UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

BAHMAN PAYMAN, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ATIQUE MIRZA, M.D.,	)	
	)	Case No. 2:02CV00023
Defendant.	)	Case No. 2:02CV00035
	)	
_____	)	**OPINION**
	)	
BAHMAN PAYMAN, M.D.,	)	By: James P. Jones
	)	United States District Judge
Plaintiff,	)	
	)	
v.	)	
	)	
KHALOUCK ABDRABBO, M.D.,	)	
	)	
Defendant.	)	

Michael A. Bragg, Bragg & Associates, PLC, Abingdon, Virginia, for Plaintiff; Wm. W. Eskridge, Penn, Stuart & Eskridge, Abingdon, Virginia, for Defendants.

The successful defendants in this civil case seek Rule 11 sanctions against the plaintiff. Finding that the plaintiff's initial pro se complaints were factually insupportable, I will grant such sanctions.

I

On February 5, 2002, the plaintiff, a physician, filed suit in this court against a former colleague, Atique Mirza, M.D. The pro se Complaint stated in its entirety as follows:

> I am Bahman Payman, MD. Filing suit against Dr. Atique Mirza who was chairman of the executive committee at Lee County Community Hospital in 2000. Dr. Mirza abused his power as a chairman of the executive committee and misrepresented me in bad faith and malicious intent at LCCH. Under the assumption that he has civil immunity (8.01-518.16.). He then left the area soon after LCCH was investigated by federal authorities.
>
> As a result LCCH terminated my employment, and I lost my eight years practice in Lee County, also I lost the good reputation that I had established. Besides economical loss, I have suffered psychological as well as emotional burdens along with my family.
>
> Therefore the plaintiff moves for a judgment against the defendant, Dr. Mirza, in the amount of ninety five thousand dollars ($95,000) together with cost and interest.
>
> /s Bahman Payman, M.D.

On that same day, the plaintiff filed a similar pro se action against another physician, Khalouck Abdrabbo, M.D., in the Circuit Court of Wise County, Virginia. The only difference between the pleadings other than the change of name of the defendant was that Dr. Abdrabbo was alleged to have been the "chief of medical staff" at Lee

County Community Hospital. This state court action was thereafter removed by Dr. Abdrabbo to this court.

In both cases, the defendants served motions for sanctions pursuant to Federal Rule of Civil Procedure 11(c)(1)(A) on the pro se plaintiff on April 5, 2002. The plaintiff then obtained counsel, who filed an appearance in the Abdrabbo case on June 27, 2002, and in the Mirza case on August 22, 2002. Defense counsel filed amended complaints in the cases and the defendants thereafter moved for summary judgment. After briefing and oral argument, the court granted summary judgment for the defendants in both cases on November 1, 2002. *See Payman v. Mirza*, No. 2:02CV00023, 2002 WL 31443216 (W.D. Va. Nov. 1, 2002); *Payman v. Abdrabbo*, No. 2:02CV00035, 2002 WL 31443212 (W.D. Va. Nov. 1, 2002).

On November 13, 2002, the defendants filed with the court the motions for sanctions previously served on the plaintiff. The motions have been briefed and argued and are ripe for decision.

II

Rule 11 provides that by presenting a pleading to the court, an attorney or unrepresented party certifies

> that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) [the pleading] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims . . . and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

Fed. R. Civ. P. 11(b). The defendants contend that the initial suit papers filed by the plaintiff pro se in both cases violated this rule. The defendants do not seek sanctions against the plaintiff's attorney for the filing of the amended complaints. In response, the plaintiff contends that his pleadings do not violate the rule and that the motions for sanctions are procedurally barred because they were filed after summary judgment had been granted.[1]

---

[1] In Dr. Abdrabbo's case the initial pro se pleading was filed in state court. Nevertheless, it is sanctionable by this court, since the plaintiff advocated it after removal here. *See Buster v. Greisen*, 104 F.3d 1186, 1190 n.4 (9th Cir. 1997). Moreover, Virginia law has a sanction provision similar to Rule 11, *see* Va. Code Ann. § 8.01-271.1 (Michie 2000), which this court may enforce. *See Tompkins v. Cyr*, 202 F.3d 770, 787 (5th Cir. 2000).

