

FILED
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CLERK & MASTER
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H.D.C.&M.

Petitioner

V.

CASE 19-644-I

SPEAKER OF THE SENATE LT. GOV.
RANDY McNALLY; CHIEF CLERK OF THE
HOUSE TAMMY LETZLER; CHIEF CLERK
OF THE SENATE RUSSELL A. HUMPHREY;
SPEAKER OF THE HOUSE ELECT CAMERON
SEXTON

TRIAL BY JURY DEMANDED
(12)

Respondents

Now comes Petitioner, John Anthony Gentry, *sui juris*, pursuant to Tenn. R. Civ. P., Rule 34A.02. During proceedings on August 16, 2019, the court stated that proceedings on that day were not to hear a motion to sanction. Accordingly, Petitioner now and herein properly presents this matter for the court's consideration.

As this court knows, and as the facts show, Respondents through counsel, tendered a fraudulent, materially altered, counterfeit, incomplete version of Petitioner's Petition of Remonstrance, a lawful and legal document reflected in the journals of both houses of the Tennessee General Assembly. During oral presentation of this matter, Petitioner will comply with the court's instruction to refer to Respondents' spoliation as "inaccurate and incomplete".

Due to the further fact that Respondents tendered their spoliated evidence in violation of Local Rule 26.01 and 26.03(b), as well as in violation of Tenn. R. Civ. P., Rule 12.02 and 56.04, and the further fact of unconstitutional Local Rule, recently revised on July 1, 2019, that restricted Petition to only four (4) day response time when he should have had 37 days pursuant to Local Rule 26.03(b), it was impossible for Petitioner to comply with the safe harbor provision stated in Tenn. R. Civ. P. Rule 11.03(1)(a). Accordingly, Petitioner now properly brings this matter to the court's attention for proper and just decision. **And again, until all matters are settled, no claims are terminated pursuant to T.R.C.P. Rule 54.02.**

Pursuant to Tenn. R. Civ. P. Rule 34A.02 - Rule 37 sanctions may be imposed upon a party or an agent of a party who discards, destroys, mutilates, alters, or conceals evidence. Here, respondents and their counsel have maliciously and materially altered and concealed evidence.

In the case: *Tatham v. BRIDGESTONE AMERICAS HOLDING*, 473 SW 3d 734 - Tenn: Supreme Court 2015, the Supreme Court of Tennessee, at Jackson rendered the following in opinion:

Tennessee courts long have applied a prerequisite of intentional misconduct in the context of the Spoliation of evidence. This prerequisite originated with the common law "doctrine of Spoliation," which allowed a trial court to draw a negative inference against a party who destroys evidence. (at 740)

It is a general rule that the intentional Spoliation or destruction of evidence relevant to a case raises a presumption, or, more properly, an inference, that the evidence would have been unfavorable to the cause of the spoliator. Such a presumption or inference arises, however, only **where the Spoliation or destruction was intentional, and indicates fraud and a desire to suppress the truth,...**

This negative inference under the doctrine of Spoliation serves two purposes: "(1) it attempts to place the non-spoliator in a position similar to

where it would have been prior to the destruction of evidence; **[and] (2) it imposes a punitive effect on the spoliating party.**" Citing *Flottman v. Hickman Cnty.*, (at 741)

There is no doubt that the conduct of spoliation by the Respondents evidences clear fraud, and a desire to suppress the truth. The conduct of the Respondents was not just destruction of evidence. **Indeed, Respondents materially altered and changed the meaning of Petitioner's Formal Written Protest and Public Petition,** and intentionally omitted 59 pages, falsely purporting their 13-page counterfeit as "*a copy of the full Petition of Remonstrance*"

Pursuant to Tenn. R. Civ. P. Rule 37.02(c), the court may order striking out of pleadings, or dismissing the action, or rendering a judgment by default against the disobedient party. Thus far, no punitive sanctions have been applied to Respondents, nor has the court considered this matter.

As stated in *Tatham v. BRIDGESTONE AMERICAS HOLDING*, the doctrine of spoliation, serves two purposes: (1) restoring the parties to their original positions, and (2) imposition of a punitive effect. Petitioner asserts that punitive measures must be applied to discourage such scandalous, indeed criminal conduct, especially by high-ranking state officials. **To not impose sanction of any kind invites and perpetuates such conduct, and sets the stage for chaos in our courts.** Here we have a perfect example of exactly the kind of conduct that Petitioner has remonstrated against to the General Assembly.

In response to Petitioner's complaint of spoliation of evidence, and conspiracy to injure and oppress constitutionally protected rights, counsel for Respondents, attorney Janet Kleinfelter of the Office of the Attorney General, stated to the court, that she was not the person who altered the document, and that the document was provided to her by the Respondents.

This response by counsel for Respondents is one step removed from “*the dog ate my homework defense*” and suggests there is no culprit, and is a failed attempt to white-wash unclean hands.

Such conduct and actions from high-ranking state officials shocks the conscience and demoralizes the judicial system. In addition to proper punitive measures being applied to the Respondents in this case, an investigation should ensue, the perpetrator(s) who materially altered evidence should be identified and held accountable to 18 U.S.C. §§ 241 and/or 242.

WHEREFORE, PETITIONER IMPLORES AND ASSERTS CONSTITUTIONAL RIGHT:

1. For this court to impose Rule 37 sanctions upon Respondents;
2. As sanction, to render judgment by default;
3. For this court, “ *In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses...*”, with such reasonable expenses to be provided the court, with affidavit, upon favorable and just ruling;
4. For such general and further relief as this Court deems appropriate and just and to which Petitioner is entitled.

Respectfully submitted,



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NOTICE OF HEARING

THIS MOTION HAS BEEN SET TO BE HEARD ON THE COURT'S REGULAR MOTION DOCKET ON FRIDAY, THE 6TH DAY OF SEPTEMBER, 2019 AT 9:00A.M.

IF NO RESPONSE IS TIMELY FILED AND SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING.


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email and via Priority US Mail, postage prepaid to;

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On this the 21st day of August, 2019



John Anthony Gentry, CPA, *Sui Juris*