

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

S.V.

Plaintiff,

-vs-

Case No. 10-cv-919

KENNETH KRATZ

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
STATEMENT OF PROPOSED MATERIAL FACTS AND
STATEMENT OF ADDITIONAL MATERIAL FACTS**

**RESPONSE TO DEFENDANT'S
STATEMENT OF PROPOSED MATERIAL FACTS**

1. Defendant Kratz was, at all times material hereto, acting as a District Attorney.

(Compl. ¶4).

RESPONSE: Admit.

2. At all times material to Plaintiff's Complaint, Defendant was acting within the scope of his employment. (Compl. ¶4).

RESPONSE: Admit.

3. Defendant Kratz prosecuted Plaintiff's former live-in partner under circumstances that constituted domestic abuse. (Compl. ¶5).

RESPONSE: Admit.

4. Defendant and Plaintiff met to discuss the criminal prosecution of her former live-in partner. (Compl. ¶9).

RESPONSE: Admit.

5. Plaintiff believed that Defendant had influence and control over the prosecution, and understood that Defendant was responsible for ensuring that she received protection from harm or threats of harm that could come from her cooperation in the prosecution. (Compl. ¶¶10-11).

RESPONSE: Admit.

6. After the meeting, and during the prosecution of the former live-in partner, in a three day period of October 20-22, 2009, Defendant sent Plaintiff thirty text messages urging Plaintiff to have a relationship with him. (Compl. ¶14).

RESPONSE: Deny that defendant's text messages urged plaintiff merely to have "a relationship" of some unspecified kind with him, rather than a *sexual* relationship, as paragraph 14 of plaintiff's Complaint alleges and plaintiff's Declaration and the messages themselves clearly prove. (Declaration of Plaintiff S.V. ("S.V. Decl.") ¶¶ 12-13 and Exh. A.) Otherwise admit.

7. In the text messages, Defendant asked Plaintiff to consider what her life would be like in the future, and what the benefit would be for her to have a relationship with a man like him. (Compl. ¶15).

RESPONSE: Admit.

8. Defendant texted Plaintiff the following: "Quite frankly I don't know what would happen, it would go slow enough for Shannon's case to get done. Remember it would be special enough to risk all." (Compl. ¶16).

RESPONSE: Admit, except that the last sentence of the message said, ". . . it would have to be special enough . . ." (S.V. Decl. ¶ 15 and Exh. A.)

9. Defendant texted the following to Plaintiff: “Hey.. Miss Communication, what’s the sticking point? Your low self-esteem and you fear you can’t play in my big sandbox? Or ???” (Compl. ¶17).

RESPONSE: Admit.

10. Defendant texted the following to Plaintiff: “I am serious! I am the attorney. I have the \$350,000 house. I have the six figure career. You may be the tall, young, hot nymph, but I am the prize! Start convincing.” (Compl. ¶18).

RESPONSE: Admit.

11. Plaintiff reported the text messages to the Kaukauna Police Department. (Compl. ¶25).

RESPONSE: Admit.

12. Defendant withdrew from further prosecution of the case against Plaintiff’s former live-in partner. (Compl. ¶27).

RESPONSE: Plaintiff denies that defendant voluntarily withdrew from the prosecution of S.K., as the proposed fact implies. Plaintiff admits that, given the conflict of interest created by defendant in having solicited a sexual relationship with a domestic abuse victim/witness during the course of a prosecution, defendant was forced to withdraw from further prosecuting the case against S.K., as paragraph 27 of plaintiff’s Complaint alleges.

13. On a plea of no contest, Plaintiff’s former live-in partner was convicted of the most serious charge filed against him, the felony charge of strangulation and suffocation. (Compl. ¶29).

RESPONSE: Admit.

14. Under ethical rules, attorneys in Wisconsin cannot engage in conduct that creates a conflict of interest as defined in the rules. (Compl. ¶33).

RESPONSE: Admit that under the Code of Professional Responsibility, attorneys are forbidden from engaging in conduct that creates or promotes a conflict of interest with regard to an attorney's legal responsibilities, as paragraph 33 of plaintiff's Complaint alleges.

15. Under the ethical rules, attorneys may not engage in sexual discrimination and sexual harassment in carrying out their professional responsibilities as lawyers as defined in such ethical rules. (Compl. ¶34).

RESPONSE: Admit that under the Code of Professional Responsibility, attorneys may not engage in sexual discrimination or sexual harassment in carrying out their professional responsibilities as lawyers, as paragraph 34 of plaintiff's Complaint alleges.

16. Chapter 950 of the Wisconsin Statutes, and specifically, §950.04(2w) states that witnesses of crimes have the following rights: (c) to receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available. (Compl. ¶35).

RESPONSE: Admit.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

1. In approximately July-August 2009, when plaintiff S.V. was 25 years old, she was beaten and strangled at home by S.K., the man with whom she had been living. (S.V. Decl. ¶¶ 1-2.)

2. S.K. and plaintiff were not married and had one child. (S.V. Decl. ¶ 2.)

3. During the time plaintiff had lived with S.K., he had repeatedly subjected her to violent domestic abuse, including beatings and strangulation. (S.V. Decl. ¶ 3.)

4. Plaintiff had never reported those past instances of abuse to the police because she was reluctant to invite law enforcement authorities to intervene in what she considered to be a private family situation. (S.V. Decl. ¶ 3.)

5. S.K.'s last attack on plaintiff was so violent, however, that she became genuinely frightened for her life and for the safety of her child if S.K. were to attack again. (S.V. Decl. ¶ 4.)

6. Despite plaintiff's reluctance to involve law enforcement, therefore, she felt that she had no choice but to report S.K.'s attack to the police, which she did. (S.V. Decl. ¶ 4.)

7. Plaintiff complained to the police in this way in the hope that S.K. would be punished for the attack and would be forced by the authorities to stop his abusive and violent behavior and prevented from repeating it in the future. (S.V. Decl. ¶ 5.)

8. Plaintiff was also very concerned, however, that reporting S.K. to the police would only anger him further and end up increasing the risk of even more serious attacks in the future if he was freed before trial or was not successfully prosecuted and put in jail, and by reporting his attack she was trusting the law enforcement authorities not to let this happen. (S.V. Decl. ¶ 5.)

9. As a result of plaintiff's police complaint, a felony charge of strangulation and suffocation and a misdemeanor charge of disorderly conduct were brought against S.K. by the Calumet County District Attorney on August 12, 2009. (S.V. Decl. ¶ 6.)

10. At that time, defendant Kenneth Kratz was the District Attorney for Calumet County. (S.V. Decl. ¶ 7.)

11. Plaintiff understood that defendant was the head of that office, in charge of all prosecutions for the County. (S.V. Decl. ¶ 7.)

12. Plaintiff was informed that defendant would be personally responsible for the prosecution of S.K. (S.V. Decl. ¶ 7.)

13. Plaintiff met with defendant Kratz three times in October 2009 regarding the prosecution. (S.V. Decl. ¶ 8.)

14. In the first two of these meetings, another woman who was a victim-witness coordinator was present. (S.V. Decl. ¶ 8.)

15. In the third meeting, on October 20, 2009, defendant Kratz met plaintiff alone in a conference room at his office. (S.V. Decl. ¶ 8.)

16. In that meeting plaintiff described to defendant her relationship with S.K. and his previous abuse. (S.V. Decl. ¶ 9.)

17. Plaintiff also explained her current personal circumstances, telling defendant that she was not in another relationship at that point, that she was living with her mother and struggling to make ends meet and care for her child, and that she had extremely low self-esteem. (S.V. Decl. ¶ 9.)

18. During the meeting, defendant confirmed that he would be in charge of the prosecution of S.K. (S.V. Decl. ¶ 10.)

19. Plaintiff understood from this that she would be relying on him directly for assistance regarding her participation in that process as the victim of the crime and the complaining witness in the prosecution. (S.V. Decl. ¶ 10.)

20. Plaintiff also understood that because defendant, as the prosecutor responsible for the case, would have substantial influence and control over whether and how S.K. would be released before trial and over the actual conduct of the prosecution and the sentencing process, she would be heavily dependent on defendant to protect her and her child from retaliation and further harm by S.K. (S.V. Decl. ¶ 10.)

21. When defendant asked if plaintiff would object to lowering the felony charge against S.K. to a misdemeanor, she responded that she would. (S.V. Decl. ¶ 10.)

22. Plaintiff also understood, at the meeting with defendant, that he and the other law enforcement authorities involved would protect her identity and privacy as much as possible if she cooperated with the prosecution of S.K., and that the contact information she provided—including her cell phone number—would be kept confidential and would be used only for law enforcement purposes. (S.V. Decl. ¶ 11.)

23. Beginning shortly after this meeting on the afternoon of October 20, 2009, and continuing over the next three days, defendant sent 30 text messages to plaintiff on her cell phone insistently urging plaintiff to enter into a secretive sexual relationship with him. (S.V. Decl. ¶ 12 and Exhibit A.)

24. There was no question in plaintiff's mind that the purpose of the whole series of messages was to express defendant's sexual attraction to her and to pressure her into agreeing to engage in a covert sexual relationship with him. (S.V. Decl. ¶ 13.)

25. Along with describing plaintiff as “pretty” and “beautiful,” the messages referred to her as “hot,” as a “tall, young, hot nymph,” and as a woman who is “blonde, 6ft tall, legs and great bod[y].” (S.V. Decl. ¶ 13 and Exh. A.)

26. Defendant’s messages told plaintiff that she “would make a great young partner someday” and asked, “are you the kind of girl that likes secret contact with an older married elected DA . . . the riskier the better?” (S.V. Decl. ¶¶ 12-13 and Exh. A.)

27. Defendant’s messages referred to a relationship requiring “passion,” being a “risk taker,” and living “close to the edge,” and said, “I would not expect you to be the other woman. I would want you to be so hot and treat me so well that you’d be THE woman! R U that good?” (S.V. Decl. ¶ 13 and Exh. A.)

28. In his messages defendant also urged plaintiff not to disclose his behavior, asking if she “can keep [her] mouth shut” and telling her, “its maybe not the wisest thing I can do, but you are awfully sweet. Just don’t tell anyone, ok?” (S.V. Decl. ¶ 13 and Exh. A.)

29. Several of the messages also attempted to use personal information that plaintiff had disclosed to defendant to increase the pressure he was putting on her to comply. (S.V. Decl. ¶ 14.)

30. One message said, “Hey.. Miss Communication, what’s the sticking point? Your low self-esteem and you fear you can’t play in my big sandbox?” (S.V. Decl. ¶ 14 and Exh. A.)

31. Other messages suggested that, given plaintiff’s limited financial circumstances, she would benefit from the relationship with defendant. (S.V. Decl. ¶ 14.)

32. The messages asked what kind of job and house plaintiff could expect to have in five years and said, “I’m serious! I’m the atty. I have the \$350,000 house, I have the 6-figure career.” (S.V. Decl. ¶ 14 and Exh. A.)

33. Defendant also suggested a direct link between the sexual relationship he was urging on plaintiff and the prosecution of S.K, saying, “Quite frankly I don’t know what would happen. It [the sexual relationship] would go slow enough for [S.K.’s] case to get done. Remember, it would have to be special enough to risk all.” (S.V. Decl. ¶ 15 and Exh. A.)

34. Plaintiff found all of these messages and what they were saying about her and urging her to do completely unwelcome and offensive. (S.V. Decl. ¶ 16.)

35. Plaintiff believed the messages were directed toward her because she was a financially dependent woman with few resources to protect herself from abuse related to her sex. (S.V. Decl. ¶ 16.)

