

Thomas N. Spyker

From: Thomas N. Spyker
Sent: Friday, May 3, 2024 6:57 AM
To: josh@joshbrownesq.com
Cc: jonathan.robe@robelaoffice.com
Subject: Margarita Nyugen et al., v. Opha Lawson - Athens County Common Pleas 24CI0118

Joshua,

This morning you are going to get my NOA on behalf of the City of Nelsonville, and its dully sitting council members, sued in their official capacities, with the exception of your clients (we will get to that later). I trust you take no issue with my representation, as Reminger has been, and is, representing Nelsonville in numerous matters via assignment from its Risk Pool. We have been assigned to this matter by the Pool.

I look forward to working with you.

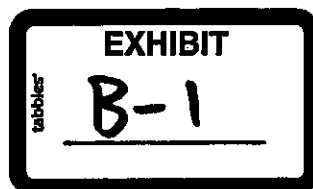
Now, after the NOA you are going to receive a lot more filings from my office.

Before that happens, I write to remind you of certain obligations you have under the Civil Rules and Ohio Frivolous Conduct Statute. Although the Ohio Rules do not require any safe harbor, I am writing this letter as a professional courtesy to give you an opportunity to adhere to your obligations under the Rules. As I am sure you know, under both Rule 11 and R.C. § 2323.51 an attorney has an affirmative duty to conduct a reasonable investigation into the facts and circumstances surrounding a complaint, as well as assure there is a sufficient legal basis for filing a complaint. *See Bartelt Dancers, LLC v. Icenhour*, 10th Dist. Franklin No. 13AP-154, 2013-Ohio-5604, ¶ 17. Rule 11 sanctions are routinely awarded where a party files for injunctive relief without legal basis. *See Bergman v. Genoa Banking Co.*, 6th Dist. Ottawa No. OT-14-019, 2015-Ohio-2797, ¶ 35.

Here, I have been on the case for about twelve hours, and I have lost count of the cognizable Rule 11 violations I see. Some of the more concerning legal issues include:

- You filed a complaint in a Court of Common Pleas seeking to ouster sitting members of the Nelsonville City Council. As an operation of the Ohio Revised Code, that Court lacks jurisdiction. *See* R.C. 2733.03.
- You are proceeding in two different courts on the exact same subject matter. As outlined above, the Court of Appeals is the only court of the two with jurisdiction to hear your claims.
- You are representing clients who have sued themselves. Of course this is just silliness. *See Ohio Dep't of Human Servs. v. Ohio DOT*, 78 Ohio App. 3d 658, 661, 605 N.E.2d 1007, 1009 (1992) (“It is axiomatic that a party cannot sue itself.”).
- You sued the City’s Council and got an *ex parte* TRO without even trying to comply with Civil Rule 65(A). This entire thing was an ambush stunt. An abuse of the judicial system, especially when considering the sheer legal frivolity of your claims. (Note, the “City Council” is not *sui juris* and cannot be sued in its own right. *City of Cuyahoga Falls v. Robart* 58 Ohio St.3d 1, 6, 567 N.E.2d 987 (1991)).
- And now, you want the Court to disqualify the City Attorney so your clients—the Plaintiffs—can choose “a new attorney” for the Defense counsel and fully take control of both sides of this litigation. I do not even know where to start with that one.

This is just *some* of the black letter law you find yourself on the wrong side of here. We do not have time to get into the factual issues.



At bottom, you have created a mess. But you have exactly one opportunity to walk this back. Dismiss the utterly frivolous Athens County Complaint by 10:00 AM today. If you do, we can start fresh and litigate your client's claims in the Fourth, as it should be and as the law requires.

However, if I do not see that dismissal by 10:00 AM, I begin filing our papers. And then we will have no choice but to exhaust every avenue to recover our costs and fees from you and your clients, jointly and severally.

Kindest regards,

-Tom

