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Libel case against ABA, magazine writer tossed

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A forensic document examiner did not libel certain members of his profession in a law journal article discussing how to tell the difference between “true professionals” and “unqualified” or “lesser qualified practitioners,” a federal judge held Thursday.

In a written opinion, U.S. District Judge Edmond E. Chang threw out a lawsuit the Board of Forensic Document Examiners Inc. and seven of its members brought against author Thomas Vastrick and other defendants.

Chang conceded Vastrick is a document examiner certified by a different entity called the American Board of Forensic Document Examiners.

Chang also noted the four statements in the article in *The Judges' Journal*, a quarterly magazine, challenged by the plaintiffs include one saying judges should be wary of examiners certified by a body other than the American Board.

Chang noted another challenged statement says an “appropriately trained” examiner will have participated in a full-time, 24-month, on-the-job training program.

The plaintiffs maintain the statement is false because the standard set by ASTM International — formerly named the American Society for Testing and Materials — is the equivalent of 24 months of full-time training, Chang wrote.

However, he wrote, the statements are in an article “that explicitly presents itself as offering *suggestions* for judges to consider in evaluating the expertise of document examiners.”

And a disclaimer in the edition in which Vastrick’s article appears says all the articles represent the authors’ opinions, Chang wrote.

Under those circumstances, he wrote, the challenged statements constitute opinions rather than factual assertions.

“The First Amendment protects the expression of opinion,” he wrote, citing *Solaia Technology LLC v. Specialty Publishing Co.*, 852 N.E.2d 825 (Ill. 2006). “So defamation claims cannot be premised on an opinion.”

Chang dismissed the suit for failure to state a claim.

In addition to Vastrick, defendants in the suit included his article’s editor, Stephanie Domitrovich, and the American Board. Also named was the American Bar Association, which publishes *The Judges’ Journal*.

The Board of Forensic Document Examiners and the seven individual plaintiffs are represented by attorneys who include Ariel Weissberg and Devvrat V. Sinha, both of Weissberg and Associates Ltd.

The board also is represented by Andrew Sulner of the Law Office of Andrew Sulner in New York. Sulner is a plaintiff in the case as well.

The lead attorneys for the defendants are Stephen J. Rosenfeld and Steven P. Mandell, both of Mandell Menkes LLC.

In a statement, the ABA said: “We are certainly pleased with the outcome that validates our position that this was an opinion piece written to help inform and was void of any defamation.”

The attorneys either declined to comment or could not be reached for comment.

Vastrick’s article, titled “Forensic Handwriting Comparison Examination in the Courtroom,” appeared in the Summer 2015 edition of *The Judges’ Journal*.

Sulner, a member of the ABA’s Judicial Division, received a pre-publication copy of the edition in August and a print copy later.

Sulner exchanged e-mails and letters with people who included Domitrovich and the ABA’s general counsel about what he contended were defamatory statements in the article.

Sulner alleges the ABA refused to make changes in the article and then watered down a rebuttal he wrote so much that he declined to allow the bar group to publish it.

In February 2016, the ABA published the electronic version of the article with two revisions to the statements. The ABA, however, did not concede the changes had been necessary.

The Board of Forensic Document Examiners and the seven individuals filed their suit in the U.S. District Court for the Western District of Tennessee.

The plaintiffs are from different states: California, Missouri, New York, Texas, North Carolina, Ohio and Wisconsin.

The suit was transferred to the Northern District of Illinois this month for improper venue.

In his opinion, Chang held the plaintiffs’ defamation claims also failed because the

challenged statements are not specific enough to identify them.

Citing *Vantassel-Matin v. Nelson*, 741 F. Supp. 698 (N.D. Ill. 1990), he wrote a reasonable person must be able to identify the subject of a statement before the statement qualifies as “actionable defamation.”

“So if a statement can be reasonably interpreted as referring to someone else, it fails to qualify as even being a statement targeting the plaintiff,” Chang wrote.

And while the Board of Forensic Document Examiners currently has only 12 certified examiners, he wrote, a reasonable person would not think the challenged statements referred only to those 12.

The statements do not name the Board of Forensic Document Examiners, Chang wrote, so the references to examiners not certified by the American Board could include a much broader group of people.

Chang wrote the reasons the defamation claims failed apply to claims alleging the defendants placed the plaintiffs in a false light, violated state laws barring unfair competition and ran afoul of the federal Lanham Act’s prohibition on false or misleading representations of fact.

The case is *Board of Forensic Document Examiners Inc., et al. v. American Bar Association, et al.*, No. 17 C 1130.

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