IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S MOTION FOR SANCTIONS

On July 5, 2016, Plaintiffs filed a frivolous, 64-page "Verified Complaint" consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal. On September 15, 2016, Defendant Young filed her Motion to Dismiss. And on September 27, 2016, Defendant Young sent Plaintiffs a letter, informing them that, in accordance with the safe-harbor procedure of Federal Rule of Civil Procedure 11, she would be filing this Motion for Sanctions on October 19, 2016, if Plaintiffs did not dismiss their Complaint against her with prejudice. But Plaintiffs have ignored Ms. Young's letter and Motions.

Plaintiffs' frivolous pleadings meaninglessly and wrongfully denigrate the reputation of Ms. Young, a prominent, hard-working Houston lawyer. Despite opportunities to nonsuit their meritless suit, Plaintiffs have refused to do so. Thus, Plaintiffs should be required to reimburse Ms. Young's attorney's fees pursuant to Federal Rule of Civil Procedure 11.

ARGUMENT AND AUTHORITIES

Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-

appointed counsel. *See Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) ("[I]t should be noted that an attorney's responsibility to conduct a reasonable prefiling investigation is **particularly important in RICO claims**.") (emphasis added). Because the claims asserted by Plaintiffs are both legally and factually frivolous, Ms. Young should be awarded attorneys' fees and costs under Fed. R. Civ. P. 11.

I. The Rule 11 Standard

Under Fed. R. Civ. P. 11(b), by presenting the Court a signed pleading, an "unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). "Compliance with these affirmative duties is measured as of the time that the document is signed." *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994). And whether a pleading meets this requirements is measured "by an objective, not subjective, standard of reasonableness under the circumstances." *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988).

"[I]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1); *see also* Fed. R. Civ. P. 11 Advisory Committee Notes ("Even though it is the attorney whose

signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client.").

II. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims.

Plaintiffs have ignored longstanding attorney immunity doctrines, have alleged six causes of action for which they have no private cause of action, and failed to plead facts showing even the most basic elements of their RICO "claim."

A. Plaintiffs ignore attorney immunity.

Plaintiffs have ignored long-established immunity doctrines that protect attorneys from suit by opposing parties and non-clients. Indeed, the affirmative defense of immunity is apparent on the face of the Complaint.

Under Texas law, it is settled that "attorneys are immune from civil liability . . . 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). The only exceptions to this rule of immunity are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Id.* at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). However, a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

In this case, Plaintiffs have not pled any facts showing Ms. Young, who served as counsel for the Temporary Administrator in the underlying lawsuit, took any actions outside the normal discharge of her duties in representing her client. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016) (attorney's conduct in sending a letter, participating in discovery, and

communicating with SEC about client were "classic examples of an attorney's conduct in representing his client").

B. Plaintiffs plead claims for which there exists no private right of action.

Plaintiffs allege three causes of action for "honest services," along with causes of action for wire fraud, fraud under 18 USC § 1001, and violation of the Hobbs Act. *See* Complaint, at ¶¶ 121–123. But those are criminal causes of action that cannot be pursued by a private plaintiff. *See* Motion to Dismiss [DKT. 25], at pp. 13–16.

C. Plaintiffs' accusations are baseless and delusional.

Plaintiffs accuse Ms. Young of what can best be described as fictional acts--being a member of a secret society and "cabal" known as the "Harris County Tomb Raiders," which Plaintiffs also call "The Probate Mafia." *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in "Poser Advocacy," supposedly an "exploitation opportunity" to "hijack" "familial wealth." *Id.* at ¶¶ 95–99. Not surprisingly, Plaintiffs do not even try to accompany their made-up story with supporting facts. The reality is unavoidable—their complaint is a bizarre, sophomoric attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Less fantastical efforts to concoct a federal claim against judges and opposing attorneys have been routinely dismissed. *See, e.g.*, *Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.) (dismissing RICO claims against probate judges, attorneys, and clerks for failure to plead a racketeering activity). And other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148

(W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Thus, Plaintiffs' allegations fail to satisfy Rule 11. Specifically, Plaintiffs' Complaint against Ms. Young—devoid of any allegation of actual wrongdoing—can only be brought for improper purposes, like harassment or to needlessly increase the cost of litigation. Plaintiffs' Complaint is in no way warranted by existing law, and Plaintiffs' contentions completely lack any sort of factual or evidentiary support. *See* Fed. R. Civ. P. 11(b)(1)-(3). Ms. Young has also specifically informed Plaintiffs multiple times of the legal defects in their Complaint and the authority showing Plaintiffs' arguments are meritless, both in Ms. Young's filing of her Motion to Dismiss and by serving this Motion for Sanctions on Plaintiffs twenty-one days before filing it with the Court. But Plaintiffs have refused to dismiss their Complaint against Ms. Young. This, too, means sanctions are necessary. *See also Taylor v. C.I.R.*, 350 Fed. Appx. 913, 915 (5th Cir. 2009) ("Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of 'ample legal authority holding squarely against them.'").

CONCLUSION

Plaintiffs have filed a frivolous and facially-deficient lawsuit, and Ms. Young respectfully requests that the Court require Plaintiffs and their attorneys to pay her attorneys' fees in defending this suit and pursuing the relief requested herein. *See* Ex. A, Aff. of Robert S. Harrell.

Dated: September 27, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF CONFERENCE

I certify that on September 27, 2016, I conferred with counsel for Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to dismiss the claims against Ms. Young, requiring the submission of this Motion to the Court.

/s/ Robert S. Harrell
Robert S. Harrell

CERTIFICATE OF SERVICE

I certify that on September 27, 2016, pursuant to Fed. R. Civ. 11(c)(2) and Fed. R. Civ. P. 5, I served copies of this Motion for Sanctions on Plaintiffs. I also certify that a true and correct copy of the above Motion for Sanctions has been served on October 19, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell