

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Danilo P. Artez,
Petitioner;

v.

CASE: 23-TC-002
DATE: March 24, 2023

Attorney Peggy Van Gheem,
Oneida Nation Law Office,
Respondent.

SCREENING ORDER

This case came before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

BACKGROUND

On February 8, 2023 during a motion hearing, Petitioner verbally accused Respondent's attorney of intentionally using fraud, lying, and inappropriate pressure to produce an affidavit. At the motion hearing, the Court ordered Petitioner to submit his accusations in a written motion stating the grounds for the accusations and relief being sought; the Court issued a scheduling brief. On February 15, 2023, Petitioner filed a written motion seeking contempt against the Respondent's attorney and relief exceeding four hundred million dollars. On February 17, 2023, the Trial Court Chief Judge issued a letter to the parties with notice that Petitioner's motion was converted to a complaint against an attorney and assigned the complaint to be screened. On February 22, 2023, Respondent filed a response brief. Petitioner did not file a reply to Respondent's response that was due on or before March 1, 2023. On March 3, 2023, in the underlying case to this claim, the Court issued a decision denying Petitioner's motion to set aside the default judgment resulting in dismissal of his December 20, 2021 appeal of the Area Manager's decision.

ISSUE

1. Did Petitioner make a good faith argument on the merits of the action taken?

2. Did Petitioner knowingly advance a claim that cannot be supported by a good faith argument?

ANALYSIS

This case arises from the February 8, 2023 motion hearing held in response to Petitioner's motion to set aside the default judgment dismissing Petitioner's employment grievance complaint. During the motion hearing, Petitioner accused Respondent of intentionally using fraud, lying, and inappropriate pressure to produce an affidavit. Later, in Petitioner's written motion, Petitioner accused Respondent of submitting an affidavit that was not factual and misrepresented the facts. The affidavit was one of two affidavits signed by the same person and filed prior to the motion hearing. Petitioner filed the first affidavit, an Affidavit of Service signed by Teresa Anderson, employed as an Infection Preventionist at the Oneida Comprehensive Health (OCHD), to show proof of service of Petitioner's motion on the other party. Respondent filed the second affidavit, also signed by Ms. Anderson, to show Ms. Anderson mistakenly signed the first affidavit. During the motion hearing and in response to the second affidavit, Petitioner verbally accused Respondent of lying and pressuring Ms. Anderson to make the second affidavit and then fraudulently filing the affidavit with Petitioner and the Court. Petitioner was ordered to file a written motion stating the grounds on which his accusations were based on and any relief being sought.

On February 15, 2023, Petitioner filed a motion seeking that Respondent be held in contempt, monetary relief exceeding \$400,000,000.00, the set aside of rulings and judgments from his previous case, and an apology from the Oneida Nation. On February 17, 2023, the Trial Court Chief Judge issued a letter to the parties with notice that Petitioner's motion was being converted to a complaint against an attorney.

A complaint against an attorney is governed under Oneida Code of Law (O.C.L.) 810 - Professional Conduct for Attorneys and Advocates. Under this law, a complaint determined to be frivolous or repetitive on its face shall be screened out and no action taken. If the complaint is not screened out, a disciplinary hearing will be scheduled to provide the parties with an opportunity to respond to the allegations and present evidence. For the screening, the Court

focuses on the accusations Petitioner made verbally at the February 8, 2023 motion hearing and in his written motion filed February 15, 2023.

FRIVOLOUS

Because neither party presented a definition of frivolous for the Court to consider and frivolous is not defined in O.C.L. 810 - Professional Conduct of Attorneys and Advocates, the Court adopts Wisconsin's professional responsibility rule defining frivolous and the subjective standard to determine whether an action is frivolous. *See Matter of Disciplinary Proceedings Against Lauer*, 324 N.W. 2d 432 (WI 1982). Under Wisconsin law, as now applied in this case, an action is frivolous if the Petitioner is unable to either (1) make a good faith argument on the merits of the action taken, or (2) to support the action taken by a good faith argument for an extension, modification or reversal of existing law. In screening a complaint, the Court must determine, by applying a subjective standard, that the Petitioner knew his claim was without merit. Because the Court found no argument in Petitioner's motion for an extension, modification or reversal of existing law, that rule is inapplicable in this case. Also, the Court determined that this case is not a repetitive claim and will screen it to determine if it is frivolous.

First, did Petitioner make a good faith argument on the merits of the action taken? To determine the meaning of "make a good faith argument", a party must be specific enough in their complaint by citing the law and specifying the events or occurrences where the other party violated the law. *See, Hawk v. Oneida Division of Land Management*, No. 97-HB-0002 (4/01/1997); *Wigg-Ninham v. Oneida Tribal Judicial System*, 11-TC-136 (9/16/2011). For attorneys, advocates and any person representing themselves before the court, the pleadings and documents they submit to the Court are submitted in good faith when they are believed to be true, accurate and based upon an adequate investigation of or research of those asserted statements of fact or law. *See, The Navajo Nation v. Donald Rico*, 4 Nav. R. 175 (Navajo 09/21/1983).

In this case, Petitioner makes conclusory and speculative accusations against Respondent without specifying any facts to support or explain his accusations. During the motion hearing, Petitioner claimed he had copies of text messages between himself and Ms. Anderson showing that Ms. Anderson admitted that the statements she made in the second affidavit are not true and she was

pressured by Respondent to make the second affidavit. However, in his written motion, Petitioner did not present any information about the text messages or provide copies of the text messages. Also, during the hearing and in his written motion, Petitioner claimed Ms. Anderson desired to attend court to dispute the factualness of the second affidavit, but he did not provide information specifying what conduct by Respondent was considered to be inappropriate pressure on Ms. Anderson causing her to sign the second affidavit. Petitioner also failed to provide information specifying what statements in the second affidavit were misrepresented. During the motion hearing, Petitioner asked if he was allowed to question Ms. Anderson and was told yes, so long as he worked through Respondent because Ms. Anderson, being an employee of the Nation, is represented by the Oneida Law Office. However, in his written motion, Petitioner did not provide information showing he contacted Respondent to schedule time to question Ms. Anderson. Also, Petitioner did not provide information specifying how he knows Respondent *intended* to misrepresent the statements in the second affidavit or what she did that constitutes a misrepresentation. (*Emphasis added*). Finally, Petitioner did not file a reply brief to respond to Respondent's arguments denying she knowingly made and filed the second affidavit using pressure on Ms. Anderson to misrepresent her statements. Thus, Petitioner did not provide information showing he conducted any investigation or had proof to support his accusations that Respondent knowingly presented the Court with an affidavit that misrepresented the truth and he failed to specify events or occurrences where and how Respondent violated the law. Therefore, the Court finds Petitioner's accusations are without merit and not presented in good faith.

Second, did Petitioner know his claim was without merit? To be frivolous, the test to be applied is a subjective one. The Court must determine that Petitioner knew his accusations were without merit and could not be supported by a good faith argument. In *Lauer*, the state court relied on the party's inaction to determine that the party knew the action was without basis in law. *See, Lauer*, 324 N.W. 2d 432, 754 (WI 1982). In this case, Petitioner did not conduct any investigation to support his accusations. Additionally, Petitioner did not file a reply to Respondent's response, which was an opportunity for Petitioner to directly address Respondent's arguments. In Respondent's response, Respondent argued that Petitioner has not provided any support for his allegations because they are untrue and that Respondent did not make false statements to the Court, did not submit false or misrepresented facts, and did not coerce Ms.

Anderson to make the second affidavit. Petitioner was put on notice by the Court's letter that his motion was converted to a complaint to be screened based on the briefs ordered by the Court in the scheduling order. Accordingly, Petitioner knew he had an opportunity to directly respond to Respondent's arguments but did not file a reply. Also, because Petitioner's reply was due 21 calendar days after adjournment of the February 8, 2023 motion hearing and his complaint involved only one person, in addition to the parties, who he has already contacted, the Court finds Petitioner had a reasonable amount of time to conduct an adequate investigation and research of his asserted facts and law.

Furthermore, the second affidavit was not material to Petitioner's motion to set aside the default judgment, even though the parties spent more time arguing whether Petitioner's service was effective rather than the merits of setting aside the default judgment. On Respondent's motion to dismiss because service was ineffective, the Court rejected Respondent's argument and announced its decision at the hearing that Petitioner's service was effective, thus allowing the hearing to continue on Petitioner's motion to set aside the default judgment. However, Petitioner continued to pursue his claim that the second affidavit was proof Respondent and Respondent's legal team lied in this case and his supervisors told lies about his character for the prior three and one-half years during his employment with the Nation. During the motion hearing, Petitioner admitted he was unable to prove the default judgment should be set aside, but he intended to prove that Respondent's attorney and Respondent's legal team was lying when it filed the second affidavit. In Petitioner's written motion, Petitioner's claim for monetary damages exceeding \$400,000,000.00 is based on allegations of harassment and mental, emotional and physical damage he allegedly suffered from the underlying employee grievance claim, not as a result of Respondent's conduct in this case. Thus, the Court concludes that Petitioner knew his claim was without merit.

