IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
(TRANSFERRED TO THE SECOND MUNICIPAL DISTRICT)

Terry Ainsworth,	)	
Plaintiff,	)	
v.	)	No. 2018 CH 01898
Jidd Enterprises LLC,	)	Judge Allegretti
BMW Financial Services NA, LLC,	)	
d/b/a Alphera Financial Services,	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO MOTION TO STRIKE
AND CROSS-MOTION FOR PROTECTIVE ORDER AND/OR TO STRIKE

In this Response, Plaintiff addresses three issues: (1) deficiencies of Plaintiff's affidavit; (2) insults hurled at Plaintiff's counsel; and, (3) Defendant's lack of knowledge of e-filing procedures.

A. Affidavit Issues

If Defendant argued that Plaintiff's affidavit was somehow insufficient at the hearing on Plaintiff's Motion for Summary Judgment, Plaintiff would have been bound by the initial Affidavit, and that Affidavit would have remained part of the record.

But Defendant filed a Motion to Strike, articulating various deficiencies in Plaintiff's Affidavit. Rather than fight about them, Plaintiff avails himself of the opportunity to remedy these defects, kindly brought to his attention by Defendant, and attaches an Amended Affidavit to this Response. Now that this Amended Affidavit is "on file" within the meaning of the summary judgment statute, 735 ILCS 5/2-1005(c), it should be considered in rendering summary judgment in favor of Plaintiff "without delay." 735 ILCS 5/2-1005(c).

Defendant can't possibly object to Plaintiff's filing of his Amended Affidavit, given that Defendant itself sprung its affirmative defense (Section 2L "nonconformity") without first raising it in the pleadings. Cf. Gold Realty Group Corp. v. Kismet Café, 358 Ill.App.3d 675, 679 (1st Dist. 2005) (a court may not grant summary judgment "on an issue not properly pled in the complaint"; by implication, it is equally improper to defend against summary judgment with an affirmative defense that is not raised in the pleadings). Accordingly, under the authority of Goose v. Gander (see Goose v. Gander, cited in Weichert v. Allstate Ins. Co., 25 Misc.3d 1207, 2009 WL 3152791, at *3 (N.Y.Sup. 2009), and Lawler v. Government Employees Ins. Co., 569 So.2d 1151, 1155, n.2 (Miss. S.Ct. 1990, Robertson, J., dissenting)), Plaintiff attaches his Amended Affidavit to this Response as **Exhibit A**.

The rest of this Response addresses two tangential issues: (1) personal insults contained in Defendant's Motion, and, (2) Defendant's lack of knowledge of e-filing procedures.

B. Unprofessional Conduct of Opposing Counsel

1. Talking Points of the Defense Bar

Plaintiff's counsel spent some twenty years doing what the people of the State of Illinois,[1] its legislature (which passed the laws), its Governor (who signed the laws), and its Supreme and Appellate Courts[2] asked him to do—to act as a private attorney general,

[1] "We, the People of the State of Illinois, *** in order to *** assure legal, social and economic justice ***." IL. Const., Preamble.

[2] Allen v. Woodfield Chevrolet, 208 Ill. 12, 30-31, 802 N.E.2d 752, 763, 280 Ill.Dec. 501, 512 (2003) ("Compromising a consumer's ability to recover legal fees renders the protections of the Act illusory."); Bank One v. Sanchez, 783 N.E.2d 217, 220 (2d Dist. 2003) ("There is a clear mandate from the Illinois legislature that the courts of this State utilize the Act to the utmost degree in eradicating all forms of deceptive and unfair business practices and grant appropriate remedies to injured parties.").

bring dishonest businesses to justice, and protect the citizens of the State of Illinois. He enforces the principles of Truth, Justice, the American Way, and the Friedman Doctrine:

> [T]here is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits ***so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud***.[3]

Counsel thus enforces the economic level playing field in the marketplace, whereby dishonest businesses do not force honest businesses into the "race to the bottom" by lowering the standards by which honest businesses are forced to operate to stay competitive. This enforcement is necessary for the proper functioning of the free enterprise system. Counsel is proud of what he does, and his way of making a living is an honorable one.

But for the same twenty years the consumer protection defense bar hurled insults at counsel. Defense lawyers seem convinced that accusations such as: "he is only doing it because of the fees," "plaintiff's lawyer is a bad person," "if it were not for plaintiff's lawyer, this case would have settled long ago," and other variations of the same talking points are, somehow, defenses to the merits of the case or of any particular motion, whether or not having anything to do with attorney fees, and generally are a good way to "poison the well" and score cheap points with the presiding judge.

Or course, these talking points have no merit, even in a fee petition context. As succinctly explained by the Ninth Circuit:

> It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning

[3] Milton Friedman, Capitalism and Freedom, at 112 (University of Chicago Press, 1982) (emphasis added).

> lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.

Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008).

Yet the talking points persist.

According to the Supreme Court's Commission on Professionalism, which promotes "the ideas of professionalism in our legal and judicial systems,"[4] 85% of lawyers experienced uncivil or unprofessional behavior in the last 6 months.[5] The Circuit Court of Cook County attempted to address this problem by promulgating Local Rule 13.11, entitled "Civility," which mandates "civil and courteous" treatment of opposing counsel "not only in court, but also in all written and oral communications." Local Rule 13.11(a)(i). But all these principles and rules would be hollow words indeed, if the courts do not enforce them.

On numerous occasions, counsel asked courts to protect him from this abuse. Surprisingly, in twenty years, not a single Illinois trial court has protected him from such offensive and unprofessional conduct.

Plaintiff asks this Court to finally do so.

2. Offensive Statements Made in This Case

In its Motion, Defendant made the following statement:

> Plaintiff's Reply and supporting affidavit is just the latest in a series of disjointed motions and filings aimed at what we can only conclude as gamesmanship and unjustly increasing Defendant's legal fees to induce a settlement.

Defendant's Motion at 3.

[4] https://www.2civility.org/
[5] https://www.2civility.org/civility/

Thus, in one sentence, Defendant, by its counsel, attorney Benoit (DeVore Radunsky Miller Berger LLC, of Chicago, Illinois), made the following allegations:

- Plaintiff's counsel makes unwarranted filings;
- Plaintiff's counsel is guilty of "gamesmanship";
- Plaintiff counsel's filings are made for the purpose of unjustly increasing Defendant's legal fees; and,
- Plaintiff's counsel, by his serial, improper filings, hopes to induce a settlement.

