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SJC-12122

ALLAN M. LEAVITT vs. CYNTHIA A. PHILLIPS & others.¹

November 6, 2017.

Mandamus. Practice, Civil, Action in nature of mandamus.

Allan M. Leavitt appeals from a judgment of the county court denying, without a hearing, his petition for relief in the nature of mandamus. We affirm.

Leavitt, the plaintiff in a civil action in the Superior Court arising from an automobile accident, sought an order directing the clerk of the Superior Court to assemble the record for appeal. At that time, Leavitt's claims had been tried to a jury, but final judgment had not yet entered, and certain posttrial motions were pending. The single justice rightly denied relief on the ground that the request was premature.²

In addition, Leavitt moved for the recusal of justices of this court and the Appeals Court. This motion was based on Leavitt's apparent belief that improper ex parte communications had occurred.³ He did not identify by name any particular

¹ Melissa Aebersold, The Commerce Insurance Company, GEICO Insurance Company, and United Services Automobile Association.

² A final judgment has since entered in the Superior Court, and Leavitt has filed a notice of appeal. We trust that the record will be assembled and that Leavitt's appeal will proceed in the usual course.

³ Leavitt is represented by counsel in this matter. The papers filed by counsel in both the county court and the full court are replete with allegations of judicial misconduct and

justice who he believed should be recused, nor did he offer any evidence that recusal was warranted. The single justice properly denied this motion, as Leavitt demonstrated no basis in law or fact for the recusal of any justice.

Judgment affirmed.

The case was submitted on briefs.

William J. Ruotolo for the petitioner.

even criminal offenses. Two of the respondents requested that the single justice impose sanctions, including sanctions under Mass. R. Civ. P. 11, as amended, 456 Mass. 1401 (2010). The single justice denied these requests, and the respondents have neither appealed nor requested that we impose sanctions. At this juncture, we take this opportunity to remind counsel, going forward, to consider his professional obligations and the consequences that can ensue, not only under rule 11 and like court rules but also under the Massachusetts Rules of Professional Conduct, if they are violated.