



McConnell Siderius Fleischer Houghtaling & Craigmile, LLC

Traci L. Van Pelt
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March 9, 2005

Mr. Charles Clements
1741 Dallas Street
Aurora, CO 80010-2018

Re: Clements v. Chapman, et al.
Our File: 5545.0006

Dear Mr. Clements:

Pursuant to your request to Ms. Meghan Pound of our offices, please find enclosed a copy of Defendant Katherine Grier's Motion for Rule 11 Sanctions which was mailed to you on February 25, 2005 and filed with the Court.

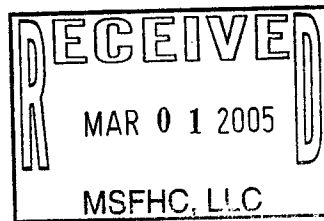
Sincerely,

A handwritten signature in cursive script that reads 'Patricia S. Bedingfield'.

Patricia S. Bedingfield
Legal Assistant to Traci L. Van Pelt
and Meghan E. Pound

/pat
Enclosure

cc: Katherine Grier, Esq. (via email)
Lisa Hudson, Esq. (via email)



COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-RB-2455 (BNB)

FILED
UNITED STATES DISTRICT COURT
DENVER, COLO.

FEB 28 2005

GREGORY C. LANGHAM
CLERK

CHARLES H. CLEMENTS,

Plaintiffs,

v.

JANIS E. CHAPMAN, THOMAS C. "DOC" MILLER and KATHERINE GRIER,

Defendants.

DEFENDANT KATHERINE GRIER'S MOTION FOR RULE 11 SANCTIONS

Defendant Katherine Grier, by her attorneys, McConnell Siderius Fleischer Houghtaling & Craigmile, LLC and pursuant to FED. R. CIV. P. 11, respectfully move for sanctions against Plaintiff. Defendant Grier takes the exceptional step of seeking Rule 11 sanctions because Plaintiff's Complaint contains both claims and allegations that are wholly unfounded in law or in fact. Even cursory legal research and minimal factual inquiry by Plaintiff would have revealed the utter inappropriateness of the claims against this Defendant as well as the unfounded factual allegations found throughout the Complaint.

In addition, upon receipt of Plaintiff's Complaint, a "safe-harbor/Rule 11 letter" was sent to Plaintiff, identifying the bases for this Motion. Notwithstanding this "fair warning," Plaintiff has persisted in asserting wholly frivolous and groundless claims against Defendant Grier despite previous warnings from undersigned counsel, despite the receipt of a safe-harbor letter, and despite receipt of Defendant's Motion to Dismiss. This case presents the rare situation where sanctions are appropriate, and indeed, are mandatory if Plaintiff is to be deterred

from continued pursuit of utterly groundless and frivolous litigation.

Certificate of Compliance with D.C.COLO.L.R. 7.1(A) and FED. R. CIV. PRO. 11(c)

Pursuant to the safe harbor provisions of Fed. R. Civ. P. 11(c), the instant motion was served on Plaintiff on February 1, 2005. (Exhibit 1) Plaintiff has failed, within 21 days, to withdraw the challenged allegations and claims, and has failed dismiss the Complaint as to Defendant Grier. Moreover, pursuant to the safe harbor provisions of Rule 11(c), a detailed letter was served on Plaintiff on December 30, 2004 related to the identical issues raised in this Motion. Under any interpretation of Rule 11(c), Plaintiff has been given numerous advance warnings of the frivolity of his actions; Plaintiff has remained undeterred.

I. INTRODUCTION

Plaintiff is *pro se*. His Complaint is eight pages long and 50 numbered paragraphs and eight "claims for relief." The Complaint is impossible to decipher, but it appears that the claims arise out of the dissolution of Plaintiff's marriage. Plaintiff was married to Victoria Lawler. Ms. Lawler filed for divorce in the District Court for Adams County, Colorado. Defendant Grier is Ms. Lawler's attorney. The dissolution action is still pending. Defendant Grier has never been Plaintiff's lawyer. At all times, she has represented a party who his directly adverse to Plaintiff. In the dissolution action, Plaintiff was initially represented by an attorney, Thomas Miller. Plaintiff has also sued Mr. Miller. The Honorable Janis E. Chapman is the Magistrate Judge for the Adams County District Court who handled portions of the dissolution action. Plaintiff has also sued Judge Chapman.

Plaintiff has attempted to amend his complaint. On January 14, 2005, Magistrate Judge Boyd N. Boland entered a recommendation denying Plaintiff's Motion to Amend, stating that

“the claims of the proposed complaint appear to be frivolous and vexatious.” Despite that recommendation, Plaintiff has not withdrawn his Complaint.

Plaintiff's Complaint is prolix and confusing. However, it can clearly be gleaned that this case arises out of a domestic relations dispute between Plaintiff and his former wife. Plaintiff obviously is dissatisfied with what occurred in the state court domestic relations proceedings. He seems to believe that he was denied parenting time because his attorney, Mr. Miller, his wife's attorney, Defendant Grier, and Judge Chapman, conspired to deprive him of his parenting rights and to extort money from him in the form of legal fees. It is undisputed that Defendant Grier is a lawyer in the private sector and is the lawyer retained by Plaintiff's ex-wife. She has never been Plaintiff's lawyer. At all times, she has represented the party directly adverse to the Plaintiff.

As a result of this alleged conduct, Plaintiff has initiated this case and asserted a number of claims against all defendants. Plaintiff alleges that Defendant Grier (as well as the other defendants) violated several of his rights under the United States Constitution, and alleges that Defendant Grier (as well as the other defendants) violated numerous federal statutes. He also has asserted claims for relief alleging that Defendant Grier (as well as the other defendants) violated several Colorado criminal statutes.

Importantly, Defendant Grier moved to dismiss Plaintiff's Complaint. It is undisputed that she is not a “state actor,” and cannot be liable under any theory asserted by Plaintiff. Moreover, Title 18 of the United States' Code – on which Plaintiff relies in his Complaint – is a criminal code and the sections relied upon by Plaintiff

cannot be used a basis to establish civil liability. Title 18 of the Colorado Revised Statutes is also criminal in nature and wholly inapplicable to Defendant Grier (as well as the other defendants).

Plaintiff alleged seven causes of action against Defendant Grier. The claims are unclear. In addition, while Plaintiff states many Constitutional and statutory provisions in support of his allegations the relevance of these statutes is equally unclear. The following chart attempts to organize the alleged basis for the claims Plaintiff has asserted against defendants generally and Defendant Grier specifically:

	CLAIM FOR RELIEF	Nature of Claim	Alleged Source of Law for Claim
1	1, 3, 5, 6, 7, 8	Violation of the First Amendment	Constitutional Claim
2	1, 4, 6, 7, 8	Violation of the Fourth Amendment	Constitutional Claim
3	1, 3, 5, 6	Violation of the Fifth Amendment	Constitutional Claim
4	1, 3, 6, 7, 8	Violation of the Sixth Amendment	Constitutional Claim
5	3	Violation of the Seventh Amendment	Constitutional Claim
6	1, 7, 8	Violation of the Eighth Amendment	Constitutional Claim
7	1, 2, 3, 4, 5, 6, 7, 8	Violation of the Fourteenth Amendment	Constitutional Claim
8	GA*, 1, 2, 3, 4, 5, 6, 7, 8	Constitutional Tort	42 U.S.C. §1983
9	GA, 1, 2, 3, 4, 5, 6, 7	Acted in concert under color of law to deprive Constitutional rights	42 U.S.C. §1985
10	GA, 1, 2, 3, 4, 5, 6, 7, 8	Knowledge of the law and did or witnessed wrongs and did not correct	42 U.S.C. §1986
11	1, 2, 3, 4, 5, 6, 7, 8	Civil damages for criminal acts	R.C. 1979

12	GA, 1, 2, 4, 7, 8	Conspiracy against rights	18 U.S.C. §241
13	GA, 1, 2, 4, 7, 8	Deprivation of rights in color of authority	18 U.S.C. §242
14	5	Does not exist	18 U.S.C. §572
15	2	Forbids importing, manufacturing or transporting explosives without a license or to withhold information pertaining to or make false statements in reference to explosive materials.	18 U.S.C. §842
16	AC**	Prohibiting transmission in interstate commerce of any communication containing any threat to kidnap any person or any threat to injure the person of another	18 U.S.C. §875(c)
17	GA, 1, 2, 4, 8	Extortion in color of authority	18 U.S.C. §872
18	GA, 1	Relating to fraud and false instruments	18 U.S. C. §1001
19	AC	Mail and wire fraud	18 U.S.C. §1341,
20	AC	Mail and wire fraud	18 U.S.C. §1343
21	AC	Does not exist	18 U.S.C. §1521
22	AC	Does not exist	18 U.S. C. §1572
23	AC	Extortion	18 U.S.C. §1951(b)(2)
24	7	Aggravated criminal extortion	C.R.S. §18-3-207
25	AC	Offering a false instrument for recording	C.R.S. §18-5-114
26	6,	Intimidating a witness	C.R.S. §18-8-704
27	AC	Retaliation against a witness or victim	C.R.S. §18-8-707
28	1, 2, 3, 4, 5, 6	Request for attorney fees under federal law	42 U.S.C. §1988

* GA = This code section was mentioned in Plaintiff's General Averments

** AC = Code sections Plaintiff placed in his Complaint in ¶9 titled "Applicable Codes but did not mention anywhere else in the Complaint.

While the claims are vague and unclear, it is clear that there is no diversity because the Plaintiff and all of the defendants are indisputably residents of Colorado. Second, Plaintiff has failed to present a valid federal question to the Court. Defendant

Grier is not a state actor and, therefore, she cannot be liable for violating Plaintiff's constitutional rights or civil rights under 42 U.S.C. §§ 1983, 1985 or 1986. In addition, Title 18 of the United States' Code addresses crimes and criminal procedure and the sections of the code cited by the Plaintiff do not create a private right of action. Finally, Plaintiff's state law claims are based upon alleged violations of state criminal statutes.

There is no legal or factual basis for these claims. Plaintiff has persisted in his pursuit of blatantly false, frivolous, and wholly groundless factual allegations and claims against Defendant Grier. Plaintiff's Complaint should be dismissed, and Defendant Grier is entitled to recover her reasonable attorneys' fees incurred in responding to this action.

Plaintiff has been repeatedly advised that his claims will likely result in the imposition of significant sanctions. Plaintiff remains remarkably undeterred. Defendant submits that only an award of significant sanctions will deter Plaintiff from filing frivolous litigation that is a shameful waste of limited Court and party resources.

II. ARGUMENT

A. Standards For Imposition of Sanctions

Rule 11 provides, in pertinent part, that **anyone** who signs a pleading or other paper certifies "that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the claims therein are: (1) warranted by existing law or by a non-frivolous argument for new or modified law; and (2) supported by evidence or likely to be supported by evidence after discovery and investigation. Fed. R. Civ. P. 11 (2002) In considering whether to impose sanctions under the rule, courts ask "whether a reasonable attorney, having conducted an objectively reasonable inquiry into the facts and law, would have

concluded that the offending paper was well-founded.” *Schutts v. Bently Nevada Corp.*, 966 F. Supp. 1549, 1562 (D. Nev. 1997). Rule 11 applies with equal force to *pro se* parties. *Business Guides, Inc. v. Chromatic Communications Enter., Inc.*, 498 U.S. 533, 544-545 (1991) (holding that Rule 11 applies to both parties who are represented by counsel and to *pro se* parties as well); *Trierweiler v. Croxton & Trench Holding Co.*, 90 F.3d 1523, 1540 (10th Cir. 1996) (same); *Eisenberg v. University of N.M.*, 936 F.2d 1131, 1134 (10th Cir. 1991) (same).

Subjective good faith in the pursuit of a claim is no defense to Rule 11 sanctions. As the Tenth Circuit has stated:

Rule 11 requires counsel to study the law before representing its contents to a federal court. An empty head but a pure heart is no defense. The Rule requires counsel to read and consider before litigating. Counsel who put the burden of study and illumination on the defendants or the court must expect to pay attorneys’ fees under the Rule.

Cascade Energy & Metals Corp. v. Banks, 87 F.3d 1146, 1151 (10th Cir. 1996) (internal quotation omitted).

The liberal deference accorded *pro se* parties by the courts, “does not confer a license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.” *In re Winslow*, 132 B.R. 1016, 1019 (D.Bankr.Colo. 1991).

One leading commentator has identified three situations in which sanctions may be appropriate: “(a) the paper is based on ‘bad law;’ (b) the paper is based on ‘bad facts;’ or (c) the paper is presented for an improper purpose such as harassment.” Williams Schwarzer, et al., *Federal Civil Procedure Before Trial*, § 17:26:1 (2000). Here, Plaintiff has transgressed in all three of these areas.

Moreover, a party’s actions must be objectively reasonable in to avoid Rule 11 sanctions. *White v. General Motors Corp., Inc.*, 908 F.2d 675, 680(10th Cir. 1990). In *White*, the Tenth

Circuit reiterated the view in this circuit that a party's or their attorney's actions must be objectively reasonable in order to avoid Rule 11 sanctions. The *White* Court held that simply a good faith belief in the merit of an argument is not sufficient; the attorney's or party's belief must also be in accord with what a reasonable, competent attorney would believe under the circumstances. *Id.* In addition, it is not sufficient for an offending attorney to allege that a competent attorney could have made a colorable claim based on the facts and law at issue; the offending attorney must actually present a colorable claim. *Id.* Thus, plaintiffs may not shield their own incompetence by arguing that, while they failed to make a colorable argument, a competent attorney would have done so. *Id.*

Again, Plaintiff's *pro se* standing should not shield him from compliance with Rule 11 or the penalties for failing to do so. *Pro se* parties should be sanctioned "after successive attempts to press a wholly frivolous claim." *Reinert v. O'Brien*, 805 F. Supp. 576, 579 (N. D. Ill. 1992)(citing *Ricketts v. Midwest National Bank*, 874 F.2d 1177, 1182 n. 4 (7th Cir. 1989), see also *Goldgar v. Office of Administration*, 26 F.3d 32, 35-36 & N. 3 (5th Cir. 1994), *cert. denied*, 115 S.Ct. 728 (1995)(warning *pro se* litigant that he would be subject to monetary and other sanctions if he continued to file baseless complaints); see also, *United States of America v. Pretonwood Properties, Inc. et al.* (1999 WL 766022 (N.D. Tex. 1999). Under the circumstances of this case, Defendant Grier is entitled to sanctions in the amount of his reasonable attorneys' fees incurred in defending the frivolous claims asserted in this litigation.

First, Plaintiff's claims are indisputably based on "bad law." Plaintiff has no legal basis for the assertion of any claims against Defendant Grier. Defendant Grier represented – and still represents in on-going litigation – Plaintiff's adversary and as such, owes no duty to Plaintiff to

protect Plaintiff's interest in any fashion. In fact, Defendant Grier's sole duty is to her client, Plaintiff's adversary, Ms. Lawler. Ms. Lawler is adverse to Plaintiff and is actively in the midst of dissolution proceedings.

Moreover, under no cognizable legal theory can Defendant Grier be liable to Plaintiff as acting under color of state law or as a state actor under 42 U.S.C. § 1983, *et seq.* Defendant Grier is a private attorney representing a private citizen seeking to divorce Plaintiff. There is simply no legal basis for any claim against Defendant Grier.

Second, Plaintiff's factual allegations against Defendant Grier – as difficult to decipher from the Complaint as they are – are wholly unfounded. Plaintiff makes conclusory allegations about the knowledge and intent of Defendant Grier, her participation in a fantastical conspiracy to harm Plaintiff, all arising out of Plaintiff's divorce proceedings. Plaintiff's factual allegations are absurd, not well investigated, and wholly unfounded. Plaintiff's allegations are more than that – they are simply insulting ramblings abusive of the litigation process. For example, Plaintiff alleges that Defendant Grier, his attorney Defendant Miller, and Judge Chapman, are liable to him based upon “improper collegiality and colloquy between Defendants Grier, Miller and Chapman.” (Compl. ¶ 18) Plaintiff also alleges that Defendant Grier was “negligent” by threatening “imminent bodily harm, kidnapping, false arrest and jailing, to Plaintiff . . . as made by Defendant Grier . . . in violation of the Fourth and Fourteenth Amendments to the Constitution of the Untied [sic] States and are actionable under 42 U.S.C. § 1983, 1985, 1986.” (Compl. ¶ 35) These allegations are spurious and as against Defendant Grier, are both legally and factually unsupported.

Where, as here, Plaintiff has been specifically warned not to assert claims that cannot be

supported by the facts or law, and he persists in filing and maintaining such claims in spite of the Court's warning, sanctions are mandated. Indeed, the very fact that Plaintiff has failed to heed both this Court's warning in its January 14, 2005 Recommendation, and the warning of Defendant Grier's counsel are facts that compel sanctions. *Martinez v. Martinez*, 62 Fed. Appx. 309, 2003 WL 1904807 (10th Cir. 2003).

