

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

KENNAN G. DANDAR, and  
DANDAR & DANDAR, P.A.,

Plaintiffs,

Case No. 8:12-cv-2477-T-33EAJ

v.

CHURCH OF SCIENTOLOGY FLAG  
SERVICE ORGANIZATION, INC.,  
F. WALLACE "WALLY" POPE, JR.,  
ROBERT V. POTTER, JR., and  
JOHNSON POPE BOKOR RUPPEL &  
BURNS L.L.P.,

Defendants.

**DEFENDANTS' MOTION AND MEMORANDUM TO STRIKE PLAINTIFFS'**  
**REPLY AND THE "EXAMINATION UNDER OATH" OF MARK "MARTY"**  
**RATHBUN ON NOVEMBER 9, 2012**

Defendants, Church of Scientology Flag Service Organization, Inc. (the "Church"), Johnson, Pope, Bokor, Ruppel & Burns, LLP, ("Johnson Pope"), F. Wallace Pope, Jr. ("Pope") and Robert V. Potter, Jr. ("Potter"), by and through their undersigned counsel, pursuant to the provisions of Rule 12(f), F.R.C.P., move the Court to strike plaintiffs' reply to defendants' joint memorandum in opposition to plaintiffs' motion for emergency preliminary injunction and the notice of filing and the transcript of the examination under oath of Mark "Marty" Rathbun dated November 9, 2012. The grounds for this motion are:

1. The "reply" brief is not a reply brief at all, but seeks to introduce new factual allegations, new theories, and new legal arguments not made or addressed in either the moving papers or even the complaint (see number 3

below). Such argument and factual allegations are entirely improper and inappropriate in a reply memorandum, and should be disregarded and stricken

2. At the preliminary hearing held telephonically in this matter on November 1, 2012, all parties agreed that the hearing on November 19 would be a non-evidentiary hearing, and the submission of the Rathbun statement seeks to violate that stipulation.

3. Nowhere in the complaint filed in this action are there any allegations regarding purported *ex parte* communications with any Pinellas County judge, nor is there any allegation that any Pinellas County judge conspired with any defendant to violate the plaintiffs' constitutional rights. Thus, the reply and sworn statement are essentially efforts to amend the plaintiffs' without saying so.

4. The purported statement of Rathbun is inadmissible hearsay with respect to the occurrence of any *ex parte* communication. It purports only to repeat what Rathbun claims he heard Mr. Pope and others say about *ex parte* communications. Needless to say, Mr. Pope and all others deny that any *ex parte* communications ever occurred and further deny that they ever reported to Rathbun that *ex parte* communications had occurred.

5. The unsupported allegations of *ex parte* communications and the patently false suggestion as to why Judge Beach required Dandar to associate lead counsel are immaterial, impertinent, scandalous, and asserted for the

purpose of harassment and improper purpose. They should be stricken on that basis<sup>1</sup>.

6. Attached as Exhibit A to this motion to strike is Kennan Dandar's extortionate e-mail which he forwarded to defendants Pope and Potter at 9:44 p.m., November 14, 2012. This threat to accuse defendants, including Potter and Pope, and also Pinellas County judges, of unethical and possibly criminal conduct to resolve a civil dispute violates Florida's extortion statute, Fla. Stat. § 836.05 (2011).

### **MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**

#### **I. The Purported "Reply" is no Reply**

A Reply is properly limited to the subject matter and argument of defendants' response and should rebut or respond to the argument in defendants' response. Instead, this purported "reply" seeks to introduce new factual allegations, new theories and new legal arguments not previously made in any of the moving papers or in the complaint. Such new arguments, legal theories and factual allegations are entirely improper and inappropriate in a reply memorandum. In addition, the purported "reply" is a *sub silentio* effort to amend

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<sup>1</sup> When questioned about inaccurate statements Mr. Dandar had made to the Court, Dandar blamed a bad memory which he claimed was a side effect of taking a medicine called Lipitor. Judge Beach did not remove or disqualify Dandar from continued involvement. He merely required Dandar's associate counsel, Luke Lirot, who was already in the case, to be lead counsel and to sign all pleadings. The motion to disqualify Dandar was otherwise denied. Moreover, the argument that the case would not settle with Dandar involved was made on the record, in open court, with a court reporter present, by an attorney not associated with Mr. Pope or his office; indeed, neither Mr. Pope nor his office were associated in the case at that point.

pleadings in this matter, and, as such, should be stricken under Rule 12(f) as well as Local Rule 3.01 M.D. Fla. Rules.

**II. The Rathbun Statement Violates the Parties' Stipulation and is Therefore Inadmissible.**

This Court convened a preliminary telephonic hearing on November 1, 2012, and during the course of that hearing, all parties agreed that the hearing on plaintiffs' emergency motion for preliminary injunction would be a non-evidentiary hearing. The filing of the Rathbun sworn statement is a violation of that stipulation.

**III. The Reply and the Rathbun Statement are Immaterial, Impertinent, Scandalous and Asserted Merely for Improper Purpose and Harassment**

In his reply, Kennan Dandar accuses defendant Pope and non-defendant, Lee Fugate, of unethical and unprofessional conduct, and attempts to suggest that Judge Robert Beach acted improperly. In fact, the reply and statement attempts to smear numerous judges of the Pinellas Circuit Court with allegations of *ex parte* communications. However, Rathbun's statement falls well short of offering evidence that any improper event occurred or that any constitutional violation occurred. At best, the Rathbun statement offers only evidence that Pope and others claimed to have had *ex parte* communications. Rule 12(f) F.R.C.P. permits the Court to strike any "redundant, immaterial, impertinent or scandalous matter" from pleadings. Mr. Dandar's reply, with attached sworn statement, is an attempt to amend his pleadings to cure the deficiencies in his original complaint identified in defendants' response to the request for injunctive

relief. Although Dandar was given leave to file a reply up to 10 pages, he instead filed a 9 page reply plus a 57 page statement plus 16 pages of exhibits. Accordingly, the reply, sworn statement and exhibits should be stricken under Rule 12(f) as well as Local Rule 3.01 M.D. Fla. Rules.

Rule 11(b) F.R.C.P. also deals with the filing of pleadings and other documents and restricts both the filing of documents for purposes of harassment, delay, and improper purpose and the assertion of frivolous arguments. The Dandars assert a violation of their constitutional rights and seek remedies under 42 USC § 1983. Yet the evidence they proffer seeks only to smear various respected jurists and lawyers with unethical and unprofessional conduct. Even if the unethical and unprofessional conduct occurred - and it did not - it does not show or prove a violation of the Dandars constitutional rights. The argument and statements are filed only to disparage the lawyers and jurists involved in this litigation and presumably to threaten more of the same if the state court proceedings are not terminated.

A district court may, "on its own," strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f); *Stephens v. Georgia Dept. of Transp.*, 134 F. App'x 320, 322 (11th Cir. 2005), *cert. denied*, 546 U.S. 1095, 126 S.Ct. 1128, 163 L.Ed.2d 862 (2006). In addition to Rule 12(f), the district court has the inherent power to strike a pleading "to enforce its orders." *State Exchange Bank v. Hartline*, 693 F.2d 1350, 1352 (11th Cir. 1982); *Dzwonkowski v. Dzwonkowski*, 298 F. App'x 885, 887 (11th Cir. 2008) ("Indeed, the district court has broad inherent powers, as well as authority under Federal

Rule of Civil Procedure 12(f) to “order stricken from any pleading ... any redundant, immaterial, impertinent, or scandalous matter.”). *See also, United States v. Spellissy*, 2009 WL 2421852 (M.D. Fla. July 24, 2009), *aff’d*, 374 F. App’x 898 (11th Cir. 2010). (Judge Whittemore granting motion to strike affidavit).

The Federal Rules of Civil Procedure provide that “the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” *Stephens*, 134 F. App’x at 322-23. The court held that the district court did not abuse its discretion in striking portions of a motion for summary judgment because it contained “immaterial, impertinent, or scandalous matter.” *Id.*

*See also, Pigford v. Veneman*, 215 F.R.D. 2, 4-5 (D.D.C. 2003) (striking response to motion for containing racist allegations against the opposing attorney based on Rule 11 and Rule 12(f)). *Chavez-Gallegos v. First Magnus Fin. Corp.*, 2012 WL 1229509 (D. Nev. April 12, 2012) (striking opposition to motion to dismiss and amended complaint because filed without leave of court). *Pacquiao v. Mayweather*, 2010 WL 3271961 (D. Nev. Aug. 13, 2010) (striking exhibits filed in reply to motion to dismiss because they could have been filed with the motion itself and were improper on reply). The clerk was ordered to strike them.

#### **IV. Mr. Dandar’s Conduct in this Matter Violates Florida’s Extortion Statute, Fla. Stat. § 836.05 (2011)**

In Florida, it is a felony of the second degree for a person, either verbally or in writing to threaten to accuse any other person of a crime, to injure the reputation, or to expose another to disgrace, with the intent to extort any

pecuniary advantage whatsoever, or with the intent to compel the person so threatened to do any act or refrain from doing any act against his or her will. Fla. Stat. § 836.05 (2011).

Mr. Dandar's e-mail of November 14, 2012, attached as Exhibit A, advises the defendants, including Potter and Pope, that unless the defendants stipulate to a voiding of the confidential settlement agreement of May, 2004, and to a dismissal of all state and federal actions with prejudice, Dandar would file both his reply and "an examination under oath of Marty Rathbun." Defendant Pope was already well-aware of Rathbun's allegations because Rathbun has published them in his anti-Scientology blog and elsewhere. Defendant Pope knew that the allegations would involve claims of unethical and unprofessional conduct and possible criminal conduct. The threat was palpable.

### **CONCLUSION**

The Court should reject this attempt to introduce extortionate, scandalous and immaterial claims into this proceeding, should strike the reply, statement and exhibits, and should direct the clerk to expunge it from the record.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 16, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: KENNAN G. DANDAR, ESQ.,

kgd@dandarlaw.net, attorney for plaintiffs.

JOHNSON, POPE, BOKOR,  
RUPPEL & BURNS, LLP

/s/ Robert V. Potter  
F. Wallace Pope, Jr.  
Florida Bar No. 0124449  
wallyp@jpfirm.com  
Robert V. Potter  
Florida Bar No. 0363006  
bobp@jpfirm.com  
Post Office Box 1368  
Clearwater, Florida 33757  
Telephone:(727) 461-1818  
Fax: 727 462-0365  
Counsel for Defendants.

1156331v4



## Eileen Ambrose

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**From:** Wally Pope  
**Sent:** Friday, November 16, 2012 11:08 AM  
**To:** Eileen Ambrose  
**Subject:** FW: CONFIDENTIAL OFFER--filing tommorrow-READ THIS NOW

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**From:** Ken Dandar <dandarlaw@aol.com>  
**Date:** November 14, 2012 9:44:39 PM EST  
**To:** "wallyP@jbpfirm.com" <wallyP@jbpfirm.com>, Bob Potter <BobP@jpfirm.com>  
**Subject:** CONFIDENTIAL OFFER--filing tommorrow-READ THIS NOW

Gentlemen:

Tomorrow at 9:30 AM I will be filing my Reply. Also, I will be filing an examination under oath of Marty Rathbun. Bob told me on Tuesday that there is no chance of settling this. I ask you once again to consider my offer to settle by agreeing to have

1. a state court order entered voiding the CSA,
2. dismissing the state and federal cases with prejudice, each party bearing their own costs and attorney fees.

I will proceed to timely file my Reply if I do not receive an acceptance of this very generous offer by 9AM, tomorrow.

*Kennan G. Dandar, Esq.*  
Dandar & Dandar, P.A.  
P.O.Box 24597  
Tampa, FL 33623  
PH: 813.289.3858  
FX: 813.287.0895  
EM: [dandarlaw@aol.com](mailto:dandarlaw@aol.com) or [kqd@DandarLaw.net](mailto:kqd@DandarLaw.net)  
Over 30 Years in Tampa Bay!

