IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
JOEL ALAN BRODSKY,	)	Supreme Court No. M.R.
Attorney-Respondent,	)	Commission No. 2018PR00064
No. 6182556.	)	

PETITION FOR INTERIM SUSPENSION
PURSUANT TO SUPREME COURT RULE 774(a)(2)

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Steven R. Splitt, pursuant to Supreme Court Rule 774(a)(2), respectfully requests that this Court issue a rule requiring Respondent, Joel Alan Brodsky, to show cause why he should not be suspended from the practice of law until further order of this Court, effective immediately, for having engaged in conduct that threatens irreparable injury to the public and to the orderly administration of justice. In support, the Administrator states:

I. SUMMARY

1. Respondent is 61 years old and was licensed to practice law in Illinois on November 1, 1982. He was suspended from the practice of law for three months in 2004 for signing a deceased person's name to bank documents and a cashier's check and converting $23,012.91. *In re Brodsky*, 01 CH 42 (Review Bd., Aug. 21, 2003), *recommendation adopted*, No. M.R. 19007 (Jan. 20, 2004).

2. Respondent has registered as active for 2019, and he lists his registered business address in Chicago. He is currently the subject of a disciplinary proceeding in the matter entitled

In re Joel Alan Brodsky, Commission number 2018PR00064, which is pending before the Commission's Hearing Board.

3. In that case, the Administrator has filed a three-count disciplinary complaint pursuant to Supreme Court Rule 753(b) encompassing the following allegations: 1) Respondent repeatedly used means having no substantial purpose other than to embarrass, delay, or burden an opposing party and that party's expert in federal court litigation regarding a claim of odometer fraud in the sale of an automobile, 2) Respondent failed to abide by a client's directives and disclosed confidential information in a matter, and 3) Respondent used means having no substantial purpose other than to embarrass, delay, or burden an opposing party in a dissolution of marriage matter and committed a criminal act by violating the Illinois Mental Health and Developmental Disabilities Confidentiality Act in the same matter. A copy of that complaint is attached to this petition as Exhibit 1.

4. Respondent's conduct set out in Count I of the Administrator's complaint resulted in Judge Virginia M. Kendall of the United States District Court for the Northern District of Illinois ("Judge Kendall") imposing a $50,000 sanction against him in March 2018. A copy of Judge Kendall's order is attached to this petition as Exhibit 2. That fine was affirmed on appeal by the United States Court of Appeals for the Seventh Circuit in January 2019. A copy of that court's order is attached to this petition as Exhibit 3. On April 11, 2019, the Executive Committee for the United States District Court for the Northern District of Illinois ("the Executive Committee"), suspended Respondent from that court's general and trial bars for one year and until he is reinstated based on Respondent's behavior in the case before Judge Kendall. The Executive Committee's order is attached to this petition as Exhibit 4.

5. Respondent's misconduct meets the requirements for an interim suspension under Supreme Court Rule 774(a)(2), because that conduct threatens irreparable injury to the public and to the orderly administration of justice, and there appears to be persuasive evidence to support the charges.

II. THE CURRENT DISCIPLINARY COMPLAINT AND RELATED PROCEEDINGS

6. Count I of the Administrator's disciplinary complaint alleges that in 2016 Respondent agreed to represent the two owners of a used car dealership in a federal lawsuit alleging that the owners had engaged in fraud and odometer tampering in connection with the sale of an SUV. Ex. 1 at 2. Between September 2016 and March 2017, Respondent filed numerous pleadings accusing the plaintiff and his attorney of filing false pleadings and attempting to extort money from the dealership owners. Ex. 1 at 3-5. During that same time period, Respondent sent several e-mails to the plaintiff's lawyer accusing him of filing a baseless lawsuit to obtain attorney's fees. Ex. 1 at 8-9. Between January 2017 and March 2017, Respondent filed multiple pleadings falsely accusing the plaintiff's expert witness of engaging in fraud and witness intimidation. Ex. 1 at 5-7.

7. On March 28, 2019, Judge Kendall issued an order sanctioning Respondent in the amount of $50,000, requiring him to attend an ethics course approved by the ARDC and provide verification of his attendance, and requiring him to successfully complete an anger management course and provide verification of that successful completion. Ex. 2 at 15. The order also referred Respondent to the court's Executive Committee for possible discipline. Ex. 2 at 15.

8. Judge Kendall's order noted that although the odometer case was a simple one, "the conduct of Joel Brodsky [] soon overshadowed the legal case and became the focus of numerous court hearings," including approximately 150 docket entries "attributable to disputes

regarding Brodsky's behavior defending the suit." Ex. 2 at 4. The order further noted that Respondent repeatedly leveled false charges of criminal and dishonest conduct against the plaintiff's expert witness, culminating in a request that Judge Kendall hold the witness in contempt and refer him to the United States Attorney's Office for criminal prosecution. Ex. 2 at 5-6. The order finally noted that, at the hours-long sanction hearing held in July 2017, Respondent offered an insincere apology for his conduct, did not provide any explanation for his actions, and, "throughout the hearing . . . was occupied with his cellular phone and made several audible exasperated sighs . . . as the testimony was being presented." Ex. 2 at 9, 13. The order concluded that Respondent had engaged in repeated acts of intimidation, harassment, character assassination, and false allegations made in bad faith, despite having been "warned numerous times to curb his vitriolic conduct." Ex. 2 at 11-15. Judge Kendall found that Respondent's actions "undermine the integrity of the judicial system and . . . cannot go undeterred." Ex. 2 at 14.

9. Respondent appealed Judge Kendall's sanction order to the United States Court of Appeals for the Seventh Circuit. Ex. 3. That court affirmed, noting that Respondent's "behavior, obvious on the face of the record and emphasized at length by the court, more than justified the court's choice of sanction." Ex. 3 at 4. The court further explained that "Brodsky's rhetoric was inappropriate and outlandish, and his attempt to implicate the court in his fraud – and to use the legal process as a tool to intimidate a witness – was beyond the pale." Ex. 3 at 4.

10. On April 11, 2019, the District Court's Executive Committee issued an order suspending Respondent from that court's general and trial bars for one year and until he is reinstated, finding by clear and convincing evidence that Respondent engaged in frivolous litigation, used means having no substantial purpose other than to burden or embarrass the

plaintiff's expert witness, and engaged in conduct that is prejudicial to the administration of justice, in violation of American Bar Association Model Rules of Professional Conduct 3.1, 4.5(a), and 8.4(d). Ex. 4.

11. Count I of the Administrator's complaint alleges that Respondent engaged in frivolous litigation, in violation of 2010 Rule of Professional Conduct 3.1; that he used means having no substantial purpose other than to embarrass, delay, or burden a third person, in violation of Rule 4.4; and that he engaged in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(d). Ex. 1 at 10.

12. Count II of the Administrator's complaint alleges that in September 2014 Respondent agreed to represent a company and its president in patent litigation and that his clients subsequently retained another law firm to help in the case given the second firm's patent experience. Ex. 1 at 11. Respondent helped the company obtain funding for the litigation from a litigation lender and knew that the lending agreement was intended to be confidential. Ex. 1 at 11-12. The company discharged Respondent during the litigation, and a dispute arose regarding fees to which Respondent was entitled. Ex. 1 at 12. Respondent improperly filed an attorney's lien after his discharge and served various parties, including the litigation lender, with the lien, thereby revealing that the plaintiff company required financial assistance to maintain the suit. Ex. 1 at 13. Later, Respondent, after having failed to withdraw and return property to his client, filed a motion to disqualify the second law firm and falsely alleged that the firm sought a kickback from the lender. Ex. 1 at 14-15.

13. Count II alleges that Respondent failed to abide by his client's decisions concerning the objectives of the representation, in violation of 2010 Rule of Professional Conduct 1.2; that he revealed confidential information without his client's informed consent, in

violation of Rule 1.6; that he failed to timely withdraw from representation, in violation of Rule 1.16(a)(3); and that he failed to promptly surrender client papers and property, in violation of Rule 1.16(d). Ex. 1 at 17.

14. Count III of the Administrator's complaint alleges that in November 2016, Respondent agreed to represent a husband in dissolution of marriage proceedings and thereafter learned that the couple had sought co-parenting counseling from a psychologist who, Respondent agreed, was not to be utilized as a witness or for any litigation purpose in the case. Ex. 1 at 18. Respondent later filed a motion to expand the husband's visitation that revealed that the couple had begun therapy with the psychologist, and he attached to that motion a confidential e-mail from the psychologist to the couple, which disclosure violated the Illinois Mental Health and Developmental Disabilities Confidentiality Act. Ex. 1 at 19-20. Respondent subsequently sent an e-mail to opposing counsel and copied the husband and wife and personnel at nearby school districts where the couple's child could have attended school alleging that the wife was mentally ill, a liar, and had attempted to steal $180,000. Ex. 1 at 20-21.

15. Count III alleges that Respondent improperly communicated with a person he knew to be represented by counsel, in violation of 2010 Rule of Professional Conduct 4.2; that he used means having no substantial purpose other than to embarrass, delay, or burden a third person, in violation of Rule 4.4; and that he committed a criminal act reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of Rule 8.4(b). Ex. 1 at 21.

III. ARGUMENT

16. Rule 774(a)(2) allows the Administrator to petition this Court to issue a rule to show cause, and provides that the Court may suspend an attorney, where a complaint has been

voted by the Inquiry Board; the attorney-respondent has committed a violation of the Rules of Professional Conduct threatening irreparable injury to the public, his or her clients, or to the orderly administration of justice; and there appears to be persuasive evidence to support the charges.

17. Respondent's interim suspension pursuant to Rule 774(a)(2) is warranted based on the conduct at issue in this proceeding. Not only did the Inquiry Board vote that a complaint be filed against Respondent, but the allegations of Count I of the Administrator's complaint resulted in Judge Kendall's $50,000 sanction and the suspension order by the federal court's Executive Committee.

18. Misconduct similar to Respondent's misconduct has warranted a suspension on an interim basis by this Court. For example, this Court suspended an attorney pursuant to Rule 774 following a Hearing Board report finding that the attorney had made false statements about the integrity of two judges and attacked guardians *ad litem* in an internet blog and pleadings filed in a guardianship proceeding. *In re Denison*, 2013PR00001, M.R. 27193 (April 21, 2015). Similarly, in *In re Zurek*, 1999PR00045, M.R. 18164 (Dec. 11, 2001), this Court suspended an attorney pursuant to Rule 774 following a Hearing Board report finding that he had litigated in a manner designed to harass and injure his opponents, that he had made false statements to a tribunal, and that he had intentionally degraded a witness at a deposition. In *In re Kozel*, 1996PR00050, M.R. 16530 (Feb. 13, 1998), this Court placed an attorney on an interim suspension after a Hearing Board report finding that he had repeatedly litigated in a manner having no purpose other than to harass or injure another, made false statements to a tribunal, and made false statements about the integrity of judges.

19. While this case has not yet proceeded to hearing before the Hearing Board, the findings made by Judge Kendall and affirmed by the Seventh Circuit, combined with the Executive Committee's findings that Respondent violated various ABA Model Rules of Professional Conduct, provide an ample basis for this Court to suspend Respondent pursuant to Supreme Court Rule 774(a)(2).

IV. CONCLUSION

20. Based on the information set forth above, the Administrator has established grounds for this Court to issue a rule to show cause in this matter. Respondent's suspension until further order of this Court would protect the public, the integrity of the profession, and the administration of justice.

WHEREFORE, the Administrator respectfully requests that this Court issue a rule to show cause as to why Respondent, Joel Alan Brodsky, should not be suspended until further order of this Court pursuant to Supreme Court Rule 774(a)(2).

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Steven R. Splitt
Steven R. Splitt

VERIFICATION

I, Steven R. Splitt, an attorney, being first duly sworn, states that the allegations contained in the Administrator's Petition for Interim Suspension Pursuant to Supreme Court Rule 774(a)(2) are true and correct to the best of my knowledge and belief.

Steven R. Splitt

Subscribed and sworn to before
me this 8th day of May, 2019.

NOTARY PUBLIC

"OFFICIAL SEAL"
VICKI J. ANDRZEJEWSKI
Notary Public, State of Illinois
My Commission Expires 09/22/2020

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SUPREME COURT CLERK

FILED

May 08, 2019

ARDC CLERK

Exhibit 1

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

FILED
August 21, 2018
ARDC CLERK

In the Matter of:

JOEL ALAN BRODSKY,

Attorney No. 6182556,

Respondent.

Commission No. 2018PR00064

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Lea S. Gutierrez, pursuant to Supreme Court Rule 753(b), complains of Respondent, Joel Alan Brodsky, who was licensed to practice law in Illinois on November 1, 1982, and alleges that Respondent has engaged in the following conduct, which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I
(*Using means with no substantial purpose other than to embarrass, delay, or burden third persons – Twyman*)

1. On October 16, 2015, Donaldson Twyman ("Twyman") purchased a 2013 Infiniti SUV for $35,000 from S&M Auto Brokers. After Twyman purchased the vehicle, he discovered information that had not been disclosed to him at the time of purchase: the vehicle had previously been in a serious accident; had been rebuilt; and the odometer had been rolled back. Twyman consulted with attorney Peter Lubin ("Lubin") to determine his legal options, and Lubin determined that Twyman had a valid claim against S&M Auto Brokers and its owners, Saed Ihmud and Mohammed Ihmud, for selling Twyman an automobile without informing him that the vehicle had been in a serious accident, and for manipulating the vehicle's odometer to

deceive Twyman about the vehicle's mileage.

2. On April 8, 2016, Lubin filed a complaint on behalf of Twyman in the United States District Court for the Northern District of Illinois, Eastern Division, against S&M Auto Brokers, Saed Ihmoud and Mohammed Ihmoud pursuant to 49 U.S.C. § 32705(a) ("the Federal Odometer Act"), 625 ILCS 5/3-112.1 ("the Illinois Odometer Act") and 815 ILCS 505/2 ("the Illinois Consumer Fraud and Deceptive Business Practices Act"). The clerk of the court captioned the matter *Donaldson Twyman vs. S&M Auto Brokers, Saed Ihmoud, and Mohammed Ihmoud*, docket number 16 cv 4182.

3. On or about April 23, 2016, Respondent and Saed and Mohammed Ihmoud agreed that Respondent would represent S&M Auto Brokers and the Ihmouds in relation to case number 16 cv 4182 for an agreed-upon fee. On May 4, 2016, Respondent filed his appearance in case number 16 cv 4182 on behalf of S&M Auto Brokers and the Ihmouds.

4. Between May 4, 2016 and August 25, 2016, Respondent commenced a pattern of conduct toward Lubin in case number 16 cv 4182, which eventually became the subject of court sanctions and is described further in the following paragraphs. Respondent's conduct was directed at Lubin as well as the plaintiff's expert, Donald Szczesniak ("Szczesniak").

5. At a status hearing on or about June 30, 2017, Respondent stated that Lubin was in the business of extorting businesses like S&M and that Lubin files lawsuits like case number 16 cv 4182 when there is no basis for doing so. In addition, on or about August 25, 2016, Respondent accused Lubin of "recidivist conduct" because "he [had] filed three other lawsuits" for the same type of claim.

6. After Respondent's statements described in paragraph five, above, on August 25, 2016, the court entered an order stating that the attorneys "should act professionally instead of

antagonistically toward each other and recognize that as officers of the Court they are expected to treat each other reasonably and professionally."

7. Despite Judge Kendall's August 25, 2016 written warning, Respondent continued a pattern and practice of unprofessional behavior including false allegations and inappropriate diatribes in pleadings accusing Lubin of lying, extortion, attempting to create a false record, and repeatedly requesting sanctions without any good-faith basis; false allegations impugning plaintiff's expert, Donald Szczesniak ("Szczesniak"), and vitriolic emails to Lubin.

Pleadings Regarding Lubin

8. Between September 21, 2016 and March 13, 2017, Respondent repeatedly filed pleadings accusing Lubin of having an improper motive for filing case number 16 cv 4182, and of engaging in criminal wrongdoing, including the following:

a. Motion for a Protective order filed September 21, 2016:

> Plaintiff does not consider a lawsuit a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating, enterprise for attorneys. ¶1

b. Objection and Response to Plaintiff's Motion to Dismiss Record with Progressive Insurance Documents Because Plaintiff Misrepresents What They Show as They do not Show the Car was in a Major Accident filed on October 14, 2016:

> Plaintiff's attorney keeps on filing false and misleading pleadings to try to run up exorbitant fees in a case in which the Plaintiffs [sic] attorney has 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 goal is only to extort as much money as possible out of the Defendants, no matter what the truth is. ¶1
>
> Used car dealers are not fair game targets for unscrupulous attorneys who look at lawsuits as a means to commit 'legal extortion,' and not as a way to get at the truth and remedy a wrong.¶4

c. Reply in Support of S&M Auto Broker's Motion *in Limine* Regarding Expert Witnesses and for Other Relief filed on January 27, 2017:

Defendant S&M Auto has said from the first that this case was an attempt at extortion by using false hyperbole and fabricated evidence. ¶9

d. Response to Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgement filed on February 10, 2017:

The 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. The entire motion is based on a premise that has no basis in law, and is further supported by a statement of uncontested facts that is anything but uncontested. Never, in over three decades of practice has Defendants [sic] lawyer seen anything like this perpetrated by lawyers in a court of law. This is akin to a situation back in the 1980's where certain personal injury attorneys set up auto-staged accidents and then filed injury lawsuits based on those staged accidents. ¶1

e. Motion to Reconsider Order of February 16, 2017, or for an Extension of Time to Provide Supplemental Expert Reports filed on February 20, 2017:

What is happening in this case is that the Plaintiffs' [sic] attorneys are fabricating a case, with the help of [their] unscrupulous [expert], where there is none, and are trying to use the fee shifting provisions of the Illinois Consumer Fraud statute as a tool of extortion by running up an exorbitant amount of fees in the hope that they can fool a jury or put the Plaintiff at such risk he will rather pay something than risk losing his business built up over a decade. What Plaintiffs [sic] attorneys are doing reminds Defenant [sic] of cases in the 1990's [sic] where a group of personal injury attorneys were caught staging accidents to defraud insurance companies. ¶2

f. Response to Plaintiff's Motion Clarification and Reply in Support of Defendant's Motion to Strike LR 56.1(c) Statement and for Sanctions filed on March 8, 2017:

The only reason for [filing the motion for summary judgment], and filing the hundreds of pages of documents in support, is so that Plaintiffs' [sic] attorneys can run up a huge legal bill which it intends to try to pass that bill off to Defendants under the fee shifting provisions of the Illinois Consumer Fraud Act. From Plaintiffs' [sic] Attorneys [sic] point of view this case has nothing to do

> with the facts or the law, and is solely a money making enterprise where the real party in interest are [sic] the attorneys for the Plaintiff and not the Plaintiff himself. ¶9

g. Reply In Support of Motion for Sanctions Regarding Plaintiff's Declared "Expert" Donald Szczesniak filed on March 13, 2017:

> Defendant asserts that to bring a lawsuit in U.S. District Court to extort money, based entirely on false evidence, and an expert who is [sic] tampers with witnesses and presents false declarations and/or engages in false lawsuit ... is no small matter. ¶10

9. Respondent's statements in the pleadings described in paragraph eight, above, that Lubin had filed a fabricated case, filed false and misleading pleadings and engaged in fee churning and extortion had no basis in law or fact, and were frivolous, because Lubin had a basis in law and fact for filing the litigation at issue and was not engaged in fee churning or extortion.

