

Hon. Veronica Alicea-Galván
KING COUNTY
DEFENDANT'S MOTION FOR SANCTIONS
Noted for Consideration: Wednesday, May 3, 2017
Without Oral Argument
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 17-2-09152-9 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

D.H.,

Plaintiff,

v.

MAYOR EDWARD MURRAY,

Defendant.

No. 17-2-09152-9SEA

DEFENDANT'S MOTION FOR
SANCTIONS

I. INTRODUCTION AND RELIEF REQUESTED

Defendant, Mayor Edward Murray (“Defendant”), respectfully moves the Court for entry of an order of sanctions against Plaintiff D.H.’s (Delvonn Heckard) attorney Lincoln C. Beauregard (“Mr. Beauregard”), under CR 11 and the Court’s inherent authority for wrongly filing documents for an improper purpose. Since the initiation of this lawsuit, Mr. Beauregard has repeatedly wrongly filed correspondence with counsel and discovery papers with the Court in violation of the Civil Rules for an improper purpose. Defendant’s counsel has tried to avoid this motion by asking Mr. Beauregard to stop, and warning him that counsel would be forced to take appropriate action if he did not. Mr. Beauregard responded by filing another letter with the Court addressed to defense counsel containing personal attacks on counsel. This behavior should not be tolerated. To be clear—if consistent with the Rules of Professional Conduct—Mr. Beauregard wishes to communicate directly with the press, that is his right. What he cannot do is use the Court’s filing system as his mouthpiece. Unfortunately, it seems the

1 only way to stop Mr. Beauregard's conduct is to ask the Court to stop it—or, to the extent
2 the Court believes it is appropriate—to engage in the same conduct in response.

3 II. FACTS

4 Mr. Beauregard and his co-counsel, Lawand Anderson,¹ on behalf of their client,
5 D.H., filed suit against Mayor Murray on April 6, 2017. Dkt. 1. They filed an Amended
6 Complaint on April 19, 2017 (Dkt. 13) and a Corrected Amended Complaint on the same
7 day (Dkt. 14). As admitted in their own complaint, part of Plaintiff's purpose is to
8 generate publicity surrounding the allegations. Dkt. 14 at 2.

9 Since initiating this lawsuit, Mr. Beauregard has filed letters addressed (but
10 sometimes not even sent) to opposing counsel and other documents not properly filed with
11 the Court for the sole reason of hoping that the press would discover them. In other
12 words, he has used the Court in order to generate publicity surrounding this case.

13 These violations began when Mr. Beauregard improperly filed Notices of
14 Deposition and Subpoenas for Mayor Murray and Jeff Reading with this Court and
15 included correspondence addressed to defense counsel as an attachment to the filed
16 discovery. Dkts. 5–7. Even the filings themselves often contained statements clearly
17 directed to the press. *E.g.*, Dkt. 6 at 2:1. It continued when, on April 19, 2017, Mr.
18 Beauregard filed a letter addressed to defense counsel as an attachment to the Amended
19 Complaint. Dkt. 13. The improper filings continued. On April 20, 2017, Mr. Beauregard
20 filed a letter addressed to defense counsel with the Court without even bothering to send it
21 to defense counsel. Dkt. 15. Mr. Beauregard's April 20 letter struck the same
22 inappropriate tone as his previous letter. *See id.*

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26 ¹ To the extent Mr. Beauregard's co-counsel has approved or consented to Mr.
Beauregard's conduct addressed in this motion, then co-counsel should likewise be sanctioned or
admonished.

1 The next day, counsel for Mayor Murray conveyed their concerns regarding Mr.
2 Beauregard’s improper filings and improper motives for those filings. Dkt. 17.² Counsel
3 requested that Mr. Beauregard cease filing correspondence with the Court given that doing
4 so is inconsistent with Rule 7 and the Rules of Professional Conduct. *Id.* Defense counsel
5 also advised Mr. Beauregard that if he continued with this conduct, appropriate steps
6 would be taken to address the issue.

7 Continuing his antics, in response and in disregard of the request, Mr. Beauregard
8 filed yet another letter addressed to defense counsel with the Court, in which he accuses
9 defense counsel of, among other things, “spitting vitriol.” Dkt. 17. This sort of conduct
10 hardly paints the legal system in a good light. Interestingly, Mr. Beauregard has failed to
11 attach the medical evidence that debunks Plaintiff’s claims or agree to an independent
12 medical exam relating to these same issues.

13 Just yesterday, and in further disregard of the judicial rules, Mr. Beauregard filed
14 another subpoena and notice of deposition with the Court that contains allegations
15 designed to be picked up by the press. Dkt. 18. Indeed, as the attached article shows, that
16 is exactly what happened. **Ex. A³** (newspaper article stating “Lawyers representing
17 Delvonn Heckard publicized a subpoena filed Monday...” and describing the “anonymous
18 allegation[s]” Mr. Beauregard and Ms. Lawand included in the subpoena). As the article
19 also describes, the anonymous allegations are false according to statements of numerous
20 eyewitnesses, yet because Plaintiff’s counsel improperly filed the subpoena, the Court
21 record now contains only these false allegations. *Id.*

22 Two things are clear: **First**, Mr. Beauregard is not filing these letters for the
23 purpose of actually communicating with Defendant’s counsel. Indeed, at least one of

24 ² Along with his response to our April 21, 2017 correspondence, Mr. Beauregard also
25 attached and filed our April 21, 2017 correspondence.

26 ³ Exhibits A–B referenced herein are attached to the accompanying Declaration of
Malaika M. Eaton.

1 them was never actually sent to counsel at all (despite what they state on the address
2 caption). Dkt. 15. Others were only provided to defense counsel after (at times
3 significantly after) their filing. Dkt. 17. **Second**, Mr. Beauregard is not filing these letters
4 or discovery documents for the purpose of asking the Court to take some action consistent
5 with Civil Rule 7. Indeed, given that there is no pending request to the Court, it may be
6 that the Court is not even aware of these filings.

7 It is doubtful that this Court would tolerate such conduct—e.g., accusing opposing
8 counsel of “spitting vitriol”—either in open Court or in any properly filed motion. Yet by
9 filing these materials, the Court is unaware of the uses to which its docket is being put and
10 Defendant has no way to respond to correct the docket.

11 III. ISSUE PRESENTED

12 Whether the Court should enter an order awarding sanctions against Lincoln C.
13 Beauregard for engaging in conduct in violation of CR 11 or pursuant to the Court’s
14 inherent authority.

15 IV. EVIDENCE RELIED UPON

16 Defendant relies upon the Declaration of Malaika M. Eaton with attached Exhibits
17 A–B, as well as the records on file herein.

18 V. ARGUMENT

19 A. **Beauregard Violated CR 11**

20 CR 11 provides:

21 (a) Every pleading, motion, and legal memorandum of a party represented
22 by an attorney shall be dated and signed by at least one attorney of record
23 in the attorney's individual name ... The signature of a party or of an
24 attorney constitutes a certificate by the party or attorney that the party or
25 attorney has read the pleading, motion, or legal memorandum, and that to
26 the best of the party's or attorney's knowledge, information, and belief,
formed after an inquiry reasonable under the circumstances . . . (1) it is
well grounded in fact ... [and] (3) 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

CR 11 (emphasis added).

1 “The purpose behind CR 11 is to deter baseless filings and to curb abuses of the
2 judicial system.” *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).
3 “CR 11 requires attorneys to ‘stop, think and investigate more carefully before serving
4 and filing papers.’” *Id.* (quoting Fed. R. Civ. P. 11, advisory cmt. note). CR 11 prohibits
5 the submission of a document for an improper purpose such as harassment. *In re Recall of*
6 *Piper*, 184 Wn.2d 780, 785-87, 364 P.3d 113 (2015) (bad faith motive for filing existed
7 where Petitioner filed document “for purposes of political harassment” and to force a
8 board member to retire as opposed to filing for a sincere belief). “A violation of CR 11 ‘is
9 complete upon the filing of the offending paper; hence an amendment or withdrawal of
10 the paper ... does not expunge the violation.’” *Id.* at 788 (quoting *Biggs v. Vail*, 124
11 Wn.2d 193, 199-200 (1994)).

12 Mr. Beauregard has violated CR 11 by filing numerous documents in bad faith and
13 for an improper purpose—for the sole purpose of using the Court as his mouthpiece to the
14 press, allowing him to make (often baseless) statements without any proper opportunity to
15 Defendant to respond and debunk these statements. To be clear—if consistent with the
16 Rules of Professional Conduct—Mr. Beauregard wishes to communicate directly with the
17 press, that is his right. What he cannot do is use the Court’s filing system for this purpose:
18 this is inconsistent with his role as an officer of the Court and an “abuse of the judicial
19 system.” Indeed, if he made the statements in his letters in a motion on which the Court
20 had to rule (e.g., accusing opposing counsel of “spitting vitriol”), the Court could take
21 appropriate action to curb such conduct. The fact Mr. Beauregard is using the Court’s
22 filing system when the Court is not being asked to rule and is likely unaware of these
23 filings is no better.

24 Defendant’s counsel asked Mr. Beauregard to cease this conduct, but that request
25 was met with further incidents of the same misconduct. There is no conceivable
26 legitimate reason for these filings other than bad faith.

1 Mr. Beauregard surely knows from his years of practice that it is improper to file
2 discovery and correspondence with the court. Indeed, doing so is inconsistent with CR 7
3 and the Rules of Professional Conduct, including his status as an officer of this Court.
4 Dkts. 5–7, 10, 15, 17–18. Again, his filings serve no legitimate purpose in this
5 litigation—their only purpose is to use the Court to make statements to the press that he
6 apparently feels uncomfortable making directly. These bad faith filings violate CR 11 and
7 impugn the dignity of the Court.

8 **B. Beauregard Should Be Sanctioned**

9 “CR 11 permits a trial court to impose sanctions against a litigant for filing claims
10 not well grounded in fact or law or for *filings made for an improper purpose.*” *Eller v.*
11 *East Sprague Motors & R.V.’s, Inc.*, 159 Wn. App. 180, 191, 224 P.3d 447 (2010)
12 (emphasis added). “The decision to impose sanctions under CR 11 is vested within the
13 sound discretion of the trial court.” *Id.* at 189 (citing *Tiger Oil Corp. v. Dep’t of*
14 *Licensing*, 88 Wn. App. 925, 946 P.2d 1235 (1997)). The court may impose “an
15 appropriate sanction, which may include reasonable attorney fees and expenses.” *Id.* at
16 190. The court may sanction the party, the attorney, or both. *See In re MacGibbon*, 139
17 Wn. App. 496, 509, 161 P.3d 441 (2007) (trial court assessed \$5,000 in sanctions directly
18 against the attorney who had advanced frivolous legal arguments).

19 In addition to its power under CR 11, “[a] trial court [also] has the inherent
20 authority to assess sanctions against attorneys for abusive litigation conduct if it finds bad
21 faith” regardless of a CR 11 violation. *State v. S.H.*, 102 Wn. App. 468, 470, 473, 8 P.3d
22 1058 (2000); *In re Recall of Piper*, 184 Wn. 2d at 787 (court has “inherent equitable
23 power” to award fees as sanctions). Under this inherent power, trial courts may assess
24 litigation expenses, including attorney fees, against attorneys engaging in bad faith
25 litigation conduct. *Id.* at 474 (quoting *Wilson v. Henkle*, 45 Wn. App. 162, 174, 724 P.2d
26 1069 (1986)).

1 Mr. Beauregard should be sanctioned because, as established above, since the
2 initiation of this lawsuit only a few weeks ago, he has already filed at least seven
3 documents that should never have been filed, for the improper purpose of making
4 statements to the press that he apparently believes he could not make directly, and perhaps
5 even to distract from the lack of merit of his lawsuit.⁴ This ongoing conduct does not
6 meet professional standards and is not consistent with Mr. Beauregard's role as an officer
7 of the court. Consequently, Mr. Beauregard should be personally sanctioned for his
8 improper behavior in an amount sufficient to deter future similar actions. This litigation is
9 still in its infancy—unless stopped, Mr. Beauregard will continue to subvert the litigation
10 process by disregarding the civil and local rules and Rules of Professional Conduct by
11 continuing to misuse and abuse the Court system for his own improper purposes.

12 If Mr. Beauregard wants to keep the press apprised of the case developments, that
13 is his prerogative within the bounds of the Rules of Professional Conduct. But
14 disparaging Defendant and his counsel in improper and bad faith filings and improperly
15 filing discovery and correspondence to use the Court system as his mouthpiece to the
16 press should not be condoned. Indeed, the Court's docket should not be a dumping
17 ground for all communications between counsel in this litigation. Again, unfortunately, it
18 seems the only way to stop Mr. Beauregard's conduct is to ask the Court to stop it—or, to
19 the extent the Court believes it is appropriate—to engage in the same conduct in response.

20 This conduct is far more abusive than conduct other cases such as *In re*
21 *MacGibbon* where sanctions in the amount of \$5,000 were awarded against the attorney
22 personally. Mr. Beauregard should be sanctioned in an amount sufficient to deter future
23 inappropriate conduct—or at the very least admonished—so the case can move forward
24 on its merits.

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26 ⁴ For instance, Mayor Murray has already established that the one medically verifiable fact
in the complaint is false by submitting to a medical exam. **Ex. B.**

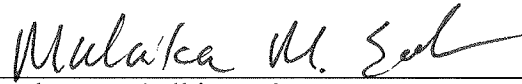
1 **VI. CONCLUSION**

2 Based on the foregoing reasons, Defendant respectfully requests that the Court
3 grant his motion for sanctions against Mr. Beauregard personally. A proposed form of
4 order is lodged herewith.

5 I certify that this memorandum contains 2,233 words in compliance with the Local
6 Civil Rules.

7 DATED this 25th day of April, 2017.

8 McNAUL EBEL NAWROT & HELGREN PLLC

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15 Attorneys for Defendant
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Proposed Order

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

D.H.,

Plaintiff,

v.

MAYOR EDWARD MURRAY,

Defendant.

No. 17-2-09152-9SEA

ORDER ON DEFENDANT’S
MOTION FOR SANCTIONS

PROPOSED

CLERK’S ACTION REQUIRED

Pending before the Court is Defendant’s Motion for Sanctions. In connection with Defendant’s Motion, the Court has reviewed the following:

- (1) Defendant’s Motion for Sanctions;
- (2) Declaration of Malaika M. Eaton in Support of Defendant’s Motion for Sanctions and Exhibits A–B attached thereto;
- (3) Plaintiff’s response and supporting material, if any; and
- (4) Defendant’s reply.

The Court has also reviewed the records on file herein. And being otherwise fully advised, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant’s Motion for Sanctions is GRANTED. The Court assesses sanctions against attorney Lincoln Beaugard in the amount of \$ _____, to be paid to the Clerk of the Court immediately but in no event later than 10 days from the date of entry of this Order.

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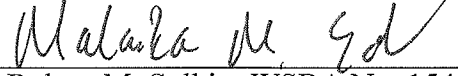
IT IS SO ORDERED.

DATED this _____ day of May, 2017.

Honorable Veronica Alicea-Galván
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: 
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

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