Plaintiff's counsel receives insults of this nature, consisting of the same tiresome talking points, in approximately 25% of his cases. For example, recently attorney Gabis (ESG Legal, LLC, of Elmhurst, Illinois), asserted the following in a DuPage County case:

- "Defendants recognize that 'consumer advocate' attorneys are incentivized to engage in extended discovery and drag out the litigation in an effort go generate a large fee before settling";
- "Plaintiffs' attorney is more interested in allowing the attorney fees to accumulate by disregarding evidence, filing unverified pleadings and partial and piggy-back motions before responding to Defendant's Request to Admit";
- Plaintiffs proceeded with filing a "false and frivolous Motion";
- Plaintiffs filed "frivolous pleadings that were clearly false at the time of filing".

In a different case, attorney Suskin (of Liberyville, Illinois), when defending Plaintiff's Motion to Deem Admitted in Lake County (occasioned by his refusal—not a failure, refusal—to respond to requests to admit), defended against the Motion by . . . referencing counsel's "exorbitant fees." In yet another case, attorney Terlep (Swanson, Martin & Bell, of Chicago, Illinois) sent one of his assistants to take photographs of counsel's house (in Whiteside County), attached the photographs to his opposition papers

to plaintiff's fee petition, and argued that a person living in such a modest dwelling is not entitled to "Chicago" attorney fees.

3. The Caselaw on Insults and Counsel's Previous Practice

As mentioned above, in previous instances, when defense counsel engaged in similar conduct, counsel sought protection from the courts. In counsel's experience, Illinois trial courts usually shrug off such attacks on counsel. But this practice is contrary to Illinois law. Over a hundred years ago, the Illinois Supreme Court stated that personal abuse "cannot be tolerated, and the records of this court cannot be used as a vehicle for abuse of the judge or of opposing counsel." Accordingly, because attacks on the other side's integrity, intelligence, or motives "cannot be permitted," the court struck the offending party's briefs, as "disrespectful to the court and to counsel." Conrad v. Barto, 269 Ill. 421, 421, 109 N.E. 968, 969 (1915). Accord, People v. Burnett, 27 Ill.2d 510, 518 (1963) ("We cannot condone these personal attacks upon [opposing counsel] and consider them unprofessional and highly improper."); Cecil v. Gibson, 37 Ill.App.3d 710, 711, 346 N.E.2d 448, 449 (3rd Dist.1976) (references to "slick attorney from Chicago" and "slick hired-hand" made during trial held improper); Board of Managers v. Spiezer, 2018 Ill.App. (1st) 170868, ¶18, 103 N.E.2d 870, 873-74 (1st Dist. 2018) ("Throughout his opening and reply briefs, Joseph's attorney, K.O. Johnson, makes a series of remarks to disparage the performance of opposing counsel, calling her arguments 'incoherent,' 'bizarre,' 'nauseating,' 'nonsensical,' and a 'word salad.' His remarks serve no purpose other than to demean or insult the other side. We expect all attorneys to behave with respect and civility in their written as well as oral interactions with opposing counsel and with the court."). The courts in other states also take a dim view of personal attacks on

counsel. Counsel was unable to find a single reported decision in which a court condoned such attacks.[6]

Counsel, in seeking protection from the courts, used to invite the courts to note that Plaintiff did not take the bait and respond in kind. Counsel then informed the courts that, if they did not regard this mode of litigation as warranting at least an admonition, Plaintiff

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[6] See, e.g., First Wis. Mortg. & Trust v. First Wis. Corp., 584 F.2d 201, 206 (7th Cir. 1978) (leveling the charge of impropriety at opposing counsel should not be a standard part of counsel's offensive armament to be used routinely); United States v. Mealy, 851 F.2d 890, 904 (7th Cir. 1988) (attorneys have an ethical obligation to refrain from personal attacks on opposing counsel); Brown v. Clayton, 2013 WL 1409881 at *1 (D. Conn. Apr. 8, 2013) ("Motions filed with the Court are a vehicle for the articulation of specific facts and law that support a party's position relevant to a case. Such filings, however, are not meant to be a vehicle through which attorneys, clients and witnesses emote, let off steam, or otherwise sling mud at an adversary."); United States v. Venable, 666 F.3d 893, 904 n.4 (4th Cir. 2012) (condemning directing of sarcastic remarks at opposing counsel as "disrespectful and uncivil"). The courts have held that "unwarranted personal attacks on the character or motives of the opposing party, counsel, or witnesses are inappropriate and may constitute misconduct." In re S.C. v. Kelly E., 138 Cal.App.4th 396, 412, 41 Cal.Rptr.3d 453, 468 (Ca. App. 2006). The court added, "[W]e note with dismay the ever growing number of cases in which most of the trappings of civility . . . are lacking," and observed that, "there is no excuse for the uncivil, unprofessional, and offensive advocacy ***. In re S.C., 138 Cal.App.4th at 420, 41 Cal.Rptr.3d at 474. See also statement from, of all places, a Texas court:

> Unwarranted personal attacks on a lawyer's integrity constitute inappropriate conduct in any court in the state of Texas. Such attacks on opposing counsel in court not only provide a disservice to our citizens, but they are demeaning to our profession and should be condemned. The courts of this state have repeatedly admonished lawyers who engage in personal attacks on opposing counsel. When the admonishments are ignored, the courts, including this court and our sister court in Dallas, have imposed stronger sanctions.

Garcia v. State, 943 S.W.2d 215, 217 (Tx. App. 1997). As pointed out by a federal judge:

> The one consistent theme that runs throughout [defense counsel's] motion papers is his use of personal attacks and unduly inflammatory language in his certifications and briefs. Use of such language does nothing to assist the court in deciding the merits of a motion, wastes judicial resources by requiring the court to wade through the superfluous verbiage to decipher the substance of the motion, does not serve the client's interests well, and generally debases the judicial system and the profession. The court is aware that a lawyer has an obligation and a duty to represent his client zealously and with diligence. However, "the circumstances of this case . . . present the unhappy picture of a lawyer who has crossed the boundary of legitimate advocacy into personal recrimination against his adversary. . . ." Lawyers are not free, like loose cannons, to fire at will upon any target of opportunity which appears on the legal landscape. The practice of law is not and cannot be a free-fire zone.

Cannon v. Cherry Hill Toyota, Inc., 190 F.R.D. 147, 161-62 (D.N.J. 1999) (quoting Thomason v. Norman E. Leher, P.C., 182 F.R.D. 121, 123 (D.N.J. 1998)).

would take this lack of action as tacit approval and an invitation to respond in kind. Plaintiff even cited the legal theory ("invited response") applicable here. United States v. Young, 470 U.S. 1, 12-13, 105 S.Ct. 1038, 1045 (1985) (the right to fair trial is not implicated by improper comments by plaintiff's counsel when "defense counsel's 'comments clearly invited the reply.'"); United States v. Johnson-Dix, 54 F.3d 1295, 1305 (7th Cir. 1995) ("Under the 'invited response' doctrine, if defense counsel strikes the first blow, we will not necessarily reverse a conviction if the prosecutor attempts to even the scales by making a reasonable but otherwise improper response.").

But counsel cannot recall even a single instance in which an Illinois trial court in one of his cases told an uncivil defense counsel, "enough."

4. Counsel's Current Practice

Thus far, Illinois courts have left counsel with the impression that asking for protection from uncivil and offensive conduct is pointless. Accordingly, while still asking for protection from offensive and unprofessional conduct, counsel now responds differently. "Sunshine is the best disinfectant," so now counsel also turns around the insults he receives from dishonorable and unprofessional lawyers, rates them on the basis of their offensiveness, and disseminates these rankings for the world to see.

Given that defense counsel (attorney Benoit, and his assigning partner, attorney Berger) saw fit to put their offensive language in writing, in a public document, it follows they can hardly object to the entire consumer protection bar of the United States knowing their names.

5. Olympics of Unprofessionalism

Accordingly, our competitors today are: attorney Gabis, attorney Benoit, and attorney Kenneth Suskin, with his "exorbitant fees" comment.

The insults from attorneys Gabis and Benoit are about equal in their offensive quotient. On the other hand, the insult of attorney Suskin is so offhand and meek, that it does not even register. So the race is really between attorneys Gabis and Benoit. While attorney Gabis took four sentences to state four offensive things, attorney Beniot packed four insults in just one sentence. Therefore, he wins on points. Quite a performance! If attorney Benoit's allegations were true, a motion under Rule 137 would be in order!

The winning position of attorney Benoit should be enhanced further: he brought up the issue of attorney fees in a case in which Plaintiff counsel offered to settle the case for no attorney fees seven (7) times. "No attorney fees," as in "zero," "not a penny." "Seven (7) times," as in "in seven different documents, with seven different dates, including the initial demand letter." **Group Exhibit B.** It takes a particularly dishonorable person to raise the issue of fees under such circumstances. Especially after Defendant would not agree to a Zoom deposition of Plaintiff, thereby increasing Plaintiff's attorney fees. It's been reported to Plaintiff's counsel that this refusal was not done for any legitimate litigation reasons, but only in order to increase Plaintiff's litigation expenses and to "punish" Plaintiff's counsel. See Local Rule 13.11(a)(ii),[7] (c)(iii).[8]

[7] **"**A lawyer shall cooperate in all phases of litigation that are not contested, reserving debate only for contested issues, in order that cases may be expeditiously resolved without incurring unnecessary expenses."

[8] **"**Lawyers shall take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. Lawyers shall not take depositions for the purposes of harassment or to increase litigation expenses."

But, even though attorney Benoit wins an award for offensive conduct in this litigation, he still loses the overall contest, because no one can surpass Joel Brodsky and Bruce Terlep, the honorary winners. Mr. Brodsky and Mr. Terlep would have been the actual winners, had one of them not been indefinitely suspended from the practice of law, and the other not have died. Using the same talking points, attorney Brodsky delivered an award-winning performance, which earned him the Grand Prize of a $50,000 sanction from federal court. **Exhibit C**. Although attorney Benoit comes close, Mr. Brodsky's masterful rendition remains unsurpassed:

> For example, in one filing Brodsky argued that Lubin "proved by his actions that he has no interest in the truth, and just sees the litigation process as an extortion game, in which his only goal is to extort as much money as possible out of the Defendants, no matter what the truth is." In another he said that "[t]he Plaintiff[']s Motion for Partial Summary Judgment is, like the entire Plaintiff[']s case, a total and complete fraud, submitted for the sole purpose [of] assisting the Plaintiff[']s[ ] attorneys in their attempt to use the legal system to extort money from the Defendant."

Exhibit C, at page 1.

As for Mr. Terlep, his conduct was simply vile. But the presiding judicial officer in the Chancery Department of Cook County did not think that taking photographs of opposing counsel's house was at all objectionable.

At the federal sanctions hearing, Mr. Brodsky was represented by Joe "The Shark" Lopez.[9] Mr. Lopez defended Mr. Brodsky by referencing the supposedly customary practices of Cook County courts.[10] It is within this Court's power to send a

[9] https://twitter.com/josharrk?lang=en

[10] "'The problem is that Brodsky's come out of the Daley Center,' where civil cases in Cook County court are fought, Lopez said. 'And the first rule at the Daley Center is that there are no rules.'" https://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=465c36ac-e86d-4f52-a254-f1ddb067c35d

message to "The Shark" and his "school" that the standards of professionalism and civility are going to be enforced by Illinois courts—even in Cook County.

To sum up: the Supreme Court established the Commission of Professionalism in 2005. The Commission was supposed to:

> promote a culture of civility and inclusion, in which Illinois lawyers and judges embody the ideals of the legal profession in service to the administration of justice in our democratic society.[11]

Yet, by 2016, the situation deteriorated sufficiently to warrant headlines such as, "Research Shows Incivility is at a Crisis Level."[12]

So surveys were made. Local rules were passed. Journal articles were written.

None of these things worked.

The only thing that would work is if the courts start saying to uncivil lawyers, "enough." Plaintiff respectfully requests that this Court do just that.

In the meantime, congrats to attorney Benoit for making it to the top! And let's not forget our runner-up attorney Gabis, and the recipient of our honorable mention, attorney Suskin. The Court should fashion its response to attorney Benoit's violation of the principles of professionalism and civility, and his concomitant violation of Local Rule 13.11(a)(i), in accordance with his first-place placement in this "Olympics of Unprofessionalism."

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[11] https://www.2civility.org/about/

[12] "Surveys show the state of civility in our country continues to decline. As of December 2016, the *Civility in America Survey* showed that three-quarters of Americans believe that incivility has risen to crisis levels, a rate that significantly increased since January 2016. The same proportion feels that the U.S. is losing stature as a civil nation (73%)."
https://www.isba.org/sections/bench/newsletter/2017/11/civilitymatters

C. Defendant's Lack of Knowledge of E-filing Procedures.

In its motion, Defendant commented that the lack of a "wet" signature somehow made the affidavit invalid. Defendant is mistaken.

This is the fourth time in counsel's experience when licensed lawyers attempted to argue that electronic signatures are somehow improper and thus make affidavits invalid. The first such argument was raised in LaSalle County, and it could have been excused, given that the lawyers in LaSalle County self-identify, not without humor, as "hog and dog lawyers." The second time this argument was raised in Lake County, which was more problematic. The third time it was in DuPage County, which was plain surprising. The instant case is the fourth. Surely, the LaSalle County bar can be forgiven for not having heard about our Supreme Court's "Electronic Filing Procedures and User Manual," **Exhibit D**, Section 6.c, of which states, in relevant part, "A document certified pursuant to Section 1-109 of the Code of Civil Procedure may contain an electronic signature as described in subparagraph a." **Exhibit D**, page 4. And subparagraph "a" provides that a signature may be ***either*** the "/s/" sign or a scanned "wet" signature. Therefore, Plaintiff's affidavit is signed in accordance with the rules.

Insults do not a good lawyer make.

WHEREFORE, Plaintiff requests that this Court:

A. Grant Defendant's Motion to Strike and strike the original affidavit from the record;

B. Consider the Amended Affidavit (**Exhibit A**) in its stead (after giving Defendant a reasonable opportunity to challenge the Amended Affidavit if it so chooses);

C. Under Supreme Court Rule 201(c)(1) and under this Court's inherent powers, enter a protective order, protecting counsel from further offensive and unprofessional conduct, or, in the alternative, strike uncivil language from the

record, or, in the alternative, admonish opposing counsel, or, in the alternative, do all of the above; and,

D. Grant any other relief this Court deems equitable and just.

TERRY AINSWORTH

By: /s/ Dmitry Feofanov
One of his Attorneys

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Amended Affidavit of Terry Ainsworth

I, Terry Ainsworth, state that, if called to testify, I can competently testify as follows:

1. I am the Plaintiff in this case.

2. Defendant Jidd made several promises to me as part of this transaction:

a. that my financing was approved;
b. that Jidd would pay off my trade in;
c. that it would act on my behalf in arranging for a bank to buy our finance contract;
d. that, if a dispute arose, we can go to arbitration at no cost to me.

3. Defendant Jidd breached all of these promises and failed to perform in accordance with its obligations under the contract, including its obligation to act in good faith:

a. Jidd breached its promise regarding my financing by unilaterally canceling my finance contract, by asking me to sign another finance contract, and, when I refused, by "resurrecting" the previously canceled finance contract, based on the following facts:

(1) I bought the car subject to this law suit and signed the transaction documents on October 12, 2017; I turned over my trade in to Jidd on or about the same date;
(2) On our about October 30, 2017, Jidd, after falsely telling me that "financing was not approved," convinced me to sign the second finance contract. I signed the second finance contract on or about October 30, 2017, even though Jidd dated it October 12, 2017;
(3) By October 30, 2017, I was still receiving bills for my trade in, but I received nothing to allow me to make payments for my new car. I realized that Jidd failed to pay my trade in, and I became suspicious of the transaction;
(4) Some time after October 30, 2017 (I do not remember exactly when, but it was more than 21 days after October 12) Jidd wanted me to sign the third finance contract, telling me that my second finance contract was "no good" and that Jidd "lost it";
(5) I refused to sign the third finance contract and returned the car to Jidd;
(6) As I came to learn later, Jidd then took the second finance contract, which it "found," and sold it to BMW Financial; BMW Financial treated the car that I returned to Jidd as a "repo," took it, and sent me various letters informing me how it sold the car and demanding that I pay the deficiency;

(7) At no time did I authorize Jidd to proceed with the second finance contract after I refused to sign the third finance contract.

b. Jidd breached its promise to pay off my trade in within the statutorily required time; under the law, it was supposed to pay my trade-in within 21 calendar days of the sale; it did not do this, based on the following facts:

(1) I signed the first of the multiple contracts with Jidd on October 12, 2017;
(2) As part of the transaction, I turned over my trade-in vehicle to Jidd;
(3) I am aware that, under the law, Jidd was supposed to pay off my trade in within 21 days, i.e. by November 3, 2017;
(4) I have personal knowledge that Jidd did not pay off my trade-in by November 10, 2017, because I started receiving phone calls and letters from my bank informing me that my account was late;
(5) I also received and read Jidd's responses to requests to admit (Amended Response to Request to Admit No. 10) in which Jidd admitted that it did not pay off my trade in within 21 days of October 21, 2017.

c. Jidd breached its promise to act in good faith by failing to convey to me a counter-offer that I received with respect to my financing, and, moreover, breached its fiduciary obligations, based on the following facts:

(1) Among the documents I signed when I was trying to buy a car from Jidd in October of 2017, there was a finance contract;
(2) Under the terms of this finance contract, Jidd extended me credit to finance the car;
(3) I now understand that Jidd was going to sell this finance contract to a bank;
(4) In November of 2017, I received a letter from Wells Fargo Bank;
(5) In that letter, Wells Fargo informed me that it made me a counteroffer with respect to my financing, and that counteroffer was not accepted;
(6) I entrusted Jidd to deal with my financing;
(7) I have seen Jidd's sworn discovery responses in which Jidd admits that it received a counteroffer from Wells Fargo with respect to my purchase;
(8) Jidd never told me about this counteroffer and appears to have rejected it without asking me about it; Jidd did not produce a single document in discovery showing that it informed me about the counteroffer.

d. When a dispute arose, Jidd breached its promise to go to arbitration at no cost to me, based on the following facts:

Ex. A

(1) Among the documents I signed when I was trying to buy a car from Jidd in October of 2017, there was an arbitration clause;
(2) I am aware that, under the arbitration clause, Jidd was obligated to pay my filing and arbitration fees;
(3) When a dispute arose, I instructed my lawyer to file for arbitration in accordance with Jidd's arbitration clause;
(4) I have reviewed the correspondence received by my lawyer from the arbitration provider, the American Arbitration Association, which stated that Jidd, in previous cases, cheated the AAA of its fees, and was asked to remove its arbitration clause from its contracts;
(5) Jidd refused to go to arbitration in my case;
(6) In January of 2019, I instructed my lawyer to go to court to force Jidd to go to arbitration;
(7) It is my understanding (I saw Jidd's opposition paper) that Jidd resisted going to arbitration even when I took it to court;
(8) As a result of having to take Jidd to court, I had to pay a court filing fee and a sheriff's fee, which I would not have had to pay had Jidd complied with its arbitration agreement;
(9) As a result of having to take Jidd to court, I could not resolve my dispute with Jidd in a more efficient, quick, and free forum.

4. If I knew that Defendant would do things it did, like cancel my contract or did not pay my trade in on it, I would have not bought the car subject to this litigation. Defendant's actions impaired the use and value of the car to me—at a certain point I found myself not being the owner of the car, and it impacted the car's use and value to me. Or, at a certain point, I also found myself having two credit obligations instead of one.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this Amended Affidavit are true and correct.

____/s/ Terry Ainsworth_____ August 20, 2021
Terry Ainsworth

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

November 26, 2017

Adam Jidd
Jidd Enterprises LLC
855 E. Rand Road
Des Plaines, IL 60016

Via email to adam@jiddmotors.com, mark@jiddmotors.com, sean@jiddmotors.com, and via regular mail

Dear Mr. Jidd:

This office represents Terry Ainsworth, who hereby revokes acceptance of the car Mr. Ainsworth bought from Jidd Enterprises, cancels his contract with you, and notifies you of your breaches of warranties. The car is unmerchantable because it suffers from the following defects: undisclosed lease vehicle, undisclosed auction vehicle, undisclosed replacement of radiator and engine. In addition, your dealership appears to have violated the Truth in Lending Act (insofar as it listed different monthly payments in contracts Nos. 1 and 2), the Equal Credit Opportunity Act (insofar as it sent no adverse action letters pertaining to the denials of credit to Mr. Ainsworth), the Consumer Fraud Act (by selling the car without disclosing its history, as well as failing to pay the lien on Mr. Ainsworth's trade-in within 21 days), and committed a breach of contract (by sending Mr. Ainsworth a ***third*** contract, and then binding him to the second).

YOU ARE HEREBY NOTIFIED OF MY ATTORNEY'S LIEN. DO NOT COMMUNICATE WITH MY CLIENT. ALL COMMUNICATIONS MUST GO THROUGH ME.

The car will be returned to you. Please contact me ***in writing*** to arrange for the return of my client's trade-in.

Our settlement demand is a complete unwinding of the transaction, including the return of approximately $3,000 that my client invested in improving and repairing the car. If you do the right thing now, you won't have to pay my attorney fees: my client does not make any claim for attorney fees ***at this time***, he only seeks to unwind the transaction. Please do the right thing.

Very truly yours,

CHICAGOLEMONLAW.COM

/s/ Dmitry N. Feofanov

GROUP
EX, B

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

November 30, 2018

Edward M. Rothschild
Dore & Rothschild
16 Monterey Drive
Vernon Hills, IL 60061-2330

Re: Ainsworth v. Jidd

Dear Ed:

This is to memorialize that today, in open court, I offered to withdraw Count II (consumer fraud) of my complaint, which would have meant that my client would forego damages and attorney fees, if you agree to a declaration by the court that, under Count I (Dec Action, which you keep saying does not exist in my complaint) my client's contract is void. In open court, you refused to accept my offer.

If you think that I described our open court interactions incorrectly, please advise.

Best,

CHICAGOLEMONLAW.COM, P.C.

/s/ Dmitry N. Feofanov

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

June 8, 2019

Edward M. Rothschild
Dore & Rothschild
16 Monterey Drive
Vernon Hills, IL 60061-2330

Timothy V. Hoffman
Sanchez, Daniels et al.
333 West Wacker Drive, Suite 500
Chicago, IL 60601

Re: Ainsworth v. Jidd

via email to edwardrothschild66@gmail.com and THoffman@sanchezdh.com

Gentlemen (and even et al.):

This is not an offer, but only an invitation to negotiate. This "non-offer" will be in effect until the day before our next court date, i.e., June 26, 2019.

If your clients are willing, I would uptake to convince my client to settle on the following terms:

1. His deal gets undone and he receives whatever he paid out of pocket, plus $3,000.
2. Jidd buys the contract from BMW and undertakes not to go after Plaintiff for the deficiency.
3. BMW undertakes to request the deletion of his tradeline.
4. No attorney fees.

I think the parameters of the above are fairly understandable, including No. 4. Please let me know if there is any interest.

Very truly yours,

CHICAGOLEMONLAW.COM, P.C.

/s/ Dmitry N. Feofanov

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

January 31, 2020

Adam M. Berger, Esq.
Kelley Kronenberg
20 N. Clark Street, Suite 2300
Chicago, IL 60602

Re: Ainsworth v. Jidd

VIA FACSIMILE to 1-312-277-3236

Counsel:

We are still waiting for a serious settlement offer from your client. At the beginning of this case, in open court, I offered to withdraw ***the entirety*** of my client's CFA claim (meaning, he would claim ***no attorney fees***), if your client agreed to the declaration that his contract with Jidd was void. Your predecessor, whether because of his eagerness to churn the file or for some other reason, chose to reject this offer. In fact, I am not even sure the offer was communicated to your client.

In any event, now that your client churned the file and made this case into a fee monster, Plaintiff's offer to forego attorney fees is off the table. Accordingly, from this time I am going to disclose Plaintiff's attorney fees to you monthly, so that your client is aware that the entirety of attorney fees could have been avoided if its conduct from the beginning of this litigation was reasonable. At this point, Plaintiff has 57.7. hours of attorney time in this case. My court-approved rate is $475.00 per hour.

A serious settlement offer at this time would cut off your client's potential liability for Plaintiff's attorney fees, which are always a major factor in cases of this type, as well as allowing your client to prevent unnecessary incurring of attorney fees on both sides.

Very truly yours,

CHICAGOLEMONLAW.COM, P.C.

/s/ Dmitry N. Feofanov

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

March 18, 2020

Adam M. Berger
Kelley Kronenberg
20 N. Clark Street, Suite 525
Chicago, IL 60602

Timothy V. Hoffman
Sanchez Daniels
333 West Wacker Dr. Ste 500
Chicago, IL 60601

Re: Ainsworth v. Jidd Enterprises, et al.

VIA FACSIMILE to 1-312-277-3236, 1-312-641-3004

Plaintiff hereby makes the following ***non-negotiable*** settlement offer. Plaintiff will agree to settle the case on the following terms, ***all of which are material***:

A. Time is of the essence

B. Payment Terms:

- Pay off of the deficiency asserted by BMW Financial;
- Attorney fees: $0.00;
- BMW Financial to request credit bureaus to delete the account associated with this transaction;

C. Time for acceptance; time for compliance

This offer shall remain open until the end of business, March 31, 2020, and shall be automatically withdrawn if not accepted by 5:00 p.m. on that day. ***Acceptance of the offer requires receipt of a signed copy of this letter delivered to our office within that time***, either by facsimile or email. This is the entire agreement. There are no implied terms. Pay off and requests to credit bureaus must all take place within 30 days of acceptance, i.e., by May 1, 2020.

D. Dismissal with prejudice; release

- Upon compliance with the above terms, Plaintiff will dismiss his law suit, currently pending in the Circuit Court of Cook County, with prejudice, with this agreement being attached to the dismissal order as Exhibit A. Further, upon dismissal of the case, the following release shall govern:

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

March 30, 2020

Adam M. Berger
Kelley Kronenberg
20 N. Clark Street, Suite 525
Chicago, IL 60602

Timothy V. Hoffman
Sanchez Daniels
333 West Wacker Dr. Ste 500
Chicago, IL 60601

Re: Ainsworth v. Jidd Enterprises, et al.

VIA FACSIMILE to 1-312-277-3236, 1-312-641-3004

Plaintiff hereby makes the following ***non-negotiable*** settlement offer. Plaintiff will agree to settle the case on the following terms, ***all of which are material***:

A. Time is of the essence

B. Payment Terms:

- Pay off of the deficiency asserted by BMW Financial;
- Attorney fees: $0.00;
- BMW Financial to request credit bureaus to delete the account associated with this transaction;

C. Time for acceptance; time for compliance

This offer shall remain open until the end of business, April 14, 2020, and shall be automatically withdrawn if not accepted by 5:00 p.m. on that day. ***Acceptance of the offer requires receipt of a signed copy of this letter delivered to our office within that time***, either by facsimile or email. This is the entire agreement. There are no implied terms. Pay off and requests to credit bureaus must all take place within 30 days of acceptance, i.e., by May 15, 2020.

D. Dismissal with prejudice; release

- Upon compliance with the above terms, Plaintiff will dismiss his law suit, currently pending in the Circuit Court of Cook County, with prejudice, with this agreement being attached to the dismissal order as Exhibit A. Further, upon dismissal of the case, the following release shall govern:

Dmitry N. Feofanov
Attorney at Law
(815) 986-7303

CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261

April 13, 2020

Adam M. Berger
Kelley Kronenberg
20 N. Clark Street, Suite 525
Chicago, IL 60602

Timothy V. Hoffman
Sanchez Daniels
333 West Wacker Dr. Ste 500
Chicago, IL 60601

Re: Ainsworth v. Jidd Enterprises, et al.

VIA FACSIMILE to 1-312-277-3236, 1-312-641-3004

Plaintiff hereby makes the following ***non-negotiable*** settlement offer. Plaintiff will agree to settle the case on the following terms, ***all of which are material***:

A. Time is of the essence

B. Payment Terms:

- Pay off of the deficiency asserted by BMW Financial;
- Attorney fees: $0.00;
- BMW Financial to request credit bureaus to delete the account associated with this transaction;

C. Time for acceptance; time for compliance

This offer shall remain open until the end of business, May 14, 2020, and shall be automatically withdrawn if not accepted by 5:00 p.m. on that day. ***Acceptance of the offer requires receipt of a signed copy of this letter delivered to our office within that time***, either by facsimile or email. This is the entire agreement. There are no implied terms. Pay off and requests to credit bureaus must all take place within 30 days of acceptance, i.e., by June 15, 2020.

D. Dismissal with prejudice; release

- Upon compliance with the above terms, Plaintiff will dismiss his law suit, currently pending in the Circuit Court of Cook County, with prejudice, with this agreement being attached to the dismissal order as Exhibit A. Further, upon dismissal of the case, the following release shall govern:

748 Fed.Appx. 705 (Mem)
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 7th Cir. Rule 32.1.
United States Court of Appeals, Seventh Circuit.

Donaldson TWYMAN, Plaintiff-Appellee,
v.
S & M AUTO BROKERS, INC., Defendant.
Appeal of: Joel Alan Brodsky
No. 18-1811
|
Argued November 7, 2018
|
Decided January 18, 2019
|
Rehearing Denied February 11, 2019

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:16-cv-4182, Virginia M. Kendall, *Judge*.

Attorneys and Law Firms

Joel Alan Brodsky, Attorney, Law Offices of Joel A. Brodsky, Chicago, IL, Ryan T. Brown, Attorney, Gordon & Rees Scully Mansukhani, LLP, Chicago, IL, for Appellant

James J. Roche, Attorney, James J. Roche & Associates, Chicago, IL, for Defendant

Anne-Louise T. Mittal, Attorney, Thomas L. Shriner, Jr., Attorney, Foley & Lardner LLP, Milwaukee, WI, for Amicus Curiae Thomas L. Shriner, Jr.

Before ILANA DIAMOND ROVNER, Circuit Judge, DIANE S. SYKES, Circuit Judge, AMY C. BARRETT, Circuit Judge

***706 ORDER**

Joel Brodsky, counsel for the defendant in a used-car dispute, was sanctioned by the district court for a variety of statements he made and motions he filed attacking the plaintiff's counsel and expert witness. The district court imposed a $50,000 fine, which Brodsky argues was not warranted by his actions.[1] We affirm the district court's judgment because the fine was justified in light of Brodsky's extreme and repeated misbehavior.[2]

The suit underlying this appeal involved allegations that the defendant, a used-car dealership, sold the plaintiff a car whose odometer and crash records had been tampered with. Over the course of the litigation, the defendant's attorney, Joel Brodsky, made multiple accusations that the plaintiff's attorney, Peter Lubin, engaged in unprofessional, unethical, and even criminal behavior. For example, in one filing Brodsky argued that Lubin "proved by his actions that he has no interest in the truth, and just sees the litigation process as an extortion game, in which his only goal is to extort as much money as possible out of the Defendants, no matter what the truth is." In another he said that "[t]he Plaintiff['s] Motion for Partial Summary Judgment is, like the entire Plaintiff['s] case, a total and complete fraud, submitted for the sole purpose [of] assisting the Plaintiff['s[ ] attorneys in their attempt to use the legal system to extort money from the Defendant." During Lubin's deposition of a defense witness Brodsky put an even finer point on it, claiming that Lubin was part of a "criminal enterprise" that "totally concocted, fabricated [this entire case] in an attempt to make money where there is no case at all." And Brodsky sent a number of inflammatory emails to Lubin and his team echoing these accusations.

Brodsky also went after the plaintiff's expert witness, Donald Szczesniak. Brodsky accused Szczesniak of fabricating expert reports in this and other cases, and he submitted an affidavit from one of Szczesniak's former clients, Diane Weinberger, to support his accusations. Two weeks later, Brodsky filed a motion asking the district court to hold Szczesniak in criminal contempt and to refer him for prosecution to the United States Attorney. In that motion Brodsky accused Szczesniak of damaging a ***707** fence at Weinberger's home in order to intimidate her into not testifying against him and of sending Brodsky an anonymous fax to discourage Brodsky's own investigation into Szczesniak's background. The district court summarily denied the motion, explaining that "[t]he judicial branch does not direct the executive branch to bring criminal prosecutions." Undeterred, Brodsky filed a motion for sanctions against both the plaintiff and Szczesniak. The plaintiff denied the allegations regarding the damaged fence and the anonymous fax and submitted affidavits from Szczesniak, his wife, his mother, and his son that showed Szczesniak had been elsewhere at the time of the incidents. Brodsky responded by alleging that Szczesniak had lied in his affidavit and questioning whether Szczesniak's son even existed. Szczesniak sought and received permission from the court to respond directly to Brodsky's accusations, and Brodsky continued to accuse him of falsifying reports and engaging in a "routine practice of intimidation and retaliation."

Exhibit C

Brodsky's misconduct ultimately eclipsed the lawsuit. The parties settled their dispute, but the court retained jurisdiction to determine whether Brodsky should be sanctioned. During the court's three-hour evidentiary hearing, Szczesniak and Lubin both testified and were subject to cross-examination regarding Brodsky's accusations against them. Brodsky, however, declined to testify or offer any new evidence in his defense (apart from a copy of Weinberger's report to the police about the damage to her fence). In lieu of testifying, Brodsky asked for and received permission to make a statement apologizing for his conduct.

The district court decided to sanction Brodsky under its inherent authority. The court noted Brodsky's "unprofessional, contemptuous, and antagonistic behavior directed at opposing counsel" throughout the litigation but focused primarily on his allegations and attacks levied against Szczesniak. It described these actions as "wildly inappropriate" and concluded that they were undertaken "in bad faith, in an attempt to improperly impugn Szczesniak's reputation before the Court, to have the Court potentially disqualify him as an expert, or at least [to] intimidate Szczesniak to the extent he would not testify." The court also found Brodsky's attempts at mitigation to be "wholly inadequate for his egregious conduct." Based on these findings, the court directed Brodsky to (1) pay a $50,000 fine to the clerk of the district court, (2) attend an ethics course approved by the Illinois Attorney Registration and Disciplinary Commission, and (3) attend an anger management class. The court also referred Brodsky to the district court's executive committee to consider barring or suspending him from practicing law in that district.

There are various sources of authority that empower a court to sanction parties or attorneys who appear before it. The court in this case relied on its inherent power "to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Its exercise is appropriate against offenders who willfully abuse the judicial process or otherwise conduct litigation in bad faith. *Salmeron v. Enter. Recovery Sys., Inc.*, 579 F.3d 787, 793 (7th Cir. 2009). Sanctions may be imposed "not only to reprimand the offender, but also to deter future parties from trampling upon the integrity of the court." ***708** *Dotson v. Bravo*, 321 F.3d 663, 668 (7th Cir. 2003). When sanctioning is warranted, a "district court has discretion to select an appropriate sanction, [but] the court must impose a sanction that fits the inappropriate conduct." *Burda v. M. Ecker Co.*, 2 F.3d 769, 776 (7th Cir. 1993) (citation omitted). Our review of that discretion is deferential. *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC*, 516 F.3d 623, 625 (7th Cir. 2008).

The district court did not abuse its discretion here. While it would have been preferable for the court to state expressly the basis for the size of its fine, Brodsky's egregious behavior, obvious on the face of the record and emphasized at length by the court, more than justified the court's choice of sanction. Brodsky's rhetoric was inappropriate and outlandish, and his attempt to implicate the court in his fraud—and to use legal process as a tool to intimidate a witness—was beyond the pale. On this record, we have no trouble affirming the district court's decision.

AFFIRMED.

All Citations
748 Fed.Appx. 705 (Mem)

Footnotes

[1] Brodsky also argues that the $50,000 sanction was punitive and so could not have been imposed without more procedural protections than he received, citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994), and *Goodyear Tire & Rubber Co. v. Haeger*, —— U.S. ——, 137 S.Ct. 1178, 197 L.Ed.2d 585 (2017). Because Brodsky fails to identify any way in which additional procedures might have made a difference in his case, we decline to address this argument.

[2] We appointed Thomas L. Shriner, Jr. as amicus curiae to defend the district court's decision. Mr. Shriner has ably discharged that responsibility, for which we thank him.

ELECTRONIC FILING PROCEDURES AND USER MANUAL

FOR THE SUPREME COURT OF ILLINOIS

1. **Electronic Filing Required in Civil Cases**. Unless exempt, all documents in civil cases on the Court's General Docket shall be filed with the Court electronically in accordance with the Court's Order entered on January 22, 2016 in *In re: Mandatory Electronic Filing* in Civil Cases (M.R. 18368) and any amendments thereto, Supreme Court Rules and as provided in this *Supreme Court of Illinois Electronic Filing Procedures and User Manual ("Manual")*. Documents filed in people cases on the Court's General Docket and documents filed on the Court's Miscellaneous Record Docket (MR Docket) may be filed electronically.

2. **Definitions.** The following terms shall be defined as follows:
    a. **"Electronic Filing Service Provider" (EFSP)** means an approved vendor for electronic filing in the State of Illinois at http://efile.illinoiscourts.gov/service-providers.htm.
    b. **"Electronic Filing Manager" (EFM)** means a solution approved by the Court that enables documents to be filed, served, and distributed electronically while integrating with both the EFSPs and the Court's case management system.
    c. **"Public Access Terminal"** means a publicly accessible computer and scanner provided by the Court for the purposes of facilitating electronic filing with the Court. Public access terminals are available during normal business hours in the Supreme Court Clerk's office in Springfield and its satellite office in Chicago.
    d. **"Electronic Filing"** (e-filing) means filing a digital document with the Court directly from the registered user's computer or a Public Access Terminal using an approved EFSP.
    e. **"Transaction Confirmation"** means a confirmation that is transmitted to a registered user after the user has submitted a transaction through an EFSP to the Court. At a minimum, the transaction confirmation displays an envelope number and the date and time the transaction was submitted by the registered user through the EFSP. The transaction confirmation may serve as the filer's proof of submission.
    f. **"Envelope Number"** means a unique number assigned by the EFM to each e-filing transaction and may be used to track an e-filing transaction.
    g. **"PDF"** means Portable Document Format, a proprietary file format developed by Adobe Systems, Inc.
    h. **"Registered User"** means an individual who has registered a username and password with the EFM.

Exhibit D

i. **"Technical Failure"** means a malfunction of the EFM, EFSP, or the Court's hardware, software, and or telecommunications facility which results in the inability of a registered user to submit a document for e-filing. It does not include the failure of a user's equipment.

3. **Secured Documents.**
   a. Confidential, impounded, sealed or otherwise secured documents ("secured") shall be submitted only when clearly designated as such at the time of filing.
   b. Motions for leave to file a secured document may be e-filed and must be designated as such at the time of submission. The secured document shall be submitted at the same time as the motion, but in a separate transaction than the transaction containing the motion.

4. **Registration, Change of Contact Information, Usernames and Passwords.**
   a. Registration to become a user through eFileIL is available on an approved EFSP's website. For a list of approved EFSP vendors, visit http://efile.illinoiscourts.gov/service-providers.htm.
   b. The registrant shall provide the EFSP the requested registration information, including a secure username and password. This username and password shall also function as a signature on each e-filed document, as provided in paragraph 6, and will authorize payment of all filing fees and service fees, if any, as provided in paragraph 10.
   c. If an attorney is suspended or disbarred by the Court, his or her e-filing account access will be suspended.
   d. The Court reserves the right to revoke a registered user's privileges with or without cause.
   e. Once registered, it is the responsibility of the registered user to keep his or her e-mail address and other contact information current with the Court and the EFSP.

5. **Format of e-filed document.**
   a. Except as otherwise provided, an e-filed document shall comply with current Supreme Court Rules, including but not limited to page and word limitations, page size, font type, margin width and font size.
   b. An e-filed document must be in text-searchable PDF format compatible with the latest version of Adobe Reader. Except as otherwise provided by this manual, an e-filed document created by a word processing program must not be a scan of the original but must instead be converted directly into a PDF file using Adobe Acrobat, a word processing program's PDF conversion utility, or another software program. Whenever possible, scanning should be avoided.

c. If scanning is unavoidable, the scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat Professional, and have a resolution of 300 dots per inch (dpi) with a "black and white" setting.
d. The size of any single transaction shall not exceed 150 megabytes.
e. Documents in different cases submitted in a single transaction will be rejected.
f. Documents submitted for e-filing shall include a proof of service for the filing and any other item required by Supreme Court Rules as a single file and be placed at the end of the document.
g. If a document requires leave of Court before filing, the registered user shall attach the proposed document as an exhibit to the motion for leave in a single transaction. The proposed document shall also be submitted for e-filing, but in a separate transaction than the transaction containing the motion requesting leave.
h. Appendix materials may be scanned if necessary, but scanning should be avoided when possible. An appendix shall be combined into one computer file with the document it is associated with for purposes of e-filing, unless the resulting computer file would exceed 150 megabytes. In such case, the registered user is responsible for dividing the document into appropriately sized parts, with each part having a separate cover page that labels each part of the appendix (e.g. Appendix, Part 1; Appendix, Part 2 etc.), and submitting the parts in separate transactions that do not exceed 150 megabytes.
i. An e-filed document item may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record citation. A hyperlink within an appendix item is also permitted. Any external material behind the link is not considered part of the e-filing.
j. An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the registered user that the document has been checked for viruses and malware.
k. A document requiring a specific color cover page pursuant to Supreme Court Rule 341 shall be submitted for e-filing in compliance with Rule 341. Upon acceptance and filing, the paper copies submitted to the Clerk's office pursuant to paragraph 8 of this manual shall also contain the appropriate color cover page and be the printed version of the e-filed document bearing the Clerk's electronic stamp.
l. The Court may reject an e-filed document for nonconformance with this manual or Supreme Court Rules.

6. **Signatures on e-filed documents.**
    a. Except as otherwise provided, the confidential, secure username and password that the registered user must use to e-file a document constitute the registered user's signature on the document, in compliance with requirements of Supreme Court Rules and statutes regarding original signatures on Court documents. When a signature is provided in this manner, the registered user must also include either an "/s/" and the registered user's name typed in the space where the registered user's signature would otherwise appear or an electronic image of the registered user's signature, which may take the form of a public key-based digital signature or a scanned image of the registered user's signature.
    b. The registered user shall not allow his or her username or password to be used by anyone other than an agent who is authorized by the registered user.
    c. If a document is notarized, sworn to or made under oath, the registered user must e-file the document as a scanned image containing an image of the necessary original signature(s). A document certified pursuant to Section 1-109 of the Code of Civil Procedure may contain an electronic signature as described in subparagraph a.
    d. If a document requires the signature of an opposing party, the registered user must e-file the document as a scanned image containing the opposing party's signature.

7. **Timing of e-filing; mechanics.**
    a. The EFSP and the EFM are agents of the Court for the purpose of e-filing and receipt of electronic documents. Upon submission of an e-filed document, the EFSP will email to the registered user a transaction confirmation which shall serve as proof of submission.
    b. A document will be considered timely submitted if e-filed before midnight on or before the date on which the document is due.
    c. A document submitted electronically after midnight or on a day when the Clerk's office is not open for business will, unless rejected, be file stamped as filed on the next day the Clerk's office is open for business.
    d. An e-filed document submitted to the Clerk for filing shall be deemed filed upon review and acceptance by the Clerk. The filed document shall be endorsed with the clerk's electronic file mark setting forth, at a minimum, the identification of the Court, the Clerk, the date and the time of filing.
    e. After the Clerk reviews an e-filed document, the registered user will receive an e-mail notification of the review results.
    f. In the event the Clerk rejects a submitted document, the document will not be filed and the registered user will receive an electronic notification of the reason(s) for the rejection.

g. A document requiring a motion and a Court order allowing its filing that is properly e-filed pursuant to subparagraph d of paragraph 5 of this manual, will be deemed filed on the date the motion is granted.
h. If an e-filed document is untimely due to a technical failure or a system outage, the registered user may seek appropriate relief from the Court, upon good cause shown.

8. **Paper Copies.**
   a. Upon acceptance of the following document types: briefs, petitions for rehearing, petitions for leave to appeal and any answers to a petition for leave to appeal or petition for rehearing, the registered user shall provide thirteen (13) duplicate paper copies to the Clerk's office in Springfield. Said copies shall be received in the Clerk's office within five (5) days of the electronic review notification generated upon acceptance of the e-filed document.
   b. The paper copies must comply with applicable Supreme Court Rules, including the color cover requirement in Supreme Court Rule 341, if applicable, and shall be the printed version of the e-filed document bearing the Clerk's electronic file stamp.

9. **Proof of Service.**
   a. A document filed electronically shall be served on all parties and/or counsel of record in accordance with Supreme Court Rules. The proof of service shall advise all parties and/or counsel of record the document was served and filed by electronic means on the Clerk's office.
   b. If a document requires a Court order allowing its filing, no additional proof of service is required as long as the original proof of service filed along with the motion for leave to file the document includes a reference to the unfiled document and is served on all parties and/or counsel of record.

10. **Payment of Filing Fees.**
   a. Registered users e-filing documents shall pay the applicable filing and appearance fees electronically to the Court through the EFSP at the time of e-filing.
   b. Registered users requesting waiver of fees shall file an application for waiver of fees pursuant to Supreme Court Rule 298. The application shall be a separate transaction from the transaction containing the document for filing. If the application for waiver is denied, the fee will be due and owing.

Approved: June 7, 2017, eff. July 1, 2017; revised November 13, 2017; revised July 27, 2018.