

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

**CASE NUMBER 06-0752-CV-W-GAF**

Harold-Ray Stanley,  
Plaintiff, *pro se*,

v.

The Honorable Jack Grate et al.,  
Defendants

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**PLAINTIFF'S MOTION AND MEMORANDUM OF LAW  
TO DENY DEFENDANT STANLEY'S MOTION FOR SANCTIONS and  
PLAINTIFF'S MOTION AND MEMORANDUM OF LAW  
FOR SANCTIONS AGAINST DEFENDANT STANLEY AND HER COUNSEL**

Plaintiff, *pro se* with assistance of counsel, moves this court to Deny Defendant Marcia Stanley's motion for Fed. R. Civ. Proc. Rule 11 sanctions and to move for Rule 11 sanctions in the form of an admonishment to defendant and her counsel for filing her Rule 11 motion for sanctions. In support he offers,

1. The motion for sanctions is untimely.
2. The defendant's April 11, 2007 service of his Motion for Sanctions was intended to intimidate the Plaintiff as evidenced by the delay in filing the Motion of Sanctions until December 12, 2007.
3. The motion for sanctions violates the "safe harbor" rule.
4. The motion impermissibly, without any authority, requests this court to render sanctions in this action *and* in a completely different action, Case Number 05-0281-CV-W-GAF,

Western District of Missouri, Western Division, Order and Judgment both dated October 25, 2005—over two years after the case was dismissed.

5. The complaint and pleadings in this action were based on current accepted law.
6. The complaint and pleadings in this action raise good faith debatable points of law.
7. The motion does not challenge the truthfulness and accuracy of any facts offered by the Plaintiff.
8. The relief sought in this action is proper.
9. The action and pleadings were *not* unfounded, meritless (groundless or without foundation), frivolous or vexatiously brought.
10. The defendant's, April 11, 2007 service of his Rule 11 Motion for Sanctions with intimidation purpose, extreme delay in filing of an untimely Rule 11 motion that violates the safe harbor rule and seeks sanctions in a totally different action, itself merits a Rule 11 sanction.

Wherefore the Plaintiff prays this court deny the Defendant's Motion for Sanctions in both actions. The Plaintiff requests Rule 11 Sanctions in the form of an admonishment to defendant and her counsel for filing an untimely, improper and groundless motion for sanctions.

Respectfully Submitted,

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Harold R. Stanley, Plaintiff, *pro se*  
10707 E. 240th Street  
Peculiar, MO 64078  
Telephone: 816-779-4284  
E-mail: [hstanley@fairpoint.net](mailto:hstanley@fairpoint.net)

December 21, 2007

**MEMORANDUM OF LAW**

**IN SUPPORT OF MOTION TO DENY SANCTIONS AGAINST  
PLAINTIFF and**

**IN SUPPORT OF MOTION FOR SANCTIONS AGAINST  
DEFENDANT**

**Introduction**

“...it is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success. No matter how honest one's belief that he has been the victim of discrimination, no matter how meritorious one's claim may appear at the outset, the course of litigation is rarely predictable. Decisive facts may not emerge until discovery or trial. The law may change or clarify in the midst of litigation. Even when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit.” Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978)

This action is a civil rights violation action (42 U.S.C. § 1983). This, contrary to defendant's framing, was not a domestic relations action. In this action the Plaintiff proved the Defendants, contrary to 28 U.S.C. § 1446, acted in state court, lacking all jurisdictions to deny the Plaintiff his civil rights. The district court's final determination is not the measure of whether the action, complaint, and pleadings were frivolous or meant to harass sufficient to trigger consideration of a Fed. R. Civ. Proc. Rule 11 motion. The measure is whether the pleadings were reasonably founded and not vexacious. The fact the district court did not feel the Plaintiff should prevail is immaterial to the determination whether a Rule 11 motion should be granted.

**A. Rule 11 Motion Was Untimely and Violated the Safe Harbor Rule**

In this action the district court's Order was dated Nov 9, 2007 and its judgment entered Nov 13, 2007.

In action Case Number 05-0281-CV-W-GAF, Western District of Missouri, Western Division, the district court dismissed the action October 25, 2005.

The Motion for Sanctions was served April 11, 2007.

The Motion for Sanctions was filed December 12, 2007.

Current Developments in Federal Civil Practice 2004, Co-Chair William P. Frank, John Gardiner, Practising Law Institute, is cited as the source for the following paragraphs.

A motion for sanctions must be filed as soon as practicable after discovery of a Rule 11 violation. Divane v. Krull Elec. Co., 200 F.3s 1020, 1027 (7<sup>th</sup> Cir. 1999); XCO Int'l, Inc. v. Pacific Scientific Co., No. 01-C-6851, 2003 U.S. Dist. LEXIS 7286 (N.D. Ill. Apr. 29, 2003). In XCO, the plaintiff moved for sanctions against the defendant, claiming the defendant filed a frivolous counterclaim, more than a hundred days after the court entered summary judgment against the defendant on the counterclaims. 2003 U.S. Dist. LEXIS 7286 at \*8. The plaintiff argued that the sanctions motion was not untimely because it was not until the resolution of the summary judgment proceeding that the lack of evidentiary support for the defendant's claims became clear. *Id.* At \*\*8-9. The court denied the sanctions motion as untimely. *Id.* At \*9. Relying on prior filings in which the plaintiff warned defendant that defendant was violating Rule 11 by maintaining its counterclaims, the court found that plaintiff knew the counterclaims lacked merit well before it served and filed the sanctions motions. *Id.* at \*\*9-10. Because plaintiff failed to timely *file* the sanctions motion and offered no equitable considerations to

explain the delay, the court found that the plaintiff failed to comply with the safe harbor provision. Id. at \*11.

Other courts have recognized that the “safe harbor” section of the rule also effectively requires parties to file Rule 11 motions before the court has ruled on the pleading at issue. See Retail Flooring Dealers of Am., Inc. v. Beaulieu of Am., LLC, 339 F.3d 1146, 1150 (9<sup>th</sup> Cir. 2003) (reversing sanctions award where motion was filed after complaint had been dismissed and time within which to amend had expired); Barber v. Miller, 146 F.3d 707, 710 (9<sup>th</sup> Cir. 1998); Ridder v. City of Springfield, 109 F.3d 288, 295 (6<sup>th</sup> Cir. 1997), cert. denied, 522 U.S. 1046 (1998).

Greer v Cox, N op. 01-2583-JAR, 2003 U.S. Dist. LEXIS 16858, slip op. at \*\*8-9 (D. Kan. Sept. 25, 2003) (holding that Rule 11 motions filed after dismissal of complaint violated safe harbor, even though served more than twenty-one days before dismissal order); Pendleton v. Central N.M. Correctional Facility, 184 F.R.D. 637, 640 (D.N.M. 1999); see also Augustine v. Adams, No. 98-2422-GTV, 2000 U.S. Dist. LEXIS 5920, at \*\*2-3 (D. Kan. Ark. Apr. 19, 2000) (holding that a Rule 11 motion *filed* subsequent to summary judgment violates the safe harbor provision); Deshiro v. Branch, 183, F.R.D. 281, 287 (M.D. Fla. 1998) (holding that where motion for summary judgment had already been granted, the service and *filing* of a Rule 11 motion “failed to adhere to the underlying policy supporting the ‘safe harbor’ provision”).

For this reason alone, and the supporting caselaw above, the defendant’s motion for sanctions must be denied. It was filed after a final order and judgment was entered.

**B. There is no Authority to Grant Request for Sanctions in Case Number 05-0281-CV-W-GAF**

The defendant’s filing a motion in *this* action requesting sanctions in a completely *different action* lacks all authority. The defendant should be filing a motion for sanctions in the

*other* action if she wants a remedy in *that* action. The court in *this* action cannot grant a remedy in *another* action.

