IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JERRY MICHAEL COLLINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO
	§	3:99-CV-0641-P
RICHARD LAWRENCE, et al.,	§	
	§	
Defendants.	§	

ORDER

Now before the Court is Defendant Judge Louis B. Gohmert, Jr.'s Motion for Sanctions Under Rule 11(b), filed May 3, 1999 (the "Sanctions Motion"). Pursuant to this Court's March 7, 2000 Order disposing of virtually all of Plaintiff's claims in favor of the defendants, Plaintiff filed responsive papers to the Sanctions Motion on March 27, 2000. *See* 3/7/00 Order at 6, fn. 3. Judge Gohmert filed his reply on May 16, 2000.

For the following reasons, the Court GRANTS the Sanctions Motion but declines to make a specific award under Rule 11 until Judge Gohmert and Jerry Michael Collins and/or G. David Westfall submit proof and argument on the issues discussed herein. Furthermore, in addition to whatever sanctions are ultimately rendered under Rule 11, Collins and Westfall are hereby sanctioned $2,500 each pursuant to the Court's inherent power.

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I. RULE 11 SANCTIONS

By the present motion, Judge Gohmert seeks to sanction plaintiff Jerry Michael Collins and Collins' attorney, G. David Westfall, pursuant to Federal Rule of Civil Procedure 11. Rule 11(b) provides:

> By presenting [a pleading] to the court ... an attorney or unrepresented party is certifying that to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal or existing law or the establishment of a new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

The central issues in determining whether to impose sanctions against Collins or Westfall[1] are whether they abused the legal process and, if so, what sanction would be appropriate. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990). The Court addresses each issue in turn.

A. Did Collins and/or Westfall Abuse the Legal Process?

Whether Plaintiff's lawsuit against Judge Gohmert constitutes sanctionable harassment under Rule 11 depends upon the objectively ascertainable circumstances rather than subjective intent. *Sheets v. Yamaha Motors Corp.*, 891 F.2d 533, 538 (5th Cir. 1990). If a reasonably clear

[1]Although Collins' initial state-court lawsuit was brought pro se, he subsequently retained Westfall as counsel and continued to prosecute the case against Judge Gohmert in federal court. The Fifth Circuit has made it clear that Rule 11 applies both to pro se litigants as well as those represented by counsel. *Mendoza v. Lynaugh*, 989 F.2d 191, 195-96 (5th Cir. 1993).

legal justification can be shown for the filing of the lawsuit, no improper purpose may be found and sanctions are inappropriate. *Id.* However, sanctions are warranted if the lawsuit is found to have inadequate legal and factual support and an improper purpose. *See* Fed. R. Civ. P. 11(b). Furthermore, a litigant or attorney's subjective good faith is not enough to avoid sanctions if the initiation of the lawsuit against Judge Gohmert was objectively unreasonable. *United States v. Alexander*, 981 F.2d 250, 252 (5th Cir. 1993) ("Rule 11 demands that the actions of the attorney be objectively, not just subjectively, reasonable under the circumstances").

In this lawsuit, Collins maintained that his business was destroyed when "some El Paso lawyers conspired with two women from El Paso, who conspired with at least one east Texas lawyers [sic], who conspired with Van Zandt County law enforcement officers, the 294th district court coordinator, district judges, the county tax collector, and every lawyers [sic] Collins hired to represent him or attempted to hire to represent him."[2] (First Amended Compl. at 9-10). The only claim against Judge Gohmert arose from Judge Gohmert's granting a motion for summary judgment and disposing of Collins' state-court action against his former attorney. In other words, the Complaint made no specific allegation against Judge Gohmert except to say that he was involved in a far-reaching RICO conspiracy against Collins.

As discussed more fully in this Court's March 7, 2000 Order, Collins' conclusory claims against Judge Gohmert were legally untenable pursuant to the doctrine of absolute judicial immunity, and were therefore dismissed in their entirety. *See* 3/7/00 Order at 4-6. There was no reason to bring such claims, let alone continue to prosecute them over a period of years, save that

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[2]The present action is at least the fourth suit filed by Collins stemming from the alleged conspiracy. *See* 3/7/00 Order at 2.

of harassment. The record in this case plainly demonstrates that Collins' RICO conspiracy claims against Judge Gohmert are utterly without arguable factual or legal basis and were filed maliciously and solely for the purpose of harassing, annoying and burdening Judge Gohmert.

As one court wrote, "the filing of frivolous civil lawsuits against judicial officers deserves a special place in the cornucopia of evils plaguing our judicial system because such lawsuits are not only an affront to the dignity of the courts but also an assault upon the integrity of our judicial system." *Hicks v. Bexar County, Texas*, 973 F. Supp. 653, 688 (W.D. Tex. 1997), *aff'd*, 137 F.2d 1352 (5th Cir. 1998), citing *Bogney v. Jones*, 904 F.2d 272, 274 (5th Cir. 1990) (upholding imposition of Rule 11 sanctions where plaintiff asserted civil claims against state district judge). So it is even more significant that the frivolous claims against Judge Gohmert continued to be asserted by Collins *after* G. David Westfall was retained. As reprehensible as Collins' conduct against Judge Gohmert is, he was acting pro se during many of the matters.[3] But that an attorney such as Westfall could file a complaint against a state-court judge based upon the circumstances in this record leaves the Court nothing short of bewildered.

Thus, after concluding that Collins' claims against Judge Gohmert lacked legal and/or factual support and were brought for an improper purpose, the Court finds that both Collins and Westfall abused the legal process by instigating and then pursuing the lawsuit against Judge Gohmert. The Court concludes without reservation that the claims against Judge Gohmert warrant the imposition of sanctions under Rule 11.

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[3]But again, just because it may be more understandable for an unrepresented party to pursue frivolous claims, Collins' pro se status should not, and will not, shield him from sanctions in this case. *Mendoza*, 989 F.2d at 195-96.

B. What Rule 11 Sanctions are Appropriate?

Having found a Rule 11 violation, the Court turns to the issue of appropriate sanctions. The Fifth Circuit instructs that the least severe sanction adequate to serve Rule 11's purposes should be imposed. *See Mendoza v. Lynaugh*, 989 F.2d 191, 196 (5th Cir. 1993); *Thomas v. Capital Security Srvs., Inc.*, 836 F.2d 866, 877 (5th Cir. 1988); *see also* Fed. R. Civ. P. 11(c)(2). Furthermore, the amount of Rule 11 sanctions must be limited to the expenses actually and directly caused by the filing of the pleading found to violate Rule 11. *See Jennings v. Joshua I.S.D.*, 948 F.2d 194, 199 (5th Cir. 1991), *cert. denied*, 504 U.S. 956 (1992).

Although Judge Gohmert has offered some evidence of the expenses incurred while defending against Collins' frivolous claims,[4] the evidence is incomplete and, as yet, Collins has not been afforded the opportunity to challenge it. So, while the Court is eager to dispose of this matter, the parties have not yet presented sufficient evidence upon which to base an appropriate sanction.

Accordingly, the Court requests that **within twenty (20) days from the date of entry of this Order**, Judge Gohmert file and serve upon Plaintiff a properly authenticated affidavit or other proper summary judgment evidence establishing the amount of fees and costs actually incurred by Judge Gohmert and/or the State of Texas in defending against Collins' lawsuit.[5] Then, **within seven (7) days of being served with Judge Gohmert's submission**, Collins and/or Westfall shall file and

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[4]In his reply brief, filed May 16, 2000, Judge Gohmert states: "This Defendant has utilized a visiting judge on two different days to allow him an opportunity to deal with this suit at a cost to the State of Texas of $327 per day. The rest of the significant burden required by this frivolous suit has been borne by the undersigned including one trip to Dallas personally to insure that filing requirements and rules were timely and appropriately met." Reply at ¶ 5.

[5]If Judge Gohmert requires additional time to assemble his evidence, he should notify this Court in writing.

serve upon Judge Gohmert any written response which they wish to make to each such statement and any arguments establishing why such fees and costs should not be imposed upon them pursuant to Rule 11. Should Plaintiff fail to file a response within the proscribed time, the Court will award sanctions without Plaintiff's input.

II. SANCTIONS UNDER THE COURT'S INHERENT POWER

Separate and apart from Rule 11, a court may use its inherent power to sanction a party who acts in bad faith, vexatiously, wantonly or for oppressive reasons. *Chambers v. NASCO*, 501 U.S. 32, 45-46 (1991); *see also Kipps v. Caillier*, 197 F.3d 765, 770 (5th Cir. 1999) (court must make specific finding that party acted in bad faith in order to impose sanctions under its inherent power). The purpose of this power is to enable the Court to ensure its own proper functioning. *Chambers*, 501 U.S. at 43 ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institutions...because they are necessary to the exercise of all others."); *Conner v. Travis County*, 209 F.3d 794, 799 (5th Cir. 2000). The invocation of this sanctioning power should be the exception rather than the rule. *Kipps*, 197 F.3d at 770.

This case, to which the Court has devoted more time and energy than it cares to remember, falls squarely within the "exceptional" category. As discussed in more detail above, the claims first initiated by Collins and later vigorously pursued by Westfall lacked any arguable legal and/or factual support, were brought to harass Judge Gohmert and other defendants, and generally constituted a flagrant abuse of the legal process. At the bottom of this now almost five-year long fiasco, Collins initiated and Westfall subsequently ratified (by filing a complaint in federal court that violated virtually

every precept of Rule 11) wholly groundless civil rights claims against two state court judges (including Judge Gohmert), the sheriff, constable, district attorney and tax assessor-collector of Van Zandt County, and several attorneys. In fact, upon losing a law suit, it is Collins' practice simply to file a new one, adding as parties most of the participants in the old suit (such as Judge Gohmert) who are then alleged, without supporting evidence, to be part of the RICO conspiracy against him. This practice is, needless to say, intolerable.

Given the utter lack of evidence tending to demonstrate that Judge Gohmert participated in a RICO conspiracy, the Court cannot avoid the conclusion that Collins and Westfall each acted in bad faith, vexatiously, wantonly *and* for oppressive reasons. *Kipps*, 197 F.3d at 770. Consequently, it is appropriate to impose sanctions pursuant to the Court's inherent power to preserve the Court's authority, to punish and to deter future misconduct. *See, e.g., Chambers*, 501 U.S. at 45-46; *Kipps*, 197 F.3d at 770.

Any sanctions levied under a court's inherent power must be the least severe sanctions adequate to achieve the end of preserving the court's authority and punishing the misconduct. *Scaife v. Associated Air Center, Inc.*, 100 F.3d 406, 411 (5th Cir. 1996). In light of the circumstances of this case, Collins and Westfall are hereby sanctioned in the amount of $2,500 each; any greater sanction would be excessive while a lesser sanction would fail to serve the Court's purposes.

Therefore, **within twenty (20) days from the date of entry of this Order, both Jerry Michael Collins and G. David Westfall are each directed to pay $2,500 to the Clerk of the District Court of the Northern District of Texas.** Furthermore, the parties are directed to submit

Rule 11 evidence and arguments in the manner set forth at pages 6-7 of this Order.

So Ordered.

Signed this 26th day of July, 2000.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE