

NIESI v. GOSLING and HARDY

Instructions

FILE

Memorandum to Applicant from Carmen Cardinal

Excerpts from www.CravenCableConsumersUnited.com Blog

Complaint

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.
2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.
5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.
6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.
9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

LAW OFFICES OF CARDINAL AND DEETZ
45 Bennington Circle
Craven, Columbia

TO: Applicant
FROM: Carmen Cardinal
RE: Niesi v. Gosling and Hardy
DATE: July 26, 2022

Grace Gosling is the web host of www.CravenCableConsumersUnited.com, a consumer website that contains a blog established to provide a platform for dissatisfied cable customers in Craven, Columbia. Gosling has retained our firm for advice concerning a complaint for defamation filed against her and Hank Hardy, a subscriber and poster to her blog, by Jack Niesi. Niesi claims that both Gosling and Hardy are liable as a result of statements Hardy posted about him to Gosling's blog.

I am preparing to meet with Gosling about Niesi's complaint. To help me prepare for the meeting, please draft an objective memorandum that discusses:

1. Whether Niesi would prove that Hardy's statements, as quoted in the complaint, were defamatory if he were to prove the facts alleged.
2. Whether Gosling is immune from liability for Hardy's allegedly defamatory statements.

Do not draft a separate statement of facts, but use the facts in your discussion.

EXCERPTS

www.CravenCableConsumersUnited.com Blog

Welcome to the voice of cable ratepayers in the City of Craven! I inaugurated this blog to highlight the incompetent and overpriced cable "disservice" and mistreatment we consumers receive as a result of the mismanagement and greed of the tone-deaf colossus, Columbia Cable Company. Despite some government regulation, the lack of competition has nevertheless resulted in poor and costly cable service. It is time to educate ourselves about cable services, our rights as consumers, and ways to contain the cost of cable service. I will be posting information on these topics and invite you to participate by posting anything you think will contribute to these goals. My hope is that members of the community will subscribe to this blog and participate constructively in ongoing discussion and action.

Note: To comment, you must be a subscriber. To subscribe, simply log on and, using the pre-populated pull-down menu, insert your first and last names, full physical address and email address, gender, age, and whether you are a Columbia Cable Company customer. There is also a blank box at the end where you can provide any additional information or comments. Each subscriber will have a profile containing all of this information that is accessible to other subscribers. The profiles will allow you to choose which other subscribers to communicate with outside this blog, including to develop ideas and actions against Columbia Cable Company, organize carpools to and from events, and the like.

In Solidarity, Grace Gosling

Oppose Rate Increase!

On June 27, 2022 at 6:00 p.m., the Craven City Council will hear a request from Columbia Cable Company for a 10% increase in cable rates to subsidize its planned re-cabling and the construction of a new store at the Stratford mall! This comes at a time

when we are experiencing further deterioration in customer service with even longer waits on the phone and at the stores to talk to a customer service representative, and bait and switch sales tactics! Be sure to show up all together at the meeting in the Council chambers at Craven City Hall to express your opposition to the rate increase request and to demand better service and ethical sales practices. And if you have any other ideas about how to keep cable costs down, please post them below.

In Solidarity, Grace Gosling

Comments:

Grace: Thanks for starting this very necessary dialogue. I'll tell you a big way to keep down cable rates – report cable theft! I live in the Green Hills condominium complex at 451 Green Hills Drive in Craven. Like most of us, I pay a lot for full cable service while one of my neighbors, Jack Niesi, is guilty of cable theft: He uses various unauthorized devices to get free phone, television and internet service to his condo. I'll bet he isn't even a cable subscriber. It's crooks like Jack Niesi who cause cable costs to go up for the rest of us!

Hank Hardy (June 11, 2022)

Hank: That sounds awful! Can you tell us more?? Have you considered reporting Niesi's theft to the Columbia Cable Company's cable theft hotline?!

In Solidarity, Grace Gosling (June 16, 2022)

Grace: This is further to my June 11, 2022 post about Jack Niesi. Since then, I've been watching him closely. And – get this – while his wife is at work, an attractive young woman is at their house most of the day. It looks as though they are watching TV on his

stolen cable service. He appears to be a cheating spouse! I put a note on his wife's car windshield telling that nice woman about her husband's infidelity while she is hard at work. What a loser and low life he is!

Hank Hardy (July 1, 2022)

SUPERIOR COURT OF THE STATE OF COLUMBIA
COUNTY OF MOREHEAD

<p>JACK NIESI, Plaintiff,</p> <p>v.</p> <p>GRACE GOSLING and HANK HARDY, Defendants.</p>	<p>CASE NO: 2022 – 7459</p> <p>COMPLAINT</p>
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1. Plaintiff Jack Niesi is a private individual who at all times mentioned in this complaint was a resident of Morehead County, Columbia.
2. Niesi has worked as an independent television producer for over 20 years and has resided at 451 Green Hills Drive in Craven, Columbia for about 5 years. Niesi has during all this time been faithfully married to his wife, Jill Niesi, and has enjoyed a good reputation, both generally and in his occupation.
3. Defendant Grace Gosling is an individual and is now, and at all times mentioned in this complaint has been, a resident of Morehead County, Columbia. She is the web host of www.CravenCableConsumersUnited.com (3CU.com), which contains a blog. As such, she has unlawfully caused, and is legally responsible for, the injury to Niesi as alleged in this complaint.
4. Defendant Hank Hardy is an individual and is now, and at all times mentioned in this complaint has been, a resident of Morehead County, Columbia. Hardy unlawfully caused, and is legally responsible for, the injury to Niesi as alleged in this complaint.

5. On or about June 11, 2022 and on or about July 1, 2022, Gosling published statements by Hardy on the 3CU.com blog in which Hardy stated:
 - a. "I'll tell you a big way to keep down cable rates – report cable theft! I live in the Green Hills condominium complex at 451 Green Hills Drive in Craven. Like most of us, I pay a lot for full cable service while one of my neighbors, Jack Niesi, is guilty of cable theft: He uses various unauthorized devices to get free phone, television and internet service to his condo. I'll bet he isn't even a cable subscriber. It's crooks like Jack Niesi who cause cable costs to go up for the rest of us!"
 - b. "Since then [i.e., the date of the statement quoted in Paragraph 5.a.], I've been watching him [i.e., Niesi] closely. And – get this – while his wife is at work, an attractive young woman is at their house most of the day. It looks as though they are watching TV on his stolen cable service. He appears to be a cheating spouse! I put a note on his wife's car windshield telling that nice woman about her husband's infidelity while she is hard at work. What a loser and low life he is!"
6. The statements quoted in Paragraph 5 referred to Niesi by name and address and were so understood by those who read them.
7. The statements quoted in Paragraph 5 are false as they pertain to Niesi. Among other things, Niesi has been a Columbia Cable Company customer for over 20 years. In that entire time, he has paid for every type of cable service he has ever received. He works with his technical assistant, Liana Mabry, from his home office. His relationship with Mabry is, and always has been, purely professional.
8. The statements quoted in Paragraph 5 were seen and read by Niesi's neighbors, business associates, and family, including his wife.

9. As a proximate result of the publication of the statements quoted in Paragraph 5, Niesi has suffered injury in the form of loss of his personal and professional reputation and business, shame, and mortification, all to his damage in a total amount to be established by proof at trial.

WHEREFORE, Niesi demands judgment against Gosling and Hardy, and each of them, as follows:

1. For compensatory damages according to proof;
2. For punitive damages;
3. For interest as allowed by law;
4. For costs of suit; and
5. For such other and further relief as this court may deem just and proper.

DATED: July 22, 2022

Ella Wang

Ella Wang
Attorney for Jack Niesi