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United States District Court, N.D. California.

EMMA C., et al., Plaintiffs,  
v.  
Delaine EASTIN, et al., Defendants.

No. C-96-4179 TEH. | Oct. 4, 2001.

## Opinion

### ***ORDER OF REFERRAL TO MAGISTRATE JUDGE RE POTENTIAL SANCTIONS***

HENDERSON, J.

#### ***FACTUAL BACKGROUND***

\*1 On August 22, 2001, this Court held a hearing to decide whether Ravenswood City Elementary School District (“Ravenswood”) should be held in contempt. In support of its defense, counsel for Ravenswood filed an exhibit on August 22, 2001, which consisted of petitions in support of the Ravenswood Board of Trustees and Ravenswood Superintendent Dr. Charlie Mae Knight. (Exhibit B to Snell Second Supp. Decl.) The exhibit was accompanied by a sworn declaration from counsel stating that the exhibit contained “true and correct copies of thirty-five pages of petitions made by parents and residents of East Palo Alto, Menlo Park and friends of the District, expressing their support for the District’s Board of Trustees and Dr. Knight.” (Snell Second Supp. Decl. at ¶ 3)

On September 14, 2001, Counsel for Defendants sent a letter to this Court withdrawing the exhibit. (copy attached hereto) Counsel admitted that the signatures on the petitions had been collected in 1997 and 2000 in connection with other matters. Counsel further stated that she had just received the document the day of the contempt hearing and that neither Dr. Knight nor any of the members of the Board of Trustees were “involved in the preparation or presentation of this exhibit.” On September 15, 2001, the San Jose Mercury News reported that signatures from earlier petitions had been pasted onto a new petition heading,<sup>1</sup> which made it look like the signatures had been collected for the instant contempt proceedings. The paper also reported that an investigation had revealed other irregularities in the petitions.<sup>2</sup> The article further stated that the petitions had been sent from a fax machine in Dr. Knight’s office. (copy of article attached hereto)

#### ***LEGAL STANDARD***

Federal Rule of Civil Procedure 11 provides for the imposition of sanctions for filings which are frivolous, legally unreasonable, or brought for an improper purpose. *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990). Papers filed to perpetrate a fraud on the court are submitted for an “improper purpose” and are violative of Rule 11. *Warren v. Guelker*, 29 F.3d 1386 (9th Cir.1994)(false statement in complaint regarding existence of prior lawsuit); *In re Omnitron Int’l, Inc. Sec. Litig.*, 1994 WL 476694 \*3 (N.D.Cal., Aug. 19, 1994)(fraudulently signed expert witness declarations); *Sun World Inc. v. Lizarazu Olivarría*, 144 F.R.D. 384, 389 (E.D.Cal.1992)(falsified documents in opposition to plaintiff’s request for a writ of attachment). The standard of conduct under Rule 11 is one of objective reasonableness. *Business Guides v. Chromatic Communications Enter., Inc.*, 119 F.R.D. 685, 688 (N.D. Cal., April 12, 1988). A party may be held liable where the party offers inaccurate information which could easily have been checked on prior to submitting information. *See id.* at 687. In addition, Rule 11 may apply to parties who did not actually sign the offending document. *See id.* at 690.

\*2 Courts also have the inherent power to impose sanctions for abusive litigation practices in any proceeding in federal district court. *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *F.J. Hanshaw Enter., Inc. v. Emerald Dev., Inc.*, 244 F.3d

**Emma C. v. Eastin, Not Reported in F.Supp.2d (2001)**

1128, 1136 (9th Cir.2001). Such sanctions may be imposed on both counsel and parties. *Alyeska Pipeline Serv. v. Wilderness Society*, 447 U.S. 752, 766 (1980)(counsel). Fabricating documentary evidence is a litigation abuse and is subject to inherent powers sanctions. *Pope v. Federal Express Corp.*, 974 F.2d 982, 984 (8th Cir.1992).

**DISCUSSION**

It is clear that the petitions filed on August 22, 2001 are fraudulent documents, given that counsel has admitted that the signatures attached thereto were collected for other matters and not the instant contempt proceedings as the petitions were doctored to suggest. The filing of a fraudulent document is a serious matter because its very nature “threatens the integrity of the judicial process.” See *Omnitron*, 1994 WL 476694 at \*8.

While the letter from Ms. Snell states that neither Dr. Knight, nor any members of the Board of Trustees, were involved in the “preparation or presentation” of the exhibit, the fact that the petitions were apparently faxed from the Superintendent’s office, and the Superintendent and Board of Trustees were presumably aware that said petitions were filed and presented to the Court on their behalf, raises serious questions regarding their potential complicity, if not outright participation, in this incident that can not be readily dismissed with conclusory assertions.

In short, under the aforementioned legal principles and the information presently before the Court, it appears that Dr. Knight and the individual members of the Ravenswood Board of Trustees may have directly or indirectly participated in, or otherwise tacitly encouraged or permitted, a “fraud on the court” which is punishable by sanctions. And while counsel Karen Snell only received the petitions the day of the hearing, and subsequently withdrew them on September 14, 2001, it is also appropriate to explore whether counsel for Ravenswood met her obligations to the Court.

Accordingly, and good cause appearing, the Court *sua sponte*<sup>3</sup> HEREBY ORDERS that this matter be referred to Magistrate Judge Elizabeth LaPorte to hold such evidentiary or other hearings or proceedings as she deems appropriate and necessary in order to make a report and recommendation to this Court as to (1) whether any of the above-mentioned parties or counsel should be held partly or wholly responsible in any way for the creation, submission, or filing of the petitions at issue,<sup>4</sup> and (2) the amount of sanctions that should be imposed, if any, under either Federal Rule of Civil Procedure 11 or the inherent powers of the court.<sup>5</sup> See *Business Guides*, 119 F.R.D. at 687 (referring similar matter to Magistrate Judge for report and recommendation).

**\*3 IT IS SO ORDERED.**

Footnotes

- <sup>1</sup> The heading reads:  
To: Honorable Felton [*sic*] Henderson  
From: Ravenswood Parents and Citizens of East Palo Alto, Menlo Park and Friends of the District  
Re: Petition in Support of The Ravenswood Board of Trustees and Superintendent, Dr. Charlie Mae Knight  
We the following parents and friends of the Ravenswood City School District support the locally elected Board of Trustees and the Superintendent of Schools, Dr. Charlie Mae Knight. We have full confidence in their desire and ability to serve all of the children in the Ravenswood City School District.
- <sup>2</sup> According to the article, “a Mercury News review found signatures listing addresses that do not exist, signatures of people who insist they neither saw the petition nor support the district’s leadership, and signatures from out-of-towners who say they have never heard of Knight and her district.”
- <sup>3</sup> As stated, this referral is issued *sua sponte* and not at the behest of any party or in response to any filing by the parties. In this regard, the Court notes that on October 1, 2001, plaintiffs filed an “ex parte application to permit the introduction of additional newly discovered evidence in support of Plaintiffs’ Motion or Contempt” which concerns the petitions at issue as well as other matters. This request, and Ravenswood’s October 2, 2001 letter responding thereto, will be addressed separately by the Court at a later date.
- <sup>4</sup> As indicated above, the petitions raises issues of fraud in two separate respects. First, signatures collected from other matters in 1997 and 2000 were apparently pasted onto a new petition heading relating to the instant case and filed on August 22, 2001. Second, irregularities have been found with respect to the signatures collected in 1997 and 2000. While the Magistrate Judge should initially focus the proceedings on the first matter, she may, in her discretion, consider whether sanctions against the Superintendent or members of the Board of Trustees are warranted with respect to the second matter as well, if the proceedings and

**Emma C. v. Eastin, Not Reported in F.Supp.2d (2001)**

record indicate that exploration into this second area is appropriate.

- <sup>5</sup> With respect to any sanctions under the inherent powers of the court, the Magistrate Judge should, at this juncture, only consider sanctions which do not rise to the level of criminal sanctions (which would require a jury trial). *See F.J. Hanshaw*, 244 F.3d at 1139 and n. 10.