

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

SHANE DOUMA-SANCHEZ,

Plaintiff,

v.

No. D-202-CV-2024-10296

UNIVERSITY OF NEW MEXICO BOARD OF
REGENTS, DBA UNIVERSITY OF NEW
MEXICO, AND RICHARD PITINO,

Defendants.

DEFENDANTS' MOTION TO STRIKE AND FOR SANCTIONS

Defendants the University of New Mexico Board of Regents d/b/a University of New Mexico (UNM) and Richard Pitino, by and through counsel, Riley | Keller | Alderete | Gonzales (D. Chet Alderete and Tara Kaminski) present this Motion seeking relief under NMRA Rule 1-011(A). For the reasons stated herein, the improper claims and allegations set forth in Plaintiff's proposed Amended Complaint should be stricken. Additionally, Plaintiff's counsel should be sanctioned for filing a Motion to Amend the Complaint to add baseless claims and new defendants for improper purposes, including delay, harassment, and publicity.

I. INTRODUCTION

Plaintiff's initial Complaint is the subject of pending Motions to Dismiss, which have been fully briefed and are awaiting the Court's ruling. With the fully briefed motions to dismiss pending, and without any newly available facts or newly established law, Plaintiff moved to amend the Complaint to add numerous legal claims and two additional defendants. The new claims against Defendants are facially meritless.

In its present form, the Amended Complaint should not be filed on public record. Instead, it should be stricken in whole or in part. Plaintiff's counsel should be sanctioned because the proposed additional claims are not supported by good ground and the Motion for Leave to file the proposed Amended Complaint is interposed for delay and other improper purposes.

II. LEGAL STANDARD

Under Rule 1-011(A), an attorney's signature on a pleading submitted to the Court constitutes a certification that, to the best of the attorney's knowledge, information, and belief, the pleading is (1) supported by good grounds, and (2) not interposed for delay. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary or other action. *Id.* Similar action may be taken if scandalous matter is inserted. *Id.* If this rule is intentionally violated, a pleading may be stricken as sham and false. *Id.*

III. ARGUMENT

1. The Proposed Amended Complaint Should be Stricken Pursuant to Rule 1-011(A) and Plaintiff's Counsel Should be Sanctioned.

The Motion for Leave, filed March 17, 2025, attaches a proposed Amended Complaint, which is not yet part of the public docket. In its present form, the Amended Complaint should not be filed on public record. The proposed new claims against UNM (direct and vicarious) and the proposed new claims against Mr. Pitino are meritless. The reasons for this are set forth in Defendants' Response to Plaintiff's Motion to Amend, filed contemporaneously herewith.

The new claims are not based on any newly discovered facts. The proposed Amended Complaint is interposed for delay and other improper purposes. Plaintiff seeks to delay Mr. Pitino's dismissal from this lawsuit by interjecting frivolous additional claims against him during the pendency of the Motions to Dismiss. This tactic violates Rule 1-011(A).

Discovery has not been exchanged. Thus, as applied to Mr. Pitino and UNM, good ground to believe the truth of the allegations in paragraphs 73-74 does not exist. These facts are speculative and improper. They are also prejudicial to the good name and reputation of these Defendants. If the pleading is not stricken in its entirety, these facts should be stricken independently pursuant to Rule 1-011(A).

Paragraphs 76-79 of the Amended Complaint as to these Defendants and the federal civil rights claims they are designed to support should be stricken as a sham and false. *See* Rule 1-011(A) (pleadings that are scandalous and/or not well-grounded may be stricken and sanctions imposed upon the attorney who signed them). The Civil Rights Act prohibits race-based inequities and injuries. A race-based civil rights claim cannot survive unless it is shown that the alleged disparate treatment/wrongful conduct was motivated by racial bias. Here, it is not shown and it cannot be inferred.

The facts alleged are: Mr. Douma-Sanchez was a walk-on member of the team. *See* Amended Complaint at ¶ 35. He was injured. *Id.* at ¶¶ 2, 37. He could not play in a tournament. *Id.* at ¶ 4. The Teammate was a starter, a valued college athlete, and a recruit who had contributed to the team's success. *See* Amended Complaint at ¶ 91 (citing the teammates "accolades" and "successes" and his contribution to "the UNM basketball teams most victorious season"); *see also* ¶¶ 28-29, 36. If the additional allegations in the Amended Complaint establish that Mr. Douma-Sanchez was treated less favorably than his Teammate by Mr. Pitino or UNM (and they do not), they equally establish why. Namely, the teammate could contribute to the team's success by playing in the tournament and Plaintiff could not.

In fact, not a single factual allegation supports the theory that the alleged disparate treatment was driven by animus against any protected class. And in no way do the allegations suggest that these Defendants are racially biased.

