

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 10-cv-00813-WJM-KMT

GUY PAQUET, and
ELIZABETH PAQUET,

Plaintiffs,

v.

MARK SMITH,

Defendant.

ORDER

This matter is before the court on Defendant's "Motion to Strike Declaration of Guy Paquet and Sanctions" [Doc. No. 128, filed June 30, 2011]. Plaintiffs responded with yet another "declaration" [Doc. No. 132] and a "Response to Motion to Strike Declaration of Guy Paquet and Sanctions." [Doc. No. 133, filed July 21, 2011.] Defendant filed a Reply with exhibits on August 5, 2011. [Doc. No. 135.] Counting the original declaration which Defendants seek to strike and the Declaration of Cap Allen, P.E. [Doc. No. 113], approximately 83 pages of paper, requiring several hours of judicial time to review, have been expended thus far on a complete non-issue, begun by the plaintiffs' attorney drafting¹ and filing multiple

¹ The declarations are obviously all drafted on the same computer using the same formatting and font. They are consistent with the appearance of other pleadings and documents drafted and filed by James E. Preston, including extraneous "declarations" of the plaintiffs filed in June, 2011 [see Doc. Nos. 106 and 107] leading up to the issue addressed in this Order.

“declarations” which sought nothing more than to besmirch and demean counsel for the defendant.

On October 4, 2011, this Court received notice that the Colorado Supreme Court entered an Order suspending James E. Preston, counsel of record for Plaintiffs, from the practice of law. The suspension Order was effective immediately and resulted in Mr. Preston’s lack of good standing to practice in this court. (*See* Order to Show Cause issued by District Judge William J. Martínez, Doc. No. 144.) On October 26, 2011, Judge Martínez made the order to show cause absolute and removed Mr. Preston as counsel of record. (Doc. No. 147.)

Given that the Declaration of Guy Paquet serves no purpose in the case and is a completely extraneous and defamatory group of statements, it should be stricken from the public record. However, in light of the discipline of attorney Preston, the court declines to award sanctions against the plaintiffs at this time. Nevertheless, plaintiffs are advised that signing or agreeing to statements, affidavits or declarations – even when drafted by an attorney and merely presented for signature – still carries the independent duty and responsibility of the declarant to be scrupulously truthful. In at least one clear respect – the fact that Mr. Paquet was not present during an exchange Mr. Paquet claimed he “witnessed” – Mr. Paquet’s declaration is patently false and is, rather, a reflection of what his attorney claims to have seen. This conduct will not be tolerated again by the court. This court is hopeful that the action taken by the Colorado Supreme Court will remedy the problem and restore the litigation to its proper rhythm.

It is therefore ORDERED

Defendant's "Motion to Strike Declaration of Guy Paquet and Sanctions" [Doc. No. 128] is GRANTED IN PART. The Declaration of Guy Paquet [Doc. No. 113] is hereby STRICKEN. All other relief requested in the motion is DENIED.

Dated this 3rd day of November, 2011.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge