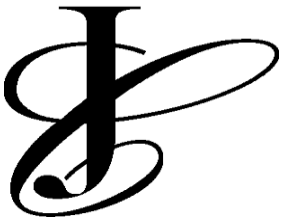

February 17, 2009

VIA EMAIL

Mr. David A. Schooler, Esq.
Briggs & Morgan
80 S. 8th Street
Minneapolis, MN 55402

Re: Brown v. Browne – your Rule 11 threat letter dated 2/13/09

Dear Mr. Schooler:

This letter reviews a number of your assertions from your 2/13 Rule 11 threat letter, even though most of them are incredibly vague.

Representation.

Your letter claims that you represent all of the rogue team of "officers" and Stacy Sorenson and NRP. I am asking you now to consider your conflict of interest in representing the rogue team, as well as Stacy Sorenson/NRP. As Plaintiffs analyze it, there is a possible "concurrent conflict of interest" between your clients.

> A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client, or, there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to another client….
> In other words, what is required is an interest that limits the lawyer's ability to represent the client.

C.D. Klausing, When it comes to conflicts, not all interests are created equal, *Minnesota Lawyer* (Nov. 2006). It seems that unless your clients are agreeing that Sorenson worked in concert with them, that there is a conflict. Your continued representation will be viewed as an admission that Sorenson worked in concert with the rogue team. You might want to check your position, however, since at the oral argument, the then-attorney for Sorenson indicated that the NRP had no stake in which were the JACC officers.

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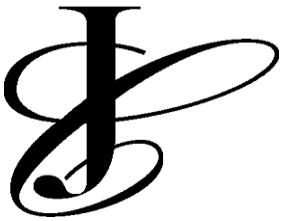


Insurance policy.

I have asked for, but you have not received, a copy of the insurance policy that your clients are purporting to claim coverage/defense under. Please forward that ASAP. Based on the arguments you make in your 2/13 letter, there is legitimate concern that the insurance company is being used to pay for the defense of City Officials (see below) and other coverage issues.

General observations regarding your 2/13 letter.

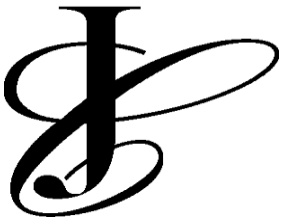
I know from speaking with you that you were retained only last week. When I talked to you, you did not even know the name of your clients. You indicated you had been retained by the insurance company. Then, literally days later, you emailed me a letter suggesting that *I* don't know enough about this case? That is a questionable position from the get go.

You cite Rule 11 and the similar state statute, but not in detail. You do not, at any point in your letter, indicate which specific language of Rule 11 was allegedly violated. Accordingly, your letter is a nullity. You really seem to be making legal arguments that your clients hope to win at some point on the merits. Disagreement on the merits, or even the facts or the law, does not a Rule 11 motion make.

One of the most widely used (and misused) methods of informal resolution of Rule 11 issues is the warning letter. A warning letter is simply a pre-motion letter written by the attorney who is contemplating a Rule 11 motion to the opposing attorney. It often sets forth the facts and law that the moving party is reasonably certain it can establish, together with why the opposing party's pleading, motion, or other paper therefore allegedly violates the requirements of Rule 11. Typically, a warning letter will also instruct or insist that the opposing party immediately abandon the allegedly frivolous or harassing portion of its pleading, motion, or other paper under the threat of a Rule 11 motion and sanctions. …Unfortunately, the warning letter is often misused by moving attorneys, who ignore some or all of the three main purposes of this tool.

47 Am.Jur. Trials 521 §29 (updated May 2007).

It also seems that you are making malpractice claims against the prior attorneys who represented your current clients. You are claiming, it seems, that the exhaustion argument was *so obvious* that any attorney should have known of it (should have been raised in the TRO proceedings briefs and/or oral argument). The defendants had from January 28, 2009 until February 3, 2009 (6 days) to put together a defense in the TRO action, and they Judge even allowed additional briefing after that. Ms. Goins emailed me on January 29 indicating he had been retained. He represented



most of your current clients, and clearly had access to Michael Browne – he filed an affidavit from him. Yet no exhaustion argument. Knowing that it is too late to make it now, you seem to want to blame me. I have no control over what defense attorneys do in response to my clients' motion. Maybe your clients want to pursue malpractice claims (I am not taking a position on whether those are viable claims), but this is not Rule 11 fodder.

Specific points in your 2/13 letter.

No exhaustion requirement

You claim that Plaintiffs failed to exhaust by going to the City of Minneapolis under a C-PED contract. You are incorrect, both factually and legally. Consider the following:

- For reasons that are unclear you attach as an exhibit an old C-PED contract (2007). Had you attended the hearing on 2/3/09, you would have heard the Assistant City Attorney say that there is no 2009 C-PED contract. No contract when the incidents occurred (on or about 1/14/09), and no contract when the litigation was commenced.

- Even if the C-PED contract were an issue, you did not read it carefully. C-PED has no role in internal governance of JACC. The grievance process is for issues dealing with City monies, only.

- Finally, even when there are factual and legal failure-to-exhaust arguments, they can be overcome by a showing that exhaustion would be futile. These are well-known legal principles, and I am surprised that you did not consider them. Why would Plaintiffs ever go to the City of Minneapolis with a grievance that City Officials were abusing their authority and trying to run JACC?

While it is fascinating that one of your first acts was to contact a City Official to support your clients' legal argument, the Robert Miller is of no moment.

Allegation of bad faith

Saying it is "clearly" bad faith does not make it so. Be specific. Further, what does "longstanding pattern of predating and including this groundless lawsuit" mean? If you are claiming there is a falsity, state what is "untruth." Flinging inflammatory terms around does not create a Rule 11 issue. But more than that – how can I ever review it, if you are not specific?

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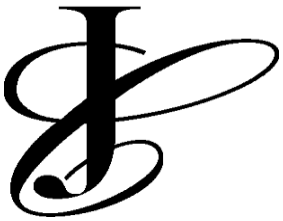

Farther down in your letter, you mention prior lawsuits by Plaintiffs – but read your sentence. It sounds like you are saying improper tactics have been used by the rogue team to bully the legitimate JACC officers. If that is what you are saying – we agree.

The mention of prior lawsuits by Plaintiffs is vague. Which Plaintiffs? What lawsuits? Did you just type up what some of your clients told you? Do you consider that sufficient factual research before claiming Rule 11 violation? You say that you "will come forward" with evidence. That is not a proper use of a Rule 11 meet and confer letter. Saying you will say or provide something later does not start the 21-day safe harbor period running.[1]

You also seem to impugn me. You say at page 3 that Plaintiffs *and their counsel* have taken a series of actions. Is that me? What actions are you referencing? I cannot read your mind.

Section 1983 claim

I am not sure what your point is here. That claim is against City Officials. Are you carrying water for them?

I have tried a First Amendment retaliation claim all the way through Federal District Court to prevailing at jury trial and even an award of punitive damages. Have you? By the way, one of the defendants in *that* case was Don Samuels.

Further, you claim that the elements of the 1983 claims are not plead. That is a Rule 12 motion issue, not a Rule 11 threat-letter issue. And you fail to discuss what is allegedly "deficient." You accuse me of "repeating" the rogue takeover argument, but you are merely repeating your exhaustion requirement. Did you even research whether there is an exhaustion requirement for a First Amendment retaliation claim? If you don't understand 1983/First Amendment law, I am happy to schedule a meeting to explain it to you.

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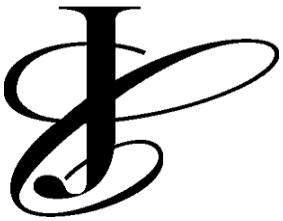
[1] Indeed, it appears that you need to brush up on Rule 11 law. The first step is a letter (often referred to as a "warning" letter), and/or a meet and confer to try to work things out. Only then a motion that is served but not filed, and only 21 days later can a Rule 11 motion be filed. As I noted I my email, take heed, because Rule 11 motions are also subject to Rule 11. "Attorneys are cautioned that because Rule 11 violations may be raised by motions, such motions themselves are subject to review under Rule 11, and can be the subject of additional allegations of violations of Rule 11." S. Baicker-McKee, W. Janssen, & J. Corr, Federal Civil Rules Handbook, West Group (2002), p. 267.



State torts

Kind of repeating yourself again, you suggest that the "rogue takeover" idea is not a recognized tort. That isn't even a valid Rule 12 argument – the Complaint must be viewed as a whole. It certainly isn't a Rule 11 argument. If you read the Complaint and did not get the interference with contract theory, then I am happy to schedule a meeting to explain it to you.

It's easy to fling around phrases like "Plaintiffs present no facts to support a claim for…" but you give no detail. I am not going to pony up Plaintiffs whole case, legal theories, factual knowledge, work product, and attorney-client privileged communications, just because you send a letter containing your oft-repeated phrase. Also, since you appear to be carrying water for City Officials (not appropriate for an attorney selected by the insurance company), I cannot tell from your letter which defendants you are discussing, so it's difficult to be more specific in my response.

Your demand.

Your demand at page 3 really shows the goal here - to try to scare me (Jill Clark) into dropping the case. Rule 11 does not authorize or provide a shield for such pressure tactics. This claimed Rule 11 warning letter appears to be nothing more than a desperate attempt to pressure, because if the lawsuit goes forward, your clients have big problems. You say your clients "fully intend" to file a Rule 11 motion. Would you be the signer? Because it appears someone is pushing you out into traffic to take the hit if the plan to scare me off, or the Rule 11 motion, fails.

You told me on the phone when we first talked that you are a reasonable attorney. You sounded like one that day. Your 2/13 fire-breathing letter does not sound like you, and my guess is that defendants are heaping mad, and looking for vengeance, so they got you to write this letter. Lawsuits get filed, in part, to provide formal process for discussion of the merits, in an organized, respectful and emotionless setting. I'm thinking we should get on with that.

I am not going to be bullied. However, if you feel you have legitimate Rule 11 issues, then I invite you to sit down to meet with me in person. However, if you fail to contact me to set up that meeting, then I will deem that you have violated Rule 11.

Sincerely,

s/jillclark
Jill Clark

JEC/slf
c: Clients

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