

CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE, §	§	IN THE DISTRICT COURT
Plaintiff, §	§	
vs. §	§	
SIDNEY POWELL §	§	
(File Nos. 202006349, 202006347, §	§	DALLAS COUNTY, TEXAS
202006393, 202006599, 202100006, §	§	
202100652, 202101297, 202101300, §	§	
202101301, 202103520, 202106068, §	§	
202106284, 202106181) §	§	
Defendant. §	§	116 th JUDICIAL DISTRICT

ORIGINAL ANSWER & SPECIAL EXCEPTIONS

TO THE HONORABLE ANDREA K. BOURESSA:

Sidney Powell, Defendant (“Powell”) files her Original Answer and Special Exceptions to the First Amended Petition (“Pleading”) filed by the Commission for Lawyer Discipline (“Commission”) and alleges as follows:

INTRODUCTION

The illegitimate and political motivations behind the filing of this suit are illuminated by even the acknowledgment, let alone the acceptance, of grievances filed by thirteen disgruntled politically motivated Democrats:

- (a) three, who were defendants in the Michigan suit: Dana Nessel, Michigan Attorney General, Gretchen Whitmer, Michigan Governor, & Jocelyn Benson, Michigan Secretary of State;
- (b) four who are third-party Democrat politicians: Ted L. Lieu, U.S. Congressman,

California; Sylvia Garcia, U.S. Congressman, Texas; Veronica Escobar, U.S. Congressman, Texas; & Robert McWhirter, an aspiring Arizona politician; and

(c) six politically motivated third-party complainants who had absolutely no dog in the any of the fights they complain about: Paula K. Goldman, an attorney in Virginia; Adam Charles Reddick, on information and belief a previously-sanctioned attorney in Florida; Eric Young; Janet Louise Lachman, an unlicensed Texas attorney; David M. Rubenstein, billionaire Co-Chair, Carylge Group in Maryland; and Paul Steven Zoltan an attorney in Texas (“Complainants”).

Moreover, the law books, both state and federal, are full of cases allowing attorneys to petition for relief without fear of grievance complaints for filing a “frivolous” law suit.

The First Amendment right to petition protects Powell and the Election Fraud Suits. Federal law is abundantly clear:

Justice Douglas in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), stated “**the right of access to the courts is indeed but one aspect of the right of petition.**” *Id.* at 510, 92 S.Ct. 609. [Emphasis added] The First Amendment also protects “litigation . . . as a form of political expression.” *NAACP v. Button*, 371 U.S. 415, 429 (1963). [Emphasis added.]

Under the Petition Clause of the First Amendment, a civil litigant cannot be sanctioned for bringing a non-baseless claim in court—unless the lawsuit is a mere “sham.” *Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961). Furthermore, **even an improper motive will not divest a non-baseless claim of Petition Clause protection.** *Professional Real Estate Investors, Inc., v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993). [Emphasis added.]

The Supreme Court further explained: “Only if challenged litigation is objectively meritless may a court examine the litigant’s subjective motivation” to determine if there is an improper purpose in filing the case. *Prof'l Real Estate Investors, Inc., v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 60; 113 S.Ct. 1920 (1993). On the flip side, an attorney or litigant is required to have “**no more than a reasonable belief that there is a chance that a claim may be held valid upon adjudication**” to obtain protection under the Petition Clause from being punished for instituting civil proceedings. *Id.* at 62–63.

[Emphasis added.]

Judge McMahon in addressing a motion for sanctions wrote: “I was once a practicing lawyer, and if my client came to me and told me he owned a patent, and showed me that the patent was registered to him at the PTO, I doubt very much whether I would have undertaken an extensive title search; **lawyers are entitled to rely on their clients in such matters.**” *Advanced Video Techs. LLC v. HTC Corp.*, No. 1:11 CIV. 06604 (CM), 2015 WL 7621483, at *10 (S.D.N.Y. Aug. 28, 2015), *aff’d*, 677 F. App’x 684 (Fed. Cir. 2017). [Emphasis added.]

“[P]laintiff’s **counsel is entitled to rely on the representations of their client, without having to assess his credibility**; ‘credibility is solely within the province of the finder of fact.’” (quoting *Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 626 (2d Cir.1991) [emphasis added].

Texas Case law is equally clear:

An attorney may file a pleading if there is “. . . **from the advocate’s point of view . . . arguable grounds existed to support a reasonable belief that the case . . . [of the] possibility of obtaining a favorable result**” from the advocates point of view. *Gray v. Turner*, 807 S.W.2d 818, 823 (Tex. App.–Amarillo 1991, no writ); [Emphasis added] *Ambrose v. Mack*, 800 S.W.2d 380, 383 (Tex.App.–Corpus Christi 1990, no writ); and all an attorney needs at the vantage point for assessing evidentiary support, the time the pleading is filed, is that the factual allegations **have or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.** Tex. Civ. Prac. & Rem.Code § 10.001; *Low v. Henry*, 221 S.W.3d 609, 615 (Tex. 2007) [emphasis added].

As the court in *Houston Mercantile Exch. Corp. v. Dailey Petroleum Services Corp.*, held in 1993 “**if a plaintiff has “probable cause” to institute legal proceedings, then a finding of sham litigation is precluded.** No. B14-92-00818-CV, 1993 WL 322901, at *3 (Tex. App.–Houston [14th Dist.] Aug. 26, 1993, no writ), (citing *Prof’l Real Estate* 508 U.S. at 61-62. (emphasis added) **Probable cause to institute civil proceedings requires no more than a reasonable belief that there is a chance that a claim may be held valid upon adjudication.** *Id.* [Emphasis added.]

Claims must be adjudicated by a trier of fact after at least a hearing where the facts are heard and considered. That was not the case in any of the Election Fraud Suits, they were summarily dismissed No discovery was allowed and not a single witness was heard.

A. DISCOVERY-CONTROL PLAN

1. Powell intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and requests the Court to enter a scheduling order with a trial set in the month of October 2022. Powell affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

B. GENERAL DENIAL

2. Pursuant to Tex. R. Civ. P. 92, Powell denies each and every, all and singular, the material allegations in the Petition and demands strict proof.

C. AFFIRMATIVE DEFENCES

3. Powell pleads the affirmative defence of privilege. Powell had the right of access to the courts on behalf of her clients seeking the right of petition

D. SPECIAL EXCEPTIONS

4. In or about November of 2020 Powell filed four federal lawsuits in different jurisdictions (“Election Fraud Suits”) including:

(a) in the District Court of Arizona, a complaint containing 145 paragraphs with 31 exhibits including affidavits, a total of 377 pages;

(b) in the Northern District of Georgia, a complaint containing 211 paragraphs with 29 exhibits including affidavits, a total of 587 pages;

(c) in the Eastern District of Michigan, a complaint containing 233 paragraphs with 30 exhibits including affidavits, a total of 960 pages; and

(d) in the Eastern District of Wisconsin, a complaint containing 142 paragraphs with 19 exhibits including affidavits, a total of 354 pages

(jointly “Election Fraud Petitions”).

5. While Texas follows the “fair notice” standard for pleading, a petition must state allegations in plain and concise language sufficient to give fair notice so the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant, *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex.2000); Tex. R. Civ. P. 45(b) & 47(a). Here the Commission makes broad and vague allegations relating to 1,938 pages containing 731 paragraphs and 109 exhibits complaining generally that Powell had no reasonable basis to believe allegations in the lawsuits she filed were not frivolous but the Commission provides no specifics.

6. The purpose of special exceptions is to inform the opposing party of defects in its pleadings so it can cure them, if possible, by amendment. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 897 (Tex.2000). By filing special exceptions, the opposing party identifies defects that should be remedied before a substantive response is required. *O’Neal v. Sherck Equip. Co.*, 751 S.W.2d 559, 562 (Tex.App.–Texarkana 1988, no writ).

7. Powell specially excepts to the Petition in it’s entirety because the paragraphs are unnumbered.

8. Powell further specially excepts to the following portions of the Petition:

8.1. Second sentence in the first paragraph in § V which states:

Respondent had no reasonable basis to believe the lawsuits she filed were not frivolous.

because the Commission’s pleading does not give fair notice of the Commission’s claims.

The Commission does not specify which Election Fraud Pleading, or the specific statements and claims in the Election Fraud Pleadings that were allegedly frivolous. Thus Powell cannot ascertain from the Pleading the nature and basic issues of the controversy and what testimony

and proof will be relevant.

8.2. Third sentence in the first paragraph in § V which states:

Further, the filing of these lawsuits violated Federal Rule of Civil Procedure 11.

because the Commission's pleading does not give fair notice of the Commission's claims. The Commission does not specify which statements or claims in the Election Fraud Pleadings allegedly violated Rule 11. Thus, Powell cannot ascertain from the Pleading the nature and basic issues of the controversy involving compliance with Rule 11 and what testimony and proof will be relevant.

8.3. Second paragraph in § V which states:

"During the course of the lawsuits, Respondent took positions that unreasonably increased the costs or other burdens of the cases and unreasonably delayed the resolution of the matters, including, but not limited to, Respondent's failure to dismiss the lawsuit filed in the Eastern District of Michigan when her requested relief was moot."

because the Pleading does not give fair notice of the Commission's claims. The Commission does not specify in which of the Election Fraud Lawsuits the positions taken by Powell unreasonably increased the costs or other burdens of the case and unreasonably delayed the resolution of the matters or in which cases. Thus, Powell cannot ascertain from the Pleading the nature and basic issues of the controversy related to the mootness of any order issued in the Election Fraud Lawsuits and what testimony and proof will be relevant. Moreover, the Pleading does not state how, when or why the Michigan suit or any of the other Election Fraud Lawsuits became moot or what gave rise to Powell's duty, if any, to dismiss such suits without filing an appeal or Pitions for Writs of Certiori.

8.4. Third paragraph in § V which states:

“In the lawsuit styled Pearson v. Kemp, Case No. 1 :20-CV-4809 filed by Respondent in the Northern District of Georgia, Respondent attached a certificate from the Secretary of State that she purported to the Court was “undated.” The certificate was altered to remove the date, and Respondent’s statement that the certificate was undated was false.”

because the Pleading does not specify which certificate was “undated,” what the significance of the “un-dating” was, the materiality of the certificate with its lack of date, how Powell knew the certificate was undated in the first place, or if and whether Powell knowingly “undated” the certificate. Thus Powell cannot ascertain from the Pleading the nature and basic issues of the controversy related to the certificate, how it was material and what testimony and proof will be relevant.

8.5. Fourth paragraph in § V which states:

“Respondent was sanctioned by the Eastern District of Michigan for her misconduct.”

because the Commission does not specify whether the sanctions order is final or not, Powell cannot ascertain from the Pleading the nature and basic issues of the controversy related to the alleged sanctions order and what testimony and proof will be relevant.

9. Powell further specially excepts to the Petition because the Commission fails to state what each of the Complainant’s complaints are, which of the Disciplinary Rules each Complaint alleges Powell violated, and to which Election Fraud Petition each Complainant complains. Thus Powell cannot ascertain from the Pleading the nature and basic issues of the controversy related to the Complaints and what testimony and proof will be relevant.

10. For these reasons, Powell asks the Court to set her special exceptions for hearing and, after the hearing, sustain her special exceptions and order the Commission to re-plead and cure its

pleading defects and, if the Commission does not cure its defects, strike the defective portions of the Pleading.

D. REQUEST FOR DISCLOSURES

11. Under Texas Rule of Civil Procedure 194, Powell requests that the Commission, within 30 days of the service of this request, provide the information and material described in Rule 194.2.

E. PRAYER

WHEREFORE, PREMISES CONSIDERED, Powell respectfully requests the Court to grant her special exceptions and the Commission take nothing by its suit against her and that she go hence without day and with her attorney's fees and costs.

Respectfully submitted,

HOLMES LAWYER, PLLC

By: /s/ Robert H. Holmes
Robert H. Holmes
State Bar No. 09908400

19 St. Laurent Place
Dallas, Texas 75225
Telephone: 214-384-3182
Email: rholmes@swbell.net

S. MICHAEL MCCOLLOCH PLLC
S. Michael McColloch
State Bar No. 13431950

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6055
Fax: 214-295-9556
Email: smm@mccolloch-law.com

and

KAREN COOK, PLLC
Karen Cook
State Bar No. 12696860

6060 N. Central Expressway
Suite 500
Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on April 4, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Automated Certificate of eService

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Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rholmes@swbell.net
Envelope ID: 63254802
Status as of 4/5/2022 8:32 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	4/4/2022 11:52:48 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	4/4/2022 11:52:48 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	4/4/2022 11:52:48 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	4/4/2022 11:52:48 PM	SENT
Robert H.Holmes		rholmes@swbell.net	4/4/2022 11:52:48 PM	SENT