IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) CHRISTOPHER BARNETT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:18-CV-00064-TCK-FHM**
	)	
(1) HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.,	)	
(2) J. PATRICK CREMIN,	)	
(3) JOHNATHAN L. ROGERS, AND	)	
(4) UNIVERSITY OF TULSA, A PRIVATE UNIVERSITY,	)	
	)	
Defendants.	)	

MOTION FOR PROTECTIVE ORDER

COMES NOW Defendant University of Tulsa [hereinafter "TU"], by and through its attorney of record, John David Lackey, and pursuant to F.R.C.P. 83, LCvR 83.7, and *Civil Trial Rules for Judge Terence C. Kern*, moves the Court for an order requiring compliance with already established court rules regarding inappropriate conduct by parties to the lawsuit during the pendency of this action. In support of said motion, TU would state:

Underlying Facts Necessitating a Protective Order

1. The instant action was removed from State Court on January 30, 2018, based on jurisdiction for alleged violations of federal law pursuant to 28 U.S.C. §1331 (*See*, Doc. #2).
2. Within hours of removal, Plaintiff posted publicly available comments about the assigned judge, Judge Dowdell, and his alleged relationship with one of the Defendants (*See, Facebook Post re. Judge Dowdell*, attached hereto as Exhibit 1).

3. On February 1, 2018, the lawsuit was randomly reassigned to Judge Terence C. Kern (*See*, Doc. #10).

4. On February 2, 2018, Plaintiff posted publicly available comments about the newly assigned judge, calling Judge Kern "corrupt" while explicitly questioning the Court's impartiality (*See, Facebook Post re. Judge Kern*, attached hereto as Exhibit 2).

5. On February 6, 2018, TU filed its *Motion to Dismiss* pursuant to F.R.C.P. 12(b)(6) (*See*, Doc. #13).

6. On February 11, 2018, Plaintiff posted publicly available comments on Facebook about undersigned counsel for TU, calling counsel "a liar" and "becoming known as a corrupt attorney" for his representation of TU (*See, Facebook Post re. John Lackey*, attached hereto as Exhibit 3).

7. On February 11, 2018, on a website maintained by Plaintiff (universityoftulsalawsuit.com), Plaintiff posted publicly available comments disparaging undersigned counsel's family name and posted counsel's home address (*See, Website Post re. John Lackey*, attached hereto as Exhibit 4).

8. On February 11, 2018, Plaintiff posted publicly available comments on Google about counsel's law firm, calling undersigned counsel for TU "racists and bigots" (*See, Google Post re. Law Firm*, attached hereto as Exhibit 5).

9. Plaintiff has, related to other litigation in which he is currently a party, made public statements calling opposing counsel, parties, and witnesses in those cases "Klansman," "Nazi & KKK supporter," commented on the sexual propensities of opposing counsel, impugned the skill and mental health of opposing counsel, and posted mockingly about the death of loved ones ("J. Patrick Cremin was ultimately responsible for the death of his son and he knows this. This is

your fault Patrick. He is dead because of you.") (*See, Other Plaintiff Statements*, attached hereto as Exhibit 6).

10. The public statements identified, *supra*, are but a sample of the offensive, defamatory, and potentially threatening conduct Plaintiff has directed toward courts and opposing counsel.
11. The identified statements and the exhibits submitted supporting those statements in this motion are attributed to Plaintiff (*See, Affidavit*, attached hereto as Exhibit 7).
12. A proposed *Order* is attached hereto as Exhibit 8.

Argument and Authority

With all due respect, TU should not have to seek court protection to defend itself during the litigation without being needlessly subjected to unnecessary, demeaning, and defamatory conduct by another party. Further, officers of this court, including counsel for TU, should not be subject to libel or slander merely because they represent a party appearing in this Court. Less than 10 days after removal, Plaintiff's conduct exceeds all bounds of decorum and acceptable conduct - impugning the character of two federal judges and calling an officer of this Court racist, bigoted, and a liar. This Court should immediately issue an order protecting the parties and their counsel from inappropriate conduct. The Court has previously issued rules that govern the conduct of counsel and parties, and this *Motion* seeks an order articulating that those rules obviously apply to both counsel for the parties and the parties themselves.

There is no question that this Court has the authority to enter orders related to the conduct of the parties while the case is pending. In this case, local civil rule 83.7 provides attorneys direction to educate their client on appropriate decorum (LCvR 83.7(b)(10)). Further, the *Civil Trial Rules for Judge Terence C. Kern,* published on the Court's website, state in the first sentence:

> Professionalism, courtesy, decorum, and common sense shall dictate all behavior in this Court. The parties and attorneys will be held to the highest standard of professional conduct, personal and professional courtesy, and deportment throughout all proceedings conducted in this Court.

