

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BREWER,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:03cv127(PCD)
	:
JAMES STRILLACCI, <i>et al.</i> ,	:
Defendants.	:

**RULINGS ON DEFENDANT JAMES STRILLACCI'S MOTION FOR SANCTIONS AND
MOTION FOR A PROTECTIVE ORDER**

Defendant James Strillacci moves for sanctions and a protective order against plaintiff for his conduct in the present proceedings. For the reasons set forth herein, the motion for sanctions is **denied** and the motion for a protective order is **granted in part**.

I. BACKGROUND

Plaintiff, an attorney admitted to the practice of law before this Court, commenced the present action against, *inter alia*, defendant James Strillacci, Chief of the West Hartford Police Department. Plaintiff sent a letter to defendant requesting records of his arrest. Defendant responded with a letter reciting details of the arrest and providing procedures for obtaining the records sought. On April 3, 2003, and April 4, 2003, after receiving defendant's letter, plaintiff telephoned Joseph O'Brien, Counsel for the Office of the West Hartford Corporation, defendant Strillacci and defendant's counsel, Carl Ficks and left messages in which he made profane references to defendant Strillacci. Plaintiff has been represented by counsel since the outset of this action.

II. MOTION FOR SANCTIONS

Defendant moves for an order of sanctions against plaintiff pursuant to D. CONN. L. CIV. R.

11,¹ 28 U.S.C. § 1927 and the inherent authority of this Court. Plaintiff responds that sanctions are inappropriate given his status as client and the nature of the violation.

Sanctions may be levied in response to a party's actions undertaken in bad faith leading to a lawsuit or in the conduct of the litigation or an attorney's negligent or reckless failure to perform his or her responsibilities as an officer of the court. *See Wilder v. GL Bus Lines*, 258 F.3d 126, 130 (2d Cir. 2001). In the appropriate circumstances, either an attorney or a party may be subject to sanctions. *See United States v. Int'l Bhd. of Teamsters*, 948 F.2d 1338, 1343-44 (2d Cir. 1991).

Plaintiff may not be sanctioned under Rule 11 for his conduct. As conduct unrelated to a paper filed in this Court based on defendant's concession that the conduct was associated with a letter that was not part of "any formal discovery mechanism,"² sanctions will not lie. The cornerstone of Rule 11 is the certification requirement imposed in filing a signed pleading, motion or other paper. *Id.* at 1344 ("Rule 11 sanctions must be based on the signature of an attorney or client on a pleading, motion, or other paper in a lawsuit."). Rule 11 "may not be employed to sanction obnoxious conduct during the course of the litigation." *Id.* at 1346.

¹ D. CONN. L. CIV. R. 11 provides in its entirety that "[m]otions for attorneys' fees or sanctions shall be filed with the Clerk and served on opposing parties within thirty (30) days of the entry of judgment. Any motions not complying with this Rule shall be denied." The Rule is procedural, not substantive, in nature and does not provide a basis on which to sanction plaintiff. As such, the reference thereto is construed as a reference to FED. R. CIV. P. 11.

² Defendant repeatedly indicates that plaintiff has not commenced discovery in his case. As discovery is governed by the Standing Order on Scheduling in Civil Cases, which provides that "[f]ormal discovery shall not commence until the parties have conferred as required by FED. R. CIV. P. 26(f) and Local Rule 16," and in light of the Report of Parties Planning Meeting filed March 14, 2003, and established discovery deadline of 10/1/03, it is not apparent why discovery would not have commenced. If the evident hesitation is based on the filing of a motion to dismiss, the Standing Order further provides that "[t]he filing order of a motion to dismiss will not result in a stay of discovery." This Court expects that it will not be receiving eleventh hour requests for extensions of discovery deadlines given plaintiff's apparent inactivity.

Nor are sanctions available under § 1927. Section 1927, entitled “Counsel’s liability for excessive costs,” by its very terms applies only to an “attorney or other person admitted to conduct cases . . . who . . . multiplies the proceedings . . . unreasonably and vexatiously.” 28 U.S.C. § 1927. By its plain meaning, only the attorney of record may be sanctioned as only he or she may multiply proceedings. *See Int’l Bhd. of Teamsters*, 948 F.2d at 1345-46 (“Rule 11 sanctions may be imposed on both counsel and client, while § 1927 applies only to counsel”). The emphasis is not on the characteristics of the offending party but rather the role of the offending party in the litigation. *See Matta v. May*, 118 F.3d 410, 413-14 (5th Cir. 1997) (holding sanctions unavailable against party represented by counsel notwithstanding fact that party was practicing attorney). Section 1927 is thus an inappropriate basis for sanctions given plaintiff’s status as party to these proceedings, notwithstanding the fact that he is a practicing attorney.

Defendant also argues that sanctions are appropriate under this Court’s inherent authority to manage its docket. “A court has the inherent power to supervise and control its own proceedings and to sanction counsel or a litigant for bad-faith conduct or for disobeying a court’s orders.” *Mickle v. Morin*, 297 F.3d 114, 125 (2d Cir. 2003). “This power may . . . be exercised where the party or the attorney ha[s] acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 78 (2d Cir. 2000) (internal quotation marks omitted). Sanctions are inappropriate absent “clear evidence that the challenged actions are entirely without color . . . and [are taken] for reasons of harassment or delay or for other improper purposes.” *Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986) (internal quotation marks omitted).

Under the circumstances, it cannot be said that the exchange between plaintiff and defendant

was completely without color. The letter sent by plaintiff to defendant requested that records from his arrest be made available to him for pick-up and emphasized that the records not be sent to his home or office, apparently because plaintiff did not want his family involved in the litigation. Notwithstanding this request, defendant responded with a letter addressed to plaintiff's home address restating the request and providing details of plaintiff's arrest and further details on how to obtain the records. In the telephone message left with defendant, plaintiff stated "why did you send a letter to my house when I specifically instructed you not to do that?" Notwithstanding defendant's allegation that formal discovery had not commenced, the parties, through their correspondence, were engaging in discovery related to plaintiff's false arrest claim. Plaintiff's telephone messages, although highly inappropriate, reiterated the position underlined and emphasized in bold-face type that he did not want his family involved, thus he did not want correspondence sent to his home address. As there is some colorable basis for the exchange, though none for the language used, plaintiff will not be sanctioned at this time.

Plaintiff should not take the denial of the motion for sanctions as in any way endorsing his behavior. As plaintiff has not denied the allegations against him, this Court is compelled to believe that there is merit to the allegations. Plaintiff is reminded, as an attorney, that he will be held to a higher standard of conduct in the course of these proceedings notwithstanding his status as litigant. *Coane v. Ferrara Pan Candy Co.*, 898 F.2d 1030, 1033 (5th Cir. 1990) ("It is not acceptable for a party--particularly a party who is also an attorney--to attempt to use the judicial system . . . to harass an opponent" (internal quotation marks omitted)). Plaintiff would be wise to leave the business of litigating his claims to his counsel and assume the passive role of client.

III. MOTION FOR A PROTECTIVE ORDER

Defendant moves for a protective order prohibiting plaintiff from contact with defendants Strillacci and police defendants Kulpanowski, Glaude and Ciarleglio. Plaintiff responds that an order prohibiting contact with police officers employed by the town in which he resides would be an unreasonable imposition on him.

“Where . . . the [discovery is] relevant, the burden is upon the party seeking . . . a protective order to show good cause.” *Penthouse Int’l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 391 (2d Cir. 1981) (citation omitted); *see also* FED. R. CIV. P. 26(c); *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992) (burden is on moving party to show good cause). FED. R. CIV. P. 26(c), however, “is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court’s processes.” *Bridge C.A.T. Scan Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983).

The allegations set forth by defendant as to plaintiff establish good cause for issuance of a protective order prohibiting further contact with defendant Strillacci. The same is not true of the other defendant police officers, as there is no indication that plaintiff has contacted them or intends to contact them, or that plaintiff’s conduct is more than an emotional and puerile response to defendant’s failure to comply with his stated request. Plaintiff’s argument raising concerns as to unreasonable restrictions would be imposed on him were he to be prevented from contacting the West Hartford Police Department in its entirety is legitimate. Such is not the case with an order prohibiting contact with the chief of police as there is no showing that, given this litigation, plaintiff would need to personally communicate with the chief. As to the remaining police defendants, plaintiff will limit his contact with the

West Hartford Police Department to emergency calls, which will be made to the department and not directly to any defendant except as one by chance may receive such call. Plaintiff is reminded of his ethical obligations as a practicing attorney and is further reminded, as an attorney, that this Court will not countenance conduct of this nature.

IV. CONCLUSION

Defendant's motion for sanctions (Doc. No. 27-1) is **denied** and defendant's motion for a protective order (Doc. No. 27-2) is **granted in part**.

SO ORDERED.

Dated at New Haven, Connecticut, June ____, 2003.

Peter C. Dorsey
United States District Judge