

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VALENTINA SHESTAWY, <i>ET AL.</i>	§	
	§	
VS.	§	
	§	C.A. No. 4:16-cv-00733
CONSERVATIVE CLUB OF HOUSTON, INC., a.k.a. “C CLUB PAC”, <i>ET AL.</i>	§	
	§	
	§	

**MOTION TO SET ATTORNEY’S FEES AND COSTS IN ACCORDANCE WITH THE
FIFTH CIRCUIT COURT OF APPEALS JULY 12, 2021 ORDER**

I.

BACKGROUND LEADING TO THE FIFTH CIRCUIT’S JULY 12, 2021 ORDER

A. In 2014, Plaintiffs lost their underlying probate case in state court.

Plaintiffs Don Peterson, Lonnie Peterson, and Mackey Peterson and their counsel, Donald Cheatham,¹ filed this lawsuit to re-litigate their losses in a state probate case involving the Estates of Adel Sheshtawy and Ruby Peterson, the Peterson Family Trust II, and the Rizk Estate.² Plaintiffs not only lost the underlying state case, but their pleadings in that matter were so offensive that the Honorable Loyd Wright sanctioned them in a November 14, 2014 ruling:

...the allegations complained of did not have evidentiary support nor were they at the time of signing, likely to have evidentiary support after a reasonable opportunity for further investigation. The Court further finds that, at the time of signing of the offensive pleadings and motion, this action has been on file for approximately eight (8) months, that Ruby S. Peterson's medical records and pertinent financial records had been provided to Plaintiffs and their counsel, and that Plaintiff Respondents and their Attorneys had a reasonable opportunity to investigate the truthfulness or falsity of their claims and allegations prior to signing the pleadings and motion made the subject of this Motion for Sanctions.³

¹ Several additional plaintiffs and one attorney have since abandoned this litigation. The Petersons and Cheatham are collectively referred to as “Plaintiffs”.

² Doc. 1.

B. In 2016, Plaintiffs filed this lawsuit against the probate judges, court personnel, and attorneys, and accused them of conspiracy to take over the Probate Court.

On March 18, 2016, Plaintiffs filed this lawsuit against Judge Wright, Associate Judge Stiles, and Court Coordinator Kimberly Hightower in this Court for RICO conspiracy, fraud, and breach of fiduciary duty, and accused them of conspiring with more than 30 people to “cheat them out of property” by “tak[ing] over” Harris County Probate Court One. The complaint alone is 192 pages with 1,085 pages of exhibits. On June 8, 2016, Plaintiffs amended to add Harris County as a Defendant, despite clear law establishing that RICO claims cannot be asserted against governmental entities.⁴

C. In 2016, this Court sanctioned Plaintiffs and awarded \$4,500 in attorney’s fees for filing frivolous motions, and up to an additional \$45,000 in conditional attorney’s fees if Plaintiffs appealed.

Defendants moved to dismiss and requested sanctions. After providing Plaintiffs more than adequate opportunity to explain their allegations, this Court concluded there was no federal jurisdiction and dismissed Plaintiffs claims. The Court initially declined to award sanctions, but noted that Plaintiffs’ “argument is pure zanyism.”⁵

On November 4, 2016, Plaintiffs filed a 47-page motion for new trial,⁶ which failed to address the jurisdictional defects pointed out by the Court, failed to show any newly discovered evidence, and failed to even attempt to meet the burden of showing manifest error of law. This lengthy motion simply repeated the same discredited claim that judges and court personnel conspired to defraud them. On December 14, 2016, this Court held:

Initially, the Court was of the opinion that any sanctions motions could be handled in state court where the relevant case(s) are pending. It was, therefore, the

³ Doc. 239-4 at 3.

⁴ Doc. 102.

⁵ Doc. 320 at 9.

⁶ Doc. 322.

Court's view that dismissal, without entering sanctions, would leave the 'door' open for state review of the plaintiffs and their attorneys' conduct. However, the plaintiffs insist on further burdening the Court and the defendants with a post-dismissal motion; a motion that is without meaningful or substantive facts or arguments. To that end, the Court GRANTS the defendants' join motion for sanctions based on the following findings of fact and conclusions of law. . . ⁷

This Court made 54 detailed findings of fact and conclusions of law, which included:

- (1) A finding that sanctions are appropriate under Rule 11 because Plaintiffs made arguments that are factually frivolous and have no evidentiary support.⁸
- (2) A finding that sanctions are appropriate under 28 U.S.C. § 1927 because there is clear and convincing evidence that "every facet of the litigation was patently meritless," plaintiffs' November 4, 2016 motion for new trial was made with "bad faith, improper motive, and reckless disregard of the duty owed to the court by counsel for plaintiffs," and "counsel has "multiplied the proceedings unreasonably and vexatiously" even after "[t]he Court identified for Mr. Cheatham and Mr. Gabel that the RICO arguments being made were 'pure zanyism.'"⁹
- (3) A finding that sanctions are appropriate under the Court's inherent powers because Plaintiffs engaged in bad faith by "persisting in claims against a Probate Court Judge, an associate judge, a court coordinator, opposing counsel, associates that work at opposing law firms, court appointed ad-litem and guardians" even after Plaintiffs were advised of the "non-meritorious nature of the lawsuit."¹⁰

The Court awarded Harris County monetary sanctions of \$1,500 for responding to Plaintiffs' November 4, 2016 Motion for New Trial.¹¹ The Court awarded Underwood, Jones & Scherrer, PLLC ("Jones") monetary sanctions of \$3,000 for responding to Plaintiffs' November 4, 2016 Motion for New Trial.¹²

The Court also awarded Harris County and Jones each \$15,000 conditional monetary

⁷ Doc. 337 at 1.

⁸ Doc. 337 at ¶¶ 16-20.

⁹ Doc. 337 at ¶¶ 21-33.

¹⁰ Doc. 337 at ¶¶ 34-37.

¹¹ Doc. 337 at ¶ 42. This was to be paid in the following amounts: \$500 by Donald Cheatham, \$500 by Christopher Gabel, \$250 by Don Peterson, Mackey Peterson, and Lonny Peterson, and \$250 by Valentina Spassova.

¹² Doc. 337 at ¶ 40. This was to be paid in the following amounts: \$1,000 by Donald Cheatham, \$500 by Christopher Gabel, and \$500 each, totaling \$1,500 by Don Peterson, Mackey Peterson, and Lonny Peterson.

sanctions if Plaintiffs appealed to the Fifth Circuit Court of Appeals and \$7,500 if Plaintiffs filed a Petition for Writ of Certiorari to the United States Supreme Court.¹³

D. In 2017 and 2018, Plaintiffs appealed this Court’s sanctions award and lost.

Knowing that they would be required to pay attorney’s fees if they filed an unsuccessful appeal, Plaintiffs filed a Notice of Appeal on January 11, 2017.¹⁴ On September 14, 2017, the Fifth Circuit Court of Appeals affirmed this Court with a *per curiam* opinion which held “the district court’s order granting sanctions thoroughly and sufficiently lays out the basis supporting its imposition of sanctions.”¹⁵

Plaintiffs unsuccessfully moved for rehearing and filed a Petition for Writ of Certiorari with the United States Supreme Court, which was denied March 19, 2018. At this point, Plaintiffs owed Harris County \$24,000 and Jones \$25,500 in attorney’s fees, for a total of \$49,500. Plaintiffs have not paid any of the fees owed.

E. Rather than pay this Court’s judgment, Plaintiffs sued the attorneys to whom they owe money.

Once this Court’s December 14, 2016 Order Granting Sanctions became final and non-appealable, Jones contacted Donald Cheatham inquiring when he and his clients would pay the sanctions assessed against them. Rather than pay the sanctions as ordered, Don Peterson, Lonnie Peterson, Mackey Peterson and Donald Cheatham *sued* Jones and Underwood, Jones & Scherrer, PLLC *again*—in a dilatory effort to avoid paying sanctions—this time in state district court alleging spurious causes of action for breach of contract, breach of fiduciary duty and fraud.¹⁶ State District Court Judge Mike Engelhart summarily dismissed each of the Petersons’ causes of

¹³ Doc. 337 at ¶¶ 50-51.

¹⁴ Doc. 338.

¹⁵ *Sheshtawy v. Gray*, 697 F. App’x 380, 383 (5th Cir. 2017).

¹⁶ *See* Cause No. 2018-50472; *Don Peterson, et al. v. Russ Jones, et al.*; in the 151st Judicial District Court

action on Jones' motion for summary judgment.

F. In 2020, Plaintiffs unsuccessfully attempted to reopen this case.

After having their petition rejected by the nation's highest court—and with \$49,500 in delinquent fees owed to Harris County and Jones—and having their dilatory and frivolous pleadings against Jones summarily dismissed in state court, Plaintiffs waited until January 15, 2020 and then unexpectedly filed a motion to reopen this case, vacate the judgment, and seek relief from the sanctions awarded in 2018.¹⁷ That motion makes rambling and irrelevant references to documents as varied as the Congressional Report, the Magna Carta and Declaration of Independence, yet it failed to provide any legitimate reason the district court, Fifth Circuit Court of Appeals, and United States Supreme Court acted improperly in awarding, affirming, and declining to hear a petition for review on their sanctions.

G. In 2020, Plaintiffs filed yet another appeal, and the Fifth Circuit Court of Appeals remanded the case with instructions to impose new sanctions.

On February 11, 2020, this Court denied Plaintiffs' motion to reopen the case and vacate judgment, and maintained the sanctions award against Plaintiffs.¹⁸ By March, 2020, the record in this case was already 9,103 pages. On March 10, 2020, Plaintiffs filed yet another appeal,¹⁹ and Defendants moved for additional appellate sanctions.

On April 6, 2021, the Fifth Circuit Court of Appeals affirmed this Court in all respects and noted that this Court provided Plaintiffs “‘more than 40 opportunities’ to drop their claims and received ten safe harbor letters from the defendants, yet they pressed on.”²⁰ On July 7, 2021, Plaintiffs filed a Petition for Writ of Certiorari with the United States Supreme Court, which is

of Harris County, Texas.

¹⁷ Doc. 346.

¹⁸ Doc. 356.

¹⁹ Doc. 357.

pending. On July 12, 2021, the Fifth Circuit Court of Appeals issued the following Orders:

IT IS ORDERED that Appellees' joint opposed motion to remand the case to the district court to determine amount of attorneys' fees and costs is GRANTED.

IT IS FURTHER ORDERED that Appellees' joint opposed motion for sanctions against Don Peterson, Lonnie Peterson, and Mackey Peterson (collectively, "the Petersons"), and Donald Cheatham is GRANTED.

IT IS FURTHER ORDERED that Appellees' joint opposed motion to assess double costs against the Petersons is GRANTED.²¹

Harris County and Jones respectfully file this motion to assist the Court in determining the appropriate amount of attorney's fees and sanctions to award.

II. REASONABLE SANCTIONS AND ATTORNEY'S FEES

A. New appellate fees of \$25,000 to each defendant.

Harris County and Jones each respectfully request an additional \$25,000 in attorney's fees to respond to Plaintiff's 2020 appeal and 2021 Petition for Writ of Certiorari to the United States Supreme Court.²² Harris County and Jones further request conditional attorney's fees of \$500 per hour for any additional time incurred defending this long-closed case.²³

B. Bar against filing further pleadings in this District without leave of court until all attorney's fees are paid.

Harris County and Jones further respectfully request that this Court follow the lead of Texas state courts and declare Don Peterson, Lonnie Peterson, and Mackey Peterson and their counsel, Donald Cheatham, vexatious litigants and bar them from filing any future pleadings in this District (including this case) without seeking permission from the Court.

²⁰ *Peterson v. Jones*, 20-20130, 2021 WL 1277942, at *1 (5th Cir. Apr. 6, 2021).

²¹ Exhibit 1, *Don Peterson; Mackey Peterson; Lonny Peterson v. Russ Jones; Underwood, Jones, Scherrer, P.L.L.C.; Harris County, Texas*, No. 20-20130, July 12, 2021 Order.

²² Defendants filed waivers of their responses and are waiting for further instruction from the United States Supreme Court.

Last year, the Fifth Circuit Court of Appeals upheld a similar bar against a former attorney who filed a nearly 500-page complaint alleging a RICO conspiracy by various Texas public officials and entities. The district court adopted the magistrate judge's report and recommendation to dismiss the case with prejudice as frivolous and permanently bar the former attorney "from filing future complaints in the Western District of Texas absent leave of court."

The Fifth Circuit affirmed this bar:

The district court did not abuse its discretion by dismissing Barnes's complaint as frivolous. Her claims are untethered from both law and fact and are thus clearly meritless. The rest of the complaint is a list of general grievances unrelated to any legally cognizable right. For similar reasons, this appeal is frivolous as well.⁵ See *Buck v. United States*, 967 F.2d 1060, 1062 (5th Cir. 1992) (per curiam). We also agree with the district court that Barnes's recusal motion was, like the complaint, "frivolous in all respects." Lastly, the filing restriction was not an abuse of discretion: The magistrate judge's report recounts Barnes's history as a vexatious litigant, which more than adequately supports this measure.²⁵

If the Court is not inclined to permanently require the Petersons and their counsel to seek permission prior to filing pleadings in this District, at a minimum, Harris County and Jones request that the Petersons and their counsel be barred from filing pleadings in this District until they pay all outstanding attorney's fees and costs owed to all parties in this case and file proof of having done so. One district in this Circuit imposed precisely that sanction and barred an attorney from "making any future filings . . . without prior approval from the Court" until she complied with the Court's order to pay attorney's fees and file a sworn affidavit stating she had done so.²⁶ It is not unreasonable to require a vexatious litigant to comply with prior sanctions orders before permitting him to file new pleadings likely to result in additional sanctions.

²³ Exhibit 2, Declaration of Seth Hopkins and Exhibit 3, Declaration of Russ Jones.

²⁵ *Barnes v. United States*, 800 Fed. Appx. 284, 286 (5th Cir. 2020), cert. denied, 141 S. Ct. 1274, 209 L. Ed. 2d 13 (2021).

²⁶ *Hoggatt v. Allstate Ins.*, 502 F. Supp. 3d 1110, 1112, 1115 (N.D. Miss. 2020), aff'd sub nom. *Hoggatt v. Allstate Ins.*, 849 Fed. Appx. 74 (5th Cir. 2021).

**III.
CONCLUSION AND PRAYER**

WHEREFORE, premises considered, Defendants Harris County, Jones and Underwood, Jones & Scherrer, PLLC, respectfully request that they each be awarded attorney's fees of \$25,000 for Plaintiffs' 2020 appeal and 2021 Petition of Writ of Certiorari to the United States Supreme Court, in addition to sanctions and fees ordered in Doc. No. 337 on December 14, 2016. Defendants request that Plaintiffs be jointly and severally liable for these amounts.

Defendants further request a finding that they are entitled to attorney's fees of \$500 per hour for any additional time incurred defending this case.

Defendants Harris County, Jones and Underwood, Jones, & Scherrer, PLLC further request that Don Peterson, Lonnie Peterson, and Mackey Peterson and their counsel, Donald Cheatham, be declared vexatious litigants, and that until they provide proof of compliance with their obligations to pay attorney's fees, they are barred from filing any future pleadings in this District (including this case) without seeking permission from the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 28th day of August, 2021, a true and correct copy of the foregoing document was delivered to all counsel of record via the CM/ECF system and served by electronic notice to all parties of record.



Seth Hopkins