

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
 ROCK ISLAND COUNTY, ILLINOIS
 CIVIL DIVISION

FILED in the CIRCUIT COURT
 of ROCK ISLAND COUNTY
 GENERAL DIVISION

JUN 30 2021

Jimmy Chidister
 Clerk of the Circuit Court

KURT DREGER, individually, and nominally on
 behalf of THE DISPENSARY, L.L.C., an Illinois
 limited liability company.

Plaintiff,

v.

DANIEL P. DOLAN, PASTRNAK LAW FIRM, P.C.,
 an Iowa professional corporation, and CANNA
 CONSULTATIONS INCORPORATED, an Illinois
 corporation,

Defendants.

Case no. 2019-L-14

ORDER AND JUDGMENT

This matter comes on hearing for sanctions under Supreme Court Rule 137 as it relates to the motion filed by Jim Zmuda and his client Kurt Dreger for the substitution of Judge McGehee for cause filed December 16, 2020, with responses filed by all other parties including affidavits of time spent responding to this motion and hearing held on March 5, 2021; with evidence taken and arguments made regarding the numerous motions for sanctions, and the court being fully advised in the premises, orders:

- 1) Supreme Court Rule 137 imposes an affirmative duty on both litigants and attorneys to conduct an investigation of the facts and law before filing an action, pleading or other papers. *Polsky v BDO Seidman*, 293 Ill. App. 3rd 414, 427 (2nd Dist. 1997). Rule 137 “allows sanctions when a party asserts a legal proposition that is contrary to established precedent.” *Id.*
- 2) The purpose of Rule 137 is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based on unsupported allegations of fact or law. *Fremarek v. John Hancock Mutual Life Insurance Company*, 272 Ill. App. 3rd 1067, 1074 (1st Dist. 1995).

- 3) The trial court must employ an objective standard to determine whether the party has made a reasonable inquiry; subjective good faith is insufficient to meet the burden of Rule 137. *Burrows v. Pick*, 306 Ill. App. 3rd, 1048, 1051 (1st Dist. 1999).
- 4) Rule 137 requires an attorney to certify that he has read the pleading, motion or other paper, and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law. *Fremarek v. John Hancock Mutual Life Insurance Company*, 272 Ill. App. 3rd 1067, 1074 (1st Dist. 1995).
- 5) Rule 137 gives the trial court authority to penalize a litigant or counsel who files a motion or pleading that: (1) is false or otherwise fails to have a well-grounded factual basis, (2) is not supported by existing law, or (3) is interposed for any improper purpose. *Peterson v. Randhava*, 313 Ill. App, 3rd 1 6-7 (1st Dist. 2000).
- 6) The trial court also has broad discretion to determine the appropriate form of sanction depending on the circumstances. *Heckinger v. Welsh*, 339 Ill. App. 3rd, 189, 192 (2nd Dist. 2003).
- 7) Rule 137 allows a trial court to order the offending party to pay other party's reasonable expenses, including attorneys fees. *McCarthy v Taylor*, 2019 IL 123622 (2019)
- 8) Rule 137 requires "both client and counsel" to make a reasonable inquiry into the facts to support a legal claim before filing a pleading or other legal paper in court. *Williams Montgomery and John LTD v. Broaddus*, 2017 IL Ap (1st) 161063. "A trial court's decision to impose sanctions is entitled to significant deference and therefore we will not disturb its decision absent an abuse of discretion." *Id.* A court abuses its discretion where no reasonable person would take the view adopted by it. *Id.*
- 9) Jim Zmuda, attorney for plaintiff Kurt Dreger's motion to substitute Judge McGehee for cause, alleged that Judge McGehee was not impartial to his client, and that Judge McGehee may be prejudiced against his client by some extrajudicial tie to Dan Dolan.
- 10) Illinois law places a heavy burden on a party who moves to substitute a judge for cause under 735 ILCS 5/2-1001. *Eyechanger v Gross*, 202 Ill 2d 228, 280 (2002).
- 11) "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Id.*

- 12) The moving party must demonstrate through specific allegations supported by affidavit and facts that, if true, constitute “actual prejudice.” *In Re: Marriage of O’Brien*, 393 Ill. App 3rd 364, 373 (2nd Dist. 2009).
- 13) Where a reasonable inquiry into the facts or law would reveal that a parties’ position was meritless, it is proper to impose sanctions for a party asserting that position in a pleading. *Fremarek v John Hancock Mutual Life Insurance Company*, 272 Ill. App. 1067, 1075 (1st Dist. 1995).
- 14) “A judge’s previous rulings almost never constitute a valid basis for a claim of judicial bias.” *Brzowski v Brzowski*, 2014 IL App (3rd) 130404 (3rd Dist).
- 15) Accordingly, whether a party’s position was subjectively reasonable is irrelevant. *Sterdjevich v RMK Management*, 343 Ill. App. 3rd, 1 (1st Dist. 2003). “It is not sufficient that plaintiff honestly believed that the allegations raised were grounded in fact or law.” *Id.*
- 16) This court makes the following findings :
 - A) The pleadings to substitute Judge McGehee for cause were frivolous and harassing to the court.
 - B) Chief Judge Frank Fuhr, after Judge McGehee referred the matter to determine whether the court was biased, ruled that Judge McGehee’s rulings did not constitute a valid basis for a claim of judicial bias, and referred the matter back to Judge McGehee for possible sanctions.
 - C) Jim Zmuda, attorney for plaintiff Kurt Dreger, in the motion or in response did not provide objective reasonable facts or evidence for his position that Judge McGehee had extrajudicial ties to defendant Dan Dolan.
 - D) Attorney Jim Zmuda was the driving force in preparing the pleading filed to substitute Judge McGehee for cause, since Jim Zmuda had filed extensive and numerous pleadings in this matter including several appeals.
 - E) Jim Zmuda’s 829-page motion, filed on December 16, 2020 at approximately 4:30 PM, before the next-day hearing to determine whether his law firm would be disqualified from representing the plaintiff, was an abuse of the judicial process and was meant to delay, be vexatious and harassing to the other parties and the court.
 - F) Jim Zmuda’s motion took adversity to the next level, causing delay and expenses for the other parties.


- G) Jim Zmuda alleged that Judge McGehee had an extrajudicial tie, i.e., a relationship with party or information regarding a party which is derived from a source other than the party in the case before the judge.
- H) Jim Zmuda inferred that the judge's spouse, and possibly even the judge, had an economic interest in this case. This false factual allegation was an attempt to create an extrajudicial basis to have Judge McGehee removed from the case.
- I) Jim Zmuda's motion to substitute for cause stated in paragraph 18 that it is unclear whether Judge McGehee or his spouse receives any economic benefit from the defendant.
- J) Jim Zmuda's motion infers that Judge McGehee has violated the Judicial Rules of Conduct as stated in paragraph 19 of his motion that, "Given the clear extrajudicial ties between Judge McGehee's spouse and the defendant, questions impartiality."
- K) Jim Zmuda then re-litigated the entire case in the motion, alleging that Judge McGehee was prejudiced in his previous rulings.
- L) Jim Zmuda tried to use the Code of Judicial Conduct with fictional allegations of a mere appearance of impropriety to force Judge McGehee to recuse himself or to be removed.
- M) There were no factual allegations or any attached exhibits showing that the wife of Judge McGehee shares in any profits or does any business together with defendant Dolan, and those documents or facts do not exist since there are no financial connections between judge's wife and the Dolans.
- N) There was a non-existent extrajudicial tie, and a reasonable inquiry into the facts would have revealed there was no extrajudicial tie between Judge McGehee and defendant Dolan, and therefore Jim Zmuda's position was meritless.
- O) Jim Zmuda's motion to substitute Judge McGehee attached irrelevant screenshots of Judge McGehee's wife, Judge McGehee and their family taken from a public Facebook page, and these screenshots were not at all related to this litigation, appearing to the court that it was just to prove Judge McGehee's wife exists and is with Judge McGehee at events and at home with their family.
- P) This court also takes judicial notice that Jim Zmuda on December 12, 2020 had another hearing on the merits to substitute Judge VandeWiele for cause in several connected Henry County cases because he claimed this judge also was incapable of

- being fair and impartial. The Chief Judge, in that hearing, also found that the judge was not to be removed for cause, and stated on the record that just because a judge rules against the party does not make the judge prejudiced.
- Q) That the petition to remove Judge McGehee was an attempt to delay the hearing set for the next day and did delay the proceedings. It had been made aware to the court as well as other counsel of the importance of a coming deadline for the application to the State of Illinois for a marijuana recreational use license on March 17, 2021, and this was also a delay tactic regarding that application process.
- R) Attacking the integrity of the court, placing his wife and family photographs in this case was a reckless disregard to the facts and applicable law. This motion was done for an improper purpose of delay to the court and other counsel. Attorney Zmuda owed a duty to one's adversary and to the legal system, and he breached that duty by taking the time of the judge and the other officers of the court away from matters more in need of a resolution. *Hernandez v Williams*, 258 Ill. App. 3rd 318, 323 (3rd Dist. 1994).
- S) The record clearly reflects that the fees and expenses that were incurred as relates to the motion to substitute the judge for cause was the result of the offending motion or document, and such expenses were reasonable and necessary in response to the motion and provided a detailed breakdown. The court also gave attorney Jim Zmuda an opportunity to respond to the motions for sanctions.
- T) Jim Zmuda's response, filed on December 22, 2020 after all the affidavits were filed as well as the other parties' having filed briefs in response to the motion, provided no further explanation or even mentioned the alleged extrajudicial conflict. This ignoring of the fictitious claim in the response made it clear and obvious to the court that Jim Zmuda's actions were done only to delay and harass.
- U) The affidavit of fees filed for Lane and Waterman totaled \$21,915 and this court finds the fees attributable to the preparation for the scheduled hearing on December 17th were not in response to the motion to substitute for cause, and will not be awarded as a sanction or \$6,210. The balance of the fees were reasonable and necessary in response to the motion. The fees of \$11,296 to Bozeman, Neighbor, Patton and Noe, and of \$2,102 to Churchill and Churchill were also reasonable and necessary.

WHEREFORE, this court:

- ORDERS attorney Jim Zmuda to pay \$15,705 to the law firm of Lane and Waterman, \$11,296 to Bozeman, Neighbor, Patton and Noe, and \$2,100 to Churchill and Churchill. The payment of these balances is a judgment of this court and shall be paid instanter.
- Also ORDERS that after 30 days and all appeal rights have been exhausted, the Facebook page with all the photographs attached in the motion to substitute will be stricken and removed from the file by the Clerk of Court.

ENTERED this 30th day of June, 2021.



John L. McGehee
Circuit Judge

JLM/sll

Copies sent by electronic mail to:

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