Pleadings Regarding Donald Szczesniak – Plaintiff's Expert

10. Between January 27, 2017 and March 13, 2017, Respondent filed pleadings containing false and harassing allegations regarding Szczesniak.

11. On January 27, 2017, Respondent filed a reply in support of S&M Auto Brokers' Motion *in limine* seeking a ruling that its disclosed experts were qualified to give expert testimony. In that reply, Respondent accused the plaintiff's expert, Donald Szczesniak ("Szczesniak"), of filing a fabricated report in case number 16 cv 4182, and stated that Szczesniak had a history of filing fabricated expert reports in unrelated matters.

12. Respondent's statements that Szczesniak had fabricated a report in case number 16 cv 4182 and that Szczesniak had a history of filing fabricated expert reports had no basis in law or in fact, were frivolous, and made in bad faith, in an attempt to improperly impugn Szczesniak's reputation before the court in case number 16 cv 4182.

13. On February 13, 2017, Respondent filed a motion in case number 16 cv 4182

entitled "Motion for an Order Holding Plaintiff's 'Expert' Witness Donald Szczesniak in Indirect Criminal Contempt of Court and to Refer this Matter to the United States Attorney." In that motion, Respondent accused Szczesniak of damaging the fence of a woman named Diane Weinberger ("Weinberger"), who was a witness in an unrelated matter, in a purported attempt to intimidate Weinberger.

14. Respondent's allegations that Szczesniak had damaged Weinberger's fence, as described in paragraph 13, above, were solely based on the Weinberger's unsubstantiated allegations. At the time that Respondent filed the pleading accusing Szczesniak of damaging Weinberger's fence, Respondent had no evidence that Szczesniak had been questioned or charged in relation to Weinberger's damaged fence, and Respondent took no action beyond speaking with Weinberger to inform himself about the alleged facts of Weinberger's claim.

15. Respondent's allegations that Szczesniak had damaged Weinberger's fence had no basis in law or fact, were frivolous, and had no other purpose than to harass and intimidate Szczesniak, and to impugn Szczesniak's reputation before the court in case number 16 cv 4182.

16. Respondent's February 13, 2017 motion described in paragraph 13, above, also falsely accused Szczesniak of sending Respondent an anonymous facsimile in a purported attempt to intimidate Respondent from searching into Szczesniak's background. At the time that Respondent filed the pleading accusing Szczesniak of sending Respondent an intimidating anonymous facsimile, Respondent had no evidence to support his accusation that Szczesniak sent him the facsimile.

17. Respondent's actions in accusing Szczesniak of sending Respondent an anonymous facsimile were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate Szcezesniak, and to impugn Szczesniak's reputation before the court in

case number 16 cv 4182.

18. On February 14, 2017, the court summarily dismissed Respondent's February 13, 2017 Motion for an Order Holding Plaintiff's "Expert" Witness Donald Szczesniak in Indirect Criminal Contempt of Court and to Refer this Matter to the United States Attorney. Then on February 27, 2017, Respondent filed a motion seeking sanctions against Szcesniak and against the plaintiff for retaining Szczesniak. Respondent's February 27, 2017 motion again accused Szczesniak of damaging a fence and sought an order barring Szczesniak from testifying due to his allegedly improper and illegal behavior.

19. On March 13, 2017, Lubin filed a response to Respondent's motion for sanctions, asserting that Respondent's accusations were false, and attaching affidavits from Szczesniak, his wife, and son Luke who all attested that Szczesniak was home sick at the time the fence had allegedly been damaged.

20. On March 13, 2017, Respondent filed a pleading entitled "Reply in Support of Sanctions Motion for Sanctions Regarding Plaintiff's Declared 'Expert' Donald Szczesniak." In that pleading, Respondent called Szczesniak a liar, and Respondent falsely accused Szczesniak of fabricating a son named Luke in his sworn declaration, and of fabricating the affidavit filed by Luke, because Respondent's LexisNexis public records search did not reveal that Szczesnizk had a son named Luke.

21. Respondent's actions in accusing Szczesniak of fabricating a son named Luke and fabricating the affidavit filed by Luke, were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate Szcezesniak, and to impugn Szczesniak's reputation before the court in case number 16 cv 4182.13.

Emails to Lubin

22. Between September 20, 2016 and March 29, 2017, Respondent repeatedly sent emails to Lubin that had no substantial purpose, other than to harass or burden Lubin, including the following:

a. An email dated September 20, 2016 at 7:35 am, stating:

> How can I work with a lawyer who will not call the prior owner to see if [sic] car was in an accident? (It wasn't). This means you have no interest in the truth and this is only a money making exercise. The law as a method of extortion. How can I work with an extortionist? I doubt the court will feel that a lawsuit is not for getting at the truth, but only for making money for the lawyer, but you keep sending those emails. The admissions (or should I say confessions) will be very useful in my motion and fee petition.

b. An email dated January 9, 2017 at 9:03 at stating:

> Your attempt to manufacture a case where none exists is deplorable and your attempt as using your law license to commit extortion will not succeed and we will be seeing fees from you after your ridiculous case is dismissed.

c. An email dated January 9, 2017 at 12:39 pm, stating:

> As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit.

d. An email dated March 29, 2017 at 6:23 pm, stating:

> I just read the pack of lies on your Motion for Protective Order, even your own reporter said it was your behavior that caused her to walk out. I love your quote about the degrading search for the truth. That is all your case is, a degradation of the search for the truth. How do you even call yourself a lawyer? You are an embarrassment to the profession.

23. At the time that Respondent made the statements in the emails described in paragraph 22, above, calling Lubin an extortionist, Respondent knew that Lubin was not extorting money in case number 16 cv 4182, and Respondent did not believe that Lubin was a criminal. Respondent's actions in accusing Lubin of extortion and manufacturing a case were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate

Lubin.

24. On April 27, 2017, Lubin filed a motion for sanctions against Respondent, based upon the conduct described in paragraphs 8 through 20, above. On July 7, 2017, a hearing was held on Lubin's motion for sanctions, during which Lubin testified regarding his good-faith basis for filing the lawsuit, discussed Szczesniak's integrity and qualifications, denied being in a criminal enterprise. Szczesniak also testified about the importance of his reputation to his work an expert witness, denied damaging Weinberger's fence, denied sending Respondent an anonymous fax, and confirmed that he has a son named Luke. Respondent did not submit any evidence contradicting Lubin's or Szczesniak's testimony, nor did he provide any explanation for his behavior throughout the case, including the allegations against Lubin and Szczesniak.

25. On March 28, 2018, the Honorable Virginia M. Kendall entered an order granting Lubin's motion for sanctions. Judge Kendall's order stated, *inter alia*, that she had "warned [Respondent] numerous times to curb his vitriolic conduct. Instead of heeding the Court's advice, at every opportunity, he increased his acerbic behavior, culminating in his unhinged attack against Szczesniak. In doing to, [Respondent] acted in bad faith and if left unpunished, his actions would serve to undermine the integrity of this Court."

26. Judge Kendall's March 28, 2017 order required Respondent to pay a $50,000 fine to the Clerk of the Court, attend an ethics course approved by the ARDC, and attend and provide the court with verification of successful completion of an anger management course. Judge Kendall's order also referred Respondent to the Executive Committee "for consideration of being barred or suspended from practicing in the Northern District of Illinois for his failure to abide by the Court rules."

27. On April 6, 2018, Respondent filed a notice of appeal of Judge Kendall's order

with the United States Court of Appeals for the Seventh Circuit. As of July 25, 2018, the date that this matter was voted by the Inquiry Board, Respondent's appeal remained pending. As of the date this matter was voted by the Inquiry Board, the Executive Committee matter against Respondent also remained pending.

28. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. bringing or defending a proceeding, or asserting or controverting an issue therein, with no basis in law and fact for doing so that was not frivolous, by conduct including, but not limited to, filing pleadings that stated the Lubin was an extortionist and that Szczesniak had a habit of filing fabricated reports, and that Szczesniak had damaged Weinberger's fence to intimidate the witness, and by seeking an order holding Szczesniak in indirect criminal contempt and to referring him to the United States Attorney, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010);

b. using means that have no substantial purpose other than to embarrass, delay, or burden a third person, by conduct including, but not limited to, sending emails and filing pleadings accusing Lubin of extortion, and by filing pleadings stating that Szczesniak had damaged a witness' fence, had a history of fabricating reports, and had no son named Luke, in violation of Rule 4.4 of the Illinois Rules of Professional Conduct (2010); and

c. conduct prejudicial to the administration of justice, by conduct including, but not limited to, filing pleadings containing baseless accusations of wrongdoing against Lubin and Szczesniak, and causing a degradation of process in case number 16 cv 4182 by ignoring multiple warnings of the court thereby challenging the court's judicial authority, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Failure to abide by client's directives and disclosing confidential information – Gamon)

29. At all times alleged in Count II of this complaint, the Attorneys Lien Act, 770 ILCS 5, provided, in part:

> [a]ttorneys shall serve notice in writing, which service may be made by registered or certified mail, upon the party against whom their clients may have suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claim, demands or causes of action.

30. On September 11, 2014, Respondent and Terry Johnson ("Johnson"), President of Gamon Plus, Inc. and Gamon International, Inc. ("Gamon"), agreed that Respondent and attorney Andrew Tiajoloff ("Tiajoloff") would represent Gamon in a lawsuit against Campbell Soup Company, Inc., and others for patent infringement. Respondent and Johnson agreed that Respondent and Tiajoloff would receive 40% of any recovery in the matter.

