UNITED STATES DISTRICT COURT
SOUTHERN DIVISION OF TEXAS
HOUSTON DIVISION

JOHN STRANGMEIER, INDIVIDUALLY, and on behalf of a Class of All Similarly Situated Persons,	)(	
Plaintiff,	)(	**CIVIL ACTION NO.: 4:11-cv-3463**
V.	)(	
THE CITY OF HOUSTON, TEXAS, and MAYOR ANNISE PARKER, INDIVIDUALLY;	)(	**JURY TRIAL**
Defendants.	)(	

FORMER[1] PLAINTIFF STRANGMEIER AND FORMER ATTORNEY OF RECORD RANDALL KALLINEN'S MOTION TO STRIKE MOTION FOR SANCTIONS FILED AFTER NOTICE OF DISMISSAL and

RESPONSE TO THE CITY'S and MAYOR PARKER'S NULL AND VOID MOTION FOR SANCTIONS FILED AFTER NOTICE OF DISMISSAL

To The Honorable Lynn N. Hughes:

NOW COME JOHN STRANGMEIER AND RANDALL KALLINEN and first move the court to strike the CITY'S and MAYOR PARKER'S motion for sanctions and then files a response even though no case is pending to the null and void motion for sanctions and will show the Court the following:

MOTION TO STRIKE MOTION FOR SANCTIONS TO BE CONSIDERED FIRST

Plaintiff filed a Notice of Dismissal May 24, 2012 (Doc. #28). See **Exhibit 1.** It was clearly indicated on ECF as well as having been filed and served electronically at 1:38 PM.

[1] 35 days ago May 24, 2012, former plaintiff Strangmeier dismissed this case in its entirety when he filed a notice of voluntary dismissal under FRCP 41(a)(1) so there is no case pending.

Exhibit 2. The text of the 1:38 PM, May 24, 2012 filed Notice of Dismissal was as follows:

> ***NOW COMES Plaintiff JOHN*** *STRANGMEIER and pursuant to FRCP 41(a)(1) voluntarily dismisses this case without a court order.*
>
> ***PROCEDURE***
>
> *This case was filed September 23, 2011.*
>
> *The Defendants have not answered nor filed a motion for summary judgment.*
>
> --See **Exhibit 1.**

The defendants had not filed an answer or a motion for summary judgment, therefore, Strangmeier's notice of dismissal was timely. FRCP 41(a)(1)(A)(I); *Aero-Colours Inc. v. Propst,* 833 F.2d 51, 52 (5th Cir. 1987). FRCP 41(a)(1)(A)(I); The dismissal is self-executing and requires no order of the court and is effective *at the moment of* filing-1:38 PM, May 24, 2012. *Finley Lines Joint Prot. Bd. v. Norfolk S. Corp.,* 109 F.3d 993, 995 (4th Cir. 1997). See **Exhibit 2.** Neither Strangmeier nor Kallinen ever filed a *motion* to dismiss nor indicated at any time they were filing or orally requested a *motion* to dismiss, only a *notice* of dismissal.[2] See **Exhibits 1, 2, 3 and 4.**

Former defendants Mayor Parker and the City also admit in their motion for sanctions that Strangmeier dismissed his case May 24, 2012. **(Doc #30, page 1).**

Neither the court or the parties have any role to play after the case is closed by a notice of dismissal. *American Soccer Co. v. Score First Enters.,* 187 F.3d 1108, 1110 (9th Cir. 1999); *In Re Bath & Kitchen Fixtures Antitrust Litig*. 535 F.3d 161, 165-66 (3rd Cir. 2008).

Wherefore, Mayor Parker's and the City's motion for sanctions should be stricken as it was filed after two weeks after the 1:38 PM, May 24, 2012 dismissal from the record.

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[2] In its minute entry order the Court indicated mistakenly that a *motion* for voluntary dismissal was heard sometime after Strangmeier filed his *notice* of dismissal, however, this is false as Strangmeier never filed nor requested a *motion* for dismissal but file a *notice* of dismissal effective upon filing.

RESPONSE TO THE NULL AND VOID MOTION FOR SANCTIONS

The City of Houston and Mayor Parker filed a motion for sanctions against Randall L. Kallinen and John Strangmeier which is improper as the case has been dismissed without prejudice. However, Kallinen and Strangmeier will address the specious and false allegations in the City's and Mayor Parker's null and void motion for sanctions nonetheless.

Incorporation of Previously Filed Documents

Kallinen and Strangmeier incorporate the facts, argument and authority contained in their live complaint filed October 21, 2011 and exhibits (Doc. #s 13-18) as well as their response to the defendants' motion to dismiss filed November 17, 2011 (Doc. #22) and their motion to supplement the live complaint (Doc. # 24) and supplement to the live complaint (Doc. # 25) filed February 5 and 6, 2012 respectively.

