

MOTION FOR SANCTIONS AGAINST APPELLANT
MISSOURI MUNICIPAL LEAGUE, ET. AL.

COMES NOW Respondent Ronald J. Calzone and moves this court for an order providing sanctions against appellants Missouri Municipal League, et. al. for violations of Court Rule 55.03(c)(1).

1. The violations, which are documented in the attached exhibits, include the following act: Presenting and maintaining a claim for an improper purpose, specifically to cause unnecessary delay to the signature gathering of the movant through prolonged litigation.

2. Rule 55.03(c) prohibits presenting or maintaining a claim for an “improper purpose”, such as “caus[ing] unnecessary delay or needless increase in the cost of litigation.” It should be noted that 55.03(c) places a higher bar than the various rules relating to frivolous actions, which have been construed to apply only if an action is devoid of merit. The clear language of 55.03(c) apply to actions which purpose *includes* to a substantial degree any of the “improper purpose[s]”.

55.03(c). By presenting and maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, or other paper filed with or submitted to the court, an attorney or party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(1) The claim, defense, request, demand, objection,

contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (emphasis added)
Mo. Supreme Court Rule 55.03(c).

3. Appellants' litigation has been protracted and resulted in delay to the movant's signature gathering efforts – delay which should be considered particularly significant in light of the constitutionally limited time-frame to collect signatures for a ballot initiative. To be considered valid, signatures must be on petition sheets bearing the official ballot title. §§ 116.120, 116.180 RSMo. Therefore collecting signatures while a ballot title challenge is pending is inordinately risky, since a court ordered change to the ballot title would render previously collected signatures invalid.

4. While it is true that any Missourian has the right to a legitimate challenge to the ballot title of an initiative petition, to challenge it for the purpose of delay is an affront to the petition proponent's constitutional right to the initiative process and a violation of court rules.

5. Although a litigant's motives are not always easy to determine, in the instant case the appellants counsel themselves have publicly admitted their purpose for bringing suit was “to delay the gathering of signatures”. Exhibit SANC-B is the affidavit of David E. Roland Esq. (Mo. Bar #60548). Mr. Roland was an eye and ear witness to comments made by a managing partner of the Appellants' counsel, one Carrie Hermeling. In a meeting of the Missouri Bar's Eminent Domain Committee, Ms. Hermeling had the opportunity to provide an update on the progress of their litigation. In the ensuing

statement she clearly revealed that the purpose of their challenge was in violation Rule 55.03(c). She said:

"It's not a real big update, but. .. um... from the standpoint of the initiative petition, uh, we did partially win, uh, in the ... at the trial court level and it's on expedited appeal for the western district, um, which will be argued in December, with the main objective being to delay the gathering of signatures and, um, hopefully we're... we're accomplishing that." (emphasis added) Affidavit of David Roland at 13 and on audio file, Exhibit SANC-A at 4 minutes 23 seconds into the recording.

6. The court may impose sanctions on parties found in violation Rule 55.03(c).

If after notice and a reasonable opportunity to respond the court finds that Rule 55.03(c) has been violated, the court, subject to the conditions below, may impose an appropriate sanction upon the lawyers, law firms, or parties that have committed or are responsible for the violation. (emphasis added) Mo. Supreme Court Rule 55.03(d).

7. A motion is the proper means of initiating a sanction. Such motion is not to be filed or presented to the court until the other party has first been served and given at least 30 days to correct the violation.

A motion for sanctions under this Rule 55.03 shall be made separately from other motions or requests and shall describe the

specific conduct alleged to violate Rule 55.03(c). The motion shall be served as provided in Rule 43.01. The motion shall not be filed with or presented to the court unless, within 30 days after service of the motion, the challenged claim, defense, request, demand, objection, contention, or argument is not withdrawn or appropriately corrected. (emphasis added) Mo. Court Rule 55.03(d)(1)(A).

8. The court can take action on its own initiative, ordering an offender to correct infractions, even in the absence of actions by any of the litigants.

On its own initiative the court may enter an order describing the specific conduct that appears to violate Rule 55.03(c) and directing a lawyer, law firm or party to withdraw or correct the questioned claim, defense, request, demand, objection, contention or argument or to show cause why it has not violated the rule with respect thereto. (emphasis added) Mo. Supreme Court Rule 55.03(d)(1)(B).

9. The Rules intend for sanctions to be a deterrent to similar future conduct “by others similarly situated”. Such sanctions can be monetary payments to the movant for “attorney's fees and other expenses.”

A sanction imposed for violation of this Rule 55.03 shall be limited to that which is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. Subject to the

limitations in Rule 55.03(d)(1), the sanction may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation. (emphasis added) Mo. Supreme Court Rule 55.03(d)(2)

10. At least part of expenses incurred by movant as a result of the Rule 55.03(c) violation are easily estimated by those skilled in the art of petition management. Exhibit SANC-C is the affidavit of Michael Arno, president of Arno Political Consulting and among the most experienced petition managers in the nation. Mr. Arno's firm is the company movant has selected to manage his petition drive. His affidavit indicates that the ballot title litigation has resulted in an increased cost of approximately \$350,000, assuming the official ballot title will be finally determined in January, 2010. The deadline for filing initiative petitions is May 2, 2010. Mo. Const. Art III § 50.

