

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

S.V.,

Plaintiff,

v.

Case No. 10-cv-919

KENNETH KRATZ,

Defendant.

ANSWER OF THE PROPOSED INTERVENOR, STATE OF WISCONSIN

NOW COMES the Proposed Intervenor State of Wisconsin, by its attorneys Attorney General J.B. Van Hollen and Assistant Attorneys General Carrie Benedon and Monica A. Burkert-Brist, and responds to the plaintiff's complaint as follows:

JURISDICTION AND VENUE

1. Answering the allegations of Paragraph 1 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

2. Answering the allegations of Paragraph 2 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

PARTIES

3. Answering the allegations of Paragraph 3 of the Complaint, Proposed Intervenor State of Wisconsin, upon information and belief, ADMITS the allegations.

4. Answering the allegations of Paragraph 4 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS that defendant Kenneth Kratz is an adult resident of the State of

Wisconsin, upon information and belief ADMITS that defendant Kratz resides in Outagamie County, and DENIES the remaining allegations.

FACTUAL ALLEGATIONS

5. Answering the allegations of Paragraph 5 of the Complaint, Proposed Intervenor State of Wisconsin, upon information and belief, ADMITS the allegations.

6. Answering the allegations of Paragraph 6 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

7. Answering the allegations of Paragraph 7 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

8. Answering the allegations of Paragraph 8 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

9. Answering the allegations of Paragraph 9 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

10. Answering the allegations of Paragraph 10 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

11. Answering the allegations of Paragraph 11 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

12. Answering the allegations of Paragraph 12 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

13. Answering the allegations of Paragraph 13 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

14. Answering the allegations of Paragraph 14 of the Complaint, the allegations appear to be incomplete and are cut off mid-sentence, and therefore Proposed Intervenor State of Wisconsin is unable to admit or deny.

15. Answering the allegations of Paragraph 15 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

16. Answering the allegations of Paragraph 16 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

17. Answering the allegations of Paragraph 17 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

18. Answering the allegations of Paragraph 18 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

19. Answering the allegations of Paragraph 19 of the Complaint, Proposed Intervenor State of Wisconsin states that this paragraph alleges a conclusion of law to which a response is

not required, further affirmatively states that district attorneys in the State of Wisconsin are publicly elected officials as set forth in Wis. Stats. Chapter 978 and can be removed either through the electoral process or by special proceedings set forth in Wis. Stats. Chapter 17.

20. Answering the allegations of Paragraph 20 of the Complaint, Proposed Intervenor State of Wisconsin DENIES the allegations.

21. Answering the allegations of Paragraph 21 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

22. Answering the allegations of Paragraph 22 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

23. Answering the allegations of Paragraph 23 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

24. Answering the allegations of Paragraph 24 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

25. Answering the allegations of Paragraph 25 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

26. Answering the allegations of Paragraph 26 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

27. Answering the allegations of Paragraph 27 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegation that the prosecution of the case against S.K. was handled by an assistant attorney general from the Department of Justice, and as for the remaining allegations, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

28. Answering the allegations of Paragraph 28 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

29. Answering the allegations of Paragraph 29 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

30. Answering the allegations of Paragraph 25 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

31. Answering the allegations of Paragraph 31 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

32. Answering the allegations of Paragraph 32 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS the allegations.

33. Answering the allegations of Paragraph 33 of the Complaint, Proposed Intervenor State of Wisconsin ALLEGES that the content of the Rules of Professional Conduct for Attorneys speaks for itself, and DENIES any allegations inconsistent therewith.

34. Answering the allegations of Paragraph 34 of the Complaint, Proposed Intervenor State of Wisconsin ALLEGES that the content of the Rules of Professional Conduct for Attorneys speaks for itself, and DENIES any allegations inconsistent therewith.

35. Answering the allegations of Paragraph 35 of the Complaint, Proposed Intervenor State of Wisconsin ALLEGES that the content of Chapter 950 of the Wisconsin Statutes speaks for itself, and DENIES any allegations inconsistent therewith.

36. Answering the allegations of Paragraph 36 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the specific allegations of texting and contact with the victim as well as to the effect on the victim of the alleged contacts with her.

37. Answering the allegations of Paragraph 37 of the Complaint, the allegations state a conclusion of law to which no response is required. To the extent that the allegations include any factual allegations, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

38. Answering the allegations of Paragraph 38 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

39. Answering the allegations of Paragraph 39 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

40. Answering the allegations of Paragraph 40 of the Complaint, the allegations appear to be incomplete and are cut off mid-sentence, and therefore Proposed Intervenor State of Wisconsin is unable to admit or deny.

41. Answering the allegations of Paragraph 41 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

42. Answering the allegations of Paragraph 42 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS that OLR initially closed its file on Kratz's self report without initiating a formal investigation, and ALLEGES, upon information and belief, that OLR subsequently reopened its file and OLR's formal investigation of Kratz's conduct is pending.

43. Answering the allegations of Paragraph 43 of the Complaint, Proposed Intervenor State of Wisconsin ADMITS that the Crime Victim Rights Board released a press statement, a true and correct copy of which is filed herewith as Exhibit A, ALLEGES that the press statement speaks for itself, and DENIES any allegations inconsistent therewith.

44. Answering the allegations of Paragraph 44 of the Complaint, Proposed Intervenor State of Wisconsin DENIES the allegations, and ALLEGES that the investigation that was undertaken in the course of the removal proceeding subsequently became a criminal investigation, which investigation has not yet been closed.

45. Answering the allegations of Paragraph 45 of the Complaint, Proposed Intervenor State of Wisconsin DENIES knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies and puts plaintiff to her proof thereof.

AFFIRMATIVE DEFENSES

1. The State of Wisconsin asserts that, pursuant to Wis. Stats. § 895.46(1)(a), defendant Kratz was acting outside the scope of his employment if indeed he engaged in the alleged actions that are the subject of this lawsuit, and therefore he is not entitled to

representation or indemnification for any judgment, damages, costs or any relief that could be awarded against him.

2. The State of Wisconsin reserves the right to name additional defenses as they may become known through further discovery or otherwise in this action.

WHEREFORE, the Proposed Intervenor State of Wisconsin respectfully asks this court for permission to intervene and to file this answer, and to provide the requested relief to the State of Wisconsin.

Dated this 18th day of January, 2011.

Respectfully submitted,

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