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MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of:	Case No: FC2023-052114
LAURA OWENS,	**REPLY IN SUPPORT OF PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS AND RENEWED MOTION TO DISMISS**
Petitioner,	
And	
CLAYTON ECHARD,	**(Assigned to Hon. Julie Mata)**
Respondent.	~~**(ORAL ARGUMENT REQUESTED)**~~

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I. INTRODUCTION

Ms. Owens' Motion for Judgment On The Pleadings deals with one narrow and discrete question of law—what are the *procedural* requirements for imposing Rule 26 sanctions? That primary legal question leads to a secondary question of fact—were those procedural requirements followed here, and if not, what effect does that have?

Mr. Echard's Response offers a *bait and switch* argument—i.e., he argues that aside from Rule 26, there are *other hypothetical* grounds upon which sanctions *might* be granted. That's entirely true. Mr. Echard then argues because there are other legal avenues by which a litigant might *hypothetically* be sanctioned, it is irrelevant whether Mr. Echard complied with Rule 26's procedural requirements because sanctions could be ordered by some other authority. Mr. Echard also claims he "more or less" did everything Rule 26 requires, therefore sanctions could still be awarded under that rule.

These arguments completely miss the point. As explained in Ms. Owens' motion, it is undisputed Mr. Echard did *not* comply with any part of Rule 26's (or 9(c)'s) procedural requirements, and this Court cannot, as a matter of law, overlook those mistakes by converting the now-withdrawn Rule 26 motion into a request for any sort of alternative relief.

Also, because there are no other *actual* sanctions motions pending, and because the defective Rule 26 motion precludes any other alternative relief (such as a *sua sponte* award), the net result is there is nothing further for the Court to decide with respect to sanctions. Accordingly, Ms. Owens is entitled to judgment as a matter of law on that issue.

II. DISCUSSION

a. The Issues Raised In Petitioner's Motion Are Not Moot

To begin, Mr. Echard suggests Ms. Owens is not entitled to judgment on the pleadings as to the issue of Rule 26 sanctions because he deems that issue "moot":

> Rule 26 governs relief pursuant to Rule 26 and nothing more. Even if Laura's arguments interpreting Rule 26 were correct—a conclusion Clayton certainly opposes—the net result on the posture of the case would be absolutely no change at all from the existing trial scheduled on the merits of the pleadings. Accordingly, her prayer for relief, improperly styled as a "Motion for Judgment on the Pleadings and Renewed Motion to Dismiss," was already moot before it was even filed because Rule 26 is not at issue.

Opp. at 3:9–15 (emphasis added).

This argument is simply wrong. The record is clear—Mr. Echard filed a previous Rule 26 motion (filed on January 3, 2024), which he moved to withdraw on April 3, 2024. Despite *asking* the Court for permission to withdraw the Rule 26 motion, that request was not granted until a matter of days ago (via minute entry order dated May 17, 2024). Thus, at the time Ms. Owens' Motion for Judgment On the Pleadings was filed on May 15, 2024, Mr. Echard's Rule 26 motion remained pending and was NOT moot.

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Furthermore, even though this Court later granted Mr. Echard's request to withdraw his Rule 26 motion *after* Ms. Owens' present motion was filed, that still does not mean the issue of Rule 26 sanctions is moot. This is so because: A.) Mr. Echard specifically and separately made a request for Rule 26 sanctions in his *Amended* Response to Petition to Establish Paternity filed January 26, 2024 (which he has not withdrawn), and B.) because Mr. Echard appears to still be seeking sanctions on some other related but *unidentified* basis (presumably based on the Court's *sua sponte* authority under Rule 26).

Indeed, on page 7 of his now-withdrawn Rule 26 motion, Mr. Echard suggested this Court could (and should) award sanctions "on the court's own impetus" under Rule 26. That specific argument (repeated in other pleadings) is shown below:

> 4. Rule 26(c)(1) contemplates sanctions by motion or on the court's own impetus.
>
> Even if Respondent did not request sanctions—which he previously did and now reiterates by separate Motion to address any proffered procedural irregularity—this Court may investigate and impose sanctions on its own motion. Rule 26 requires signatures on pleadings and filings and attaches substantial meaning to those signatures: a person filing a document certifies to the Court that it is being presented for a proper purpose and is supported by law and evidence. The Rule requires parties and attorneys to conduct at least a reasonable inquiry before signing filings, and sanctions exist to ensure compliance, vindicate misuse of the Court's resources and authority, and to make responding parties whole for frivolous lawsuits. Respondent asserts that the circumstances of this case are so egregious that this Court ought to impose sanctions on its own, even if for no other reason than to deter specific and general abuse of process.

Why does this matter? It matters because as explained on pages 9–10 of Ms. Owens' original motion, when a party seeks sanctions under Rule 11 (or 26), but then fails to comply with the rule's procedural requirements, a court *cannot* "fix" the problem

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by converting the defective Rule 11 motion into an alternative request for *sua sponte* sanctions based on the court's "own initiative". This is simply not permitted:

> We reject Rainbow's argument that the district court's order for sanctions can be interpreted as a Rule 11 motion on the court's own initiative, pursuant to Fed. R. Civ. P. 11(c)(1)(B). This provision does not require twenty-day advance notice. We reject Rainbow's contention because it was Rainbow, not the court, that initiated the award of sanctions. The district court's discussion of the safe harbor provision in its order concerning sanctions serves to emphasize this point. It would render Rule 11(c)(1)(A)'s "safe harbor" provision meaningless to permit a party's noncompliant motion to be converted automatically into a court-initiated motion, thereby escaping the service requirement. *Because Rainbow did not follow the mandatory service procedure of Rule 11(c)(1)(A), we reverse the award of sanctions.*

Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001) (emphasis added).

To summarize – it does not matter that Mr. Echard has withdrawn his defective Rule 26 motion. He still made a *separate* request for Rule 26 sanctions in his amended response to Ms. Owens' petition, and Mr. Echard has *repeatedly* suggested this Court could still impose sanctions *on its own initiative* under Rule 26 (a request this Court has not specifically rejected).

But based on the authority cited in Ms. Owens' motion, this Court cannot do what Mr. Echard asks. It cannot convert his defective (and now withdrawn) Rule 26 motion into a request for relief under some alternative theory. The Court cannot do this because if it did, this "would render Rule 11(c)(1)(A)'s "safe harbor" provision meaningless to permit a party's noncompliant motion to be converted automatically into a court-initiated motion, thereby escaping the service requirement."

To be clear – if Mr. Echard will stipulate that this Court *cannot* sanction Ms. Owens *sua sponte*, then Ms. Owens will agree that issue is moot. But Mr. Echard has not taken that position. Very much on the contrary, he has made it clear that he will stop at absolutely nothing, under any circumstances, until every possible argument in favor of sanctions has been litigated and resolved.

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Because Mr. Echard has taken this position, the issue remains ripe for this Court to resolve. And as explained in Ms. Owens' original motion, Mr. Echard cannot obtain sanctions under Rule 26 because he failed to follow the requirements of that rule, and by necessary extension, that error precludes the Court from stepping in to help by converting the motion into one seeking relief under any other alternative theory.

This issue is not moot, and for the reasons already explained, Ms. Owens is entitled to prevail on that issue as a matter of law.

b. Mr. Echard Misstates The Holding Of *Holgate v. Baldwin*

Strangely, immediately after claiming the Rule 26 issue is moot, Mr. Echard then proceeds to argue he complied with Rule 26 and thus sanctions are still available under that rule. To support this contradictory argument, Mr. Echard cites *Holgate v. Baldwin*, 325 F. 3d 671 (9th Cir. 2005) for the idea that "The Court upheld an award of sanctions despite the parties not sending a separate notice of their intent to seek Rule 11 sanctions …." Opp. at 4:21–22 (emphasis in original).

This argument—which implies Rule 11 sanctions can still be awarded even when a separate written warning and "safe harbor" notice is not provided—is a direct and material misstatement of the holding of *Holgate*.

In *Holgate*, the plaintiff (Holgate) filed a lawsuit which allegedly included groundless claims against several defendants. One defendant (Baldwin) prepared and served the plaintiff with a mandatory written warning notice that included the "safe harbor" warning required by Rule 11. The plaintiff *refused* to withdraw the Complaint, so after the 21 day waiting period passed, Baldwin filed his request for Rule 11 sanctions. *See Holgate*, 325 F.3d at 678.

While the sanctions motion was pending, plaintiff's counsel (an attorney named Levinson) moved to withdraw. Because plaintiff's counsel was seeking to leave the case, "the district court denied Baldwin's initial motion for sanctions without prejudice and allowed Levinson to withdraw as counsel, but retained jurisdiction over Levinson for future Rule 11 motions." *Id.*

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As the Ninth Circuit explains, once plaintiff's counsel withdrew, "This was not the end of the matter. On March 25, 2003, Baldwin re-filed his Rule 11 motion and again served Levinson." The trial court then granted the re-filed motion and awarded sanctions against Mr. Levinson (as former counsel for the plaintiff).

Mr. Levinson appealed this decision, essentially arguing that because the first Rule 11 motion was denied, the defendant could not bring a second Rule 11 motion without re-sending a *second* pre-motion "safe harbor" warning notice. The Ninth Circuit flatly rejected this argument:

> We hold that Levinson received all the process due to him when Baldwin initially satisfied the safe harbor requirements of Rule 11. There was no need for Baldwin to satisfy a second safe harbor period when he re-filed his Rule 11 motion in 2003. See Fed.R.Civ.P. 11 advisory committee's notes to 1993 amends.

Holgate, 325 F.3d at 678 (emphasis added).

The effect of this holding is simple – if a party prepares and serves a valid "safe harbor" warning notice (something Mr. Echard admits he never did) and that party moves for sanctions which is denied without prejudice, that party is not required to prepare a *second* safe harbor notice before filing a *second* (or a renewed) request for sanctions. The law merely requires that one warning be given, and in *Holgate*, the Court correctly found the required notice was given. *Holgate* does not support the argument that a party like Mr. Echard can simply ignore the safe harbor warning altogether. Literally no part of *Holgate* even remotely suggests this.

For those reasons, nothing about *Holgate* helps Mr. Echard. In this case, Mr. Echard admits he never gave the mandatory 10-day safe harbor warning. That fact is conclusive of the issue of Rule 26 sanctions. And as explained in Ms. Owens' original motion, that error cannot be "fixed" by the Court converting the defective Rule 26 request into one seeking relief under the Court's own authority. Such a result would unlawfully deprive Ms. Owens of the safe harbor to which she was legally entitled.

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c. The Court Cannot Award Sanctions Based On Some Other Hypothetical Grounds, But Even If It Could, Any Other *Future* Request For Sanctions Is Untimely

On pages 5–8 of his Response, after flip-flopping between admitting he cannot receive Rule 26 sanctions and then arguing such sanctions are still available, Mr. Echard suggests the Court should allow the issue of sanctions to proceed because "Rule 26 is just one avenue for sanctions." Opp. at 5:1–2. As to this issue, Ms. Owens offers three short comments.

First, to state the obvious – as a matter of basic due process, Mr. Echard cannot obtain sanctions on some imaginary or hypothetical basis that he has never actually pleaded. In other words, it does not make any difference that there are rules or laws *other than* Rule 26 under which a litigant *might* be sanctioned, because here, Mr. Echard has not moved for sanctions under any other authority besides Rule 26.

Even the loosest definition of due process mandates that if Mr. Echard wants to obtain such relief, he must actually apply to the Court for such relief, and he must explain the factual and legal grounds upon which the request is based. *See*, *e.g.*, Rule 35(a)(1) (explaining, "A party must request a court order in a pending action by motion, unless otherwise provided by these rules.") (emphasis added). The motion requirement of Rule 35 exists for an obvious reason – because the Due Process Clause of the 14th Amendment requires this.

Although the Court has extended a great deal of flexibility to Mr. Echard thus far, this much is clear – the Court cannot simply wave a magic wand in the air and declare to Ms. Owens: "*I hereby sanction thee*." Before such a penalty could be imposed, Ms. Owens is constitutionally entitled to notice of the grounds upon which such relief is being sought, and she is entitled to a *meaningful* opportunity to respond. The process currently being pursued by Mr. Echard ignores both of those legal requirements.

This leads to Ms. Owens' second comment. Mr. Echard's "other authority" argument ignores a classic limitation imposed by Arizona law; "When a statute creates a

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right and also creates a remedy for the right created, the remedy thereby given is exclusive." *Hull v. DaimlerChrysler Corp.*, 209 Ariz. 256, 257 (App. Div. 2 2004) (emphasis added) (quoting *Register v. Coleman*, 130 Ariz. 9, 14, 633 P.2d 418, 423 (1981)) (citing *Blankenbaker v. Jonovich*, 205 Ariz. 383, P 18, 71 P.3d 910, 914 (2003)). Furthermore, "The rules of civil procedure 'have the force and effect of statute so far as applicable to any case.'" *Groat v. Equity Am. Ins. Co.*, 180 Ariz. 342, 347 (App. Div. 1 1994) (emphasis added) (quoting *Preston v. Denkins*, 94 Ariz. 214, 219 n.2, 382 P.2d 686, 689 n.2 (1963)).

What this means is simple. Rule 26 creates a right to seek sanctions any time a litigant breaks the rule by, *inter alia*, bringing a claim they know is groundless. In addition, the rule provides a clear and powerful remedy to anyone harmed by a violation of the rule. But the remedy established by Rule 26 requires a party seeking relief to follow the specific protocol established by that rule (which Mr. Echard did not do here).

This failure is wholly conclusive of the issue of sanctions insofar as it is based on the allegation that Ms. Owens filed or pursued this action without a valid basis. Even assuming that is exactly what happened here, Rule 26 provides the exclusive remedy for those violations, and because Mr. Echard is not entitled to relief under Rule 26, that resolves the issue as a matter of law.

At the same time and to be clear, Ms. Owens agrees there are *other* legal rules/authorities that permit an award of fees for reasons *other than* a Rule 26 violation. A party who engages in unreasonable litigation conduct could be required to pay fees pursuant to A.R.S. § 25–324 (a request Mr. Echard has not made in any pending motion). Similarly, a party who brings a claim without "substantial justification" could be sanctioned under A.R.S. § 12–349 (provided they have not made a prior timely motion for voluntary dismissal, thus precluding an award under § 12–349(C)).

The fact remains a violation of Rule 26 can only be remedied by the process set forth in Rule 26. That rule creates a right and a remedy for any violation, and that remedy is exclusive. There is no dispute the process required by Rule 26 was not followed here.

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This leads to the third and final comment. As explained on pages 10–12 of Ms. Owens' motion, any request for sanctions (regardless of the basis) necessarily includes a temporal limitation; i.e., the request must be brought as close as possible to the alleged violation in order to promote the purposes of sanction (i.e., judicial efficiency and avoiding needless litigation). Mr. Echard never even attempts to respond to that issue in his pleading, so the Court should find, as a matter of law, that no other *timely* basis exists that would permit such a belated request for sanctions made months after Ms. Owens had attempted to dismiss this action.

III. CONCLUSION

For all the reasons presented, Petitioner's Motion for Judgment On the Pleadings should be granted.

DATED May 22, 2024.

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