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To: CAMPBELL, CANDY A
From: Merrick, Glenn W - CO#10042
Subject: Service of Documents in BORGEN, BJORN K vs. CAMPBELL, CANDY A

You are being served documents that have been electronically submitted in BORGEN, BJORN K vs. CAMPBELL, CANDY A through LexisNexis File & Serve. The details for this transaction are listed below.

Court: CO Denver County District Court 2nd JD
Case Name: BORGEN, BJORN K vs. CAMPBELL, CANDY A
Case Number: 2010CV4273
Transaction ID: 34115454
Document Title(s):
Plaintiffs Motion in Limine to Bar Irrelevant Testimony and Materials (8 pages)
Proposed Order Granting "Plaintiffs Motion in Limine to Bar Irrelevant Testimony and Materials" (1 page)
Authorized Date/Time: Nov 1 2010 12:51PM MDT
Authorizer: Glenn W Merrick
Authorizers Organization: MERRICK, G W & ASSOCIATES LLC
Sending Parties:
BORGEN, BJORN K
Served Parties:
CAMPBELL, CANDY A

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>Court Address: 1437 Bannock Street Denver, Colorado 80202</p>	<p>Δ COURT USE ONLYΔ</p>
<p>BJORN K. BORGEN, Plaintiff, v. CANDY A. CAMPBELL, Defendant.</p>	<p>Case Number 10 CV 4273</p> <p>Division 8</p>
<p>Attorneys for Plaintiff:</p> <p>G.W. MERRICK & ASSOCIATES, LLC Glenn W. Merrick, No. 10042 Joseph T. Bernstein, No. 37753 Suite 912, 5445 DTC Parkway Greenwood Village, Colorado 80111 Telephone: (303) 831-9400 Facsimile: (303) 771-5803 E-mail: gwm@gwmerrick.com jtb@gwmerrick.com</p>	
<p align="center">PLAINTIFF'S MOTION <i>IN LIMINE</i> TO BAR IRRELEVANT TESTIMONY AND MATERIALS</p>	

Pursuant to C.R.C.P. 121, Section 1-15(1), and C.R.E. 402, 403 and 404, Plaintiff, Bjorn K. Borgen (“Borgen”), through his undersigned counsel, G.W. MERRICK & ASSOCIATES, LLC, respectfully moves the Court for entry of an Order barring Defendant, Candy A. Campbell (“Campbell”), from offering into evidence at the preliminary injunction hearing scheduled for November 12, 2010, irrelevant testimony and/or materials respecting any relationship with a person other than Campbell that allegedly occurred many years ago. As grounds for this Motion, Borgen advises the Court as follows:

C.R.C.P. 121, Section 1-15(8) Certification: Pursuant to C.R.C.P. 121, Section 1-15(8), the undersigned advises the Court that no conference with Campbell was attempted prior to

the filing of this Motion. Such a conference is excused under Rule 121 because Campbell is not represented by counsel and because a conference with Campbell would be futile based upon the relief herein sought.

I. LITIGATION BACKGROUND

1. The Borgen Media Litigation. During the period of April 2006 through June of 2006, Borgen Media, LLC (“Borgen Media”), a Colorado limited liability company in which Borgen was the sole member, made secured loans to Siegel Media, LLC (“Siegel Media”), a Colorado limited liability company engaged in the magazine publishing business in which Campbell was the sole member. The aggregate amount of these loans was \$200,000, and these were secured with all of the personal property assets of Siegel Media. Borgen Media’s secured loans to Siegel Media matured in April of 2007, and the loans moved into default status at that time based upon the failure of Siegel Media to pay any portion of the outstanding indebtedness.

2. On May 30, 2007, Borgen Media brought suit in this Court against Siegel Media seeking to collect the outstanding indebtedness owed by Siegel Media which remained in default. *Borgen Media, LLC v. Siegel Media, LLC*, Case No. 07-cv-5335, Denver District Court (the “Borgen Media Litigation”). In January of 2008, Campbell published to the internet (at the “Free Press Release” website) one or more “press releases” misrepresenting the context and content of the Borgen Media Litigation. Campbell also published at that website that she was in the process of releasing details of the Borgen Media Litigation in which Siegel Media was seeking to hold Borgen Media and Borgen accountable for Siegel Media’s closure, and seeking “\$3.7 million in damages.”

3. On April 29, 2008, this Court (Hon. Michael A. Martinez) entered summary judgment in favor of Borgen Media and against Siegel Media on all claims alleged against Siegel Media in the Borgen Media Litigation. The amount of the judgment was well in excess of \$230,000, and no portion of that judgment has been collected by Borgen Media.

4. The Campbell Litigation. On January 9, 2009, Campbell brought suit in this Court, on a *pro se* basis, against Borgen and Borgen Media alleging: (i) claims that had been decided in favor of Borgen Media in the Borgen Media Litigation, and (ii) a claim against Borgen for intentional infliction of emotional distress. *Campbell v. Borgen, et al.*, Case No. 09-cv-591, Denver District Court (the “Campbell Litigation”). The claim alleged by Campbell against Borgen falsely asserted that during 2006 Borgen engaged in extreme and outrageous conduct that proximately caused Campbell severed emotional distress. According to Campbell’s deposition testimony in the Campbell Litigation, the incident to which she referred occurred at the Capitol Grill Restaurant on November 9, 2006. Campbell falsely testified that well in the evening hours Borgen made unwelcome physical advances at the bar in a crowded commercial establishment in downtown Denver (with the Governor of Colorado and prominent members of the Colorado bar in attendance) that constituted “sexual assault” and “extreme and outrageous” conduct.¹

¹ Campbell also testified during her deposition that immediately following the alleged “sexual assault”

5. Following the initiation of the Campbell Litigation (and continuing to the present), Campbell began publishing to the worldwide internet numerous false, highly offensive and deeply scandalous allegations about Borgen and his dealings with Campbell. They falsely assert -- in relatively graphic and repulsive detail -- that Borgen: (i) physically assaulted Campbell at the Capitol Grill Restaurant, (ii) made unwanted personal advances toward Campbell, and (iii) reneged on an agreement to provide hundreds of thousands of dollars in funding for Siegel Media because Campbell refused his invitations for an intimate relationship. Campbell demanded millions of dollars in settlement.

6. Not surprisingly, during the course of the Campbell Litigation, Borgen's counsel timely requested that Campbell submit to a psychological examination under the provisions of C.R.C.P. 35 to test the validity of Campbell's claim that she had sustained severe emotional distress. Campbell categorically refused to submit to any psychological examination.

7. On July 16, 2009, this Court (Hon. Morris B. Hoffman) dismissed, with prejudice, all claims asserted by Campbell in the Campbell Litigation other than the intentional infliction of emotional distress claim that Campbell alleged against Borgen. On July 26, 2010, Judge Hoffman dismissed, with prejudice, the remaining intentional infliction of emotional distress claim that Campbell had alleged. Judge Hoffman has not yet ruled on Borgen's claim for recovery of his legal fees under the provisions of C.R.S. §13-17-102(2) based upon Borgen's defense of claims asserted against him in the Campbell Litigation that were frivolous and groundless.

8. During 2009 and 2010, Borgen repeatedly demanded through his counsel that Campbell remove the false and scandalous material that she has published to the world wide internet concerning Borgen allegedly making unwelcome advances for an intimate relationship with her and refusing to provide additional funding for her magazine business (in the period following the initial loans by Borgen Media to Siegel Media) based upon her refusal. In each instance, Campbell has rejected Borgen's demands to remove her outrageous publications to the internet unless she is paid millions of dollars. Campbell's shocking efforts to extort money from Borgen could not be more brazen or manifest.

9. The Current Litigation. Borgen initiated the current suit on May 25, 2010 asserting, among other claims, claims for defamation/libel and extortion arising from Campbell's publication of false, inflammatory and acutely injurious statements on the worldwide internet and demanding substantial payment to remove them. **Complaint at pp. 2-6.** In particular, Campbell has published to the internet several false accounts of a "physical assault" and "sexual misconduct" that she wrote were committed upon her by Borgen and that he reneged on a commitment to provide funding for her magazine publishing business when she refused his invitation for a personal relationship. *Id.* at ¶17. Among other things, Borgen seeks injunctive

at the Capitol Grill Restaurant she had Borgen walk her to her motor vehicle -- but not before providing him with an evening tour of the offices of Siegel Media in the upstairs suite of a nearby office building.

relief directing Campbell to remove her libelous publications to the internet respecting her dealings with Borgen.

10. Borgen has sought preliminary injunctive relief in this suit seeking to require Campbell to remove immediately -- and pending trial on the merits -- her libelous publications to the internet respecting her dealings with Borgen. The hearing on the preliminary injunction has been set for November 12, 2010 at 1:30 p.m.

II. THE IRRELEVANT TESTIMONY AND MATERIAL

11. In connection with the forthcoming hearing on Borgen's motion for a preliminary injunction, Campbell has caused nine (9) hearing *subpoenas* to be issued to persons who have no knowledge or involvement with the dealings between Borgen and Campbell. The persons targeted by Campbell include: (i) Borgen's wife, Katherine Borgen, (ii) several of Borgen's social acquaintances, and (iii) persons who were employed more than fifteen years ago as Borgen's personal assistants.

12. In addition, in connection with the forthcoming hearing on Borgen's motion for a preliminary injunction, Campbell has served upon Borgen's counsel an exhibit list and a set of exhibits. Virtually all of these exhibits consist of documents and photographs arising out of Borgen's relationship with a person other than Campbell more than seventeen (17) years ago. These do not have any relevance to Campbell's false, outrageous and libelous publications to the internet concerning her dealings with Borgen approximately a generation later.

13. For at least three independent reasons, the testimony and documentary evidence that Campbell apparently will attempt to adduce at the at the November 12, 2010 hearing must be excluded.

A. First, and most obviously, any "evidence" of Borgen's prior relationship with a person other than Campbell many years earlier is manifestly irrelevant. Any such relationship -- seriously remote in time and circumstance from the issues in the current litigation -- is not probative of whether Campbell's publications to the internet respecting her dealings with Borgen are false, outrageous and libelous. Accordingly, any such proffered evidence must be excluded under C.R.E. 402.

B. Second, any such proffered "evidence" by Campbell is inadmissible under C.R.E. 404(b) because it is a transparent effort by Campbell to use evidence of alleged "other wrongs or acts" in an effort to establish that Borgen "acted in conformity therewith."

C. Third, even if Campbell's proffered "evidence" were admissible under C.R.E. 402 (which it is not), the probative value of the "evidence" is substantially outweighed by: (i) its unfair prejudice to Borgen, (ii) the likelihood of confusion of the issues, and (iii) the undue delay and waste of time that would ensue from the necessity of addressing the remote and collateral issues

that Campbell seeks to infuse by virtue of offering such testimony and documents. Thus, the proffered evidence must be excluded under C.R.E. 403.

III. ARGUMENT AND AUTHORITIES

A. Campbell's Proffered Evidence is Inadmissible Under C.R.E. 402

14. The scope of "relevant" evidence is not unbounded. When proffered testimony and/or documentary evidence has no direct connection to the issues before the Court it is properly excluded under C.R.E. 402 as irrelevant. *People v. White*, 632 P.2d 609, 613 (Colo. App. 1981). For example, in *White* the Court of Appeals affirmed the exclusion of evidence because it lacked a "direct connection" to the issues before the trial court. 632 P.2d at 613. The Court of Appeals instructed that evidence that is at best tangentially related "to some degree" to the case does not satisfy the requirement of "relevancy," and is properly excludable under C.R.E. 402. *Id.*

15. The issue before the Court at the preliminary injunction hearing on November 12, 2010 are whether Campbell's internet publications respecting her dealings with Borgen are false, scandalous and libelous, and whether Campbell should be directed to remove them from the worldwide internet pending a trial on the merits.

16. Campbell's proffered "evidence" in respect of the November 12, 2010, hearing provides no probative nexus to the issues before this Court. Testimony and documents relating to any other relationship – particularly any relationship remote in time and circumstance to Campbell's dealings with Borgen about which Campbell has published – are not relevant under C.R.E. 402 and must be excluded. Stated more precisely, Campbell's proffered evidence is not legally material to any factual issue before the Court. Thus, the "evidence is simply inadmissible as having no bearing whatever on any issue in the case." *People v. Carlson*, 712 P.2d 1018, 1021 (Colo. 1986).

B. Campbell's Proffered Evidence is Inadmissible Under C.R.E. 404(b)

17. Even if Campbell's "evidence" were relevant (which it is not), any "evidence" of a prior relationship involving Borgen -- particularly one remote in time and circumstance -- is inadmissible under C.R.E. 404(b). Rule 404(b) instructs that evidence of past "wrongs or acts" is inadmissible to prove that a person "acted in conformity therewith." Rule 404(b) bars evidence of a person's past character or conduct when such evidence is offered to establish that the person acted in conformity with that character or conduct on any specific occasion. *People v. Gardner*, 919 P.2d 850, 855-56 (Colo. App. 1995); *People v. Hansen*, 708 P.2d 468, 471 (Colo. App. 1985).

18. In the context of a civil case, C.R.E. 404(b) excludes evidence of "prior conduct" designed to establish that a litigant engaged in the same or similar conduct at a later time.

Bennett v. Greeley Gas Co., 969 P.2d 754 (Colo. App. 1998) is illustrative and instructive. In *Bennett*, a gas company was sued for injuries arising from a fracture in the defendant’s gas pipeline. At trial, the judge admitted evidence that several years prior to the pipeline fracture giving rise to the plaintiff’s injuries the defendant had violated gas pipeline safety rules. *Id.* at 761. The Court of Appeals reversed, and applying C.R.E. 404(b) held that evidence of defendant’s prior acts was not admissible to show that defendant had acted similarly at any other time. *Id.*

19. Campbell’s intent in respect of the upcoming hearing on Borgen’s preliminary injunction motion is to offer testimony and/or documents relating to matters involving: (i) different persons, (ii) different business and/or personal relationships, (iii) at times remote from the alleged events about which Campbell has published outrageous and libelous accounts to the worldwide internet. Even if there were some tangential relevance to the issue before this Court, Rule 404(b) bars evidence of “prior wrongs or acts” to prove that a litigant “acted in conformity therewith” later in time. *Bennett*, 969 P.2d at 761, *citing* C.R.E. 404(b).

C. Campbell’s Proffered Evidence is Inadmissible Under C.R.E. 403

20. Finally, Campbell’s proffered evidence must be excluded under C.R.E. 403 because even if relevant to any fact at issue in the current litigation (which it is not), the probative value of the proffered evidence is substantially outweighed by: (i) unfair prejudice to Borgen, (ii) potential confusion of the issues, and (iii) considerations of undue delay and waste of time necessary to address the remote and collateral issues that Campbell seeks to infuse by virtue of her proffered testimony and documentary materials.

21. Applying Rule 403, the Colorado courts have consistently excluded proffered evidence that has minimal probative value and which would result in unfair prejudice to the party against whom it is offered. *See, e.g., People v. Watkins*, 83 P.3d 1182, 1186 (Colo. App. 2003). Moreover, and of particular import here, the exclusion of evidence under Rule 403 is appropriate when the evidence would “open the door to cross-examination concerning ... collateral issues” and unduly delay or distract from the resolution of the issues actually before the Court. *Watkins*, 83 P.3d at 1186.

22. *People v. Walker*, 666 P.2d 113, 122 (Colo. 1983) is apposite. In *Walker*, the Colorado Supreme Court affirmed the trial court’s ruling under C.R.E. 403 limiting cross-examination of a witness. The justices observed that the examination would have elicited relevant testimony, but the trial would have launched into unnecessary and distracting exposition of collateral issues. 666 P.2d at 122. In the words of the High Court, “[t]he ruling of the trial court properly prevented the sideshow from taking over the circus.” *Id.*

23. Campbell’s proffered evidence will unfairly prejudice Borgen (its provocative context is exactly what motivates Campbell to offer it) and will cause a significant delay and waste of time as Borgen will be required to address evidence of matters that are seriously remote in time and circumstance from the claims alleged in this litigation. Any effort to estimate the amount of

additional court time necessary to address Campbell's voracious appetite to manufacture collateral issues would be perilous – but it likely is substantial. As the Colorado Supreme Court instructed in *Walker*, this Court should be vigilant to ensure that the sideshow does not obstruct a just, speedy and inexpensive determination of this litigation. C.R.C.P. 1.

CONCLUSION

For all of the foregoing reasons, Borgen respectfully moves this Court for an Order barring Campbell from offering into evidence at the hearing on November 12, 2010, irrelevant testimony and/or materials respecting Borgen's relationship with any person other than Campbell. A proposed Order granting the relief here requested is appended for the consideration and convenience of the Court.

Dated: November 1, 2010.

G.W. MERRICK & ASSOCIATES, LLC

By: /s/ Glenn W. Merrick

Glenn W. Merrick, No. 10042

ATTORNEYS FOR PLAINTIFF, BJORN K.
BORGEN

CERTIFICATE OF SERVICE

The undersigned certifies that on November 1, 2010, the foregoing **PLAINTIFF'S MOTION *IN LIMINE* TO BAR IRRELEVANT TESTIMONY AND MATERIALS** was served upon Defendant by mailing a true and genuine copy thereof, first class mail, postage prepaid, addressed as follows:

Candy A. Campbell
724 Hayden Court
Longmont, Colorado 80503

/s/ Sabrina R. Marymee
Sabrina R. Marymee

In accordance with C.R.C.P. 121 § 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO

Court Address: 1437 Bannock Street
Denver, Colorado 80202

Δ COURT USE ONLYΔ

BJORN K. BORGEN,

Plaintiff,

v.

CANDY A. CAMPBELL,

Defendant.

Case Number
10 CV 4273

Division
8

**ORDER GRANTING “PLAINTIFF’S MOTION *IN LIMINE* TO BAR IRRELEVANT
TESTIMONY AND MATERIALS”**

THIS MATTER, having come before the Court on “Plaintiff’s Motion *in Limine* to Bar Irrelevant Testimony and Materials,” filed on November 1, 2010; and

THE COURT, having reviewed the aforementioned Plaintiff’s Motion and the Court file and having determined that the Motion is meritorious and that the relief therein requested should be granted;

NOW, THEREFORE, under the provisions of C.R.E. 402, 404(b) and 403, this Court directs that Defendant, Candy A. Campbell, shall not seek to introduce into evidence at the preliminary injunction hearing scheduled for November 12, 2010 any testimonial or documentary evidence testimony and/or materials respecting Borgen’s relationship with any person other than Campbell.

Dated this ____ day of November, 2010.

BY THE COURT:

District Judge