

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NOLEN SCOTT ELY, <i>et al.</i> ,	:	3:09-cv-2284
	:	
Plaintiffs,	:	
	:	Hon. John E. Jones III
v.	:	
	:	Hon. Martin C. Carlson
CABOT OIL & GAS	:	
CORPORATION, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER**

**July 21, 2014**

Before the Court is a Report and Recommendation by Chief United States Magistrate Judge Martin C. Carlson (Doc. 530) filed on May 22, 2014 proposing certain recommendations regarding the disposition of the Defendants' Motion for Sanctions (Doc. 455) against Leslie Lewis, Esq. and Carly Janetty, Esq. Objections have been filed and briefed. (Docs. 532,533, 538, 539, 540, 541, 542, 543).<sup>1</sup> Accordingly, this matter is ripe for our review.

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<sup>1</sup> Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. *Supinski v. United Parcel Serv.*, Civ. A. No. 06-0793, 2009 WL 113796, at \*3 (M.D. Pa. Jan. 16, 2009) (citing *Sample v. Diecks*, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" *Id.* (citing *Shields v. Astrue*, Civ. A. No. 07-417, 2008 WL 4186951, at \*6 (M.D. Pa. Sept. 8, 2008)).

## **I. BACKGROUND**

Within the Report and Recommendation, Magistrate Judge Carlson thoroughly sets forth the facts and conduct underpinning the Defendants' Motion for Sanctions. Due to the prolix nature of the facts, and because we write for the benefit of the parties and Attorneys Lewis and Janetty,<sup>2</sup> we shall only highlight those salient to our analysis herein.

This lawsuit was initiated on November 9, 2009 by a group of 44 plaintiffs who collectively filed suit to recover damages for injuries and property damage allegedly suffered as the result of the Defendants' natural gas drilling operations in Dimock Township, Susquehanna County, Pennsylvania. (Doc. 1). In large measure, the original Plaintiffs in this case have reached settlement agreements with the Defendants, however a few Plaintiffs remain, including Nolen Scott Ely and Monica L. Marta-Ely, individually, and as parents and natural guardians of their three natural children; Nolen Scott Ely, as Executor for the Estate of Kenneth R. Ely, and Ray and Victoria Hubert, individually and as the parents and natural guardians of one minor child, and a child who as since reached the age of majority, Angel Hubert (collectively "Plaintiffs").

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<sup>2</sup> Ms. Janetty is a lawyer who worked briefly with Ms. Lewis and whose relationship to this litigation seems to have been minimal. She became acquainted with Ms. Lewis while working at a previous firm, and her level of professional experience is less than Ms. Lewis's.

When the lawsuit was commenced, Plaintiffs were represented by Leslie Lewis, who had been generally admitted to practice in the Middle District of Pennsylvania a week prior to the filing. At the time the case was filed in 2009, Ms. Lewis was a senior associate with The Jacob D. Fuchsberg Law Firm in New York City. In 2010, Ms. Lewis left the Fuchsberg firm and became an associate at the law firm of Napoli Bern Ripka Shkolnik & Associates, LLP (“Napoli Bern”), also located in New York City. Several other attorneys from Napoli Bern entered their appearances on behalf of the Plaintiffs. The litigation became very contentious, particularly in the area of discovery, and defense counsel filed a motion for sanctions (Doc. 69), arguing that Ms. Lewis routinely abused and harassed them with profanity laced tirades, and otherwise regularly interfered with counsel and their consultants during Court-ordered site inspections on the Plaintiffs’ properties. Defense counsel also asserted that Ms. Lewis and her associate Tate Kunkle, Esq., violated the Pennsylvania Rules of Professional Conduct and the Local Rules of this Court, and also failed to respond appropriately or timely to discovery requests. (Doc. 70).

In response, Plaintiffs’ counsel disputed the characterization of their conduct and maintained that the same as not sanctionable, but noted that they were “profoundly sorry” for the use of foul language. (Doc. 80, p. 2). Ultimately, the

motion for sanctions was later resolved by agreement of the parties, and ordered withdrawn with prejudice by the Special Master previously assigned to this case by us to resolve matters pertaining to discovery. (Doc. 295).

While the first motion for sanctions was never formally ruled upon by the Court, it did raise questions regarding Ms. Lewis's admission to practice before this Court. Specifically, the motion sought to have Ms. Lewis's *pro hac vice* admission revoked, even though she was generally admitted to the Middle District's bar. In March 2011, Ms. Lewis's general admission to the Middle District was revoked after it was learned that she was not a member of the Pennsylvania bar, and therefore did not satisfy the Court's requirements for general admission. (Doc. 116). Thus, Ms. Lewis was terminated as counsel in the case. She did, however, remain involved in matters before the Special Master in order to defend herself against the charges brought in the first motion for sanctions. After the aforementioned resolution of the first motion for sanctions was reached in February of 2012, Ms. Lewis had no apparent overt involvement in the case. That is, until July 22, 2013, when counsel for the Defendants filed an omnibus motion seeking to strike numerous filings made in conjunction with the pending summary judgment motions as well as a motion for sanctions against Ms. Lewis and Ms. Janetty for impermissible ghostwriting of Plaintiffs' alleged *pro se* submissions

before the Court. (Doc. 455). Defense counsel uncovered that Ms. Lewis and/or Ms. Janetty were the true authors of the Plaintiffs' filings by examining the meta data embedded in the submissions made with the Court.