Plaintiff's racial-animus theory is not only unsupported by the allegations, but also scandalous. Plaintiff's Counsel, who invoke an online ESPN opinion article as grounds to support a claim that Mr. Douma-Sanchez's right to play basketball is guaranteed by the federal constitution, are certainly aware of Mr. Pitino's good reputation and good will within the collegiate basketball community—a matter that, though unpled, should be subject to judicial notice as a widely published fact. In this context, grounded sheerly in speculation and without any good faith basis to believe that it is true, Plaintiff's counsel has signed and submitted a pleading asserting that this nationally renowned college basketball coach makes wrongful coaching decisions because he is biased against—and *would conspire to harm*—Native Americans. Unsubstantiated claims of this nature should not be treated lightly. And no court should permit such egregious abuse of process.

The Proposed Amended Complaint should be stricken as a sham and false as to the federal civil rights claims against Mr. Pitino and UNM.¹ If it is not stricken in its entirety, the Court should strike the paragraphs identified herein, strike the factually unsupported federal civil rights claims against these Defendants, and impose sanctions upon Plaintiff's counsel for violating Rule 1-011(A).

2. Plaintiff's Counsel's Pursuit of the Civil Rights Claims Against Mr. Pitino, Personally, Smacks of Malicious Abuse of Process.

¹ As a matter of law, for the reasons stated in these Defendants' Response to Plaintiff's Motion to Amend and for the additional reasons stated herein.

The federal civil rights claims and the allegations intended to support them raise the specter of malicious abuse of process. *See Fleetwood Retail Corp. of N.M. v. LeDoux*, 2007-NMSC-047, ¶ 1 (recognizing New Mexico's merger of the torts abuse of process and malicious prosecution to create the new tort of malicious abuse of process). If Plaintiff's proposed Amended Complaint in its current form is filed on the public docket, Plaintiff's counsel will effectively be inviting a malicious abuse of process claim by these Defendants. The proposed federal civil rights claims are intended to accomplish an illegitimate end - whether that is garnering publicity for Plaintiff's counsel's law firm, seeking to damage Mr. Pitino's professional reputation, or to leverage the threat of a lawsuit as a means to a settlement of the claims. In any instance, the nature of the claims and allegations, their baselessness in fact and their baselessness in law satisfy the elements of a malicious abuse of process claim, which will be pursued.

IV. CONCLUSION

Plaintiff's attempt to amend the Complaint at this late stage in the proceedings, after full briefing on the Motions to Dismiss, is a transparent effort to achieve the illegitimate ends of delaying Mr. Pitino's dismissal from this litigation and amplify the scope of the lawsuit by adding new claims and parties on grounds that are legally and factually baseless. No new evidence or legal authority supports the expansion of this lawsuit. The amendment appears calculated to exert pressure on UNM and Mr. Pitino through the burden of litigation and reputational harm, rather than assert a legitimate basis for liability.

This conduct constitutes an abuse of the judicial process and a violation of Rule 1-011(A). Sanctions should be imposed. Additionally, the Proposed Amended Complaint should be stricken as a sham and false in its entirety or, at least, as to the newly added claims against these Defendants

and the false allegations posited in support of them. These allegations are prejudicial, unsupported, and serve no legitimate purpose in the litigation.

Defendants have been forced to incur additional fees and expenses in responding to Plaintiff's improper Motion to Amend and will continue to suffer prejudice if this conduct is left unchecked.

V. RELIEF REQUESTED

WHEREFORE, Defendants respectfully request that the Court:

- A. Deny Plaintiff's Motion to Amend;
- B. Find that Plaintiff's counsel have violated Rule 1-011(A) NMRA;
- C. Impose appropriate sanctions, including striking the proposed Amended Complaint as a sham and false as set forth herein and an award of Defendants' reasonable attorney's fees and costs incurred in responding to the Motion to Amend and bringing this Motion for Sanctions; and
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

RILEY | KELLER | ALDERETE | GONZALES

By: /s/ D. Chet Alderete

DANIEL CHET ALDERETE

TARA KAMINSKI

Attorneys for The Regents and Richard Pitino

3880 Osuna Road NE

Albuquerque, NM 87109

(505) 883-5030

calderete@rileynmlaw.com

tkaminski@rileynmlaw.com

CERTIFICATE OF SERVICE

I certify that on this day, April 3, 2025, the foregoing was electronically filed through the Court's Odyssey File and Serve system, which caused the parties and counsel to be served by electronic means as reflected on the Notice of Electronic Filing. A courtesy copy was also emailed to all counsel of record on the same date.

/s/ D. Chet Alderete

DANIEL CHET ALDERETE