

FENNEMORE CRAIG JONES VARGAS

Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
(702) 692-8000

Bradley Scott Schragger
Direct Phone: (702) 692-8033
Direct Fax: (702) 692-8053
bschragger@fclaw.com

Law Offices
Denver (303) 291-3200
Las Vegas (702) 692-8000
Nogales (520) 281-3480
Phoenix (602) 916-5000
Reno (775) 786-5000
Tucson (520) 879-6800

October 12, 2012

Via Facsimile: (702) 382-9452

Mr. Gus Flangas
Flangas McMillan Law Group
3275 South Jones Boulevard, Suite 105
Las Vegas, Nevada 89146

Re: Steven Horsford for Congress Advertisement

Dear Mr. Flangas:

This firm represents the Steven Horsford for Congress campaign (the "Campaign."). I am in receipt of your letter of October 11, 2012. Thanks very much for expressing your client's concerns. Please allow me the opportunity to respond through this correspondence.

As I understand it, your client objects to language in a recent television advertisement placed by the Campaign asserting that Mr. Tarkanian "worked for telemarketing scammers." I must admit to some confusion regarding this argument, and ask that you do me the courtesy of clarifying your client's position so that I may properly advise my client.

Is it Mr. Tarkanian's position that he never performed legal work, as a corporate attorney, for entities found by state and federal authorities to have bilked millions of dollars from hundreds of victims across the country? If so, published quotes attributed to him—quotes which, to my knowledge, have never been attacked by Mr. Tarkanian as inaccurate or fabricated—believe this approach. In a newspaper article published on September 27, 2004, and in reference to a report that Mr. Tarkanian "was a civil attorney for a telemarketing company that was indicted on fraud charge," Mr. Tarkanian is quoted as saying "he was merely a corporate lawyer for businessman who 'did some bad things.'" Two years later, in a newspaper article published November 3, 2006, Mr. Tarkanian stated flatly, "I did legal work for these companies." Apart from the articles here referenced, however, the public record is abundantly clear that Mr. Tarkanian performed work for these individuals and entities. It cannot be that the source of your

FENNEMORE CRAIG JONES VARGAS

Page 2

client's assertion that the Campaign's statement is false is an argument that Mr. Tarkanian did no "work" for these individuals and entities.

Perhaps, therefore, your client now maintains, despite his earlier statement that they "did some bad things," that the people for whom he worked in this context were not, in fact, "telemarketing scammers" at all. I can recite the litany of convictions associated with these schemes and so-called "charities," if you like, as well as cite to the specific findings of the criminal courts, but I feel certain your client is already familiar with that information. It would not strike me as a particularly profitable legal avenue, but if your client would like now to defend the conduct of his former clients in this regard as a basis for a defamation claim, that choice is certainly available to him.

Lastly, perhaps Mr. Tarkanian is under the impression that a previous suit against an entirely different opponent who made entirely different statements in an entirely different campaign somehow now inoculates him from a truthful and accurate critique of his past conduct as it relates to his qualifications to stand as a candidate in 2012 for Nevada's Fourth Congressional District. On my behalf, please disabuse him of this impression. There is no effective legal analog between the 2004 case and what your client appears to be complaining of at present.

As further note, the analysis of Nevada defamation law you provide in your letter appears to me to be in error. As the Nevada Supreme Court held in *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 722 (2002), no aspect of the test for actual malice is, as you suggest, some "average listener" standard but rather the test "is a subjective one, relying as it does on what the defendant believed and intended to convey, and not what a reasonable person would have understood the message to be." See also *Posadas v. City of Reno*, 109 Nev. 448, 454 (1993). Please adjust your analysis accordingly.

I welcome a response to my questions so that I may understand the precise nature of your client's complaints about the advertisement in question. I am able to determine, however, that the Campaign's statement is accurate and valid, and would easily withstand judicial scrutiny. If you can provide me with argument and authority to the contrary, I will be happy to entertain them.

Thanks very much for your letter, and I am—

Sincerely yours,

FENNEMORE CRAIG JONES VARGAS

/s/ Bradley Scott Schrager