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Pro Se

Township of Manalapan, Plaintiff vs. Stuart Moskovitz, Esq., Jane Doe and/or John Doe, Esq. I-V (these names being fictitious as their true identities are presently unknown) and XYZ Corporation, I-V (these names being fictitious as their true corporate identities are currently unknown) Defendants (s)	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. MON-L-2893-07** **CIVIL ACTION** **CERTIFICATION IN SUPPORT OF MOTION FOR SANCTIONS**

I, Stuart J. Moskovitz, Esq., an attorney duly admitted to practice in the State of New Jersey, certifies under penalty of perjury to the following:

1. I am the Defendant in this matter and as such have personal knowledge of the facts set forth herein.

PRELIMINARY STATEMENT

2. On or about June 13, 2007, purportedly on behalf of the Township of Manalapan, David R. Weeks, Esq., filed a Complaint against me alleging legal negligence in connection with the purchase of two parcels of land while I was serving as Township Attorney.

3. The filing of the action was without legal authority. Not only was there no resolution by the Township Committee expressly authorizing the litigation, but, upon information and belief, the Township Committee determined in executive

session that no such action would be filed prior to my receiving a letter setting forth the claim and being given the opportunity to respond to determine whether this litigation was warranted. The bases for this belief are numerous statements made by Mayor Andrew Lucas to people outside the litigation circle advising them of activities and conversations taking place within executive session, which have since been relayed to me.

4. I received no such letter. There was no further authorization by the Township Committee to commence this litigation. Mr. Weeks proceeded with the litigation without the authorization of his client.

5. Township Attorney and soon to be Assemblywoman Caroline Casagrande was present for those discussions, was well aware that there was no legal authorization for this action and failed to so inform this Court, in breach of her duty to this Court as the Township Attorney for the Township of Manalapan.

6. David Weeks, attorney for the Township, participated in those discussions in Executive Session, was aware that there was no authorization for this lawsuit, was aware that in fact, the Township Committee had expressly stated that it should NOT be brought prior to the serving of that correspondence, and intentionally withheld that information from the Court, even in responding to a Motion to Dismiss based in part on such lack of authorization.

7. The action itself compounds the foregoing by making intentionally false statements to this Court. Paragraph 31 of the Complaint states the "Green Acres and the Monmouth County Board of Recreation Commissioners have both determined

that the Township is required to clean up the contaminated soil prior to receiving funding on both the Green Acres and the Monmouth County grants."

8. That statement is false, and was knowingly false when made. In fact, the Township of Manalapan has already received the funding from Green Acres, the same $250,000 it was always supposed to receive. No remediation has been conducted.

9. What has happened so far is that the Township of Manalapan has expended nearly $100,000 on an engineer who is the principal campaign financier for virtually everyone that has served on the Township Committee in the last ten years. That money has paid for various remediation plans, including remediation plans prepared and submitted after the Township claimed to have received a letter approving a prior, far less expensive remediation plan.

10. What has happened so far is that four attorneys, all heavily connected to a single political powerhouse in the Monmouth County Democratic Party, have been receiving funding from the Township for this frivolous litigation.

11. This includes Mr. Weeks, who is representing the Township by virtue of an illegal contract that not only is excessive and issued without bid, but violates New Jersey Law governing contingent fees, namely Rule 1:21-7. This rule prohibits any open ended contingent fee agreement that requires payment of a 33 1/3% contingent fee on recovery amounts that exceed $500,000. There is no cap to Mr. Week's 33 1/3% contingency fee recover. This agreement was approved by Township Attorney Caroline Casagrande. One might argue that such an approval amounts to legal malpractice.

12. Plaintiff's attorneys breached their duty to advise this Court of the falsity of their statement that the remediation was required to obtain Green Acres funding, a duty clarified when the funding was in fact received. Plaintiff's attorneys also failed in their duty to advise the Court of the 2004 Court order leaving Defendant was left with no option not to acquire the property when he became the Township Attorney.