In *Sevier v. Hickenlooper*, 2018 WL 447356 (Attached hereto as Exhibit 9), the Colorado District Court entered orders requiring Plaintiffs to "immediately desist from any further *ad hominem* attacks, insults, or threats against any judicial officer this Court…" In a second related case, the District Court explicitly articulated its expectations, ordering:

> Plaintiffs are hereby ORDERED to **immediately** cease all *ad hominem* attacks on Judge Wang. This Court can only adjudicate Plaintiffs' claims on their merits if Plaintiffs address their filings to those merits, without resort to baseless *ad hominem* attacks. Further insults and attacks of this kind ***will not be tolerated***. Any pleadings—whether already docketed or filed in the future — which contain *ad hominem* attacks on any other judicial officer of this Court may be summarily stricken. ANY future violations of this Order may also subject Plaintiffs to sanctions, including being held in contempt of Court. Plaintiffs are hereby specifically put on notice that such possible sanctions may include this Court ordering that **all of Plaintiff's claims be dismissed with prejudice and attorney's fees and costs being awarded to one or more Defendants**. Plaintiffs will proceed by showing appropriate and due respect to all judicial officers of this Court, or they will not proceed at all (all emphasis original). (*See*, *Order on Pending Filings and Case Procedures*, attached hereto as Exhibit 10, Pgs. 8-9).

In this case, it is clear that a formal court order directing the parties to abide by these simple rules is required as Plaintiff's apparent reaction to a mere *Motion to Dismiss* has led to shocking public commentary against not only an opposing party, but an attorney simply representing that party.

Prior to initiating this lawsuit, Plaintiff framed his highly offensive comments as protected speech under the 1st Amendment to the U.S. Constitution or categorized his inflammatory statements as *satire*. As this Court is well aware, the 1st Amendment does not protect all speech and the 1st Amendment does not protect this conduct. *See*, *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam); (incitement of violence); *Miller v. California*, 413 U.S. 15 (1973) (obscenity);

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) and (defamation) *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, (1974) (defamation); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949) (criminal speech); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (fighting words); *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography); *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (fraud); *Watts v. United States*, 394 U.S. 705 (1969) (per curiam) and *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931) (threats).

The right of access to the courts is neither absolute nor unconditional. See, *In re Green*, 669 F.2d 779, 785 (D.C.Cir.1981). There is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious. *See*, *Tripati v. Beaman*, 878 F.2d 351, 353 (10th Cir.1989). Thus, federal courts have the inherent power to levy sanctions in response to "abusive litigation practices." *Lewis v. Circuit City Stores, Inc.*, 500 F.3d 1140, 1153 (10th Cir.2007). Courts also have "inherent power to impose sanctions that are necessary to regulate the docket, promote judicial efficiency, and ... to deter frivolous filings." *Hutchinson v. Pfeil*, 223 Fed.Appx. 765, 768 (10th Cir.2007).

In this case, Plaintiff's statements are *per se* defamatory and are subject to judicial control. *See*, *Continental Cas. Co. v. Southwestern Bell Telephone Co.*, 860 F.2d 970, 975 (10th Cir. 1988) ("[T]he issue of whether a statement is libelous per se is one of law for the court...."). Further, continued public statements, including statements made to google, available to any prospective or current client, pose a real likelihood that irreparable harm may arise by Plaintiff's conduct. There is no question that Plaintiff's conduct is an attempt to harm TU as it defends itself in this litigation, tipping any balancing of equities in favor of the protective order, and allowing a party a fair

opportunity to defend itself in court free from abuse and harassment is a public interest this Court must resolve in favor of TU.

Plaintiff has voluntarily sought the process of the court system for redress of what he perceives to be wrongs committed against him. Having availed himself of the Court, he must now abide by the rules and obligations imposed therein while his case is pending. To be clear, TU does not seek to generally enjoin all of Plaintiff's speech or even enjoin Plaintiff's speech as it relates to this litigation. TU merely seeks an order that precludes Plaintiff from engaging in behavior that is disparaging, defaming, disrespectful, or inflammatory to other parties or counsel for those parties.

Conclusion

There is no place in this Court for public statements that identify opposing counsel (or the parties themselves) as "KKK members" or "racist" or "bigoted." Plaintiff has already called this Court "corrupt," and has used shockingly vulgar language to describe opposing parties and their lawyers. These public statements come mere days after removal and before any real litigation has commenced. Unfortunately, this language follows a similar pattern of behavior Plaintiff has exhibited in other litigation where he apparently sees the use of defamatory, vulgar comments as viable trial strategy. This Court should issue an Order precluding Plaintiff from further public commentary that is disparaging, defaming, disrespectful, or inflammatory to other parties or counsel for those parties.

WHEREFORE, premises considered, Defendant the University of Tulsa prays that the court enter a Protective Order; for attorney fees and court costs as allowed by law; and for such other and further relief as is just and equitable.

/s/ John David Lackey
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ATTORNEY FOR DEFENDANT UNIVERSITY OF TULSA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of February, 2018, a true and correct copy of the above and foregoing document was transmitted *Electronically via Court ECF System* to the following attorney(s) of record:

Mr. Phil Richards
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And

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/s/ John David Lackey
John David Lackey

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