (As read:) "No. 3: To be licensed as a Tennessee

1 private investigator, TCA 62.26.206 outlines the
2 requirements which must be met. This includes specific
3 experience or education under Section (a)(6) with either
4 2,000 hours of investigative related experience, or one year
5 of education in a related area of study approved by the
6 Commission.

7 Can the Commission provided a list of courses that
8 meet this education requirement in full? Private courses,
9 community courses, or any other. If not, can the Commission
10 recommend a pathway or a process to have the specific course
11 approved that meets the education requirement."

12 The answer I want to give this gentlemen is: You
13 need to check our website, because that information is on
14 the website.

15 CHAIRPERSON VALENTINE: Agreed.

16 COMMISSIONER BROWN: Great. Yes.

17 DIRECTOR VEST: (Unintelligible) if he has any
18 questions.

19 CHAIRPERSON VALENTINE: I think that answers all
20 three questions, Director Vest.

21 DIRECTOR VEST: Yes, sir, it did. And we will
22 correspond with him. I don't really -- actually, I don't
23 think we need to actually take a vote on that. He was just
24 asking for correspondence, and I'm going to answer him. And
25 I'm going to say, "At the commission meeting today, the --

1 October the 15th, the answers are" -- and I'll answer his
2 questions. Is that correct?

3 MS. A. THOMAS: That will be fine.

4 DIRECTOR VEST: Do you think any -

5 MS. A. THOMAS: That will be fine. And then I
6 would just, you know, refer him to the video if he wants to
7 see the discussion on his questions.

8 DIRECTOR VEST: All right.

9 CHAIRPERSON VALENTINE: Okay.

10 DIRECTOR VEST: All right. Thank you. Thank you
11 so much, sir. We got that.

12 CHAIRPERSON VALENTINE: Good.

13 DIRECTOR VEST: Now we can move down to the
14 education. Let me explain that. The Education Committee
15 now is meeting at the -- at 9:00 o'clock when we have our
16 normal meeting. No -- we were having the education meeting
17 at 9:00, commission meeting at 9:30. But now since the last
18 meeting, we all -- we voted to incorporate all of it.

19 I sent the continuing education out to commission
20 members to -- to review in advance. You did send me back
21 your -- your comments. And it appeared to me that all --
22 that three courses -- and we need to actually say what they
23 are -- the one that Charles Piper Professional Services, he
24 wants to become a provider and an instructor.

25 The information that I got back that everyone

1 agreed. We did seem to think that maybe some of this
2 material was a little expensive. But if people want to
3 purchase those books or whatever items, that is up to them.
4 What we're looking at is approving him or -- and/or the
5 course.

6 Do we have any comments from the
7 Education Committee?

8 COMMISSIONER BAYNE: One -- one thing I'd like to
9 ask: Do the requirements of a certified trainer come into
10 play on this?

11 DIRECTOR VEST: If he's going to be an instructor,
12 yes. Is that what you're asking me?

13 COMMISSIONER BAYNE: That is exactly what I was
14 asking you.

15 DIRECTOR VEST: Okay.

16 COMMISSIONER BAYNE: I believe he would be, yes.

17 DIRECTOR VEST: Yes. Well, that's why he provided
18 his information, because he wants -- he's going to instruct
19 his own course. Apparently he's written the books and going
20 to do the whole thing. So he wants to be on our approved
21 course list.

22 COMMISSIONER BAYNE: Well, I -- and I would add,
23 I've seen this -- I've seen this person training before, and
24 he delivers. He knows what he's talking about, and he
25 delivers a good -- a good program. It was only on for an

1 hour or so a couple of times during our annual six-hour
2 seminars. But I just -- does he have to be a certified
3 PI trainer in order to deliver the course?

4 DIRECTOR VEST: I don't know the answer to that
5 question without doing a little bit more research on that.

6 Do you know, Ashley? I -- I'm -

7 MS. A. THOMAS: I'm looking up the rule right now,
8 Cody.

9 DIRECTOR VEST: Okay. Thank you.

10 MS. A. THOMAS: So the rule is 1175-02-.03. It
11 says "Formal programs requires attendance may only be
12 considered if" -- and then Sub-part (2)© says, "the program
13 is conducted by a qualified instructor, discussion leader or
14 lecturer."

15 I don't believe we've defined "qualified
16 instructor." But I would assume that is the Commission's --
17 I guess I would ask if the Commission assumes that a
18 qualified instructor is certified trainer.

19 DIRECTOR VEST: And we might be talking and two
20 things, Stuart. I'm trying to do this by memory now. He
21 wants to be an instructor for -- to treat his -- his -- for
22 his course. He's not asking to be a PI instructor, to
23 instruct PIs, and become a PI. Which we have the PI school,
24 and PIs that -- you do have to be an instructor to do that.
25 I think we're talking about two different things.

1 COMMISSIONER BAYNE: Thank you, Ms. Vest.

2 MS. A. THOMAS: So now just -- just for clarity on
3 the record, you don't have to be a certified PI trainer to
4 -- to have a course approved. You can be qualified to teach
5 that course.

6 DIRECTOR VEST: Right.

7 MS. A. THOMAS: Okay.

8 DIRECTOR VEST: Right. And that's what we're
9 asking to do here.

10 Do we have any other discussion -- okay, the
11 Education Committee, any other discussion on that?

12 CHAIRPERSON VALENTINE: Hearing -

13 DIRECTOR VEST: (Unintelligible).

14 CHAIRPERSON VALENTINE: Do we need to vote on
15 that?

16 DIRECTOR VEST: Oh, yes, sir.

17 COMMISSIONER BAYNE: (Unintelligible).

18 DIRECTOR VEST: Or -- or we can just wait and do
19 all three of them together, or -- or we can do one at a
20 time.

21 COMMISSIONER BAYNE: If I may -

22 DIRECTOR VEST: Yes, sir?

23 COMMISSIONER BAYNE: I have been (Unintelligible)
24 evaluation of this program, it's -- one place in his
25 application he had said 12 hours, and in another place he

1 said 10 hours. Frankly, folks, in my view, far more hours
2 will be dedicated to this program to doing this work than
3 10. And so I would -- I would recommend the Commission
4 would -- would approve it for 12 hours.

5 CHAIRPERSON VALENTINE: I agree.

6 DIRECTOR VEST: Commissioner Brown? You're on the
7 Education Committee.

8 COMMISSIONER BROWN: Aye.

9 DIRECTOR VEST: Doug Shanks, are you -- we're not
10 voting, I'm just asking your opinion there.

11 COMMISSIONER SHANKS: I'm okay with making it 12
12 instead of 10.

13 DIRECTOR VEST: Oh, all right.

14 All right. Let's go ahead and just vote for that,
15 then, so I make sure I have the right information here.

16 What -- Mr. Chairman, what we're voting for is
17 Charles Piper's professional services, for him to --
18 Charles Piper to be the instructor, and to approve his
19 course for 12 hours for continuing education.

20 CHAIRPERSON VALENTINE: Yes.

21 DIRECTOR VEST: All right. If you'd like, I'll go
22 ahead and call the roll.

23 CHAIRPERSON VALENTINE: Please do.

24 DIRECTOR VEST: Walt Valentine?

25 COMMISSIONER VALENTINE: Aye.

1 DIRECTOR VEST: David Brown?

2 COMMISSIONER BROWN: Aye.

3 DIRECTOR VEST: Stuart Bayne?

4 COMMISSIONER BAYNE: Aye.

5 DIRECTOR VEST: Robin Johnston?

6 COMMISSIONER JOHNSTON: Aye.

7 DIRECTOR VEST: Doug Shanks?

8 COMMISSIONER SHANKS: Aye.

9 DIRECTOR VEST: Kendall Barham?

10 COMMISSIONER BARHAM: May I ask for clarity on
11 this question, please?

12 DIRECTOR VEST: Sure.

13 COMMISSIONER BARHAM: Is this a vote of the
14 Education Committee, of which I am not, or this is a
15 recommendation of the committee to the full board, that I'm
16 now voting on?

17 DIRECTOR VEST: Yes, it's to the full board to
18 vote on this, yes, sir.

19 COMMISSIONER BAYNE: Okay. Thank you. All right.

20 DIRECTOR VEST: All right. Thank you, Mr. Barham.
21 Charlie Bradley?

22 CHAIRPERSON VALENTINE: You're muted.

23 DIRECTOR VEST: Charlie is still -- did we lose
24 him again?

25 CHAIRPERSON VALENTINE: No, he's just muted.

1 COMMISSIONER BROWN: He's on mute.

2 DIRECTOR VEST: All right. You need to come off
3 of mute, Charlie, because I need to hear your vote.

4 All right. How do you vote, Charlie?

5 COMMISSIONER BRADLEY: Aye.

6 DIRECTOR VEST: All right. Aye. I appreciate
7 you. Thank you. This is a work in process. We understand
8 that.

9 Okay. Then this course for Charles Piper's
10 Professional Services for -- for Charles Piper's and for the
11 course has been approved for 12 hours, for him to be a
12 provider.

13 CHAIRPERSON VALENTINE: Yes.

14 DIRECTOR VEST: All right. Let's go to -- the
15 next one is PI Education. And I probably -- I don't know
16 really why I brought this to you. They were on the course
17 list, and they want two hours.

18 But did the Education Committee have an
19 opportunity to look at this and -- well, you sent it back to
20 me and you said "yes."

21 Was there any discussion with the Education
22 Committee about it?

23 COMMISSIONER BAYNE: Yes, there is.

24 DIRECTOR VEST: All right.

25 COMMISSIONER BAYNE: Just that the Commission

1 needs to recognize that the course syllabus indicates two
2 different passing scores; one 70 percent, on Page 4; and one
3 75 percent on Page 8. Can't be both, folks.

4 CHAIRPERSON VALENTINE: Whatever he suggests,
5 whatever he approves, is what it is.

6 COMMISSIONER BAYNE: I accept that.

7 DIRECTOR VEST: Okay. And you said on Page 4, of
8 -- a score of 70 percent or better, is what we're looking --
9 I think is what we're looking at.

10 COMMISSIONER BAYNE: Yeah.

11 DIRECTOR VEST: All right?

12 COMMISSIONER BAYNE: Yeah.

13 DIRECTOR VEST: Any other discussion with the
14 Education Committee?

15 If not, we'll go to the Board for approval.

16 CHAIRPERSON VALENTINE: Okay.

17 DIRECTOR VEST: All right.

18 Walt, now this is approval for PI education for
19 two hours for Ethics for Investigators in Theory and
20 Practice.

21 Walt Valentine?

22 COMMISSIONER VALENTINE: Approve, yes, aye.

23 DIRECTOR VEST: David Brown?

24 COMMISSIONER BROWN: Aye.

25 DIRECTOR VEST: Stuart Bayne?

1 COMMISSIONER BAYNE: Aye.

2 DIRECTOR VEST: Robert -- Robin Johnston?

3 COMMISSIONER JOHNSON: Aye.

4 DIRECTOR VEST: Doug Shanks?

5 COMMISSIONER SHANKS: Aye. Aye.

6 DIRECTOR VEST: Kendall Barham?

7 COMMISSIONER BARHAM: Aye.

8 DIRECTOR VEST: Charlie Bradley?

9 Okay, Charlie, you're going to have to come off of
10 mute.

11 COMMISSIONER BRADLEY: (Unintelligible) aye.

12 DIRECTOR VEST: All right. Thank you.

13 COMMISSIONER BRADLEY: Yes.

14 DIRECTOR VEST: Appreciate that.

15 The "ayes" have it, Mr. Chairman. So that has
16 been approved, that course, PI Education.

17 THE COURT: Okay. And the last one?

18 DIRECTOR VEST: All right. The last one we have
19 is a Criminal Defense Investigation Training Counsel. This
20 is for an individual. Her name is Natalie Matthews. She
21 took this course, and she wants to have it approved.

22 It was approved -- that -- the course action was
23 40 hours. But of course, we're only going to do 12. And it
24 was -- and already in -- on August the 24th, she got -- she
25 was in between board meetings to have it approved. Did the

1 Education Committee take a look at it? Have any comments?

2 CHAIRPERSON VALENTINE: It was fine by me.

3 DIRECTOR VEST: All right. Anybody else have any
4 other comments? If not, I'll go ahead and ask for a full
5 vote of approval by the Commission.

6 All right. Walt Valentine?

7 COMMISSIONER VALENTINE: Aye.

8 DIRECTOR VEST: David Brown?

9 COMMISSIONER BROWN: Aye.

10 DIRECTOR VEST: Stuart Bayne?

11 COMMISSIONER BAYNE: Aye.

12 DIRECTOR VEST: Robin Johnston?

13 COMMISSIONER JOHNSON: Aye.

14 DIRECTOR VEST: Doug Shanks?

15 COMMISSIONER SHANKS: Aye.

16 DIRECTOR VEST: Kendall Barham?

17 COMMISSIONER BARHAM: Aye.

18 DIRECTOR VEST: Charlie Bradley?

19 COMMISSIONER BRADLEY: Aye.

20 DIRECTOR VEST: All right. The "ayes" have it,
21 Mr. Chairman, to approve the Criminal Defense Investigation
22 Training Counsel for the -- for -- it says for "12 hours for
23 Ms. Natalie Matthews." Okay.

24 CHAIRPERSON VALENTINE: That -- that concludes the
25 Education Report, I believe. Do we have -

1 DIRECTOR VEST: Yes, sir.

2 CHAIRPERSON VALENTINE: Do we have any unfinished
3 business?

4 DIRECTOR VEST: I'm -- I'm not aware of any
5 unfinished business.

6 CHAIRPERSON VALENTINE: Do we have any new
7 business?

8 COMMISSIONER BAYNE: I would -- I would like to
9 ask a question, if I may.

10 DIRECTOR VEST: Okay. Uh-huh.

11 COMMISSIONER BAYNE: We have -- and I'm not sure
12 whether it's unfinished or new, it's probably a little bit
13 of both -- we have, in the past, been paying attention to
14 trends across our state, and I might add, our great state.

15 And I'm curious if the executive director and her
16 -- and her staff have a number -- have any -- have an
17 understanding of what the trends are in terms of what number
18 of licensed PIs and number of licensed polygraph examiners
19 across our great state.

20 DIRECTOR VEST: I can only give you the totals
21 that -- that we have that are licensed in the state. I can
22 tell you how many individuals are licensed. That's why we
23 -- when we looked at the budget, if -- the point I was
24 trying to make is it looks like we're staying pretty even
25 for -- as new investigators (Unintelligible) have like -- I

1 think you've moved up to 62 polygraph examiners.

2 But the PI trend is looking like it's staying the
3 same; the minute they're dropping off, the new ones are
4 coming on. And these happen at -- what we can tell for the
5 trend is they are sole practitioner companies that are being
6 added. If that answers the question, Commissioner Bayne?

7 COMMISSIONER BAYNE: Yes, ma'am. Thank you.

8 DIRECTOR VEST: I do look at these numbers
9 constantly. I'm -- and correspondence with others
10 constantly about these numbers. And matter of fact, I had a
11 meeting yesterday with the assistant commissioner about our
12 department.

13 And some of the numbers have gone down, but it
14 wasn't in the PI program. So whenever our numbers start
15 falling off a little bit, they always get with me to see if
16 we can find out what's going on and see what we can do about
17 it.

18 Now, far as if we don't have any other questions,
19 we'll go to new business, which we must vote on the new
20 dates. And there is a mistake out on the website that
21 Shauna is getting corrected.

22 The dates I believe that I sent to you were
23 January the 14th, April the 22nd, July the 23rd, October the
24 15th, of 2021. No one sent back to me any problems they had
25 with those dates.

1 And I actually looked at last year's dates and
2 tried to keep them the same.

3 Now, whether we're going to be doing this by
4 Webex, I do not know. I -- this is just my opinion, and
5 I'll need -- I would like to have the opinion of the
6 commissioner -- Commission, to bring eight people in -- and
7 we're almost ready to adjourn -- for an hour, for you to
8 come in overnight, and the expenses.

9 And that's what's really been holding things down
10 with the PI board. But we have to go back there, doing it
11 -- paying the expenses. It's going to affect the budget.

12 I have asked the assistant commissioner if we can
13 continue our Webex meetings. I just -- we just don't know,
14 under the Executive Order, we're doing it until the -- from
15 what I understand, until the end of the year. And then
16 we'll go from there. I may have to ask for something
17 special, I don't know.

18 So what do our commission members think? Do you
19 want to go back to meeting, coming in, or -- and -- and
20 these dates, like I said, I matched them best I could to
21 last year.

22 But I do not know of anything that's going to be
23 happening in Tennessee with this Covid 19. I don't know if
24 there -- we're going to have any functions, that you might
25 not get a room. We'll just have to play it by -- by month

1 on that.

2 But what do the commission members think?

3 COMMISSIONER BROWN: Cody, Commissioner Brown.

4 DIRECTOR VEST: Uh-huh?

5 COMMISSIONER BROWN: (Unintelligible) our expenses
6 been cut (Unintelligible)?

7 DIRECTOR VEST: Yes, sir, your expenses have been
8 cut a good bit. But now we don't always look at expenses.
9 We're looking if it -- what's better for the Tennesseans in
10 this state, and having our meetings back in the -- in the
11 office -- in this building, I should say.

12 They have made recommend -- they have made changes
13 downstairs in the way that you'd be sitting. The audience,
14 they have moved the chairs to, I don't know, six or eight
15 feet, whatever. We do have another, I think it's 1C that is
16 going to be our overflow room, in case we have more
17 visitors. We don't have that many, but a lot of the boards
18 have an excessive amount of people that to show up.

19 But I just want to be able to say to the assistant
20 commissioner, number one, we would save money by having
21 these virtual meetings, just -- I mean -

22 CHAIRPERSON VALENTINE: Cody -

23 DIRECTOR VEST: -- and (Unintelligible) -- yes,
24 sir?

25 CHAIRPERSON VALENTINE: Cody, it seems like, to

1 me, that we ought to see what the third -- the fourth
2 quarter is with our budget and everything, and then at the
3 beginning of the year make a decision on whether we should
4 meet in person or virtually.

5 DIRECTOR VEST: Well, this is your last meeting of
6 the year.

7 COMMISSIONER BAYNE: Bayne. Would add that it
8 would make great sense to me if we, at the very least,
9 retained January 14 as a Webex meeting.

10 CHAIRPERSON VALENTINE: I would go along with
11 that.

12 COMMISSIONER BAYNE: For obvious reasons, namely,
13 you know, winter weather, and flu season.

14 CHAIRPERSON VALENTINE: Get your flu shot.

15 DIRECTOR VEST: I already got mine.

16 COMMISSIONER BAYNE: Already got mine.

17 CHAIRPERSON VALENTINE: Yep.

18 DIRECTOR VEST: And you too, oh, okay.

19 All right. So I think what -- what we're hearing,
20 unless some other commission members want to speak up, I'll
21 -- I -- whenever I have the meeting with the assistant
22 commissioner about the board meetings, which I do, I will
23 ask that we have the January meeting by Webex so we can make
24 a decision then whether we're going to be meeting by
25 virtual, or whether we're going to be required by statute to

1 come back and have -- start having the meetings in the -- in
2 the building.

3 Is that what I heard?

4 CHAIRPERSON VALENTINE: That's what you heard.

5 COMMISSIONER SHANKS: Hey Cody?

6 DIRECTOR VEST: All right.

7 COMMISSIONER SHANKS: Commissioner Shanks.

8 DIRECTOR VEST: Uh-huh?

9 COMMISSIONER SHANKS: If we have a hearing about
10 something, I think it should be -- we should be there. I
11 like to see the person in person.

12 CHAIRPERSON VALENTINE: Yes.

13 DIRECTOR VEST: All right. That's why are having
14 those -- that's why we had those meetings.

15 CHAIRPERSON VALENTINE: Yeah, but -

16 DIRECTOR VEST: Some of the judges, from what I
17 understand -- and you correct me here, Ashley, if I'm
18 incorrect -- some of the -- or Jesse -- some of the judges
19 want to do these virtually, and some of them want to do them
20 in person. I think it's going to depend on the judge that
21 draws our formal hearing.

22 Is that what I understood?

23 CHAIRPERSON VALENTINE: Would -

24 DIRECTOR VEST: Ashley or Jesse?

25 CHAIRPERSON VALENTINE: -- we determine that

1 rather than the Judge?

2 DIRECTOR VEST: No, sir.

3 CHAIRPERSON VALENTINE: Let me -- it -

4 DIRECTOR VEST: I -

5 CHAIRPERSON VALENTINE: -- seems to me like if we
6 combine the hearing with our meeting, we could kill two
7 birds with one stone.

8 DIRECTOR VEST: I'm sorry. I -- I -- I am sure
9 you do have an opinion there. I -- I apologize for that.
10 But when it goes to a full -- if we have a case that's going
11 to a formal hearing, it has to be set in advance. Jesse is
12 going to have to get the -- the judge. And like I said,
13 each judge has their own opinion, from what I understood
14 from that meeting.

15 Am I correct, Jesse?

16 MR. GENTRY: That's correct. I have actually had
17 some hearings that are being set in person right now. But
18 it seems to be going by, you know, how the parties are
19 agreeing.

20 Based on how we're filing to put things on the
21 docket for these judges, they do ask the location of the
22 hearing. So if I specifically put in there, you know, Davy
23 Crockett Tower, 500 James Robertson Parkway, I think we
24 could request at that point to have a judge who would be
25 assigned to hold an in-person hearing. But I think that we

1 could still potentially get a judge who, you know, says,
2 "No, I want -- I want to be virtual."

3 I have also had some judges compromise. I have a
4 hearing coming up next month that the judge (Sound cuts out)
5 and the respondent will be in person, but all witnesses will
6 be by video conferencing, because there's witnesses who
7 still don't want to meet in person.

8 So I think potentially we could -- we could say,
9 you know, if -- if we want the Commission to meet in person,
10 you know, and any witnesses we want to come in person, if
11 the judge needs to be by video conference, if the judge is
12 not comfortable, that could be potentially arranged. If a
13 witness is not comfortable and wants to be by video
14 conferencing, that could be arranged.

15 But I agree, it does make it easier, you know, if
16 I have documents, if I can give you a physical copy of it,
17 give a witness a physical copy of it, it makes it much
18 easier than, "Well, look at my screen, let's -- let's all
19 look at this," or if I'm sending emails out to everyone to
20 refer to documents during the middle of a hearing.

21 So I can -- I can make that request, if that's
22 what the Commission would prefer. I can't guarantee that
23 we'll have a judge who, you know, wants to have everyone in
24 person. But we can -- we can certainly make that request.

25 And I -- I think we are still at the mercy of the

1 governor's office, because our office is subject to those
2 executive orders. So if, you know, for some reason, by
3 January, you know, this Covid 19 gets much worse and they
4 shut down all government offices, we may be forced to be,
5 you know, by Webex or video conference, and we may not have
6 a choice. So I will -- I will make that recommendation,
7 though, but we may need to be flexible.

8 CHAIRPERSON VALENTINE: Okay.

9 DIRECTOR VEST: Okay. You said that so much more
10 nicely than I did. Thank you so much, there, Jesse.

11 MR. GENTRY: Well, you know, I'm just trying to do
12 what these judges want to do, so -

13 DIRECTOR VEST: Right.

14 MR. GENTRY: -- I am, you know, at -- at their
15 mercy every day it seems like when I'm filing hearings.

16 DIRECTOR VEST: I do know from other directors
17 they have had some virtual hearings, and then there -- I do
18 know they have had some in person. So like Jesse said, it
19 just -- it's just going to be -- it's just going to depend.

20 We just hope everything gets settled and we don't
21 have to go for a formal hearing, because it's been a while
22 since you've done a formal hearing.

23 Walt, I believe I would get with you before then
24 to go over some things -- other things, and make sure that
25 we do a refresher course and everything, because a lot of it

1 falls on you. I -- I don't have anything to do with it.

2 CHAIRPERSON VALENTINE: Well -

3 DIRECTOR VEST: I just sit there. So it would be
4 -- it -

5 CHAIRPERSON VALENTINE: No problem.

6 DIRECTOR VEST: -- would be you.

7 But we'll -- we'll leave it up to Jesse to go
8 ahead and get those settled.

9 CHAIRPERSON VALENTINE: We'll -- we'll cross that
10 bridge when we get there.

11 DIRECTOR VEST: There you go.

12 All right. We didn't have any -- obviously, this
13 is where it's hard, continuing education participant, for
14 him.

15 Do we have anybody in the audience that wanted to
16 make a comment?

17 We do thank you, Mr. Stainback, for your comments.

18 Okay. I -- I don't have any -

19 CHAIRPERSON VALENTINE: Hearing -

20 DIRECTOR VEST: Sir?

21 CHAIRPERSON VALENTINE: Hearing none, we are
22 finished with the Continuing Education participation forum.

23 And the last item on the agenda is adjournment.

24 DIRECTOR VEST: Okay. Let me call the roll. But
25 this is for adjournment.

1 Walt Valentine?

2 COMMISSIONER VALENTINE: Aye.

3 COMMISSIONER VEST: David Brown?

4 He was having audio problems, he was telling me.

5 All right. Stuart Bayne?

6 COMMISSIONER BAYNE: Aye.

7 COMMISSIONER VEST: Robin Johnston?

8 COMMISSIONER JOHNSON: Aye.

9 COMMISSIONER VEST: Doug Shanks?

10 COMMISSIONER SHANKS: Aye.

11 COMMISSIONER VEST: Kendall Barham?

12 COMMISSIONER BARHAM: Aye.

13 DIRECTOR VEST: Charlie Bradley?

14 COMMISSIONER BRADLEY: Aye.

15 COMMISSIONER VEST: The "ayes" have it,

16 Mr. Chairman, to adjourn at 10:12, on October the 15, 2020.

17 CHAIRPERSON VALENTINE: We are adjourned.

18 DIRECTOR VEST: Thank you. I appreciate it.

19 CHAIRPERSON VALENTINE: Okay. Thank you -

20 DIRECTOR VEST: Bye everyone. Bye.

21 CHAIRPERSON VALENTINE: Thank you, Board Members.

22 COMMISSIONER BAYNE: Everybody be safe.

23 CHAIRPERSON VALENTINE: Take care.

24 (End of recording.)

25 * * * * *

1 STATE OF TENNESSEE)
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3 COUNTY OF DAVIDSON)

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Date 03/05/2021

Laurie McClain
Laurie McClain
Transcriber

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Exhibit #2

CRIME

TBI says lawyer tried to extort money relating to unsolved murder of Karen Swift

A west Tennessee attorney charged with extortion says he's done nothing wrong, but the Tennessee Bureau of Investigation believes lawyer Charles Sam Kelly...

Author: Jeni Diprizio

Published: 7:59 PM CST December 5, 2019

Updated: 11:02 PM CST December 5, 2019



DYER CO. Tenn. (localmemphis.com) – A west Tennessee attorney charged with extortion says he's done nothing wrong, but the Tennessee Bureau of Investigation believes lawyer Charles Sam Kelly, Jr. tried to extort money from a Dyersburg businessman in connection to the 8-year-old unsolved murder of Karen Swift.

TBI says lawyer tried to extor...



Taylor Swift & Evermore Theme Park End Legal Battle | Billboard News

FEATURED BY 

The 44-year-old mother of four was last seen on Halloween night in 2011. Next week marks the 8-year anniversary of when Swift's decomposed body was found.

Thursday in court, a judge ruled the extortion case could move forward. The judge wouldn't allow cameras in the courtroom, but prosecutors said audio recordings played in court prove what happened was extortion. The defendants disagree.

"I did nothing wrong," said defendant Kelly.

Kelly left court Thursday proclaiming his innocence. Prosecutors say Kelly and his co-defendant Mark Morgan tried to extort \$25,000 from Darrell Sells and his family. The Sells' own several McDonald's franchises in the Mid-South.

For years, there have been rumblings that the Sells family was somehow connected to the 2011 unsolved murder of Karen Swift.

"I don't need to extort anybody particularly Darrell Sells and his crummy family," said Kelly.

On tapes played in court, co-defendant Mark Morgan claimed to possess information that the Sells would not want the FBI to have.

Also, on the tapes, Darrell Sells said as part of the deal, he wanted Morgan to get information on private investigator Heather Cohen who was independently investigating the case of Karen Swift.

"I think they need to look into why he would pay \$25,000 for information on me. That kinda feels like a threat to my life," said private investigator Heather Cohen.

Kelly said what's being lost in all of this is the Swift case. It remains unsolved. The 44-year-old was last seen alive at a Halloween party in 2011. Her decomposed and naked body was found nearly two months later by hunters in a rural cemetery, just a few miles from her home.

"I feel it's terrible, it's a shame this woman has been dead for eight years and nothing. No arrests, no anything," said Kelly.

TBI says lawyer tried to extor...

On the stand, Darrell Sells said he and no one from his family had anything to do with the Swift murder. Sells wouldn't say much as he left court except, "We're happy."

Kelly's final comment to Local 24 News was, "I don't need their money or want their money. That's all I gotta say about that."

Kelly said he has been a lawyer in Dyer County for 25 years and never had a bar complaint against him. Kelly said he was a liaison between Sells and Morgan.

On the tapes, you hear that Kelly drew up an "employment agreement" trying to document the transaction between the parties involved, which is why he says he was not extorting. Prosecutors say it was extortion, pointing out that at several times Kelly referred to the agreement as "protection."

Morgan waived his right to a preliminary hearing. His and Kelly's case will now go to the grand jury in February.

