

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: January 22, 2015)

A. RALPH MOLLIS, in his official
capacity as Rhode Island Secretary of
State, and not in his individual capacity

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v.

C.A. No. PM 14-3703

MICHAEL D. CORSO

DECISION

PROCACCINI, J. This matter comes before the Court to set the appropriate amount of sanctions to be imposed upon Attorney Mark Welch (Attorney Welch) who, in representing former Secretary of State A. Ralph Mollis (Secretary Mollis), filed a petition before this Court that was found to be improper and legally deficient.¹ In that Decision, the Court imposed monetary sanctions in the amount of the reasonable attorney’s fees and costs incurred by Mr. Michael D. Corso related to the petition. Jurisdiction is pursuant to G.L. 1956 § 9-29-21 and Super. R. Civ. P. 11 (Rule 11).²

I

Facts and Travel

The petition that led to the current action was filed in this Court on July 25, 2014, after the Secretary of State’s office had commenced a hearing against Michael D. Corso (Mr. Corso or

¹ Mollis v. Corso, 2014 WL 7247142 (R.I. Super. Dec. 17, 2014).

² See also Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393-96 (1990) (stating that a district court retains jurisdiction for the purpose of imposing sanctions under Rule 11 even after an action has been voluntarily dismissed); accord Burns v. Moorland Farm Condo. Ass’n, 86 A.3d 354, 360 (R.I. 2014).

Respondent) on the issue of whether Mr. Corso had engaged in unauthorized lobbying. (Ex. 3—
Notice of Hr’g.)

In the petition, Secretary Mollis, pursuant to Super. R. Civ. P. 27(a) (Rule 27(a)) and § 9-18-12, sought an order from the Court authorizing him to take the deposition of the “person(s) most knowledgeable at The Providence Journal . . . for the purpose of perpetuating” their testimony. (Pet. ¶ 15.) Secretary Mollis and Attorney Welch (collectively, Petitioners) contended that they came before this Court in order to conduct depositions they deemed “necessary and indispensable” to the administrative hearing regarding the possible unauthorized lobbying of Mr. Corso. Id. at ¶ 13.

On August 13, 2014, Mr. Corso filed Respondent’s Opposition to Miscellaneous Petition for Perpetuation of Testimony & Preservation of Documents and/or Items (the Initial Opposition), in which he argued that the petition was without merit and not in conformity with Rule 27(a); consequently, he sought its dismissal with prejudice, and attorney’s fees and costs. It was at this time that the Petitioners became aware that there was some possibility of sanctions being sought in the case.³ On August 25, 2014, the Petitioners voluntarily dismissed the suit pursuant to Super. R. Civ. P. 41(a)(1). The Respondent opposed the voluntary dismissal and contended that the petition was filed deliberately, in bad faith and for an improper purpose, and, therefore, was a violation of Rule 11.

On September 19, 2014, after the voluntary dismissal of this action, the parties entered into a Stipulation addressing Mr. Corso’s argument for Rule 11 sanctions; the Court endorsed that Stipulation on the record on December 2, 2014. On December 17, 2014, the Court issued a

³ Mr. Corso’s Initial Opposition did not specifically mention sanctions under Rule 11; he formally requested Rule 11 sanctions in his Memorandum in Opposition to Petitioner’s Proposed Voluntary Dismissal of Petition on August 29, 2014.

Decision finding that Attorney Welch violated Rule 11 when he filed an improper and legally deficient petition that attempted to involve the Court in Mr. Corso's administrative hearing before the Secretary of State's Office. Mollis v. Corso, 2014 WL 7247142 (R.I. Super. Dec. 17, 2014). The Court strongly rebuked Secretary Mollis but found no evidence to support that Secretary Mollis, who has no legal training, knew the petition was flawed from a legal standpoint. Id. However, the Court sanctioned Attorney Welch to pay Mr. Corso's reasonable attorney's fees and costs in an effort to deter future improper filings and to remedy the financial harm that his conduct caused Mr. Corso. Id.

II

Standard of Review

The issue in the instant case is what sanctions should be imposed pursuant to Rule 11.

Rule 11 provides, in pertinent part, as follows:

“The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.”

This Court, when faced with a Rule 11 violation, “has the discretionary authority to fashion what it deems to be an ‘appropriate’ sanction, one that is responsive to the seriousness of the violation under the circumstances and sufficient to deter repetition of the misconduct in

question.” Lett v. Providence Journal Co., 798 A.2d 355, 368 (R.I. 2002); see also Pleasant Mgmt., LLC v. Carrasco, 918 A.2d 213, 217 (R.I. 2007). The “central purpose of Rule 11 is to deter baseless filings . . . [and] streamline the administration and procedure of the . . . courts.” Cooter & Gell, 496 U.S. at 393; see also Gregory P. Joseph, Sanctions: The Federal Law of Litigation Abuse § 13(b)(1) at 2-187 (4th ed. 2008). Therefore, any interpretation of Rule 11 “must give effect to the Rule’s central goal of deterrence,” while also attempting to remedy the harm caused by the violation. Cooter & Gell, 496 U.S. at 393; Michalopoulos v. C & D Rest., Inc., 847 A.2d 294, 300 (R.I. 2004); see also 61A Am. Jur. 2d Pleadings § 595 at 598 (2010).