Additionally, the defendant and her counsel request this sanction over two years after the action was dismissed. No authority exists for the motion. It too is untimely filed.

**C. This Action Was Grounded in Current Law and No Facts Were Disputed**

None of the defendants challenged any of the allegations, i.e. that they acted in state court to deny the Plaintiff his civil rights during a time period when the state action had been removed to federal court and before it was remanded. 28 U.S.C. § 1446, to the Plaintiff's reading, was unambiguous, that the state court shall proceed no further after removal; that any state court action after removal and before remand lacked all jurisdiction.

No facts in this lawsuit were challenged by any defendants.

The conclusion of the district court that the state judge defendant had immunity, and that the other defendants were not state actors pursuant to 42 U.S.C. § 1983 was supporting evidence the action was not frivolous, was well founded and not vexacious.

There is further evidence the civil right action had merit because the district court about 15 months after it dismissed the removed action entered an order of remand. That is an indication the district court felt something was amiss and supports the Plaintiff's position that this lawsuit had merit because no remand had been entered.

Finally, a timely appeal has been filed in this action.

**D. The Complaint's Purpose Was Good Faith and Supports Public Policy**

The only purpose of the lawsuit was to defend the Plaintiff's civil rights. There is nothing to indicate the Plaintiff's intentions were otherwise. Furthermore, there is nothing

improper in filing a civil rights lawsuit (42 U.S.C. § 1983) that may have good faith secondary purposes. Burkhart v. Kinsley Bank, 852 F.2d 512, 515 (10th Cir. 1988).

(stating, without explanation, that where the complaint was well-grounded, “any suggestion of harassment would necessarily fail.”).

Solovy, Hirsch, Simpton, Tamaras in Sanctions Under Rule 11: A Cross Circuit Comparison, Loyola of Los Angeles Law Review, v 37: 727, 737 Winter 2004, citing Townsend v. Holman Consulting Corp. 929 F.2d 1358 (9th Cir. 1991) (en banc) and Sussman v. Bank of Isr., 56 F.3d 450, 459 (2d Cir. 1995);

“The enforcement of these substantive legal rights is important not only to the plaintiff asserting them but also potentially to ‘the public, since the bringing of meritorious lawsuits by private individuals is one way that public policies are advanced.’ The Ninth Circuit concluded that, from a policy standpoint, it would be counterproductive to sanction nonfrivolous, substantive claims, ‘even when the motives for asserting those claims are not entirely pure.’ The Second Circuit adopted the *Townsend* court’s analysis, stating that ‘[a] party should not be penalized for or deterred from seeking and obtaining warranted judicial relief merely because one of his multiple purposes in seeking that relief may have been improper.’ ”

Solovy at 730,

“An improper purpose to delay proceedings will be found when a litigant suggests that his purpose in presenting a paper is to cause delay.[ Bay State Towing Co. v. Barge Am. 21, 899 F.2d 129, 132–33 (1<sup>st</sup> Cir. 1990)] But the improper purpose may also be inferred if the presenting party stands to benefit from a delay.[ Wright v. Tackett, 39 F.3d 155, 158 (7th Cir. 1994)].

There were no delays in this action.

Solovy at 739,

“The Supreme Court has not spoken on the issue of whether an otherwise nonfrivolous complaint filed with an improper purpose would violate Rule 11. However, in two different contexts, the Court has examined whether a litigant may be penalized for bringing a nonfrivolous lawsuit based on his or her purpose for doing so—in 1993 in Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc. (PRE)[508 U.S. 49 (1993)] and in 2002 in BE&K Construction Co. v. NLRB (BE&K) [536 U.S. 516 (2002)]. PRE and BE&K make clear that penalizing litigants with nonfrivolous claims because of their

purposes for bringing those claims raises concerns under the First Amendment right to petition. PRE, 508 U.S. at 62.”

Solovy at 741,

“In PRE, the Court, citing its decision in California MotorTransport Co. v. Trucking Unlimited, [404 U.S. 508, 513 (1972)] stated that recourse to the courts “should not be condemned as sham until a reviewing court has ‘discern[ed] and draw[n]’ the ‘difficult line’ separating objectively reasonable claims from ‘a pattern of baseless, repetitive claims . . . which leads the factfinder to conclude that the administrative and judicial processes have been abused.’” [Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., 508 U.S. 49, 58 (1993)]. The Court set forth a two-part rule. [ *Id.* at 60.] First, “the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.” [ *Id.* ] Second, “[o]nly if challenged litigation is objectively meritless may a court examine the litigant’s subjective motivation.” [ *Id.* ]”

This action has merit. No ill purpose existed for filing the action.

#### **D. The Defendant’s Sanction Motion is Worthy of a Rule 11 Sanction**

##### **1. Defendant’s Service of Sanctions Motion Was Meant to Intimidate**

The defendant served her Motion of Dismissal to the Plaintiff on April 11, 2007. She then deliberately delayed her filing of the Motion until December 12, 2007. If the defendant truly felt Plaintiff’s complaint was meritless or meant to harass, under well-established caselaw, she should have immediately filed the Motion after the Rule 11 twenty one day safe harbour. She did not. She delayed. It cannot be disputed that the early service of the motion for sanctions - without subsequent timely filing - represented an attempt to intimidate. This is conduct disapproved in the notes to Rule 11.

##### **2. Defendant’s Untimely Motion Was Contrary to Clearly Established law**

The law was well settled as to the proper time to file a Motion for Dismissal. Defendant’s filing contrary to well established caselaw indicates a purpose to harass the Plaintiff.

The defendant in *this* action requests the court to grant a sanction in a completely *different* case. Such a pleading lacks all authority. Filing two years after final order is untimely and can only be viewed with a purpose to intimidate and harass the Plaintiff.

**3. Defendant's Motion Pleading is Meritless and Ungrounded**

The defendant's Motion, untimely, ungrounded, delayed for the purpose of intimidating and harassing, and requesting relief in a different case is meritless and ungrounded.

Further, the defendant misrepresents to this court the nature of *this* action. It is a 42 U.S.C. § 1983 action, not a domestic relations action.

Lastly, the defendant's motion consumes the court's valuable resources requiring review of this motion to deny, rendering and entering an order.

It is proper for this court to admonish the defendant for the untimely filing of an improper motion for sanctions.

**Conclusion**

Wherefore the Plaintiff prays this court deny defendant's motion for sanction in this case and declare the motion for sanctions in Case Number 05-0281-CV-W-GAF is misplaced.

Further, he prays this court admonish the defendant and her counsel for filing an untimely, improper motion for sanction meant to intimidate and harass the Plaintiff and that improperly consumes valuable court resources.

Respectfully Submitted,

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Harold R. Stanley, *pro se*  
10707 E. 240th Street  
Peculiar, MO 64078  
Telephone: 816-779-4284  
E-mail: [hstanley@fairpoint.net](mailto:hstanley@fairpoint.net)

December 21, 2007

## Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via first-class U.S. Mail, postage pre-paid, this 21<sup>st</sup> Day of December, 2007 to

Michael S. Dodig, Esq.  
The Dodig Law Firm, LLC  
P.O. Box 158  
Lee's Summit, Missouri 64063-0158  
E-mail: [mdodig@kc.rr.com](mailto:mdodig@kc.rr.com)  
Attorney for Defendant Marcia E. Stanley

Emily A. Dodge  
Assistant Attorney General  
P.O. Box 899  
Jefferson City, Missouri 65102  
Attorney for Defendant the Honorable Jack Grate

Daniel E. Hamann, Esq.  
Deacy & Deacy, LLP  
920 Main Street, Suite 1900  
Kansas City, MO 64105  
Attorney for Defendant Lester Wight, Esq.

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Harold R. Stanley, Plaintiff, *pro se*  
10707 E. 240th Street  
Peculiar, Missouri 64078  
[hstanley@fairpoint.net](mailto:hstanley@fairpoint.net)