Sanctions Pursuant to Code of Virginia § 8.01-271.1

George Mason American Inn of Court
January 21, 2015

CLE MATERIALS

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions.

Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

INTRODUCTION AND A BRIEF HISTORY OF SANCTIONS IN VIRGINIA

Sooner or later most litigators will deal with a lawsuit or pleading that clearly has no colorable basis. Code of Virginia § 8.01-271.1 requires that pleadings be well grounded in fact, warranted by law, and not brought for an improper purpose.

> For the protection of the public from harassment by frivolous, oppressive, fraudulent or purely malicious litigation, the General Assembly has chosen to hold attorneys and pro se litigants to a high degree of accountability for the assertions they make in judicial proceedings.

Shipe v. Hunter, 280 Va. 480, 484, 699 S.E.2d 519, 521 (2010) (explaining why the sanctions statute requires the signature of counsel on papers filed). Litigators pay attention to sanctions cases because they directly affect the way all of us practice law.

The sanctions statute has existed for twenty five years. See Lannon v. Lee Conner Realty Corp., 238 Va. 590, 594, 385 S.E.2d 380, 382 (1989) (assessment of attorneys' fees made before the statute became effective on July 1, 1987 reversed). However, seasoned practitioners knew that most judges were reluctant to award sanctions, and many judges would not even entertain such a motion. Case law generally disfavored sanctions, and Code of Virginia § 8.01-271.1 remained a little used provision.

The decision in Ford Motor Co. v. Benitez, 273 Va. 242, 249-250, 639 S.E.2d 203, 206 (2007) functionally changed the landscape in Virginia. The holding itself was rather unremarkable upon scrutiny. In essence, the case stands for the proposition that the sanctions statute says what it says, and that the trial court "shall impose" sanctions upon a finding of a violation of the statute. While the trial court retained wide discretion in crafting an appropriate sanction, a trial court could no longer simply decline to make any imposition of sanctions once a violation of the statute was found.

The underlying Circuit Court opinion in Ford Motor Co. v. Benitez is useful because it demonstrates the rather modest bar with respect to reasonable inquiry. Sanctioned defense counsel had asserted a litany of affirmative defenses that were factually groundless. On a motion to reconsider, defense counsel asserted that sanctions had been awarded because defense counsel had not fully developed the facts in support of the affirmative defenses when filed. The trial court disagreed:

> This assertion is in error. The Court repeatedly asked counsel for any fact – even a single fact – to support the contentions that the Plaintiff could have been contributorily negligent, could have assumed a known risk, that a breach of duty or care by a third-party was the proximate cause of the Plaintiff's injuries or that the Plaintiff failed to mitigate her damages under a contract claim.
>
> Counsel admitted that there was no factual basis for the defensive claim of contributory negligence. In addition, the Court asked Counsel for any authority from any one of the 50 states that stood for the proposition that a passenger in an automobile could be contributorily negligent by being seated in that automobile, and Counsel could not.
>
> Contrary to Mr. Wise's assertion, the Court did not require the facts for the defense of contributory negligence be fully developed. The Court asked for a single fact, or even an argument that a fact could reasonably be developed from discovery to support the defense of a passenger in a car being contributorily negligent, and Counsel could not provide one. Not in the response to Plaintiff's Motion to Strike Affirmative Defenses nor during oral argument.

Benitez v. Ford Motor Co., 68 Va. Cir. 156, 158 (2005).

Perhaps ironically, in Ford Motor Co. v. Benitez it was defense counsel who was sanctioned. Anecdotally at least, it is the plaintiff's bar that generally runs a higher risk of incurring sanctions by overreaching in pleadings, and in Complaints in particular. Firms that primarily handle high volume personal injury work may also have less economic incentive to take the time to properly investigate claims before filing suit. Unfamiliarity with a substantive area of law is also a path to peril.

One of the reasons that sanctioned counsel in Benitez had no cover was because the baseless affirmative defenses were asserted after the case had already been fully litigated until the eve of trial, and then nonsuited. The written discovery and multiple depositions had left few if any stones unturned. Not only did the defense dump in unsupported and boilerplate affirmative defenses, but in essence the trial judge forced the defense to concede that they knew the affirmative defenses were unsupported.

Whether because the bar felt emboldened to seek sanctions, or because trial courts felt free or duty bound to award sanctions, the number of sanctions opinions slowly began to rise. For example, in Boyce v. Pruitt, 80 Va. Cir. 590, 591 (2010) the Circuit Court for Patrick County stated that "in filing and maintaining this suit, the plaintiff and his attorney violated Va. Code § 8.01-271.1 and find that both litigant and lawyer should be sanctioned." Reasonable pre-filing inquiry would have readily revealed that two months before filing the Supreme Court of Virginia, in a legally indistinguishable case, held that the defendants were completely immune from suit. Plaintiff and counsel also persisted in making baseless legal claims after warned otherwise by the court. The Circuit Court ordered Plaintiff and counsel to reimburse defendants various costs and attorney's fees incurred, totaling over $33,000.

In Williams & Connolly, LLP v. People For Ethical Treatment of Animals, Inc., 273 Va. 498, 643 S.E.2d 136 (2007) sanctions of $40,000 were upheld where counsel filed motions for recusal attacking a Circuit Court judge and accusing him of unethical conduct. The Circuit Court found that the motions were not well grounded in fact, and the Supreme Court of Virginia further found no basis law and an improper purpose.

And yet Circuit Courts in Virginia still often bend over backwards to avoid sanctioning litigants. In Chester v. Beyeler, 79 Va. Cir. 642, 658 (2009) the Circuit Court of Augusta County crafted an eloquent opinion discussing the important policies served by the sanctions statute, and made specific findings that the suit was not well grounded in fact, and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Counsel had purportedly filed a class action despite a clear lack of authority to do so, failed to identify all of the purported plaintiffs, named clearly improper parties, requested inappropriate relief, and filed counts in bad faith. Remarkably, despite carefully cataloging a parade of horribles, "the only sanction the Court imposes in this case is its strong expression of disapproval of [counsel's] misuse of the legal process before he had a legitimate suit to file."

THE MOST RECENT JURISPRUDENCE

Circuit Courts continue to generate instructive opinions on sanctions motions. In addition to the classic circumstance of a clearly groundless suit, more Courts appear willing to award sanctions based on the last disjunctive part of the statute which is that the pleading was interposed for an "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

In what appears to be the largest award of sanctions to date in Virginia, in Yvonne Christ v. Flinthill Space Communications Trust. et al., Case No. CL-2008-8220 (June 13, 2013) Fairfax County Circuit Court awarded over $880,000 in attorney's fees.[1] Prior to filing suit:

[1] This lengthy opinion is available on the Fairfax County Circuit Court website at the following link: http://www.fairfaxcounty.gov/courts/circuit/pdf/opinions/cl-2008-8220-christ-v-flinthill-space-comm-trust.pdf

> and throughout its duration, Defendants' counsel continued to offer [Plaintiff's] counsel the opportunity to review and discuss the accounting documents to avoid wasting time and accumulating unnecessary legal expenses. In fact, the record shows that [defense] counsel repeatedly invited [Plaintiffs'] counsel and experts, to confer independently and directly with the Lee and the Trust's accountant, so that they could examine the accounting together, and, consequently, show that the "monies in and out" were properly itemized in the documents the Trust had provided. [Plaintiff] and her attorneys declined all of these offers.
>
> Despite Defendants' repeated invitations to review "the math," examine the accounting documents, and avoid expensive and unnecessary litigation, [Plaintiff] and her counsel embarked upon a course of protracted, no-holds-barred, scored-earth litigation. This litigation manifested itself in numerous rounds of complaints, sustained demurrers, burdensome and onerous discovery, and incessant motions practice up to the very morning of trial.

Although the Court also made extensive findings as to violations of other parts of the sanctions statute, the Court emphasized that the entire suit had been brought for an improper purpose. In particular, applying an objective standard of reasonableness, the Court found that Plaintiff did not file suit "to prevail on the merits of her claims, but to retaliate against her ex-husband and other perceived adversaries from the Maryland Divorce."

A 2014 opinion from Fairfax County Circuit Court awarded over $20,000 in sanctions against a *pro se* plaintiff who was a real estate agent. Lepelletier v. Will Nesbitt Realty, LLC, 2014 Va. Cir. LEXIS 20 (May 21, 2014) (attached). Plaintiff filed suit against defendant real estate agents to retaliate because they had filed an ethics complaint against Plaintiff with a professional association. Not only were many allegations not well grounded in fact, nor warranted by law, but the suit was obviously brought for an improper purpose – to harass and intimidate business competitors.

Plaintiff filed over a dozen pleadings in just four months, many of them exceeding page limitations set by the Court. Defendants were placed in the position of having to read and respond to an endless barrage of hostility and nonsense, and to appear frequently for oral argument. The Complaint characterized Plaintiff's first encounter with one Defendant as "First Blood". Plaintiff also employed inappropriately hostile language in correspondence, including "bad blood," a "peace treaty," and "Peace is the best choice. Let's be friendly competitors rather than enemies." The Court found that the suit had been "implemented for an improper purpose." Id. at 6.

The Court of Appeals weighed in on sanctions in 2014 in Carrithers v. Hannah, 64 Va. App. 641 (2014), where the Court laid out the parameters for testing the finality of a Court's order when it sanctioned a plaintiff who attempted to create an end run around *res judicata*. In 1993, Carrithers and Harrah divorced, after having one child during the marriage. As part of the divorce, Carrithers was order to pay $325 per month to Harrah for child support. The case was then transferred to JDR. Carrithers subsequently never paid any child support. In 2006, JDR awarded Harrah $62,096.06 plus 6% interest. Carrithers did not appear. Carrithers then filed a motion to appeal the Court's judgment citing want of personal jurisdiction for deficiency in service of process. The JDR denied the motion holding jurisdiction based on original divorce decree. Carrithers then appealed to the Circuit Court, which upheld the service as meeting the requirements under Code § 16.1–278.18. In a separate order the Circuit Court also awarded Harrah $5,825 in attorney's fees.

Carrithers then appealed to the Court of Appeals stating that the Circuit Court erred in not dismissing the case as well as ordering attorney's fees. The Court of Appeals

found that because Carrithers had failed to challenge the 2006 order within 30 days, the courts award could not be challenged. The court upheld the circuit court's decision to dismiss Carrithers' appeal. The Court of Appeals then also subsequently found that Carrithers' challenge to Circuit Court's attorney fee award was within 30 days. However, the Court of Appeals held that because the underlying court order could not be challenged based on res judicata grounds.

Despite the Court of Appeal's decision in 2011, Carrithers then filed another motion challenging the order in 2012 in JDR again, seeking to vacate the 2006 order without regard for the Court of Appeal's decision that the order was res judicata. The JDR court held that the order had been declared res judicata and therefore unchallengeable. The JDR court also found that Carrithers had abused the litigation process and ordered him to pay Harrah $4,500 in attorney's fees. JDR entered its order in February of 2013. Carrithers then appealed that order to the Court of Appeals.

In reviewing Carrithers' appeal, the Court of Appeals found that the essential argument behind Carrithers' appeal was a reframing of Carrithers' original appeal to the 2006 JDR order, that the JDR court lacked personal jurisdiction for a deficiency in service of process. Carrithers argued that void orders can be challenged at any time and so the Court should vacate the 2006 order. The Court of Appeals found that the issue of whether the order was void had already been decided in previous litigation and so was res judicata.

On the matter of court ordered attorney's fees in the amount of $2,000, the Court of Appeals held that it agreed with the JDR court's determination that when Carrithers filed his last motion appealing the 2006 order he was challenging an unchallengeable

order and so was abusing the litigation process in attempting to create limitless litigation by attempting to circumvent res judicata. The Court found that Carrithers failed to argue for any innovative reading of law instead arguing that the law as it is, is clearly stated. Therefore, the Court found that the JDR court did not abuse its discretion in awarding the attorney's fees because Carrithers' 2012 motion was not "'warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." 63 Va. App. 641, 655 (2014). Nor was the Court persuaded that Carrithers' motion was "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Id.

The Supreme Court of Virginia weighed in on sanctions twice in 2014. First, in Shebelskie v. Brown, 287 Va. 18 (2014) the Court considered whether the trial court had abused discretion in sanctioning two lawyers who had argued a Rule to Show Cause. The first attorney

> presented argument as to why Betty should not be held in contempt. That argument, however, was in response to Larry's motion for the issuance of a rule to show cause and the circuit court's issuance of the rule. At the time of the hearing, Shebelskie had neither filed nor made orally any motion under consideration by the court. To hold that Shebelskie's argument was nevertheless an "oral motion" under Code § 8.01-271.1 would extend the word "motion" beyond its plain meaning and would mean that any oral argument is a "motion" under the statute. The General Assembly chose the word "motion" intentionally, and we will not construe the term beyond its intended meaning to encompass an argument made in response to an opposing party's motion

Id. 27-28. As to the second attorney, the Supreme Court of Virginia concluded "that Wright 'after reasonable inquiry, could have formed a reasonable belief' that the arguments set forth in the Show Cause Response Brief were 'warranted by existing law' governing contempt." Id. at 32.

In Norfolk S. Ry. Co. v. E. A. Breeden, Inc., 287 Va. 456 (2014), the Supreme Court of Virginia could not

> conclude the circuit court abused its discretion. Norfolk Southern opposed the motion for summary judgment, among other reasons, on the grounds that Breeden was required to prove actual damages and an inadequate remedy at law on which it asserted there were disputed issues of fact. Norfolk Southern continues to maintain on appeal that the circuit court erred in failing to require proof of actual injury, the lack of an adequate remedy at law, and in failing to balance the equities in considering the injunction. Although Norfolk Southern chose not to call its corporate witnesses and contest the issues of laches and estoppel at the injunction hearing and did not prevail on its arguments regarding Breeden's burden to prove damages, there is no evidence that Norfolk Southern's asserted defenses were not well-grounded or interposed for an improper purpose.

Id. 469.

The last two cases suggest that Virginia is still careful in handling sanctions matters, and will allow the statute to serve its purpose without overreaching.

HANDLING FRIVOLOUS COMPLAINTS

There are plenty of judges and attorneys who understandably cringe at the very thought of a motion for sanctions. Such motions should not be threatened casually or brought lightly. The broad purpose of the Inns of Court is to promote civility and professionalism, and we can be mindful of both how to avoid filing a sanctionable pleading and how to deal with sanctionable pleadings that you receive.

- **How do I avoid violating the sanctions statute?**

This should not be difficult. The sanctions statute does not require lawyers to have conducted exhaustive investigation. Investigations do not have to be correct. The bar is remarkably low. Has the lawyer made some sort of pre-filing investigation? A lawyer does not need five witnesses for each allegation of the Complaint, but one ought to have at least one witness, one document, or some compelling circumstantial evidence.

Are the causes of action recognized in Virginia, or can you articulate the good faith extension of existing law? The sanctions statute is not designed to chill novel interpretations or zealous advocacy – it is a rule of reason designed to prevent bad faith filings that cause unnecessary time and expense to respond to.

Are you comfortable that the purpose of the pleading is to vindicate a genuine right or cause of action? Or do you believe that your client solely wants to bring a suit or file a pleading designed to delay litigation, harass the other side, or otherwise has some improper purpose that you would not be comfortable conceding in open court?

- **When should you alert the other side that, in your assessment, a Complaint is frivolous?**

First, do not raise sanctions until you are certain yourself that the Complaint violates the statute. Re-read the statute carefully. Sanctions are not warranted simply because parties or witnesses have conflicting views of the facts. Sanctions are not warranted simply because it has or will cost a lot of time and money to defend a weak suit. Nor are sanctions warranted simply because the plaintiff or plaintiff's counsel was unusually difficult to deal with, filed a lot of motions, or instigated a distasteful battle over discovery.

Most likely you will not be able to easily ascertain whether opposing counsel made the reasonable inquiry required by the statute. Considering your own incomplete knowledge, and considering that the judge will likely give every benefit of the doubt to the target of a sanctions motion, you need to save sanctions motions for those cases where you have a high degree of confidence. Taking the very low bar from Ford Motor Co. v. Benitez described above, is this a Complaint that contains factual assertions that are unassailably fabricated or demonstrably false? Or does the Complaint assert a cause

of action that the Supreme Court of Virginia has clearly and directly refused to recognize in Virginia as a valid cause of action? Or is it clear from the tone and the language employed that the plaintiff is filing the Complaint for sole purpose of harassing a defendant? Pragmatically, that is the standard of proof that most judges will employ when deciding whether to grant your motion for sanctions. File on weak grounds and instead the Court may rebuke counsel for bringing disrepute to the local bar by filing and arguing such a motion.

Unlike Rule 11 of the Federal Rules of Civil Procedure, which is the analogous statute dealing with frivolous complaints, there is no safe harbor provision in Code of Virginia § 8.01-271.1. That is, you are not required to warn the opposing side that you intend to file and argue a motion for sanctions unless the offending pleading is withdrawn. Since you do not need to announce your intent, there is little danger in waiving your ability to file the motion later. Moreover, many have observed since Benitez that lawyers are more frequently sending one another letters that accuse their counterpart of filing frivolous pleadings. Sending a sanctions letter should not be routine.

Nevertheless, once you have identified a genuine frivolous Complaint (or other pleading) that violates the statute, sending a letter asking for the offending pleading to be withdrawn is probably the best practice. Although most opponents will ignore your warning or otherwise press on, this can neutralize the tendency by judges to suspect either an ambush on the one hand or retrospective score settling on the other. If you identified the issue early then there is no surprise, and if you communicated a fair warning to the other side a sanctions motion will not later appear to be mere piling on after prevailing at trial.

If you enjoy the requisite level of confidence to send the letter early in the pleading stage, you can include language with the affirmative defenses that defendant intends to seek reasonable attorney's fees pursuant to Code of Virginia § 8.01-271.1. That way there is no doubt that you placed opposing party and opposing counsel on notice. Once again, this should not be done lightly or casually, or you will invite your own scrutiny from the Court.

- **When should you actually file the motion for sanctions?**

Pragmatically, you need to wait until trial or shortly before trial to file the motion. Conceptually, waiting until discovery is done should not matter to the extent that the party and counsel had a duty to perform reasonable inquiry prior to filing the Complaint or other pleading. But pragmatically the end of discovery is when plaintiff has had every opportunity to show his or her cards. If the cabinet is as bare 30 days before trial as you believed it to be when suit was filed, you can start drafting your motion.

If you file a motion for sanctions at the beginning of the case or early in the litigation, you will create a difficult procedural problem for yourself and the Court. Very much like opposing a motion for summary judgment, the opposition may be able to hide behind a fig leaf or two at an early hearing, and the Court will employ a very lenient standard. Of course arguments about inadequate time to conduct discovery should be inapposite to the extent there was a duty to perform reasonable inquiry prior to filing the offending pleading. Nevertheless, unless you believe you have a judge who is willing to follow the letter and bring the hammer down, you are better off waiting. Filing a motion to be heard at the conclusion of trial, or preparing one to be filed the moment trial concludes, is probably best.

If you do wait until trial is over, be very careful to clarify in the judgment order or nonsuit order that the order is suspended for some definite period of time for the express purpose of briefing and arguing a motion for sanctions. Although there is case law that allows a little more flexibility than that, you should regard Rule 1:1 as your enemy. Having the motion with you to file at trial prevents an argument that the Court cannot suspend finality to hear an as yet unfiled motion, and specifying a definite period of time avoids the argument that final orders cannot or should not be suspended indefinitely.

- **Should you seek sanctions against plaintiff, against counsel, or against both?**

This can be a difficult decision. Code of Virginia § 8.01-271.1 permits all three options. Generally speaking, a case not well grounded in fact is somewhat easier to blame on a litigant, who presumably was intimate with the facts before seeking counsel, while a case not warranted by existing law nor the good faith extension of existing law is easier to blame on counsel, who presumably is responsible for having some ability to distinguish a valid cause of action or recoverable form of damages. Often you cannot ascertain where the fault truly lies because of the attorney client privilege.

Simply deferring to the ultimate findings of the Court is one way to handle this issue: "Judge, this frivolous complaint is someone's fault, and the defense will not guess whether the party or counsel is to held accountable." On the other hand, there are many cases where the litigant is clearly to blame, and the Court may be pleased that you spared an officer of the Court from having to defend himself or herself. If you suspect that counsel was not acting in bad faith, you may want to give counsel the benefit of the doubt.

- **Are there any other considerations?**

Make sure your own pleadings in the case are above reproach. Hypocrisy is not a formal defense to a motion for sanctions, but the Court has great discretion in determining whether there is a violation or not, so the equities matter. Moreover, the opposing side might seek out any opportunity to file a retaliatory motion. Do not give them one.

Keep detailed and accurate records of your attorney's fees. There is a split of authority in federal courts and outside of Virginia as to whether block billing is a *per se* obstacle to assessing the reasonableness of attorney's fees. There is one Circuit Court opinion in Virginia that discusses the issue and finds that block billing is perfectly acceptable. See N. Va. Real Estate, Inc. v. Martins, 80 Va. Cir. 478, 488 (2010). The Supreme Court of Virginia granted writ on that question, but did not directly address it in its affirmance, such that it may be safest to still regard it as an open question. See also Southtrust Bank v. Clary, 69 Va. Cir. 20, 23 (2005) (attorney's fees charges are not unreasonable despite block billing).

Finally, all pleadings are subject to the statute. See e.g. Womack v. Yeoman, 83 Va. Cir. 401 (2011) (objections to witnesses and exhibits violated statute).

Example 1: The $80 Million Trespass Case

In a case filed in Fairfax County Circuit Court in 2008, a married couple by counsel filed a Complaint against a real estate brokerage acting as a property preservation company, and the individual broker. The Complaint featured four counts, and the civil coversheet clarified that the plaintiffs sought $80 million for trespass. In the face of Demurrer, the plaintiffs expressly abandoned two counts as they are not causes of action in Virginia (Destruction of Property, and Invasion of Privacy), and functionally abandoned the count for Fraud was as well.

The Amended Complaint was limited to Trespass and Trespass to Chattels, and also dropped the wife from the suit. Husband again claimed that he had exclusive possession of a residential property in Burke, Virginia on June 12 and 13, 2008. Defendants were alleged to have trespassed on the property those two days and to have taken or damaged various items of personal property. A list taken from the plaintiff's Answers to Interrogatories included items that admittedly did not belong to the plaintiff (belonging to his adult daughters), trivial items such as "Food in Refrigerator," and facially incredible items such as "China Set - $8,000."

Despite warning the remaining plaintiff and his counsel that there was no legitimate basis to bring any claim, much less such an outrageous *ad damnum*, the plaintiff pressed onward and forced a defense of the suit all the way through jury trial. Plaintiff's claims were dismissed on a renewed Motion to Strike the Evidence on the second day of jury trial. There was no evidence whatsoever in support of any element of trespass nor trespass to chattels.

Plaintiff admitted on the witness stand that he knew of the impending foreclosure on the residential property in May of 2008, and actually attended the foreclosure sale on June 4, 2008. As he testified at trial, the plaintiff did not purchase the property. A bank became the owner of the property on June 4, 2008. As of that date, as a matter of law, the previous owner had no property interest in the property that he could lease to the plaintiff. While the plaintiff may have had some cause of action against the previous owner, and while the new owner of the property may have had to follow certain procedures to physically eject anyone holding over or squatting at the property, the plaintiff obviously did not have exclusive possession of the property.

Even if the plaintiff did have exclusive possession of the property on June 12 and 13, 2008, he still knew that the individual defendant broker had never set foot on the property nor taken hold of any of the plaintiff's personal property. Naming the individual broker as a defendant was independently completely groundless.

Counsel clearly had a significant role in this ridiculous suit. A likely explanation is that lead counsel was a DC attorney who did not know Virginia law, and Virginia counsel appeared to be signing pleadings without doing independent research or fact finding. Code of Virginia § 8.01-271.1 expressly allows the court to impose a sanction upon an attorney or a represented party or both. Nevertheless, a tactical decision was made to only seek sanctions against the plaintiff who pressed forward with such an unfounded claim, and not counsel. Moreover, instead of seeking all attorney's fees and costs incurred in defending the frivolous suit, the amount of $2,500 was sought to simply recover the insured defendants' deductible paid to its carrier. Plaintiff, by counsel, agreed to the post-trial motion for sanctions by consent order and paid it.

Example 2: Camp Creek

Louisa County had been battling for many years in court with The Historic Green Springs, Inc. ("HGS"), an environmental advocacy group. Their president was a local lawyer who had been involved with the group since its inception many years ago. HGS had filed a number of suits over the years, including against various governmental entities, including Louisa County, and private parties. HGS appeared to be quick to file suit, and liked to recruit various residents of the Green Springs Historic Landmark District to serve as fellow plaintiffs or petitioners.

Louisa County and the Louisa County Water Authority finally brought a Motion for Sanctions against HGS, counsel, and five individual plaintiffs when they appealed the granting of a renewal permit for the wastewater treatment plant that borders the landmark district and empties into Camp Creek. Among others, Louisa County and Louisa County Water Authority were named as respondents. The other petitioners were the president of HGS, and two married couples.

The petition was not well grounded in fact. The first married couple claimed that Camp Creek passed through their property when it did not. They retreated when challenged on this by Respondents at deposition and the sanctions hearing. Camp Creek does run through the second married couple's property, but they mischaracterized the proximity of their property to the treatment plant. The petition was not warranted by existing law or the good faith extension of existing law to the extent that the president of HGS attempted to claim standing deriving from her position with HGS. Camp Creek does not run through any of her land.

At the conclusion of a full day hearing, the Motion for Sanctions was granted in part and denied in part. The Court found that the filing of the Petition for Appeal and Opposition to Demurrer violated Code of Virginia § 8.01-271.1 as not warranted by law or the good faith extension of existing law to the extent the president of HGS and counsel of record for petitioners argued that the president of HGS enjoyed any standing. Moreover, the Court found that the filing of the Petition for Appeal violated Code of Virginia § 8.01-271.1 as not well grounded in fact to the extent it inaccurately stated that Camp Creek passes through the first married couple's property when it did not, and where standing is a key issue to be pled properly, and where there was evidence that no reasonable inquiry was made by one petitioner nor the president of HGS to ascertain the actual geographic location. The Court did not find sufficient evidence to show that the Petition for Appeal further violated Code of Virginia § 8.01-271.1.

The Court awarded $1,625.00 in favor of respondents to be paid jointly and severally by the president of HGS and by counsel of record for the petitioners, and further awarded $975.00 in favor of respondents to be paid jointly and severally by the president of HGS and one other petitioner. The Motion for Sanctions was denied with respect to other three individual petitioners and as to HGS.

Arguably this was only a moral victory, as it cost far more to prepare for and argue the Motion for Sanction than was awarded in total. Nevertheless, the Court felt compelled to grant the motion in part because there was no room to hide and because there was an appearance of bad faith animating the filing of the petition.

Example 3: NVRE

In N. Va. Real Estate v. Martins, 283 Va. 86, 720 S.E.2d 121 (2012), the Supreme Court of Virginia addressed a number of issues regarding Code of Virginia § 8.01-271.1 that a prudent litigator ought to be mindful of when both bringing and defending a case. The decision affirmed the trial court's award to defendants of over $270,000 in attorney's fees against plaintiffs and plaintiffs' counsel jointly and severally.

Northern Virginia Real Estate, Inc. ("NVRE") and principal broker Lauren Kivlighan filed suit through counsel on July 18, 2007. A copy of the original Complaint (without exhibits) and the Bill of Particulars are attached to these materials. NVRE and Kivlighan sued a real estate agent and a real estate brokerage for conspiracy, tortious interference, and defamation despite their counsel's letter of June 25, 2007 warning that the known records and statements of the parties demonstrated no merit to Plaintiffs' claims. NVRE and Kivlighan also sued a married couple, the Gavins.

The Complaint revealed multiple misapprehensions of Virginia substantive and procedural law, and was not well grounded in key facts. Plaintiffs fundamentally alleged without any basis that various Defendants had schemed to cut Plaintiffs out of a real estate deal. Revealing in particular were Paragraphs 89, 92, 95, and 98 of the Complaint which all stated "(an allegation likely to have evidentiary support after a reasonable opportunity for discovery)" which is simply not the standard for pleading practice in Virginia. The counts multiplied over the Bill of Particulars and Amended Complaint, and only were curtailed in the Second Amended Complaint to the extent the Court dismissed all of the defamation counts against the agent and broker, and almost all of the defamation counts against the Gavins.

Quite simply, there was never any valid cause of action under the facts known to plaintiffs prior to their filing of the Complaint. Discovery only produced additional facts that would act as a complete bar independent of and beyond the original obvious defenses. The baseless nature of the suit only grew clearer as pleadings and discovery accumulated. Plaintiffs were left so exposed at jury trial that the trial judge identified a number of problems with plaintiffs' theories before defense counsel could even raise them. Late in the trial the Court *sua sponte* asked questions of plaintiffs' counsel that appeared to be an independent inquiry of basic facts and legal positions similar to the same Court's inquiry in the case later conspicuously affirmed in Ford Motor Co. v. Benitez.

Under the facts, Plaintiffs' only hope of a legitimate claim would have required them to have had a valid and enforceable listing agreement with the owner of real property in question, that Plaintiffs not have committed the first breach of that contract, that the owner of real property breached the contract in a material way, and that Plaintiffs had suffered actual and demonstrable harm as a result of that breach. That was the bare minimum for Plaintiffs to have had an underlying claim for breach of contract. Yet none of these premises were true.

Some counts were dismissed on Demurrers but others survived. Late on the second day of jury trial all Defendants raised motions to strike the evidence when Plaintiffs rested, and began oral argument which was interrupted by the end of the business day. On the third day of jury trial, in light of compelling motions to strike the evidence, Plaintiffs' counsel moved to nonsuit the agent and the broker and ultimately the Gavins as well.

The order entered at trial granted the motions to nonsuit all defendants and went on to expressly state: "ADJUDGED, ORDERED, and DECREED that this Order is SUSPENDED until further order of this Court." Counsel made no written objection on the order, nor orally.

Defendants filed timely Motions for Sanctions pursuant to the agreed briefing schedule, and argued on an agreed date. The trial court granted the Motions for Sanctions and continued the matter to hear evidence and argument as to quantum of sanctions, reasonableness of attorney's fees, and allocation of sanctions between counsel and Plaintiffs.

A second hearing was held. All parties called expert witnesses on attorney's fees, and Plaintiff testified. The June 29, 2010 letter opinion concluded: "Plaintiffs and Mr. Walpole violated the Statute when they filed the Underlying Action for an improper purpose and without a proper basis in law and in fact." The opinion found that counsel and both Plaintiffs had each violated Code of Virginia § 8.01-271.1. The trial court had previously concluded that the suit was not well grounded in fact, not warranted by law, and that

> the combination of so many frivolous claims, supported by such wild speculation, so virulently prosecuted even after any legitimate prospect of success had vanished, convinces the Court that the claims were not an oversight or a mistake. The Court is of the firm conviction that they were filed out of a vindictive and malevolent desire to injure and intimidate a business competitor.

By its order dated June 29, 2010 the trial court granted the Motion for Sanctions, ordered counsel and Plaintiffs, jointly and severally, to pay costs and reasonable attorney's fees of Defendants in the amount of $272,096.46.

In an effort to escape the sanctions award, plaintiffs and counsel petitioned for appeal citing multiple alleged errors. Defendants agreed that the trial court should have (and did) employ an objective standard of reasonableness when making findings as to sanctionable conduct. See Oxenham v. Johnson, 241 Va. 281, 287-88, 402 S.E.2d 1, 4-5 (1991). The duty of reasonable inquiry arises every time a pleading is filed. Id.

Here, the trial court examined extensive briefs, conducted two hearings, allowed additional evidence, and expressly employed an objective standard of reasonableness to determine whether the Appellants could have formed a reasonable belief after a reasonable inquiry that their pleadings were well grounded in fact. Appellants were provided the opportunity to demonstrate any plausible merit to their claims. The trial court exercised great care in awarding sanctions:

> The danger that a decision to sanction a party in one action could intimidate future parties and prevent them from asserting their valid rights, is not one the Court takes lightly. One of the foundational functions of civilized government is to provide a forum where parties may peacefully resolve their disputes. The Court feels a particular obligation to avoid the "wisdom of hindsight," and objectively evaluate the actions of the parties taking into account only the information available to them at that time. Having given this matter thorough consideration, the Court is of the opinion that sanctions are warranted.

The Appellants continued to insist that the bare fact that the real estate agent and Mr. Gavin spoke on the phone was circumstantial evidence of a conspiracy. But when repeatedly pressed for any evidence whatsoever of an agreement between them, Appellants had nothing to offer except to insist that Mr. Gavin was upset and circumstances were suspicious. No documents, whether admitted at trial or otherwise, has ever evidenced the existence, purpose, or terms of any agreement between them regarding the Plaintiffs.

Setting aside a host of dispositive problems with their case, at best Plaintiffs could have brought a simple breach of contract action against the actual owner (or her estate) for 2% of the $697,000 purchase of the subject property, which amounts to $13,940. But the testimony at the second sanctions hearing was that Kivlighan wanted more, and she shopped attorneys until this attorney "offered Plaintiffs a grab bag of remedies," as described the trial court.

One groundless theory of damages was that NVRE was owed a second commission on the subsequent speculative sale of the subject property by a particular gentleman after he would buy the subject property, under an offer that the seller never agreed to, that he would tear down the existing house at the subject property, hire Kivlighan's ex-boyfriend to build a mansion of unknown dimensions and features, and then sell it for $2.175 million through NVRE and Kivlighan despite the witness' consistent testimony to the contrary, and assuming the unidentified future purchaser would not engage a buyer's real estate agent, such that NVRE would collect a full 6% sales commission on the sale. This is absurd.

Appellants argued that the trial court paid insufficient attention to Kivlighan's "reasonable belief" that NVRE would obtain the Second Commission. This reveals that Appellants mistake a subjective standard for an objective one ("reasonable inquiry"). The theory remained speculative as a matter of law.

After considering the three primary and baseless theories of liability, as well as the meritless measures of damages, the trial court specifically made a finding that the effect of Appellants' unyielding pursuit of so many speculative claims was "not an oversight or a mistake. The Court is of the firm conviction that they were filed out of a

vindictive and malevolent desire to injure and intimidate a business competitor." That is as clear a finding of Appellant's improper purpose as one could imagine.

As referenced in the narrative above, simply deferring to the ultimate findings of the Court is one way to handle this issue. In NVRE, the real estate agent and broker adopted this tactic:

> Defendants do not presume to direct the Court to Plaintiffs or counsel for Plaintiffs in its determination of sanctions. Defendants are not in a position to determine whether one or more of the bases of this motion are best laid at the feet of Plaintiffs or counsel for Plaintiffs, and leaves that factual and equitable determination up to the Court's discretion.

The Gavin Defendants expressly asked the trial court to make a finding that counsel and Plaintiffs should be jointly and severally liable. Ultimately that is what the trial court found, and what the Supreme Court of Virginia affirmed.

Robert Lepelletier v. Will Nesbitt Realty, LLC, et al.

Case No. CL-2014-517

CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

2014 Va. Cir. LEXIS 20

May 21, 2014, Decided

COUNSEL: [*1] Robert **Lepelletier,** Jr., Alexandria, VA.

Mikhael D. Charnoff, Esq., PERRY CHARNOFF, PLLC, Arlington, VA.

JUDGES: John M. Tran, Judge.

OPINION BY: John M. Tran

OPINION

Due to the unexpected delay in issuing this decision, the Court is sending this decision by e-mail to ensure the parties receive this decision as soon as possible. Sending the parties this opinion by e-mail is not an invitation to the parties to communicate to the Court, in return, by e-mail. Additionally, filings should be made through the Clerk of the Court as it typically done.

On Friday, May 2, 2014, the parties appeared before the Court on the Defendants' Motion for Sanctions against the Plaintiff, the Plaintiff's Opposition to Defendants' Motion for Sanctions and Cross-motion for Sanctions as well as Plaintiff's Pleas in Bar and Written Objections to the Defendants' Errors and Omissions Attorney's offering Uncorroborated Allegations and Making Fraudulent Misrepresentations in Support of His Motion for Sanctions -- set for May 2, 2014. After argument, the Court took the matter under advisement and suspended and vacated the Nonsuit Order entered on April 11, 2014.

Based on the arguments presented at the hearing on May 2, 2014 and further review of [*2] the issue, the Court

grants the Defendants' Motion for Sanctions and orders the Plaintiff to pay $20,045.00 in attorney's fees and $116.02 in costs as set forth in Defense Counsel's Affidavit attached as Exhibit "D" to Defendants' Motion for Sanctions. The Court further awards the fee of $200.00 to cover Defense Counsel's time at the hearing on May 2, 2014. The Court finds the fees to be more than reasonable, noting the reduced rate that Defense Counsel has applied to this case and when comparing the detailed time sheets and the filings in this case, the Court found that the fees and costs were necessitated by Plaintiff's actions taken in this case in violation of Va. Code § 8.01-271.1.

Va. Code § 8.01-271.1 reads in pertinent part:

> The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary **[*3]** delay or needless increase in the cost of litigation.

Under the statute, a party shall be sanctioned for committing any violation of the provisions of Va. Code § 8.01-271.1. The standard to apply is an objective standard. Additionally, the Court believes that it should apply that standard with due consideration of the Plaintiff's pro se status -- liberally construing the filings and arguments advanced by a *pro se* litigant.

Va. Code § 8.01-271.1's primary purposes, applicable to *pro se* litigants and attorneys, are to "(1) protect litigants from the mental anguish and expense of assertions of unfounded factual and legal claims and against the assertions of claims for improper purposes," and (2) to protect courts against those who would abuse the judicial process." *Oxenham v. Johnson,* 241 Va. 281, 286, 402 S.E.2d 1, 3, 7 Va. Law Rep. 1699 (1991).

Despite the Plaintiff's *pro se* status and the liberal reading of the arguments advanced by Plaintiff, the Court finds that the Plaintiff violated the statute and conducted this litigation in a manner the statute was expressly designed to remedy.

First, the Plaintiff's claims were not warranted by existing law or a good faith argument for the modification of existing law.

As [*4] noted by Defendants, the Plaintiff filed at least fourteen pleadings in this action since the case was open. Many of these pleadings exceeded the Court's five-page limit and were irrelevant or improper motions. Leading up to the May 2, 2014 hearing, the Plaintiff filed not only an objection, but a cross-motion for sanctions and pleas in bar. Subsequent to the hearing, while the Court was weighing the past conduct with the purpose of the statute, the Plaintiff filed an additional motion.

This Plaintiff appears to have some legal training, although the filings reflect an inability to correctly apply principles of law to the facts of this case. For example, the latest pleading that Plaintiff has filed is an Amended Motion to Strike the Defendants' Errors & Omissions Attorney's Motion for Sanctions. His chief complaint centers on the use of settlement letters and allege their inclusion violates Va. Supreme Court Rule 2:408.

Rule 2:408 precludes "evidence of offers and responses concerning settlement or compromise of any claim which is disputed as to liability or amount is **inadmissible regarding such** issues". The rule goes further to state that ". . . evidence of settlement or compromise [*5] negotiations [is not] excluded if the evidence **is offered for another purpose**, . . ." (emphasis added). The communications support Defendants' claims that Plaintiff's lawsuit and his communications were vexatious and pursued for an improper purpose. Such evidence is relevant to establish Plaintiff's liability under Va. Code § 8.01-271.1, it is not being offered to establish liability in the underlying claim and therefore does not violate Rule 2:408 or its federal counterpart.

As stated above, the Court recognizes that the Plaintiff is a *pro se* party and consequently liberally reads the Plaintiff's filings, recognizing that Plaintiff is acting without the benefit of experienced counsel and has to balance the purpose of § 8.01-271.1 with the portions of the lawsuit where Plaintiff appears earnest in his subjective beliefs.

The Court also notes that on occasion the Plaintiff presented plausibly correct legal arguments.

For example, the Defendants argued that the statements made in support of an ethics complaint to the Professional Standards Committee of the Northern Virginia Association of Realtors ("NVAR") are absolutely privileged and immune from a defamation claim. Plaintiff disagreed.

NVAR's [*6] procedures for resolving a disputed ethics claim are set forth under "Exhibit B" of the Defendants' Motion for Sanctions and the Court agrees with Defendants' argument that such procedures are protected from defamation lawsuits in order to encourage unrestricted speech in litigation. Public policy requires that parties be allowed to speak their mind at proceedings where there is a public interest in pro-

moting a robust exchange of views, without fear of retaliation.

The Virginia Supreme Court has not, however, directly addressed the issue as to whether the judicial or quasi-judicial privilege applies to the procedures of a voluntary association. Other courts have found the privilege to be broad and comprehensive and to include proceedings with attributes similar to those of court proceeding. *Katz v. Odin, Feldman & Pittleman, P.C.,* 332 F. Supp. 2d 909, 920-21 (E.D. Va. 2004)(applied privilege to arbitration despite lack of evidentiary formalities found in judicial proceedings); *Childress v. Clement,* 44 Va. Cir. 169, 176 (1997)(applied privilege to.proceedings before an Honor Council).

In contrast to *Katz* and *Childress,* the Circuit Court of Spotsylvania County *Kinney v. Williamscraft, Inc.,* 14 Va. Cir. 212, 213 (1988) **[*7]** *citing Elder v. Holland,* 208 Va. 15, 155 S.E.2d 369 (1967) *as commented in* 3 U. Rich. L. Rev. 202 (1969), found that statements made to the Farmers Home Administration, the Virginia Board of Contractors, the Virginia Office of Consumer Affairs, and the Office of State Building Codes were not protected by absolute privilege because the communications were not made as part of a legislative or judicial body or military proceeding and were not acts of the government.

This is not to say that the Court agrees with one or the other party. The issue of absolute privilege was not resolved in this case. Additionally, under qualified privilege, the defendants may have a complete defense against the allegations asserted. This issue simply highlights that there were instances where Plaintiff came upon plausibly correct legal principles to apply to his case.

Nonetheless, overall the Complaint and then the Amended Complaint against the Defendants asserting claims for U.S. Constitutional Tort, Virginia Constitutional Tort, Libel, Defamation, and Issuance of a writ of *brevia anticipantia* was without any basis in fact or law and the Court has to weigh the prejudice to Defendants in having to incur costs **[*8]** to demur to those counts where the Court sustained all counts, granting leave to amend the defamation and libel counts -- but where the Plaintiff fails to set forth the defamation pro haec verba. Overall, even the weight of the flawed pleadings tip the scale in favor of Defendants to be awarded the relief § 8.01-271.1 provides or parties aggrieved by the actions of the other litigant

More importantly, the Plaintiff's pleadings and communications with counsel were uncivil, unnecessarily discourteous, and riddled with *ad hominen* attacks.

In *Williams & Connolly, LLP v. People for Ethical Treatment of Animals, Inc.,* the Virginia Supreme Court stated, "Contemptuous language and distorted representations in a pleading never serve

a proper purpose and inherently render that pleading as one interposed for an improper purpose....Such language and representations are wholly gratuitous and serve only to deride the court in an apparent effort to provoke a desired response." 273 Va. 498, 519, 643 S.E.2d 136, 146 (2007).

The pleadings and communication that caused this Court to conclude that sanctions are appropriate and actually necessary to impose include, but are not limited to the following:

o Plaintiff's **[*9]** mocking reference to Defense Counsel as "Errors and Omissions Counsel" -- even after Court informed Plaintiff on May 2, 2014 that it was wholly appropriate and common for an insurance company to retain counsel to represent its insured;

o Plaintiff's Motion for a Ruling that Perry Charnoff PLLC's Appearance on behalf of all the Defendants Constitutes a Conflict of Interest Vel Non (asserting that defendants would cause defense counsel to commit fraud upon the tribunal);

o Plaintiff's Motion for Protective Order, Amended Motion for Protective Order and 2nd Amended Motion for Protective Order (with repeated references to the need for contemporaneous discovery because of fraud committed by defendants);

o Plaintiff's Memorandum in Opposition to the Defendant's Demurrer;

o Plaintiff's e-mailing the Defendants despite their being represented by counsel;

o The First Amended and Second Amended Complaint (with reference to allegations that defendants' son had engaged in the stalking and molestation of women);

o Repeated reference to fraud committed by defendants in filings that were unnecessary to the filings:

o Plaintiff's repeated description of defendants' filings as "frivolous", when in fact, the **[*10]** defendants' filings were meritorious and prevailed;

o Plaintiff's assertions that defendant's counsel had slandered plaintiff while describing him as a "serial litigant" -- although plaintiff's e-mails to defendants mentioned that the plaintiff is well versed in litigation and is a legal researcher;

o Plaintiff's Motion for Nonsuit that included unnecessary allegations of fraud;

o Plaintiff's repeated threat to "refile the action in General District Court" -- a proceeding that is clearly prohibited;

o Plaintiff's Motion for Recusal/Disqualification of the Honorable Bruce D. White (describing how the Court was biased towards pro se litigants); and

o Plaintiff's Opposition to the Motion for Sanctions and Cross-Motion for Sanctions and filings submitted after May 2, 2014.

The Court has considered the numerous filings submitted the Plaintiff and after giving consideration to for his *pro se* status, this Court finds the Plaintiff's language directed towards the Defendants and Defense Counsel to be contemptuous and implemented for an improper purpose and award the fees and costs sought.

An Order adopting and incorporating this letter is attached hereto. The Order includes a prohibition against communicating **[*11]** with the Court through e-mail. The Court has communicated its decision to the parties as a matter of courtesy only and is not inviting further communication by e-mail.

Upon entering the Order granting the motion for sanctions, the Court also revisited Plaintiff's Nonsuit and enters an Order nonsuiting this case.

/s/ John M. Tran

John M. Tran

Judge, Circuit Court of Fairfax County

FINAL ORDER ENTERING NONSUIT AND GRANTING DEFENDANTS' MOTION FOR SANCTIONS

THIS MATTER came before the Court upon Defendants' Motion for Sanctions against the Plaintiff, the Plaintiff's Opposition to Defendants' Motion for Sanctions and Cross-motion for Sanctions, Plaintiff's Pleas in Bar and Written Objections to the Defendants' Errors and Omissions Attorney's offering Uncorroborated Allegations and Making Fraudulent Misrepresentations in Support of his Motion for Sanctions set for May 2, 2014, and

IT APPEARING THAT ON May 2, 2014, this Court entered an Order Suspending the Order of Nonsuit previously entered on April 11, 2014 and also vacated the dismissal to allow it time to consider the Motion for Sanctions filed and argued before the Court;

AND IT FURTHER APPEARING that the Plaintiff has violated Va. Code § 8.01-271.1 **[*12]** by filing claims that were not warranted by existing law or a good faith argument for the modification of existing law and by communicating

with the Defendants and Defense Counsel in an uncivil, vexatious and harassing manner, it is hereby,

ORDERED that the Defendant's Motion for Sanctions is GRANTED and the Plaintiff is ordered to pay $20,361.02 to Defendants within 180 days of the entry of this Order, with judgment being entered against Robert **Lepelletier** in said sum with 6% interest from the date of judgment until paid and it is further,

ORDERED that the Plaintiff is prohibited from communicating with the Court via email unless the communication is specifically requested by the Court, and it is further

ORDERED that the Court's letter dated May 21, 2014 to the parties be and is hereby adopted and incorporated in this Order; and it is further

ORDERED that Plaintiff's Motions filed after May 2, 2014 are DENIED; and it is further

ORDERED that Plaintiff's Motion for Nonsuit is GRANTED and his lawsuit against defendants is nonsuited as of the date of this Order.

AND THIS IS A FINAL ORDER.

ENTERED this 22nd day of May, 2014.

/s/ John M. Tran

JUDGE, Circuit Court of Fairfax County

VIRGINIA: IN THE CIRCUIT COURT FOR THE OF COUNTY OF FAIRFAX

NORTHERN VIRGINIA REAL ESTATE, INC.	) Case No.	2007 87 17
1018 Shipman Lane, Suite 200	)	
McLean, VA 22101	) Complaint	
LAUREN KIVLIGHAN	)	
1018 Shipman Lane, Suite 200	)	
McLean, VA 22101	)	
Plaintiffs	) Jury Demand	
V.	)	
KAREN MARTINS	)	
6515 Sunny Hill Court	)	
McLean, VA 22101	)	
McENEARNEY ASSOCIATES, INC.	)	
Barbara P. Beach, Registered Agent	)	
312 Edwards Ferry Road, N.E.	)	
Leesburg, VA 20176	)	
DAVID GAVIN	)	
21565 Glebe View Drive	)	
Ashburn, VA 20148	)	
DONNA M. GAVIN	)	
21565 Glebe View Drive	)	
Ashburn, VA 20148	Defendants)	

FILED
CIVIL INTAKE
2007 JUN 18 PM 1:16

Plaintiffs Northern Virginia Real Estate Inc. and Lauren Kivlighan allege as follows:

PARTIES, VENUE, AND BACKGROUND

1. Plaintiff Northern Virginia Real Estate, Inc. ("Northern Virginia Real Estate") is a Virginia corporation, with offices in the county of Fairfax, Virginia.

