

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 GALE A. NORTON, Secretary of the Interior, et al.,)
)
 Defendants.)
)
)

Case No. 1:96CV01285
(Judge Lamberth)

DEFENDANTS' MOTION TO STRIKE SCANDALOUS MATERIAL FROM PLAINTIFFS' RESPONSE TO THE *AMICUS CURIAE* BRIEF FILED BY THE QUAPAW TRIBE OF OKLAHOMA AND TO ADMONISH PLAINTIFFS' COUNSEL TO COMPLY WITH D.C. BAR'S VOLUNTARY STANDARDS FOR CIVILITY IN PROFESSIONAL CONDUCT

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, Defendants respectfully move this Court for an Order (a) striking the first sentence of the final paragraph beginning on page 2 and continuing to page 3 of Plaintiffs' Response to *Amicus Curiae* Brief of the Quapaw Tribe of Oklahoma (Dkt. No. 2658) ("Plaintiffs' Response")¹ and (b) admonishing Plaintiffs' counsel to comply with the D.C. Bar's voluntary standards for civility in professional conduct. Defendants seek such relief upon the grounds that the first sentence of the final paragraph beginning on page 2 and continuing to page 3 of Plaintiffs' Response constitutes yet the latest instance of a never-ending series of scandalous attacks upon government officials, and such statements are wholly inappropriate in pleadings before this Court. Pursuant to Local Civil Rule 7(m), counsel for the Defendants conferred with Plaintiffs' counsel on September 3, 2004,

¹ In seeking such relief, Defendants further request that the Court order Plaintiffs to remove this statement from their website (www.indiantrust.com) and to take all steps necessary to prevent the further publication of said passage in any other forum.

regarding this motion and plaintiffs' counsel stated that this motion would be opposed. In support of this motion, Defendants state as follows.

I. This Court Should Strike the First Sentence of the Final Paragraph Beginning on Page 2 and Continuing to Page 3 of Plaintiffs' Response

On August 24, 2004, the Quapaw Tribe filed, with leave of Court, a brief with this Court as *amicus curiae*. Brief for *Amicus Curiae* The Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Amicus Brief") (filed Aug. 24, 2004) (Dkt. No. 2648). The Quapaw Tribe submitted their brief "to explain and support the pending settlement of its trust-related accounting claims with [the Department of the Interior] and also to support the Defendants' motion requesting confirmation that certain tasks to be performed under the settlement agreement [conformed] with this Court's order of December 23, 2002." Amicus Brief at 1.

In opposing the Amicus Brief, Plaintiffs predictably returned to their well-worn practice of using this Court's process as a shield for what would otherwise be libelous and defamatory conduct. Plaintiffs dismissed the arguments of the Quapaw Tribe with the statement that the Amicus Brief

offers nothing but regurgitation of the government's same frivolous arguments, sprinkled with misrepresentations and a dab of word games that would make [Defendants' lead counsel] proud.

Plaintiffs' Response at 2-3.

Rule 12(f) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[u]pon motion made by a party . . . the court may order stricken from any pleading any . . . scandalous matter." Fed. R. Civ. P. 12(f); see 5A C. Wright and A. Miller, Federal Practice and Procedure (Civil) 2d § 1382, at 712 (1990) ("Scandalous' matter is that which improperly casts

a derogatory light on someone, most typically a party to the action.”) (footnote omitted); 2 Moore’s Federal Practice § 12.37[3] at 12-97 (“‘Scandalous’ generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court.”) (footnote omitted).

While motions to strike are generally disfavored, “the disfavored character of Rule 12(f) is relaxed somewhat in the context of scandalous allegations and matter of this type often will be stricken from the pleadings in order to purge the court’s files and protect the subject of the allegations.” 5A C. Wright and A. Miller, Federal Practice and Procedure (Civil) 2d § 1382, at 714 (1990);² see Metrokane, Inc. v. The Wine Enthusiast, 160 F. Supp. 2d 633, 641-42 (S.D.N.Y. 2001) (“Generally, motions to strike are disfavored and usually granted only for scandalous material.”)(citation omitted).

The striking of offensive material is particularly appropriate when the offensive material is not responsive to an argument but, rather, constitutes an inappropriate attempt to abuse the Court’s process to attack an individual personally. See, e.g., Magill v. Appalachia Intermediate Unit 08, 646 F. Supp. 339, 343 (W.D. Pa. 1986) (striking allegations that “reflect adversely on the moral character of an individual who is not a party to this suit” which were “unnecessary to a decision on the matters in question”); see also Pigford v. Veneman, 215 F.R.D. 2, 4-5 (D.D.C. 2003)(striking unfounded accusations that opposing counsel was racist); Murray v. Sevier, 156 F.R.D. 235, 258 (D. Kan. 1994) (striking allegation that defendant and his counsel “bought off”

² Indeed, the relief provided for in Rule 12(f) need not be granted only upon motion of a party; consistent with the Court’s inherent powers to protect the decorum of proceedings before it, the Court may strike such material sua sponte. Fed. R. Civ. P. 12(f); see Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (quoting Anderson v. Dunn, 6 Wheat. 204, 227 (U.S. 1821)).

and paid “hush money” to prospective witnesses); Cairns v. Franklin Mint Co., 24 F. Supp. 2d 1013, 1037 (C.D. Cal. 1998) (striking allegation that “defendants are ‘[l]ike vultures feeding on the dead’”); Nault's Automobile Sales, Inc. v. American Honda Motor Co., 148 F.R.D. 25, 29-34 (D.N.H. 1993) (noting that “[w]ith each passing week the pleadings assumed a more hostile and accusatory tone” and striking scandalous assertions).

II. Because Plaintiffs’ Response Continues Their Well-Established Practice Of Filing Pleadings Containing Scandalous Material, Contrary to the D.C. Bar’s Voluntary Standards for Civility in Professional Conduct, This Court Should Admonish Plaintiffs’ Counsel to Comply With The D.C. Bar Civility Standards for Future Pleadings

The D.C. Bar’s Voluntary Standards for Civility in Professional Conduct prescribe principles that Plaintiffs’ counsel routinely disregard. See, e.g., D.C. Bar’s Voluntary Standards for Civility in Professional Conduct, General Principle 1 (civil, professional, and courteous treatment of all participants in the legal process), 2 (client’s ill feelings generally not to be reflected in counsel’s conduct, attitude, and demeanor toward participants in legal process), 3 (abstention from “disparaging personal remarks or acrimony” toward participants in legal process), 24 (lawyers will “speak and write civilly”), 25 (lawyers “will not engage in conduct that offends the dignity and decorum of judicial proceedings”), 27 (lawyers “will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities”), 28 (lawyers “will not degrade the intelligence, ethics, morals, integrity or personal behavior of others, unless such matters are legitimately at issue in the proceeding”)(emphasis added), quoted in Alexander v. FBI, 1999 WL 314170, at *3 n.1 (D.D.C. May 17, 1999). And while it would be impossible, within the page limitations set forth in the Local Court’s Rules, to recite an exhaustive list of

Plaintiffs' counsel's uncivil efforts, a review of the record reveals numerous examples for the Court's consideration, only some of which have provided the basis for prior motions to strike. See Defendants' Motion to Strike Plaintiffs' "Comments," Filed August 27, 2003 (filed Sept. 16, 2003)(Dkt. No. 2287)(denied by Order filed March 15, 2004 (Dkt. No. 2528)); Interior Defendants' Motion to Strike Plaintiffs' Request for Personal Sanctions in Plaintiffs' Comments to the January 27, 2003 Corrected Report and Recommendation of the Special Master (filed Mar. 4, 2003)(Dkt. No. 1860)(denied by Order filed June 4, 2003 (Dkt. No. 2094)); Interior Defendants' Motion to Strike Scandalous Materials from Plaintiffs' Response to Defendant's Historical Accounting Plan for Individual Indian Money Accounts (filed Feb. 10, 2003)(Dkt. No. 1795)(denied by Order filed Mar. 3, 2003 (Dkt. No. 1847)); see also Order at 2 n.1 (Apr. 8, 2003)(Dkt. No. 1961)("Plaintiffs would be well-advised to avoid their customary statements of grievances and purple prose in these briefs, and instead concentrate on furnishing legal arguments.").

While the D.C. Bar standards are "voluntary" by their terms, the Supreme Court has recognized that "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (quoting Anderson v. Dunn, 6 Wheat. 204, 227 (U.S. 1821)); see generally Jaen v. Coca-Cola Co., 157 F.R.D. 146, 152-53 (D.P.R. 1994)(discussing role of civility in litigation). Indeed, this Court's Order in Alexander directed counsel intending to attend a deposition "to file in advance thereof a certificate with the Clerk of Court that they have carefully read the [D.C. Bar standards of civility]." Alexander v. FBI, 1999 WL 314170, at *2 (D.D.C. May 17, 1999).

Moreover, while this Court denied Defendants' prior above-cited motions to strike, we respectfully suggest that the time has come for the Court to take some action to restore civility in this matter. In the absence of such an order, Plaintiffs' repetitive and unceasing disregard for decorum and civility will continue to degrade this Court and the judicial process.

Conclusion

For the foregoing reasons, Defendants respectfully ask this Court for an Order (a) striking the first sentence of the final paragraph beginning on page 2 and continuing to page 3 of Plaintiffs' Response to *Amicus Curiae* Brief of the Quapaw Tribe of Oklahoma (Dkt. No. 2658), (b) directing Plaintiffs to remove this statement from their website (www.indiantrust.com) and to take all steps necessary to prevent the further publication of said passage in any other forum, and (c) admonishing Plaintiffs' counsel to comply with the D.C. Bar's voluntary standards for civility in professional conduct.

Respectfully submitted,

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September 3, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on September 3, 2004 the foregoing *Defendants' Motion to Strike Scandalous Material from Plaintiffs' Response to the Amicus Curiae Brief Filed by the Quapaw Tribe of Oklahoma and to Admonish Plaintiffs' Counsel to Comply with D.C. Bar's Voluntary Standards for Civility in Professional Conduct* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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/s/ Kevin P. Kingston
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)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

ORDER

This matter comes before the Court on The *Defendants' Motion to Strike Scandalous Material from Plaintiffs' Response to the Amicus Curiae Brief Filed by the Quapaw Tribe of Oklahoma and to Admonish Plaintiffs' Counsel to Comply with D.C. Bar's Voluntary Standards for Civility in Professional Conduct* (Dkt. # ____). Upon consideration of the Motion, the Opposition, any Reply thereto, and the entire record of this case, it is hereby

ORDERED that the Motion is GRANTED and;

It is FURTHER ORDERED that The Clerk of the Court is directed to strike the first sentence of the final paragraph beginning on page 2 and continuing to page 3 of *Plaintiffs' Response to Amicus Curiae Brief of the Quapaw Tribe of Oklahoma* (Dkt. No. 2658) and

It is FURTHER ORDERED that the Plaintiffs will remove the same passage from their website (www.indiantrust.com) and

It is FURTHER ORDERED that Plaintiffs will take all steps necessary to prevent the further publication of said passage in any other forum and

It is FURTHER ORDERED that Plaintiffs will certify per Local Civil Rule 5(h) and Rule 11 of the

Federal Rules of Civil Procedure they have carefully read and will abide by the D.C. Bar Standards of Civility.

SO ORDERED

Hon. Royce C. Lamberth
UNITED STATES DISTRICT JUDGE

Date _____

cc:

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