13. As noted in previous papers, there was a court order, written and agreed to by the Township, mandating the acquisition of the properties. The Township agreed to this Order with the full knowledge of the existence of the oil tank. Indeed, papers submitted by the Township in this matter establish that they had full knowledge of the underground tank no later than four months prior to entering into the agreement and order. Those same papers, already submitted to this Court, established that of the two choices left open for the Township in 2005, one, condemnation, was impractical in that the Township had been notified that Green Acres would not fund any condemnation of these properties after 2004. That left a single choice to the Township Attorney, me, in 2005. Plaintiff's suggestion that we should have asked the Court to alter the Order is disingenuous at best, cynical at worst. There was no basis for requesting such a revision. That Order fully settled a litigation with third parties. Between the date of the Order and the date of the closing, there was no factual change upon which to base any motion to reconsider.

14. The Township knew about the oil tank prior to the Order and entered into the Agreement with full knowledge of the existing underground storage tank. There was no evidence of pollution until 2006. Thus, there was no change throughout the entire time I was Township Attorney that would have caused any motion to reconsider to be deemed anything other than frivolous.

15. What we have so far is a Complaint that **1. is premised entirely on a false statement that remediation was required to obtain Green Acres funding; 2. is supported by a failure by Plaintiff's attorneys to advise this Court of prior litigation that precludes any determination of liability against Defendant; 3. is being prosecuted without the necessary legal authority by the government agency that is ostensibly the Plaintiff in this matter, and 4. all by way of an illegal contingent fee agreement that also manages to force the taxpayers of Manalapan to pay twice for the same legal services, in that three attorneys are being paid by the hour, while the fourth gets a contingent fee providing for no deduction for any amount paid to other attorneys doing the legal work on this matter.** Needless to say, that last is an offensive, if not illegal "double dipping" forcing the taxpayers to pay twice for the same work.

16. All of the foregoing is by way of prologue, because it explains what is presently before the Court.

17. What can no longer be reasonably disputed is that this action, violative of so many laws, was never about legal malpractice in the first place. That should have been obvious from the outset. If I were to lose this case, I would undoubtedly be the first attorney in the history of New Jersey, if not the entire nation, to be held legally negligent for following a prior court order obtained before I even became involved in the matter.

18. What is clear from the actions of the Plaintiff's attorneys, is that the entire litigation, as malicious a prosecution as there ever was, was designed to

prevent me from exercising my constitutional rights to be involved in this past year's election, while serving as a platform from which to attack a third party's constitutional rights to disagree with the government.

19. While our soldiers are dying overseas in the name of freedom, we have a local government spending hundreds of thousands of dollars of taxpayers' money in a frivolous litigation so that they can uncover a government critic. That should offend every American following this story. In fact, the myriad editorials already written condemning this action make it clear that Plaintiff's attorneys' actions in this matter, including those of an attorney about to become a member of the State Assembly, are deemed outrageous and offend most people's sensitivities.

20. Some of the newspapers covering this story have made one significant error, however. They have claimed that Mr. McCarthy believed that the blogger DaTruthSquad was attacking the Township government because of this litigation. But DaTruthSquad was online attacking Manalapan's government for most of 2006, long before the June, 2007 commencement of this litigation.

21. Clearly, DaTruthSquad did not come about because of this litigation. This litigation came about because of DaTruthSquad.

22. Everything about this case, as shown above, and as will be shown in the body of this Certification below, reeks of dishonesty, fraud on this Court, malicious prosecution (for which I expect to file third party claims against the attorneys and Mayor Lucas) and abuse of the judicial system.

23. The violations discussed below, for which sanctions are being sought, must be viewed in light of the foregoing.

THE SUBPOENA ISSUED BY RUPERT HART & WEEKS, LLC VIOLATED THE NEW JERSEY COURT RULES AND WARRANTS SANCTIONS

24. Not only was the subpoena improper by being issue despite the lack of even the remotest relationship between the subpoena and the issues presently in this case, it was issued in violation of other Rules of Court.