2. Plaintiff Lauren Kivlighan ("Kivlighan") is a resident of the County of Fairfax, Virginia.

3. The causes of action or parts thereof against each defendant arose in the County of Fairfax, Virginia.

4. Defendant Karen Martins ("Martins") is a resident of Fairfax County, Virginia; defendant McEnearney Associates, Inc. ("McEnearney") is a Virginia corporation that regularly conducts substantial business activity in Fairfax County, Virginia; and defendants David Gavin and Donna M. Gavin are residents of Loudon County, Virginia.

5. Defendant Martins is the duly authorized agent of defendant McEnearney.

6. On or about March 31, 2007 defendant Donna M. Gavin, acting as attorney-in-fact on behalf of Bernadette A. Kennedy, contacted plaintiff's principal broker, Kivlighan, with respect to real estate located in Fairfax County at 6932 Hector Road, McLean, Virginia 22101, Tax Map No. 021-4-13-0040 (the "Property"), and asked for assistance in selling the Property on behalf of the owner. She represented to plaintiff Kivlighan that the Property was owned and titled in the name of Bernadette A. Kennedy, in her own estate.

7. On April 19, 2007 Kivlighan prepared an exclusive listing agreement between Bernadette A. Kennedy and plaintiff Northern Virginia Real Estate for the sale of 6932 Hector Road, McLean, Virginia 22101 and left it with defendant Donna M. Gavin.

8. On April 27, 2007 defendant Donna M. Gavin, as attorney-in-fact for Bernadette A. Kennedy, signed and returned to plaintiff the exclusive written listing to sell the Property, dated April 27, 2007.

9. On April 27, 2007 plaintiff Kivlighan executed the exclusive listing agreement on behalf of plaintiff Northern Virginia Real Estate and returned to defendant Donna M. Gavin a fully executed copy of the document, titled "Virginia Regional Listing Agreement – Exclusive Right to Sell", a true copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "Contract").

10. The Contract had a 90 day term: April 27, 2007 through July 28, 2007 (the "Term").

11. Under Section 7 of the Contract plaintiff Northern Virginia Real Estate was entitled to a 5% commission of the full sales price in cash if, during the Term of the Contract, anyone produced a buyer ready, willing and able to buy the Property.

12. Defendants David Gavin, Donna M. Gavin, Martins and McEnearney knew of this Contract.

13. On May 5, 2007 plaintiff Northern Virginia Real Estate delivered to defendant Donna M. Gavin, as attorney-in-fact for Bernadette Kennedy, a written offer for the purchase of the Property for $750,000 (the "Purchase Offer"), a true copy of which is attached hereto as Exhibit B and incorporated herein by reference.

14. Following delivery of the Purchase Offer defendants formed a conspiracy, combined together, or acted in concert to injure plaintiff Northern Virginia Real Estate.

15. Pursuant to their conspiracy defendants interfered with plaintiff Northern Virginia Real Estate's contract or contract expectancy with the owner of the Property, as more fully alleged in Counts II and III, and caused (a) the Contract to be unilaterally terminated on May 8, 2007 and (b) the seller not to pay the agreed upon 5% commission to Northern Virginia Real Estate upon the sale of the Property on July 12, 2007 to Peter Wheeler and Barbara Cantwell-Wheeler, thereby injuring the business of Northern Virginia Real Estate.

16. The defendants' actions to injure the business of Northern Virginia Real Estate were without legal justification.

COUNT I

CONSPIRACY TO HARM IN BUSINESS

17. Plaintiffs reallege paragraph 1 of this complaint as paragraph 18.

18. Plaintiffs reallege paragraph 2 of this complaint as paragraph 19.

19. Plaintiffs reallege paragraph 3 of this complaint as paragraph 20.

20. Plaintiffs reallege paragraph 4 of this complaint as paragraph 21.

21. Plaintiffs reallege paragraph 5 of this complaint as paragraph 22.

22. Plaintiffs reallege paragraph 6 of this complaint as paragraph 23.

23. Plaintiffs reallege paragraph 7 of this complaint as paragraph 24.

24. Plaintiffs reallege paragraph 8 of this complaint as paragraph 25.

25. Plaintiffs reallege paragraph 9 of this complaint as paragraph 26.

26. Plaintiff realleges paragraph 10 of this complaint as paragraph 27.

27. Plaintiffs reallege paragraph 11 of this complaint as paragraph 28.

28. Plaintiffs reallege paragraph 12 of this complaint as paragraph 29.

29. Plaintiffs reallege paragraph 13 of this complaint as paragraph 30.

30. Plaintiffs reallege paragraph 14 of this complaint as paragraph 31.

31. Plaintiffs reallege paragraph 15 of this complaint as paragraph 32.

32. Plaintiff reallege paragraph 16 of this complaint as paragraph 33.

33. Plaintiff Northern Virginia Real Estate was damaged by the unlawful actions of defendants, including loss of profits.

WHEREFORE, plaintiff Northern Virginia Real Estate requests that:

A. The Court enter a judgment against defendants jointly and severally three-fold the damages sustained by it in the amount of $100,000.

B. The Court award plaintiff Northern Virginia Real Estate its costs of this suit, including a reasonable fee paid to its counsel.

C. The Court grant such other relief as may be deemed equitable or just.

COUNT II

INTERFERENCE WITH CONTRACT

34. Plaintiffs reallege paragraph 1 of this complaint as paragraph 34.

35. Plaintiffs reallege paragraph 2 of this complaint as paragraph 35.

36. Plaintiffs reallege paragraph 3 of this complaint as paragraph 36.

37. Plaintiffs reallege paragraph 4 of this complaint as paragraph 37.

38. Plaintiffs reallege paragraph 5 of this complaint as paragraph 38.

39. Plaintiffs reallege paragraph 6 of this complaint as paragraph 39.

40. Plaintiffs reallege paragraph 7 of this complaint as paragraph 40.

41. Plaintiffs reallege paragraph 8 of this complaint as paragraph 41.

42. Plaintiffs reallege paragraph 9 of this complaint as paragraph 42.

43. Plaintiffs reallege paragraph 10 of this complaint as paragraph 43.

44. Plaintiffs reallege paragraph 11 of this complaint as paragraph 44.

45. Plaintiff Northern Virginia Real Estate had a contract with the owner of the Property.

46. Defendants knew of this contract.

47. Plaintiffs reallege paragraph 13 of this complaint as paragraph 47.

48. Defendants intentionally caused the seller unilaterally to terminate the contract and caused the failure of the seller to pay the agreed 5% commission to Northern Virginia Real Estate upon the sale of the Property on July 12, 2007 to Peter Wheeler and Barbara Cantwell-Wheeler. A copy of the unlawful termination of the Contract, dated May 8, 2007, is attached hereto as Exhibit C and incorporated herein by reference.

49. The actions of defendants were undertaken intentionally, in bad faith and with legal and actual malice and constituted tortious interference with contract.

50. Defendants used improper methods to interfere with the contract.

51. The interference with contract by defendants was not justified, privileged, or proper.

52. The actions complained of were the direct and proximate cause of economic damage to plaintiff Northern Virginia Real Estate in the amount of in excess of $100,000 for which defendants should be held liable to plaintiff Northern Virginia Real Estate.

53. The actions complained of were taken in willful, wanton, or reckless disregard of the rights of Northern Virginia Real Estate and of the damage they might cause it and,

as such, constitute an independent tort for which defendants should be held liable to plaintiff Northern Virginia Real Estate.

WHEREFORE, plaintiff Northern Virginia Real Estate requests that judgment be entered in its favor against defendants jointly and severally in the amount of $100,000 economic damages, and $500,000 punitive damages, and its costs incurred in this matter.

COUNT III

INTERFERENCE WITH CONTRACT EXPECTANCY

54. Plaintiffs reallege paragraph 1 of this complaint as paragraph 54.

55. Plaintiffs reallege paragraph 2 of this complaint as paragraph 55.

56. Plaintiffs reallege paragraph 3 of this complaint as paragraph 56.

57. Plaintiffs reallege paragraph 4 of this complaint as paragraph 57.

58. Plaintiffs reallege paragraph 5 of this complaint as paragraph 58.

59. Plaintiffs reallege paragraph 6 of this complaint as paragraph 59.

60. Plaintiffs reallege paragraph 7 of this complaint as paragraph 60.

61. Plaintiffs reallege paragraph 8 of this complaint as paragraph 61.

62. Plaintiffs reallege paragraph 9 of this complaint as paragraph 62.

63. Plaintiffs reallege paragraph 10 of this complaint as paragraph 63.

64. Plaintiffs reallege paragraph 11 of this complaint as paragraph 64.

65. Plaintiff Northern Virginia Real Estate had a contract relationship and expectancy with the owner of the Property.

66. A reasonable probability of future economic benefit to Northern Virginia Real Estate from the contract relationship and expectancy existed.

67. Defendants knew of this contract relationship and expectancy.

68. Plaintiffs reallege paragraph 13 of this complaint as paragraph 68.

69. Defendants used improper methods to interfere with the contract relationship and expectancy causing the unilateral termination of the Contract and the failure of the seller to pay the agreed 5% commission to Northern Virginia Real Estate upon the sale of the Property on July 12, 2007 to Peter Wheeler and Barbara Cantwell-Wheeler.

70. Defendants intended to interfere with the contract relationship and expectancy of Northern Virginia Real Estate.

71. It was reasonably certain that the contract relationship and expectancy would have been realized in the absence of defendants' conduct.

72. The actions of defendants were undertaken intentionally, in bad faith and with legal and actual malice and constituted tortious interference with contract relationship and expectancy.

73. The interference with contract relationship and expectancy by defendants was not justified, privileged, or proper.

74. The actions complained of were the direct and proximate cause of economic damage to plaintiff Northern Virginia Real Estate in the amount of in excess of $100,000 for which defendants should be held liable to plaintiff Northern Virginia Real Estate.

75. The actions complained of were taken in willful, wanton, or reckless disregard of the rights of Northern Virginia Real Estate and of the damage they might cause it and, as such, constitute an independent tort for which defendants should be held liable to plaintiff Northern Virginia Real Estate.

WHEREFORE, plaintiff Northern Virginia Real Estate requests that judgment be entered in its favor against defendants jointly and severally in the amount of $100,000 economic damages, and $500,000 punitive damages, and its costs incurred in this matter.

COUNT IV

DEFAMATION

76. Plaintiff Kivlighan realleges paragraph 1 of this complaint as paragraph 76.

77. Plaintiff Kivlighan realleges paragraph 2 of this complaint as paragraph 77.

78. Plaintiff Kivlighan realleges paragraph 3 of this complaint as paragraph 78.

79. Plaintiff Kivlighan realleges paragraph 4 of this complaint as paragraph 79.

80. Plaintiff Kivlighan realleges paragraph 5 of this complaint as paragraph 80.

81. Plaintiff Kivlighan realleges paragraph 6 of this complaint as paragraph 81.

82. Plaintiff Kivlighan realleges paragraph 7 of this complaint as paragraph 82.

83. Plaintiff Kivlighan realleges paragraph 8 of this complaint as paragraph 83.

84. Plaintiff Kivlighan realleges paragraph 9 of this complaint as paragraph 84.

85. Plaintiff Kivlighan realleges paragraph 10 of this complaint as paragraph 85.

86. Plaintiff Kivlighan realleges paragraph 11 of this complaint as paragraph 86.

87. Plaintiff Kivlighan realleges paragraph 12 of this complaint as paragraph 87.

88. Plaintiff Kivlighan realleges paragraph 13 of this complaint as paragraph 88.

89. On or about the dates of May 4- 8, 2007 defendant Martins and defendant McEnearney, through its agent acting within the scope of her agency, (an allegation likely to have evidentiary support after a reasonable opportunity for discovery), falsely accused plaintiff Kivlighan of "not working in the best interest" of the owner of the Property; the false statement was made to defendant David Gavin.

90. The statement set forth in paragraph 89 was false.

91. The words stated in their normal usage are understood by the people of the community to harm plaintiff Kivlighan's reputation.

92. Defendants Martins and McEnearney (an allegation likely to have evidentiary support after a reasonable opportunity for discovery) made the statement set forth in paragraph 89 knowing it to be false or believing it to be true lacked reasonable grounds for such belief or acted negligently in failing to ascertain the facts on which the statement was based.

93. Defendants Martins and McEnearney published the false statement set forth in paragraph 89 with malice, reckless disregard of whether the statement about plaintiff Kivlighan was false, and such recklessness as to amount to wanton and willful disregard of plaintiff Kivlighan's rights.

94. Plaintiff Kivlighan has been damaged by the false statement.

95. On or about the dates of May 4- 8, 2007 defendant Martins and defendant McEnearney, through its agent acting within the scope of her agency, (an allegation likely to have evidentiary support after a reasonable opportunity for discovery), falsely accused plaintiff Kivlighan of "discouraging [defendant Martins] from submitting a written offer to purchase the [Hector Road] property"; the false statement was made to defendant David Gavin.

96. The statement set forth in paragraph 95 was false.

97. The words stated in their normal usage are understood by the people of the community to harm plaintiff Kivlighan's reputation.

98. Defendants Martins and McEnearney (an allegation likely to have evidentiary support after a reasonable opportunity for discovery) made the statement set forth in paragraph 95 knowing it to be false or believing it to be true lacked reasonable grounds for such belief.

99. Defendants Martins and McEnearney published the false statement set forth in paragraph 95 with malice, reckless disregard of whether the statement about plaintiff Kivlighan was false, and such recklessness as to amount to wanton and willful disregard of plaintiff Kivlighan's rights.

100. Plaintiff Kivlighan has been damaged by the false statement.

101. On or about the dates of May 4- 8, 2007 defendant David Gavin falsely accused plaintiff Kivlighan of "lying" to him and his wife, defendant Donna M. Gavin; the false statement was made to defendant Martins.

102. The statement set forth in paragraph 101 was false.

103. The words stated in their normal usage are understood by the people of the community to harm plaintiff Kivlighan's reputation.

104. Defendant David Gavin made the statement set forth in paragraph 101. knowing it to be false or believing it to be true lacked reasonable grounds for such belief or acted negligently in failing to ascertain the facts on which the statement was based.

105. Defendant David Gavin published the false statement set forth in paragraph 101 with malice, reckless disregard of whether the statement about plaintiff Kivlighan was false, and such recklessness as to amount to wanton and willful disregard of plaintiff Kivlighan's rights.

106. Plaintiff Kivlighan has been damaged by the false statement.

107. On or about June 7, 2007 defendants Donna M. Gavin and David Gavin falsely accused plaintiff Kivlighan in writing of being "an untrustworthy agent" and one who "misrepresented her clients"; the false statements were made to the Virginia Department of Professional and Occupational Regulation.

108. The statements set forth in paragraph 107 were false.

109. The words stated in their normal usage are understood by the people of the community to harm plaintiff Kivlighan's reputation.

110. Defendants Donna M. Gavin and David Gavin made the statements set forth in paragraph 107 knowing them to be false or believing them to be true lacked reasonable grounds for such belief or acted negligently in failing to ascertain the facts on which the statements were based.

111. Defendants Donna M. Gavin and David Gavin published the false statement set forth in paragraph 107 with malice, reckless disregard of whether the statement about plaintiff Kivlighan was false, and such recklessness as to amount to wanton and willful disregard of plaintiff Kivlighan's rights.

112. Plaintiff Kivlighan has been damaged by the false statements.

113. On or about June 7, 2007 defendants Donna M. Gavin and David Gavin falsely accused plaintiff Kivlighan in writing of being guilty of turning the Kennedy Contract into a "pocket listing"; the false statement was made to the Virginia Department of Professional and Occupational Regulation.

114. The statement set forth in paragraph 113 was false.

115. The words stated in their normal usage are understood by the people of the community to harm plaintiff Kivlighan's reputation.

116. Defendants David Gavin and Donna Gavin made the statement set forth in paragraph 113 knowing them to be false or believing them to be true lacked reasonable grounds for such belief or acted negligently in failing to ascertain the facts on which the statements were based.

117. Defendants Donna M. Gavin and David Gavin published the false statement set forth in paragraph 113 with malice, reckless disregard of whether the statement about plaintiff Kivlighan was false, and such recklessness as to amount to wanton and willful disregard of plaintiff Kivlighan's rights.

118. Plaintiff Kivlighan has been damaged by the false statement.

WHEREFORE, plaintiff Kivlighan prays that a judgment be entered against jointly and severally for $1,000,000 compensatory damages and $500,000 punitive damages and the costs of this suit.

JURY DEMAND

Plaintiffs hereby demand a trial by jury in the foregoing complaint.

Dated this 20th day of July, 2007

Forrest Walpole, VBN 70339
Attorney for plaintiffs
P.O. Box 429
Alexandria, VA 22313-0429
Telephone: 703 836-3001
Fax: 703 836-1979
Forrest.walpole@verizon.net

VIRGINIA: IN THE CIRCUIT COURT FOR THE OF COUNTY OF FAIRFAX

NORTHERN VIRGINIA REAL ESTATE, INC.) Case No.CL 2007-8717

LAUREN KIVLIGHAN)

Plaintiffs)

V.)

KAREN MARTINS)

McENEARNEY ASSOCIATES, INC.)

DAVID GAVIN)

DONNA M. GAVIN)

Defendants)

BILL OF PARTICULARS

Plaintiffs, Northern Virginia Real Estate, Inc. and Lauren Kivlighan, by counsel, in response to the Consent Order of this Court dated September 21, 2007, files this Bill of Particulars and say that they rely on the allegations contained in their Amended Complaint filed herein, and in addition thereto say:

COUNT I

Plaintiffs rely on the allegations contained in Count I of the amended complaint filed herein and in addition specify the following particulars:

1. The facts and circumstances alleged in paragraph 16 of the amended complaint include, but are not limited to, the following: over the course of the period May 5 – July 12, 2007 defendants David Gavin and Martins in concert (a) engaged in conduct aimed at denying plaintiff Northern Virginia Real Estate broker's compensation for the sale of the

Property due under the valid exclusive listing agreement between plaintiff Northern Virginia Real Estate and Bernadette Kennedy; (b) engaged in wrongful, slanderous attacks on the character and integrity of plaintiff Kivlighan with the intent of destroying the confidence seller's attorney-in-fact had in her; (c) caused seller's attorney-in-fact to cease working with plaintiffs and to ignore Northern Virginia Real Estate valid exclusive listing agreement; (d) in violation of law, failed to work through plaintiff Northern Virginia Real Estate in connection with all offers to purchase the Property; (e) sought to duplicate the Alnifaidy $700,000 written cash offer for the Property delivered by plaintiff Northern Virginia Real Estate on May 4, 2007 but under a 'For Sale by Owner' scheme with McEnearney at 3% broker's total compensation to McEnearney, all the while prevailing upon seller's attorney-in-fact to dishonor the seller's obligations under the valid exclusive listing agreement between plaintiff Northern Virginia Real Estate and Bernadette Kennedy.

2. The economic damages suffered by plaintiff Northern Virginia Real Estate in the amount of $168,000 are made up of the sum of (i) loss of broker compensation on Alnifaidy sale (5% of $750,000 = $37,500) and (ii) loss of broker compensation on the resulting sale of the improvement Alnifaidy would have constructed on the Kennedy lot (6% of $2,175,000 = $130,500), making the damages to which plaintiff Northern Virginia Real Estate is entitled under Va. Code §18.2-500A a total of $504,000, three-fold $168,000.

COUNTS III and IV

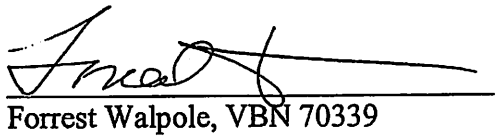
Plaintiffs rely on the allegations contained in Counts III and IV of the amended complaint filed herein and in addition specify the following particulars with respect to damages:

3. The economic damages suffered by plaintiff Northern Virginia Real Estate in the amount of $168,000 are made up of the sum of (i) loss of broker compensation on Alnifaidy sale (5% of $750,000 = $37,500) and (ii) loss of broker compensation on the resulting sale of the improvement Alnifaidy would have constructed on the Kennedy lot (6% of $2,175,000 = $130,500).

ATTACHMENTS

As ordered by the Court, the written statements, contracts, and other documents upon which Plaintiffs rely are attached.

Dated this 5th day of October, 2007

By: 

Forrest Walpole, VBN 70339
Attorney for plaintiffs
P.O. Box 429
Alexandria, VA 22313-0429
Telephone: 703 836-3001
Fax: 703 836-1979
Forrest.walpole@verizon.net

FACT PATTERNS FOR CONSIDERATION AND VOTING BY GEORGE MASON AMERICAN INNS OF COURT

Fact Pattern #1

Subject area: Divorce case.

Plaintiff files Complaint for Divorce. Answer filed.

Plaintiff seeks to amend Complaint.

Plaintiff attorney sends motion to defense attorney on Monday noting that if defense does not agree to amendment by the end of the week, she will file motion for amendment.

On Thursday at 4:55 Plaintiff's attorney sends notice to attend Calendar Control the following morning (Friday) for the motion previously sent. But the attachment to the notice is for a different case.

Defense attorney law firm contacts Plaintiff's attorney and asks the following: (1) Given that the notice and attachment reference another case, was the notice meant to be delivered? (2) The lawyer responsible for the case is out-of-town and cannot appear the following morning; (3) There is no reason to appear at Calendar Control for a Motion to Amend.

Plaintiff attorney says that the notice was meant for the subject case despite the erroneous attachment, Plaintiff's lawyer does not care if the lawyer responsible is out of the office, and Plaintiff's lawyer plans to have the Court put her motion on the 11:30 docket on the same day (that Friday).

Defense attorney indicates that no Fairfax procedure would permit the motion being heard the same day.

Plaintiff attorney says failure to appear at Calendar Control is at your own risk.

The following morning, an attorney covers for out-of-town attorney and goes to Calendar Control. At 8:15, Plaintiff attorney calls Court and indicates that a medical emergency prevents her from attending.

At 9:10 am, Plaintiff's attorney faxes over discovery to Defendant.

That evening Plaintiff's attorney is seen at a holiday party.

Defendant is hit with $600 legal bill for work related to Calendar Control appearance.

Sanctions warranted?

Fact Pattern #2

Mr. and Mrs. Smith, (hereinafter "Father" and "Mother," respectively), were married on December 24, 2007. Two children were born of the marriage; namely, a son age four years of age and a daughter age three. During Thanksgiving of 2014, the parties were having difficulty in their marriage and discussed that Father would move from the marital home on December 15, 2014. Prior to moving out, Father emailed Mother memorializing their discussion/agreement to live separate and apart for the purpose of dissolving the marriage. Mother did not respond to Father's email. Father is a pharmaceutical salesman and Mother has been a stay at home mom since 2010.

On December 20, 2014, after obtaining legal advice, Mother filed a Complaint for Divorce on the grounds of desertion and adultery.

I. Mother alleged the following with regard to desertion:

That during the 2014 Thanksgiving holiday, Father approached Mother to discuss his desire to separate and obtain a divorce from Mother. Mother was shocked and devastated to learn of Father's intentions. In response, Mother offered the alternative of marriage counseling in lieu of a divorce to which Father refused;

That on or about December 15, 2014, Father willfully and without cause or provocation abandoned his wife and children, deserting the marital relationship and such desertion has continued to the present day; and,

That to the present date, Father, who is the primary wage earner, has not provided financial support for his family nor will he address the issue with Mother.

II. Mother alleged the following with regard to adultery:

That upon information and belief, Father committed adultery with various partners, including, but not limited to, females sought from different online websites. Mother believes that said adultery has taken place within this jurisdiction from approximately 2007 through to the present date;

That Father spent overnights away from the home during the marriage where he had the opportunity to engage in extra-marital affairs with members of the opposite sex. These overnights included, but were not limited to, travel to San Francisco, CA in the Spring and Fall of 2009 on business. During the parties' discussion over the Thanksgiving holiday, Father informed Mother that he had engaged in an adulterous relationship during this time period, but has not engaged in extra marital affairs since that time. He admitted that he traveled with his colleague, a female sales representative, and his office administrator, also a female during these business trips; and,

Mother expects to obtain further facts regarding the alleged adultery in 2009 during the discovery process.

Sanctions warranted?

Fact Pattern #3

Here is the John Doe fact pattern:

Plaintiff Victoria Victim files a Complaint against defendants Bad Driver and John Doe. In her Complaint, Victim alleges that she was a passenger in a motor vehicle operated by her husband on Main Street in Fairfax, Virginia when she was rear-ended by the vehicle operated by Driver. In the alternative, Victim alleges that the vehicle in which she was a passenger was rear-ended by John Doe. Plaintiff further alleges that both Driver and Doe had a duty to keep their vehicles under proper control, obey a traffic signal, keep a proper lookout, and maintain a reasonable and prudent distance between vehicles and that both Driver and Doe violated those duties. Finally, Victim alleges that the negligence of Driver and Doe proximately caused her to suffer severe bodily injuries, which are permanent, and to expend sums for hospital and medical care, to undergo physical pain, humiliation, mental anguish, and emotional distress, and to receive and in the future continue to receive medical and hospital care. Victim prays for judgment to be entered against Driver and Doe, jointly and severally, in the amount of one million dollars.

Prior to filing suit, Victim's lawyer had been in contact with her insurance company and had provided a copy of the police report. The police report showed only 2 vehicles at the scene of the accident—Victim and Driver. There was no mention in the police report of a hit and run vehicle. Driver was issued a citation for failure to pay full time and attention. Court records also provided by Victim's attorney showed that Driver appeared in court and pled guilty to the charge. Victim was subpoenaed for the traffic hearing but no other witnesses were subpoenaed or appeared. During the course of its post-accident investigation, Victim's insurance company took a recorded statement from both Victim and Driver. Victim's attorney was present at the time of the recorded statement. Victim was asked in the recorded statement how many vehicles were involved in the accident. She said two and identified Driver as the driver of the other vehicle involved. Victim made no mention of a third vehicle, a phantom vehicle, or a hit-and-run vehicle in her statement. In his recorded statement, Driver likewise confirmed that there were only two vehicles involved in the accident and that he had in fact been the operator of the vehicle that had rear-ended Victim. Driver admits that he was solely at fault for the accident.

Victim's insurance company retains an attorney for Doe, pursuant to the terms of Victim's insurance policy. Doe's attorney is provided with a copy of the police report, both recorded statements, and the Complaint. After reviewing these documents, Doe's attorney calls Victim's attorney to inquire as to the status of the claim against Doe, as it does not appear that there was a John Doe vehicle at the scene. Victim's attorney says she intends to keep Doe in the case "at least for now."

At this point, does Doe have enough to file a 8.01-271.1 Motion for Sanctions?

Doe's attorney answers the Complaint denying that there was a John Doe driver. At the same time, she issues Requests for Admission to Victim, requesting that Victim admit that she has no facts upon which to assert the existence of a John Doe driver, no facts upon which to base a claim of negligence against a John Doe driver, and no facts upon which to base a claim of any kind against a John Doe driver. Additionally, Doe's attorney issues an Interrogatory asking Victim to state all facts upon which she relies to deny any of the Requests for Admission.

Victim responds to Doe's Requests for Admission by denying all of the requests. In response to the accompanying Interrogatory, Victim answers that "discovery is ongoing and this answer will be supplemented as information is discovered."

Doe's attorney again calls Victim's attorney and asks her to withdraw the claim/nonsuit the claim against John Doe. Victim's attorney again declines and tells Doe's attorney that she will consider dropping Doe from the suit after depositions. Doe's attorney follows up in writing and points to Va. Code 8.01-271.1, specifically the part that states that the signature of an attorney on a pleading constitutes a certificate by him that to the best of his knowledge, information and belief, formed after a reasonable inquiry, it is well grounded in fact and is not interposed for any improper purpose, such as to needlessly increase the cost of litigation. Doe does not receive a response to her letter.

At this point, does Doe have enough to go forward with a Motion for Sanctions or is Doe's attorney required to go through depositions? Assuming that Doe's attorney goes forward with depositions and that no new facts supporting a claim against John Doe come to light during the depositions, does Doe now have a basis for a Motion pursuant to 8.01-271.1?

If Doe's attorney decides not to file a Motion for Sanctions and a Motion to Strike is granted at trial, can she now seek Sanctions? What if Victim nonsuits John Doe after resting her case?

Fact Pattern #4

Filing pleadings with obvious hearsay either in it or attached as exhibits. This occurs quite frequently and it raises the question of whether you can attach exhibits that are hearsay and then offer no attempt to overcome the objection.

Is it proper to not include such information from the outset or if you do include it and then fail to overcome the objection should there be a sanction?

Fact Pattern #5

Plaintiff is ex-husband. Defendant is ex-wife. The causes of action are frivolous as not warranted by existing law under the undisputed facts, but set that aside. Assume that Plaintiff has some slam-dunk cause of action to recover about $8,500. Instead of filing a Warrant in Debt in General District Court, Plaintiff files a Complaint in Circuit Court, where the amount sought barely crosses the jurisdictional minimum of $4,500. Plaintiff seeks the $8,500 in damages plus $75,000 in attorney's fees and $350,000 in punitive damages.

Is this fact pattern sufficient to warrant sanctions under the improper purpose prong even if the cause of action itself has merit?