

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ROBERT E. MIELNICKI

Plaintiff

v.

JASON DEPP

Defendant.

CIVIL DIVISION

Case No.: GD-19-012751

CIVIL ACTION COMPLAINT

Filed on Behalf of:  
Plaintiff

Counsel of Record for  
Plaintiff:  
Karissa N. Murphy, Esquire  
PA ID No. 325780

428 Forbes Avenue  
Suite 400  
Pittsburgh, PA 15219  
Phone: 412.288.0300  
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FILED

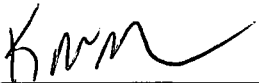
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CLERK OF COURT RECORDS  
CIVIL DIVISION  
ALLEGHENY COUNTY PA

**NOTICE TO PLEAD**

TO: Defendant

You are hereby notified to file a written response to the enclosed Complaint within twenty (20) days from the date of service hereof or a judgment may be entered against you.

By:   
Karissa N. Murphy, Esquire

OP5\$ASHLEY01  
6 September 2019  
10:15:41  
GD-19-012751

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

CIVIL DIVISION

ROBERT E. MIELNICKI

Case No.:

Plaintiff

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Defendant.

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED in court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are WARNED that IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

**LAWYER REFERRAL SERVICE  
The Allegheny County Bar Association  
11th Floor Koppers Building  
436 Seventh Avenue  
Pittsburgh, Pennsylvania 15219  
Telephone: (412) 261-5555**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
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**CIVIL ACTION COMPLAINT**

AND NOW, come the Plaintiff, Robert E. Mielnicki, by and through his attorney, Karissa N. Murphy, Esquire, and submits the following:

1. Plaintiff, Robert E. Mielnicki (hereinafter "Plaintiff"), is an adult individual and an attorney, with a business address of 428 Forbes Avenue, Suite 400, Pittsburgh, PA 15219. Plaintiff is an attorney in good standing licensed to practice by the Pennsylvania Supreme Court, before the United States District Court for Western Pennsylvania, before the Third Circuit Court of Appeals and before the United States Supreme Court. Plaintiff's primary area of practice is criminal law.

2. Defendant, Jason Depp (hereinafter "Defendant Depp"), is an adult individual who, at all times material hereto, resided with his mother at 238 Coral Drive, Pittsburgh, PA 15241. Defendant is also a "Google Local Guide" meaning that by providing reviews for businesses, he can receive some unspecified benefit. In his capacity as a "Google Local Guide," Defendant has given poor reviews to approximately sixteen (16) or

more businesses.

3. As of February 15, 2019, Plaintiff had a presence on Google that was generating considerable revenue. Google, of course, is a dominant search engine for those looking for services and other things online.

4. There are several ways to gain business from Google. One is pay per click where the person offering services will pay Google a certain amount to appear on Google in certain designated spots. Including the top of the page for the relevant search results. As of February 15, 2019, Plaintiff did no pay per click advertising for criminal law.

5. Google also offers local listings and the top three (3) of these listings are universally accepted as a significant source of calls and revenue for those businesses who can be placed there. Google assigns a rating up to 5.0 for the attorneys, who appear in these local listings. It is difficult, if not impossible, to see Google's rating for the attorney, other than as it appears by the local listings. The rating is prominent by the local listing.

6. Another way Google helps those offering services is what is known as organic listings. These are simply where Google places the top search results. A placement on the first page is helpful to a business. Plaintiff appears on the first page for most organic searches for criminal attorneys located in Pittsburgh.

7. Google permits users to see the reviews based on "newest", "highest rating" and "lowest rating".

8. For a prolonged period of time, Plaintiff had the number one (1) or two (2) listing for "Pittsburgh Criminal Attorney" search and a top three (3) listing for other related search terms. Displayed prominently next to such listing was a 5.0, which was based on

legitimate reviews from clients of Plaintiff. Plaintiff was receiving three (3) calls a day from said listing.

9. In 2011 or 2012, Defendant consulted with Plaintiff about a lawsuit, in which he was named as a defendant. (Keller v. Depp and Saunders, Allegheny County GD No. 11-11686). Keller alleged that on August 5, 2009, Defendant punched him twice in the jaw causing him injury. Said lawsuit was initiated by writ of summons on June 24, 2011. A complaint was filed on September 1, 2011. Plaintiff was not involved in the case during the filing of the initial pleadings.