25. On or about September 26, 2007, the law firm of Rupert Hart & Weeks, LLC, attorneys for Plaintiff in this matter, issued a subpoena to Google, Inc. in California, returnable October 11, 2007. A copy of that subpoena is Exhibit G to the Certification of Matthew Zimmerman in support of the Motion to Quash.[1]

26. We will avoid the obvious argument that such a subpoena is not enforceable. That argument has been briefed very well by the movant in the Motion to Quash.

27. However, we are compelled to point out that RPC 3.4, entitled, "Fairness to Opposing Party and Counsel" mandates that "A lawyer shall not ... (d) in pretrial procedure make frivolous discovery requests..." Mr. Weeks' firm has violated

[1]That motion is returnable the same day as the instant motion is expected to be returnable. Rather than increase the already considerably voluminous file of this Court, we will not reattach documents submitted to the Court in connection with motions being heard simultaneously.

this Rule of Professional Conduct. The integrity of the judicial system mandates that this violation not simply be ignored.

28. Nor is that the only Rule of Professional Conduct violated by Mr. Weeks and his firm. RPC 4.4, entitled, "Respect for Rights of Third Persons" mandates that "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

29. It is clear that the purpose of the subpoena, if not this entire litigation, was to embarrass or burden a third person, the anonymous blogger known as "daTruthSquad." The subpoena has nothing whatsoever to do with the purported basis of this litigation, my following a court order to obtain a parcel of land.

30. Of importance to the instant motion is that I was never served with a copy of the subpoena. That motion was served surreptitiously by Rupert Hart & Weeks, LLC without notice to opposing counsel. I did not learn about the subpoena until long after the return date of the subpoena, when I was informed of it by the attorney for the Electronic Frontier Foundation.

31. Rule 4:14-7(c) expressly states:

> The subpoena shall be simultaneously served no less than 10 days prior to the date therein scheduled on the witness and on all parties, who shall have the right at the taking of the deposition to inspect and copy the subpoenaed evidence produced.

32. Mr. Weeks, the Plaintiff's attorney is an experienced litigator. He is a medical malpractice defense attorney. Though he may have no experience regarding legal malpractice plaintiff's work, he surely knows the requirements of the Rules of Court regarding subpoenae.

33. Yet, he and his firm intentionally withheld service of the subpoena from opposing counsel. Clearly, Mr. Weeks intended to serve this subpoena without notice to me. This is understandable, since Mr. Weeks had to be aware the subpoena was improper, could not be served on anyone in California, and was completely irrelevant to what was alleged to be the subject of this case.

34. While attorneys fees are a normal sanction for such a violation, that would be far from sufficient in this matter.

35. Here we have a case which, given the foregoing, was brought in bad faith at the outset, and, apparently, solely for the purpose of having a mechanism to gather material in violation of a private citizens' constitutional rights.

36. That this entire case is a subterfuge is evidenced by the failure of Mr. Weeks to inform the court that 1. no remediation – the very foundation of this case – was ever required or deemed necessary by the State or County (contrary to the allegations by Mr. Weeks which are now disproved by the receipt by the Township of the grant money without any remediation); and 2. the actions by Defendant were solely in pursuit of a court order mandating that the Township obtain the property, to which order the Township agreed with the full knowledge that the underground

storage tank came with the property, making any legal malpractice case premised on the obtaining of that property an absurd waste of the Court's time and resources.

37. Accordingly, the only reasonable sanction is that Plaintiff be prohibited in this matter from serving any discovery prior to an Order from this Court approving such service, upon a showing by Plaintiff that the discovery is appropriate for this matter, given the allegations on record.

38. Simply stated, Plaintiff's attorneys have violated their obligations as officers of the court, and should no longer be able to function in this matter as if they remained officers of the court.

DANIEL MCCARTHY SHOULD BE SANCTIONED FOR PROVIDING FALSE INFORMATION TO THE COURT

39. In *Triffin v. Automatic Data Processing, Inc.,* 394, N.J.Super 237, 926 A.2d 362 (2007), the Appellate Division held:

> A fraud on the court occurs "where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."[2] 394 N.J.Super. at 251.

