Sanson's accusations as being anything other than false assertions of fact.[19] He did not, and could not, ever prove those false accusations to be true, and his attempt to invoke the anti-slapp statute therefore fails as a matter of law.

Contrary to Sanson's unsupported assertion (at 22), Sanson is not "entitled" to make accusations of criminally unethical conduct based entirely on "his own interpretation." Unethical conduct meriting criminal prosecution or attorney discipline is an objective fact per published rules, and anyone making false claims of violations of those laws for months has an obligation to make an inquiry regarding truth. Sanson's refusal to do so was, at minimum, a reckless disregard for the truth, constituting malice for defamation purposes.[20] As detailed in the *Opening Brief*,

---

[19] Sanson repeatedly very selectively edits quotes from the record to misrepresent them. For example, on page 20 at footnote 4, he omits Mr. Gilmore's statement at the hearing that in context Sanson's statements could only be taken as the false accusation that Ms. Abrams had been found to be unethical. A lie which is half a truth is ever the blackest of lies. Alfred, Lord Tennyson, *The Grandmother* st. 1 (1864).

[20] As Daniel Patrick Moynihan famously put it: "You are entitled to your opinion. But you are not entitled to your own facts." Oddly, some of those false assertions of fact are repeated even on appeal, such as the statement (at 23) that Ms. Abrams "convinced" Judge Elliott to enter a ***stipulated*** order. Sanson's efforts to re-label assertions of fact as "opinions" don't alter them. As this Court once observed, "Calling a duck a horse does not change the fact it is still a duck." *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).

Sanson was personally informed by Judge Elliott, in writing, that his asserted facts were false.

III. CONTEXT CANNOT BE IGNORED

Sanson attempts (at 21-30) to break his months-long smear campaign down into individual words and then quibble about how each of them in isolation might be perceived as individually non-actionable. It is not helpful for Sanson to pretend on appeal that there is some potentially non-defamatory way to interpret the words used.

First, his own explanations made his actual intention crystal clear.[21] In any event, if there really was any way to interpret Sanson's claims in more than one way, one of which is defamatory, "resolution of the ambiguity is a question of fact for the jury."[22] The case should not have been dismissed because "the truth or falsity of an allegedly defamatory statement is an issue of fact properly left to the jury for resolution."[23]

---

[21] Any alleged doubt as to Sanson's meaning is refuted by his own statements that he intended to assert that Ms. Abrams was "unethical and a criminal," was "breaking the law," had "unlawfully" had her staff enter a person's home, etc. V AA 750-752.

[22] *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225-26 (1981).

[23] *Posadas v. City of Reno,* 109 Nev. at 453, 851 P.2d at 442.

The only distinction between Sanson's false claims of criminality at issue in *Willick* and those at issue here is that he made *specific* false claims there[24] whereas his claims at issue here are mostly general "criminality" and "lawbreaking," peppered with occasional allegations of criminal "obstruction of justice," etc. A claim that an attorney is "breaking the law" and "should be reported to the Bar" without specifying why *necessarily* is an assertion "based on implied undisclosed facts," and for this analysis is an assertion of fact.[25]

There was no mystery as to what was actually going on in the *Saiter* divorce. As detailed in the Statement of Facts in the *Opening Brief*, Schneider had made a point of parading Sanson through Judge Elliott's courtroom shortly prior to the *Saiter* hearing, Sanson had directly engaged Judge Elliott in private conversations, and Sanson had directly threatened Judge Elliott with a complaint to judicial discipline and other actions against her[26] – just the sort of intimidation tactics Judge Duckworth warned about when he claimed that the Nevada judiciary was under attack by Sanson

---

[24] False claims of sexual coercion of a minor and of criminal defamation.

[25] *Standing Comm. on Discipline of U.S. Dist. Court for Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1438-39 (9th Cir. 1995) (a statement of opinion is not protected by the First Amendment if it is based on implied undisclosed facts, but the speaker has no factual basis for the stated opinion).

[26] V AA 760.

and his organization.[27] Unfortunately, Judge Elliott caved under the threat, never addressed the merits of the sanctions motion against Schneider, and without a hearing revoked her prior order prohibiting posting of the *Saiter* video.

IV. PUBLIC AND PRIVATE CONTROVERSIES, PUBLIC POLICY, AND LAWYER BEHAVIOR

Sanson's attempts (at 30-32) to portray his smear campaign as having something to do with amorphous concepts of "practice in the public's courtrooms" is nonsense. The *Saiter* divorce was an entirely private controversy between husband and wife about how to divide their modest estate and properly look after their children.

Within that private dispute, the sanctions motion by Ms. Abrams against Schneider for his assorted improprieties, from overbilling and misrepresenting to making sexual advances on his client, were even more of a private dispute in which

---

[27] VII AA 1243-1253 ("This type of threat to any judicial officer strikes at the very core of the integrity of the judicial process. Moreover, such threatening behavior is an attempt to manipulate and control judicial officers if they do not succumb to Mr. Sanson's desired result.")

there was no conceivable public interest. And the fact that a mis-informed judge took an hour to get the facts straight at a hearing on a motion even less so.[28]

This case perfectly illustrates this Court's warning in *Shapiro* that a matter of public interest must be something of concern to a substantial number of people and closely related to a *specific* public interest because "the assertion of a broad and amorphous public interest is not sufficient" and "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people."[29]

This Court held years ago that whether a person becomes a "public figure" depends on whether the person's role "in a matter of public concern" is "voluntary and prominent," and that simply being an accomplished professional in a field does not make that professional's work a matter of public concern.[30] Ms. Abrams was

---

[28] The only conceivable public interest to those events is the one thing that Sanson does not want to (and never did) discuss: that he directly threatened Judge Elliott with personal consequences if she did not do what he wanted, exactly as Judge Duckworth has identified as Sanson's standard operation, and that she caved into that pressure.

[29] *Shapiro v. Welt,* 133 Nev. ___, ___, 389 P.3d 262, 268 (Adv. Opn. No. 6, Feb. 2, 2017), (*quoting Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013), *aff'd*, 609 F. App'x 497 (9th Cir. 2015)).

[30] *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006).

representing a client, and did nothing to "voluntarily thrust [herself] into a public controversy" or "affirmatively step outside of [her] private realm[] of practice to attract public attention."[31]

As in *Bongiovi*, Sanson's relentless attacks on Ms. Abrams were wholly made for a private interest—Schneider's extortion effort, and had nothing to do with "a media defendant reporting on the goods and services of a place of public accommodation." No "special protection" for Sanson's smear campaign is warranted, under the anti-slapp statutes or otherwise, because "the speech is wholly false and clearly damaging to the victim's business reputation."

Sanson attempts to ***make*** Ms. Abrams' private representation of a private client – at a closed hearing in a sealed case – into a matter of "public controversy" by broadcasting false claims against her repeated to many tens of thousands of people, which is exactly what this Court in *Shapiro* said does ***not*** create a "matter of public interest."[32]

---

[31] *Id.*, citing *Sparagon v. Native American Publishers*, 542 N.W.2d 125, 135 (S.D. 1996).

[32] There is no public interest in a lawyer instructing her associate to sit down during a hearing or inquiring whether the judge has a conflict of interest.

It is sophistry to claim as Sanson does (at 30-34) that every private controversy is a "matter of public interest" if it touches a "taxpayer-funded courtroom." The government builds roads and bridges, military bases, and courthouses; that does not mean that everything that happens at those locations is a "matter of public interest."

Sanson argues that this Court has an interest in attorney discipline as the supervisor to the Nevada Bar which regulates attorneys.[33] We agree. The whole point to the underlying lawsuit is that despite Sanson's months of claims to the contrary, Ms. Abrams was never found, by *anyone*, to have committed a crime, violated a rule, or to have every behaved other than impeccably as an attorney. And this case, on appeal, concerns a smear campaign orchestrated by Schneider for the illicit purpose of corrupting justice in a case by using Sanson to "get dirty so they can stay nameless."[34]

This Court oversees attorney discipline and has an interest in protecting the public. That interest is implicated in two ways here. First, in addressing actual attorney misconduct by seeing that statutes designed to protect "free speech" are not misused as tools to further and facilitate illicit enterprises such as the

---

[33] Sanson brief at 33-35 & fn. 7-8.

[34] II AA 297, 314; V AA 848; VIII AA 1480, 1497.

Schneider/Sanson extortion plot. Second, by seeing that *false* allegations of misconduct, such as those made against Ms. Abrams, are not given unlimited free reign, as doing so would create false doubt in the public's confidence in the legal system. All relevant laws and policies should be interpreted and applied so as to serve both those interests.

V. CLAIMS OF AT LEAST "MINIMAL MERIT" AND THE NEED FOR DISCOVERY

As discussed, Sanson and Schneider have both already admitted that the entire course of events at issue here resulted from their efforts to extort Ms. Abrams into calling off her sanctions motion against Schneider. What money changed hands, who provided the false information to Judge Elliott, etc., has not yet been fleshed out through discovery.

On the basis of the communications themselves, some causes of action, such as false light, requiring only "an implicit false statement of objective fact"[35] are easily met and should have been found to require denial of the motion and a jury trial on the merits. Others, such as the economic and other harm suffered by Ms. Abrams during

---

[35] *See Flowers v. Carville*, 310 F.3d 1118, 1132 (9th Cir. 2002).

and since the months that the smear campaign was conducted, have not yet been inquired into in discovery or demonstrated.

Sanson's attempts to defend the denial of trial on other causes of action, by attacking (at 44-49) the form of the pleadings is unavailing in this "notice pleading" state where the appropriate response to any alleged defect in the form of the pleadings is to remedy by amendment, not dismissal.[36] Indeed, as noted in the Statement of Facts, the pleadings were in the process of being amended when that process was halted by the underlying motion.

Sanson's conclusory assertion (at 48-51) that his and Schneider's actions were not adequately extreme and outrageous to reach a jury deserves special mention; a fully-informed jury may well see the conducting of a smear campaign for extortion as ***very*** outrageous and deserving both compensatory and punitive damages.

Sanson's circular argument returns (at 55) to its starting point, claiming that because a smear campaign is composed of "speech," there could be no actionable conspiracy to defame despite their admission to doing so, and still ignoring this

---

[36] *See, e.g., Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984); *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (this Court is concerned with substance, not form, and will construe pleading and other rules to avoid creation of traps for the unwary).

Court's holdings that illicit activities are not shielded by the First Amendment, as detailed above.

For all the reasons set out in the *Opening Brief*, discovery is mandatory when necessary to fully develop defenses to an anti-slapp motion, and should have been allowed before the hearing appealed from was conducted. Several of Ms. Abrams' claims are clearly meritorious on the basis of the existing record, and she was entitled to conduct adequate discovery on the remainder of them to establish their merit before the case faced a motion to dismiss.

CONCLUSION

Schneider and Sanson have proffered no legitimate excuse why they should be allowed to misuse the anti-slapp statutes to facilitate an illicit goal.

Schneider and Sanson did not satisfy their burden of establishing truthfulness, and cannot do so since they were not truthful. They were not sued for making truthful statements, but for engaging in a deliberately false and defamatory smear campaign for illicit purposes.

The statements at issue concerned a private controversy during a closed hearing in a sealed case, and were not in direct connection with any issue of public interest.

If there really could have been any doubt whether the smear campaign might warrant review under the anti-slapp laws, the district court was required to permit adequate discovery to resolve it.

In any event, the Abrams Parties proved that their claims for defamation, false light, and business disparagement had at least "minimal merit" precluding dismissal.

The judgment below should be reversed and remanded with instructions to proceed through discovery to trial.

Dated this 10th day of April, 2019.

Respectfully submitted,
WILLICK LAW GROUP

/s/Marshal S. Willick, Esq.
Marshal S. Willick, Esq.
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X7, Standard Edition in font size 14, and the type style of Times New Roman; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more and contains 4,298 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of April, 2019.

WILLICK LAW GROUP

/s/Marshal S. Willick, Esq.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 10th day of April, 2019, documents entitled *Appellants' Reply Brief* were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

Maggie McLetchie, Esq.
MCLETCHIE SHELL LLC
701 E Bridger Avenue, #520,
Las Vegas, Nevada 89101
Attorney for *Steve W. Sanson* and
VETERANS IN POLITICS INTERNATIONAL, INC.

Joseph W. Houston, Esq.
430 S. Seventh St.
Las Vegas, Nevada 89101
Attorney for Louis C. Schneider, and
LAW OFFICES OF LOUIS C. SCHNEIDER, LLC

An Employee of the WILLICK LAW GROUP

P:\wp19\ABRAMS,J\SCDRAFTS\00295167.WPD/jj

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JENNIFER V. ABRAMS; AND THE ABRAMS & MAYO LAW FIRM, Appellant, vs. STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC; LOUIS C. SCHNEIDER; AND LAW OFFICES OF LOUIS C. SCHNEIDER, LLC, Respondent.	S.C. NO. 75838/75834 D.C. NO: A-17-749318-C

APPELLANTS' REPLY BRIEF

Attorney for Appellants:
Marshal S. Willick, Esq.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondents:
Maggie McLetchie, Esq.
Nevada Bar No. 10931
MCLETCHIE SHELL LLC
701 E Bridger Avenue, #520,
Las Vegas, Nevada 89101
(702) 728-5300
Email: maggie@nvlitigation.com
Attorney for *Sanson Parties*

Joseph W. Houston, Esq.
Nevada Bar No. 1440
430 S. Seventh St.
Las Vegas, Nevada 89101
(702) 982-1200
Email: jwh7408@yahoo.com
Attorney for *Schneider Parties*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

STATEMENT OF CASE

There are two Answering Briefs, referred to here by the name of the primary party filing them. Schneider copied our Statement of the case verbatim. Sanson improperly submitted five pages of argument, including lots of hyperbole and adjectives alleging motivation and alleged knowledge among the various parties, plus arguments not raised below for which there is of course no citation to the record.

We ask the Court to rely on the Statement of the Case in the *Opening Brief.*

STATEMENT OF FACTS

The two answering briefs take very different tacks. Schneider attempts to defend his obtaining of the hearing video from the *Saiter* case and providing it to Sanson to use in the extortion efforts against Ms. Abrams (to try to get her to take off calendar the sanctions motion against Schneider), essentially stating that since the case file was not sealed until after the hearing, doing so was not illegal. He further argues, repeatedly, that "anyone could have" obtained the video during that window, ignoring the fact that subpoenaed records show that he is the only one that actually did so. Schneider includes no citations to the record.

Sanson admits (at 6) that this entire case is a First Amendment case (which is relevant to the point, discussed below, that this Court has already provided guidance as to what kinds of speech and actions do and do not deserve "First Amendment Protection"), and largely ignores the context of why Schneider provided the *Saiter* video to Sanson in the extortion attempt, instead trying to delve into minutia of individual words stripped of the context of their usage.

Along the way, Sanson mischaracterizes the proceedings and actions in the underlying actions. For example, he mis-quotes (at 7) the email from Ms. Abrams to former Judge Elliott, which actually stated the Saiter family did not need a video or other information about their private lives posted on the internet and noted, as the extortion campaign opened, that the Sanson articles were "intended to place" her in a bad light, instead characterizing it as complaining that the posting was critical of her.

Most of the remainder of Sanson's statement of facts recites the order appealed from which his attorney wrote, puts Sanson's preferred spin on each salvo of the months-long campaign against Ms. Abrams, and minimizes and recharacterizes his actions and comments. For example, at page 9 Sanson terms his accusation that Ms.

Abrams is "unethical and a criminal," was "breaking the law," had "unlawfully" had her staff enter a person's home[1] as Sanson making "unflattering comments."

There is much editorializing in both the text and the headings of Sanson's statement of facts, and lots of direct argument, and the positions taken are directly at odds with Sanson's filings in the companion case now on appeal.[2]

Sanson also does not want this Court to note that this case was reassigned from the court that issued the decision on appeal, or Sanson's continual *ex parte* contacts to judges and other improper behavior that caused that reassignment. Those *ex parte* contacts and other intimidation and control tactics were occurring before and during the time of the decision at issue; they had just not yet been memorialized by Judge Duckworth's written order or in our *Motion to Disqualify*. All of Sanson's

---

[1] V AA 750-752.

[2] *Sanson v. Willick*, Case No. 72778, in which Sanson quoted extensively from Judge Duckworth's orders in the *Ansell* divorce case, although in this filing he complains that all such orders should be ignored because they are "by definition irrelevant." They are not, of course, both because they identify the attempted "manipulation, intimidation, and control" of judges by Sanson that was the reason Schneider employed him for the extortion efforts, and because Sanson's filings make contradictory requests. *See e.g.*, *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (discussing doctrine of judicial estoppel and noting that the ***purpose*** of the doctrine "is to prevent parties from deliberately shifting their position to suit the requirements of another case concerning the same subject matter.")

misconduct is relevant to the reason for the reassignment to the senior judge program and the reason the incorrect decision appealed from was made.

The intent of Sanson's argument in the facts section appears to be to prevent this Court from reviewing the context in which this case was filed, litigated, and decided, because his argument, addressed below, depends on the Court having no regard for the actual situation and instead focusing on individual words in isolation.

For all these reasons, we ask the Court to rely on the Statement of Facts in the *Opening Brief.*

This Reply Brief follows.

STANDARD OF REVIEW AND SUMMARY OF THE ARGUMENT

The answering briefs are in direct contradiction. Schneider claims (at 5) that the applicable standard of review is abuse of discretion; Sanson claims (at 15) it is *de novo*.

As noted in the *Opening Brief* (at 38) and per this Court's recent decision in *Coker v. Sassone*,[3] the correct standard of review is *de novo*. Schneider's argument

---

[3] *Coker v. Sassone*, 135 Nev. ___, 432 P.3d 746 (Adv. Opn. No. 2, Jan. 3, 2019).

summary simply repeats (at 6) his assertion that there was no abuse of discretion. Sanson did not provide an argument summary.

ARGUMENT

I. THERE CAN BE NO "GOOD FAITH" COMMUNICATIONS IN PURSUIT OF AN EXTORTION SCHEME

The Schneider argument ignores what he and Sanson were actually doing in obtaining the *Saiter* video and using it to attempt to extort Ms. Abrams into taking off her pending sanctions motion against Schneider, instead focusing (at 6-8) on the assertion that Schneider did nothing illegal in obtaining the video. He never addresses his emailed threat to take out-of-court action against her or his admission that he acted on that threat by using the out-of-court smear campaign to extort opposing counsel in the case.[4]

Along the way, Schneider falsely asserts (at 8) that this Court has referred "the matter" to the State Bar, when actually the Court expressly declined to do so.[5]

---

[4] V AA 666, 745 (Schneider's offer to "make all this go away" if the Sanctions Motion against him was withdrawn).

[5] Schneider brief at 28.

Without analysis or cogent argument, he includes (at 9) a long quote making the irrelevant claim that "fair, accurate and impartial" reporting falls within First Amendment Privilege.[6] That principle is not at issue here, but if it was, it would not apply to deliberately stating the opposite of what actually occurred.

Sanson also never addresses his admission that the smear campaign would end if Ms. Abrams succumbed to pressure and betrayed her client by withdrawing her sanctions motion against Schneider.[7]

Both respondents claim that this is a First Amendment case, and both entirely ignore without addressing it this Court's holding in *Hafter* that false statements of fact are not entitled to any First Amendment protection.[8] Likewise, they ignore this Court's holding in *Coker* that communications for an illicit purpose, whether advertising and selling counterfeit artwork as original work,[9] or an out-of-court smear

---

[6] *See Adelson v. Harris*, 133 Nev. ___, 402 P.3d 665 (Adv. Opn. No. 67, Sep. 27, 2017).

[7] V AA 671, 751.

