IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER
Plaintiff,

Case No.110-CVE-PJC

v.

UNITED STATES, et al.,
Defendants.

MOTION FOR SANCTIONS AND BRIEF IN SUPPORT THEREOF

Lindsey K. Springer, files his Motion for Sanctions against Attorney Michael J. Roessner, Counsel for the Defendants, for intentional violations of Federal Rules of Civil Procedures 11(b)(1) and (2).

1. RULE 11 AND ITS MEANING

Rule 11, prior to its amendment, was construed in part to mean::

> The signature of an attorney or party constitutes a certificate by the signer that the singer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

See *Barrett v. Tallon*, 30 F.3d 1296 (10th Cir. 1994)

"[w]hether a reasonable and competent attorney would believe the argument has merit.." forms the basis for Plaintiff's Motion for Sanctions. See *Dodd Ins. Co. v. Royal Ins. Co. of America*, 935 F.2d 1152, 1155 (10th Cir. 1991); *White v. General Motors Corp.*, 908 F.2d 675, 680 (10th Cir. 1990), cert. denied, 498 U.S. 1069, 111 S.Ct. 788, 112 L.Ed.2d 850 (1991)

Rule 11 sanctions serve to punish a knowing filing of a false and misleading pleading. It ensures that an attorney observes his duty as an officer of the court, as well as an advocate for his client. *5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1335 (2d ed. 1990*). Rule 11 requires that the pleading be, to the best of the signer's knowledge, well grounded in fact, warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose. Fed.R.Civ.P. 11. The attorney has an affirmative duty to inquire into the facts and law before filing a pleading. His inquiry must be reasonable under the circumstances. *Business Guides, Inc. v. Chromatic Comm. Enterprises, Inc.*, 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991)

From the language of Rule 11, it is apparent that the act of signing the pleading, motion, or other paper provides the certification that the action is not frivolous. See *Dahnke v. Teamsters Local 695*, 906 F.2d 1192, 1199 (7th Cir. 1990); *Oliveri v. Thompson*, 803 F.2d 1265, 1274 (2nd Cir. 1986) (en banc), cert. denied, 480 U.S. 918, 107 S.Ct. 1373, 94 L.Ed.2d 689 (1987). Therefore, sanctions are only appropriate if a pleading, motion, or paper is signed in contravention of the Rule. *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 393, 110 S.Ct. 2447, 2454, 110 L.Ed.2d 359 (1990). A pleading or paper is signed in violation of Rule 11 only if the singer is subject to the Federal Rules of Civil Procedure at the time of the signing. *Dahnke*, 906 F.2d at 1199. see also *Griffin v. City of Oklahoma City*, 3 F.3d 336 (10th Cir. 1993)

Rule 11 was designed to "help to streamline the litigation process by lessening frivolous claims or defenses." Fed.R.Civ.P. 11 advisory committee's note. When considering sanctions under Rule 11, ..., the court must judge the attorney's conduct under an objective standard of reasonableness. See *Burkhart ex rel. Meeks v. Kinsley Bank*, 804 F.2d 588, 590 n. 3 (10th Cir.

1986). Subjective bad faith is not required to trigger the imposition of sanctions. Id. at 589. Rather, the central issue is whether "the person who signed the pleading conducted a reasonable inquiry into the facts and law supporting the pleading." *United Mo. Bank of Kansas City, N.A. v. Bank of N Y*, 723 F. Supp. 408, 415 (W.D.Mo. 1989) (interpreting Fed. R.Civ.P. 26(g) under Rule 11 standards).

In deciding whether to impose Rule 11 sanctions, a district court must apply an objective standard; it must determine whether a reasonable and competent attorney would believe in the merit of an argument. *White v. General Motors Corp*., 908 F.2d 675, 680 (10th Cir. 1990); *Adamson v. Bowen,* 855 F.2d 668, 673 (10th Cir. 1988). See also *Dodd Ins. Services v. Royal Ins. Co.*, 935 F.2d 1152 (10th Cir. 1991)

2. RULE 11 VIOLATIONS.

The claims Plaintiff makes against Attorney Michael J. Roessner ("counsel") begin with the Motion to Dismiss, the Brief filed in support thereof and his Response in Opposition to Plaintiff's Motion for Preliminary Injunction.