In short, an examination of the meta data showed that documents were created by Ms. Lewis on multiple occasions and by Ms. Janetty on a single occasion.

Defendants' contend that the Court must strike the numerous briefs and supporting materials that were ghostwritten by Attorneys Lewis and Janetty, and move us to levy other available sanctions against the attorneys. While neither Ms. Lewis or Ms. Janetty dispute that they have done precisely what the Defendants' charge, they submit that they should not be sanctioned because the conduct in which they engaged has never been prohibited in this district and, moreover, the American and Pennsylvania Bar Associations have recently advised that ghostwriting does not violate ethical rules and should be permitted.

Following fulsome briefing on the omnibus motion to strike and for sanctions (Doc. 455), Magistrate Judge Carlson issued the instant Report and Recommendation, wherein he recommends that we not strike the ghostwritten submissions, inasmuch as to do so at this late date would surely be prejudicial to the Plaintiffs and the litigation in general. With that recommendation we fully agree, and it shall be adopted. The Magistrate Judge next recommends that we

sanction Ms. Lewis in the following fashion: that we admonish her for her lack of candor to the Court, the Defendants and Ms. Janetty, and that we further require her to bear all or some of Ms. Janetty's legal expenses that were incurred by Ms. Janetty to defend herself in this matter. While we agree with the learned Magistrate Judge that Ms. Lewis must be subjected to sanctions for what we can only describe as her duplicitous conduct, the sanctions we shall levy differ from those recommended by Magistrate Judge Carlson.

## **II. DISCUSSION<sup>3</sup>**

As the Magistrate Judge notes in his comprehensive R&R, the parties to the instant omnibus motion have cast their arguments in a way that mostly speaks to the ethics of ghostwriting. It is plain that this issue is a contested one, with courts and commentators at odds. Suffice it to say that the rules of ethics in this area are evolving as we speak, thus we, like the Magistrate Judge, are quite loathe to hang an order of sanctions on the peg of ghostwritten submissions.

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<sup>3</sup> We fully adopt, without discussion, the Magistrate Judge's exposition on our authority to levy sanctions, set forth at pages 10 through 13 of the R&R. (Doc. 530, pp. 10-13). We further adopt the Magistrate Judge's general discussion of the contents of the instant omnibus motion as well as his comments on the status of ghostwriting in this district. (Doc. 530, pp. 13-21). Of greatest concern to us, and the driving force behind the sanctions we levy herein, is Ms. Lewis's lack of candor to the Court, thus we need not add to the Magistrate Judge's treatment of these areas.

What is far more troubling to this Court, and has been of great concern to us since we inherited this case from our former colleague Judge Thomas I. Vanaskie, is Ms. Lewis's unprofessional and dishonest behavior towards the Court and her adversaries. From the very first time Ms. Lewis appeared before us in open Court, she has conducted herself in a fashion that is obdurate, unprofessional, and disrespectful. Moreover, her dealings with opposing counsel in hearings and discovery issues that have come before us are noteworthy for their lack of even a scintilla of collegiality. We are hardly surprised at the allegations levied by the Defendants in the instant motion. Ms. Lewis's presence in this action, both overt and secret, has been highly deleterious to the ends of justice. In short, Ms. Lewis wrote submissions wherein she knowingly misled the Court and opposing counsel by stating that the Plaintiffs were *pro se*. Such knowingly false statements not only violate the duty of candor, but they are breathtakingly brazen and cannot be lightly excused. In our view, the most appropriate sanction, tailored specifically to Ms. Lewis's falsehoods before the Court, is to require her to attend and complete 5 hours of ethics-based Continuing Legal Education.

Further, we shall not levy an award of Ms. Janetty's legal fees against Ms. Lewis. While we agree with the Magistrate Judge that Ms. Janetty's minimal contact with the matter does not warrant sanctions, we do find that Ms. Janetty

should have had the wherewithal to understand that she was being led down a perilous road by working with Ms. Lewis. It strains credulity to find that Ms. Janetty was unaware that Ms. Lewis was making her a party to something that was professionally inappropriate, and at worst duplicitous. Thus, we hope that, at minimum, through the litigation of this motion, Ms. Janetty has learned a life's lesson. Our strong surmise is that she has, and will not replicate anything of this sort in the future. To the extent Ms. Janetty has incurred costs in defending herself, she must bear them unaided as the wages of her improvident association with Ms. Lewis.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation of Magistrate Judge Carlson (Doc. 530) is **ADOPTED** in part and **REJECTED** in part.
2. Defendants' Motion to Strike and for Sanctions (Doc. 455) is **GRANTED** in part and **DENIED** in part to the following extent:
  - a. Leslie Lewis, Esq. shall attend and complete 5 hours of ethics-based Continuing Legal Education within ninety (90) days of the date of this Order.
  - b. Attorney Lewis shall prove her compliance with this Order by mailing copies of her certificates of completion to this Court at

the following address: Chambers of the Honorable John E. Jones III, United States Federal Courthouse, 228 Walnut Street, 9<sup>th</sup> Floor, Harrisburg, Pennsylvania 17108.

- c. In all other respects, the Motion (Doc. 455) is **DENIED**.
3. The Petition to Correct the Objections Filed on Behalf of Leslie Lewis, Esq. to the Report and Recommendation (Doc. 536) is **GRANTED**.

s/ John E. Jones III  
John E. Jones III  
United States District Judge