Finally, Petitioner is a self-represented litigant, not an attorney. Self-represented parties are given a liberal approach but are not entitled to *carte blanche*. *See, Deborah Thundercloud and Jacqueline Smith*, 20-AC-004 (6/01/2021); *Vaks v. Quinlan, et al*, Civil No. 18-12751 (D. Mass. Feb. 24, 2020). In this case, providing Petitioner a liberal approach does not mean excusing Petitioner from performing an adequate investigation or inquiry into his asserted facts and law.

In conclusion, because Petitioner knowingly filed a claim without merit that could not be supported in good faith, Petitioner's motion is frivolous and screened out. Therefore, no action will be taken.

FINDING OF FACTS

The Court finds as follows:

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On February 8, 2023, a motion hearing was held on Plaintiff's motion to set aside the default judgment entered against him on January 10, 2022.
4. Prior to the motion hearing, the parties each submitted an affidavit made and signed by the same person, Ms. Teresa Anderson, employed as an Infection Preventionist at the Oneida Comprehensive Health Division (OCHD).
 - a. On December 9, 2022, Petitioner filed the first affidavit signed by Ms. Anderson. The Affidavit of Service was signed by Ms. Anderson on November 22, 2022 stating she personally served Petitioner's legal papers to the Respondent Area Manager.
 - b. On January 18, 2023, Respondent filed the second affidavit signed by Ms. Anderson. The affidavit was signed by Ms. Anderson and notarized on January 18, 2023. In the affidavit, Ms. Anderson states she mistakenly signed the Affidavit of Service that was filed by Petitioner.
5. During the February 8, 2023 motion hearing, the following occurred:
 - a. Petitioner verbally accused Respondent of inappropriately pressuring Ms. Anderson to make and sign the second affidavit and then knowingly misrepresenting the facts and truthfulness of Ms. Anderson's statements; and
 - b. Petitioner was ordered to file a written motion, to be filed within five business days after adjournment of the motion hearing, stating the grounds for his accusations and relief being sought; Respondent was provided five business days to file a response to Petitioner's motion; and finally, Petitioner was provided five days to file a reply to Respondent's response.

6. On February 15, 2023, Petitioner filed a written motion stating his accusations, the grounds for the accusations, and relief sought.
7. On February 17, 2023, the Trial Court Chief Judge issued a letter to the parties with notice that Petitioner's motion was converted to a complaint against an attorney and assigned the complaint to be screened by Trial Court Judge Hoeft.
8. On February 22, 2023, Respondent filed a response brief.
9. Petitioner did not file a reply to Respondent's response that was due on or before March 1, 2023.
10. On March 3, 2023, in the underlying case to this claim, the Court issued a decision denying Petitioner's motion to set aside the default judgment resulting in dismissal of his December 20, 2021 appeal of the Area Manager's decision.

PRINCIPLES OF LAW

Oneida Code of Laws Chapter 810 – Professional Conduct for Attorneys and Advocates

810.23. Disciplinary Actions

810.23-1. The Judiciary's Trial Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the Trial Court or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the Trial Court or his or her designee who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.

(a) The Chief Judge or his or her designee may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge or his or her designee shall assign a judge to preside over the disciplinary proceedings. Current or pro tem judges are eligible to hear disciplinary matters.

(a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.

(b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The judge can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

(a) The Court may opt to choose any combination of the following disciplinary methods:

- (1) Private reprimand;
- (2) Public reprimand through publication in the Nation's newspaper;
- (3) Additional training requirements;
- (4) Monetary fine not to exceed five thousand dollars (\$5,000); or
- (5) Suspension or revocation of the right to practice before the Judiciary.

(b) The Court may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).


810.23-6. Decisions of the Trial Court under this section are appealed to the Court of Appeals.

ORDER

Petitioner's complaint is frivolous and **SCREENED OUT**.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council, this order is signed on March 24, 2023.


Patricia Ninham Hoeft, Trial Court Judge

