

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PHILIP C. BELLFY, PhD,

Plaintiff,

v.

Case No. 2:23-cv-51

Hon. Paul L. Maloney

Magistrate Judge Maarten Vermaat

MICHAEL T. EDWARDS and  
JOCELYN K. FABRE,

Defendants.

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**DEFENDANT EDWARDS' MOTION FOR SANCTIONS**

NOW COMES Defendant Michael T. Edwards, by and through his attorneys, Maddin, Hauser, Roth & Heller, P.C., and for this Motion for Sanctions pursuant to Fed. R. Civ. P. 11 states as follows:

1. On 3/22/23, Plaintiff filed the instant Complaint.

2. On 4/27/23, after the undersigned asked Plaintiff to dismiss the Complaint. Defendant Edwards filed a Motion to Dismiss. That Motion is currently pending.
3. On 8/4/23, Defendants served this Motion for Sanctions on Plaintiff, but did not file it (EX 1).
4. Sanctions are appropriate under Fed. R. Civ. P. 11 for the reasons stated in the attached Brief.
5. Through 7/31/23, Defendant Edwards has incurred fees and expenses of \$5,750.00 in defending this frivolous lawsuit (EX A).<sup>1</sup>

WHEREFORE Defendant Edwards respectfully request that this Honorable Court grant this Motion, order Plaintiff to pay all of Defendant Edwards' attorney fees and costs, together with such additional relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ David M. Saperstein

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Dated: August 4, 2023

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<sup>1</sup> An unredacted copy of the fees can be submitted for in camera review at the Court's request.

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**BRIEF IN SUPPORT**

**Statement of Facts**

On 3/22/23, Plaintiff filed the instant Complaint. The Complaint alleges improprieties in the underlying tribal court matter in which Plaintiff was not a party but acted as a lay advocate. Plaintiff did not appeal the decision in the underlying matter. On 4/27/23, after the undersigned asked Plaintiff to dismiss the Complaint, Defendant Edwards filed a Motion to Dismiss (ECF

No. 10, PageId.45-46 and ECF No. 11, PageId.47-230). That Motion argued that dismissal is appropriate because: 1) as a nonparty in the underlying action, Plaintiff lacks standing to pursue this action; 2) Defendant Edwards owed no duty to Plaintiff under Michigan law; and 3) Plaintiff had proper notice of the underlying Motion to Dismiss and the hearing. The Motion is currently pending. On 8/4/23, Defendants served this Motion for Sanctions on Plaintiff, but did not file it (EX 1).

Through July 31, 2023, Defendant Edwards has been forced to incur \$5,750<sup>2</sup> in fees and costs as a result of the filing of Plaintiff's frivolous Complaint (EX 2):

5/3/23	\$3,493.00
6/1/23	\$596.35
7/10/23	\$910.65
8/1/23	\$750.00
<b>TOTAL (through 7/31/23)</b>	<b>\$5,750.00</b>

### Standard of Review

Federal Rule of Civil Procedure 11(b) provides in relevant part:

By presenting to the court . . . a pleading, . . . [an] unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for

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<sup>2</sup> This total is only through 7/31/23, and does not include any fees incurred after that date. The work attendant to this Motion for Sanctions, including the undersigned's affidavit and letter requesting concurrence, was performed in August 2023. Defendant Edwards requests sanctions for all expenses incurred as a result of defending this frivolous action, including fees and expenses incurred after 7/31/23.

extending, modifying, or reversing existing law or for establishing new law;

[and] (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. . . .

### Argument

#### **I. Because Plaintiff’s Complaint violates Rule 11, sanctions should be awarded against Plaintiff and in favor of Defendant Edwards.**

##### **A. Applicable Law**

A party who signs a pleading in violation of Rule 11 is subject to sanctions. Fed. R. Civ. P. 11(c). As Justice O’Connor wrote, “[t]he filing of complaints, papers, or other motions without taking the necessary care in their preparation is a separate abuse of the judicial system, subject to separate sanction.... Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990). The liberal deference accorded to *pro se* parties “does “not confer a license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.” *Sieverding v. Colorado Bar Assn.*, 2003 WL 22400218, at \*27 (D. Colo. 2003), subsequently *affd.* 126 F. Appx. 457 (10th Cir. 2005).

Most requests for sanctions concern whether the complaint was well grounded in fact and law. Although this motion does so as well (see *infra*), the independent subparagraphs of Rule 11(b) mean that a pleading filed for an improper purpose justifies sanctions even if it was not frivolous. Fed. R. Civ. P. 11(b)(1); *Whitehead v. Food Max of Mississippi, Inc.*, 332 F.3d 796, 802 (5<sup>th</sup> Cir. 2003); *Cohen v. Virginia Elec. & Power Co.*, 788 F.2d 247 (4<sup>th</sup> Cir. 1986); see also *Kasben v. Hoffman*, 2005 WL 678158, unpublished opinion per curiam of the Michigan Court of Appeals, issued 3/24/05 (Docket Nos. 247927, 253201, 2545295) (“Even if Kasben’s motion

was well grounded in fact and warranted by existing law, however, we conclude that there is a separate and independent duty to certify that the document was not filed for an improper purpose such as to harass the other party”).

Courts have awarded sanctions where a Complaint was motivated by a desire to harass. For example, in *Clements v. Miller*, 2005 WL 2085497, at \*7 (D. Colo. 2005), *affd. sub nom. Clements v. Chapman*, 189 F. Appx. 688 (10<sup>th</sup> Cir. 2006), the Court held that Plaintiff was motivated by a desire to harass opposing counsel:

No reasonable person in the plaintiff's position would assert twenty baseless claims in federal court against counsel who opposed him in a state domestic proceeding, especially after being expressly warned by the attorney and the court that his claims were frivolous. Rule 11 sanctions are appropriate—not because the plaintiff's *pro se* Complaint demonstrates a mere misunderstanding of the law—but because the plaintiff is clearly motivated by a purposeful desire to harass Grier.

Similarly, in *Nali v Logisticare Solutions, LLC*, unpublished opinion per curiam of the Michigan Court of Appeals, issued 6/10/21 (Docket No. 352688), the Michigan Court of Appeals affirmed sanctions against a party who brought an independent action against the opposing attorney where the conduct was covered by the litigation privilege.

A Rule 11 Motion for Sanctions must comply with the “safe harbor” provision whereby the party seeking sanctions must serve the Motion on the other party, but not file it with the Court for 21 days. Fed. R. Civ. P. 11(c)(2). In this case, the undersigned served Plaintiff with the instant Motion on 8/4/23 (EX 1). If this Motion has been filed with the Court, it means that the 21-day safe harbor period has expired without the Complaint being withdrawn.

## **B. Application to Case**

Although Plaintiff is not represented by counsel, he has made abundant use of the legal system. In fact, Plaintiff had been appointed as a Lay Advocate to serve in the Tribal Court until

his abuse of that privilege led to revocation of his appointment (ECF No. 11-12, PageID.158-161).

Plaintiff's theories of liability are unsupportable. A good faith belief in the merits of a case is insufficient to avoid sanctions. *Mann v. G & G Mfg., Inc.*, 900 F.2d 953, 958 (6th Cir. 1990). To the extent that he was unknowledgeable about the law, the time for his reasonable inquiry into the state of law was before he filed his Complaint. Fed. R. Civ. P. 11(b). If this Motion for Sanctions has been filed with the Court, it means that the 21-day safe harbor period expired in which Plaintiff could have investigated further and withdrawn his Complaint without the imposition of sanctions.

Plaintiff's Complaint was brought without an adequate basis in fact or law, as exemplified by the following:

- Plaintiff was not a party in the underlying action. In order to have Article III standing, “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Garland v. Orleans, PC*, 999 F.3d 432, 436 (6th Cir. 2021).
- Under Michigan public policy, an attorney owes no duty to an adverse party. *Friedman v. Dozorc*, 412 Mich. 1, 20; 312 N.W.2d 585 (1981). In the underlying case, Plaintiff was adverse counsel to Edwards.
- Once the Tribal Judge dismissed the underlying case (ECF No. 11-7; PageId.132-133), Plaintiff could have appealed that decision on the basis of any alleged impropriety. See TCR 82.109 (“The Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court as provided in this Chapter”); TCR 82.110 (“Any person adversely affected by a decision of the Tribal Court in a civil case may appeal”); TCR 82.111 (“An appeal is properly before the Court of Appeals if it concerns: (1) a final judgment or order of the Tribal Court...”.) Although the grounds for appeal are limited, one of them specifically includes “irregularities or improprieties in the proceedings.” TCR 82.114(2)(b). [ECF No. 11-15,

PageId.213-230).]

- There is no question that Plaintiff received the underlying Answer to the Complaint, which requested that the Complaint be dismissed. [ECF No. 11-3, PageId.72-84.]
- Plaintiff's receipt is not in question because he specifically addressed the arguments raised in the motion to dismiss when he filed an Amended Complaint and requested the Court not to address the arguments in the Motion to Dismiss. [ECF No. 11-5, PageId.91-98.]
- Nor is there a question of whether Plaintiff received Edwards' amended dispositive motion, which was both mailed and emailed to Plaintiff at his listed address and email address. [ECF No. 11-6, PageId.100-130.] The amended dispositive motion stated that it was "scheduled to be heard on March 1, 2022." [*Id.* at PageId.122.]

In further support of this Motion, Defendants incorporate the facts and arguments in their Motion to Dismiss, Brief, and Exhibits (ECF No. 11, PageId.47-230).

In addition, the following demonstrate that the Complaint was brought for an improper purpose:

- Plaintiff's erratic email to the underlying Judge in the underlying case demanding a second motion for reconsideration, and accusing the Trial Court of abandoning protocol. [ECF No. 11-10, PageId.144-152.] .
- Plaintiff's ex parte letter to Judge Fabre in the underlying case, accusing the Judge of criminal conduct. [ECF No. 11-11, PageId.154-156.]
- Plaintiff's filing of an improper subpoena in this case before Initial Disclosures had been filed (ECF No. 13, PageId.232-235).
- Plaintiff's filing of a frivolous Motion to Strike, its frivolous accusations of criminal conduct, and its nonsensical misrepresentations of Edwards' statements and positions (ECF No. 15, PageID.240-250).
- Plaintiff's demand of payment of "at least \$1,000,000 from the Defendants' personal funds, and an additional \$1,000,000 in Rule 11 sanctions from their attorneys." [Complaint and



ECF No. 15, PageId.246.]

- Plaintiff's demand that the Court order Defendant Edwards and his attorney to appear in-person for a hearing (ECF No. 19, PageId.271).

WHEREFORE Defendants respectfully request that this Honorable Court grant this Motion, order Plaintiff to pay all of Defendant Edwards' attorney fees and costs, together with such additional relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ David M. Saperstein

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Dated: August 4, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2023, I electronically filed Defendant's Motion for Sanctions and Brief in Support with the Clerk of the Court using the court's electronic filing system, which will send notification of such filing to those who are currently on the list to receive e-mail notices for this case.

/s/ David M. Saperstein

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Dated: August 28, 2023