[2]I am cognizant of the fact that normal procedure is to submit either a separate brief setting forth legal arguments, or a letter brief combining facts and legal arguments. In this matter, I wanted to be sure that my statements were recognized as being made under oath, thus requiring this Certification, and a separate brief would have been merely repetitive of much of what is being discussed in this Certification. In the interests of judicial economy, therefore, I beg the Court's indulgence to permit the very brief legal arguments to be included herein.

40. The Court in *Triffin* further stated "Separate and distinct from court rules and statutes, courts possess an inherent power to sanction an individual for committing a fraud on the court.

41. That power should be exercised here.

42. It was Daniel McCarthy that intentionally misled this Court in response to the Order to Show Cause seeking to dismiss the action, that he had personal knowledge that I was "daTruthSquad." Not only did Mr. McCarthy have no such personal knowledge, the statement itself was blatantly false, and caused the Court to lift the gag order that had been imposed. It was also used to encourage the Court to violate my first amendment rights by prohibiting direct conduct between me and sitting officials of the Township.

43. In his certification to this Court on August 3, 2007, in support of his application to vacate the order to show cause (Exhibit C to the Certification of Matthew Zimmerman), Daniel McCarthy, stated, under penalty of perjury, "I am fully familiar with the facts contained herein."

44. In paragraph 6 of his Certification, Daniel McCarthy stated, "The blog is entitled 'daTruthSquad' and appears to have been written by Defendant." Mr. McCarthy's statement under penalty of perjury to this Court that he was "fully familiar with the facts" would tend to mislead the Court into thinking that he actually had some basis on which to make such an allegation. I do not know Mr. McCarthy. To the best of my knowledge, Mr. McCarthy is not a recognized expert on writing styles.

45. His statement that the blog "appears to have been written by Defendant" was an extraordinary misrepresentation to the Court.

46. But Mr. McCarthy did not stop there. After attaching voluminous excerpts from the blog site to his Certification, Mr. McCarthy extended his misrepresentation to this Court to the absolute limit, stating unequivocably in his brief that I was, in fact, DaTruthSquad. The brief of Mr. McCarthy constitutes a writing by an attorney to a Court. The same penalties applicable to a certification under oath apply to an attorney signing a brief.

47. On page 7 of Mr. McCarthy's brief (Exhibit B to the Certification of Matthew Zimmerman), Mr. McCarthy affirmatively declared the blog site to be mine, stating:

> Regarding Defendant's internet blog, "daTruthSquad," Defendant uses the anonymous forum to dissect the specific allegations asserted against him, offering his opinion and analysis of the validity of each claim.

48. Thus Mr. McCarthy abandoned his "appears to be" mode and blatantly lied to this Court claiming in no uncertain terms that I am daTruthSquad, despite the falsity of that allegation, and despite the fact that he couldn't possibly have any reasonable basis upon which to make that representation.

49. Throughout the remainder of his brief, Mr. McCarthy compounds the continued false representations to this Court with phrases like, "Defendant posted an entry in his internet blog..." (p. 9); "Defendant discusses the various aspects of this litigation on his internet blog, 'daTruthSquad'" (p. 15); "In 'Da BACONHEAD of Da Week!' Defendant tells his side of 'da story'" (p. 15); and "In 'DaTruth or Da

Consequences', Defendant states..." (p. 15). Mr. McCarthy continues to make such blatantly false statements further in his brief.

50. What such statements clearly establish, together with Mr. Week's firm's surreptitious and illegal subpoena, is that this case was never about legal malpractice. The entire point of this litigation was to unmask a private citizen's anonymous criticisms of the government in violation of his first amendment rights.

51. Obviously, it was expected that I would deny being "daTruthSquad" and justifiably so. By making it an issue in this case, Plaintiff would then have the pretext to use this frivolous litigation to pursue its inquisition against this anonymous blogger.

52. While I never sent a letter to Mr. McCarthy asking him to rescind his blatant falsehoods to the Court, pursuant to 1:4-8(b), there is no such need. Judges have an "inherent authority" to impose sanctions for blatant violations of our court rules apart from any specific provisions setting forth those sanctions. *Mandel v. UBS/PaineWebber, Inc.,* 373 N.J.Super. 55, 82, 860 A.2d 945, 961 (App. Div. 2004).

