FEDERAL ELECTIONS COMMISSION
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

DAVID KRIKORIAN,	:	
Complainant,	:	
v.	:	MUR No. 6494
REP. JEAN SCHMIDT, et al.,	:	
Respondents.	:	

RESPONSE TO SECOND AMENDMENT TO COMPLAINT

Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt submit that the allegations against them in the Complaint, in the Amendment to the Complaint and, now, in the Second Amendment to the Complaint are without merit and should be dismissed.

Since Respondents' initial response to Complainant's initial Complaint, Jean Schmidt has voluntarily dismissed, without prejudice[1], her Ohio Common Pleas Court defamation action against Mr. Krikorian. Mr. Krikorian then accused Ms. Schmidt and her attorneys of misconduct and filed a motion for sanctions against them. On July 3, 2012, the Ohio Common Pleas Court rejected Mr. Krikorian's motion and characterized it as "antithetical, at best," "disingenuous," "ha[ving] a hollow ring," "void of any evidence," and "baseless," and "OVERRULED [it] in its entirety." A copy of that July 3, 2012, decision is attached hereto.

[1] Under Ohio law, Ms. Schmidt has one year within which to refile her defamation action against Mr. Krikorian.

I. TCA'S PAYMENTS FOR THE LEGAL FEES AT ISSUE WERE NOT CONTRIBUTIONS.

A. AOR 2011-20

Complainant reiterates his prior argument that the Schmidt for Congress Committee's (since withdrawn) Advisory Opinion Request constitutes an admission that TCA's payments for the legal fees at issue were contributions. As discussed in our response to the same argument in Complainant's *first* Amended Complaint, it does not. Nor does repeating a weak argument make it stronger.

Although the Ethics Committee concluded that TALDF's payments for legal fees constituted gifts to Jean Schmidt, the Ethics Committee also "determined that [Jean Schmidt's] use of campaign funds to pay for the Ohio Elections Commission matter, the defamation action and the amicus briefs filed in the *Krikorian v. Ohio Elections Commission* would not violate House rules . . . . However, the Committee advises you to consult with the Federal Election Commission (FEC) before using campaign funds for any of these purposes." [August 4, 2011, Committee on Ethics Letter at pp. 2-3.] That is precisely why the AOR was filed – to consult with the FEC as recommended by the Ethics Committee.

B. IRS Determination

Complainant correctly notes that the IRS rejected his contention that they should pursue Jean Schmidt for cheating on her income tax returns. Complainant concludes that the IRS's exoneration of Ms. Schmidt would show that she "must necessarily have" admitted violating federal election law - if only he could get his hands on the IRS's work product. Such a conclusion is absurd.

Mr. Krikorian has made numerous allegations of misconduct against Ms. Schmidt in numerous governmental entities and, to date, none of them has found any of Mr. Krikorian's

allegations of misconduct to have merit. Yet, Mr. Krikorian argues that having his misconduct charges rejected by the IRS (as they were also rejected by the Ohio Elections Commission, and by the Ohio Common Pleas Court) should be construed as reason for the FEC to find merit in his FEC Complaint. To state the argument is to refute it.

C. Rep. Schmidt's August 24, 2009, Testimony

Complainant correctly notes that in Jean Schmidt's August 24, 2009, deposition she – sincerely but mistakenly – testified to her belief that her campaign had retained the attorneys who represented her in the Ohio Elections Commission.

On prior occasions in which Jean Schmidt had had matters before the Ohio Elections Commission, her campaign had paid the attorneys (after bills were sent after the cases were over), and Jean Schmidt assumed in her testimony that that would be the same with the most recent Ohio Elections Commission case. However, she had received no bill as of August 24, 2009, and the Ethics Committee of the U.S. House (then known as the Committee on Standards of Official Conduct) later suggested that it was more appropriate that it not be a campaign payment. Jean Schmidt opted to follow the advice and counsel of the Ethics Committee. In any event, the Ethics Committee found that TALDF's payments of legal fees were gifts to Jean Schmidt and, thus, they were not campaign contributions.

D. Alleged Conversion of Campaign Resources to Personal Use

Complainant argues that if (as the Ethics Committee held) TALDF's payments of legal fees constituted a personal gift to Ms. Schmidt, then Ms. Schmidt must have "converted campaign resources to personal use in violation of Federal Law."

Complainant assumes his conclusion (that the payments were campaign contribution) and, thus, asserts that the evidence that they were personal gifts proves that Jean Schmidt

converted the campaign contributions into personal gifts. But repeatedly asserting that they were campaign contributions does not make it so.

E. MUR 5141

Complainant argues, on the claimed authority of MUR 5141's Statement of Reasons, that since Jean Schmidt had loaned her campaign committee money, that a gift or loan to her by TALDF's payment of the legal fees "freed up other funds of the candidate for campaign purposes – specifically the $275,000 that was payable to Rep. Schmidt on demand from the campaign." Thus Complainant concludes that any gifts to Jean Schmidt personally must be treated as campaign contributions.

In fact, MUR 5141's Statement of Reasons does not support Complainant's conclusions. Complainant offers no evidentiary support for his assertion that there is any connection between TALDF's payment of the legal fees and the outstanding loans of Rep. Schmidt. MUR 5141's Statement of Reasons states (at p. 2):

> "A complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true. *See* Commissioners Wold, McDonald, Mason, Sandstrom, Thomas Statement of Reasons in MUR 4869 (American Postal Workers Union). Unless based on a complainant's personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified. *See* 11 C.F.R. § 111.4(d)(2); General Counsel's Report dated April 11, 2000 at 17 in MUR 4545 (Clinton/Gore '96 Primary Committee/Amtrak), Commissioners Thomas, Elliott, Potter, McDonald, Aikens, and McGarry Statement of Reasons dated Oct. 7, 1993 in MUR 3534 (Bibleway Church of Atlas Road)."

As in the case of MUR 5141, there is no reason to believe that the Respondents violated any provision of the Act.

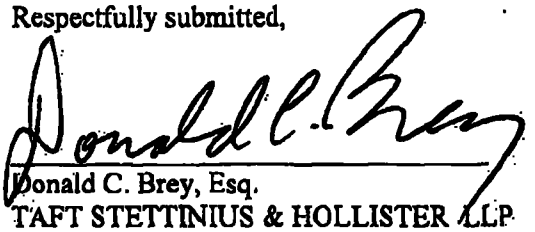
II. RESPONDENTS HAD NO KNOWLEDGE OF ANY "CONTRIBUTIONS" FROM TCA.

III. RESPONDENTS JOSEPH BRAUN AND PETER SCHMIDT ARE NOT PROPER PARTIES.

Complainant's Second Amended Complaint, like his First Amended Complaint does not change the need to dismiss the Complaint because: (a) Respondents had no knowledge of any contributions from TCA; and, (b) Respondents Joseph Braun and Peter Schmidt are not proper parties. These grounds, alone, are sufficient for dismissal.

WHEREFORE, for the above stated reasons, and for the reasons set forth in their prior response, Respondents Rep. Jean Schmidt, Schmidt for Congress Committee, Joseph Braun, Phillip Greenberg and Peter Schmidt respectfully submit that the Complaint against them should be dismissed.

Respectfully submitted,



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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

JEAN SCHMIDT	:	CASE No. 2010-CVC-1217
Plaintiff,	:	Judge: John W. Kessler (by assignment)
v. DAVID KIRKORIAN, et al.,	:	DECISION, ENTRY AND ORDER OVERRULING DEFENDANTS MOTIONS FOR IMPOSITION OF SANCTIONS PURSUANT TO R.C. 2323.51, & CIV.R. 11
Defendants	:	

This matter is before the Court on Defendants' David Krikorian and Krikorian for Congress Committee ("Defendants") April 25, 2012 Motion for the Imposition of Sanctions pursuant to R.C. 2323.51 and April 25, 2012 Motion of the Imposition of Sanctions pursuant to Civ.R. 11, and the Inherent Power of the Court ("Defendants' Motions"). On May 14, 2012, Plaintiff Jean Schmidt ("Schmidt") and her counsel Donald C. Brey and Elizabeth Watters filed a combined Memorandum in Opposition to Defendants' Motions. On May 21, 2012, Defendants filed their Reply in Support of their Motions for Sanctions. These matters are properly before the Court.

I. FACTS AND PROCEDURAL HISTORY

Schmidt has been a Member of Congress, representing the second district of Ohio in the House of Representatives, since 2005. (Compl. ¶3). On April 29,

2009 and on July 21, 2009, Schmidt filed complaints before the Ohio Elections Commission ("OEC") alleging Defendant Krikorian (a political opponent) published false statements about her with knowledge of their falsity or with reckless disregard of the same. (Compl. at ¶16, 17 &19).

On June 8, 2010, Schmidt filed this case alleging Defendant Krikorian continued making (in her knowledge and belief) false statements regarding her complicity in campaign finance crimes, bribery, perjury or obstruction of justice. (See Compl. generally). It is uncontested that the alleged defamatory statements were made by Defendant Krikorian and published. (Id., see also Defendant's' Answer & Counterclaim, generally.) Those statements are as follows:

(1) "She's [Jean Schmidt is] threatened by my campaign and is using the OEC to hide her positions and hide who's funding her campaigns." (Compl. ¶30 & ¶68)
(2) "Just like she [Jean Schmidt] voted to bailout 'Wall Street while accepting thousands of dollars from the banking industry, she continues to deny genocide while accepting money from Turkish interest PACS." (Compl. ¶30 & ¶72)
(3) "What, I can't call [the funds Rep. Schmidt received from Turkish interest], some $29,500, 'blood money'! You have got a representative who is taking money from a foreign lobby. Schmidt said in her deposition that she had no idea why she was the largest recipient of money from the Turkish lobby. Just think how stupid that sounds." (Compl. ¶38 & ¶83)
(4)...the Turkish government is behind these contributions and it is my right to feel that way and it is my right to say so." (Compl. ¶38 & ¶83)
(5) "Schmidt is bought and paid for by the Turkish lobby and people don't like it when their representatives sell out like that." (Compl. ¶41 & ¶88)
(6) "she [Plaintiff Schmidt] suggested that she had no idea that she was the leading recipient of lobby money in '08 ... She said that she never spoke of the Armenian Genocide resolution at any of the Turkish lobby fundraisers held on her behalf, which from my prospective is laughable ... She's a liar; she's not credible. I think its obvious that two weeks after receiving $11,000 of Turkish lobby money she joins the Turkish caucus – and claims there's no quid pro quo. She's an embarrassment to the district and to the country." (Compl. ¶44 & ¶92)

(7) "She was basically programmed by the Turkish lobby for that sworn deposition and its a shame to see a sitting congressional representative act in the way she acted yesterday." (Compl. ¶48 & ¶98)
(8))"I stand by the statements that I made, that my opponent in the last election, the current representative of Ohio's second congressional district, is a paid puppet of the Turkish government involved in their denial campaign to suppress the truth about Armenian genocide." (Compl.. ¶51 & ¶103)1

After conducting an investigation and trial, the OEC found by clear and convincing evidence that the statements made by Defendant Krikorian were made with knowledge of their falsity or with reckless disregard of whether they were false or not. (Compl. ¶16 &17).

Defendant Krikorian filed a complaint with the OEC claiming Schmidt was hiding the source of funding of her campaign contributions and her legal expenses. On August 5, 2011, the OEC cleared Schmidt of any ethical violations. (See Plaintiff's Exhibit K, Gongwer News Service).

After almost a year of litigation and on May 3, 2011, Schmidt appealed two decision and orders journalized by this Court on April 4, 2011. (See Court's docket). On May 13, 2011, Defendants similarly filed their Joint Notice of Cross Appeal. This action was stayed pending the appeal. (Id).

On February 21, 2012, the Twelfth District Court issued its decision regarding the appealed matters, and on February 27, 2012, a Motion to Lift the Stay and Re-Open Discovery was filed. (Id). On March 28, 2012, Plaintiff filed her Notice of Voluntary Dismissal pursuant to Civ.R. 41(A), which dismissal prompted the instant motions. (Id.).

Generally, Defendants' allege Schmidt and her counsel filed this suit in

June 2010 solely to silence Defendant Krikorian regarding his expression of his opinions and positions over matters of public concern, and to harass and intimidate him. Schmidt and her counsel emphatically deny these allegations.

