

[INSERT COURT NAME AND JURISDICTION]

[INSERT NAME OF PLAINTIFFS])
)
 Plaintiffs,)
)
 v.) Civil Action No. [DOCKET NUMBER]
)
 [INSERT NAME OF DEFENDANTS])
)
 Defendants.)
)

PLAINTIFFS' MOTION IN LIMINE TO STRIKE THE DEFENDANTS' PLEADINGS,
MOTIONS, AND ADVOCACY FOR PLEADING S AND MOTIONS FOR VIOLATION

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE TO STRIKE
THE DEFENDANTS' PLEADINGS, MOTIONS, AND ADVOCACY FOR
PLEADINGS AND MOTIONS FOR VIOLATION OF
FEDERAL RULE OF CIVIL PROCEDURE 11

, INTRODUCTION

The Defendants' pleadings and advocacy for their pleadings that seek to threaten deportation or criminal sanctions in a civil trial should be excluded and stricken from the record on the grounds that such pleadings, advocacy of such pleadings, and motions that violate the Rule 11.

Rule 11 was promulgated to prevent abuses, act of bad faith, and punish violations of conduct in the signing and advocacy of pleadings motions, whether by an attorney or a pro se litigant. An abuse, act of bad faith, violation of conduct can be inferred from behavior that harasses, causes unnecessary delay, increases the cost of litigation, or presents frivolous legal contentions.

The Defendants may not threaten deportation or criminal sanctions to the Plaintiff due to the abusive, harassing and intimidating nature of being so in a civil trial, and due to the bad

faith and frivolous nature of conduct in making an argument for an unlawful contention of law.

For the reasons detailed below, this Court should strike the Defendants' pleadings, advocacy of such pleadings, and motions that violate Rule 11.

ARGUMENT

LEGAL STANDARD

The Federal Rule of Civil Procedure provides for the striking of pleadings and the imposition of disciplinary sanctions on attorneys or pro se litigants who abuse the signing of pleadings.

Rule 11 was promulgated to limit abuses and bad faith acts by attorneys and pro se litigants in court. Tarkowski v. County of Lake, 775 F.2d 173, 175-176 (7th Cir. 1985). Rule 11 takes effect when the attorney or pro se litigant advocates or reaffirms to the court a position contained in a pleading after learning the position ceases to have merit. Generally, Rule 11 was enacted to require litigants to "stop and think" before making assertions in court. Fed.R.C.P. 11 advisory committee notes.

The provisions of Rule 11 apply to motions and other papers by incorporation of Rule 11 into the Federal Rule of Civil Procedure 7(b)(3), which expressly states that "[a]ll motions shall be signed in accordance with Rule 11."

An attorney or pro se litigant is considered to be "present" to the court when the attorney or pro se litigant signs, files, submits, or later enters a pleading, written motion, or other paper. Fed.R.Civ.P. 11(b). The sanctions for an attorney or pro se litigant violating Rule 11 can be instituted on the court's initiative or by motion. Fed.R.Civ.P. 11(c)(1). The

procedure for filing a motion for Rule 11 sanctions includes a “safe harbor” of twenty-one days between the service of the motion and its filing with the court, so that the individual who has allegedly violated Rule 11 has twenty days to retract the statement. Fed.R.Civ.P. 11(c)(1)(A).

An attorney who initiates, causes to be initiated, or threatens to initiate a criminal prosecution for the purpose of influencing a civil matter is violating the rules of ethics. See

the court; referring the matter to disciplinary authorities. Fed.R.Civ.P. 11 advisory committee notes.

Although Rule 11 carries the purpose to deter rather than to compensate, the Court allows in unusual circumstances for monetary sanctions payable to the offended party for violations of Rule 11(b)(1).

In analyzing the appropriate sanctions, the court analyses whether the improper conduct was willful or negligent; whether it was part of a pattern of activity, or an isolated event; whether the offender has engaged in similar conduct in other litigation; whether the conduct has infected the entire paper, or only one particular account or defense; whether it was intended to injure; what effect the conduct had on the litigation process in time or expense; whether the offender person is trained in the law; what amount may be needed to deter the offender from repeating the offense; what amount is needed to deter other litigants from similar activity. Fed.R.Civ.P. 11 advisory committee notes.

, , THE COURT SHOULD STRIKE THE DEFENDANTS' PLEADINGS, MOTIONS, AND ADVOCACY FOR PLEADINGS AND MOTIONS FOR VIOLATION OF RULE 11 BECAUSE THEY HARASS, INTIMIDATE, CAUSE UNNECESSARY DELAY OR INCREASE THE COST OF LITIGATION

IV. CONCLUSION

The Defendants are attempting to present the court pleadings and motions that unlawfully threaten deportation or criminal action to the Plaintiff, causing harassment, intimidating, unnecessary delays, and increased cost of litigation to argue frivolous claims that are not proper statements of law.

This Court should strike the Defendants' presentation of pleadings and motions to the extent that they threaten deportation or criminal actions, and impose disciplinary sanctions on the Defendants and their attorneys for their faith conduct and abuse of Rule 11.

Dated [MONTH DAY], 2007

By: _____ /s/
[NAME
TITLE
CONTACT INFORMATION]

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ORDER