31. On January 23, 2015, Gamon, Respondent, and Tiajoloff entered into a supplemental retainer agreement with the law firm Niro, McAndrews, Dowell, & Grossman, LLC ("NiroMcAndrews"), because of the firm's experience with patent litigation. Pursuant to the January 23, 2015 supplemental retainer agreement, NiroMcAndrews would receive 25% of any recovery in the matter, and Respondent and Tiajoloff would each receive 7.5% of any recovery in the matter. Attorneys Raymond Niro, Jr. ("Niro"), Kyle Wallenberg ("Wallenberg"), and Matthew McAndrews ("McAndrews") were the attorneys from NiroMcAndrews responsible for handling the Gamon matter.

32. On October 8, 2015, Niro filed a complaint in the Northern District of Illinois on behalf of Gamon. The matter was docketed as *Gamon Plus, Inc. et al. v. Campbell Soup Company, et al.*, and assigned case number 15-cv-8940.

33. On October 8, 2015, Niro, Wallenberg, and McAndrews filed their appearances as counsel for Gamon in case number 15-cv-8940. On October 9, 2015, Respondent filed his appearance on behalf of Gamon.

34. During the course of representing Gamon, Respondent learned of and participated in confidential negotiations between Gamon and a third party litigation funding company

(hereinafter "TPLF") regarding Gamon financing its legal costs related to case number 15-cv-8940 through TPLF. On February 8, 2016, Gamon and TPLF executed a written term sheet setting forth the binding terms to which Gamon and TPLF agreed, subject to the completion of a more comprehensive written agreement. Respondent became aware of the terms of the parties' agreement between Gamon and TPLF shortly thereafter.

35. On January 21, 2015, TPLF and McAndrews entered in to a confidentiality and non-disclosure agreement with respect to the litigation funding negotiations and prospective financing agreement between TPLF and Gamon. Shortly thereafter, McAndrews communicated the nature of the confidentiality and non-disclosure agreement to Respondent.

36. On February 10, 2016 at 10:29 am, Johnson sent Respondent an email that "instructed [him to] immediately withdraw as counsel of record in the litigation," and further stated that Respondent would receive the previously agreed to share of any judgment. Respondent received Johnson's email within ten minutes of it being sent.

37. On February 10, 2016 at 10:35 am, Niro sent an email to Lisa Ferrari and Respondent, notifying Ferrari that Respondent had been terminated as counsel and instructed to withdraw from the case immediately. Respondent received Niro's email within ten minutes of it being sent.

38. On February 10, 2016 at 10:41 am, Respondent sent an email to Johnson stating that he would not withdraw until he received a written agreement signed by all attorneys and clients in the matter stating that Respondent would receive his agreed upon 7.5% of the proceeds. Respondent ended the email by asking Johnson if his proposal was agreeable. At no time did Johnson respond to Respondent's February 10, 2016 at 10:41 am email, nor did Johnson agree to allow Respondent to delay withdrawing as Gamon's attorney until he received a written

confirmation of the fee agreement signed by all parties.

39. At 10:42 am on February 10, 2016, Respondent sent an email to Ferrari in response to Niro's 10:35 am email described in paragraph 37, above, stating that he was "not out yet" and that he would inform Ferrari when he filed a motion to withdraw.

40. At 10:43 am on February 10, 2016, Niro sent an email to Respondent asking him to comply with Gamon's instructions to "immediately withdraw as counsel in the litigation." Though Respondent received Niro's 10:43 am email, as of February 14, 2016 Respondent had not complied with Johnson's request to immediately withdraw as counsel for Gamon.

41. On February 10, 2016, after Respondent received Johnson's email asking Respondent to withdraw, Respondent filed what purported to be an attorney lien to secure his fees in case number 15cv8940 that purported to be filed "on behalf of all plaintiffs." Respondent caused his attorney's lien to be served upon TPLF, as well as Johnson, the opposing attorneys, and the registered agents for the Campbell Soup, Meijer, Trinity Manufacturing, and Kroger Co.

42. Respondent's purported attorney lien was improper and untimely because at the time that Respondent filed it, he had already been terminated. In addition, Respondent's purported attorney lien was improper because TPLF was not a party against whom a litigant had made a claim, and therefore, TPLF was not an appropriate or necessary entity upon whom to serve a lien, pursuant to the Attorney Lien Act, described in paragraph 29, above.

43. By serving the lien on TPLF, Respondent revealed the fact of Gamon's negotiations with TPLF to opposing counsel and to the public, thereby alerting opposing counsel to the fact that Gamon had sought funding from TPLF, and therefore may be eager to settle because Gamon did not have had sufficient assets to engage in lengthy litigation.

44. On February 10, 2016, shortly after noon, TPLF emailed McAndrews and Niro

asking them to call immediately because Respondent had filed a pleading with TPLF on the service list.

45. On February 10, 2016 at 12:41 pm, Niro sent an email to Respondent notifying him that his lien disclosed to opposing counsel and the public information covered by the attorney-client privilege and work product immunity and asked him to withdraw the lien and the service list from the public record. Though Respondent received Niro's February 10, 2016 email sent at 12:41 pm, at no time did Respondent take action to withdraw the lien or service list from the public record.

46. On February 11, 2016, Niro sent Respondent an email requesting that Respondent "return any and all documents, electronic information, electronic media, and any work product or other information or documents [Respondent had]" within 24 hours. Though Respondent received Niro's email shortly thereafter, at no time did Respondent return the requested documents and other information to Gamon or Niro.

47. As of February 11, 2016, Respondent had not withdrawn as counsel for Gamon as requested. On that same date, Gamon filed an emergency motion to terminate Respondent as counsel for Gamon and to remove Respondent as counsel of record in case number 15-cv-8940.

48. On February 14, 2016, Respondent filed a motion in case number 15cv8940, purportedly on behalf of Gamon, seeking to disqualify NiroMcAndrews from representing Gamon due to a purported conflict of interest. At no time did Johnson give Respondent authority to file the February 14, 2016 motion seeking to disqualify Niro and McAndrews, nor did Johnson give Respondent any authority to take any action on behalf of Gamon after February 10, 2016. At the time that Respondent filed his motion seeking to disqualify NiroMcAndrews, Respondent's services had been terminated, and therefore, he had no authority to do anything on

behalf of Gamon except seek to withdraw.

49. In his motion to disqualify NiroMcAndrews, Respondent falsely accused the firm of illegally attempting to obtain a commission or kickback from TPLF, and Respondent revealed confidential information relating to the representation of Gamon, including the following:

> Prior to even seeking additional counsel, Attorney Brodsky and Attorney Tiajoloff provided the information for, worked with, and obtained from patent Attorney David L. Applegate (of the IP practice group of Williams, Montgomery & John), a fifty three (53) page "Overview of Potential Litigation Strategies," which was supported by over five hundred (500) pages of exhibits. The purpose of obtaining this document was to obtain an independent analysis of the strength of Gamon's case, know what defenses were likely to be presented (if any) and analyze how to best present the case, and defend against any defenses. A tremendous amount of work was done by Attorney Brodsky and Attorney Tiajoloff, (tantamount to preparing the case for trial), went [sic] into producing this document. Therefore, when Attorney Brodsky first (and later Attorney Tiajoloff) met with Mr. Niro and Mr. McAndrews they knew that when the final patent issued involving the invention at issue in the above referenced litigation, that Gamon had an extremely strong patent infringement case, with damages in many tens of millions of dollars, if not more.

50. On February 14, 2016, Respondent also filed a response to Gamon's emergency motion to terminate Respondent as counsel for Gamon, described in paragraph, 47, above. Respondent attached an affidavit to his response that disclosed the nature of the fee agreement between Gamon and NiroMcAndrews, and disclosed the content of purported conversations that Respondent had with Johnson and purported conversations between Mr. Johnson and Niro and McAndrews.

51. On February 16, 2016, Gamon filed a motion requesting an order sealing Respondent's motion to disqualify and Response to Gamon's emergency motion to terminate Respondent as counsel due to the fact that both pleadings revealed confidential business information and communications and information subject to the attorney-client privilege and work product immunity.

52. On February 17, 2016, Respondent filed a response objecting to Gamon's motion requesting an order sealing Respondent's motion to disqualify and Response to Gamon's emergency motion. In his February 17, 2016 response, Respondent again accused NiroMcAndrews of attempting to obtain an illegal kickback from TPLF, and attempting to cover up the illegal kickback by sealing Respondent's pleadings.

53. On February 19, 2016, the Honorable Charles R. Norgle, Sr. held a hearing on Gamon's motion to terminate Respondent as counsel for Gamon, described in paragraph 47, above. On that date, Judge Norgle entered an order granting Gamon's motion to terminate Respondent as counsel for Gamon. Judge Norgle's February 19, 2016 order also granted Gamon's motion to seal Respondent's motion to disqualify NiroMcAndrews and to seal Respondent's Response to "Emergency" Motion to Terminate [Respondent] as Counsel for Plaintiffs, described in paragraphs 48 and 50, above. In addition, Judge Norgle's February 19, 2016 order granted Gamon's motion to seal Respondent's response to Gamon's motion to seal.

54. On February 19, 2016, McAndrews sent Respondent a letter, again requesting that Respondent return to Gamon any of Gamon's documents or electronic files that were in Respondent's possession. As of February 22, 2016, Respondent had not returned Gamon's property. On that date, Niro sent Respondent an email, again requesting that he return Gamon's business documents. Respondent received McAndrews' February 19, 2016 email and Niro's February 22, 2016 email shortly after they were sent.

55. On February 24, 2016, Gamon filed a motion to strike, or in the alternative, seal Respondent's notice of attorney lien, as described in paragraph 41, above, stating that the lien had been filed without Gammon's authorization, and stating that the lien divulged to opposing counsel Gamon's confidential business information.

