

STATE OF OHIO  
COUNTY OF CUYAHOGA

) IN THE COURT OF COMMON PLEAS  
) SS.  
) Civil Case No. 474673

)  
) **JOURNAL ENTRY**  
)

**STANLEY MARKIEWICZ**, et al.,

Plaintiffs,

Vs.

**EMERY J. LEUCHTAG**, et al.,

Defendants.

**Kathleen Ann Sutula, J:**

IT IS SO ORDERED:

The Court conducted a Show Cause Hearing on March 26, 2003, to determine the validity of the assertions made by Plaintiffs' counsel, Joseph Mamone (hereinafter "Mamone"), in "Plaintiffs' Motion for Extension of Time to Produce Experts Report" ("February 27 Motion").<sup>1</sup> Present at the hearing were Mamone; one of the Plaintiffs, Patricia Markiewicz ("Ms. Markiewicz"); and defense counsel, Laura Volpini.

Specifically, in the February 27 Motion, Mamone wrote, "...my direct involvement in this case has only been since Stanley and Patricia Markiewicz asked me to be directly involved in June, 2002." *See* February 27 Motion, p.3.

Given the lengthy history of this case, a brief overview of the matter is certainly appropriate at this juncture.

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<sup>1</sup> This particular motion for extension of time was filed on February 27, 2003.

Plaintiffs originally filed the action on October 19, 2000.<sup>2</sup> At that time, the Complaint bore attorney Kevin Senich's ("Senich") signature. Mamone, however, was aware of the proceedings as far back as September 5, 2000, when he notarized Stanley Markiewicz's medical release of information. *See* Motion to Extend, filed March 23, 2001. Two weeks later, Mamone sent a letter to Southwest General Hospital, in which he wrote, "This is to inform you that *I represent* Stanley L. Markiewicz." (emphasis added) *See* Motion to Extend, filed March 23, 2001.

Following a case management conference that the Court conducted on February 13, 2001, Mamone filed an "Entry of Appearance" on February 14. Through that notice, Mamone notified the Court that he was entering "a formal appearance as co-counsel," and he requested "that his name be entered on the docket and in the file and that copies and orders be sent to him."

Upon Mamone's official entry as co-counsel, Mamone filed three motions for extensions of time for filing an expert report. Each of these motions bore Mamone's signature. More significantly, Mamone's signature was the first signature listed on each of these motions. Also at that time, Mamone's signature can be found on a subpoena that was issued March 21, 2001.

Plaintiffs eventually dismissed the original suit, without prejudice, on July 5, 2000. Once again, Mamone's signature was affixed to the notice of dismissal.

The case was re-filed nearly one year later, on July 3, 2002.<sup>3</sup> This time, Mamone was the lone counsel representing Plaintiffs.

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<sup>2</sup> The original action was assigned case number CV-00-421509.

<sup>3</sup> The case number for the re-filed case is CV-02-474673.

In prosecuting the re-filed action for Plaintiffs, Mamone has continued to handle the case in a dilatory fashion, as he has filed no less than three extensions for time to file his expert report and/or extend discovery.<sup>4</sup> One of these motions was the February 27 Motion, which is at the center of this particular dispute.

Ohio Civil Rule 11 provides, in pertinent part:

*The signature of an attorney...constitutes a certificate by the attorney...that the attorney...has read the document; that to the best of the attorney's...knowledge, information, and belief that there is good ground to support it; and that it is not interposed for delay...For a willful violation of this rule, an attorney...upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. (emphasis added)*

In addition, Disciplinary Rule 7-102(A)(5) of the Ohio Code of Professional Responsibility prohibits attorneys from “[k]nowingly mak[ing] a false statement of law or fact.”

Despite the weight of the evidence detailed above, Mamone has stated in a pleading to the Court that his “direct involvement in this case has only been since Stanley and Patricia Markiewicz asked me to be directly involved in June, 2002.” *See* February 27 Motion, p.3. A plain reading of that sentence, however, would lead one to believe that Mamone did not have any prior involvement in the matter.

It is undeniable, however, that Mamone has had some involvement, in one form or another, *since at least September 2000*. At the hearing, Ms. Markiewicz, herself, stated that Mamone has been present in the suit long before June 2002. Additionally, this Court cannot overlook the fact that Mamone filed a formal notice of appearance in

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<sup>4</sup> Mamone has also filed, in the present case, a motion to continue the case management conference and a motion to continue the show cause hearing.

February 2001, and that he signed several pleadings before the case first was dismissed back in June 2001.

Mamone's explanations and interpretations for the claim made in the February 27 Motion are at best dubious, and at worst represent a fraud on the Court.

First, Mamone insists that he was not lead counsel in the first case. His argument relies on the fact that Senich initially filed the complaint and that Senich's signature appears on the pleadings. Mamone, however, cannot explain why his letters to Southwest General Hospital state that he represented Plaintiffs. Nor, can Mamone explain why his name and signature found on the various motions appear above Senich's.

In reality, Mamone's argument fails because his signatures signify to the Court that he was involved. Even if this Court were to turn a blind eye towards the evidence and take Mamone at his word, i.e. that Mamone was not "directly involved," by signing the motions, it gives the appearance to the Court that he was involved.

It is beyond this Court's powers of comprehension how one can "read [a] document" and attest "that to the best of the attorney's...knowledge, information, and belief that there is good ground to support" that motion, and then have that same attorney allege, at some later point in time, that he was not involved. *See* Civ.R. 11. Mamone's signature serves as prima facie evidence that he had read all documents and verified that they were true and accurate. *See* Civ.R. 11.

If anything, Mamone's argument places him in the proverbial Catch-22. If he was not involved in the prior case, then he perpetrated a fraud on the court by signing the motions in the first action despite lacking the appropriate knowledge as to whether the pleadings were accurate. On the other hand, if he did sign the motions in the first case in

accordance with Civil Rule 11, Mamone has fraudulently misled the Court by stating in the February 27 Motion that he was not directly involved. *See* DR 7-102(A)(5). Regardless of the view one takes, Mamone has created a double-edged sword that has been used in an attempt to mislead the Court.

Second, Mamone argues that Senich prepared the documents in the prior action, and Mamone simply signed off on them. This defense is wanting for the same reasons as discussed above. Moreover, Disciplinary Rule 6-101(A)(3) states that an attorney may not “[n]eglect a legal matter entrusted to him.” Overlooking the fact that as of September 2000, Mamone wrote in a letter that he was representing the Plaintiffs, Mamone now asserts that he referred the matter to Senich.

Assuming this is true, Mamone, since he was still signing various documents in the prior suit, had a duty under the Code of Professional Responsibility not to neglect the Plaintiffs’ case. Once again, Mamone has painted himself into a corner. If Mamone was not directly involved, as he claims in the February 27 Motion, then he presumably neglected the legal matter in violation of DR 6-101(A)(3). In the alternative, if he did adhere to this particular disciplinary rule, then the February 27 Motion contains a false statement. *See* DR 7-102(A)(5). Either way, Mamone has seemingly violated Ohio’s ethical rules.

Ultimately the ones who are hurt in this situation are those who place their faith in the integrity and competence of the legal system and the attorneys who serve that system. The Code of Professional Responsibility exists, however, for instances, such as the one before the Court, when those attorneys who swear to abide by the ethical rules fail to comport with the duties the legal profession imposes on them.

This Court, and in fact any person who desires the fair administration of justice, does not take lightly attempts to mislead it. Mamone's statement in the February 27 Motion is a clear example of an attempt to mislead the Court in a hope to grant yet another deadline extension.

The Court hereby holds Mamone in contempt of court for his statement in the February 27 Motion that he was not directly involved in Plaintiffs' case until June 2002. Due to the egregiousness of Mamone's conduct, any sanction this Court could impose would be insufficient. The Court, therefore, will be referring this matter, with the relevant documents and a transcript of the show cause hearing, to the Board of Commissioners on Grievances and Discipline of the Supreme Court.

DATE: April \_\_\_\_, 2003

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KATHLEEN ANN SUTULA, JUDGE

SERVICE

A copy of the foregoing Journal Entry has been sent via regular U.S. mail on this

\_\_\_\_\_ day of April, 2003, to the following:

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