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Exhibit #3



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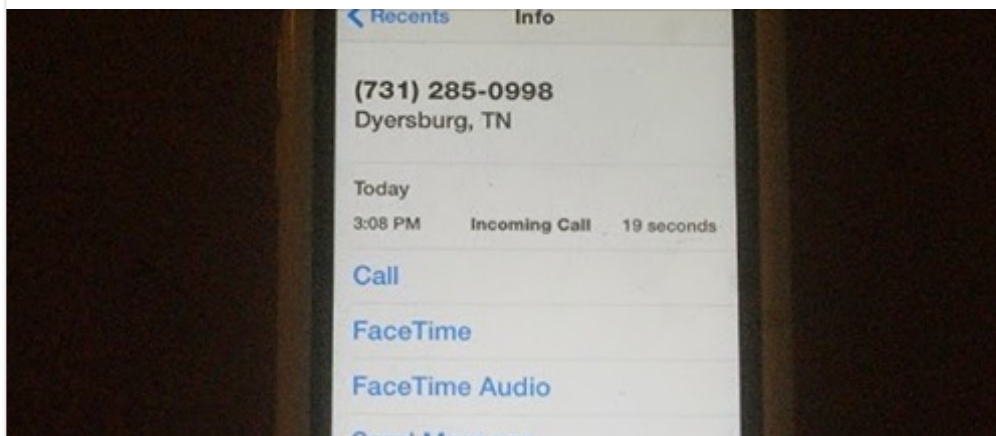
HMC Investigations & Fugitive Recovery

April 14, 2019 · ■



For anyone who is interested in reading about Bill Warner's investigation into the murder of Karen Swift... and/or the threatening call that he received from Darrell Sells... you can find it here:

<http://www.billwarnerpi.com/.../updated-threatening-call...>





BILLWARNERPI.COM

UPDATED Threatening Call Today From 731-285-0998 Dyersburg TN Caller Was Darrell Sells From His McDonal...

26

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Write a comment...



Phillip McKnight

Will you please help me find out what happened to my cousin Jimmy Bingham I can pay a little

4

Like · Reply · 1y



Mikel Dial

He's hiding or he's involved

4

Like · Reply · 1y

2 Replies



Bill Melder

Personally his reaction to the investigation kinda implicates he might know a little more then he is letting on.

8

Like · Reply · 1y

29 Replies



Otto Sontheimer

"It ain't over till it's over."

3

Like · Reply · 1y



Bill Melder

Very interesting... I'm very curious if he is involved.

4

Like · Reply · 1y



Heather Albright

Maybe someone contact 20/20 or Dateline about doing a show about this case and a few more here that haven't been solved

4

Like · Reply · 1y

View 1 more reply



Heather Albright

Omg that will ruffle a few feathers and good she and her family deserve closure





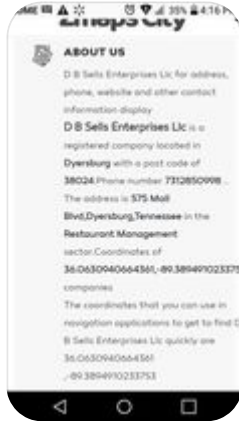
Teresa Beecham Welch

Thank you. I sure hope you bust this case wide open.

Like · Reply · 1y



Bill Melder



Like · Reply · 1y



Amy Carpenter

Seems as if it's a touchy subject for Darrell?! Why would one be so defensive if he has nothing to hide?! And what a potty mouth he has.

Like · Reply · 1y · Edited

3 Replies

Most Relevant is selected, so some comments may have been filtered out.

PINNED POST



HMC Investigations & Fugitive Recovery

August 7, 2020 ·

Everyone is welcome on the HMC Investigations & Fugitive Recovery FB page. We appreciate feedback and we encourage a good/healthy debate over opposing views. If we say something that we later realize is incorrect, we will apologize. We are not above correcting and we are not below correcting. But, under NO circumstances will we tolerate disrespect. If you cannot refrain from personal attacks and/or demeaning and abusive language then your comment will be removed from our page... **See More**

69

8 Comments

Most Relevant



Write a comment...





Gracy Bea

Well said. At least you don't delete people for harmless conversations. This is the only time I have seen or heard of any discrepancy on your page. While the other notable "podcast " throws it in the air to see if it sticks.

Like · Reply · 33w

Most Relevant is selected, so some replies may have been filtered out.



Author

HMC Investigations & Fugitive Recovery

The funny thing is that we admitted we made a mistake, apologized and corrected it. Something I am CERTAIN would never happen over there. But, at least the people who aren't allowed to behave that way over here have somewhere to go where they will fit ... **See More**

Like · Reply · 33w



Karen Garrison Walker

HMC Investigations & Fugitive Recovery no, and any comments to the contrary would be deleted.

Like · Reply · 33w



Gracy Bea

HMC Investigations & Fugitive Recovery
Amen!

Like · Reply · 33w



Reply to HMC Investigations & Fugi...

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HMC Investigations & Fugitive Recovery

March 7 at 7:55 PM ·





SPREAKER.COM

Episode 34 - Tracey and Heather Discuss Book Release (mini-episode)

 6

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Write a comment...



Exhibit #4

STATE GAZETTE

As anniversary of unsolved murder nears, questions remain

Sunday, October 11, 2020



General Manager Mike Smith can be reached at 285-4091, ext. 120 or by email at editor@stategazette.com. Throughout the course of a week, it's seldom one will pass without someone bringing up the question... who killed Karen Swift?

While many have their own theories regarding the murder of the mother of four, it's been nine long years since the tragic incident occurred and yet the case remains in limbo, or does it?

Currently, the case is in the hands of District Attorney General Danny Goodman, and has been since the Dyer County Sheriff's Office turned over all information regarding the murder investigation in October of 2019.

I remember meeting with Goodman and Sheriff Jeff Box when the case was handed over, and after eight years of waiting for the killer to be charged, I knew better than to think someone would be charged quickly. Goodman acknowledged working through the evidence would take time, which I understood.

Though the district attorney has the case before him, in order to charge someone for the murder, there has to be enough evidence to present to the grand jury to obtain an indictment. Goodman and staff get one chance at this, so everyone should completely understand the delay in charging a suspect.

For nine years there hasn't been an opinion shared in this space regarding much of anything regarding the tragic death of Swift, but there comes a time when remaining silent just isn't working anymore.

As one of the only people to ever interview David Swift, the husband of Karen, it's time to share a few thoughts regarding the case, without damaging the investigation in any way, shape, or form.

Three years after the murder, David Swift agreed to sit down with me for an interview. I felt I was thoroughly prepared with a number of questions, so I traveled to Arkansas to meet him at a location he approved of for the interview. Prior to the interview, I had never met Swift.

We had lunch and I began to ask questions, lots of them. The thing I was most interested in was the night Karen went missing, and it was something Swift did not want to discuss. To this day it is something I still don't understand, and I'll explain why.

First and foremost, if someone murdered my wife, whether I was set to go through a divorce as the Swifts were or not, and I had nothing to do with it, there wouldn't be a question I couldn't answer about the tragic circumstances of her murder. Nothing.

If it was my wife and I had nothing to do with it, I would have been at the sheriff's office every day wanting to know the progress regarding my wife's murder. Not just every now and then, but every single day Sheriff Jeff Box would have had to see my face and deal with me on the progress of the investigation.

Understanding in most cases such as this the first one looked at is the husband, I would have done whatever necessary to rule myself out of the crime, again, if indeed I had nothing to do with it. I wouldn't need a lawyer because I hadn't done anything wrong. I would have agreed to take a polygraph or anything else law enforcement needed me to do to rule me out as a suspect.

In no way am I saying Swift murdered his wife, but what I am saying is there is a lot about his actions, or non-actions, that myself as well as law enforcement simply don't understand. I will say I left the interview feeling very strongly about what happened the night she went missing, and who actually committed the crime. However, I've kept that to myself, in most cases.

Now, let's fast-forward a little bit and discuss a couple of theories regarding the case. The one most have heard of by now involves a local family, the Sells family. This theory spread like an uncontrolled wildfire, and to be honest it's about as far-fetched as I've ever seen.

Somehow, a private investigator got involved in the case and focused her attention squarely on the Sells family. I had conversations with this woman a couple of years ago regarding the murder. At first, I thought her investigation was genuine. However, as time went on it became clear the apparent motive of the investigation was to point the finger at anyone except the husband. Why is that?

I've known the Sells family for a long time. Darren Sells is a frequent playing partner of mine on the golf course, and his dad Darrell used to play with us as well. However, I'm unbiased despite our friendship and believe with every ounce of my being the Sells had as much to do with this tragic murder as I did, which is absolutely nothing.

Darrell's problem regarding this tragedy is quite simply that he is a bit nosy, no disrespect intended, and when the television crews arrived where the body was found in 2011, he was interviewed by one of the stations because he drove out there to see what was going on, just like many others. In this town we all want to know what is going on, and Darrell Sells is no different. However, this private investigator latched on to him and his family and surged ahead. This family has been put through the ringer, and they don't deserve it the least bit.

Currently, there are two people charged with attempting to extort money from Sells regarding the Swift case, and there are pending lawsuits filed by the Sells family against the private investigator as well as one of those charged with extortion.

It's been said by the private investigator different people saw Sells with a metal detector searching for a watch at the location where Swift's body was found. When I asked if any one that saw Sells there talked to him, the answer was no. So, if no one talked to him how in the world did anyone know what he was looking for? The story soon changed that he was searching for a wedding ring with the metal detector, and the list goes on and on. Honestly, this has gotten out of hand.

There have been so many stories it's hard to keep count, but I'm firm in my belief that one day, maybe sooner than later, the person or persons involved in this tragic murder will be brought to justice and charged accordingly. I respect the fire out of Goodman and his staff. If there is enough evidence to indict, then someone will be charged.

I also know this much about it as well. Every day someone wakes up knowing they killed this woman. It has to be the first thing they think of when they open their eyes, and that, my friends, has to be a terrible way to live life. I cannot imagine having to live with the guilt, but someone out there is doing so today.

Nobody is ever going to come forward and admit to murdering Karen Swift, but in the coming days, weeks, months or even years, the killer will have to face a jury. Perhaps it won't be a jury sitting in a jury box at the courthouse, it may on judgment day before God. However, I wholeheartedly believe Goodman will present the case to a grand jury at some point.

In closing, Karen Swift deserves justice just like anyone else murdered here or anywhere else.

Again, if God forbid something happened to my wife, I would never go away until the person that committed the crime was brought to justice. It just wouldn't happen.

Karen Swift is owed that much, and much more.

Until next time...

COMMENTS

▼ [View 17 comments](#)

Note: The nature of the Internet makes it impractical for our staff to review every comment. Please note that those who post comments on this website may do so using a screen name, which may or may not reflect a website user's actual name.

Readers should be careful not to assign comments to real people who may have names similar to screen names. Refrain from obscenity in your comments, and to keep discussions civil, don't say anything in a way your grandmother would be ashamed to read.

You good sir, are pointing the blame just the same as the people you wrote about. Anything other than facts being printed about this case is nothing but gossip and un fair to all parties involved. I love reading your articles but this one is shady and un professional.

-- Posted by **Keepup76!** on Mon, Oct 12, 2020, at 4:22 AM

 Report comment to editor

This is biased reporting and highly unethical journalism in my opinion. Thanks for letting us know just how close to the Sells family you are. I went back and read the Oct. 31, 2014 interview with Mr. Swift. I think he answered all your questions and then more. He can't answer for what he doesn't know as to what happened to his wife if he is not guilty. Way to use the paper to taint public opinion but I think it backfired on you!

-- Posted by **EagleOne64** on Mon, Oct 12, 2020, at 12:05 PM

 Report comment to editor

there are several more unanswered murders here in Dyer County, as i don't see you writing about them in the paper, yes i know the Sells just like everyone, but there are other people that were murdered, and deserve the attention as well

-- Posted by **mjowers** on Mon, Oct 12, 2020, at 6:30 PM

 Report comment to editor

Well, I slept in a Holiday Inn Express last night and that makes me a Sherlock Holmes!

-- Posted by **DyersburgStrong** on Mon, Oct 12, 2020, at 6:48 PM

 Report comment to editor

The PAPER is being used a opinion column report the facts only not your thoughts Mr. Smith

-- Posted by **trav1** on Mon, Oct 12, 2020, at 11:05 PM

 Report comment to editor

I'm glad I'm not the only one who saw the shame job cover my buddies track reporting here. You need to leave the articles to the ones that know how to report sir.

-- Posted by **Keepup76!** on Tue, Oct 13, 2020, at 4:05 AM

 Report comment to editor

This is one sided reporting. I see many issues with Mike Smith's claims. I bet you would have a lawyer. I bet your paper has a lawyer on standby. I saw the sheriff has a lawyer in the Tinkle

case. If not guilty why do you all have one? Please start reporting the facts in our town not who you want to protect! Also, report on all the unsolved cases.

-- Posted by **EagleOne64** on Tue, Oct 13, 2020, at 9:36 AM

 Report comment to editor

Response by Mike Smith, General Manager, Dyersburg State Gazette:

Thank you for reading and for your comment. The written editorial is an opinion. We have written numerous articles on the case. Again, an editorial is an opinion.

We all have opinions! We want the facts not some opinion of the general manager of the Dyersburg State Gazette. You're buddies may like what you're doing for them but I promise you the public does not. Opinions are like.....we all have one!

-- Posted by **Keepup76!** on Wed, Oct 14, 2020, at 1:51 AM

 Report comment to editor

A good journalist should be impartial but we see what Darrell Sells post to you on Facebook: "Darrell Sells

Thank you Mr. Smith for your Article on the murder of Karen Swift in Sundays Paper. Our families appreciate your involvement ment I appreciate your help

October 12 at 9:50 AM" What involvement is Mr. Sells referring to and at which time? I have also seen a post from you calling Mr. Sells "Big Daddy" very odd behavior in my opinion.

-- Posted by **EagleOne64** on Wed, Oct 14, 2020, at 2:31 AM

 Report comment to editor

Five Core Principles of Journalism FROM EJM

1. Truth and Accuracy

Journalists cannot always guarantee 'truth', but getting the facts right is the cardinal principle of journalism. We should always strive for accuracy, give all the relevant facts we have and ensure that they have been checked. When we cannot corroborate information we should say so.

2. Independence

Journalists must be independent voices; we should not act, formally or informally, on behalf of special interests whether political, corporate or cultural. We should declare to our editors – or the audience – any of our political affiliations, financial arrangements or other personal information that might constitute a conflict of interest.

3. Fairness and Impartiality

Most stories have at least two sides. While there is no obligation to present every side in every piece, stories should be balanced and add context. Objectivity is not always possible, and may not always be desirable (in the face for example of brutality or inhumanity), but impartial reporting builds trust and confidence.

4. Humanity

Journalists should do no harm. What we publish or broadcast may be hurtful, but we should be aware of the impact of our words and images on the lives of others.

5. Accountability

A sure sign of professionalism and responsible journalism is the ability to hold ourselves accountable. When we commit errors we must correct them and our expressions of regret must be sincere not cynical. We listen to the concerns of our audience. We may not change what readers write or say but we will always provide remedies when we are unfair.

-- Posted by **EagleOne64** on Wed, Oct 14, 2020, at 2:45 AM

 Report comment to editor

This so called reporter is a joke. Gtfo man! Wonder how much you got paid to post your "opinion"

-- Posted by **Keepup76!** on Wed, Oct 14, 2020, at 11:49 AM

 Report comment to editor

Wow, so y'all get all ***** because the Editor wrote his opinion.

I don't think y'all are really ***** about his opinion, as much as his comment about being friends with Darren Sells.

Mikes job as an editor, when he writes an editorial, is just that, his opinion. It is not a news article....it is a freaking editorial, aka opinion.

The Sells family, regardless if you do or do not like them, have been the victim of stupid small town gossip and slander; it jis perfectly acceptable for Mike to voice his opinion about that in his editorial.

As far as the facts go, none of you have the facts.....and thank God for that. All you know is what you hear and therefor swear as the gospel truth.

The only facts here are small minded people who have accepted gossip/rumor as facts and blasting the Editor for simply writing his opinion in a column that is designed for opinions.

-- Posted by **DyersburgStrong** on Wed, Oct 14, 2020, at 12:26 PM

 Report comment to editor

The facts are that Mr. Smith is the general manager of our paper and has tainted public opinion by using the State Gazette as a platform for his own use to protect his friends. It also appears Mr. Smith has contradicted himself from previous articles he has written. It just seems downright shady and immature if you ask me.

-- Posted by **EagleOne64** on Wed, Oct 14, 2020, at 4:22 PM

 Report comment to editor

Well, yes, and he can use his platform as Editor to say what he wants absent slander/libel.

You too have the option to write a letter to the editor, and I am sure they will publish it, so long you sign your name.

"Tainting public opinion"? You could say that freedom of speech taints public opinion everyday, from the senior citizens eating breakfast as a group at McDonalds, hole 18 at the Farms, the lobby of First Baptist Church, and the pulpit, radio station, cable news, the classroom, and even your spouse.

Oh, I forgot about Party line and Dyersburg Topix.....lot of tainting going on there for sure....

-- Posted by **DyersburgStrong** on Wed, Oct 14, 2020, at 7:53 PM

 Report comment to editor

I bet it would not be published. I don't have the right last name!

-- Posted by **EagleOne64** on Wed, Oct 14, 2020, at 8:18 PM

 Report comment to editor

Response by Mike Smith, General Manager, Dyersburg State Gazette:

We are happy to print letters to the editor. Please feel free to submit your letter, with your actual name. We print all letters to the editor. Thanks.

I'm sure you do haha

-- Posted by **trav1** on Fri, Oct 16, 2020, at 4:22 AM

 Report comment to editor

This is reporting from your own paper Sept. 7, 2005 proof in the pudding but Bill Hiles did report it and not Mike Smith. Mr. Hiles did not appear to be biased unlike Mr. Smith.

"Mr. Burnett is not able to participate in his defense," White said. "That is caused by Mr. Sells' death threats to Mr. Burnett."

White called Sells as a witness.

When asked by White if he had ever threatened to kill Burnett, Sells replied "Hell, no" and Stafford admonished him for cursing on the witness stand.

Sells admitted he had said he would "blow a hole in Frank Burnett's rear big enough to drive one of his trucks through," but said he and Burnett had met amicably after church about six weeks ago.

White next called as a witness Judith Kirkland, an employee of the business run by Burnett and Joslin.

She testified that in February or early March, Sells told her he was frustrated with not getting an accounting of the loan-package business from Burnett and had "said he could kill Frank Burnett."

"When I told him, he shouldn't say that, he said, 'I will hurt him real bad,'" she testified.

Kirkland said Sells repeated the threat four to six weeks later, using the same words.

-- Posted by **EagleOne64** on Sat, Dec 19, 2020, at 11:03 PM

 Report comment to editor

Exhibit #5

STATE GAZETTE

Burnett fears threat by Sells over loan accounting: Attorney

Wednesday, September 7, 2005

BILL HILES.

Dyersburg businessman Frank Burnett is willing to testify in a lawsuit brought against him by Darrell Sells, but needs to be assured Sells won't harm him, his lawyer said Friday.

"Mr. Burnett is quite competent and willing to testify if he's not threatened," Burnett's attorney, Edward K. White III of Nashville, told Dyer County Chancellor J. Steven Stafford during a hearing, "but we need more assurance that there is some protection for him."

Burnett has thus far failed to appear for hearings in the case, White said, on orders from his doctor. He said Burnett is suffering depression and is fearful for his life because Sells has threatened him.

Friday's hearing was the second in a lawsuit filed by Sells and two of his children against a group of partners asking for an accounting of their share of a \$100 million loan collection partnership.

Darrell Sells, owner of McDonald's franchises in Dyersburg and elsewhere in West Tennessee and Missouri, his son, Darren Sells; his daughter, Dena Sells Quertermous; and the children's business, Interiors for Less Outlet; filed the civil complaint asking for an accounting of the loan-collection partnership, against Hewell Dennis Joslin, Burnett, Dennis Joslin Co., Walter Hastings and several other companies and partnerships owned or controlled by Joslin and/or Burnett.

In addition to asking for an accounting of the loan-collection partnership, the complaint contends that Burnett and Joslin improperly diverted funds for their own use and should repay them to Sells.

It asks for the defendants to be ordered by the court to provide an accounting for a business arrangement financed by Darrell Sells to buy loans at auction from lending institutions and collect them.

On June 6, Stafford issued a temporary injunction reaffirming a restraining order he had issued on June 1 that orders Burnett not to spend the proceeds of a California real estate partnership until the Sells claims are decided.

On Friday, White asked that the injunction be dissolved because it is harming Burnett's business.

"Seven hundred eighty thousand dollars of Mr. Burnett's money is being held in my trust account that is essential to Mr. Burnett's financial health," he told Stafford. "I've not been paid in six

months and the (California) money was sent to me for the purpose of paying for this litigation.

"When all the dust settles in this case money will be paid by Darrell Sells to Frank Burnett."

Sells' lawyer, John G. Young Jr. of Clayton, Mo., objected, saying a hearing on the injunction is scheduled for mid-October.

Stafford denied White's motion to dissolve the injunction.

"I think sufficient wrong has been alleged to keep the injunction in place until mid-October," the judge said. "But I am concerned that we're about a year out from getting this case resolved.

"Remember, you're in the country, not a big city."

Stafford said during a recent telephone scheduling conference attorneys involved indicated the case would go to trial next August.

"With the number of attorneys and the complexity I think it will take that long," said Brandon Gibson, attorney for Dennis Joslin. "But I think if we all work hard and cooperate, a trial in May of next year probably is possible."

"That beats the heck out of August as the scheduling order says," Stafford said.

Earlier Stafford had denied Gibson's motion to dismiss Hastings from the lawsuit.

"My concern is the volume of loans and loan packages," Young said.

The bulk of Friday's three-hour hearing was devoted to a motion by White that Sells be mentally evaluated and a guardian be appointed to look after him.

"Mr. Burnett is not able to participate in his defense," White said. "That is caused by Mr. Sells' death threats to Mr. Burnett."

White called Sells as a witness.

When asked by White if he had ever threatened to kill Burnett, Sells replied "Hell, no" and Stafford admonished him for cursing on the witness stand.