A

I find the suit papers in these cases did violate Rule 11because the allegations did not have evidentiary support. While the fact that the plaintiff's claims did not survive summary judgment is alone insufficient to justify sanctions, *see Miltier v. Downes*, 935 F.2d 660, 664 (4th Cir. 1991), it is clear that the plaintiff had no objectively reasonable evidence to support his assertion that Drs. Mirza and Abdrabbo acted in "bad faith" and "maliciously" toward him. In fact, the only supporting basis ever presented for these allegations is the plaintiff's claim that Moslems have persecuted those of the Bahai'i faith in Iran. He has never explained why that was relevant to the plaintiff's relationships with the defendants.

Moreover, the plaintiff should not be afforded any special leniency because he was proceeding pro se when the initial suit papers were filed. He is an educated person who had researched the issues sufficiently to know (and cite) the state law that afforded immunity to any person such as the defendants who served on a medical review board. *See* Va. Code Ann. § 8.01-581.16 (Michie Supp. 2002). He has filed other cases pro se in this and other courts. *See, e.g., Payman v. Joyo*, No. 2:01CV00128, 2002 WL 1821635 (W.D. Va. Aug. 8, 2002).

It is true that the plaintiff amended his complaints after he obtained counsel and after he had received the Rule 11 motions from the defendants. However, the

Amended Complaints did not constitute a withdrawal or correction of the earlier pro se pleadings. They merely fashioned the factual allegations into legal form and attached the names of legal theories of recovery to them.

The plaintiff asserts a procedural bar to the motions for sanctions, claiming that they were untimely, since they were filed after the court had granted summary judgment. However, the rule contains no express time limit and as long as the motion is served on the offending party prior to the conclusion of the case, it may be filed with the court within a reasonable time after judgment has been entered. *See Truelove v. Heath*, No. 95-3009, 1996 WL 271427, at *2 (4th Cir. May 22, 1996) (unpublished) (holding that motion under Rule 11 filed after conclusion of case but served on defendant more than twenty-one days before dismissal was properly served and filed.).

B

Having held that sanctions are proper in these cases, the next task is to determine the nature of such sanctions. Rule 11 allows directives of a nonmonetary nature, a monetary penalty payable into court, or reimbursement of some or all of the movant's reasonable attorneys' fees and other expenses "incurred as a direct result of the violation." Fed. R. Civ. P. 11(c)(2).

Particularly since the offending party here is a nonlawyer, a nonmonetary sanction such as a reprimand, suspension from practice, or a requirement of additional continuing legal education, is inappropriate. The most effective sanction in this case, taking into account the purpose of Rule 11, is reimbursement of attorneys' fees. In considering such a monetary sanction, I must take into account "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation." *In re Kuntsler*, 914 F.2d 505, 523 (4th Cir. 1990).

The defendants have submitted itemized statements of their attorneys' fees and expenses, which total $22,668.59 for Dr. Abdrabbo and $5,460.64 for Dr. Mirza. I find these fees and expenses to be reasonable, but "[t]he primary purpose of Rule 11 is not compensation of the offended party, but rather deterrence of future litigation abuse." *Brubaker v. City of Richmond*, 943 F.2d 1363, 1370 n.7 (4th Cir. 1991). Considering all of the relevant factors, I find that an appropriate sanction is to require the plaintiff to pay each of the defendants the sum of $2,500.[2] The plaintiff's conduct

[2] There is no direct evidence of the plaintiff's ability to pay, but he is a physician who is board certified in obstetrics and gynecology. His prior contract with the hospital provided for annual compensation of $250,000 plus payment of professional liability insurance coverage, health insurance, and professional memberships. Presumably that contract is a fair measure of the plaintiff's earning ability. He has not claimed in response to the Rule 11 motions that he is unable to pay a reasonable sanction. The burden is on the party being sanctioned to show his financial status. *See In re Kunstler*, 914 F.2d at 524.

was egregious; moreover, there is some evidence of malice, particularly in light of his allegation in the suit papers that the defendants "left the area soon after [the hospital] was investigated by federal authorities." There is no evidence that the defendants fled any investigation, in spite of this innuendo. As a physician himself, the plaintiff would know the likely professional complications to the defendants engendered by a lawsuit, regardless of its lack of merit.

III

For the foregoing reasons, the Motions for Sanctions will be granted and sanctions awarded. Separate judgments consistent with this opinion are being entered herewith in the cases.

DATED: March 3, 2003

_____
United States District Judge