10. On October 3, 2011, Attorney David M. McQuiston, paid by Trustguard Insurance, filed an Answer and New Matter for Defendant. Someone turned the aforementioned lawsuit into insurance and notified Trustguard, the homeowner's insurance for Defendant's mother. Such person was not Plaintiff.

11. On November 22, 2011, a Petition to Intervene was filed by Trustguard Insurance Company, the homeowner's insurance company for the house owned by Defendant's mother, with whom defendant resided. Keller was clearly alleging that Defendant assaulted him for no reason. Defendant was alleging that he acted in self-defense. Trustguard was represented by Attorney Michael Marando from Youngstown, Ohio. McQuiston was apparently retained to represent Defendant under a reservation of rights.

12. Around mid-December of 2011, Defendant consulted with Plaintiff. Defendant had notice, of some kind, that Trustguard may not continue to defend and may not indemnify Defendant. Defendant brought this pleading to Plaintiff during Defendant's initial consultation with Defendant. Said pleading had a time limit in which to respond.

13. Defendant paid Plaintiff an initial retainer, which was by check written by Defendant's mother.

14. Plaintiff knew that no insurance would provide coverage for an intentional tort but, if Plaintiff was contending that he acted in self-defense, there might be coverage. Such was unlikely though. On April 9, 2012, Plaintiff filed a response to the Petition to Intervene, which was really a motion seeking declaratory relief that Trustguard owed Defendant no coverage. Defendant made it clear that he did not completely understand what was going on.

15. Given the number of parties involved in Keller's lawsuit against Defendant, proceeding to trial would likely have cost more than \$10,000.00 in legal fees and costs for Defendant.

16. Contrary to Defendant's assertion, Plaintiff never informed him that the suit would likely be dropped but instead informed Defendant that Keller's attorney was probably working pursuant to a contingency fee agreement, and advancing costs, and that should there be no insurance coverage, that attorney would likely have no interest in representing Keller.

17. Defendant verified the response referenced in paragraph fourteen (14) of this Complaint, indicating that he read it.

18. Based upon information Plaintiff obtained, including from sitting through a deposition of Keller and his wife, Defendant had a potential for exposure and Plaintiff was trying to protect him. Depositions of the parties took place in mid-2012. Plaintiff, at some point, after the punching of Keller, jokingly asked him how his jaw was. Keller was somewhat badly hurt.

19. Often, where there is questionable insurance coverage, the insurance company

will just settle with the plaintiff. Plaintiff knows this as he is a personal injury lawyer.

20. Plaintiff informed Defendant, who wanted to sue Keller, that he should first win the suit brought by Keller, and then consider suing Keller for wrongful use of civil proceedings. At no point, did Plaintiff express a desire to sue Keller on Defendant's behalf, but would have considered such if the lawsuit brought by Keller against Defendant resulted in a verdict in favor of Defendant.

21. Trustguard eventually pressed the issue of no coverage and sought summary judgment on October 17, 2013

22. Plaintiff was fired by Defendant at some point in mid to late 2013 and Attorney G. Clinton Kelly entered his appearance on November 18, 2013. Attorney Kelly strangely filed for summary judgment, on behalf of Defendant, which was denied in February of 2014. Attorney Kelly, in a very long pleading, consented to Trustguard's motion and Trustguard was, thereafter, relieved of any obligation to Defendant.

23. On May 19, 2014, Attorney Kelly withdrew his appearance. Defendant posted a very negative review of Kelly on Google, but it has since been removed.

24. The case has sat dormant since and no attorney is currently representing Defendant in Allegheny County GD 11 – 11686. There has been no docket activity on Keller v. Depp since May 19, 2014.

25. On February 15, 2019, Defendant posted to Google that Plaintiff represented him and that he was not pleased with such representation. Defendant, however, falsely alleged:

- a. That he hired Plaintiff "to release insurance from liability" despite verifying the response to Trustguard's motion;

- b. That Plaintiff did nothing “to argue self-defense” which is blatantly false as one can see from the pleading Plaintiff did file for Defendant, which Defendant verified, the questions he presented to Keller at his deposition etc. At every opportunity, Plaintiff argued self-defense for Defendant and would have argued it vigorously had Defendant continued to retain him;
- c. That Defendant was entitled to the benefit “Pa.Stand Your Ground Law”;
- d. That Plaintiff’s brief representation of him was a “nightmare”. The case against Defendant has been dormant for five (5) years;
- e. That Plaintiff stated that he was “confused on what (Defendant) had hired him for.”; and
- f. The case “had already been declared self-defense.” The case is still unresolved.

26. While Plaintiff was prepared to let this go, in mid-March of 2019, Defendant decided to post a negative review of G. Clinton Kelly. In said review, Defendant stated that he consulted G. Clinton Kelly about “concerns about the conduct of my lawyer Robert Mielnicki.” At some point, on March 19, 2019 or March 20, 2019, Defendant deleted his negative review, or G. Clinton Kelly, or Google deleted it for inappropriate conduct. The post about G. Clinton Kelly, however, demonstrates that Defendant is acting with malice.

27. It is believed that Defendant edits his review of Plaintiff. In its most recent form:

- a. Defendant falsely asserts that Plaintiff failed to have his case dismissed based upon some fictitious “stand your ground” law despite the fact that Attorney Kelly failed to have the case dismissed in 2014;
- b. Defendant falsely asserts that he should sue Plaintiff and that some attorney, presumably Attorney Kelly, told him that Plaintiff acted unprofessionally. Defendant falsely asserts that Plaintiff’s role was to file a counterclaim against Keller, although he does not specify what counterclaim would be filed at the present time for his breaking Keller’s jaw;
- c. Defendant falsely asserts that he hired Plaintiff to sue Keller for defamation, however, Plaintiff would have never told Defendant he would pursue said



- claim as Keller's pleading was privileged, Defendant admitted to punching Keller in the jaw. Defendant falsely asserts that Plaintiff told him the case would likely never make it to trial, which ironically is what is happening as the case has been dormant since 2014; and
- d. Defendant falsely asserts that the police declared his actions self-defense. Even if some random police officer concluded this, such would not be a bar to Keller's lawsuit. Defendant again falsely asserts some fictitious "stand your ground" law. General principles of self-defense in Pennsylvania might be construed as stand your ground" laws. In the only pleading that Plaintiff ever filed for Defendant, read and verified by Defendant, Plaintiff asserted that Defendant acted in self-defense.

28. To the extent that Plaintiff understands Defendant's claim against him, it is premised on some belief that when he paid Plaintiff a modest retainer, Plaintiff was supposed to defend him in the action brought by Keller and pursue some unspecified legal action on his behalf against Keller. Plaintiff's position is that he punched Keller, when Keller approached him in what may have appeared to him to be a threatening manner. Keller, however, did not strike or offensively touch Plaintiff. At most, Plaintiff would have had some weak action for the tort of assault, yet the damage would have been at most, some pressure to his fist when he struck Keller in the face. Plaintiff made it clear to Defendant that, should Keller's lawsuit be dismissed, or a verdict be entered in Defendant's favor, he could pursue a lawsuit then for wrongful use of proceedings. At no point did Plaintiff ever indicate to Defendant that he would, at the time he was retained, file a lawsuit on his behalf against Keller.

29. As a result of Defendant's defamatory review, Plaintiff's Google rating dropped to a 4.7 from a perfect 5.0. Plaintiff has since returned to a rating of 4.9. While Plaintiff was a 5.0, he received approximately three (3) to four (4) calls from prospective clients each day. Since Defendant posted his defamatory review, he does not receive one (1)

such call a day.

30. In late February or early March of 2019, Google removed Defendant's defamatory review. On March 27, 2019, said review was either edited or Defendant posted another, this time asserting many of the defamatory things found in the first review, referenced in paragraphs twenty-five (25) and twenty-seven (27) of this Complaint. This review asserted:

- a. That Plaintiff was hired to "release insurance from liability;
- b. That the case filed against Defendant should have been or should be dismissed under "Pa. Stand Your Ground Law."
- c. That Plaintiff said that "Keller is going to eventually drop this" when what Plaintiff said was that if there ended up being no insurance, it was likely Keller's attorney would not pursue the lawsuit; and
- d. During depositions (which took place in an attorney's office", there was a "cookout".

31. Following the review left, which is set forth in paragraph in paragraph twenty-three (23), Plaintiff's Google rating dropped from a renewed 5.0 to a 4.9. It became apparent to Plaintiff that Defendant would engage in targeted harassment of him.

32. Plaintiff corresponded with Defendant Google, which indicated that since Defendant's posting did not appear to have originated from spam or a "bot" essentially, Defendant's defamatory review complied with Google's standards.

33. Plaintiff sent Google Defendant's verification, parts of the pleadings filed in Keller's lawsuit against Depp, and invited Google to look at the online docket for said case.

34. Defendant keeps editing his review of Plaintiff and Defendant Google each time, makes Defendant's defamatory review the newest, making it nearly impossible for Plaintiff to escape the harm of Defendant's defamatory review. Defendant is engaged in cyberstalking at this point, and Defendant Google refuses to stop or curtail it.

**COUNT I – PLAINTIFF V. DEFENDANT DEPP - LIBEL**

35. Plaintiff incorporates paragraphs one (1) through thirty – four (34) as though set forth at length herein.

36. Defendant’s Google review(s) was/were defamatory and/or portrays Plaintiff in a false light.

37. Defendant published these statements with malice.

38. Defendant published these statements and made these claims with the intent to damage Plaintiff.

39. The damage to Plaintiff, given his Google presence, and provable number of calls from such, is real and substantial.

40. Defendant’s review was false and/or portrayed Plaintiff in a false light.

41. The review was published by Defendant and done so in the worst place possible for Plaintiff.

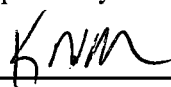
42. The review was clearly applicable to Plaintiff and mentioned Plaintiff by name.

43. Plaintiff has sustained a special kind of harm. Defendants review is libel per se.

44. While Defendant can express dissatisfaction with Plaintiff, he has no privilege to lie, or proceed in reckless indifference about facts, while doing so.

WHEREFORE, Plaintiff seeks judgment in his favor for compensatory and punitive damages, plus attorney’s fees and costs, in an amount in excess of \$35,000.

Respectfully submitted,

  
\_\_\_\_\_  
Karissa N. Murphy, Esquire  
Attorney for Plaintiff

PA ID No. 325780  
428 Forbes Avenue, Suite 400  
Pittsburgh, PA 15219  
(412) 288-0300

**VERIFICATION**

The undersigned, Robert Mielnicki, avers that the statements of fact contained in the attached **Complaint** are true and correct to the best of my information, knowledge and belief and are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

9/6/19  
Date

  
\_\_\_\_\_  
Robert E. Mielnicki

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Karissa Murphy

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Attorney No. (if applicable): 325780

# Supreme Court of Pennsylvania

Court of Common Pleas  
Civil Cover Sheet

Allegheny County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint     
  Writ of Summons     
  Petition  
 Transfer from Another Jurisdiction     
  Declaration of Taking

Lead Plaintiff's Name:

Robert E. Mielnick

Lead Defendant's Name:

Jason Depp

Are money damages requested?  Yes  No

Dollar Amount Requested:  within arbitration limits  
 outside arbitration limits  
 (check one)

Is this a Class Action Suit?  Yes  No

Is this an MDJ Appeal?  Yes  No

Name of Plaintiff/Appellant's Attorney:

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT** (do not include Mass Tort)

- Intentional  
 Malicious Prosecution  
 Motor Vehicle  
 Nuisance  
 Premises Liability  
 Product Liability (does not include mass tort)  
 Slander/Libel/ Defamation  
 Other: Defamation

**CONTRACT** (do not include Judgments)

- Buyer Plaintiff  
 Debt Collection: Credit Card  
 Debt Collection: Other  
  
 Employment Dispute: Discrimination  
 Employment Dispute: Other  
  
 Other:

**CIVIL APPEALS**

- Administrative Agencies  
 Board of Assessment  
 Board of Elections  
 Dept. of Transportation  
 Statutory Appeal: Other  
  
 Zoning Board  
 Other:

**MASS TORT**

- Asbestos  
 Tobacco  
 Toxic Tort - DES  
 Toxic Tort - Implant  
 Toxic Waste  
 Other:

**REAL PROPERTY**

- Ejectment  
 Eminent Domain/Condemnation  
 Ground Rent  
 Landlord/Tenant Dispute  
 Mortgage Foreclosure: Residential  
 Mortgage Foreclosure: Commercial  
 Partition  
 Quiet Title  
 Other:

**MISCELLANEOUS**

- Common Law/Statutory Arbitration  
 Declaratory Judgment  
 Mandamus  
 Non-Domestic Relations Restraining Order  
 Quo Warranto  
 Replevin  
 Other:

**PROFESSIONAL LIABILITY**

- Dental  
 Legal  
 Medical  
 Other Professional: