

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 AZ Pool Supplies Incorporated, an Arizona  
foreign corporation,

No. CV12-1214 PHX DGC

10 Plaintiff,

**ORDER**

11 v.

12 Saltman Enterprises Incorporated, a revoked  
13 Arizona corporation, et al.,

14 Defendants.

15 Plaintiff's motion for inherent sanctions (Doc. 15) and its motion to disqualify  
16 counsel (Doc. 29) are denied, and Defendants' motion to quash the deposition of defense  
17 counsel (Doc. 30) is granted.

18 Plaintiff's motion for inherent sanctions is based on Defendants' answer to the  
19 complaint and should have been brought, if justified at all, under Federal Rule of Civil  
20 Procedure 11. That rule requires that the motion be served before filing, to afford  
21 opposing counsel an opportunity to address charges in the motion before the Court's time  
22 and resources are invoked to resolve the issue. Fed. R. Civ. P. 11(c)(2). Plaintiff's  
23 counsel cannot evade these requirements by appealing to the Court's inherent power.  
24 Moreover, the typical remedy for statements in a pleading with which opposing counsel  
25 disagrees is to litigate those issues and establish the correct facts, not to fire off a motion  
26 for sanctions.

27 Plaintiff's motion to disqualify counsel constitutes a similar tactical salvo rather  
28

1 than a justified motion. Plaintiff seeks to disqualify defense counsel because he  
2 submitted an affidavit in response to Plaintiff's motion for sanctions and allegedly  
3 violated several ethical rules in the process, including making himself a witness in the  
4 litigation. To avoid the use of ethical rules for the tactical disqualification of opposing  
5 counsel, Arizona law provides that "[o]nly in extreme circumstances should a party to a  
6 lawsuit be allowed to interfere with the attorney-client relationship of his opponent."  
7 *Alexander v. Superior Court*, 685 P.2d 1309, 1313 (Ariz. 1984).

8 The allegations in the motion to disqualify do not approach extreme  
9 circumstances. Defense counsel filed the affidavit because Plaintiff's counsel had  
10 accused him of unethical conduct. And although Plaintiff's counsel may disagree with  
11 factual assertions made in the affidavit, the proper remedy is not to seek disqualification  
12 of opposing counsel, but to litigate the facts and establish the truth.

13 Plaintiff's counsel has issued a notice of deposition for defense counsel on the  
14 basis of defense counsel's affidavit. Defendant's motion to quash seeks to prevent the  
15 deposition. The motion will be granted and the deposition quashed. The deposition, like  
16 the motions discussed above, is a tactical move designed to obtain some advantage over  
17 opposing counsel or his client.

18 Plaintiff's counsel is warned that the Court will not tolerate further vexatious  
19 litigation tactics like those displayed in his motions and the deposition notice. The  
20 federal courts are available to achieve the just, speedy, and inexpensive resolution of  
21 genuine disputes. Fed. R. Civ. P. 1. Those goals cannot be achieved when parties or  
22 counsel engage in accusatory and vexatious litigation practice rather than focusing on the  
23 merits of the dispute. Plaintiff's counsel is also admonished that he should cease tossing  
24 out accusations of perjury and lies as though they were mere greetings. Courtesy,  
25 respect, and civility are mandatory in this Court.

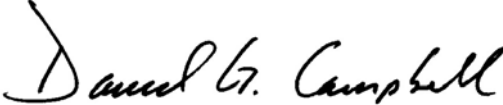
26 **IT IS ORDERED:**

- 27 1. Plaintiff's motion for inherent sanctions (Doc. 15) is **denied**.  
28 2. Plaintiff's motion to disqualify counsel (Doc. 29) is **denied**.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Defendants' motion to quash (Doc. 30) is **granted**.

Dated this 28th day of September, 2012.



---

David G. Campbell  
United States District Judge