

December 10, 2024

By First-Class Mail and Email

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Re: Request That the DSBA's Committee on Response to Public Comment Respond Promptly to Dangerous and Inaccurate Attacks on Chancellor McCormick By Elon Musk

Dear Ms. Dugan, Mr. Kirk, and Mr. Spence:

We write to you in your capacity as the Committee on Response to Public Comment of the Delaware State Bar Association (the "Committee") to respectfully ask that the Committee speak publicly—and promptly—to defend Chancellor McCormick from unfair attacks levied by Elon Musk.

We are a group of lawyers, legal academics, and others who practice in, write about, or otherwise focus on the work of the Delaware Court of Chancery. We come from different backgrounds and perspectives, but we all share a strong belief that the Court of Chancery is a uniquely valuable asset, both to the State of Delaware and the corporate community writ large. We believe that the expert, hard-working, and outstanding members of the Court of Chancery as well as other members of the Delaware judiciary deserve vocal support from the bar when they are the subjects of unfair attack.

The Committee has given staunch support to Chancellor McCormick and former Chancellor Bouchard in the face of unfair attacks from a disappointed litigant in the *TransPerfect* matter. That scenario is now playing out again with substantially higher stakes: the disappointed litigant is Mr. Musk, the world's richest man and the owner of one of the world's most prominent social media websites.

As you know, in January 2024, Chancellor McCormick invalidated a substantial compensation

package awarded to Mr. Musk.¹ In December 2024, she rejected Mr. Musk’s motion to modify that judgment based on a subsequent stockholder vote.²

In response, Mr. Musk has launched vicious and deeply unfair attacks on Chancellor McCormick, which he has shared with his more than 206 million followers on social media. Mr. Musk has:

- Accused Chancellor McCormick of “absolute corruption.”³
- Claimed that Chancellor McCormick is “totally crazy.”⁴
- Claimed that Chancellor McCormick is “a radical far left activist cosplaying as a judge.”⁵
- Claimed that Chancellor McCormick “is an activist posing as a judge.”⁶
- Responded “Absolutely” to a post claiming that Chancellor McCormick’s decision was “literal corrupt bullshit.”⁷
- Publicly thanked a friend for writing that “DELAWARE IS A DISGRACE” and “WE CANT [sic] HAVE THE CORPORATE STANDARD BE A KANGAROO FUCKING COURT.”⁸
- Reposted, to his followers, a claim that “Judge [sic] McCormick is an activist judge at its [sic] worst.”⁹

These accusations—which have been widely reported by the media¹⁰—are dangerous, defamatory, and one-hundred-percent false. As the Committee has previously written, in response to attacks arising from the *TransPerfect* matter, “Chancellor McCormick is guilty of nothing other than doing

¹ *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024).

² *Tornetta v. Musk*, C.A. No. 2018-0408-KSJM (Del. Ch. Dec. 2, 2024) (slip op.).

³ Elon Musk, X (Dec. 2, 2024), <https://x.com/elonmusk/status/1863728056474419580>

⁴ Elon Musk, X (Dec. 2, 2024), <https://x.com/elonmusk/status/1863761611925721561>

⁵ Elon Musk, X (Dec. 3, 2024), <https://x.com/elonmusk/status/1863984642216329473>

⁶ Elon Musk, X (Dec. 2, 2024), <https://x.com/elonmusk/status/1863740336331170304>

⁷ Elon Musk, X (Dec. 2, 2024), <https://x.com/elonmusk/status/1863736644773220593>

⁸ Elon Musk, X (Dec. 2, 2024), <https://x.com/elonmusk/status/1863781737878216939>

⁹ Cathie Wood, X (Dec. 2, 2024), <https://x.com/CathieDWood/status/1863742043362824674> (reposted by Musk).

¹⁰ See, e.g., Ariel Zilber, *Elon Musk rips ‘totally crazy’ ruling by Delaware judge denying his \$100B Tesla pay package: ‘Absolute corruption’*, N.Y. POST (Dec. 3, 2024); Jef Feely and Dana Hull, *Delaware Judge Who Rejected Musk’s Payday Faces Backlash*, BLOOMBERG (Dec. 3, 2024).

her job, and doing it well. Delaware’s judiciary is recognized, year after year, as the finest in the nation. ... Chancellor McCormick is good for Delaware.”¹¹

As you know, the Delaware Judges’ Code of Judicial Conduct prevents Chancellor McCormick from speaking out to defend herself against these appalling attacks from one of the most powerful men in the world. As codified in Rule 8.2, comment 3 of the Delaware Lawyers’ Rules of Professional Conduct, we believe that the bar has an obligation to speak in her defense.¹² We respectfully ask the Committee to do so, promptly.

Sincerely,

*[Signatures begin on the following page]*¹³

¹¹ Delaware State Bar Association, *The Delaware Bar Stands with Chancellor McCormick* (Apr. 10, 2024).

¹² Del. Lawyers’ R. Prof. Cond. 8.2, cmt. 3 (“To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.”).

¹³ This is a complete list of signatories as of 6:00 p.m. on December 10, 2024. Additional signatories may continue add their names at the sign-up form here: <https://forms.gle/TLtDNtn3FR6TxXAUA>.

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