A court imposing a sanction under Rule 11 must “describe the conduct determined to constitute a violation of [the] rule and explain the basis for the sanction imposed.” Joseph, supra § 17(E)(1)(a),(b) at 2-364 to 2-368 (internal quotation marks omitted). The court “has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted, all in light of the rule’s deterrent orientation.” Bay State Towing Co. v. Barge Am. 21 (O.N. 517472), 899 F.2d 129, 133 (1st Cir. 1990) (internal citation omitted). Furthermore, it is appropriate to award attorney’s fees as a sanction when the vast bulk of a party’s legal fees were incurred after, and because of, a sanctionable filing. Id. at 134.

III

Analysis

In determining an appropriate Rule 11 sanction, the Rhode Island Supreme Court has held that “a trial justice has the discretionary authority to fashion what it deems to be an ‘appropriate’ sanction.” Michalopoulos, 847 A.2d at 300. The court should consider a sanction “that is responsive to the seriousness of the violation under the circumstances and sufficient to deter repetition of the misconduct in question.” Id.

Although the language of Rhode Island’s Rule 11 is not identical to the Federal Rules of Civil Procedure Rule 11, our Supreme Court has noted that it “closely follows” that of the Federal Rule. Pleasant Mgmt., LLC, 918 A.2d at 218. In determining that a sanction of \$20,000 was appropriate, the First Circuit considered five factors: (1) the Rule 11 violation is clear; (2) the sanctioned party is not unrepresented, unsophisticated, without economic power, or suffering some special need; (3) the case exemplifies a potential injustice arising out of the American attorney’s fee rule, that each party normally pays for its own attorney; (4) the case strengthens the self-policing by attorneys and strengthens the hand of attorneys who would discourage clients from taking positions totally lacking in merit; and (5) the vast bulk of the innocent party’s legal fees were incurred after and because of the sanctionable filing. Bay State Towing Co., 899 F.2d at 133-34. In formulating the appropriate sanction, this Court is “mindful that sanctions should not be imposed to chill an attorney’s enthusiasm, creativity or zealous advocacy.” Cruz v. Savage, 896 F.2d 626, 634 (1st Cir. 1990).⁴

Here, this Court has already determined that the Rule 11 violation is clear, and that Secretary Mollis was represented by his legal counsel, Attorney Welch, at the time of the filing at issue. Attorney Welch cannot be described as “unsophisticated, without economic power, or suffering some special need.” Bay State Towing Co., 899 F.2d at 133-34. A review of the attorney’s fees Mr. Corso incurred illustrates that the bulk of his attorney’s fees were “incurred after and because of [Attorney Welch’s] sanctionable filing.” Id. at 134. Therefore, it would be patently unjust to require Respondent to bear the entire costs associated with addressing this improper filing. Finally, and most importantly, this sanction must serve to reinforce the ethical

⁴ In this spirit, the First Circuit held that imposing a \$3000 sanction, despite a case where attorney’s fees amounted to over \$40,000, was well within the trial judge’s discretion. Cruz, 896 F.2d at 634-35.

duties of attorneys to revisit the pursuit of matters totally lacking in merit. See Cooter & Gell, 496 U.S. at 393.

IV

Conclusion

Based upon the circumstances presented, this Court orders that a sanction in the amount of \$18,000⁵ be imposed upon Attorney Welch. The Court further orders that this sanction is imposed upon Attorney Welch personally, must be paid from his personal funds, and under no circumstances shall this sanction be paid from funds attributable to the State of Rhode Island. This sanction's primary purpose is to deter future ethical lapses of judgment and to serve as a reminder that an attorney's ultimate obligation is to respect and obey the professional and ethical rules of our profession. The deterrent effect of this sanction will be completely thwarted if the sanction is paid from a source other than Attorney Welch. Counsel shall submit appropriate judgment for entry.

⁵ This amount is substantially less than the total legal costs incurred by Respondent in addressing this matter.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Mollis v. Corso

CASE NO: PM 14-3703

COURT: Providence County Superior Court

DATE DECISION FILED: January 22, 2015

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

For Plaintiff: Mark P. Welch, Esq.
 Christopher M. Mulhearn, Esq.

For Defendant: Anthony M. Traini, Esq.
 Michael J. Lepizzera, Jr., Esq.