

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA  
SA NO: 1712F04573

GEORGE ZIMMERMAN  
\_\_\_\_\_ /

**STATE'S MEMORANDUM IN SUPPORT OF SECOND MOTION FOR GAG ORDER**

The State of Florida, by and through the undersigned Assistant State Attorney, files this Memorandum in support of the State's Second Motion for Gag Order.

**BACKGROUND**

1. On 4/26/2012, the State filed a Motion for Gag Order. The Motion was heard by the Court on 4/27/2012, and an order denying the Motion was issued by Judge Kenneth R. Lester, Jr., on 4/30/2012. In denying the State's Motion the Court reminded the attorneys of Florida Bar Rule 4-3.6 regarding Trial Publicity, which prohibits prejudicial extrajudicial statements:
  - (a) Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communications if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.
  - (b) Statements to Third Parties. A lawyer shall not counsel or assist another person to make such a statement. Counsel shall exercise reasonable care to prevent investigators, employees, or other persons assisting in or associated with a case from making extrajudicial statements that are prohibited under this rule.

2. Since Judge Lester's order on 4/30/2012 the following has occurred:

- (a) Defense Counsel created a website gzlegalcase.com dedicated to this case.**
- (b) Defense Counsel created a Facebook website dedicated to this case.**
- (c) Defense Counsel created a Twitter website dedicated to this case.**

Defense Counsel has posted commentary on websites / social media discussing the case and encouraging bloggers to post comments about witnesses and/or evidence. Through these social media sites, Defense Counsel is able to control and filter commentary about the case, in effect bypassing the regular media (television and newspapers –printed and internet) and communicate the spin they want potential jurors to read about the case. This is done without Defense Counsel having to talk to the media. Potential jurors can access the website and communicate with Defense Counsel and other potential jurors.

Apparently, the Facebook website was removed. The State is not sure if bloggers still have access to it and are able to communicate with Defense Counsel or with other bloggers. The main website and Twitter are still in existence as indicated by the latest posting below. Defense Counsel doesn't just post pleadings and court proceedings, but goes beyond that and engages and encourages discussions as to what the defense feels is significant.

## ZIMMERMAN DEFENSE INVITES PUBLIC SCRUTINY OF MEDIA POLICY

ON 23 OCTOBER 2012.

Monday morning we sent this email to a person who has offered support to the defense, and since then it has been widely circulated on the web:

*"All this week we'll be preparing to defend ourselves against the State's renewed motion for a Gag Order. We're confident that everything we've posted, and everything we've said publicly is proper and well within our rights, but we know that on Friday, the State is likely to find the most questionable thing Mark's said and present it to the Court. I'd like to ask if you and other supporters could help us scour the web and, strange as it may sound, send us links to the most potentially questionable statements we have made during this process. Again, we're confident ALL our statements are easily defensible, we just want to know what we're likely to have thrown back at us."*

Although we originally intended for the message to be private, we feel the message is sound, and since it has been made public, we extend the invitation to anyone who has an interest to participate: send us a link to any statement the defense has made publicly about the case that you think is inappropriate.

When we set our communications policy, we knew we would be under intense public scrutiny, and we are confident the whole of our efforts will stand up to that scrutiny well.

You can submit links via the commenting below, or you can tweet a link and reference the @gzlegalcase handle.

### **(d) Defense Counsel and Defendant have discussed this case on national television – Sean Hannity Show (FOX News).**

Defendant, with Defense Counsel seated next to him, talked about what Defendant claims occurred; the events leading up to the shooting and what happened when he shot Trayvon Martin. The State is not asking the Court to prevent Defendant from talking to the media. Quite frankly, the interview with Sean Hannity was beneficial to the State.

The State would ask that Defense Counsel be prohibited from talking to the media and attempt to explain or clarify "what Defendant really" meant to say when he told Hannity that Trayvon Martin was "skipping away" and it "was all God's plan".