56. On that same date, TPLF informed McAndrews that, due to Respondent's public disclosure of the fact of the relationship between TPLF and Gamon, TPLF would not continue funding negotiations in the *Gamon* matter.

57. On February 25, 2016, Judge Norgle entered an order granting Gamon's motion to strike Respondent's notice of attorney's lien, as described in paragraph 55, above.

58. As of July 25, 2018, the date that this matter was voted by the Inquiry Board, Respondent had not returned Gamon's documents and electronic files.

59. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. failing to abide by a client's decisions concerning the objectives of representation, by conduct including, but not limited to, failing to withdraw from representing Gamon upon request and filing a motion to disqualify Gamon's other attorney's without direction or authority to do so from Gamon, in violation of Rule 1.2 of the Illinois Rules of Professional Conduct (2010);

b. revealing information relating to the representation of a client without the client's informed consent, by conduct including, but not limited to, disclosing the relationship between Gamon and TPLF, in violation of Rule 1.6 of the Illinois Rules of Professional Conduct (2010);

c. failing to withdraw from representation after being discharged, by conduct including, but not limited to, failing to withdraw immediately upon the Gamon's request and by holding himself out as Gamon's attorney by filing pleadings purportedly on behalf of Gamon after being discharged, in violation of Rule 1.16(a)(3) of the Illinois Rules of Professional Conduct (2010); and

d. Failure to promptly surrender papers and property to which the client is entitled upon termination of representation, by conduct including, but not limited to, failing to return Gamon's documents and electronic files after requested to do so, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Using means that have no substantial purpose other than to embarrass, delay, or burden third persons and disclosing confidential information– Fanady)

60. At all times alleged in Count III of this Complaint, Section 110/3 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/3, provided:

> a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship.

61. Section110/2 of the Mental Health and Developmental Disabilities Confidentiality Act defines "Confidential Communication" or "communication" as:

> Any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient.

62. In or about November 2016, Respondent and S.F. agreed that Respondent would represent S.F. in matters relating to the dissolution of his marriage to G.F., Cook County Circuit Court case number 2016 D XXXXXX, *In re the Marriage of G.F. and S.F.*. Respondent and S.F. agreed that S.F. would pay Respondent $300 per hour for his work in relation to case number 2016 D 230507.

63. In or about December 2016, S.F. and G.F. agreed to attend counseling to assist them with co-parenting their minor child.

64. On December 12, 2016, G.F.'s attorney, John Kay, sent Respondent an email stating that a psychologist named Dr. Karla Steingraber had agreed to assist S.F. and G.F. with co-parenting, and seeking to confirm with Respondent that Dr. Steingraber would be "utilized for counseling purposed only in this case and that she shall not be called as a witness or otherwise used for any litigation purpose."

65. Later on December 12, 2016, Respondent sent an email to Kay stating "[w]e agree that Dr. Steingraber is not to be called as a witness or otherwise used for any litigation purpose."

66. On or about December 14, 2016, S.F. and G.F. attended their first appointment with Dr. Steingraber. During the course of S.F. and G.F.'s appointments with Dr. Steingraber, the parties discussed terms of a parenting agreement and they entered into a preliminary parenting agreement.

67. On December 21, 2016, Dr. Steingraber sent an email to S.F. and G.F. memorializing the terms discussed during their counseling session that would lead to successful co-parenting. The email asked S.F. and G.F. to contact Dr. Steingraber if the terms she outlined did not fit with their understanding. Some of the co-parenting terms outlined in Dr. Steingraber's email included communication with both parents, handling of health and medical information and decisions, and the time for certain holiday pick-ups.

68. At the end of Dr. Steingraber's December 21, 2016 email, it stated:

> Notice: The information contained in this e-mail is confidential information intended only for the use of the individual(s) named above. If the reader of this message is NOT the intended recipient, you are hereby notified that any dissemination, distribution or retention of these materials is illegal. Please do not read, copy, or let anyone else see these materials if sent to you in error. Delete the materials completely and call or email me back at the number listed above for appointments to identify the error involved in your receipt of this correspondence.

69. On or before December 23, 2016, S.F. forwarded a copy of Dr. Steinberger's December 21, 2016 email to Respondent.

70. On January 10, 2017, Respondent filed a motion on behalf of S.F. entitled "Motion of S.F. to Continue and Expand Visitation, to Adopt Parties Agreement Regarding Parenting as the Order of this Court, and for Other Relief."

71. Respondent's motion disclosed that S.F. and G.F. had entered into counseling with Dr. Steingraber, attached a copy of Dr. Steingraber's December 21, 2016 email to S.F. and G.F., which outlined preliminary terms of successful co-parenting discussed during counseling, and sought to have the court adopt the terms outlined in Dr. Steingraber's email.

72. Respondent's actions in referencing and attaching Dr. Steingraber's email, which outlined the terms of co-parenting discussed by S.F. and G.F. when in counseling, to his motion violated the agreement that the parties had reached via the emails described in paragraphs 64 and 65, above, that Dr. Steingraber would not be used for any litigation purpose. Respondent's actions in referencing and attaching Dr. Steingraber's email to Respondent's January 10, 2017 motion also violated Section 110/3 of the Mental Health and Developmental Disabilities Confidentiality Act, as described in paragraphs 60 and 61, above, because Respondent disclosed records of confidential communications made or created in the course of Dr. Steingraber providing mental health services without G.F.'s consent.

73. On August 23, 2017, Respondent sent an email to opposing counsel, and copied it to S.F., G.F., and various personnel in the two school districts in which S.F and G.F's child could have attended school. The email stated that G.F. was "very mentally sick" and stating the "the psychiatric report that [the custody evaluator was] writing [would] confirm that." The email also stated that the following:

> [G.F.'s] actions are the sign of someone who is pathologically obsessed with having to have things her way, and will stop at nothing, who will lie, mislead, and fabricate, to achieve that end. Her other actions in the divorce case, her starting the case with false allegations in an ex-parte petition for order of protection which was thrown out of court, her false statements about the child representative Judge Bender, her false statements about her not making agreements that she clearly made, her false statements about property ownership, her attempt at stealing $180,000 in corporate money that did not belong to her or [S.F.] (and unfortunately I could go on and on and on) show that [G.F.] doesn't care about the consequences of her actions no matter who his [sic] hurt, even if it is her own

[child]. [G.F.] is mentally ill and needs serious help. This is a fact that anyone can, and does, see, not conjecture.

74. At the time that Respondent copied his August 23, 2017 email to G.F., Respondent knew that G.F. was represented by counsel in relation to case number 2016 D 230507.

75. Respondent's actions in sending his August 23, 2017 email to opposing counsel, G.F., and the school district employees had no substantial purpose other than to embarrass or harass G.F..

76. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. communicating with a person known to be represented by counsel about the subject of the representation, in violation of Rule 4.2 of the Illinois Rules of Professional Conduct (2010), by conduct including, but not limited to, sending an email to G.F. regarding her actions in registering her minor child for school in District 28;

b. using means that have no substantial purpose other than to embarrass, delay, or burden a third person, by conduct including, but not limited to, sending an email to school officials in two school districts stating that G.F. was "very mentally sick" and in need of "serious help," in violation of Rule 4.4 of the Illinois Rules of Professional Conduct (2010); and

c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects by disclosing confidential information (preliminary parenting agreement) made in connection with receiving mental health services in violation of Section 110/3 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/3, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
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Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donaldson Twyman, Plaintiff, v. S&M Auto Brokers, Saed Ihmoud, and Mohammed Ihmoud Defendants.	)	No. 16 C 4182 Judge Virginia M. Kendall

MEMORANDUM OPINION AND ORDER

This is an odometer rollback case that landed in federal court due to a little known federal statute that federalized the crime of manipulating a car's odometer in order to protect purchasers from potential shady practices committed by used car sellers. This small Federal Odometer Act case began in April of 2016 and burgeoned into an 18-month battle between defense counsel, Joel Brodsky, and Plaintiff's counsel over the purchase of a $35,000 used SUV from S&M Auto Brokers ("S&M").. The Plaintiff, Donald Twyman alleged that S&M failed to inform him that the Infiniti SUV had been in a serious accident, had been rebuilt, and the odometer had been rolled back. After the car drove poorly, Twyman brought it to a local Infiniti dealer who reviewed the warranty claim history that showed a discrepancy in the odometer readings and that the car had been in an accident. Twyman filed suit alleging a violation of the FOA and that S&M committed fraud and violated the Illinois Consumer Fraud and Deceptive Business Practices Act when it failed to disclose that the SUV had been damaged in an accident.

Plaintiff's attorney and Brodsky are no strangers to each other or this type of litigation. Plaintiff's attorney filed a complaint that not only accused S&M of violations pertaining to Twyman's purchase but also alleged that S&M has "a pattern and practice of selling

unmerchantable wrecks with substandard repairs and concealing or misrepresenting material facts." The Court inquired about the ability to resolve what the Court perceived to be a finite and discrete case with few issues and Plaintiff's attorney informed the Court that he would be seeking punitive damages and that the case was valued at an amount much greater than the value of the car. Brodsky responded in kind that Plaintiff's attorney is essentially in the business of extorting clients like S&M and that he just files these lawsuits over and over when there is no basis for doing so. And so the battle began.

Now one would think that a federal judge would not hear parties square up so heatedly at their first appearance before the Court, but unfortunately, that is not always the case. Yet, the Court has an obligation to protect not only the legal process but also the clients who are represented by the litigants which is why district court judges have initial status hearings and question the lawyers about the cost of litigation and the value of an award. Recognizing the Court's inherent authority to control those litigation costs, the Court immediately clipped the wings of the lawyers by refocusing them to the reality of their dispute:

> So you can all go and interview all of these people and bills tens of thousands of dollars to do discovery on the case, and you hire an expert and pay that expert another 10 or 20 thousand dollars. . . all over a dispute that has probably much less value than the 56 [thousand] that the plaintiff has demanded in settlement. So you all need to be lawyers and recognize that you have clients that have concerns. He's got a car that he doesn't think works well . . .and you've got a dealership that is going to spend an awful lot of money defending it. I think you both need to sit down at the table and discuss this.
>
> Status hearing 6/30/17.

The Court then limited the discovery period to a period of three months so as not to have the lawyers expend too much money taking into account Fed. R. Civ. P. 26 and the need to

balance the proportion of the costs of litigation with the value of a potential award in Plaintiff's favor.

Shortly thereafter, the parties appeared again. This time to argue over when and where depositions would take place. Brodsky informed the Court that he would be in Florence, Italy at his vacation home for one month and sought an extension of time to respond to various motions and discovery which the Court granted. During this status, Brodsky accused Plaintiff's counsel of "recidivist conduct" because "he has filed three other lawsuits" for the same type of claim. The Court managed to calm the parties down once again and once again instructed the lawyers talk to each other before filing motions and to allow for lawyers to take vacations. Within days, the parties were battling about requests to admit which Plaintiff's counsel filed and noticed to be heard when Brodsky returned from his vacation and the Court entered its first written warning to act reasonably and professionally. (Dkt. 35 "The parties should act professionally instead of antagonistically toward each other and recognize that as officers of the Court they are expected to treat each other reasonably and professionally.")

Unfortunately, that first shot across the bow from the Court had little effect on Brodsky nor did his vacation in Italy. Within days of his return, he filed a motion for protective order seeking to bar Plaintiff from issuing document subpoenas, and striking Plaintiff's Third Set of Interrogatories and, Requests for Production and Requests to Admit because "Plaintiff does not consider a lawsuit as a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating, enterprise for attorneys." (Dkt. 41 at 8.) Brodsky requested that the Court award him reasonable fees for having to bring the motion. In response, Plaintiff set forth the requests he had made to Brodsky, all within the Federal Rules of Civil Procedure, all relevant to proving his case, and how Brodsky

had responded to his email requests by calling Plaintiff's counsel "an extortionist" who is "really obsessed" and refusing to comply with Plaintiff's discovery requests. (Dkt. 45).

Although the nature of the dispute between the parties was limited to a narrow factual and legal issue, the conduct of Joel Brodsky, soon overshadowed the legal case and became the focus of numerous court hearings. In the eighteen months since Twyman filed his lawsuit, the docket includes well over 200 docket entries, nearly three quarters of them attributable to disputes regarding Brodsky's behavior defending the suit. The parties filed a number of requests for sanctions throughout the litigation and the Court admonished Brodsky multiple times to curb his uncivil and vitriolic conduct. Finally, the Court conducted a hearing regarding allegations that Brodsky made against Plaintiff's expert witness and the Court warned that sanctions may result if the Court determines that the allegations were frivolous or bought in bad faith.[1] Based on his conduct throughout the course of this lawsuit, and as explained in detail below, the Court invokes its inherent authority to sanction Brodsky.

BACKGROUND

Throughout the course of the litigation, the Court has observed first-hand Brodsky's unprofessional, contemptuous, and antagonistic behavior directed at opposing counsel. These have included false accusations and inappropriate diatribes in pleadings, where he repeatedly accused opposing counsel of lying, extortion, attempting to create a false record, and repeatedly

[1] Brodsky also moves to strike the binder of exhibits that Plaintiffs submitted to the Court after the hearing alleging that he did not see them nor did he have a chance to object. Ninety percent of the binder comprises docket entries and exhibits already on the docket and submitted or discussed during the hearing. A very small amount of unrelated emails are also presented which simply show a pattern of name-calling, nasty remarks about litigants and a general obstructionist litigation strategy in other cases. To the extent that some of the pattern was argued in Court to show that Brodsky's behavior in this case was not an anomaly, the Court accepts the argument; however, does not rely on any materials that were not part of this case and the behavior engaged in by Brodsky in this case. In short, the motion to strike the exhibits is denied in part and granted in part. [212] The emails unrelated to this case are stricken.

requested sanctions without any good-faith basis. (*See, e.g.*, Dkt. Nos. 67, 106, 138, 151, 155.) Brodsky also sent numerous vitriolic emails to opposing counsel during the course of the litigation, including asking opposing counsel "How do you even call yourself a lawyer? You are an embarrassment to the profession," and accusing him of being an extortionist and manufacturing the case. (*See, e.g.*, Dkt. 166-1). This pattern of behavior continued at a deposition of one of Defendants' experts. There, Brodsky was confrontational and antagonistic and made numerous speaking objections, improperly instructed the witness not to answer, in addition to cursing several times on the record (Dkt. 160 at 58:19, 73:21), making several inappropriate ad hominem attacks against opposing counsel, including calling him a liar (*id.* at 71:21-22), and accusing counsel of engaging in a criminal enterprise (*id.* at 122:6-19).

Ironically, in many of his diatribes, Brodsky has accused opposing counsel of over-litigating what he often referred to as a "small-claims" case, yet Brodsky filed a number of baseless or unnecessary motions himself prolonging the litigation and the costs of litigation. These include a motion opposing plaintiff's ministerial motion to correct a typo in his expert's report (Dkt. 62); a motion *in limine* seeking the Court initial review of whether Defendant's expert reports were sufficient (Dkt. 96); a frivolous motion to strike Plaintiff's Rule 56 statement; and a baseless motion to seal a recording of the deposition referenced above in order for it not to be accessed on the public record. (Dkt. 162).

Of special concern for the Court, however, are allegations Brodsky leveled at Donald Szczesniak, Plaintiff's expert witness. In his reply in support of his motion *in limine* regarding expert witnesses (Dkt. 102), Brodsky leveled charges against Szczesniak for allegedly fabricating an expert report in an unrelated matter involving Diane Weinberger. Two and a half weeks later, Brodsky filed another motion regarding Szczesniak, this time asserting that

Szczesniak had damaged Weinberger's fence. (Dkt. 108.) That motion also raised a number of alleged unrelated civil judgments against Szczesniak, relating to his auto repair business. (*Id.* at 3.) The motion also accused Szczesniak of sending Brodsky an anonymous facsimile transmission of a newspaper article in an "attempt to intimidate the Defendants [sic] attorney from further searching into his background." (*Id.*) This motion sought an order of "indirect criminal contempt" against Szczesniak and sought to have the Court make an immediate referral to the United States Attorney for a criminal investigation to be launched against Szczesniak. (*Id.* at 4.) The Court summarily rejected Brodsky's motion and reminded him that there were proper ways to challenge an expert, none of which were followed, and that if he believed that criminal activity occurred, he himself could call the USA and make a complaint. (Dkt. 110.) Nonplussed by the Court's refusal to act as his bully, Brodsky filed a motion seeking sanctions against Szczesniak and against Plaintiff for retaining him. (Dkt. 121.) Brodsky's motion for sanctions again accused Szczesniak of attempting to intimidate Weinberger by threatening her and purportedly damaging her fence. Rather than file a motion seeking to bar the expert testimony pursuant to the Court's gatekeeping function in Daubert, Brodsky instead simply sought an order barring Szczesniak from testifying due to his alleged improper and even illegal behavior. (*Id.* at 4.)

Plaintiff responded to Brodsky's motion for sanctions, asserting that Brodsky's accusations were false and attached affidavits from Szczesniak, his wife, and son Luke who all attested that Szczesniak was home sick at the alleged time Weinberger's fence was damaged. Plaintiff's response also pointed out inconsistencies in the story Weinberger told the police as compared to the affidavit she completed for Brodsky, including Szczesniak's alleged location on the night of the incident and the timing of the incident. (Dkt. 137 at 3.) In fact, there is no

evidence that Szczesniak was ever questioned by police in the matter, let alone arrested. Plaintiff also denied Brodsky's allegation that Szczesniak anonymously faxed him an article, pointing out that Brodsky's affidavit was not grounded in facts, and submitted sworn testimony that Szczesniak was taking his elderly mother to the doctor at the time the fax was sent. (*Id.* at 5.)

In the face of evidence contradicting his motion for sanctions, Brodsky again doubled-down. In his reply, he called Szczesniak a liar and accused Szczesniak of submitting a false declaration and committing perjury. (Dkt. 138 at 2.) To use his own words against him, "in what can only be described as strange and bizarre" Brodsky asserts that "an examination of the LexisNexis public records search that was done on Donald Szczesniak, states that while he does have a wife named Jennifer, a mother named Ruth Ann, and a son named Zachery, there is **no** son named Luke." (*Id.*) Brodsky went on to insinuate Szczesniak had fabricated the affidavit filed by Luke and that he indeed had fabricated Luke. Brodsky then went on to accuse Plaintiff's counsel of bringing the lawsuit "to extort money, based entirely on false evidence, and an expert who is [sic] tampers with witnesses and presents false declarations and/or engages in false lawsuit . . . is no small matter." Meanwhile, Szczesniak, a proposed witness in the matter, sought representation based on the allegations against him that went to the heart of his work – testifying as an expert in odometer fixing cases. Szczesniak appeared in Court with his retained personal attorney and sought leave to file a response to the accusations against him. Rather than back down, Brodsky opposed his efforts to file a response and increased his level of accusations against the witness, this time alleging that the instant case was "not the first case in which Szczesniak has fabricated persons and events in affidavits filed with the Court, nor is it the first time he has been accused of witness intimidation. It appears to be a habit." (Dkt. 142 at 1.) The Court permitted Szczesniak to file a response to defend his reputation and Brodsky filed

another reply, again accusing Szczesniak of damaging Weinberger's property and fabricating his expert report, along with other allegations of impropriety regarding unrelated cases. (Dkt. 150.)

Following this flurry of serious allegations, the Court held a status on April 6, 2017. At that status hearing, the Court again reminded the parties that it was considering sanctions based on the conduct of counsel and noted that the filings were the most acerbic and nasty accusatory filings the Court had ever seen. Despite these warnings, Brodsky continued to impugn Szczesniak and claim that the case was fabricated in open court. The Court ordered counsel to bring their clients to the next status, which was held six days later. At that status, the Court informed the parties of the need for a sanctions hearing regarding Brodsky's accusations and asked the parties whether they were aware of the protracted proceedings and why they were taking so long to deal with such a minor dispute. Brodsky's client informed the Court that he was unaware of the ethical issues and had never been conveyed an offer to settle the suit – something he was willing to do long ago. (Dkt. 165.) Following the April 12, hearing Plaintiff filed a motion for sanctions. After retaining counsel, Brodsky filed a motion to withdraw his filings involving accusations against Szczesniak. (Dkt. 172.) He also withdrew from representing S&M. Shortly before the hearing, Brodsky filed a short response and the sanctions hearing was held on July 7, 2017. In his response, he denied that any of the filings were submitted for an improper purpose and highlighted his efforts to "address issues raised by the Court." (Dkt. 208.)

At the hearing, which lasted several hours, the Court heard testimony from Peter Lubin, lead counsel for Twyman, and also testimony from Szczesniak. Lubin testified regarding his good-faith basis for filing the lawsuit, discussed Szczesniak's integrity and qualifications, denied being in a criminal enterprise (a rant that Brodsky repeated throughout his filings), and discussed

the emotional distress he suffered from Brodsky's poor treatment. Szczesniak testified about the importance of his reputation to his work as an expert witness, denied damaging Weinberger's fence, denied sending Brodsky an anonymous fax, and confirmed that he has a son named Luke. Szczesniak also averred that Brodsky's filings had damaged his employment and put undue stress on his family. Brodsky declined to testify but gave a statement where he said he let his frustrations get the better of him and that he "went too far in this case." Brodsky also apologized to the Court "for anything that [he] did that caused this Court concern or stress" and apologized to Lubin for "going too far in this case" and also to Szczesniak. Brodsky did not submit any evidence contradicting Lubin's or Szczesniak's testimony nor did he provide any explanation for his behavior throughout the case, including the allegations against Lubin and Szczesniak. Although not reflected on the transcript, throughout the hearing, Brodsky was occupied with his cellular phone and made several audible exasperated sighs during the course of the hearing as the testimony was being presented.

Outside of the events leading up to the sanctions hearing, the Court warned Brodsky several times that his behavior could result in sanctions. (*See, e.g.*, Dkt. 118; Dkt. 165 (informing the parties that the Court has reviewed the docket and the need for a sanctions hearing because "Mr. Brodsky has been overly aggressive in this case, that he's not following the rules of professional conduct, and he is filing a lot of motions to exacerbate the discovery process. And so it's going to be a [sanctions hearing] primarily to determine whether sanctions should be applied to him" and noting the seriousness of the accusations Brodsky made against Szczesniak but noting that the Court has "no problem levying the appropriate sanction against a lawyer who misrepresents or lies to the Court in such a manner as to hijack a litigation"); Dkt. 216 at 9-10 (warning the parties that settlement of the matter, including attorneys' fees would not moot the

Court's desire to consider sanctioning counsel, because the "Court always has jurisdiction over protecting the integrity of the proceedings before her" and that the Court intended to "protect the integrity of this courtroom").)

LEGAL STANDARD

I. The Court's Inherent Authority to Sanction

"A district court has inherent power to sanction a party who 'has willfully abused the judicial process or otherwise conducted litigation in bad faith.'" *Secrease v. W. & S. Life Ins. Co.*, 800 F.3d 397, 401 (7th Cir. 2015) (quoting *Salmeron v. Enterprise Recovery Systems, Inc.*, 579 F.3d 787, 793 (7th Cir. 2009)). These sanctions are appropriate where a party or their counsel has practiced fraud upon the Court, acts in "bad faith by delaying or disrupting the litigation," hampers enforcement of a court order, or when a party is responsible for defiling "the very temple of justice." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (quotations omitted). "This power is 'permissibly exercised not merely to remedy prejudice to a party, but also to reprimand the offender and to deter future parties from trampling upon the integrity of the court.'" *Flextronics Int'l, USA, Inc. v. Sparkling Drink Sys. Innovation Ctr. Ltd.*, 230 F. Supp. 3d 896, 906–07 (N.D. Ill. 2017) (quoting *Salmeron*, 579 F.3d at 797).

Due to "their very potency, inherent powers must be exercised with restraint and discretion," but "[a] primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers*, 501 U.S. at 44-45. These powers should be invoked when "in the informed discretion of the court, neither [a] statute nor the Rules are up to the task." *Id.* at 50. This authority includes circumstances where "conduct sanctionable under the Rules was intertwined within conduct that only the inherent power could address," because "requiring a court first to apply Rules and statutes containing sanctioning

provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the Rules themselves." *Id.* Therefore, "the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." *Id.* at 49.

Attorneys can be sanctioned pursuant to the Court's inherent authority. *Carr v. Tillery*, 591 F.3d 909, 919 (7th Cir. 2010) ("A court has inherent power, which is to say a common law power, to punish by an award of reasonable attorneys' fees or other monetary sanction, or to prevent for the future by an injunction, misconduct by lawyers appearing before it."). Indeed, severe sanctions can be imposed against attorneys pursuant to the Court's inherent authority when an attorney acts in bad faith. *See Salmeron*, 579 F.3d at 793 (affirming sanction of dismissal with prejudice after court found that attorney acted in bad faith). "[B]efore a court may impose sanctions *sua sponte*, it must give the offending party notice of its intent to do so and the opportunity to be heard." *Johnson v. Cherry*, 422 F.3d 540, 551 (7th Cir. 2005)

DISCUSSION

Our legal system provides ample opportunities for litigants to vociferously challenge the testimony of expert witnesses. Brodsky, however, never availed himself of the tools available to him to legitimately challenge the qualifications or opinions of Szczesniak. Instead, he resorted to inflammatory, unsubstantiated, and false allegations against Szczesniak. Brodsky's allegations against Szczesniak were made 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 intimidate Szczesniak to the extent he would not testify. These acts of intimidation and harassment, included allegations of improper conduct in unrelated matters, allegations related to

Szczesniak's personal litigation history divorced of any relevancy to this matter, and unsubstantiated and even false claims of intimidation.

Brodsky attempts to shield his conduct by pointing to the police report and affidavit of Ms. Weinberger. His alleged reliance on Ms. Weinberger, however, is unavailing. Apparently relying on Ms. Weinberger's allegations that Szczesniak damaged her fence, Brodsky asked this Court to find Szczesniak in criminal contempt and refer the matter to the United States Attorney. This was wildly inappropriate and an attempt to harass Szczesniak and poison the Court's view of him. First, Ms. Weinberger's purported allegations against Szczesniak have nothing to do with this matter and even if her allegations were substantiated, they are irrelevant to his testimony as an expert witness before this Court. Second, based on testimony and evidence adduced at the sanctions hearing, Ms. Weinberger's allegations against Szczesniak are unsubstantiated. There are material inconsistencies between her police report and the affidavit she provided to Brodsky, and there was uncontroverted testimony that Szczesniak was at home at the time of the alleged incident with his family. Furthermore, there is no evidence that Szczesniak was ever questioned in the matter, let alone arrested. Third, if Brodsky was aware of criminal conduct by Szczesniak he could report it to the proper authorities; there was no reason other than to harass and intimidate for him to bring the allegations to the Court's attention. Fourth, even if it were somehow appropriate to bring Ms. Weinberger's allegations to the attention of the Court, Brodsky apparently failed to investigate their veracity.

Brodsky's allegations regarding Ms. Weinberger were not the sole basis for his request for his request for holding Szczesniak in criminal contempt or for barring his testimony. He also submitted his own allegations and later an affidavit, completely divorced from fact and reality alleging that Szczesniak attempted to intimidate him by sending an anonymous fax to his office.

First and most importantly, there is no evidence that Szczesniak sent Brodsky the fax. In fact, this notion was disproven at the hearing and Brodsky failed to submit any evidence to allow the Court to come to another conclusion. The only reason the Court can see to explain why Brodsky would make such an allegation, which was made under penalty of perjury, was to harass Szczesniak, attempt to have him barred from testifying, or otherwise impugn his reputation with the court.

The Court also finds that Brodsky's attempts at mitigation were wholly inadequate for his egregious conduct. After retaining counsel, he moved to withdraw some of the pleadings where he accused Szczesniak of misconduct and eventually withdrew from representing the Defendant. While this could potentially have abrogated Szczesniak's Rule 11 motion, his attempt to withdraw some pleadings is inadequate to spare Brodsky from the inherent authority of this Court to sanction him. To date, he has not provided any explanation for his repeated inflammatory and unsubstantiated accusations.

Furthermore, at the hearing, Brodsky gave an apology in name only. He did not appear contrite and did not offer any explanation for his conduct directed toward Szczesniak. In fact, he has failed to provide any explanation for his egregious conduct whatsoever outside of blaming his frustrations with opposing counsel. He also attempted, without subjecting himself to cross-examination, to blame Ms. Weinberger for his allegations against Szczesniak. His failure to take responsibility for his actions amplifies the need for sanctions in this case. Additionally, his conduct as an observer during the hearing was entirely inappropriate and undermines any apology he provided to the Court. Throughout the hearing, Brodsky was occupied with his phone and frequently shook his head and sighed when evidence or argument was presented by Plaintiff's or Szczesniak's counsel.

Exacerbating the need for sanctions, Brodsky had numerous opportunities to avoid a formal retribution from the Court. Throughout the course of the litigation, Brodsky was warned numerous times to curb his vitriolic conduct. Instead of heeding the Court's advice, at every opportunity, he increased his acerbic behavior, culminating in his unhinged attack against Szczesniak.

In doing so, Brodsky acted in bad faith and if left unpunished, his actions would serve to undermine the integrity of this Court. *See Mach v. Will County Sheriff*, 580 F.3d 495, 501 (7th Cir. 2009) (bad faith includes harassment, willful disobedience, and "recklessly making a frivolous claim"); *Carr v. Tillery*, 591 F.3d 909, 920 (7th Cir. 2010) (finding that party acted deserving of sanctions when filed pleading "so lacking in merit . . . that its pursuit . . . indicates a motive to harass"). Although the imposition of sanctions against Brodsky for some of his conduct, including frivolous filings and unprofessional conduct could be sustained under Section 1927 or Rule 11, his allegations levied against Donald Szczesniak demand the invocation of the court's inherent authority to sanction. That is because "[t]he imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the []purpose of 'vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court.'" *Chambers*, 501 U.S. at 46 (quotation omitted). Brodsky's actions undermine the integrity of the judicial system and such behavior cannot go undeterred.

Sadly, the Court learned of numerous other instances in state court where Brodsky has been left unscathed by sanctions which might have led to his belief that he could act with impunity when acting as a litigator in court. That stops here. Protecting the integrity of the court as a place where litigants can fairly and professionally access justice remains this Court's

paramount concern. Respect for the court, the rule of law, and lawyers themselves is essential to an orderly society. Once an individual is given the privilege to serve as a lawyer, as an officer of the court, he is held to professional standards that are essential to the preservation of justice and the protection of those clients he serves. Any deviance from that course of professional conduct should not be tolerated.

CONCLUSION

Due to the repeated violations of this Court's orders to refrain from the aggressive, unprofessional and vitriolic behavior, the Court grants the motion for sanctions [194] and imposes the following sanctions: 1) Brodsky shall pay a fine of $50,000 to the Clerk of the Court; 2) Brodsky shall attend an ethics course approved by the Attorney Registration and Disciplinary Commission and provide the Court with verification of completion of the course; 3) Brodsky shall attend an anger management course and provide the court with verification of the successful completion of the course; and 4) the Court shall refer Brodsky to the Executive Committee for consideration of being barred or suspended from practicing in the Northern District of Illinois for his failure to abide by Court rules.

Date: March 28, 2018

Hon. Virginia M. Kendall
United States District Judge

Exhibit 3

Case: 18-1811 Document: 34 Filed: 01/18/2019 Pages: 4

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued November 7, 2018
Decided January 18, 2019

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 18-1811

DONALDSON TWYMAN,
Plaintiff-Appellee,

v.

S&M AUTO BROKERS, INC.,
Defendant.

APPEAL OF: JOEL ALAN BRODSKY

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:16-cv-4182

Virginia M. Kendall,
Judge.

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

[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 (1994), and *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178 (2017). Because Brodsky fails to

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 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

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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.

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."

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 (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 (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." *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.

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	
	)	No. 18 D 10
Joel Alan Brodsky	)	
	)	(Before the Executive Committee)
An Attorney	)	

ORDER

1. Joel Alan Brodsky was admitted to practice before the general bar of this Court on January 26, 1983 and before the trial bar of this Court on August 6, 1984.

2. On April 5, 2018, the Honorable Virginia Kendall notified the Executive Committee of Mr. Brodsky's actions before the Court while he was representing the defendant in case number 16 C 4182, *Twyman v. S&M Auto Brokers, Inc. et al.* In a March 28, 2018 order in case number 16 C 4182, Judge Kendall imposed sanctions upon Mr. Brodsky.

3. On January 18, 2019, the Seventh Circuit Court of Appeals affirmed the imposition of sanctions against Mr. Brodsky in District Court case number 16 C 4182, *Twyman v. S&M Auto Brokers, Inc. et al.*

4. On February 8, 2019, the Executive Committee stayed any disciplinary decision pending a ruling by the Seventh Circuit Court of Appeals on Mr. Brodsky's motion for rehearing.

5. On February 11, 2019, the Seventh Circuit Court of Appeals entered an order denying Mr. Brodsky's petition for rehearing.

6. On March 13, 2019, the Executive Committee entered an order noting that in order for the Committee to consider the appropriate disciplinary sanction, if any, for Joel Alan Brodsky's violation of Rules 3.1, 4.5(a), and 8.4(d) of the American Bar Association Model Rules of Professional Conduct, which apply to the attorneys of

this Court's bar pursuant to Local Rule 83.50, Mr. Brodsky shall inform the Committee of the status of payment of the monetary sanction ordered by Kendall.

7. On March 27, 2019, Mr. Brodsky responded, and the Executive Committee considered his submission.

8. By clear and convincing evidence, based on the same misconduct found by Judge Kendall in the *Tywman* case, the Executive Committee finds that Joel Alan Brodsky violated the following American Bar Association Model Rules of Professional Conduct:

A. Rule 3.1: A lawyer shall not assert an issue unless there is a basis in law and fact that is not frivolous.

B. Rule 4.5(a): A lawyer shall not use means that have no substantial purpose other than to embarrass or burden a third person (namely, Donald Szczesniak, Plaintiff's expert witness in *Twyman*).

C. Rule 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IT IS HEREBY ORDERED that Joel Alan Brodsky is suspended from this Court's general and trial bars for a period of one year, after which he may petition the Executive Committee for reinstatement.

IT IS FURTHER ORDERED that within twenty-one (21) days of the docketing of this order, Joel Alan Brodsky shall notify by certified mail, return receipt requested, all clients to whom Joel Alan Brodsky is responsible for pending matters before this Court of the fact that the attorney cannot continue to represent them.

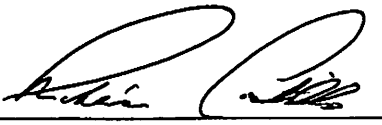
IT IS FURTHER ORDERED that any password issued to Joel Alan Brodsky for access to the electronic filing system shall be disabled until the attorney is reinstated to active status with this District.

IT IS FURTHER ORDERED that pursuant to Local Rule 83.25(e), the Executive Committee has determined that in the interest of justice, a copy of this order shall be docketed on each pending case in which Joel Alan Brodsky has filed an appearance and shall be shared with the Supreme Court of Illinois Attorney Registration and Disciplinary Commission.

IT IS FURTHER ORDERED that within thirty-five (35) days of the entry of this order, Joel Alan Brodsky shall file with the Assistant to the Clerk of the Court a declaration indicating the address to which subsequent communications may be addressed; and shall keep and maintain records evidencing compliance with this order so that proof of compliance will be available if needed for any subsequent proceeding instituted by or against the attorney.

ENTER:

FOR THE EXECUTIVE COMMITTEE



Chief Judge

DATED: April 11, 2019

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
	)	
JOEL ALAN BRODSKY,	)	Supreme Court No. M.R.
	)	
Attorney-Respondent,	)	Commission No. 2019PR00064
	)	
No. 6182556.	)	

PROOF OF PERSONAL SERVICE

I, Kevin Roach, who is over the age of 18 and an agent of the Attorney Registration and Disciplinary Commission, on oath state that I served the Administrator's PETITION FOR INTERIM SUSPENSION PURSUANT TO SUPREME COURT RULE 774 on Joel Alan Brodsky as follows:

By personally serving such document on Respondent at 8 S. Michigan Avenue, Suite 3200, Chicago, Illinois on May 8, 2019, at or about 11:28 a.m.

Kevin Roach

Subscribed and sworn to before me on this 8th day of May, 2019.

NOTARY PUBLIC

"OFFICIAL SEAL"
VICKI J. ANDRZEJEWSKI
Notary Public, State of Illinois
My Commission Expires 09/22/2020

E-FILED
5/8/2019 12:46 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	
JOEL ALAN BRODSKY,	Supreme Court No. M.R.
Attorney-Respondent,	Commission No. 2018PR00064
No. 6182556.	

NOTICE OF FILING

TO: Joel Alan Brodsky
Attorney-Respondent
Law Office of Joel A. Brodsky
8 S. Michigan Avenue, Ste. 3200
Chicago, IL 60603-3320

PLEASE TAKE NOTICE that on May 8, 2019, electronic copies of the Administrator's PETITION FOR INTERIM SUSPENSION PURSUANT TO SUPREME COURT RULE 774(a)(2) and the PROOF OF PERSONAL SERVICE, were submitted to the Clerk of the Supreme Court for filing. On that same date, copies were served on Respondent, by causing said copies to be deposited in the U.S. Mailbox located at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois, with first-class postage prepaid, at or before 4:00 p.m.

Respectfully submitted,
Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Steven R. Splitt
Steven R. Splitt

Steven R. Splitt
Counsel for the Administrator
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601
Telephone: 312-565-2600
E-mail: ssplitt@iardc.org

E-FILED
5/8/2019 12:46 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

PROOF OF SERVICE

I, Vicki J. Andrzejewski, on oath state that I served copies of the Notice of Filing, Administrator's PETITION FOR INTERIM SUSPENSION PURSUANT TO SUPREME COURT RULE 774(a)(2) and the PROOF OF PERSONAL SERVICE, on the individual shown on the foregoing Notice of Filing, by regular mail, proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox located at One Prudential Plaza, 130 East Randolph Drive, Suite 1500, Chicago, Illinois 60601 on May 8, 2019 at or before 4:00 p.m.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Vicki J. Andrzejewski

Subscribed and sworn to before
me this 8th day of May, 2019.

NOTARY PUBLIC

"OFFICIAL SEAL"
KEVIN P. ROACH
Notary Public, State of Illinois
My Commission Expires 02/10/2022

E-FILED
5/8/2019 12:46 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK