

Timothy M. Kolman, Esquire
KOLMAN LAW P.C.
414 Hulmeville Avenue,
Pennel, Pa 19047
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS FOR LACKAWANNA COUNTY
PENNSYLVANIA

PHILIP GODLEWSKI
115 Huckleberry Lane,
Duryea, PA 18642.

Plaintiff

v.

CHRIS KELLY
149 Penn Avenue,
Scranton, PA 18503.

And

**TIMES-SHAMROCK
COMMUNICATIONS**
149 Penn Avenue,
Scranton, PA 18503

And

THE SCRANTON TIMES-TRIBUNE
149 Penn Avenue,
Scranton, PA 18503.

And

No: 2021-CV-2195

LARRY HOLEVA
149 Penn Avenue,
Scranton, PA 18503.

Defendants

MAURI B. KELLY
LACKAWANNA COUNTY
2022 MAY 25 P 2:28
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR SANCTIONS AGAINST DEFENDANTS FOR VIOLATION OF 42 PA.C.S. § 2503(7),(9)

Plaintiff, Philip Godlewski ("Plaintiff or Mr. Godlewski"), by and through his attorneys, hereby files this Brief in support of his Motion for Sanctions against Defendants for violation of 42 PA.C.S. § 2503(7)(9) and avers as follows.

I. Background

Plaintiff incorporates his motion in support of sanctions as if set forth at length.

II. Argument

Plaintiff is entitled to legal fees for failure of Defendants to exercise diligence which caused unnecessary legal work. In short, Defendants could have easily found out that the case of Commonwealth v. Godlewski had not been sealed. Instead, Defendants waited until Judge was seated in the case adjudicating unsealing, before they admitted that no hearing was necessary because the case was never sealed.

Notably, Defendants could have withdrawn their motion to unseal or otherwise let Plaintiff's counsel know that the matter was moot. Instead, Plaintiff continued to respond to Defendants' motion, as if a genuine response was necessary.

Under 42 Pa.C.S. § 2503(7), (9). Section 2503 provides, in pertinent part, as follows:

§ 2503. Right of participants to receive counsel fees

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

* * * * *

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

* * * * *

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

42 Pa.C.S. § 2503(7), (9). The Pa Supreme Court has defined the level of conduct necessary under section 2503(9) as follows:

‘An opponent’s conduct has been deemed to be “arbitrary” within the meaning of the statute if such conduct is based on random or convenient selection or choice rather than on reason or nature. An opponent also can be deemed to have brought suit “vexatiously” if he filed the suit without sufficient **grounds in either law or in fact** and if the suit served the sole purpose of causing annoyance. Finally, an opponent can be charged with filing a lawsuit in “bad faith” if he filed the suit for purposes of fraud, dishonesty, or corruption. (Emphasis added).

Thunberg v. Strause, 545 Pa. 607, 682 A.2d 295, 299 (1996) (internal citations omitted).

Section 2503(7) prohibits similar conduct, described as “dilatory, obdurate or vexatious.” Generally speaking, “obdurate” conduct may be defined in this context as “stubbornly persistent in wrongdoing.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 815 (1987). **Conduct is “dilatory” where the record demonstrates that counsel displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal work.** *See Gertz v. Temple Univ.*, 443 Pa.Super. 177, 661 A.2d 13, 17 n. 2 (1995). (Emphasis added)

Although disposition of claims under either section generally requires an evidentiary hearing, no hearing is necessary where the facts are undisputed. *See Kulp v. Hrivnak*, 765 A.2d 796, 800 (Pa.Super.2000).

III. Conclusion

It follows, from the foregoing, that Defendants failed to exercise due diligence and, for no good reason, unnecessarily caused the Plaintiff additional legal work. Wherefore, Plaintiff requests this Honorable Court to impose sanctions on the Defendants for the unnecessary legal fees expended by the Plaintiff in responding to the frivolous motion.

Respectfully submitted,

KOLMAN LAW P.C.

/sTimothy Kolman
Timothy M Kolman Esquire

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:
:

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2022, upon consideration of the attached Motion for Sanctions Against Defendants. and Tim Hinton, Esq, it is hereby

ORDERED that:

1. A Rule is issued upon the Respondent(s) (Attorney Hinton and Defendant Scranton Times) to show cause why the relief requested should not be granted;
2. On or before the _____ day of _____, 2012 Respondents may file a response to the motion;
3. Upon filing of a response, the motion shall be decided under Pa.R.C.P. No. 206.7
4. Notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT:

J