36. Plaintiff was upset, made uncomfortable, injured, and humiliated by defendant’s behavior. (S.V. Decl. ¶ 16.)

37. Plaintiff also felt frightened, threatened, and intimidated by the pressure defendant was putting on her in his messages and the difficult position they put her in. (S.V. Decl. ¶ 17.)

38. Plaintiff felt that she had taken a great risk for herself and her child by reporting S.K. to the police and that she was very dependent on defendant for protection from that risk through the course of the prosecution of S.K. (S.V. Decl. ¶ 17.)

39. As defendant’s messages continued, plaintiff became fearful that if she confronted him too directly it would have an adverse effect on the prosecution of S.K. or would cause defendant to retaliate against her in some other way. (S.V. Decl. ¶ 17.)

40. After defendant continued sending plaintiff a steady stream of messages for three days, she concluded that she would not be able to trust him or participate properly in the prosecution of S.K. under these circumstances. (S.V. Decl. ¶ 18.)

41. Because defendant was himself the Calumet County District Attorney, plaintiff did not believe that there was any superior law enforcement official in Calumet County that she could complain to about defendant's conduct. (S.V. Decl. ¶ 18.)

42. After anguishing about what to do, plaintiff went with her mother to the Kaukauna Police Department on the afternoon of October 22, 2009, and reported defendant's conduct and gave the police his text messages and her replies.. (S.V. Decl. ¶ 19.)

43. Plaintiff told the Kaukauna police that she wanted defendant to stop pressuring her to have a sexual relationship with him, but that she was concerned that if she did not comply, defendant would act in some way that continued and potentially increased the danger to her personal safety. (S.V. Decl. ¶ 19.)

44. Defendant sent the last of his string of 30 text messages to plaintiff's cell phone while she was at the Kaukauna Police Department. (S.V. Decl. ¶ 19.)

45. After plaintiff had reported defendant's conduct to the Kaukauna police, she insisted that she not be required to attend any proceeding in Calumet County that was related to the prosecution of S.K. (S.V. Decl. ¶ 20.)

46. Plaintiff did this because of the revulsion she felt, as a result of defendant's conduct, for anything associated with Calumet County law enforcement. (S.V. Decl. ¶ 20.)

47. At some point after plaintiff had reported defendant's conduct to the Kaukauna police, she learned that the prosecution of S.K. was taken over by a prosecutor from the Wisconsin Department of Justice. (S.V. Decl. ¶ 21.)

48. It is plaintiff's understanding that in April 2010, S.K. pleaded no contest and was convicted on the felony charge of strangling and suffocating her. (S.V. Decl. ¶ 22.)

49. On September 17, 2010, the Wisconsin District Attorneys Association (“WDAA”) issued a public letter to defendant Kratz that was highly critical of his conduct toward plaintiff.

(Declaration of Michael R. Fox (“Fox Decl.”) ¶ 2 and Exhibit A.)

50. The WDAA letter stated:

Your behavior involving a crime victim was repugnant and cannot be countenanced. Crime victims have both statutory and constitutional protections which are designed to protect them from systemic or bureaucratic abuses that may unintentionally flow from our criminal justice system. . . . Your behavior was neither unintentional nor innocent. As a cofounder of our current victim rights system, and as a frequent lecturer on these topics, no prosecutor could be expected to know these issues better. . . . Your behavior . . . has generated the question of whether our crime victims, whose interests we serve, may now hesitate when considering whether to share their personal information with us or participate in our prosecutions. It is impossible to fathom how any crime victim in your county could ever do so with your office in the future.

(Fox Decl., Exh. A, p. 1.)

51. The WDAA letter told defendant that his behavior was “inconsistent with the standards of our profession” and called upon him to resign. (Fox. Decl., Exh. A, p. 2.)

Dated this 1st day of June, 2011.

Respectfully submitted,

FOX & FOX, S.C.

s/ Michael R. Fox

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