Sells admitted he had said he would "blow a hole in Frank Burnett's rear big enough to drive one of his trucks through," but said he and Burnett had met amicably after church about six weeks ago.

White next called as a witness Judith Kirkland, an employee of the business run by Burnett and Joslin.

She testified that in February or early March, Sells told her he was frustrated with not getting an accounting of the loan-package business from Burnett and had "said he could kill Frank Burnett."

"When I told him, he shouldn't say that, he said, 'I will hurt him real bad,'" she testified.

Kirkland said Sells repeated the threat four to six weeks later, using the same words.

She said when she asked about the accounting Sells wanted she was told the information had been given to Sells' accountant.

Sells had testified that his accountant was not able to complete an audit because Burnett never provided all the information he promised.

White next called as a witness Dr. Johnnie Welch, a counselor treating Burnett for post-traumatic stress disorder and said he was testifying with Burnett's permission to disclose confidential information.

Welch said knowledge of Sells' threats against him was the triggering incident for both Burnett's depression and post-traumatic disorder.

Under cross-examination by Young, Welch said Burnett's perception that he is in danger is no longer related to any current actual event or current threat.

"He asked me if I can tell him Mr. Sells is not a threat and when I told him I could neither tell him it was or wasn't, he became agitated," Welch said. "I'm treating a perceived threat to self."

White said the impact of Sells' threat on Burnett is real.

"The potential for an injurious impact on Frank Burnett and others is real," he said. "I think it is incumbent on the court to determine Mr. Sells' mental condition."

"Whether Mr. Sells is insane or not is not the basis for Mr. Burnett's disorder," Young argued. "It would not be proper for the court to order an evaluation."

Stafford denied the motion, saying White had not met standards for ordering a mental evaluation set by the Tennessee Court of Appeals.

White said he intends to file a motion for a protective order preventing Sells from having contact with Burnett.

Since the last hearing in the case on June 21, two other lawsuits related to the case have been filed.

A company, Joslin Oklahoma, partially owned by Joslin and Burnett, filed a \$2.996 million complaint against Sells.

The lawsuit against Sells, filed June 16 in Dyer County Circuit Court, accuses Sells of having agreed in August 2002 to purchase a medical office building in Oklahoma City for \$2,996,000 and failing to make any payments on the purchase.

The complaint also alleges fraud in that Sells never intended to pay the note.

It was originally filed in February in federal court in Memphis but was withdrawn for technical jurisdictional reasons and refiled in Dyer County.

Another complaint, similar to Sells' original lawsuit, was filed June 30 in Chancery Court by a Knoxville company accusing Burnett, Joslin, Burnett's daughter and six partnerships Burnett and Joslin are involved in with breach of contract and fraud in a loan-redemption venture. It was filed on behalf of Knoxville partnership Hudharris L.L.C., composed of Kirk A. Huddleston and Paul Harrison.

The Hudharris complaint alleges Burnett and Joslin have failed to repay \$618,133 plus interest they diverted from Hudharris accounts. It also asks for a restraining order against Burnett to prevent his use of the proceeds from the California real estate sale.

Near the end of Friday's hearing Hudharris' lawyer, Robert E. Craddock Jr. of Memphis, asked Stafford for a temporary restraining order preventing Burnett from hiding proceeds of a \$2.5 million Arkansas judgment for defective materials a boat company previously partially owned by Joslin and Burnett won. The judgment is on appeal and the appeal is scheduled to be heard by the Arkansas Court of Appeals next month.

Craddock introduced an affidavit from a former CEO of the boat company claiming Burnett told him money he sent to the boat company came from Sells' accounts "... and possibly other loan package investors at the Dennis Joslin Company ... without the knowledge and consent of Sells."

Craddock also introduced an affidavit of a forensic accountant, Mark N. Henry of Nashville, that alleged that the transfers to the boat company totaled \$1,806,800.34.

"It causes us a great deal of concern that an effort is being made to get this judgment beyond our reach," Craddock said.

"This is outrageous," White said. "We are in the process of trying to settle that judgment, but the perception that we're in the process of absconding is patent nonsense," he said. "Also this is a judgment in another state that is outside the jurisdiction of this court."

He said the former CEO was fired and is being sued for stealing from the now-bankrupt boat company.

Stafford agreed the judgment is beyond his jurisdiction and denied Craddock's motion for a restraining order.

The judge ordered all the attorneys to agree on a date for the mid-October hearing on the injunction he gave Sells in June.

That date probably will be set this week.

On Aug. 12 all parties to the Sells and Hudharris lawsuits agreed and Stafford ordered that all confidential business and operational information introduced into the proceedings will be sealed and kept secret.

STATE GAZETTE

Joslin Oklahoma company sues Sells over note nonpayment

Thursday, June 30, 2005

BILL HILES

A company partially owned by defendants in a lawsuit filed earlier this month by Dyersburg restaurant owner Darrell Sells has filed a \$2.9 million complaint against Sells.

The lawsuit against Sells, filed June 16 in Dyer County Circuit Court, accuses Sells of having agreed in August 2002 to purchase the Pasteur Medical office building in Oklahoma City for \$2,996,000 and failing to make any payments on the purchase.

The complaint also alleges fraud in that Sells never intended to pay the note.

Sells, reached at his Dyersburg office Monday, declined to comment on the complaint. He has 30 days to file a response.

Joslin's local phone has been disconnected with no forwarding number left. A call to a Jamaican number obtained by the State Gazette was answered Monday by a woman who said Joslin no longer is there. She said she had no forwarding number for him.

Sells and two of his children sued a group of partners June 1 in Dyer County Chancery Court asking for an accounting of their share of a \$100 million loan collection partnership.

The lawsuit filed by Sells, owner of McDonald's franchises in Dyersburg and elsewhere in West Tennessee and Missouri, his son, Darren Sells, his daughter, Dena Sells Quertermous, and the children's business, Interiors for Less Outlet, names Hewell Dennis Joslin, Frank Burnett, Dennis Joslin Co., Walter Hastings and several other companies and partnerships owned or controlled by Joslin and/or Burnett as defendants.

It asks for the defendants to be ordered by the court to provide an accounting for a business arrangement financed by Darrell Sells to buy loans at auction from lending institutions and collect them.

The complaint filed by Dennis Joslin Oklahoma, L.L.C. asks for the principal amount of a promissory note it claims Sells signed Aug. 15, 2002, interest, actual damages caused by Sells' fraud in never intending to pay, seizure and return of the building, rents and profits, punitive damages for fraud and attorney's fees.

The four-page complaint filed by Jackson attorney Brandon O. Gibson claims Sells agreed to make monthly interest payments at 4.5 percent beginning Jan. 1, 2003, and to pay the principal and any

remaining interest on Aug. 1, 2004.

"No payments of any kind have been made on the note," the complaint states.

Sells never intended to pay the debt, the complaint alleges.

"Sells told the Joslin Oklahoma representative that he accepted a deed for the medical office building believing he would never have to pay for it," the complaint states. "Sells made the representation at the time of executing the note that he fully intended to pay the note and other material misrepresentations which were a fraud on Joslin Oklahoma which would never have transferred the medical office building to Sells without these representations.

"State fraud and constructive trust laws should mandate the court to impose a constructive trust on the medical office building and require an accounting for the purpose of returning the building with all rents, profits and damages to plaintiff as if Sells were merely holding the building in trust since the note was signed."

A copy of the note signed by Sells is attached to the lawsuit as is a letter, dated Aug. 2, 2004, from Burnett to Sells asking for payment according to the terms of the note. Burnett, as a member of Dennis Joslin Oklahoma, L.L.C, signed the letter.