

REC'D SEP 23 2014

STATE OF MAINE
KNOX, SS.DISTRICT COURT
Rockland
Docket No. PA-14-117

EXHIBIT

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Katherine Sullivan,
Plaintiff,

v.

Lawrence Tardiff,
Defendant.Order on Sanctions

On September 12, 2014, the Court held a hearing on Plaintiff's Motion for Rule 11 sanctions filed July 22, 2014, Plaintiff's Amended Motions for Rule 11 Sanctions filed July 30, 2014, Plaintiff's Request for Rule 11 Sanctions to be Imposed on Beth Maloney, Esq. filed August 1, 2014, and Defendant's Cross Motion to Dismiss, Cross Motion for Fees and Sanctions filed August 5, 2014. The Motions arise out of a protection from abuse proceeding held on July 25, 2014, and decided by Order dated July 28, 2014.

Pursuant to Rule 11, the signature of an attorney to a motion constitutes a representation by him or her that, subject to Rule 11(b), he or she has read the motion; that to the best of his or her knowledge and belief there is good grounds to support it, and that it is not intended for delay. 2 Harvey, *Maine Practice Series* §11.3 at 398 (3rd ed. 2011). The rule requires that an attorney make a reasonable inquiry into the facts and the law that serve as a basis for his or her motion. With respect to the law, an attorney need not be correct in his or her view of the law, but must at a minimum make a reasonable inquiry into the law supporting the motion to ensure that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. See *Bulen v. Navajo Refining Co.*, 9 P.3d 607, 301 Mont. 195 (2000)(discussing Montana's similar Rule 11 requirements).

Plaintiff's Motion for Rule 11 sanctions filed July 22, 2014, Plaintiff's Amended Motions for Rule 11 Sanctions filed July 30, 2014, Plaintiff's Request for Rule 11 Sanctions to be Imposed on Beth Maloney, Esq. filed August 1, 2014.

The court concludes that Attorney Beth Maloney violated Rule 11 when she signed and filed a Motion for Recusal against Judge Worth dated July 17, 2014 because she had no good grounds either in fact or law to do so. The fact that Attorney Maloney subsequently withdrew the motion at hearing because Judge Worth was not presiding over the proceeding does not negate the violation.

The court also finds that Attorney Maloney violated Rule 11 in the Defendant's Motion for Findings and Conclusions and for Amendment of Findings (M.R.Civ.P 52(a) & (b)) dated July 31, 2014. Among the findings and amendments that Attorney Maloney requested were findings and orders regarding the enforceability and constitutionality of a "Spickler" provision in the parties' agreed-upon Divorce Judgment. That Divorce Judgment became final over two years ago and no reasonable attorney could have believed that the Divorce Judgment was subject to a collateral attack in this proceeding simply because the court referenced it, by way of background, in its factual findings.

The court further finds that Attorney Maloney had no good grounds in fact or in law to request that the court find that Plaintiff committed professional misconduct "as it related to the Spickler provision, which counsel refers to as the "Unenforceable Provision" (paragraph 13) or that the "Plaintiff deliberately and intentionally perpetuated a fraud upon the court" (paragraph 14) or to request that the court order Plaintiff to reimburse Defendant " for all of his fees and costs incurred 'to comply' with the application of the Unenforceable Provision and/or for contempt proceedings initiated and orchestrated by Plaintiff thereunder, as well as to have Plaintiff sanctioned for such conduct" (paragraph 16) .

Plaintiff also seeks Rule 11 sanctions related to a subpoena that Attorney Maloney issued in this case. While the issuance of the subpoena may implicate violations of the rules of civil procedure and the rules of professional conduct, it does not appear that the issuance of a subpoena is expressly covered under Rule 11.

In summary, for the reasons stated above, the court finds that Beth Maloney, Esq violated M.R.Civ.P. 11 and ORDERS that she pay attorney fees to Christopher K. MacLean, Esq. in the amount \$702 on Plaintiff's Motion filed July 22, 2014 and

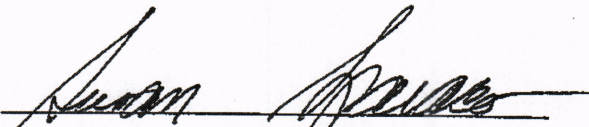
Amended Motion filed July 30, 2014 and \$400 on Plaintiff's Request for Sanctions filed August 1, 2014.

Defendant's Cross Motion to Dismiss, Cross Motion for Fees and Sanctions filed August 5, 2014.

Defendant's Cross Motion to Dismiss dated August 5, 2014 relates to Plaintiff's Opposition to Defendant's Motion for Findings and Conclusion. It is not a proper motion and is therefore dismissed. *See* M.R.Civ.7 (e). Defendant's Cross- Motion for Fees and Sanctions is likewise dismissed.

The entry shall be: Plaintiff's Motion for Rule 11 sanctions filed July 22, 2014, and Plaintiff's Amended Motions for Rule 11 Sanctions filed July 30, 2014, are granted in part and denied in part; Plaintiff's Request for Rule 11 Sanctions to be Imposed on Beth Maloney, Esq. filed August 1, 2014 is granted; and Defendant's Cross Motion to Dismiss, Cross Motion for Fees and Sanctions filed August 5, 2014 is denied.

Dated: September 22, 2014


JUDGE, MAINE DISTRICT COURT

¹ The amounts are based upon counsel's affidavit for fees. The court deducted \$270 from the amount requested for work performed on July 29, 2014 as it pertained to research concerning the request for sanctions arising out of the issuance of the subpoena.