

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

RUSSELL E. SCHNEIDER, DDS, and  
CARL B. HAGSTROM, DDS,

Plaintiffs,

v.

C. MICHAEL BOWERS, DDS., JD.,

Defendant.

No.

2011L011654  
CALENDAR/ROOM Z  
TIME 00:00  
PI Other

FILED  
2011 NOV -8 PM 3:14  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

COMPLAINT AT LAW

Plaintiffs, RUSSELL E. SCHNEIDER, DDS and CARL B. HAGSTROM, DDS., (“Plaintiffs”), by their attorneys, BOLLINGER CONNOLLY KRAUSE, LLC, complaining of defendant, C. MICHAEL BOWERS, DDS, (“Defendant”), state as follows:

JURISDICTION AND PARTIES

1. Plaintiff, RUSSELL E. SCHNEIDER, DDS., is an individual residing in Waukegan, Lake County, Illinois.
2. Plaintiff, CARL B. HAGSTROM, DDS., is an individual residing in Fox Lake, Lake County, Illinois.
3. Defendant, C. MICHAEL BOWERS, DDS., JD., is an individual residing in Ventura, California.
4. From February 21, 2011 through February 26, 2011, Defendant attended the 63<sup>rd</sup> Annual Scientific Meeting of the American Academy of Forensic Science in Chicago, Cook County, Illinois.
5. At said time and place, Defendant gave a presentation entitled “A Perfect Storm: Is There a New Paradigm to Keep Bitemarks Afloat or Will They Sink?”

6. At said time and place, while giving his presentation, Defendant published defamatory statements of and concerning the Plaintiffs.

7. This Court has jurisdiction over this suit pursuant to 735 ILCS 5/2-209 as the alleged defamatory statements were made and published within the City of Chicago, County of Cook, State of Illinois.

8. Venue is appropriate under 735 ILCS 5/2-101(b) as the alleged defamatory statements were made and published within the City of Chicago, County of Cook, State of Illinois.

### COMMON ALLEGATIONS

#### **Bennie Starks Case**

9. Plaintiffs are practicing odontologists who from time to time provide expert opinion testimony regarding bite mark analysis.

10. Plaintiffs provided expert opinion testimony on behalf of the prosecution in the case of People of the State of Illinois v. Bennie Starks, Circuit Court of Lake County, Illinois, case number 86 CF 106.

11. During trial, Plaintiffs opined that Bennie Starks had bitten his victim on the shoulder. Such testimony was based upon a forensic analysis and examination of the bite mark along with Mr. Starks' teeth and dental x-rays.

12. At the conclusion of the trial, Bennie Starks was convicted of two counts of aggravated criminal sexual assault, one count of attempted aggravated criminal sexual assault, one count of aggravated battery and one count of unlawful restraint for the attack of a 68 year old woman.

13. On March 23, 2006 the Illinois Appellate Court reversed the conviction of Bennie Starks but only on the charges of aggravated criminal sexual assault and attempted aggravated criminal sexual assault. The Illinois Appellate Court ordered that a new trial take place with respect to only those charges. The Appellate Court's opinion is published at 365 Ill. App. 3d 592 (2d. Dist. 2006).

14. The basis for the Appellate Court's reversal of Mr. Starks' conviction with respect to the counts of aggravated criminal sexual assault and attempted aggravated criminal sexual assault was the use of faulty DNA evidence.

15. The Appellate Court did not reverse the conviction of Bennie Starks for aggravated criminal sexual assault and attempted aggravated criminal sexual assault based upon bite mark testimony or any testimony rendered by plaintiffs during the trial of that matter.

#### **Defendant's Presentation**

16. On February 24, 2011, Defendant, C. Michael Bowers, gave a presentation titled ~~A Perfect Storm: Is There a New Paradigm to Keep Bitemarks Afloat or Will They Sink?~~, ("Presentation") at the 63<sup>rd</sup> Annual Scientific Meeting of the American Academy of Forensic Science ("Conference") in Chicago, Illinois.

17. In attendance at Defendant's Presentation were many odontologists who specialized in forensic analysis of bite marks.

18. During the Presentation, Defendant made reference to various convictions that he claimed had been overturned as a result of faulty bite mark evidence.

19. During the presentation, Defendant stated, "There is obvious proof that bite mark opinions have contributed to wrongful conviction in ten cases in the United States in the last decade."

20. At or near the time when such a statement was made, Defendant published a slide for his audience that listed ten cases that Defendant stated represented wrongful convictions due to faulty bite mark testimony. The first of the ten cases listed was People v. Bennie Starks.

21. Defendant's Presentation was heard and seen by multiple odontologists attending the Conference.

22. Plaintiff's have requested a copy of Defendant's presentation, however, Defendant has refused to turn over his presentation materials.

23. It was well known throughout the intimate odontological community in the Chicago area that Plaintiffs gave expert bite mark testimony in the Bennie Starks case.

24. Upon hearing Defendant's statement and reading the aforementioned slide, Plaintiff, Dr. Schneider, informed Defendant that Bennie Starks' conviction was not reversed based upon faulty bite mark testimony. Defendant ignored Plaintiff's statement and did not retract his assertion that the Bennie Starks' conviction was premised upon faulty bite mark testimony.

25. Defendant's statements constitute false publications where the reversal of the Bennie Starks conviction was not based upon faulty bite mark testimony.

26. At the time of his Presentation, Defendant knew, or in the exercise of reasonable care, should have known that the Bennie Starks conviction was not reversed based upon faulty bite mark testimony.

27. Plaintiffs are not public figures. Accordingly, no recognized privilege exists for the aforementioned statement.

COUNT I  
DEFAMATION PER SE

Plaintiffs repeat and reallege and incorporate by reference paragraphs 1 through 27 above as paragraphs 1 through 27 of Count I.

28. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks are false.

29. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks are of and concerning the Plaintiffs.

30. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks were published without any recognized privilege.

31. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks constitute defamation *per se* in that they impute that the Plaintiffs lack ability and integrity in their profession as forensic odontologists.

32. As a direct and proximate result of Defendant's actions, Plaintiffs suffered substantial damages including, but not limited to, loss of goodwill and damage to their reputation as odontologists.

WHEREFORE, Plaintiffs, RUSSELL E. SCHNEIDER, DDS and CARL B. HAGSTROM, DDS., request Judgment in their favor and against Defendant, C. MICHAEL BOWERS, DDS, and further request the following:

- a. Compensatory damages in excess of the jurisdictional limit of the Law Division of the Circuit Court of Cook County; and
- b. Any other legal and equitable relief this Court deems fair, just and reasonable.

COUNT II  
DEFAMATION PER OUOD

Plaintiffs repeat and reallege and incorporate by reference paragraphs 1 through 31 above as paragraphs 1 through 32 of Count II.

33. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks are false.

34. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks are of and concerning the Plaintiffs.

35. The statements published by Defendant regarding the basis for the overturned conviction of Bennie Starks were published without any recognized privilege.

36. As a result of the above described defamation, Plaintiffs have suffered harm to their personal and occupational reputations. Specifically, since the date of Defendant's Presentation, Plaintiffs have not been retained to provide bite mark testimony in any case, and further, the number of patients referred to Plaintiffs for treatment and evaluation has decreased.

WHEREFORE, Plaintiffs, RUSSELL E. SCHNEIDER, DDS and CARL B. HAGSTROM, DDS., request Judgment in their favor and against Defendant, C. MICHAEL BOWERS, DDS, and further request the following:

- a. Compensatory damages in excess of the jurisdictional limit of the Law Division of the Circuit Court of Cook County; and
- b. Any other legal and equitable relief this Court deems fair, just and reasonable.

BOLLINGER CONNOLLY KRAUSE, LLC.

By: 

One of the Attorneys for Plaintiff

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## Jed Stone

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**From:** Kadish, Marc R. [MKadish@mayerbrown.com]  
**Sent:** Saturday, December 17, 2011 2:11 PM  
**To:** Jed Stone  
**Subject:** FW: defamation suit against bowers - the complaint  
**Attachments:** Complaint\_at\_Law\_Filed.11.08.11(1)[1].pdf

Jed-Attached is the reason for my call. Jack Rimland said that you have been involved in the Bennie Starks case recently. Peter Neufeld and Maddy have contacted us to see if we would be interested in representing Dr. Bowers. We have a young partner who has handled a number of defamation suits so we are interested in representing the doctor. If you are still involved in representing the defendant it is probably a good idea for me to talk with you about the current posture of the case-although it is not crucial to the defense of the doctor.

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**From:** Madeline deLone [mailto:mdelone@innocenceproject.org]  
**Sent:** Thursday, December 15, 2011 4:48 PM  
**To:** Kadish, Marc R.  
**Subject:** FW: defamation suit against bowers - the complaint

Mark,

Would you let me know your thoughts about defending the expert who has been charged with Defamation. Thanks.  
Maddy

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Innocence Project on Facebook: <http://www.facebook.com/innocenceproject>  
Innocence Project on Twitter: <http://www.twitter.com/innocenceblog>

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**From:** Peter Neufeld [mailto:pneufeld@innocenceproject.org]  
**Sent:** Thursday, December 01, 2011 6:26 PM  
**To:** Madeline deLone  
**Subject:** FW: defamation suit against bowers - the complaint

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[pneufeld@innocenceproject.org](mailto:pneufeld@innocenceproject.org)



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**From:** Vanessa Potkin [mailto:[vpotkin@innocenceproject.org](mailto:vpotkin@innocenceproject.org)]

**Sent:** Thursday, December 01, 2011 4:51 PM

**To:** Peter Neufeld

**Subject:**

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