

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN STRANGMEIER

§
§
§
§
§

v.

CIVIL ACTION 4:11cv03463

CITY OF HOUSTON, ET AL

**CITY OF HOUSTON’S AND MAYOR ANNISE PARKER’S
REPLY IN SUPPORT OF MOTION FOR SANCTIONS**

I. Argument

Plaintiff seeks to “strike” the City and Mayor Parker’s motion for sanctions, arguing that because Plaintiff voluntarily dismissed the case before the motion was filed, the motion cannot be considered by the Court. Plaintiff argues that “neither the court nor the parties have any role to play after the case is closed by a notice of dismissal.” (Plaintiff’s Response at p. 2). This is simply incorrect. The court retains collateral jurisdiction to impose sanctions for vexatious or otherwise sanctionable conduct even when a party seeks to avoid such a result by voluntary dismissal.

This well-established principle was discussed at length by the Fifth Circuit in *Ratliff v. Stewart*, 508 F.2d 225 (5th Cir. 2007). *Ratliff* involved a patient’s claim that she was harmed by a dangerous drug. The plaintiff’s counsel mistakenly sued the son of the treating physician, who was also a doctor, instead of the treating physician. Although the plaintiff’s attorney’s eventually confessed the error and substituted parties, the Court awarded the incorrectly sued doctor sanctions against the plaintiff’s counsel under 28 U.S.C. § 1927. In addressing the plaintiff’s claim that sanctions could not be awarded after the doctor had been

dismissed and final judgment entered, the *Ratliff* court relied, in part on the Supreme Court's decision in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394 (1990). In *Cooter & Gell*, the Supreme Court held that ““district courts may enforce Rule 11 even after the plaintiff has filed a notice of dismissal under Rule 41(a)(1).”” *Ratliff*, 508 F.3d 230-231 (quoting *Cooter & Gell*, 496 U.S. at 394). The Court noted that ““nothing in the language of Rule 41(a)(1)(I), Rule 11, or other statute or Federal Rule terminates a district court's authority to impose sanctions after such a dismissal.”” *Id.*¹ The defendants' motion for sanctions in this case is not based on Rule 11, but the same reasoning applies to motions for sanctions under Section 1927 and 42 U.S.C. § 1988. *Ratliff*, at 231-233.

II. Conclusion

For the reasons stated above and in defendants' motion for sanctions, defendants ask this Court to award defendants attorney's fees under 28 U.S.C. § 1927, 42 U.S.C. § 1988, and its inherent power, against John Strangmeier or Randall Kallinen or both due to the conduct detailed in the motion.

¹ Some courts have noted that the 1993 amendments to Rule 11 to add the safe harbor provision may limit the holding of *Cooter & Gell*. However the defendants do not seek relief under Rule 11, and the *Ratliff* court applied the analysis to sanctions under Section 1927.

Respectfully submitted,

DAVID M. FELDMAN
City Attorney

LYNETTE K. FONS
First Assistant City Attorney

DONALD J. FLEMING
Senior Assistant City Attorney
Chief, Labor Section

/s / Elizabeth L. Stevens

Elizabeth L. Stevens

Attorney In Charge

Senior Assistant City Attorney

Federal ID 20100; SBN 00792767

elizabeth.stevens@houstontx.gov

Andrea Chan

Senior Assistant City Attorney

Federal ID 14940; SBN 04086600

andrea.chan@houstontx.gov

City of Houston Legal Department

P.O. Box 368

Houston, Texas 77001-0368

Phone: (832) 393-6472

Facsimile: (832) 393-6259

ATTORNEYS FOR DEFENDANTS
CITY OF HOUSTON AND MAYOR ANNISE
PARKER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served in accordance with the Federal Rules of Civil Procedure on this the 9th day of July, 2012.

Randall L. Kallinen
Law Office of Randall L. Kallinen PLLC
511 Broadway Street
Houston, Texas 77012

Via e filing

/s/ Elizabeth Stevens
Elizabeth Stevens