

detriment. (Emphasis added). However, Defendants only state that the case would be stayed indefinitely while Plaintiffs would attempt to obtain alternative counsel, but do not justify as to what would cause such an unreasonable or substantial delay. Plaintiffs' Attorney has sufficiently alleged mandatory grounds for withdrawal. Plaintiffs' Attorney once again reiterates that the case is still in its initial stages and sooner the Court allows the Plaintiffs' Attorney to withdraw, Plaintiffs would be able to get a new representation, without wasting much of the Court and Defendants' time. Thus, Plaintiffs Attorney does not see any prejudice to the Defendants and if any that they have alleged are just imaginative figments and not the facts.

Defendants further allege that there is no proof of Plaintiffs' Attorney's notice of withdrawal to Mr. Harris and his consent to the withdrawal. However, Plaintiffs' Attorney had given enough notice of his withdrawal to the Plaintiffs and he is in the receipt of a letter from Mr. Harris, wherein Mr. Harris states that he knew that Plaintiffs' Attorney wish to withdraw his representation and that it was his right to do so. However, this aforesaid letter is potentially covered by the attorney-client privilege, and because of its sensitive nature in any event, it was not attached to the Motion to Withdraw. The letter is available for inspection by this Court in camera, if the court deems it necessary.

Defendants incorrectly quote only that portion from the motion to withdraw which says "Plaintiffs' claim is meritless". The Plaintiffs' Attorney reiterates and clarifies that Plaintiffs' claim of copyright infringement was never and is not meritless. Plaintiffs' Attorney seeks to withdraw not because he believes that claim is meritless but because he believes that continuing the claim without any clarifications from the Copyright Office would make this claim meritless as Plaintiffs' Attorney had relied heavily, in all his pleadings, on the fact that finished copy of the booklet was registered with the Copyright Office and Copyrighted booklet had questions

which were read verbatim by Ms. Winfrey. The Plaintiffs' Attorney believes that the result of the investigation, in to the Plaintiffs' complaint by United States Copyrights Office, will be decisive and might change the expected outcome of this case, as the registration of the copyright would have served as prima facie evidence of Plaintiffs' claim in this Court. Plaintiffs' Attorney wants to clarify to this court and the Defendants that he believes that the claim would be meritless in reference to the above. However, Plaintiffs' Attorney still believes that apart from the registration issue, the case is still in Plaintiffs' favor. Defendants have moved to dismiss the Complaint contending that Plaintiffs have failed to assert a plausible claim, and even if they did assert such a claim, the Copyright Act does not protect the expressions at issue here. As stated in his reply to motion to dismiss, Plaintiffs' Attorney still believes that Defendants' motion deserves a denial, particularly because Plaintiffs have asserted enough facts to establish that Mr. Harris' work was original at the time Ms. Winfrey asked those Questions. Plaintiffs are not claiming that they have a copyright on historical facts, as Defendants would want this Court to believe, but the way, in which they are presented in the finished/completed booklet, they fulfill the elements of copyrights. Mr. Harris has sufficiently alleged facts that show that his work is original, and that the Questions that Ms. Winfrey asked 'Graham' were indeed very similar to those that Mr. Harris had framed them in his finished booklet, and that a lay observer would find those similarities to be the result of unlawful copying by Ms. Winfrey. Therefore, Defendants' claim that neither the rough draft nor the final version of the booklet contains copyrightable information is completely incorrect.

Further, Defendants' allegation that Plaintiffs' Attorney wants to withdraw from the case to avoid the sanctions is nothing but one more figment of imagination. If the Plaintiffs' Attorney had not exercised due diligence in researching the claim, he would have withdrawn from the case

at the time Defendants' had sent him their Motion for Sanctions. He had twenty one (21) days to reflect if he had not exercised due diligence in researching the claim. He would have advised his clients/Plaintiffs to withdraw from the case during the twenty days notice period. Instead, Plaintiffs' Attorney stood his ground to defend Clients and countered all allegations in the motion for sanctions. Defendant's contention that Plaintiffs have failed to make reasonable inquiry and into law and facts, therefore, must be dismissed.

