

# WHEN VICTIMS GET SUED: Best Practices in Defending SLAPP Suits



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Oregon Crime Victims Law Center Annual CLE

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# What is a SLAPP Suit???

Strategic Lawsuits Against Public Participation

- ... aka Intimidation Lawsuits
- ... aka Payback Lawsuits

and now. . . .

➤ “D A R V O”

(Deny Attach Reverse Victim & Offender)

# What is the Purpose of an Anti-SLAPP Law?

To expeditiously terminate unfounded civil claims that threaten constitutional rights:

- Freedom of speech;
- Freedom of assembly;
- Right to petition government for redress of grievances; and
- Freedom of the press.

# Typical SLAPP Targets

- **Opponents of real estate developments**
- **Environmental activists**
- **Opponents of proposed facilities**
- **Whistle-blowers**
- **... and more recently, CRIME VICTIMS**

# Typical SLAPP Claims

- **Defamation (libel, slander)**
- **Intentional infliction of emotional distress**
- **Business torts (interference with contract, restraint of trade)**
- **Malicious prosecution**
- **Civil rights violations**
- **Conspiracy to commit one of above**
  - **and even. . . Wrongful Death (?!)**

# Typical SLAPP Claims - Defamation

- **Libel (written) and slander (spoken):**
  - Making of a statement that would subject the plaintiff to hatred, contempt or ridicule or tend to diminish the esteem in which he is held
  - Publication of the statement to others
  - Resulting harm (unless defamatory *per se*)
- **Affirmative defenses: truth, consent, privilege**
- **Privilege includes (but is not limited to) statements in judicial and legislative proceedings.**

# Typical SLAPP Claims – Malicious Prosecution

- **Initiating of criminal proceedings;**
- **By or at insistence of defendant;**
- **Termination of the proceedings in plaintiff's favor;**
- **Malice in instituting the proceedings;**
- **Lack of probable cause; and**
- **Injury or damage because of the prosecution.**

**(Civil version is “Wrongful Initiation of Civil Proceedings.”)**

# Which States Protect Against SLAPP Suits?

- 31 states, the District of Columbia, & Guam have some form of anti-SLAPP law.
- A federal anti-SLAPP law was introduced in 2009, but not passed.
- Several Canadian provinces have anti-SLAPP laws.
- In 2020, Uniform Law Commission published a model anti-SLAPP law for states to follow.

# What Does an Anti-SLAPP Law Look Like?

## **ORS 31.150 – Special Motion to Strike:**

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;

(c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

# What Are the Features of an Anti-SLAPP Motion?

- A cross between a motion to dismiss and a motion for summary judgment.
- Short timelines (60 days to file, hearing within 30 days).
- Evidence is in the form of affidavits.
- Discovery is stayed until the motion is decided, except for good cause shown.
- Mandatory attorney fees and costs to prevailing defendant.

# Who Has the Burden of Proof?

- Defendant has initial burden to show applicability of anti-SLAPP law.
- Burden then shifts to plaintiff to establish a probability of prevailing.
- Plaintiff must “present[] substantial evidence to support a prima facie case” to defeat the motion.

# What's a "Prima Facie Case"?

Enough evidence to get to a jury; or

Evidence sufficient to shift the burden of producing evidence.

*See Schwern v. Plunkett*, 845 F.3d 1241 (9<sup>th</sup> Cir. 2017)

# What Happens when an Anti-SLAPP Motion is Granted?

- Dismissal of the lawsuit without prejudice.
- Attorney fees and costs awarded to prevailing plaintiff.

# What Happens When an Anti-SLAPP Motion is Denied?

- The SLAPP suit proceeds.
- The losing defendant is able to immediately appeal.
- The winning plaintiff is entitled to attorney fees and costs ONLY if the court find that the anti-SLAPP motion was frivolous or intended to cause unnecessary delay (basically same standard as ORS 20.105(1)).

# Give me an Example of a SLAPP Suit. . .

In 2012, Oregon's very own Beaverton Grace Bible Church sued four former church members who had blogged and written online reviews of their experiences at the church.

The church sought \$500,000 in damages (in addition to subjecting them to an Old Testament shunning).

The anti-SLAPP motion was granted, and the plaintiffs were ordered to pay the defendants' attorney fees and costs.

# SLAPP-ing Crime Victims

**STEVEN,**

**Plaintiff,**

**v.**

**MARIA and SNORE-EGONIAN  
NEWSPAPERS, INC.,**

**Defendants.**

**Case No. 12-34567**

**COMPLAINT FOR DEFAMATION**

# Crime Victims (Anti-)SLAPP Back

3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF WASHINGTON

6 STEVEN,

7 Plaintiff,

8 v.

9 MARIA, and  
10 SNORE-EGONIAN NEWSPAPERS,  
INC.,

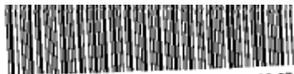
11 Defendants.

Case No. 12-34567

**SPECIAL MOTION TO STRIKE  
PURSUANT TO ORS 31.150  
(ANTI-S.L.A.P.P. STATUTE)**

**(Oral Argument Requested)**

# SLAPP-ing Crime Victims



13-2-06153-3 38970573 CMP 02-07-13

IN COUNTY CLERK'S OFFICE

A M FEB 06 2013 P M  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

4  
5  
6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
7 **IN AND FOR THE COUNTY OF PIERCE**

8 **LAWRENCE SHANDOLA**

9 Plaintiff,

10 vs.

11 **PAULA HENRY and JOHN DOE HENRY**  
12 **and the marital community thereof; LEW COX,**  
13 **individually and in his Official Capacity or**  
14 **Executive Director of VIOLENT CRIMES**  
15 **VICTIM SERVICES; ANNE NELSON and**  
16 **JOHN DOE NELSON and the Marital**  
17 **Community thereof; LAUREEN NICOLAY**  
18 **and JOHN DOE NICOLAY and the Marital**  
19 **community thereof,**  
20 **Defendants.**

Case No.: 13 2 06153 3

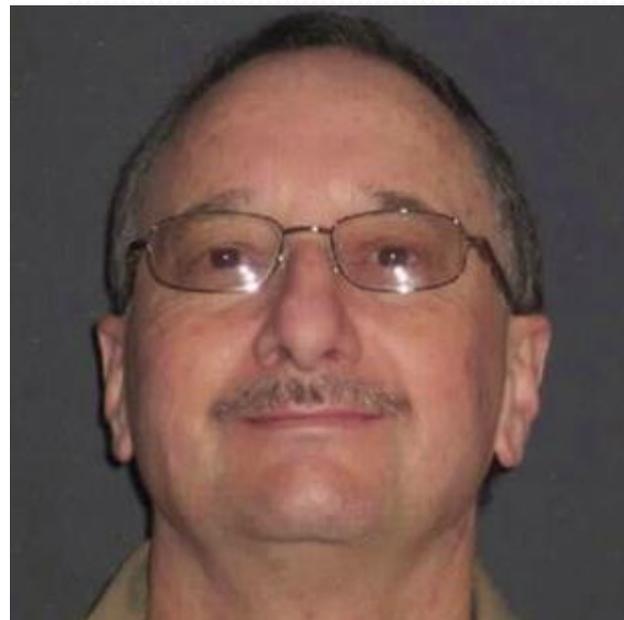
COMPLAINT

- VERIFIED -

21 Comes now LAWRENCE SHANDOLA, (hereinafter "Plaintiff") being first duly sworn  
22 upon oath, on belief and being informed, alleges:

23 **I. JURISDICTION, VENUE AND PARTIES**

24 1) This Court has jurisdiction over this matter pursuant to Article IV, § 6 of the  
Constitution of the State of Washington, and Washington Laws of 1955 c 38 § 3. Declaratory  
relief is sought pursuant to Washington laws of 1937 c 14 § 1. Injunctive relief is sought pursuant  
to Washington Laws of 1957 c 9 § 11.



# Crime Victims (Anti-)SLAPP Back

9	IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON IN AND FOR PIERCE COUNTY	
10	LAWRENCE SHANDOLA,	No. 13-2-06153-3
11	Plaintiff,	DEFENDANTS' MOTION TO DISMISS
12	vs.	PURSUANT TO CR 12(B)(6) AND FOR
13	PAULA HENRY and JOHN DOE HENRY, and the marital community thereof; LEW COX, individually and in his Official Capacity or Executive Director of VIOLENT CRIMES VICTIM SERVICES; ANNE NELSON and JOHN DOE NELSON, and the marital community thereof; LAUREEN NICOLAY and JOHN DOE NICOLAY, and the marital community thereof,	AN AWARD OF FEES AND STATUTORY DAMAGES
14	Defendants.	
15		
16		
17		
18		
19		
20		<b>I. <u>MOTION</u></b>
21		Defendants Paula Henry by and through her attorneys of record, Ladenburg Law,
22		PLLC, Lew Cox, individually and in his Official Capacity or Executive Director of Violent



# Crime Victims (Anti-)SLAPP Back



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

LAWRENCE SHANDOLA

Plaintiff,

v.

PAULA HENRY and JOHN DOE HENRY and the marital community thereof; LOU COX, individually and in his Official Capacity of Executive Director of VIOLENT CRIME VICTIM SERVICES; ANNE NELSON and JOHN DOE NELSON and the marital community thereof; LAUREEN NICOLAY and JOHN DOE NICOLAY and the marital community thereof,

Defendants.

NO. 13-2-06153-3

DEFENDANTS HENRY'S MOTION  
FOR PERMENENT RESTRAINING  
ORDER

COMES NOW Defendant Paula Henry and moves the Court for a permanent anti – harassment restraining order against Plaintiff Lawrence Shandola restraining him from filing any legal proceedings against Defendant Paula Henry without the express approval of the presiding judge of Pierce County.

# Crime Victims (Anti-)SLAPP Back

6 having heard argument of counsel, and being otherwise fully advised in the premises, it is

7 hereby

8 ORDERED, ADJUDGED AND DECREED that Defendants' motion is GRANTED.

9 It is FURTHER ORDERED that defendants are awarded their costs, fees, and expenses  
10 including reasonable attorneys' fees, incurred in defending against plaintiff's lawsuit and in  
11 bringing this motion. Defendants are granted leave to file a cost bill detailing such costs, fees,  
12 and expenses within fourteen (14) days of the date of this Order.

13 It is FURTHER ORDERED that defendant Henry is awarded statutory damages of  
14 \$10,000 pursuant to R.C.W. 4.24.510 against plaintiff Shandola.

15 It is FURTHER ORDERED that defendant Cox is awarded statutory damages of  
16 \$10,000 pursuant to R.C.W. 4.24.510 against plaintiff Shandola.

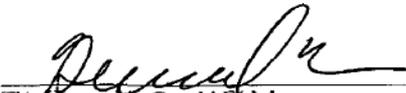
17 It is FURTHER ORDERED that defendant Nelson is awarded statutory damages of  
18 \$10,000 pursuant to R.C.W. 4.24.510 against plaintiff Shandola.

19 It is FURTHER ORDERED that defendant Nicolay is awarded statutory damages of  
20 \$10,000 pursuant to R.C.W. 4.24.510 against plaintiff Shandola.

21 Dated this 17 day of April, 2013.

22

23

  
The Honorable Garold E. Johnson



# Crime Victims (Anti-)SLAPP Back

This matter came on regularly for hearing before the undersigned on Defendant's Motion to Dismiss. In addition to dismissal of this action it is ORDERED that this action not be re-filed; it is further ORDERED that any future service of process on any of the defendants in this case be made upon those defendants' counsel of record as of this date, and not be made on the defendants personally.

# Vexatious Litigant Remedy

## **Plaintiff Should Be Prohibited From Filing Future Lawsuits Against Defendant Without Leave of Court.**

**Federal:** The All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent power to enter pre-filing orders against vexatious litigants. *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999). "Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

**State:** ORS 1.010 (5) (trial court has authority to issue orders to "control, in furtherance of justice, the conduct...of all...person in any manner connected with a judicial proceeding before it, in every matter appertaining thereto.").

# SLAPP-ing Those Who Advocate for Crime Victims

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

Fr. Chester J. Pryzbylo, )  
)  
Plaintiff, )  
)  
v. )  
)  
Peter Galica, Jeffrey R. Anderson, )  
Jeff Anderson & Associates, P.A., )  
Marc J. Pearlman, Kerns, Pitof, Frost & )  
Pearlman, LLC, Barbara Blaine, and )  
Survivors Network of those Abused )  
by Priests a/k/a SNAP, )  
)  
Defendants. )

FILED-3  
2010 JAN 29 AM 10:14  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

2010L001289  
CALENDAR/ROOM E  
TIME 00:00  
Libel/Slander

## COMPLAINT

NOW COMES Plaintiff, Fr. Chester J. Pryzbylo (“Fr. Pryzbylo”), by his attorney, Walter Maksym, and complaining of Defendants Peter Galica (“Galica”), Jeffrey R. Anderson (“Anderson), individually agent of Jeff Anderson & Associates, P.A., a Minnesota professional association, Jeff Anderson & Associates, P.A. (“JA&A”), a Minnesota professional association, Marc J. Pearlman (“Pearlman”), individually and as agent of Kerns, Pitof, Frost & Pearlman, LLC (“KPF&P“), an Illinois limited liability company and Peter Galica, (collectively “Galica’s Lawyers”), Barbara Blaine (“Blaine”), an attorney, individually and as president and agent of The Survivors Network of those Abused by Priests a/k/a SNAP (“SNAP”), an entity, person or persons of unknown legal character and alleges as follows:

# SLAPP-ing Those Who Advocate for Crime Victims

## Scammers preyed on elderly with love, beer



**Contractor Scott D. Gaumond, 37, of Haverhill, was sentenced yesterday to serve five to seven years in jail.**



# SLAPP-ing Those Who Advocate for Crime Victims

COMMONWEALTH OF MASSACHUSETTS

(1)

ESSEX, SS

DISTRICT COURT

SCOTT D. GAUMOND, ]]]]]  
PLAINTIFF ]

CIVIL NO. \_\_\_\_\_

v. ]

ERIN K. OLSEN, ]  
DEFENDANT ]]]]]

#9936CV751

RECEIVED  
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CLERKS OFFICE

CIVIL COMPLAINT

1. The Plaintiff, Scott D. Gaumond, 20 Manning Avenue, PO Box 807, Middleton, MA, 01949.
2. The Defendant, Erin K. Olsen, 200 Portland Street, Boston, MA 02114.

# Critical Issues

## **Deadlines:**

- Many states, including Oregon, require the motion to be filed within 60 days of service of the complaint.
- Good cause exception for later filing (but don't count on it).

## **What Must be Shown by Crime Victims who are Sued:**

- Activity was protected expression or petitioning activity; and
- Petitioning was not a sham, *i.e.* really for purposes of harassment, or objectively baseless.

# Miscellaneous Issues

## **Anti-SLAPP motions and protective orders:**

Compare *Thomas v. Quintero*, 24 Cal. Rptr. 3d 619, 626 (Cal. Ct. App. 2005) (California's anti-SLAPP statute may be invoked in civil harassment cases), with *Emmerson v. Weilep*, 110 P.3d 214, 216-17 (Wash. Ct. App. 2005) (Washington's may not – “[h]arassment is not protected speech”).

## **Federalism issues:**

- 9<sup>th</sup> circuit allows discovery before motion to strike is filed because federal procedural rules apply.
- Anti-SLAPP motions cannot be used to strike federal law claims under the Supremacy Clause.

# References:

1. The Public Participation Project, [www.anti-slapp.org](http://www.anti-slapp.org)
2. *Guarding Against the Chill: A Survival Guide for SLAPP Victims*, The First Amendment Project Anti-SLAPP Resource Center, <https://www.thefirstamendment.org/resources/>
3. California Anti-SLAPP Project, [www.casp.net](http://www.casp.net)
4. Robert D. Richards, *A SLAPP in the Facebook: Assessing the Impact of Strategic Lawsuits Against Public Participation on Social Networks, Blogs and Consumer Gripe Sites*, 21 DePaul J. Art. Tech. & Intell. Prop. L. 221 (2011).
5. James W. Devine, *Rule 11's Big-Mouthed Little Brother: How a Federal Anti-SLAPP Statute Would Reproduce Rule 11's Growing Pains*, 9 Ave Maria L. Rev. 367 (2011).
6. Carson Hilary Barylak, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 Ohio St. L. J. 845 (2010).
7. Sean P. Trende, *Defamation, Anti-SLAPP Legislation, and the Blogosphere: New Solutions for an Old Problem*, 44 Duq. L. Rev. 607 (2006).
8. Joshua R. Furman, *Cybersmear or Cyber-SLAPP: Analyzing Defamation Suits Against Online John Does as Strategic Lawsuits Against Public Participation*, 25 Seattle Univ. L. R. 213 (2001)

# WHEN VICTIMS GET SUED: Best Practices in Defending SLAPP Suits



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