Plaintiff's Complaint seeks injunction, declaratory judgment and other equitable relief, involving the public protection announced by Congress under 44 U.S.C. § 3512. It involves the IRS's Collection of Information Form 1040 with OMB # 1545-0074. It involves the decision by the Supreme Court in *Dole v. Steelworkers*, 494 U.S. 26, 32 (1990), the 10th Circuit's acceptance of that decision in *U.S. v. Dawes*, 951 F.2d 1189, 1192-1193, and *U.S. v. Collins*, 920 F.2d 619, fn 12(10th Cir. 1990), as well as Defendants' published words. It involves whether Plaintiff can be subjected to civil and criminal penalties by the IRS when it is clear by the allegations of Plaintiff's Complaint that the Collection of Information Form 1040 contains numerous facial

violations to the Paperwork Reduction Act.

Counsel moved to dismiss Plaintiff's Complaint claiming that Plaintiff's Complaint was about "an effort to avoid the collection of his unpaid 1990-1995 federal income tax liabilities..." Brief @ 1. Counsel had no good faith basis in which to characterize Plaintiff's Complaint in this way. In fact, the reason he did was to bring in the Anti-Injunction Act defense, which he knew was no defense to prospective claims of action raised by Plaintiff in his Complaint. Counsel knew that taxes were not the type of penalties at issue in Plaintiff's Complaint. Counsel knew the Anti-Injunction Act did no apply as a defense in this case. Counsel made no attempt to advance some argument for a change in the law regarding the Anti-Injunction Act. He simply argued that the law supported his purported characterization of Plaintiff's Complaint

On page 3 of his brief he appears to mislead this Court into his "this is Springer's third frivolous complaint"language by attempting to confuse this Court as to the issues between Plaintiff and the IRS in Oklahoma City. The first case was regarding Plaintiff's claims that the IRS was ignoring the new laws enacted in 1998 (RRA of 1998). It began with the IRS placing a business card on Plaintiff's front door while they sent a notice of levy to an address that the IRS knew was over 14 years old. The IRS also was making third party contacts without giving Plaintiff notice. Plaintiff had recently concluded a 6700 investigation, cooperated fully, conducted by the IRS, in which the IRS used Plaintiff's current address to give Plaintiff notice and demand. The second case was filed because during the pendency of the first case, the IRS thought they would try to gain some silent advantage, by issuing two notice of determinations based upon one notice of levy, hoping Plaintiff, acting without Counsel, would continue thinking the first case was at issue while the 30 days under 26 U.S.C. § 6330(e) expired. Defendants in

that case were directed by Counsel from the Department of Justice to issue those final notice of determinations. Plaintiff had nothing to do with that confusion. In fact, had Plaintiff done what the IRS Final Notice of Determination suggested, there would be 4 cases on the issue.

Counsel argues in the second case in Oklahoma City that Plaintiff's action in that Court is wrong because it belongs in Tax Court. Counsel's clients in that case issued two Notice of Determinations to Plaintiff from one Notice of Levy. Plaintiff had nothing to do with that confusion. One notice said to go to Tax Court and the other said to go the United States District Court. Plaintiff went to the United States District Court and Counsel did not like that choice.

The day after Plaintiff filed the second action in Oklahoma City, challenging the two final Notice of Determinations issued purportedly under 26 U.S.C. § 6330, Plaintiff was greeted with several armed agents of the IRS presenting a warrant to search Plaintiff's home. It was not until after the second action was filed that the first action was dismissed. [1]

Then two paragraphs later, Counsel states "in September, 2005, after the CDP hearing described above, Springer filed a second complaint..." See Brief at 4, paragraph 10.

Counsel knew what he was doing. This is just the beginning of the rule 11 violations.

Next he argues "Springer is attempting to use this Court in an effort to delay the payment of his 1990-1995 tax assessments." Where could someone come to this conclusion by the reading of Plaintiff's Complaint? No one would and again, another rule 11 violation.

Counsel on page 8 claims "Springer plainly has not shown that the United States, under no circumstances, could prevail. To the contrary, as described below, Springer's arguments are

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[1] See paragraph 8, pg 3 of Counsel's Brief "The Western District of Oklahoma granted the United States' motion to dismiss in an order issued in October 2005."

frivolous." The only argument that is frivolous is the argument contained in the brief of Counsel in this case.

Setting aside the claims that Counsel should have known that the case law and statutes provided for the relief Plaintiff seeks. Counsel did not argue for any change in the current law or any new construction of existing law. He simply argues that "numerous courts have repeatedly found claims similar to Springer's to be without merit and frivolous."

Still looking "below" and Counsel never cites any cases that say the allegations in Plaintiff's Complaint are frivolous. In fact, on page 11, once again, Counsel says "However, as discussed below, courts have repeatedly and consistently held that this section does not relieve a taxpayer from filing his return." Hoping "below" it will soon appear and it never does. Next, Counsel says "In addition, the PRA does not apply to "the process of assessment and collection of taxes" against specific individuals." Brief @ 12.

The closest the Brief gets to finally reaching some supportive argument is when Counsel writes "Springer's argument or combination thereof, based upon purported lack of compliance with the PRA, have been addressed repeatedly by the Tax Court, the Court of Appeals for most of the other circuits, and numerous District Courts." Id.

Counsel says that among the numerous and different arguments "every court that has considered the argument that the PRA in some way relieves taxpayers of their duty to file income tax returns has rejected it." Id.

Counsel then argues that "The Secretary and the IRS have the clear authority to impose the statutory penalties related to Form 1040 that are found in the Internal Revenue Code." Brief @ 13. And finally, without so much as a whisper on the argument, Counsel attempts to argue

that collection of information requests, that are issued during an investigation, are exempted from the protection of the PRA. Brief @ 14.

Counsel ignored the decision by the Supreme Court in *Dole v. Steelworkers*, 494 U.S. 26, 32 (1990), the 10th Circuit's acceptance of that decision in *U.S. v. Dawes*, 951 F.2d 1189, 1192-1193, and *U.S. v. Collins*, 920 F.2d 619, fn 12(10th Cir. 1990), as well as Defendants' published words in publications.

In *Dole*, the Supreme Court said "Typical information collection requests ***include tax forms..."*** Id. @ 32

The 10th Circuit in *Collins* said at footnote number 12, explained their decision in *United States v. Tedder*, 787 F.2d 540, at page 542, a decision rendered by the 10th Circuit in 1986, that previously held that "tax forms ***were not*** information collection requests subject to the Paperwork Reduction Act because the filing of income tax returns was **obligatory,** held that the *Tedder* decision was "superseded by the Supreme Court's analysis in *Dole v. United Steelworkers*, 494 U.S. 26, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), which **included federal income tax forms** within the category of information collection requests under the Act." *Dole*

The 10th Circuit next in *Dawes* said "As long as the 1040 form complies with the Act, nothing more is required." Id. @ 1193

The 8th Circuit held in *U.S. v. Holden*, 963 F.2d 1114 (8th Cir. 1992) that

> "Although tax forms fall within the PRA's definition of information collection requests, *Dole v. United Steelworkers*, 494 U.S. 26, 33, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), tax instruction booklets do not. *United States v. Dawes*, 951 F.2d 1189, 1192 (10th Cir. 1991). Because tax instruction booklets simply assist a taxpayer in completing tax forms and ensure compliance with the information collection requests, booklets are not required to display an OMB number. Id. "As long as the 1040 form complies with the [PRA], nothing more is required." *Dawes*

at 1193."

These decisions and law conclusively show Counsel's Motion to Dismiss, Brief and Response in Opposition to Plaintiff's Motion for Preliminary Injunction, all ignore the words in these decisions.

Counsel also ignores the words his clients publish every year:

> "You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number."

See Exhibit 3 to Plaintiff's Complaint.

In the wake of all this overwhelmingly against Counsel, the Supreme Court gives a footnote in *Dole* which says:

> "(The Act "allow[s] the public, by refusing to answer these [information collection requests], to help control `outlaw forms'")."

Dole, @ 40, fn. 6

It is not that Counsel was not aware of these decisions or what they say either. Plaintiff noticed his clients of these cases when they were served with Plaintiff's Complaint. Counsel even says in his brief at page 13 "He cites three irrelevant cases to support his frivolous claims."

3. REMEDY

Although the district court has wide discretion in selecting an appropriate sanction, "Rule 11 does not provide any `free passes' to litigants who violate its mandate. Once a court finds a Rule 11 violation it must impose some form of sanction" *Eisenberg v. University of New Mexico,* 936 F.2d 1131 (10th Cir. 1991); quoting *Spiller v. Ella Smithers Geriatric Center*, 919 F.2d 339,

347 (5th Cir. 1990); see also *Traina v. United States*, 911 F.2d 1155, 1158 (5th Cir. 1990); *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989) (citation omitted).

Rule 11 sanctions are meant to serve several purposes, including (1) deterring future abuse, (2) punishing present abuse, (3) compensating victims of litigation abuse, and (4) streamlining court dockets and facilitating case management. *White v. General Motors Corp*., 908 F.2d 675, 683 (10th Cir. 1990). "The appropriate sanction should be the least severe sanction adequate to deter and punish the plaintiff." Id. at 684. Of these purposes, the Supreme Court has stated that the rule is designed primarily to serve the purpose of deterring future violations. *Cooter & Gell*, 110 S.Ct. at 2454.

Being that there is no doubt Counsel was aware of the decisions listed in Plaintiff's Complaint and his Motion for Preliminary Injunction, along with his construction of them as irrelevant and frivolous, should be sanctioned for the arguments and defenses he raised in his Brief in support of his Motion as well as those incorporated in his Response in Opposition to Plaintiff's Motion for Preliminary Injunction.

4. COUNCLUSION

THEREFORE, Plaintiff Lindsey K. Springer, respectfully requests this Court (1) enter an Order finding that Counsel Michael J. Roessner has intentionally violated Rule 11(b)(1) and (2) of the Federal Rules of Civil Procedures in that he presented a defense to Plaintiff's Complaint that:

(A was presented for an improper purpose to harass, cause unnecessary delay, needless increase in the cost of time in litigation; and

(B) the claims, defenses, and other legal contentions therein were not warranted by existing law;

and

(C) the claims, defenses, and other legal contentions therein were a frivolous argument of the law; and

(D) the claims, defenses, and other legal contentions did neither argue therein nor did they warranting an extension, modification, or reversal of existing law or the establishment of the law."

(E) the claims, defenses, and other legal contentions therein advanced by Counsel intended to mislead the Court as to the Complaint and its intentions; and

(2) impose an order for Sanctions under rule 11, upon Counsel Michael J. Roessner, counsel for the Defendants, in such a way that will satisfy this Court that what was being intentionally ignored in this case will not ever be ignored again by any of the attorneys in the firm Counsel Roessner finds himself employed.

Respectfully Submitted
/s/ Lindsey K. Springer
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Motion for Sanctions was sent on April 24, 2006, by email from Plaintiff to (not filed with the Court for 21 days) :

Michael J. Roessner
Trial Attorney, Tax Division
U.S. Department of Justice
michael.j.roessner@usdoj.gov

/s/ Lindsey K. Springer
Signature of Server