

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALANA ORR

Civil Action 17-cv-01280 (GLS/TWD)

Plaintiff,

v.

OPPOSITION TO DEFENDANT'S ORDER TO

SHOW CAUSE

ANTHONY MCGINTY

FOE ATTORNEY SANCTIONS

Defendant.

The court has inherent power to sanction parties and their attorneys, a power born of the practical necessity that courts be able "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, [501 U.S. 32](#), 43, [111 S.Ct. 2123](#), 115 L.Ed.2d 27 (1991). This power may likewise be exercised where the party or the attorney has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska Pipeline Service Co. v. Wilderness Society*, [421 U.S. 240](#), 258-59, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975). An award of sanctions under the court's inherent power requires both "clear evidence that the challenged actions are *entirely without color*, and [are taken] for reasons of harassment or delay or for other improper purposes[,] and a high degree of specificity in the factual findings of [the] lower courts." *Oliveri v. Thompson*, [803 F.2d 1265](#), 1272 (2d Cir.1986) (internal quotation marks omitted) (emphasis added), *cert. denied*, 480 U.S. 918, 107 S.Ct. 1373, 94 L.Ed.2d 689 (1987). A claim is colorable "when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim." *Nemeroff v. Abelson*, [620 F.2d 339](#), 348 (2d Cir.1980) (per curiam). "Bad faith is the touchstone of an award under this statute." *United States v. International Brotherhood of Teamsters*, [948 F.2d 1338](#), 1345 (2d Cir.1991). "Like an award made pursuant to the court's inherent power, an award under § 1927 is proper when the attorney's actions are *so completely without merit* as to require the conclusion that they must have been undertaken for some improper purpose such as delay." *Oliveri v. Thompson*, 803 F.2d at 1273 (emphasis added); *id.* ("[A]n award made under § 1927 must be supported by a finding of bad faith similar to that necessary to invoke the court's inherent power....").

"[U]nless such measures are needed to protect the integrity of the judicial system or a criminal defendant's right to a fair trial, a court's steps to deter attorneys from, or to punish them for, speaking to the press have serious First Amendment implications." *Revson v. Cinque & Cinque, P.C.*, [221 F.3d 71](#), 78 (2d Cir.2000).

"When a district court invokes its inherent power to impose attorney's fees or to punish behavior by an attorney in the actions that led to the lawsuit. . . [or] conduct of the litigation, . . . which actions are taken on behalf of a client, the district court must make an explicit finding of bad faith. . . . But, when the district court invokes its

inherent power to sanction misconduct by an attorney that involves that attorney's violation of a court order or other misconduct that is not undertaken for the client's benefit, the district court need not find bad faith before imposing a sanction under its inherent power." United States v. Seltzer, [227 F.3d 36](#), at 41-42 (2d Cir. 2000). Fed. R. Civ. P. 16(f)(1)(C) does indeed authorize a court to sanction parties who fail to "obey a . . . pretrial order."

I must admit that I did violate a Court Order. I hereby apologize for that. I allowed my passions to get in the way. I hereby join in Defendant's request for a conference. Such conference will permit me the opportunity to apologize to the Court and the Defendant.

/s/ Joshua A. Douglass
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