

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

JASMIN HERNANDEZ,

Plaintiff,

v.

BAYLOR UNIVERSITY BOARD OF
REGENTS; ART BRILES, in his official
capacity as head football coach; IAN
MCCAWE, in his official capacity as
athletic director,

Defendants.



Civil Action No. 6:16-CV-00069-RP-JCM

(Oral Argument Requested)

**DEFENDANT'S MOTION TO STOP PLAINTIFF'S LAWYER FROM
CONTINUED VIOLATION OF THE TEXAS DISCIPLINARY RULES OF
PROFESSIONAL CONDUCT SUBJECT TO DEFENDANT'S
PREVIOUSLY FILED MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Art Briles, named and sued in his official capacity as Head Football Coach at Baylor University ("Coach Briles") and, without waiving his previously filed Motion to Dismiss pursuant to Federal Rule 12(b)(6) and subject thereto, files this **Motion to Stop Plaintiff's Lawyer from Continued Violation of the Texas Disciplinary Rules of Professional Conduct** and in support thereof would show the Court as follows:

A. FACTUAL BACKGROUND

1. On June 10, 2016, the media reported that Coach Briles and Baylor University ("Baylor") wanted to settle this pending suit against them. Coach Briles did **NOT** and does **NOT** want to settle this case because he did not do anything wrong.
2. On June 16, 2016, Coach Briles' attorney learned that a mediation of this case was set the next day on Friday, June 17, 2016. Coach Briles was not even a party included in the

mediation proceeding and was given **NO** notice to attend by Baylor or Plaintiff. (*See, e.g., Documents: BU, Briles Want to Settle Rape Victim's Lawsuit Quickly*, GRAY TELEVISION 10 KWTX, (June 10, 2016), <http://www.kwtx.com/content/news/Documents-BU-Briles-want-to-settle-rape-victims-lawsuit-quickly-382526751.html> (Attached as Ex. A).

3. Coach Briles' attorney, Ernest Cannon filed an emergency Motion for Substitution of Counsel. Up until then, Baylor attorneys were representing Coach Briles and Baylor. Coach Briles wanted his own lawyer. (*See* Dkt. No. 15.)

4. Counsel for Plaintiff Hernandez, Alexander Zalkin, in direct violation of the Texas Disciplinary Rules of Professional Conduct,¹ has waged a "media war" against Coach Briles

- **HEADLINE: "Attorney says Art Briles broke promise to apologize to rape victim."** ESPN (June 20, 2016), http://espn.go.com/espn/otl/story/_/id/16363944/attorney-lambastes-ex-baylor-coach-art-briles-reneging-deal-apologize-rape-victim (Attached as Exhibit

B). The article states:

The attorney for a sexual assault victim suing Baylor University is claiming that former head football coach Art Briles backed out of a pledge to support and apologize to the victim, who was raped by a Baylor football player in 2012. The issue so angered the woman, Jasmin Hernandez, and her attorneys that they released a statement detailing the interaction on Monday." (emphasis added)

- **HEADLINE: "Attorney: Art Briles broke promise to apologize to Baylor sexual assault victim."** USA TODAY (June 21, 2016) <http://ftw.usatoday.com/2016/06/attorney->

¹ The "Standards of Professional Conduct" section of the Local Court Rules of the United States District Court for the Western District of Texas states, "Members of the bar of this court and any attorney permitted to practice before this court must comply with the standards of professional conduct set out in the Texas Disciplinary Rules of Professional Conduct." *See* W.D.Tex. R. AT-7. The "Trial Publicity" section of the Texas Disciplinary Rules of Professional Conduct states, "a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement." *See* Tex. D.R.P.C. 3.07.

art-briles-broke-promise-to-apologize-to-baylor-sexual-assault-victim (Attached as Exhibit C).

The articles states:

‘Briles used the threat of helping Jasmin in her lawsuit against Baylor as leverage to negotiate his wrongful termination claim against Baylor,’ **Zalkin said. ‘He doesn’t care about victims. He never cared about victims. He’s using victims. He used them to help build up his football program, and now he’s using Jasmin to leverage more money out of Baylor.’** (emphasis added)

5. This sounds like a final argument that might be made in Court if proved. There is no truth in these inflammatory statements. **Final arguments should be made in Court based on evidence only, not in the media.** No evidence supports it and doing so in the press is a violation of Rule 3.07(a) of the Rules of Professional Conduct.² After Coach Briles defends these claims in Court, we will challenge Lawyer Zalkin to make these arguments in Court.

Hernandez’s attorney, Alexander Zalkin has violated Rule 3.07(a) and (b)(1) and (5) of the Rules of Professional Conduct in an effort to damage the character, credibility, and reputation of Coach Briles with false statements, inadmissible in any trial of the present lawsuit. Plaintiff’s attorneys prepared and published a press release or statement to the media, with the intent that same be republished to other media, that **Coach Briles made some promise to attend a mediation and conduct himself in a specific manner at that mediation, for the sole purposes of defaming the character, credibility, and reputation of Coach Briles and deprive him of a fair trial in a Court of law.** Communications relating to a civil dispute made by a participant in mediation, whether before or after the institution of formal judicial proceedings, are strictly confidential, and not subject to disclosure, and may not be used as evidence against the

² Rule 3.07(a) of the Rules of Professional Conduct provides in pertinent part that “in the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing adjudicatory proceeding.” Subparagraph (b) of Rule 3.07 states that “a lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:

- (1) the character, credibility, reputation...of a party;
- (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

participant in any judicial or administrative proceeding pursuant to Tex. Civ. Prac. & Rem. Code §154.073(a).

6. Coach Briles never spoke with either of the attorneys for the Plaintiff in this litigation. He made no promise to the Plaintiff or anyone associated with her. Because of the Texas Disciplinary Rules of Conduct discussed above, Coach Briles is unable to defend himself in the media against these wrongful attacks by counsel for Plaintiff Hernandez.³

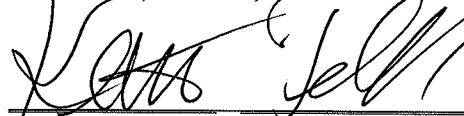
II. RELIEF REQUESTED

WHEREFORE, Defendant Art Briles, sued in his former capacity as Head Football Coach of Baylor, prays for the following;

1. A Court Order requiring counsel for Plaintiff Hernandez to stop continued violation of the Texas Disciplinary Rules of Professional Conduct by ceasing all public dissemination of information regarding this case or Defendant Art Briles that is calculated to prejudice him in this or any other matter and deprive him of a fair trial.
2. That the Court consider holding Lawyer Zalkin in violation of our Rules of Ethics and in violation of Confidentiality and Rules of Mediation and remove him from this case.

Respectfully Submitted,

TEKELL, BOOK, ALLEN & MORRIS, L.L.P.



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³ See Tex. D.R.P.C. 3.07.

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***COUNSEL FOR DEFENDANT ART BRILES
SUED IN HIS FORMER OFFICAL CAPACITY
AS HEAD FOOTBALL COACH***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon opposing counsel on July 6, 2016, via the Court's ECF/CMF electronic filing and service system as follows:



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