11. Additional monetary expenses incurred by the movant include his time spent in litigation, acting pro se and the impact that delay has on fund raising efforts.

12. An intangible expense to movant and the other Missourians desirous of the opportunity to vote on the subject amendments, is the increased risk of failure of the petition drive resulting from a diminished time-frame in which to collect signatures.

13. It is probably not possible for the court to access sanctions against Appellant Missouri Municipal League to an extent that will make movant whole, but the nearest

approximation would be to order monetary sanctions equivalent to the increased cost of collecting signatures caused by their delay tactics plus litigation costs.

14. The court has a particularly grave responsibility in the present matter, as admonished by the Missouri Supreme Court: “When courts are called upon to intervene in the initiative process, they must act with restraint, trepidation and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course.” (emphasis added) *Missourians to Protect the Initiative Process v. Blunt* 799 S.W.2d 824 (Mo. Banc 1990)

WHEREFORE this movant prays the court consider the evidence before it and take appropriate action to make movant as near whole as possible and in accordance with Missouri Supreme Court Rules, movant's constitutional right to the ballot initiative process, and in keeping with Justice.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

This is to certify that on the 14 day of December, 2009, a copy of the above and foregoing Motion for Sanctions was served by U.S. Mail, first class postage prepaid and by electronic mail to each of the following and by facsimile to Robert Hess at approximately 4:25 p.m.

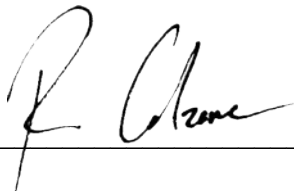
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ATTORNEYS FOR PLAINTIFFS

By  _____

December 14, 2009

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IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MISSOURI MUNICIPAL LEAGUE,)
ERIC D. SCHNEIDER,)
MICHAEL E. PALMER,)
and)
HOWARD C. WRIGHT)

Appellant-Respondents,)

v.)

ROBIN CARNAHAN, Missouri Secretary)
of State,)

Respondent-Appellant,)

and)

SUSAN MONTEE, Missouri State Auditor,)

Respondent,)

and)

RON CALZONE,)

Respondent.)

Court of Appeals
Case No. WD71224 (consolidated
with WD71230)

AFFIDAVIT OF DAVID E. ROLAND, ESQ.

Comes the affiant, under oath, and does depose and say the following:

1. I, David E. Roland, am over the age of eighteen and the following is based upon my personal knowledge.
2. I am a practicing attorney in the State of Missouri (Bar #60548) with an office located at 5938 De Giverville Ave., St. Louis, Missouri 63112.
3. On November 20, 2009, I attended a meeting of the Missouri Bar Association's Eminent Domain Committee, of which I am a member.
4. In the course of that meeting, I took notes with a LiveScribe pen, which in addition to being a writing utensil allows the user to make an audio recording of the event at which the user is taking notes.
5. At no point in the committee meeting did any speaker indicate that the statements made by themselves or others should be considered to be made in confidence, off the record, or in any way otherwise privileged.
6. The Eminent Domain Committee meeting was chaired by Mr. Bob Denlow, whom I know personally and with whom I have interacted on several occasions.
7. At the beginning of the meeting, Mr. Denlow asked each attendee to identify themselves.

8. About this time, at approximately 10:07 a.m., I activated the LiveScribe pen's recording capabilities and recorded the next fifty-nine (59) minutes and four (4) seconds of the meeting.

9. About forty-two (42) seconds after I began this first recording, a woman sitting in the room identified herself as "Carrie Hermeling, St. Louis".

10. Toward the end of the meeting, at approximately 11:29 a.m., I began recording a second segment of the conversation that lasted about nine (9) minutes and forty-six (46) seconds.

11. About four (4) minutes and twenty-three (23) seconds into that portion of the meeting, the discussion turned to the subject of the litigation surrounding the Missouri Citizens for Property Rights initiative petition to amend the Missouri Constitution's eminent domain provisions.

12. At that point, Mr. Denlow indicated the woman who had identified herself as Carrie Hermeling, and said "We should point out, Carrie's firm is handling it... it's on appeal right now."

13. Immediately following Mr. Denlow's comment, Ms. Hermeling stated: "It's not a real big update, but... um... from the standpoint of the initiative petition, uh, we did partially win, uh, in the... at the trial court level and it's on expedited appeal for the western district, um, which will be argued in December, with the main objective being to delay the gathering of signatures and, um, hopefully we're... we're accomplishing that."

14. I hereby verify that the shorter of the aforementioned recordings recovered from the LiveScribe pen has been transferred to a CD to be provided to the court, and that this recording accurately reflects the conversations as they took place at the Eminent Domain Committee Meeting; they have not been altered or edited in any way.

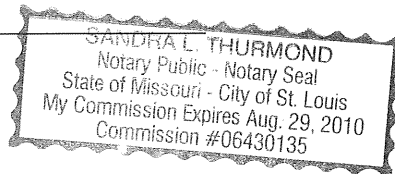
Further affiant saith not.

David E. Roland
David E. Roland, Esq.

Sworn to and subscribed before me this 11th day of December, 2009.

Sandra L. Thurmond
Notary Public

My Commission Expires: _____



CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the labeled disk simultaneously filed and served with the hard copy of this motion has been scanned for viruses and is virus free.

