

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

CHARLES H. CLEMENTS,

Plaintiff,

vs.

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

Defendants.

DEFENDANT THOMAS C. MILLER'S MOTION TO DISMISS

Defendant, Thomas C. Miller, through Counsel, pursuant to C.R.S. §13-20-602, respectfully submits the following Motion to Dismiss for the following reasons:

I. D.C. Colo. L. Civ. R. 7.1(a) Statement of Conferral

Pursuant to D. C. Colo. L. Civ. R. 7.1(a), undersigned certifies that, prior to filing this Motion, he did not confer with Plaintiff concerning the issues raised herein because such conversation would be futile.

II. Statement of the Case

Plaintiff, proceeding *pro se*, has alleged a series of allegations in a manner described by this Court as "prolix and tedious."

This case arises from a domestic relations matter between Plaintiff and his soon-to-be-ex-wife. Plaintiff is dissatisfied with the results in the domestic relations proceedings against him. Plaintiff apparently believes that he was denied parenting time because his attorney at the time, Defendant Miller (hereafter "Mr. Miller") his wife's attorney, Katherine Grier ("Ms. Grier") and Magistrate Janice Chapman, the judge assigned to the case, conspired to deprive him of his parenting rights and extort money from him in the form of legal fees. It is undisputed that Mr. Miller is an attorney in the private sector; and that at all times relevant to this matter was licensed to practice law in the state of Colorado; and that Mr. Miller withdrew from representing Plaintiff on or about June 7,

2005. It is also undisputed that Defendant Grier is a private attorney who represented Plaintiff's spouse.

As a result of this alleged conduct, Plaintiff filed a Complaint in federal district court alleging various claims against the three defendants. A summary of the procedural history of this matter is contained in Defendant Katherine Grier's Motion to Dismiss, and is incorporated herein by reference. However, under any interpretation of the claims against Mr. Miler, Plaintiff is alleging that Mr. Miller deliberately abandoned his duty of zealous representation of Plaintiff, and hence, committed legal malpractice.

III. Legal Argument

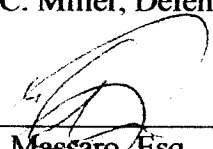
1. Plaintiff has made claims against Defendant Miller arising from his representation of Plaintiff in a domestic dispute in Adams County District Court.
2. Defendant Miller is a licensed attorney in the State of Colorado, attorney registration number 22652, and at all times relevant to the matter before the Court, licensed to practice law.
3. Plaintiff alleges that in the scope of his representation of Plaintiff, Defendant Miller entered into a conspiracy to deprive Plaintiff of his civil rights with co-defendants, Magistrate Janice Chapman of the Adams County District Court, and attorney Katherine Grier.
4. Mr. Miller, as counsel for Plaintiff, had a duty to represent Plaintiff's interests.
5. To engage in a conspiracy with another attorney, as alleged by Plaintiff would be an act of professional negligence.
6. Plaintiff's claims are therefore clearly grounded in professional negligence, since Plaintiff alleges that in violation of his duty of zealous representation, Defendant Miller instead conspired to deprive Plaintiff of his civil rights.
7. Further, to a lesser extent, if Ms. Grier was conspiring to deprive Plaintiff of his civil rights as Plaintiff alleges, she, too, would be committing a form of legal malpractice, since attorneys have pledged to follow the laws of the state of Colorado and the United States.
8. In every action for damages based upon the alleged professional negligence of a licensed professional, the plaintiff or plaintiff's attorney must file a certificate of review within sixty days of the service of the complaint. C.R.S. §13-20-602.

9. This requirement applies to all claims against licensed professionals wherein expert testimony is required to establish the scope of the professional's duty or the failure to reasonable conduct himself or herself in compliance with the responsibilities inherent in the assumption of the duty. *Martinez v. Badis*, 842 P.2d 245(Colo. 1992); *Tracz. v. Centennial Peaks*, 9 P.3d 1168 (Colo. App. 2000).
10. This requirement includes every claim of professional negligence, whatever the formal designation of the claim may be. *Martinez*, supra; *Eslander v. Cramer*, 903 P. 2d 1171 (Colo. App. 1995); *Baumgarten v. Coppage*, 15 P.3d 304 (Colo. App. 2000).
11. Expert testimony will be necessary to determine whether or not the conversations Defendant Miller had with opposing counsel, and with Plaintiff constituted professional negligence.
12. Defendant Miller was served with the Complaint on or about November 24, 2005.
13. As of the date of this filing, one hundred and ninety six (196) days have elapsed since the filing of the Complaint and service upon Defendant Miller.
14. Plaintiff has not filed a Certificate of Review as required pursuant to C.R.S. 13-20-602(1)(a).
15. The failure to file a Certificate of Review shall result in the dismissal of the complaint. C.R.S. § 13-20-602(4).
16. There is no exemption for pro se litigants. *Yadon v. Southward*, 64 P.3d 209 (Colo. App. 2002).

WHEREFORE, Defendant Thomas C. Miller, through Counsel, respectfully moves for an ORDER dismissing the entire Complaint as a matter of law for WITH PREJUDICE, for Plaintiff's failure to comply with the requirements of C.R.S. §13-20-602.

Respectfully submitted this 27th day of June, 2005.

Thomas C. Miller, Defendant,

BY: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of June, 2005, a true and correct copy of the foregoing Defendant Thomas C. Miller's Motion to Dismiss was sent via US Mail, first class postage prepaid, to the following:

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