

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY KAY STEWART and	:	CIVIL ACTION
TIMOTHY JOHN STEWART, SR. and	:	
TIMOTHY JOHN STEWART, JR., BY HIS	:	
PARENTS AND NATURAL GUARDIANS	:	
MARY KAY STEWART AND TIMOTHY	:	
JOHN STEWART, SR.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 96-0441
	:	
STATE FARM FIRE & CASUALTY	:	
COMPANY,	:	
	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J. NOVEMBER , 1997

Plaintiffs' counsel, Allen L. Feingold, Esquire has been sanctioned a sum total of \$1,500.00 for filing frivolous motions.¹ Additionally, Mr. Feingold has asked for my reconsideration of the Order imposing sanctions on him and for my recusal. I write this memorandum to explain in detail the outrageous conduct that led to the imposition of these sanctions, and to warn Mr. Feingold against any further frivolous filings. Zuk v. Eppi of the Med. College of PA., 103 F.3d 294, 301 (3d Cir. 1996). I also find that my recusal is unwarranted on the facts of this case.

I. FACTS.

¹ By Order dated June 11, 1997, Mr. Feingold was sanctioned an additional \$500.00 for failure to depose a witness in violation of an Order of this Court dated March 3, 1997. Because that sanction is unrelated to the sanctions addressed in this Memorandum, it will not be discussed.

This lawsuit originally commenced in the Court of Common Pleas of Philadelphia County. The Complaint alleges that Mary Kay Stewart was driving her son, Timothy Jr., in her husband's car when it was involved in an automobile accident on December 29, 1991, and that mother and son sustained personal injuries as a result of the collision. The Stewarts allege that State Farm is responsible for the payment of expenses for medical care and treatment, for uninsured motorist benefits, and for various other benefits, but that it has wrongfully failed to pay the requested benefits. Plaintiff Timothy John Stewart, Sr. also alleges that his vehicle sustained collision damage in the accident and that Defendant has wrongfully refused to pay the property damage claim.

Subsequently, the case was removed to this Court on January 22, 1996, by Defendant pursuant to 28 U.S.C.A. §§ 1332 and 1441. Since that time Plaintiffs' counsel has continuously filed Motions requesting that the matter be remanded back to the Philadelphia Court of Common Pleas. Mr. Feingold has repeated his pattern of repetitive filings with respect to a Motion to Compel Production of Documents. This conduct is unwarranted and must cease. Monetary sanctions have been imposed twice, which, it is hoped, will deter Mr. Feingold from continuing this offensive course of conduct.

II. STANDARD.

Rule 11 of the Federal Rules of Civil Procedure governs Mr. Feingold's behavior. Specifically, Rule 11(b) provides that

by filing or advocating a motion an attorney is simultaneously certifying that such motion "is not being presented for any improper purpose, such as to harass or to cause unnecessary delay." FED.R.CIV.PRO. 11(b)(1). If Rule 11(b) is violated, the Court may sanction the attorney responsible for the violation. FED.R.CIV.PRO. 11(c).

The Court of Appeals for the Third Circuit has ruled that Rule 11 sanctions should be imposed "only in the 'exceptional circumstance' where a claim or motion is patently unmeritorious or frivolous." Doering v. Union County Board of Chosen Freeholders, 857 F.2d 191, 194 (3d Cir. 1988)(quoting Gaiardo v. Ethyl Corp., 835 F.2d 479, 483 (3d Cir. 1987); citing Lieb v. Topstone Industries, Inc., 788 F.2d 151, 157 (3d Cir. 1986)). The sanction imposed must be limited to what the Court determines is sufficient to deter future violations. Doering, 857 F.2d at 195. Mitigating factors, such as the attorney's ability to pay, adverse press coverage, and past disciplinary action taken against the attorney must be considered in determining the amount of sanctions to be imposed. Id. at 196.

III. PROCEDURAL HISTORY.

Mr. Feingold has violated Rule 11(b) by filing a frivolous motion. His latest motion, entitled "Plaintiffs' Motion for Production and Sanctions and to Remand," addresses two issues, both of which have already been decided by this Court on numerous occasions. Mr. Feingold's repetitive filings, as outlined below, rise to the level of an "exceptional

circumstance" justifying the imposition of sanctions against him.

A. Motion to Remand.

This action was removed by Defendant on January 22, 1996. One week later, on February 2, 1996, Mr. Feingold filed his first Motion to Remand. This Court denied that Motion by Order dated February 18, 1996. Five days later, on February 23, 1997, Mr. Feingold filed a Motion for Reconsideration. That Motion was denied by Order dated February 7, 1996.

On October 25, 1996, a hearing was held in order to set a date for trial. Mr. Feingold orally argued the issue of remand in open Court, handing up a courtesy copy of his Amended Motion to Remand. The Motion was filed with the Clerk's Office that same day. A Supplement to Plaintiff's Amended Motion was filed four days later on October 29, 1996. Plaintiffs' Amended Motion was denied by Order dated November 12, 1996.

On February 13, 1997, Mr. Feingold again filed a Motion for Reconsideration of the issue of remand.² This Court denied Plaintiff's Motion for Reconsideration and Defendant's Cross-motion for sanctions by Order dated March 3, 1997.

On March 20, 1997, Mr. Feingold filed a document entitled "Verification of the Plaintiff, Mary Kay Stewart as to Jurisdictional Limits and Minimums." In this document, Mr. Feingold again argues that the matter should be remanded to State Court.

² This Motion combines both the issue of remand and the production of documents as discussed below.

On March 21, 1997, Mr. Feingold filed a Petition for Certification of Interlocutory Order pursuant to 28 U.S.C.A. § 1292(b). By this Petition Mr. Feingold attempted to have the issue of remand decided by the Third Circuit Court of Appeals. A Supplement to this Motion was filed on March 24, 1997. The Petition was denied by this Court's Order dated April 25, 1997.

On April 25, 1997, Mr. Feingold filed a Motion for Preclusion and Sanctions. This Motion, which consisted of 115 paragraphs and 81 exhibits, included, among other things, the issue of remand.³ This Motion was denied by Order dated June 11, 1997.

On June 23, 1997, Mr. Feingold filed a Motion for Reconsideration of Certification of Interlocutory Order. That Motion was denied and Mr. Feingold was sanctioned \$500.00 for filing a frivolous motion. Despite that sanction, Mr. Feingold filed his latest "Motion for Production and Sanctions and to Remand" on August 26, 1997.

B. Motion to Compel.

While continuously bombarding this Court with Motions addressing the issue of remand, Mr. Feingold was contemporaneously filing repetitive Motions regarding discovery. Specifically, Mr. Feingold seeks discovery of any document in Defendant's possession which refers to the non-payment of Plaintiffs' insurance claims.

³ The portion of this Motion dealing with the production of documents is discussed below.

Mr. Feingold first broached the discovery issue on September 13, 1996 by the filing of a Motion to Compel. The parties addressed the issue during the October 25, 1996 hearing, at which time Defense counsel indicated that the file would be reviewed for any documents of this nature. The same day, an Order was entered directing Defendant to notify the Court of any such documentation.

On November 18, 1996, Mr. Feingold filed his second Motion to Compel. Defendant's response was that the documents requested did not exist. On December 16, 1997, an "Additional Response to Defendant's Answer to Plaintiff's Motion" was filed, requesting, for the third time, the production of these phantom documents. By Order dated January 27, 1997, Plaintiff's Motion was denied with respect to the production of documents.

On April 25, 1997, Mr. Feingold again filed his fourth Motion requesting, among other things, that Defendant turn over "each and every document that they possess, that has not previously been turned over to the plaintiffs." Mr. Feingold's Motion was denied by Order dated June 11, 1997.

IV. DISCUSSION.

A. Defendant's Motion for Sanctions.

By his current "Motion for Production and Sanctions and to Remand," Mr. Feingold requests the production of "each and every record, document, file [sic] involving the plaintiffs, their claims, this action or the defendant" and also asks this

Court to remand the matter to the Philadelphia Court of Common Pleas. This is no less than the ninth attempt to remand and fifth request for production of the same documents.

Apparently, Mr. Feingold does not understand the meaning of the word denied. The only explanation for his behavior is that he intends to harass, annoy, and delay both this Court and opposing counsel. Mr. Feingold's lack of regard for this Court, the Federal Rules of Civil Procedure, and the legal profession is apparent.⁴ Thus, sanctions under Rule 11 are warranted.

Mr. Feingold has been sanctioned \$1,000.00 for his latest Motion by Order dated October 9, 1997. That amount should not be reduced after considering the mitigating factors announced

⁴ In addition to the conduct outlined in this Memorandum, Mr. Feingold's Motions routinely contain unprofessional statements. Most are too lengthy to set forth verbatim but a sample of the more outrageous comments follows:

- (1) Characterization of Defendant as "the worst insurance company in the State of Pennsylvania" who "harasses and hassles their insureds and all third parties." Pls. Mot. to Remand filed 2/2/96 at ¶¶ 3-4.
- (2) Comparison of defense counsel and "an individual with even limited first-grade intelligence." Pls. Mot. to Remand filed 2/2/96 at ¶ 9.
- (3) Stating that Defendant "treats every matter as a burden, takes their good old time about everything . . . poo-pooed the matter, and did little or nothing on the claim." Pls. Additional Resp. to Def.'s Answer to Pls. Mot. for Protective Order and Pls. Mot. to Compel with Sanctions filed 12/16/96 at 1.
- (4) Reference to Defense Counsel receiving payment "for every word, sentence, paragraph, document, pleading, phone call, etc." Pls. Reply to Def.'s Br. in Opp'n to Pls. Mot. to strike Def.'s Br. in Opp'n to Pls. Mot. filed 5/28/97 at 2.

by the Third Circuit in Doering. Mr. Feingold has previously been sanctioned \$500.00 for an earlier frivolous filing and \$500.00 for failure to depose a witness. This amounts to a total of \$2,000.00 in sanctions that have been assessed against Mr. Feingold to date. Mr. Feingold has not received any adverse press coverage as a result of this incident. I feel that Mr. Feingold has adequate financial resources to pay this paltry sum.

It is hoped that these sanctions will deter Mr. Feingold from filing any further frivolous Motions with this Court. Further frivolous filing will result in the imposition of additional sanctions, the amount of which will increase with each sanction imposed.

B. Plaintiff's Motion for Recusal.

Mr. Feingold argues that recusal is appropriate because it appears that I am biased in favor of Defendants. Mr. Feingold looks to rulings entered against him and sanctions imposed upon him to support this argument. "The standard for recusal is whether an objective observer reasonably might question the judge's impartiality." Mass. Sch. of Law at Andover, Inc. v. Am. Bar Assn., 107 F.3d 1026, 1042 (3d. Cir. 1997), cert. denied ___ U.S. ___, 118 S.Ct. 264 (1997).

Mr. Feingold's Motion for recusal must be denied. Judicial rulings, standing alone, are not a valid basis for recusal, unless they show "deep-seated favoritism or antagonism that would make fair judgment impossible." Liteky v. U.S., ___ U.S. ___, 114 S.Ct. 1147, 1157 (1994). Consistently "ruling

against a party could be entirely justified for that party might consistently be taking positions that cannot be supported."

Mass. School of Law at Andover, Inc., 107 F.3d at 1043.

This Court has consistently ruled against Mr. Feingold because he has consistently taken the same positions on the same issues, positions which cannot be supported. There is no evidence of favoritism towards Defendants or antagonism towards Plaintiffs. A reasonable person would not question the impartiality of this Court. Recusal is unwarranted in these circumstances. An appropriate Order follows.