As explained in Plaintiffs' reply to motion for sanctions, Plaintiffs and their Attorney have conducted a reasonable inquiry in law to find that although historical facts cannot be copyrighted, it is the originality of Mr. Harris' work that makes him entitled for copyright. As Plaintiffs are not claiming that they have a copyright on historical facts, but the way in which they are presented in the completed booklet, they fulfill the elements of copyrights. Likewise, Plaintiffs have established that the record is underdeveloped to ascertain if Plaintiffs were mistaken; Defendants motion for sanction is premature. In applying this objective standard, the Court "is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring into what was reasonable to believe at the time the pleading, motion, or other paper was submitted." FED.R.CIV.P. 11; *CTC Imports & Exports v. Nigerian Petroleum Corp.*, 951 F.2d 573, 578 (3d Cir.1991); *Rouse v. II-VI, Inc.*, Civ. A. No. 06-566, 2007 WL 1007925 (W.D. Pa. March 30, 2007). The Court is required to consider all of the circumstances surrounding the submission, including the amount of time the signer had to investigate and whether the *signing attorney had to rely on a client for information as to the facts*. See *Garr v. U.S. Healthcare*, 22 F.3d 1274, 1278 (3d Cir.1994); *Bradgate Assocs., Inc. v. Fellows, Read & Assocs.*, 999 F.3d 745, 752 (3d Cir.1993); *CTC Imports*, 951 F.2d at 578; FED.R.CIV.P. 11. (Emphasis provided).

Given the facts stated by the Plaintiffs to the Plaintiffs' Attorney, before filing of the Complaint, the Plaintiffs' Attorney had no other way but to rely on his client's representations. Plaintiff, Mr. Harris had seen Ms. Winfrey reading out the questions which he believed were very similar to the questions in his final completed booklet. Neither Plaintiffs nor their Attorney had access to the video tapes of Ms. Winfrey's show. Further, as stated in the reply to motion to dismiss and reply to motion for sanctions, Plaintiffs believed that Ms. Winfrey's show transcript available on Ms. Winfrey's website was altered. (See, Plaintiff Mr. Harris' affidavit attached to Plaintiffs' reply to motion to dismiss). Furthermore, when the Plaintiffs' attorney was provided with the proof of registration by his client, there was nothing in the registration acknowledgement that would suggest if the rough draft was registered or the final copy was registered. There was no way Plaintiffs' Attorney could have thought, even in his wildest imagination, that at the time of registration his client had submitted --a rough draft and a final draft-- of which US Copyright Office would grant copyright protection to the rough draft and will not inform Mr. Harris about the same. Plaintiffs' Attorney filed his complaint based upon best knowledge, information or belief, which in turn was reasonable in the circumstances.

Plaintiffs' Attorney has adhered to the spirit of Rule 11, which provides that persons, who sign, file, submit or later advocate documents are certifying to the court that the document or advocacy is based upon the person's best knowledge, information or belief, which is in turn based upon an inquiry that was reasonable in the circumstances of the particular case. Reasonableness in the context of Rule 11 is "an objective knowledge or belief at the time of the filing of the challenged paper that the claim was well-grounded in law and fact." *Taylor v. Messmer*, No. 02:09-cv-1116, 2010 WL 545892, *1 (W.D. Pa. Feb. 9, 2010).

Thus, as stated above, Plaintiffs attorney is confident that Defendants will never succeed in their patently unmeritorious or frivolous motion for sanctions.

Plaintiffs' would like to bring to the notice of this Court that Plaintiffs have not waived their rights to amend the Complaint in the wake of newly revealed facts. Plaintiffs can still amend and pursue their copyright infringement claim and sustain in their copyright infringement claim in the booklet, although, it is not registered.

However, Plaintiffs' Attorney is finding it increasingly difficult to represent the Plaintiffs as the Plaintiffs are not happy with the Attorney's representation which has led to irreconcilable fundamental differences between them. Plaintiffs' Attorney has not requested withdrawal only based on the disagreement with the Plaintiffs but also because Plaintiffs have refused to communicate with their Attorney and is not happy with his representation. Plaintiffs' Attorney has diligently represented the Plaintiffs' claim but the Plaintiffs are not happy with their Attorney's efforts and have sent a letter to this effect to the attorney. As stated above, this letter is potentially covered by the attorney-client privilege, and because of its sensitive nature in any event, it was not attached to the Motion to Withdraw. The letter is available for inspection by this Court in camera, if the court deems it necessary. Therefore Plaintiffs' Attorney believes he will be unable to effectively and properly continue representing the Plaintiffs, if they are not happy with his representation. The Plaintiffs Attorney should therefore be granted leave to withdraw.

Since Plaintiffs have refused to communicate with the Plaintiff Attorney, it is obvious on his part to be insecure about his finances if he still continues to represent the Plaintiffs. It needs no evidence to show and is but obvious that if Plaintiffs are not happy with his representations, they will not pay him for his services he would render.

For all of the foregoing reasons and the reasons stated in the Plaintiffs' Attorney's Motion to withdraw, Plaintiffs Attorney requests this Court allow his motion to withdraw and this action should be stayed thirty (30) days to allow Plaintiffs to find and retain substitute counsel.

Respectfully submitted,

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