

**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 MICHAEL T. EDWARDS' RESPONSE TO PLAINTIFF'S OBJECTION  
(ECF NO. 35) TO REPORT AND RECOMMENDATION (ECF NO. 34) REGARDING  
EDWARDS' MOTION TO DISMISS (ECF NO.10) AND EDWARDS' MOTION FOR  
SANCTIONS [ECF NO. 29]**

**Oral argument requested only if Plaintiff is granted oral argument**

**I. The Motion to Dismiss (ECF No. 10) should be granted in accordance with the Report and Recommendation (ECF No. 34).**

Defendant Edwards filed a Motion to Dismiss on 4/27/23 (ECF No. 10), arguing that regardless of the merits of Plaintiff's allegation of lack of receipt of notice of a Zoom hearing, this case must be dismissed for various independent reasons, including that: 1) Plaintiff lacks standing (ECF No. 11, PageId.57-58); 2) Defendant Edwards owed no duty to Plaintiff (*id.*, PageId.58-59); 3) the time and place to raise Plaintiff's notice argument was in the underlying case or on appeal (*id.*); and 4) Edwards provided Plaintiff with the notice of the hearing that Edwards was required to provide under Fed. R. Civ. P 5(C) (*id.*, PageId.59-60).

U.S. Magistrate Judge Maarten Vermaat issued a Report and Recommendation (ECF No. 34) on 10/17/23 addressing these arguments. As to the issue of standing, the Report recommended that this Court hold that Plaintiff has not shown that he has standing because he did not suffer an injury, is not one of the named parties in the underlying lawsuit, has brought a complaint that relates solely to his role as an advocate for others, and may not represent those others in federal court (ECF No. 34, PageId.458-460). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The recommendations regarding standing should be adopted and the case dismissed on that basis.

As to the issue of duty, the Report recommended that this Court hold that an attorney does not owe a duty to an opposing party, and that this case does not present one of the rare circumstances under which a special relationship could exist (ECF No. 34, PageId.462). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The recommendations regarding duty should be adopted and the case dismissed on that basis.

As to the argument that the time and place to raise Plaintiff's notice argument was in the underlying case or on appeal, the Report recommended that this Court hold that it lack jurisdiction under an analogy to the *Rooker-Feldman* doctrine because Plaintiff may not re-adjudicate issues resolved in tribal court and Plaintiff (or the underlying parties) should have filed an appeal in tribal appellate court (ECF No. 34, PageId.464-466). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The recommendations regarding jurisdiction and the proper method to challenge the ruling in the underlying case should be adopted and the case dismissed on that basis.

As to the issue of Edwards' provision of notice to Plaintiff of the notice of the hearing, the Report recommended that this Court hold that Plaintiff received a copy of the motion to dismiss, that Edwards sent Plaintiff by mail a Notice of Hearing and Proof Service, that Edwards did everything that he was supposed to do on behalf of his clients, and that Plaintiff has not shown that any failure to receive proper notice of the hearing was the fault of Edwards (ECF No. 34, PageId.462). Plaintiff touches on this issue in his Objection (ECF No. 35), but without any documentation or citation, and without showing that the Report's recommendation should be rejected. The recommendations regarding the Notice of Hearing should be adopted and the case dismissed on that basis.

Additionally, the Report recommended that this Court hold that Plaintiff's claims of due process and equal rights violations fail because Edwards is not a state actor and the order of dismissal in the underlying case did not state that the dismissal was because Plaintiff did not attend the hearing (ECF No. 34, PageId.460-461). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The

recommendations regarding due process and equal rights violations should be adopted and the case dismissed on that basis.

The Report recommended that this Court hold that Plaintiff has failed to plead specific facts to support his conspiracy claims against Edwards (ECF No. 34, PageId.462). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The recommendations regarding conspiracy should be adopted and that portion of the case dismissed on that basis.

A to various statutes mentioned in the Complaint, the Report recommended that 18 U.S.C. § 242 is a criminal statute that has no application to this case, that a criminal statute based upon a violation of the Constitution does not apply, that a private citizen cannot initiate a criminal proceeding, that 18 U.S.C. § 242 does not provide for a private cause of action, and that Plaintiff has failed to show that he is entitled to relief under 18 U.S.C. § 242 (ECF No. 34, PageId.464). Plaintiff's Objection (ECF No. 35) does not find error with regard to any of those recommendations and proposed holdings. The recommendations regarding allegations of statutory violations should be adopted and that portion of the case dismissed on that basis.

**II. The Motion for Sanctions (ECF No. 29) should be granted with the amount of Sanctions increased.**

As to Edwards' Motion for Sanctions (ECF No. 29), the Report recommended that this Court hold that a party or counsel must inquire into the facts and law before making the decision to file the complaint or pleading, and that sanctions under Rule 11 are appropriate (ECF No. 34, PageId.468-469). Plaintiff's Objection erroneously states that the reason for the recommendation of a dismissal was a conflict between whether the Complaint failed to state a claim upon which relief could be based or it did state a claim (ECF No. 35, PageId.471-472). In fact, the Report and

Recommendation identified numerous deficiencies with the Complaint, as mentioned above in § I. Furthermore, the Sanctions portion of the Report and Recommendation reiterated that Plaintiff lacked standing to bring the lawsuit, the Fourteenth Amendment was inapplicable, and Plaintiff's claims lacked arguable merit (ECF No. 34, PageID.469). The Report continues that Plaintiff should have reached the conclusion that the federal court could not provide him with relief before he filed the complaint and certainly should have done so after Edwards filed his motion to dismiss (*id.*, PageID.469). Defendant Edwards would add that the entire purpose of the 21-day waiting period for sanctions is to allow a party who filed a frivolous pleading time to reconsider their frivolous pleading in light of the opposing party's arguments.

Plaintiff's plea to make him happy ignores the fact that his filing of the Complaint, his refusal to dismiss it when the Complaint's deficiencies were listed in the Motion to Dismiss, and his continued refusal to dismiss the Complaint even after the proposed Motion for Sanctions was served upon him caused Defendant Edwards to spend thousands of dollars to defend a frivolous claim, a large portion of which was out of his own pocket. This Court should adopt the Report's recommendation to grant sanctions. The Complaint never should have been filed. Once filed, it should have been dismissed.

The only portion of the Report which warrants a second thought is the recommendation that sanctions of \$1,500 would deter further pleadings from Plaintiff in pursuit of this frivolous claim. They have not (ECF No. 35). Defendant Edwards would respectfully request that this Court increase the amount of sanctions awarded against Plaintiff.

**WHEREFORE**, Defendant Edwards respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment (ECF No. 31), grant Defendant Edwards' Motion to Dismiss (ECF No. 10), and grant Defendant Edwards' Motion for Sanctions (ECF No. 29).

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

*/s/ David M. Saperstein*

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Dated: November 8, 2023

**Certificate of Compliance**

Pursuant to Local Rule 7.2 (b) (ii), the attorney for Defendant Michael T. Edwards certifies that Defendant Michael T. Edwards' Response to Plaintiff's Objection (ECF No. 35) to Report and Recommendation (ECF No. 34) Regarding Edwards' Motion to Dismiss (ECF No.10) and Edwards' Motion for Sanctions [ECF No. 29] is 1,314 words in length inclusive of headings, footnotes, citations and quotations. The name and version of the word processing software used to generate this word count is Microsoft Word 2019.

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

*/s/ David M. Saperstein*

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Dated: November 8, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2023 I electronically filed the above document(s) with the Clerk of the Court using the ECF 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: November 8, 2023