II. APPLICABLE LAW

A. Standard of Review

Trial Courts retain jurisdiction to determine a motion for sanctions pursuant to R.C. 2323.51 and Civ.R. 11, even after a dismissal pursuant to Civ.R. 41. Goff v. Ameritrust Co., 8th Dist. No. 96120, 1994 Ohio App. LEXIS 1916; ABN AMBRO Mortg. Group, Inc. v. Evans, 6016, 8th Dist. No. 65196 & 62011-Ohio-5654.

(1) Sanctions Under R.C. 2323.51

Trial Courts have discretion under R.C. 2323.51 to award court costs, reasonable attorney fees, and other reasonable expenses to a party in a civil action if the party was adversely affected by frivolous conduct. Frivolous conduct is defined by R.C. 2323.51(A)(2)(a)(i)-(iv), and means either of the following:

> (a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies any of the following:
>
> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv)The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief. (R.C. 2323.51)

Sanctions under this section may be awarded if a motion is filed within 30 days of final judgment. R.C. 2323.51(B)(1). The Court notes that Defendants' motion under this section is timely, as it was filed April 25, 2012 following the March 28, 2012 Dismissal.

"A hearing is not required where the court has sufficient knowledge of the circumstances for the denial of the requested relief and the hearing would be perfunctoy, meaningless, or redundant." Brancatelli v. Soltesiz, 11th No. 2011-L-012, 2012-Ohio-1884, citing Huddy v. Toledo Oxygen Equip. Co.,6th Dist. No. L-91-321992 Ohio App. LEXIS 2390, 5 (May 8, 1992).

Sanctions under R.C. 2323.51 are broader in scope than sanctions under Civ.R. 11 and are determined regardless of what the attorney or client knew or believed. It is an objective consideration, whether or not the alleged frivolous claims are warranted under existing law. Slye v. City of London Police Department, 12th Madison No. 2009-12-027, 2010-Ohio-2824. The test is "whether no reasonable attorney would have brought the action in light of existing case law." Id. Emphasis added. "In other words, a claim is frivolous if it is absolutely clear under existing law that no reasonable lawyer could argue the claim." Oakley v. Nolan, 4th District No. 06CA36, 2007-Ohio-4794.

"Courts should apply R.C. 2323.51 'carefully so that legitimate claims are not chilled. A party is not frivolous merely because a claim is not well grounded

in fact. Furthermore, the statute was not intended to punish mere misjudgment or tactical error. Instead the statute was designed to chill egregious, overzealous and frivolous action." Pingue v. Pingue, 5th Dist. No. 06-CAE-10-0077, 2007-Ohio-4818, ¶30, citing Riston v. Butler, 149 Ohio App.3d 390, 2002-Ohio-2308, quoting Hickman v. Murray, (Mar.22, 1996), Montgomery App. No. 15030, 1996 Ohio App. LEXIS 1028.

The goal of R.C. 2323.51 is to impose sanctions on the person actually responsible for the frivolous conduct, and thus, the court may use its discretion to levy sanctions against a party, the counsel of record or both. Ron Scheiderer & Assoc. v. London, 81 Ohio St.3d 94, 689 N.E.2d 552 (1998); Burrell v. Kassicieh, 128 Ohio App.3d 226, 220 (1998). As such, the trial court is required to engage in a two-part inquiry: (1) it must first determine whether the action taken by the party against whom sanctions are sought was frivolous, and (2) if so, determine an amount of compensation, if any, to award. McCallister et al. v. Frost, et al, 10th Dist. No. 07AP-884, 2008-Ohio-2457.

(2) Sanctions Under Civ.R. 11 and the Inherent Power of the Court

Civ.R. 11 provides, in pertinent part, the following:

> The signature of an attorney or pro se party constitutes a certificate by the attorney of party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it. Ad that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

The imposition of sanctions is a matter within the sound discretion of the trial Court. Harris v. Southwest Gen. Hosp., 84 Ohio App.3d 77, 616 N.E.2d 507 (8th Dist. 1992). In fact, a hearing for sanctions under Civ.R. 11 is not required where the Court finds claim is not frivolous. Martin v. Crosby, 8th Dist. No. 68517, 1995 Ohio App. LEXIS 3453. "The issue of whether one party's conduct is intended merely to harass or maliciously injury another party to the civil action is a factual question," Long v. Rhein, 12th Dist. No. CA 2007-02-007, CA 2007-02-008, 2003-Ohio-711, ¶20.

Alternatively, trial courts possess inherent power to impose sanctions when the judicial process is abused. Slabinski, et al. v. Sevisteel Holding Co. et. al., 33 Ohio App.3d 345, 346, 515 N.E.2d 1021 (9th Dist. 1986).

In determining whether to award sanctions under Civ.R. 11, the Court must determine the attorney's actual intent or belief in deciding whether or not his conduct was willful; said another way, the Court must utilize a subjective, bad faith standard. Baker v. A.K. Steel Corp., 12th Dist. No. 86904, 2006-Ohio-3895, ¶10.

The Ohio Supreme Court has described bad faith as "a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud. It means with 'actual intent to mislead or deceive another'." State ex. rel Bardwell v. Cuyahoga County Bd. Of Comm'rs,

127 Ohio St. 3d 202, 2010-Ohio-7073; 937 N.E.2d 1274, at ¶8, citing Slater v. Motorists Mut. Ins. Co. (1962), 174 Ohio St. 148, 151, 187 N.E.2d 45, overruled on other grounds in Zoppo v. Homestead Ins. Co. (1994), 71 Ohio St.3d 552, 1994-Ohio-461, 644 N.E.2d 397, quoting Spiegel v. Beacon Participations, Inc. (1937), 297 Mass. 398, 416, 8 N.E.2d 895.

The Court should consider "whether the party signing the document: (1) has read the document; (2) harbors grounds to support the document to the best of the person's knowledge, information and belief; and (3) did not file the document for purposes of delay." Harris, supra. If the attorney fails to meet any of these requirements, and that failure was willful, as opposed to negligent, then attorney may be subject to sanctions under Civ.R. 11. Id.

(B) Law as it Relates to Defamation & Public Officials

"Defamation is a false statement published by a defendant acting with the degree of fault that injures a person's reputation, exposes the person to public hatred, contempt, ridicule, shame or disgrace, or adversely affects the person's profession. Becker v. Internatl. Assn. Of Firefighters Local 4207, 12th Dist. No. 2010-03-029, 2010-Ohio-3467, citing Jackson v. City of Columbus, 117 Ohio St.3d 328, 2008-Ohio-1041, ¶9; Welling v. Weingeld, 113 Ohio St. 3d 464, 2007-Ohio-2451, ¶953 ("publication" for defamation purposes is a word of art, which includes any communication by the defendant to a third person.) (2003). Damages are presumed when plaintiff has pled and proved claims of defamation per se. Murray v. Knight Rider, 7th Dist. No. 02 BE 45, 2004-Ohio-821. Defamation per se involves defamatory statements that either imputes indictable

criminal offense or impairs plaintiff's ability to practice her trade or profession. Wilson v. Wilson, 2nd Dist. No.. 21443, 2007-Ohio-178.

"Under the standard enunciated in New York Times Co. v. Sullivan (1964), 376 U.S. 254, 279-280, 84 S.Ct. 710, a public official may not recover damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice," that is, with knowledge that it was false or with reckless disregard of whether it was false or not." Becker, supra, citing Perez v. Scripps-Howard Broadcasting Co. (1988), 35 Ohio St.3d 215, 218. Indeed, the United States Supreme Court recognizes that "there is no constitutional value in false statements of fact." Gertz v. Welch, 418 U.S. 323 (1974).

In determining whether Defendant acted with actual malice, the "focus is upon defendant's attitude toward the truth of falsity of the published statements, rather than upon the existence of hatefulness or ill will." Becker, supra, ¶13, citing Perez, supra at 218. Plaintiff bears the burden of proving the same. Id at ¶14.

"For a statement to be defamatory, the statement must be a statement of fact and not of opinion." Curry v. Blanchester, 2010-Ohio-3368, ¶47, citing Fuchs, 2006-Ohio-5349 at ¶39. To determine whether a statement at issue is a statement of fact or opinion, the court must consider the totality of the circumstances, including (1) the specific language used, (2) the verifiability of the statement, (3) the general content of the statement, and (4) the broader context in which the statement appeared. Vail v. The Plain Dealer Publishing Co., 72 Ohio St.3d 279, 1995-Ohio-187. The Court will determine whether a reasonable

reader would perceive the statement as fact or opinion. McKimm v. Ohio Elections Comm., 89 Ohio St. 3d 139; 2000-Ohio-118; 729 N.E.2d 364.

Courts infrequently hold select slurs or accusations, ie. Facist, gay-basher, hate-monger, to be actionable statements because they consist of elements of hyperbole and ambiguity, so as to fall within the realm of opinion. Condit v. Clermont County Review, 110 Ohio App.3d 755, 675 N.E.2d 475 (12th 1996). Lastly, if the alleged defamatory words are susceptible to innocent and defamatory meanings, the innocent one should be used. Yeager v. Local Union 20, 6 Ohio St.3d 369; 453 N.E.2d 666 (1983). The innocent construction rule only applies when in context there are two reasonable constructions of the statement, one defamatory and the other non-defamatory. McKimm, supra.

III. ANALYSIS

A. Defendants' Motion for Sanctions under R.C. 2323.51

Defendants seek the imposition of sanctions jointly and severally, against Jean Schmidt, and her counsel Mr. Donald C. Brey and Ms. Elizabeth Watters, asserting their conduct rose to the level of frivolous conduct. Schmidt and her counsel assert Defendants' Motions must be denied because they did not act in bad faith, they did not file the complaint to harass or injure Defendants, and there exists a legal and factual basis to litigate their claims.

At the outset, the Court notes Defendants conceded that Schmidt had probable cause to file her Complaint. See Defendants' March 10, 2011 Joint Motion in Opposition to Plaintiff Schmidt's Motion to Dismiss, p. 3, (emphasis in original) "Defendant Krikorian's claim implicitly states that there is 'probable

cause' for Plaintiff Schmidt's Complaint." Given this previous admission that Schmidt had a basis for filing her complaint, the Court finds it antithetical, at best, that Defendant now refutes the same and demands sanctions.

Importantly, the OEC found that the statements made by Krikorian, which similarly concerned Schmidt and the Armenian genocide, were not only false, but also were made with knowledge that they were false or with reckless disregard for the same. The findings of the OEC support Schmidt's claims that the complaint was not filed to merely harass or injury Defendants. Brey's affidavit confirms the same.

After reviewing the pleadings of the parties and the copious amounts of evidence submitted, the Court finds an adequate factual basis for Schmidt to have filed the complaint against Defendants.

The Court has reviewed the claimed defamatory statements to determine whether or not a reasonable attorney would have undertaken the filing of a complaint thereon based upon the existing law. In determining whether the statements alleged are defamatory, the Court must consider the context in which each was made.

First, the Court examines the statements made in July of 2009 during an Asbarez.com interview right after the first OEC complaint and the start of the OEC's investigation. "She's [Jean Schmidt is] threatened by my campaign and is using the OEC to hide her positions and hide who's funding her campaigns." (Compl. ¶30 & ¶68). "Just like she [Jean Schmidt] voted to bailout 'Wall Street while accepting thousands of dollars from the banking industry, she continues to

deny genocide while accepting money from Turkish interest PACS." (Compl. ¶30 & ¶72).

Defendants' argument that the first statement is an opinion and therefore not actionable, is not well taken. Likewise, Defendants argument that the second statement is true, and that "Turkish interest PACs" can have an innocent construction is also not well taken. Clearly, given the context, the innocent construction rule is inapplicable.

The Court finds a reasonable belief by Schmidt and her counsel that the first statement was accusing Schmidt of misusing the OEC (or being in cahoots with the OEC), and the crime of concealing her campaign contributions, and under existing case law such supports a defamation claim. The Court concludes that such statements falsely made and published to Asbarez.com about Schmidt would injure her reputation, exposes her to public hatred, ridicule, shame, disgrace and adversely affected her profession, that presumptively Defendant knew the statements were false or acted with reckless disregard for whether or not they were false. Simply because Schmidt is a public official does not exclude her from defamatory injury; rather it increases her burden of proof regarding the speaker's knowledge, ie. actual malice. Further, the second statement implies that Schmidt accepts bribes in exchange for official acts, which again a reasonable attorney may find defamatory.

Importantly, even if a jury ultimately determined these statements were not defamatory, Schmidt's alleged violation in pursuing this complaint was not frivolous. The complaint does not rise to the level of willful violation as the

complaint appears warranted in existing case law or a reasonable extension of the same. As such, initiating a complaint for defamation per se on this basis of these statements alone is not a violation of R.C. 2323.51.

Second, the Court reviews the statements made during the August 27, 2009 Armenian Report interview. "What, I can't call [the funds Rep. Schmidt received from Turkish interest, some $29,500, 'blood money'! You have got a representative who is taking money from a foreign lobby. Schmidt said in her deposition that she had no idea why she was the largest recipient of money from the Turkish lobby. Just think how stupid that sounds." (Compl. ¶38 & ¶83). "...the Turkish government is behind these contributions and it is my right to feel that way and it is my right to say so." (Compl. ¶38 & ¶83). "Schmidt is bought and paid for by the Turkish lobby and people don't like it when their representatives sell out like that." (Compl. ¶41 & ¶88). These statements were made after the August 14, 2009 and August 22, 2009 depositions of officers of the Turkish Coalition of America and of the two PACs that Defendant claims were sponsored by the Turkish government.

Defendants claim that "blood money" is political hyperbole, and submit several literal translations of what "blood money" actually means. (See Krikorian Affidavit, ¶68). Additionally, Defendants filed a 49 page report on what the term "bought and paid for" means in American Culture. Defendant Krikorian attempts to now urge the position that these statements are merely his opinion, and are susceptible to multiple interpretations.

Schmidt contends these statements are evidence of Defendant Krikorian's

repeated and knowingly false allegations that she took money from a foreign lobby, even after he heard evidence that undoubtedly refuted the same. Importantly, at no point during the proceedings have Defendants offered competent, credible evidence that these statements are true. The OEC ultimately cleared Schmidt of any wrongdoing.

The Court finds that a reasonable jury could find these statements defamatory, and there exists legal grounds for bringing a defamation per se claim on these statements. Even if a jury were to ultimately find these statements are political hyperbole, this would still not make Schmidt's conduct in pursuing the claims frivolous, as opposed to misjudgment or even a negligent misinterpretation of the statements.

Third, the interview with the Armenian Mirror-Spectator on August 28, 2009. "she [Plaintiff Schmidt] suggested that she had no idea that she was the leading recipient of Turkish lobby money in '08 ... She said that she never spoke of the Armenian Genocide resolution at any of the Turkish lobby fundraisers held on her behalf, which from my prospective is laughable ... She's a liar; she's not credible. I think its obvious that two weeks after receiving $11,000 of Turkish lobby money she joins the Turkish caucus – and claims there's no quid pro quo. She's an embarrassment to the district and to the country." (Compl. ¶44 & ¶92). "She was basically programmed by the Turkish lobby for that sworn deposition and its a shame to see a sitting congressional representative act in the way she acted yesterday." (Compl. ¶48 & ¶98).

The Court finds these last statements qualify Defendants' opinion, and as

such, the statements at ¶44, ¶48, ¶92 & ¶98 are likely not actionable as a matter of law. The Court finds, however, that the inclusion of these statements in Schmidt's defamation per se action is not sanctionable, as other statements in the complaint were actionable.

After reviewing each of the statements that formed the basis for Schmidt's complaint, the Court finds that a reasonable attorney would have found a basis in law and fact to proceed with the defamation claims. Moreover, the complaint was not filed merely to harass Defendants. Instead, Schmidt chose to avail herself of a legal remedy after Defendants alleged repeated and knowingly made false statements about her.

Defendants' Motion for Sanctions under R.C. 2323.51 is hereby OVERRULED in its entirety.

B. Defendants' Motion for Sanctions under Rule 11 & Inherent Authority of the Court

Defendants seek the imposition of sanctions against Schmidt's counsel Mr. Donald C. Brey ("Mr. Brey") claiming the following pleadings were frivolous and lacked good grounds to support: (1) June 8, 2010 Complaint; (2) December 23, 2010 Plaintiff Jean Schmidt's Response to Defendant David Krikorian's Notice of Correction;(3) May 3, 2011 Notice of appeal and Appellate Briefs; (4) June 9, 2011 Plaintiff's Motion for Protective Order pending motions regarding jurisdiction over discovery' and (5) July 14, 2011 Plaintiff's Memorandum Opposing Defendant's June 23, 2011 Motion to Compel.

Mr. Brey insists that the Motion against him under Civ.R. 11 and/or the Court's inherent power is baseless. He testifies (via affidavit): (1) he read all the

documents and notices that he signed and filed in connection with the case and appeal; (2) he possessed a good factual grounds to support the Complaint; (3) no actions were taken simply to harass or maliciously injury Defendants, or for any improper purpose; and (4) he believed all actions taken by him were warranted under existing law or argument for future modification of the law.

The accusation that Mr. Brey deliberately misquoted Defendant Krikorian for purposes of the Complaint is not well taken. Defendants' Answer and Counterclaim admits paragraphs 32,77,45 and 97 of Plaintiff's complaint (quotes) are "true and accurate representation of how that publication reported Defendant Krikorian's alleged statements." The Court finds it disingenuous that Defendants now seek sanctions claiming they were misquoted. Likewise, Defendants previously failed to raise this issue in their Motion to Strike part of Plaintiff's Complaint.

Additionally, Defendants' claim that Mr. Brey "lied to this Court about claimed damages" has a hollow ring. Schmidt filed her complaint alleging defamation per se, which does not require pleading damages because they are presumed. Whiteside v. Williams, 12th Dist. No. CA2006-06-021, 2007-Ohio-1100, ¶4.

In short, the record is void of any evidence that Mr. Brey willfully violated the professional rules and filed this complaint and maintained the cause of action in bad faith. Importantly, the OEC found: (1) Defendant Krikorian knowingly made false statements about Schmidt; and (2) Schmidt did not violate the rules as they relate to campaign contributions. The Court examined the statements

above in detail, reviewed the numerous pleadings and exhibits filed in contested matter, and concludes that a reasonable basis existed in law and fact for the belief that many (if not all) of the Defendants' statements were actionable.

In determining whether a Civ.R. 11 violation occurred, Defendants must prove Mr. Brey's conduct was not simply negligent, but willful. This is not established. The Court finds that this case was certainly not "open and shut" for either party; however, the existence of closely contested issues does not mean that Mr. Brey's decision to proceed with suit was in bad faith. The Court finds sufficient evidence to demonstrate that the defamation suit was not instituted frivolously or without a good-faith belief in legitimate legal grounds.

Defendants' Motion for Sanctions Against Mr. Brey Under Civ.R.11 and the inherent power of the Court is hereby OVERRULED.

C. Separate Finding Regarding Ms. Watters

The Court finds the allegations against Ms. Watters to be baseless. On April 28, 2011, Ms. Watters filed her Notice of Appearance in this case. This coincided with the Court's April 4, 2011 denial of Plaintiff's September 27, 2010 Motion to Admit Bruce Fein Pro Hac Vice. On January 26, 2012, Ms. Watters withdrew as counsel for Schmidt owing to her new position as a Franklin County Common Pleas Court Magistrate.

Importantly, none of the documents or allegations complained of by Defendants involved Ms. Watters. The Affidavit of Ms. Watters confirms that she was not involved in the decision to file the complaint, or any events that followed, regarding matters before this Court. One of the objectives in awarding sanctions

under R.C. 2323.51 is for the Court to award them against the party actually responsible. Ron Scheiderer & Associates, supra. Even had the Court found a basis for sanctions under R.C. 2323.51, there is no basis for imposing them against Ms. Watters.

Defendants Motion for Sanctions against Ms. Watters is OVERRULED in its entirety.

IV. CONCLUSION

Based upon the foregoing analysis, Defendants Motion for Sanctions Under Civ.R. 11 and Inherent Power of the Court and Defendants Motion for Sanctions Under R.C. 2323.52 are hereby OVERRULED in their entirety.

SO ORDERED.

John W. Kessler /sm

JUDGE JOHN W. KESSLER (Ret.)
(By assignment)

Copies of this Decision were sent to all parties below by ordinary mail or electronic mail this filing date.

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