

<p>County Court <u>EL PASO</u> County, Colorado  Court Address:  270 S. Tejon Colorado Springs</p> <hr/> <p>Plaintiff(s)  Kris K. Stewart  2213 N. Chestnut St.  Colorado Springs. Colorado 80907</p> <p>v.</p> <p>Defendant(s)</p> <p>Dr. Mark Hoffman  ATTORNEY FOR MARK HOFFMAN:  DENIS LANE JR.  1912 WEST COLORADO AVE.  COLORADO SPRINGS, CO 80904  PHONE: (719) 636-1017 FAX: (719) 635-4571</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorney or Party Without Attorney (Name and Address):</p> <p>Kris K Stewart  2213 N. Chestnut St.  Colorado Springs, CO 80907</p> <p>Phone Number: <input type="text"/> E-mail: <input type="text"/></p>	<p>Case Number:  07C00009</p> <p>G                      330  Division              Courtroom</p>
<p><b>PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT  AND PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF PLAINTIFF</b></p>	

Now comes Plaintiff Kris K. Stewart to respond to Denis K. Lane's (attorney for defendant Mark H. Hoffman) motion for summary judgment.

**Mr. Lane states that my action is frivolous.**

My complaint is anything but frivolous. It is a very grave matter to accuse someone, especially a professional that works with children, (I am a licensed school teacher) of being a sex offender and a criminal. It is absolutely outrageous for Dr. Hoffman to fabricate the allegations, fabricate confessions to the allegations, and present them to the Court as matters of fact.

Yet this is what Dr. Hoffman did. I have proven this to the Grievance Board of the Department Of Regulatory Agencies, and am fully prepared to prove it to the Court. Dr. Hoffman created allegations against me of criminal and sexual misconduct, and completely fabricated confessions, purportedly made by me, admitting to the actions. The fact that Dr. Hoffman fabricated these confessions is clearly discernable by comparing Dr. Hoffman's report to the Court with my audio recording of what actually transpired in our meetings.

Mr. Lane stated in his ANSWER that my complaint to the Grievance Board is a confidential matter, and that any reference to it should be struck. My complaint to the Grievance Board was only confidential during the investigative phase. The Board investigated my complaint, and found it valid. The Board then referred the case to the Office of The Attorney General for commencement of disciplinary proceedings. THAT fact is not confidential.

Moreover, Mr. Lane brought the subject of my complaint to the Grievance Board to the Court's attention on August 15, 2007, in his MOTION OF DEFENDANT TO VACATE DEFAULT JUDGEMENT, MOTION TO QUASH SERVICE OF PROCESS, AND MOTION TO DISMISS. In this motion, Mr. Lane provided the Court with a copy of Magistrate Erler's letter to the Board advocating for Dr. Hoffman's immunity. Mr. Lane cannot bring up the topic of the Grievance Board, and then later claim that I cannot reference it.

It should also be noted that the Grievance Board REJECTED Dr. Hoffman's claim to immunity, as does the Attorney General. Enclosed with this MOTION is a copy of the letter that the Grievance Board sent me stating that it had completed the investigation and referred the matter to the Attorney General's office for disciplinary action.

**Mr. Lane states that my action is barred by the two year Statute of Limitations.**

This is not correct. The very core of my complaint is that Dr. Hoffman fabricated evidence against me and presented it to the Court. On February 7, 2005, Dr. Hoffman presented his report to the court, and stated under oath that it was completely accurate. It is not disputed that I filed my complaint on January 2, 2007. This falls within the two-year limit.

**Mr. Lane states that Dr. Hoffmann is entitled to absolute immunity, thus barring my action.**

This is not correct. On January 24, 2008, the United States Court of Appeals for the Ninth Circuit filed an opinion, which states:

**"A prosecutor doesn't have absolute immunity if he fabricates evidence during a preliminary investigation."**

**"Furthermore, as prosecutors and others investigating criminal matter have no absolute immunity for their investigatory conduct, a fortiori, social workers conducting investigations have no such immunity."**

***Beltran v. Santa Clara County*, No. 05-16976; D. C. No. CV-03D-0.C3.7 6N7o-.RMW**

*Beltran v. Santa Clara County* arose from a child dependency and custody case. It would follow *a fortiori* that an Unlicensed Psychotherapist such as Dr. Hoffman that is illegally masquerading as a Licensed Psychologist is also NOT entitled to absolute immunity when he falsifies and fabricates evidence. This opinion by the Ninth Circuit specifically addresses the issue at hand.

**Other reasons that Dr. Hoffman does not have immunity:**

**1. It is not disputed that Dr. Hoffman is an Unlicensed Psychotherapist.**

Colorado Statute 12-43-216 states:

**"No other person [that is not properly licensed] shall hold himself or herself out to the public by any title or description of services incorporating the terms "licensed clinical social worker,".... "Psychologist," "psychologist candidate," "psychology," or**

**“psychological”, and no other person shall state or imply that he or she is licensed to practice social work, marriage and family therapy, professional counseling, or psychology”.**

12-43-306 states:

**“The use of the title “psychologist” may be continued by an unlicensed person who as of July 1, 1982 is employed by a state, county, or municipal agency, or by other political subdivisions or any educational institution chartered by the state, but only so long as such person remains in the employment of the same institution or agency and only in the course of conducting duties for such agency or institution.”**

No school was involved in any manner whatsoever in my dealings with Dr. Hoffman.

Enclosed is an advertising flyer in which Dr. Hoffman offers **“Forensic and psychological services involving children, adolescents & adults.”** and call’s himself a **“Licensed Educational Psychologist.”**

**2. I personally hired Dr. Hoffman to do a psychological evaluation.**

I can prove and have proven that I hired him **before** his appointment by the Court. After I had hired him, he contacted the Guardian Ad Litem, and solicited an appointment as Special Advocate. My professional-client relationship with Dr. Hoffman did not terminate when he unethically, and in direct violation of Chief Justice Directive 04-08 took on a dual role. Dr. Hoffman had represented himself to me and to the GAL as a licensed psychologist. In his letter to the Grievance Board, Magistrate Erler refers to Dr. Hoffman as a “psychologist” thus implying that Dr. Hoffman had also fraudulently misrepresented himself to the Court as licensed.

It is extremely unlikely that Magistrate Erler would knowingly appoint an unlicensed psychotherapist to do a Court ordered psychological evaluation when the Colorado Statute states that such evaluations are to be done by a licensed professional.

**3. Mr. Lane does not dispute that I later paid Dr. Hoffman a “retainer”**

A “retainer” (by any definition that I can find) is for services rendered to a client (I also have a cancelled check with the word “retainer” on it.) I paid no money to Dr. Hoffman through the Court, or by Court order. When he demanded a \$7,000 retainer from me, he led me to believe that I was hiring him, and that the money was for services to be rendered to me. My father, James B. Stewart, witnessed this transaction.

**4. Dr. Hoffman phoned me from California and stated that he would quit immediately if I did not place \$1,000 cash in his bank account.**

I have receipt to show that I withdrew \$1,000 in cash from my bank account, and 15 minutes later deposited the cash in Dr. Hoffman’s account.

I ask the Court to keep in mind, that there had been recent, specific, witnessed, and documented threats by my wife to kill herself, and my son. I can also show on an audio

recording that Dr. Hoffman told me before going to California that he would “most probably” bring my son back to Colorado. For Dr. Hoffman to demand cash from me under threat of immediately terminating his investigation amounts to extortion. After the bank teller called and confirmed that the cash had been deposited, Dr. Hoffman came directly home without my son, and with no explanation.

The fact that Dr. Hoffman called me and threatened to quit if I did not immediately pay him implies that he was working for me, and not just for the Court. If he were working solely for the Court, he would have had to contact the Court to be released from his duties. He also would have had to ask the Court to order that I pay him the money (pursuant to CRS 14-10-116.5 (3)).

**5. Doctor Hoffman did many things that were completely outside the scope of his appointment.**

Dr. Hoffman is only entitled to quasi-judicial immunity for activities that he conducted that were within the scope of his appointment (as per HB O5-1172). He was appointed to do psychological evaluations, **but he did no such evaluations.**

On January 7, 2005, Dr. Hoffman abused and harangued me for 2 hours and fifty minutes. During this session, (which I recorded in its entirety) Dr. Hoffman repeatedly demanded that I drop my custody case, insisting that it was God’s will, and that he (Dr. Hoffman) was receiving messages from God to that effect. He tried to do psychotherapy on me, and “diagnosed” me as being a “sociopath”, and suffering from “paraphilia”. He insisted that I was a pervert, and that I had inherited this from my father, and that if I was around my son, that my son would likewise inherit sexual perversions and sociopathy from me.

**It is expressly forbidden by Chief Justice Directive 04-08 for a Special Advocate do any form of counseling, psychotherapy, or to give legal advice.**

Dr. Hoffman’s bizarre accusations were extremely distressing (and very surprising, as he was accusing me of sins that I had never even thought of.) This was very distressing to me to me, as were his stories about **his** “sexual sins”, his pornography addiction, drug and alcohol abuse, and spousal abuse. Dr. Hoffman also tried to impose his strange and peculiar religious beliefs on me and told me that I was under a “Generational Curse” and was suffering from the “Sins of the fathers.” He tried to get me to repent of things that I had never even done, and told me that I was full of “lust.” He also made me pray with him, which was very distasteful to me. Dr. Hoffman told me things like “Everyone thinks about molesting children.” When I insisted that I have never had any such thoughts, he insisted that **everyone** does. He also told me that he has a picture in his desk of a naked woman that was drawn by a seven year-old girl that “has all the anatomy there, including clit and pubic hair.” He went on and on about prostitutes, “strip joints,” breast milk, exhibitionism, masturbation, voyeurism, etc.

All of this occurred on **January 7, 2005**, and was recorded in digital audio. I gave a copy of this recording to the Guardian Ad Litem, Erin Glenn. After she listened to it, she told me how shocked she was, and that if I hadn’t of recorded it, no one would have ever believed me that Dr. Hoffman had said such things.

Part of my complaint involves the abusive and inappropriate behavior of Dr. Hoffman during this session. I would ask the Court to also note that I filed my complaint on **January 2, 2007**, and this was within the time constraints of the Statute of Limitations.

**Conclusion, and motion for summary judgment in favor of the plaintiff.**

I have conclusively shown by the specific ruling by the Ninth Circuit in *Beltran v. Santa Clara County* that someone that is investigating for the Court does **not** have immunity to protect him from liability if he fabricates evidence.

The Grievance Board did not accept Dr. Hoffman's claim to immunity, and clearly the Attorney General does not either.

As Magistrate Erler's letter to the Grievance Board attests, Dr. Hoffman presented his report to the Court. It cannot be disputed, that this hearing occurred on February 7, 2005. Since I filed my COMPLAINT against Dr. Hoffman on January 2, 2007, that filing was clearly within the two-year limit.

As the enclosed letter that I received from the Grievance Board states, the Board did a thorough investigation of my complaint, and found it to be actionable. I believe that this is prima facie evidence of my complaint's legitimacy.

Mr. Lane has never disputed any of my allegations as matters of fact, nor has he disputed any of my monetary claims or claims of damage.

Mr. Lane's ANSWER to my COMPLAINT, which he called "complete", only addressed immunity and Statute of Limitations issues.

**I have conclusively shown that Dr. Hoffman does not have immunity for fabricating evidence, and that I did not exceed the time limit imposed by the Statute of Limitations. As Mr. Lane has not disputed any of my allegations as matters of fact, there are therefore, no more disputed issues.**

**Thus, this Plaintiff respectfully moves that the Court enter a summary judgment in favor of the Plaintiff in the amount of \$15,000.**

Included with this motion:

1. Copy of letter to the Plaintiff from the Grievance Board stating that Plaintiff's complaint to that Board was thoroughly investigated, and was referred to the Office of The Attorney General for disciplinary action.
2. Copy of an advertising flyer produced by Dr. Hoffman offering "Forensic and psychological services" and referring to himself as a "Licensed Educational Psychologist."