Strangmeier filed suit to defend his rights, and the rights of more than 15,000 people who were issued RLC ticket after the City certified the election.

In order to have the election which got rid of red light cameras The Kubosh Family (Paul, Randall, Michael and Francis Kubosh) gathered 50,000 signatures, verified some 31,000, and submitted them to City Secretary Anna Russell on August 9, 2010.

On August 24, 2010, City Secretary Anna Russell certified that the City had received the 20,000 certified signatures necessary to call a charter-election as well as a number of additional certified signatures (in the thousands) sufficient to convince her and the City's Legal Department that the Kubosh Family had clearly satisfied the governing legal requirements as set forth in Chapter 9 of the Texas Local Government Code.

The Texas Constitution and state statutory law trump inconsistent city ordinances, just as the U.S. Constitution and federal statutes trump inconsistent state laws. The Kubosh Family

strictly adhered to Texas law in submitting their charter-amendment petitions, as set forth in Texas Local Government Code Section 9.004 (Charter Amendments). Therefore, Strangmeier received a ticket that the City had absolutely no right to give out. Strangmeier incorporates al other facts as set for in the live complaant supplement and response to motion to dismss.

The City and Mayor Parker demand an award of sanctions against Randall Kallinen as counsel under Section 1927, however, none is warranted as Mayor Parker and the City have not met the requirements of Section 1927 and Kallinen disputes the allegations at **Exhibit 4.**

The City and Mayor Parker complain of the supplement filed and mislead the court that it was about another case when the supplement was primarily about exhausting the appeals in municipal court of Strangmeier's red light camera ticket which the City themselves complained was lacking in the live complaint. Also, the City falsely states Strangmeier had to go to state court when the City themselves made the rule that there was no further appeal of a red light camera ticket.

The sanctions motion filed by Elizabeth Stevens is itself sanctionable under 28 U.S.C. § 1927 as it brings a motion in a dismissed case-a case that they know is dismissed as they admit it on the first page of their motion for sanctions.

The City and Mayor have not accurately conveyed the high burden of proof a party seeking Section 1927 sanctions bears. Such sanctions are "penal in nature, and in order not to dampen the legitimate zeal of an attorney in representing his client, § 1927 is strictly construed."[3] A court must find that an attorney multiplied the proceedings both "unreasonably" *and*

[3] *Travelers Ins. Co. v. St. Jude Hosp.*, 38 F.3d 1414, 1416 (5th Cir. 1994).

"vexatiously" to impose such sanctions.[4] This requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court."[5] Section 1927 only authorizes shifting fees associated with "the persistent prosecution of a meritless claim."[6]

Section 1927 does not apply to an attorney who represents a client with vigor.[7] Whether an attorney multiplied proceedings "unreasonably and vexatiously" depends "on the *conduct* of the litigation and *not* on the merits."[8] An attorney must act in bad faith, with an improper motive, or with reckless disregard of a duty owed to the court.[9] Defendants even admit there was not much filed in this case.

"Section 1927 is aimed at *specific conduct* and claims."[10] In *Browning*, the Fifth Circuit held that a court was required to "*identify the specific conduct* of Ms. Kramer which unreasonably and vexatiously multiplied the proceedings."[11] Section 1927 does not allow movants to paint all of the attorneys on one side of a dispute with a broad brush. The statute "authorizes awards only for actual fees and costs which proscribed conduct has *caused*."[12] A court's findings must "*link* the specific sanctionable conduct of the attorney to the size of the

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[4] *FDIC v. Calhoun*, 34 F.3d 1291, 1297 (5th Cir. 1994).

[5] *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1992).

[6] *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991) (citation omitted) (internal quotation omitted).

[7] *See Mercury Air Group, Inc. v. Mansour*, 237 F.3d 542, 549 (5th Cir. 2001).

[8] *Bryant v. Military Dept. of Miss.*, 597 F.3d 678, 694 (5th Cir. 2010) (emphasis added).

[9] *Bryant*, 597 F.3d at 694; *cf. Baulch v. Johns*, 70 F.3d 813, 817 (5th Cir. 1995) (simple inadvertence or negligence will not support sanctions under § 1927).

[10] *Browning*, 931 F.2d at 345 (emphasis added); *Merial Ltd. v. Intervet, Inc.*, 437 F. Supp.2d 1332, 1335 (N.D. Ga. 2006) (Section 1927 aims at attorneys who *willfully* abuse judicial proceedings in bad faith).

[11] *Browning*, 931 F.2d at 346 (emphasis added).

[12] *Browning*, 931 F.2d at 346 (emphasis added).

sanctions."[13] A court must make findings that a specific attorney's particular conduct violated the statute and link that conduct to excess costs, expenses, and fees reasonably incurred.[14]

Because sanctions can adversely affect an attorney's or law firm's reputation for years, Fourteenth Amendment Due Process requires "detailed findings to determine whether the requirements of the statute have been met, and which, if any, excess costs, expenses or attorney's fees were incurred because of [the attorney's] vexatious multiplication of the proceedings."[15]

While it does not appear that the City or the Mayor is requesting sanctions under Rule 11 Strangmeier and Kallinen point out that the Fifth Circuit's Rule 11 precedent demonstrates the heavy burden of proof the City and Mayor Parker bear in seeking sanctions. Rule 11 sanctions apply only to a specific paper filed in court which does not conform to that rule's standards,[16] as set forth below:

> By presenting to the court (whether by *signing, filing, submitting, or later advocating*) a pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> (A) 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;
>
> (B) the claims, defenses, and other *legal contentions therein are warranted* by existing law *or by a nonfrivolous argument* for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (C) the factual contentions have *evidentiary support* or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further

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[13] See Cambridge Toxicology Group, Inc. v. Exnicios, 495 F.3d 169, 180 (5th Cir. 2007).

[14] *See Sakon v. Andreo*, 119 F.3d 109, 114 (2d Cir. 1997).

[15] *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991); *White v. Goodyear Tire*, 96 F.3d 1444, at *7 (5th Cir. 1996) ("The district court failed to identify Thomson's unreasonable and vexatious conduct which multiplied the proceedings, or the fees and costs which Goodyear incurred as a result of this conduct. We therefore hold that the district court abused its discretion in imposing sanctions under § 1927, and we vacate the award.").

[16] *See, e.g., Edwards v. General Motors Corp.*, 153 F.3d 242, 245 (5th Cir. 1998).

investigation or discovery; and

(D) the *denials of factual contentions are warranted on the evidence* or, if specifically so identified, are reasonably based on belief or a lack of information.

A court may only sanction "attorneys, law firms, or parties that violate [Rule 11(b)] or are responsible for the violation."[17] Rule 11 sanctions cannot be imposed unless:

(1) a document has been presented for an improper purpose, under Rule 11(b)(1));

(2) the claims or defenses of the signer are not supported by existing law or by a good-faith requirement for an extension or change in existing law, under Rule 11(b)(2); or

(3) the allegations and other factual contentions lack evidentiary support or are unlikely to do so after a reasonable opportunity for investigation under Rule 11(b)(3).[18]

When deciding if sanctions are appropriate, a court must adhere to the "snapshot rule," which "ensures that Rule 11 liability is assessed only for a violation existing at the moment of filing."[19] The "snapshot" rule focuses a court on the instant a picture is taken – when a motion is signed. Liability under Rule 11 is only assessed if at that instant the attorney or party violates the rule.[20]

Furthermore, this case has been dismissed with prejudice so Strangmeier and Kallinen cannot withdraw any document as under Rule 11 a party has 21 days after service to withdraw a document. FED. R. CIV. P. 11(c)(2).

C. Respondents did not violate Section 1927 or Rule 11.

1. The declarations deny sanctionable conduct.

Strangmeier's and Kallinen's declarations declare that they did nothing to vex the Court

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17 Fed. R. Civ. P. 11(c).
18 *Bynum*, 166 Fed. Appx. at 732, citing Rule 11 and Rule 11(c)(2)(A).
19 *See Marlin v. Moody Nat'l Bank, N.A.*, 533 F.3d 374, 380 (5th Cir. 2008).
20 *Thomas v. Capital Sec. Services, Inc.*, 836 F.2d 866, 874 (5th Cir. 1988).

or parties nor did any other act for any improper or sanction able purpose. **Exhibits 3 and 4.**

2. This case has been dismissed under FRCP 41(a)(1) so there is no prevailing party.

The City and Mayor Parker try to imply they are a prevailing party under 42 U.S.C. Section 1988 when the case has been dismissed *without prejudice* without any decision on the merits. Since there is no prevailing party there is no fee award. Secondly, fee awards to prevailing defendants are only granted in extreme cases but not here where Strangmeier brought legitimate claims as set forth in the live complaint. See **Doc. #s 13-18, 22, 24, and 25** incorporated by reference as if fully set forth herein.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, John Strangmeier and Randall Kallinen respectfully request this Court to strike the City and Mayor Parker's motion for sanctions and also to DENY the motion for sanctions.

RESPECTFULLY SUBMITTED,

/S/ Randall L. Kallinen

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CERTIFICATE OF CONFERENCE

I certify that I conferred in good faith by e-mail June 28, 2012 with Elizabeth Stevens concerning the motion to strike but she did not reply.

/S/ Randall L. Kallinen

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Randall L. Kallinen

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing on all counsels of record, as set forth below, by the Court's electronic filing system on this 28th Day of June, 2012.

Elizabeth Stevens
City of Houston Legal Department
900 Bagby, 3rd Floor
Houston, TX 77002

/S/ Randall L. Kallinen

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Randall L. Kallinen