

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 1:15-cv-13297-NMG

BHARANIDHARAN PADMANABHAN MD PhD)
(Dr. Bharani))
- PLAINTIFF)

JURY TRIAL DEMANDED

vs.)

MAURA HEALEY)
STEVEN HOFFMAN)
CHRIS CECCHINI)
ADELE AUDET)
JAMES PAIKOS)
LORETTA KISH COOKE)
JOHN DOES)
JANE DOES)
- DEFENDANTS)

FILED
IN CLERK'S OFFICE
NOV 20 1 11 PM '15
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF'S MOTION FOR SANCTIONS FOR CONSCIOUS WILLFUL VIOLATION OF
LOCAL RULE 7.1
BY DEFENDANTS HEALEY, HOFFMAN, CECCHINI, PAIKOS, COOKE AND AUDET
AND COUNSEL MARK SUTLIFF

- 1 Named Defendants filed a Motion to Dismiss on November 16th, 2015. (Document 23)
- 2 Counsel for Named Defendants, Mark Sutliff (via Counsel Adam LaGrassa) did not confer with Plaintiff Dr Bharani even once prior to filing that Motion in willful violation of D. Mass. Local Rule 7.1(a)(2) "*Motion Practice*. No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue."
- 3 It should not be necessary for a *pro se* scientist to point out that this state's Attorney General and Assistant Attorneys General need to be in compliance with Local Rule 7.1

prior to filing Motions in this Court.

4 It is impossible for anyone to believe that Defendants and their Counsel inadvertently forgot to confer in good faith with opposing counsel as required by Local Rule 7.1.

5 This is accepted standard routine expected practice well known to filers with this Court, likely including even *pro se* filers and should certainly be ingrained in Assistant Attorneys General who appear before this Court.

6 Plaintiff Dr Bharani, being *pro se* and not registered with the ECF system, files his pleadings with the Clerk's Office where personnel always check to see the Certificate of Compliance prior to even accepting the pleading. Plaintiff has not received any such Certificate associated with Defendants' Motion to Dismiss (Document 23).

7 On November 24th, 2015, Counsel Mark Sutliff filed a Notice with this Court acknowledging that no one at AGO made any effort to confer with Plaintiff *pro se*. However Counsel Mark Sutliff claimed it was Plaintiff's fault "because Plaintiff Bharanidharan Padmanabhan believed he was "precluded from communicating directly with [him]"". (Document 31)

8 What Plaintiff *pro se* believes or not about himself does not explain why no one at AGO besides Counsel Mark Sutliff could have reached out to Plaintiff, given that Plaintiff had already established a channel of communication with Co-counsel Adam LaGrassa, with whom Plaintiff is indeed not ethically precluded from communicating. Exhibit 1

9 It would have been a simple good faith matter for Co-counsel Adam LaGrassa to have been asked to confer on Defendants' Motion to Dismiss, an important motion.

- 10 It is vital to note that the Notice filed by Counsel Mark Sutliff, which states “I, Assistant Attorney General Mark P. Sutliff, certify that I was unable to confer under Local Rule 7.1(a)(2)”, was allegedly signed electronically by both Counsel Mark Sutliff and Co-counsel Adam LaGrassa. This essentially mocks the very system of electronically signed documents filed with the Court.
- 11 Facts totally disprove Counsel Mark Sutliff’s bad faith claim that he was unable to confer with Plaintiff *pro se* because barely 6 minutes after filing the Motion to Dismiss (Document 23) Counsel Mark Sutliff felt freely able to email Plaintiff *pro se* to tell him that he was wrong about the deadline to file Defendants’ Answer. Exhibit 2
- 12 As Counsel Mark Sutliff clearly did not feel unable to email Plaintiff *after* filing the Motion, he could just as easily have emailed Plaintiff *before* filing the Motion.
- 13 Counsel Mark Sutliff’s email of November 16th, 2015, conclusively proves that the Notice he filed on November 24th, 2015 was willfully perjurious and filed entirely in bad faith.
- 14 The only possible conclusion is that Counsel Mark Sutliff willfully and intentionally did not wish to confer with Plaintiff *pro se* and did not fear any consequences for himself or his clients as a result of his conscious contempt for this Court’s rules and judicial machinery.
- 15 It was fully eight (8) days after filing the Defendants’ willfully noncompliant Motion to Dismiss and after Plaintiff *pro se* pointed that out in a Motion (Document 28) that Counsel Mark Sutliff rushed out his Notice, but even then there was nary an apology or

claim of inadvertence, simple mistake or neglect. Instead, egregiously, he blamed the Plaintiff.

- 16 Counsel Mark Sutliff's Notice "could not have been calculated to assist the Court in the administration of justice, but only to win an advantage." Tesco Corp. v. Weatherford Int'l. Inc., No. H-08-2531, 2014 WL 4244215 (S.D. Tex. Aug. 25, 2014) (Fed. Cir. 2015-1041)
- 17 All Federal District Courts have accepted sanctions for the serious offense of non-compliance with the Local Rule mandating conferral. See Converse, Inc. v. Reebok Intern. Ltd., 328 F. Supp. 2d 166, 170-71 (D. Mass. 2004) (the failure "to comply with Rule 7.1 is an 'offense ... that harms the District Court as much as [opposing counsel].'" (emphasis added), Nina Scott v. Associated Credit Services, Inc. D. Mass. 12-40005-TSH (Plaintiff's counsel alleges that Defendant's counsel failed to contact him prior to filing a Rule 12(b)(6) motion to dismiss, a claim Plaintiff supports by affidavit. Such a failure to confer would constitute a violation of LR 7.1(a)(2), for which this Court may impose sanctions.), L-3 Communications Security and Detection Systems Corp. Delaware v. American Science & Engineering, Inc., D. Mass 04-10339-RWZ (In light of L-3's pattern of flouting the Local Rules, AS&E requests that this Court impress upon L-3 the importance of following the Local Rules by striking its reply.), Karakis v. Gulfstream Park Racing Ass'n, 08-61572-CIV, 2008 WL 4938406 (S.D. Fla. 2008) (a motion **should** be denied where the movant failed to confer with opposing counsel prior to filing the motion). (emphasis added)
- 18 It is also the ruling and well established practice in Federal Courts in all Districts that Defendants are responsible for misconduct by their attorneys, who they have freely

selected to represent them. "Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney. "' Link v. Wabash R. Co., 370 U.S. 626 (1962), Tesco Corp. v. Weatherford Int'l. Inc., H-08-2531, 2014 WL 4244215 (S.D. Tex. Aug. 25, 2014)(Fed. Cir. 2015-1041)

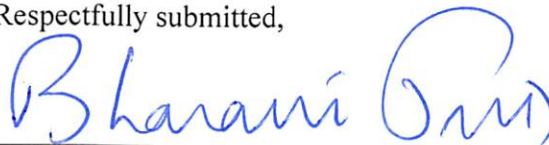
19 Plaintiff attaches a sworn affidavit documenting Defendants' failure to confer prior to filing their Motion to Dismiss (Document 23), which directly harms the judicial machinery.

WHEREFORE Plaintiff Dr Bharani respectfully seeks that this Court impose:

- (A) sanctions upon Defendants Healey, Hoffman, Cecchini, Paikos, Cooke and Audet as well as their Counsel Mark Sutliff for failing to confer in good faith as required by LR 7.1 prior to filing a Motion, by DENYING with prejudice Defendants' Motion To Dismiss (Document 23) and precluding Defendants from filing any more Motions to Dismiss in the future for this case. Not doing so would reward perjury;
- (B) order the Defendants to finance their defense privately without relying on the tax payer and to reimburse the tax payer for the cost of their defense thus far;

- (C) severe, public and exemplary sanctions upon Defendant Attorney General Maura Healey, Assistant AG Mark Sutliff and the Massachusetts Office of the Attorney General for failing to meet the higher standard expected of such a high office and to protect, from the state government, future plaintiffs who may be *pro se*.

Respectfully submitted,



Bharanidharan Padmanabhan MD PhD

pro se

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1 December 2015