

February 3, 2022

VIA E-MAIL

Re: False Judicial Crisis Network Advertisement About Arabella Advisors

Dear Station Manager:

We are counsel to Arabella Advisors. We write on behalf of Arabella Advisors regarding a blatantly false advertisement currently being run on your station by the Judicial Crisis Network (“JCN”).¹ The JCN advertisement falsely states that Arabella Advisors has “bankrolled” political campaigns, and falsely accuses Arabella Advisors of criminal activity in connection with those contributions. Therefore, under D.C. law, this advertisement is clearly defamatory and, furthermore, constitutes defamation per se. **Accordingly, your station must cease airing this advertisement immediately.**

The advertisement claims that “the President and the Senate were bankrolled by Arabella Advisors. A record amount of dark money - over a billion put them in office. So they’ll put up an Arabella judge, a liberal activist, a Biden rubber stamp. A huge sum, a huge payback.” There is no question that JCN is referring to Arabella Advisors, rather than a shorthand to its clients, as the advertisement repeatedly references Arabella Advisors and uses the Arabella Advisors’ logo. **These claims are demonstrably false.** Arabella Advisors did not contribute to President Biden nor any candidates for U.S. Senate, nor did it contribute to electoral efforts to support them. What’s more, Arabella Advisors never engaged in a *quid pro quo* of providing contributions in exchange for a Supreme Court nomination.

Arabella Advisors is a Certified B Corporation that provides administrative and operational support services to nonprofit organizations.² While it has organizations as clients that make political contributions and expenditures, as a professional services firm, Arabella Advisors neither controls nor directs how those organizations spend their funds. Not only has Arabella Advisors never contributed to federal candidates, but as a corporation it would also be illegal for them to do so.³ Even if, however, the JCN advertisement is meant to imply that Arabella Advisors “bankrolled” independent efforts to help President Biden and Senate candidates be elected, that is also false. **Arabella Advisors does not make donations or contributions in connection with**

¹ A copy of the JCN advertisement is available here, <https://youtu.be/Q5UW66RoyM>.

² *Our Story*, ARABELLA ADVISORS, <https://www.arabellaadvisors.com/company/our-story/>.

³ See 11 C.F.R. § 114.2.

elections. It is simply false that it “bankrolled” any electoral efforts If JCN would like to accurately describe political contributions or expenditures by Arabella Advisors’ *clients*, it is free to do so. It is not free to falsely claim that Arabella Advisors itself, a private company, is the source of those funds.

As a private corporation, Arabella Advisors is not a public figure under *New York Times v. Sullivan* and need not show actual malice.⁴ Rather, for a private entity to prove defamation in the District of Columbia, the offending party must have (1) made a false and defamatory statement; (2) the party must have published the statement without privilege to a third party; (3) the party’s fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.⁵ “[A] publication is considered defamatory ‘if it tends to injure plaintiff in his trade, profession or community standing, or lower him in the estimation of the community.’”⁶ Here, JCN undeniably made a false and defamatory statement by claiming that “the President and the Senate were bankrolled by Arabella Advisors” and clearly published the statement without privilege to a third party by paying to run the advertisement on your station. Further, in publishing the advertisement, JCN’s actions amounted to at least negligence given the brazen disregard for the publicly available information related to Arabella Advisors,⁷ including publicly available contribution history made available via the Federal Election Commission, and caused Arabella Advisors special harm by alleging plainly false statements and suggesting criminal activity – all statements that could easily injure Arabella Advisors in its trade, profession, and standing in the community. Therefore, there is no question that this advertisement is defamatory under D.C. law.

Furthermore, Arabella Advisors has certainly never given nor promised contributions in exchange for the “huge payback” of an “Arabella judge” on the Supreme Court. There is simply no basis for these malicious claims. Under federal law anyone who “corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent to influence any official act” is subject to monetary penalties and imprisonment of up to fifteen years.⁸ By claiming that Arabella Advisors gave President Biden and U.S. Senators “over a billion” dollars in exchange for a “huge payback” of “an Arabella judge,” JCN falsely accuses Arabella Advisors of criminal activity.

⁴ See *Doe No. 1 v. Burke*, 91 A.3d 1031, 1044 (D.C. 2014) (stating if the entity alleging defamation is a public figure, the entity must show by clear and convincing evidence that the defendant’s defamatory statement was published with actual malice).

⁵ *Rosen v. Am. Israel Pub. Affs. Comm., Inc.*, 41 A.3d 1250, 1256 (D.C. 2012).

⁶ *Olinger v. Am. Sav. & Loan Ass’n*, 409 F.2d 142, 144 (D.C. Cir. 1969) (quoting *Afro-Am. Pub. Co. v. Jaffe*, 366 F.2d 649, 654 (D.C. Cir. 1966)).

⁷ See, e.g., ARABELLA ADVISORS, <https://www.arabellaadvisors.com/company/our-story/>.

⁸ 18 U.S.C. § 201(b). “Public official” means “Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.” *Id.* § 201(a)(1).

Therefore, this advertisement also constitutes defamation per se⁹ and your station must cease airing this advertisement immediately.

In addition to the blatant falsity of the JCN advertisement, the advertisement also depicts the Arabella Advisors logo at seconds 16 and 28. In doing so, JCN is infringing on Arabella Advisors' trademark, which is further cause to remove this advertisement from your station immediately. Broadcasters have a legal obligation to cease airing advertisements that infringe on trademarks.¹⁰

Unlike candidates, independent organizations like JCN do not have a "right to command the use of broadcast facilities."¹¹ Because you need not air this advertisement, your station bears responsibility for its content when you do grant access.¹² Moreover, you have a duty "to protect the public from false, misleading or deceptive advertising."¹³ Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license.¹⁴

Accordingly, we demand that you immediately stop airing the advertisement. Given JCN's complete disregard for the truth and the damage caused by continuing to air the ad, we expect an immediate response. We expressly reserve the right to pursue any and all available legal and equitable remedies, including but not limited to, instituting formal proceedings against your station.

Thank you for your attention to this matter, and please contact us immediately at 202-968-4666 to confirm that this advertisement is no longer appearing on your station.

Very truly yours,

Ezra W. Reese
Emma Olson Sharkey
Emma R. Anspach
Counsel to Arabella Advisors

⁹ *Raboya v. Shrybman & Associates*, 777 F.Supp. 58, 60 (D.D.C. 1991) ("A defamatory publication need only be injurious to the reputation of another to constitute libel, while libel per se requires an actual imputation of a criminal offense.").

¹⁰ 15 U.S.C. § 1114(2)(b).

¹¹ See *CBS v. DNC*, 412 U.S. 94, 113 (1973).

¹² See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).

¹³ Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).

¹⁴ *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).