### **(e) Defense Counsel has spoken about the case on national and local television, and given numerous interviews to local, state and national newspapers.**

Defense Counsel has commented about the credibility of potential witnesses and the possible evidence.

**CNN –PIERS MORGAN 5/17/2012**

[http://www.youtube.com/watch?v=WReFBGv\\_uGA&feature=plcp](http://www.youtube.com/watch?v=WReFBGv_uGA&feature=plcp)

- Morgan asks O'Mara if he agrees with the statement that if Zimmerman had stayed in his car none of this would have happened. O'Mara says yes, in the same way as if Trayvon hadn't been in the complex none of this would have happened.

**CNN –PIERS MORGAN 6/21/2012**

[http://www.youtube.com/watch?v=7ifPi\\_mG110&feature=plcp](http://www.youtube.com/watch?v=7ifPi_mG110&feature=plcp)

- Morgan questions O'Mara about the perjury claims against George and his wife. O'Mara says Zimmerman's credibility was affected and he will have to deal with that, but his credibility isn't necessary for everything. At approximately one minute in the interview, O'Mara: "As we discussed, his credibility was certainly affected by the fact that he stood mute when his wife said something that turned out to be a misrepresentation to the court about the funds. And they're going to have to deal with that. That rehabilitation is going to have to occur. However, we do need to keep in mind as we review his credibility what his credibility attends to and what it doesn't or isn't necessary for. And all the objective evidence, I think, once it is all out is going to be another focus that people need to look at. So you need to look at the forensic evidence, the injuries to both of the parties, the witness statements, the tape that talks about or on it has the person screaming for help for more than 45 seconds. I think when you look at all the evidence, not some, which is the way it is supposed to happen, that the attacks on Mr. Zimmerman's credibility are going to pale in comparison to the undeniable objective evidence."

### **CNN-PIERSMORGAN 7/17/2012**

<http://www.youtube.com/watch?v=vsGs0Gw-6n8&feature=plcp>

- A quote from witness #9 is shown, saying, "It started when I was six. He's about almost two years old than I am... he would reach under the blankets and try to do things and I would try to push him off but he was bigger and stronger and older...it was in front of everybody and I don't know how I didn't say anything but I just didn't know any better."
- O'Mara said witness #9 called police anonymously the day before and claimed the whole Zimmerman family was racist. He references the FBI interviews of some people that said Zimmerman was not a racist. He says because of this, her credibility is questionable. At approximately one minute and twenty-one seconds, O'Mara: "I would suggest that maybe her first statement suggests the racism questions her credibility so the next day she makes up allegations about sexual abuse."

### **WFTV (ORLANDO 9) 8/13/12**

<http://www.wftv.com/videos/news/raw-video-zimmermans-attorney-holds-news/vdM6X/>

- O'Mara: "I think the facts suggest in this case that what probably happened was my client was reacting to having his, having his nose broken, which I think is probably undisputed that he had a broken nose now".

### **Orlando Sentinel 9/29/2012**

- O'Mara: "The reality is, this case is supposed to be judged on George's belief, whether it was reasonable, that he was in fear of great bodily injury at Trayvon's hands".
- O'Mara: "I'm not concerned that he made those statements now, because I think there'll all pretty consistent".

- As to a drawing by a witness. O'Mara: "That's one of the most significant pieces of evidence."
- O'Mara: "His great-grandfather is black. He's a non-racist, yet there is a segment of this population who refuse to believe he's not racist because of what they've been fed." Is he a murderer? That has yet to be determined. It's questionable as to what happened and why and how."

**Miami Herald 5/2/2012**

- Regarding Defendant's Myspace page that makes disparaging comments about Mexicans. O'Mara acknowledged the posts cited by the Herald were written by Defendant.
- O'Mara talked about why he got into social media to respond to all the emails and phone calls. "He also said it would be irresponsible to ignore the robust debate taking place online about his client."

**Miami Herald 6/4/2012**

- Regarding Defendant / family members not disclosing money at bond hearing. O'Mara/West: Mr. Zimmerman understands that his mistake has undermined his credibility, which he will have to work to repair".

**Miami Herald 7/17/2012**

- Regarding Witness 9 statements about what Defendant did to her. O'Mara: it's a "side tornado that comes with a hurricane" "It's completely irrelevant, and now we will have to waste 50 hours on something that will never make it to a courtroom." "He denies it. He is saying it never happened."

**Miami Herald 9/20/2012**

- Regarding the book written by Defendant's friend. "O'Mara said he never heard about a struggle for the gun. He said he read a draft of the book before it was published, but felt asking Osterman to change details would amount to witness

tampering.” “I don’t like him talking about things George spoke to him about in confidence. I don’t like yet another statement of George’s out there for review. It’s more of a headache.”

- “Although he questioned whether Osterman’s memory is accurate, O’Mara admitted that between Zimmerman’s various interviews to police, his father and brother’s accounts to the press and now Osterman’s, there are several versions of what happened that night, but he characterized the discrepancies as surmountable obstacle. If everyone’s story was exactly the same, O’Mara said, then it would smack of a lie.” “We will be able to respond to the six, seven, eight different renditions of the story, how and why there are different statements.” “The jury is going to believe what the jury is going to believe.”

- (f) Defendant has created his own website dedicated to this case.
- (g) Defendant’s family members have created their own website dedicated to this case.
- (h) Defendant’s family members have discussed this case on national television and radio.
- (i) Defendant’s friends have written a book about the case and appeared on national television.

The State has no comment about Defendant and family members’ websites other than to say it will impact jury selection. Defense Counsel has made a point of distancing Defendant and the defense from Defendant’s website / twitter comments. The State is not asking the Court to prevent Defendant’s family and friends from talking to the media. The book written by Defendant’s friends and television interview with Dr. Phil was beneficial to the State.

## ARGUMENT

3. This case is set for trial on June 10, 2013.
4. This case continues to receive extensive pretrial publicity in the print and television media, as well on the internet, including social media.
5. The State and Defendant wish to be able to receive a fair trial.
6. This case should be tried in the courtroom and not in the media.
7. The Court has an obligation to preserve the integrity and fairness of the judicial process and can place limitations on lawyers involved in a case. "Muzzling lawyers (involved in a case) who may wish to make public statements to gain public sentiment for their clients has long been recognized as within the court's inherent power to control professional conduct. State ex rel. Miami Herald Publ. Co. v. McIntosh, 340 So. 2d 904 (Fla. 1977).
8. Since the first Gag Order Motion was heard, Defense Counsel has continued to talk about the case in person or through his legal website providing commentary, opinions, and encouraging comments about the case through social media.
9. Unless Defense Counsel stops talking to the media as described, in person or by use of the internet and social media websites, it will be impossible to select an impartial jury that has not been influenced by the biased comments of Defense Counsel.
10. The State would renew its Motion for Gag Order and pursuant to Rule 3.220 (l)(1), Florida Rules of Criminal Procedure, and Rule 4-3.6 of the Rules Regulating the Florida Bar, ask this Honorable Court to enter an order prohibiting any attorney involved with the prosecution or defense of this cause, any personnel employed or affiliated with said attorneys, and law enforcement personnel from making or releasing any extrajudicial statements to the media about the following: facts of this case, any evidence or the lack thereof in this case, the strength or weakness of the case, the credibility or the lack of credibility of any potential witnesses, opinions about guilt or innocence, and any appropriate or anticipated penalty.

WHEREFORE, the State requests this Honorable Court Grant this Motion.



CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email to Mark O'Mara, Esq. / Don West, Esq., Scott Ponce, Esq., Rachel E. Fugate, Esq., and by fax to Judge Debra S. Nelson (Judicial Assistant Tina Cannavino) this 25<sup>th</sup> day of October, 2012.

ANGELA B. COREY  
STATE ATTORNEY

By: 

Bernardo de la Rionda  
Bar Number: 365841  
Assistant State Attorney