[8] *Matter of Discipline of Hafter*, No. 71744, 2017 WL 5565322, at *2 (Nov. 17, 2017) (Unpublished Disp.). There is no constitutional value in false statements of fact. *Dehne v. Avanino*, 219 F. Supp. 2d 1096, 1107 (D. Nev. 2001) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974)).

[9] *Coker v. Sassone*, 135 Nev. ___, 432 P.3d 746 (Adv. Opn. No. 2 Jan. 3, 2019).

campaign for extortion, can never be "good faith communications in direct connection with an issue of public interest."[10]

Given both respondents' admissions that the entire smear campaign at issue was in pursuit of an illicit extortion attempt intended to corrupt the judicial process, no anti-slapp analysis should ever have been reached. To the extent that any of the statements could be considered "mixed"—a statement of opinion that implies the existence of undisclosed, defamatory facts—the analysis is the same and the statements are actionable.[11]

II. THE BURDEN OF PROVING TRUTHFULNESS IS ON SANSON AND SCHNEIDER

Schneider's brief ignores the issue. Sanson attempts to duck it, simply insisting again and again that all his comments were either true or matters of opinion. But the totality of the communications made by Sanson—that Ms. Abrams is a criminal who

---

[10] Sanson almost concedes this point (at 16), noting that the statute itself states that statements made for an improper purpose and false statements are not "good faith communications [etc.]" under NRS 41.637. The entirety of the remainder of his argument ignores that all statements at issue were made as part of a smear campaign for hire to achieve an illicit goal.

[11] *Lubin v. Kunin,* 117 Nev. 107, 113, 17 P.3d 422, 426 (2001).

had "violated the law" and *was* "breaking the law," had used "undue influence," and is "unethical," among many other things,[12] are simply false, and no one anywhere has ever found otherwise.

Sanson studiously avoids ever directly addressing that it was *his burden* to prove truthfulness to have an anti-slapp analysis go forward,[13] and that he neither did do so or ever could do so. The months of communications in the smear campaign must be considered in the aggregate,[14] not by parsing out each individual word and seeing if there is some conceivable way of interpreting each as a "mere opinion," because the question is the message conveyed to the recipient.

Most of Sanson's brief[15] consists of the repetition, citing his own argument and the order at issue drafted by his lawyer, that his accusations against Ms. Abrams were made "without knowledge of falsehood" or "incapable of being true or false." Given

---

[12] See AOB at 44.

[13] NRS 41.637(4); *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 754, 219 P.3d 1276, 1282 (2009), *superseded by statute on other grounds*.

[14] *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001) (when assessing whether a statement is defamatory, the words "must be reviewed in their entirety and in context to determine whether they are susceptible of a defamatory meaning").

[15] *See*, e.g., Sanson brief at 18-30.

the context of a months-long smear campaign, the attempts to focus on minutia are mere evasion.

Whether a statement constitutes fact or opinion is determined by assessing "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact."[16]

Sanson's repeated call to action, claiming that Ms. Abrams was "obstructing justice," "breaking the law" and a "criminal who should be reported to the Bar," necessarily implied the existence of facts to support it, despite Sanson's claim (at 21) that claiming an attorney is "unethical" is a mere opinion.

Accusations of obstruction of justice, unethical activity, and allegations relating to professional integrity that are susceptible of proof are assertion of fact[17] and can be libelous *per se*.[18] In context, there is no reasonable way to perceive

---

[16] *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001).

[17] *Yoder v. Workman*, 224 F. Supp. 2d 1077, 1081 (S.D.W. Va. 2002) (denying motion to dismiss defamation action because allegation that attorney engaged in "spurious and unethical legal actions and false allegations" could "be reasonably interpreted as stating actual facts); see also *Held v. Pokorny*, 583 F. Supp. 1038, 1040 (S.D.N.Y. 1984).

[18] *Wachs v. Winter*, 569 F. Supp. 1438, 1443 (E.D.N.Y.1983) (noting that statements accusing an attorney of unprofessional conduct that would tend to injure him in that capacity are libelous per se).