53. "There is an irrefragable linkage between the courts' inherent powers and the rarely-encountered problem of fraud on the court. Courts cannot lack the power to defend their integrity against unscrupulous marauders; if that were so, it would place at risk the very fundament of the judicial system." *Triffin, supra,* 394 N.J.Super. at 253.

54. It is a lawyer's obligation to participate in upholding the integrity, dignity, and purity of the courts. *In the matter of Jack L. Seelig,* 180 N.J. 234, 248, 850 A.2d 477, 486.

55. This entire litigation, and the manner in which Plaintiff's attorneys have handled it, is a direct attack on the integrity, dignity and purity of the courts.

56. It is not as if there has been a single, minor violation of the rules by Plaintiff's attorneys.

57. To the contrary, their total disregard for the integrity of the judicial process is rampant throughout this frivolous litigation.

58. Rule 1:4-8(a) provides:

> (a) Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> > (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> >
> > (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will

> be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and
>
> (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

59. Clearly this rule applies to *any writing* including a brief signed by an attorney.

60. The language is very instructive: "By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances..." Mr. McCarthy should be ordered to explain to the Court what "inquiry reasonable under the circumstances" he made before definitively falsely stating to this Court that I was daTruthSquad.

61. The rule also provides that the attorney certifies under oath by signing any paper that "the factual allegations have evidentiary support" unless there is a specific disclaimer. Mr. McCarthy should be ordered to inform this court of the evidentiary support he has establishing that I am someone else, the anonymous blogger known as daTruthSquad.

62. RPC 3.3, entitled "Candor Toward the Tribunal" mandates that "(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal."

63. While Mr. Weeks, and apparently the municipal attorney "expert", Mr. Renaud, have made numerous such false statements – and, claiming to be an expert, Mr. Renaud can not now deny that he made such false statements knowingly – Mr. McCarthy has made the most outlandish false statements in claiming I was daTruthSquad.

64. RPC 4.1, entitled "Truthfulness in Statements to Others" mandates that "(a) In representing a client a lawyer shall not knowingly: (1) make a false statement of material fact or law to a third person." It is difficult to believe that this rule was intended to prevent the attorney from making false statements to a non-party without similarly being intended to prevent such false statements from being made to the Court itself.

65. Finally, RPC 8.4, entitled, "Misconduct" provides that "It is professional misconduct for a lawyer to:...(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

66. Almost everything Plaintiff's attorneys have done in this case, from misrepresenting the necessity of remediation, to failing to disclose the 2004 Court Order, to bringing this action despite the clear direction that I was to receive a letter first, to failing to disclose to the Court that the Green Acres funding that they claim wouldn't be provided in the absence of a remediation has in fact been provided, to the false statements about "daTruthSquad" to the surreptitious serving of a subpoena intended to violate a non-party's constitutional rights, have been an exercise in conduct involving dishonesty, fraud, deceit or misrepresentation.

67. At the very least, Mr. McCarthy should be forced to pay attorneys fees for all of the motions generated by his false statements to this court as to the identity of daTruthSquad.

68. That I am pro se does not preclude me from being awarded attorneys fees. *Port-O-San Corp. v. Teamsters Local Union No. 863 Welfare & Pension Funds,* 363 N.J.Super. 431, 441, 833 A.2d 263 (App. Div. 2003), fn 5.

69. To date, I have expended in excess of $5,000 in time as the direct result of Mr. McCarthy's false statements.

WHEREFORE, Defendant seeks an Order of sanctions against Plaintiff's attorneys as follows:

a. Against David Weeks and Rupert Hart Weeks, LLC:

i. prohibiting them or any attorney for Plaintiff from engaging in any discovery without a prior order of the court, after a showing of the relevance to this case; and

ii. awarding attorneys fees in the amount of $2,000.00

b. Against Daniel McCarthy:

i. precluding him from appearing on behalf of any party in this litigation; and

ii. awarding attorneys fees in the amount of $5,000.00.

I Certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: December 3, 2007

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