The Tenth Circuit has also upheld the imposition of sanctions where both frivolous and nonfrivolous claims are advanced by a party in the same pleadings. *Dodd Insurance Services, Inc., v. Royal Insurance Co.*, 935 F.2d 1152 (10th Cir. 1991). In *Dodd*, the court upheld the imposition of sanctions where a party filed pleadings asserting ten separate causes of action, and only three survived summary judgment. *Dodd Insurance Services, Inc., v. Royal Insurance Co.*, 935 F.2d at 1159. Specifically addressing the issue of the appropriateness of sanctions where a party files both frivolous and non-frivolous claims, the Court stated:

A pleading containing both frivolous and nonfrivolous claims may violate Rule 11. To conclude otherwise 'would allow a party with one or more patently meritorious claims to pepper his complaint with one or more highly advantageous, yet wholly frivolous, claims, for that party would be assured that the weight of his meritorious claim(s) would shield him from sanctions.' *Id.* at 1158 (internal citations omitted).

Later, the Court summarized the policies underlying Rule 11 in stating, "Rule 11 was strengthened in order to make parties and their lawyers consider the burden of defending frivolous claims." *Id.* at 1159 (emphasis added).

Here, without a doubt, Plaintiff knows, or should know, that his claims against Defendant Grier – his wife's divorce lawyer – are both legally and factually frivolous and unfounded. There can be only one reason for the assertion of these claims – to harass Defendant Grier. Such

conduct is sanctionable, and Defendant Grier respectfully requests this Court impose the sanctions that Plaintiff has invited.

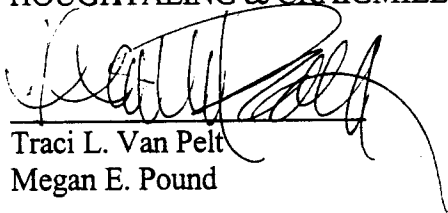
III. CONCLUSION

If the requirements of Rule 11 are to have any meaning, they must attach to conduct of the sort demonstrated by Plaintiff here. Plaintiff has continually and irresponsibly caused Defendant Grier to incur the costs of defending herself against baseless allegations and claims. Plaintiff should bear the consequences and the attendant risks that go along with the assertion of frivolous and groundless claims.

DATED this 25th day of February, 2005.

Respectfully Submitted,

MCCONNELL SIDERIUS FLEISCHNER
HOUGHTALING & CRAIGMILE, LLC



Traci L. Van Pelt
Megan E. Pound

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2005, a true and correct copy of the foregoing DEFENDANT KATHERINE GRIER'S MOTION FOR RULE 11 SANCTIONS was served via Regular U.S. Mail, first-class postage prepaid, on the following:

Charles H. Clements, *pro se*
1741 Dallas Street
Aurora, CO 80010

Kevin Massaro
3780 S. Broadway Ste. 111
Englewood, CO 80113

Patrick L. Sayas
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, Colorado 80203



/s/ Patricia S. Bedingfield

EXHIBIT 1



McConnell Siderius Fleischner Houghtaling & Craigmile, LLC

Traci L. Van Pelt
Direct Dial: 303.458.9555
E-Mail: tyanpelt@msfhc.com

February 1, 2005

Charles Clements
1741 Dallas Street
Aurora, Colorado 80010-2018

Re: Clements v. Chapman, et al.
Our File: 5545.0006

Dear Mr. Clements:

This is in follow-up to my correspondence to you of December 30, 2004. As you know, this office represents Katherine Grier in the above-referenced matter. Pursuant to Federal Rule of Civil Procedure 11(c), enclosed please find a Motion for Sanctions against you. Under Rule 11(c), you have 21 days from the date of this letter to withdraw your complaint and dismiss all claims against Ms. Grier. If you do not do so, we will file this Motion with the Court and request that you be sanctioned in the amount of that attorneys' fees Ms. Grier has incurred in defending against your frivolous and groundless claims.

Very truly yours,



Traci L. Van Pelt

cc: Katherine Grier, Esq. (via fax)
Lisa Hudson, Esq. (via fax)