UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-Civ-Marra/Johnson

JANE DOE #1 AND JANE DOE #2,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

_____/

REPLY TO JANE DOE #1 AND JANE DOE #2'S RESPONSE TO MOTION TO INTERVENE OR IN THE ALTERNATIVE FOR A *SUA SPONTE* RULE 11 ORDER

Comes now, Movant Bruce E. Reinhart, and replies to Plaintiffs' Response to his Motion To Intervene Or In The Alternative For A *Sua Sponte* Rule 11 Order. Plaintiffs wrongly assert that there is no common question of law or fact sufficient to support permissive intervention. Plaintiffs do not address, nor oppose, Movant's request that the Court on its own initiative require Plaintiffs and their counsel to show their compliance with Federal Rule of Civil Procedure 11. The Court should hold a sanctions hearing, either through Movant's intervention or *sua sponte*.

Plaintiffs also prematurely ask that, if the Court permits intervention, they should be allowed to take Movant's deposition. Issues of discovery are not ripe at this time.

On March 21, 2011, Plaintiffs filed a Motion for Finding of Violations of the Crime Victims' Rights Act (the "CVRA Motion") [DE 48]. Paragraphs 52 and 53 of the CVRA Motion falsely alleged that Movant, a non-party to this matter, violated Florida Bar rules and Department of Justice regulations by representing employees of Jeffrey Epstein ("Epstein") in civil litigation

after the undersigned retired from the United States Attorney's Office for the Southern District of Florida (the "Office"). The CVRA Motion also falsely alleged that Movant, while still employed by the Office engaged in improper conduct relating to Epstein. The CVRA Motion did not even attempt to connect these allegations to the relief it seeks. It did not explain how the accusations against Movant were relevant to its claims under the CVRA, nor did it explain how Movant's alleged conduct could be imputed to any party in the action. Because there was no proper purpose for these allegations, Movant sought leave to intervene under Fed. R. Civ. P. 24(b) to file a Motion for Sanctions (the "Intervention Motion") [[redacted]. 79]. In the alternative, Movant asked the Court *sua sponte* to conduct a sanctions hearing. Plaintiffs have now filed a Response to the Motion to Intervene [DE 81] (the "Response").

Movant meets the requirements for permissive intervention under Rule 24(b). *See New York News, Inc. v. Newspaper and Mail Deliverer's Union*, 139 [redacted]. 291, 293 ([redacted]. 1991), [redacted] *sub nom New York News v. Kheel,* 972 F.2d 482, 487 (2d Cir. 1992). The gratuitous attack on Movant's reputation creates a sufficient common question of law or fact to justify intervention. Plaintiffs have not articulated any undue prejudice that would outweigh Movant's interest in pursuing sanctions against them.

A request for sanctions based on an attack on a lawyers' reputation creates a sufficient common question of law or fact to satisfy Rule 24(b). *Kheel*, 972 F.2d at 488. Nevertheless, Plaintiffs incorrectly cite *Kheel* for the proposition that Movant lacks standing to seek Rule 11 sanctions because he is not a party to the litigation. *See* Response at pp. 3-4. They cite the wrong portion of *Kheel*. The lawyer in *Kheel* sought sanctions two ways: first, by intervening as a party; second, directly under Rule 11 as a non-party. The language cited in the Response is from the appellate court's discussion of why the lawyer could not seek sanctions directly under Rule 11. Here, Movant is seeking to intervene *as a party* before seeking sanctions. Unlike the lawyer

in *Kheel,* Movant does not seek Rule 11 sanctions as a non-party. Rather, Movant seeks to become a party, through permissive intervention, prior to seeking sanctions. Plaintiff's reliance on *Kheel* to attack Movant's standing is simply wrong.

Plaintiffs also make the incorrect argument that if Movant's motion is granted, "legions of bystanders will have the ability to intervene in lawsuits through the simple device of claiming an interest in filing a Rule 11 sanctions motion." Response at p. 4. Plaintiffs ignore the Court's broad discretion under Rule 24(b). That discretion gives the Court the power to police requests to intervene, and empowers the Court to prevent "bystanders" from unnecessarily flooding into federal court.

In the instant case, the sanctionable conduct is so clear and egregious that the Court should exercise its discretion to permit intervention. The CVRA Motion makes inflammatory assertions of unethical conduct by a non-party, which are irrelevant to the relief Plaintiffs seek. It does not require substantial judicial resources to look at the face of the CVRA Motion and recognize that the allegations against Movant are completely irrelevant to the underlying motion and are not included for any proper purpose. These allegations are not repeated in any of the subsequent pleadings in support of the CVRA Motion. No existing party has chosen to refute or defend against these allegations because they are so clearly irrelevant to the relief sought. This Court should not countenance such blatant abusive litigation tactics.

Plaintiffs have not pointed to any undue prejudice to them from permitting Movant to intervene, other than the asserted need to brief an additional issue. Should Plaintiffs avail themselves of the 21 day safe harbor under Rule 11 and remove the offending allegations against Movant, they will not have to brief anything. They merely will have to file an amended pleading that deletes two irrelevant paragraphs. Otherwise, they simply will have to identify for the Court facts that are already known to them, that is, what due diligence they undertook before

filing the CVRA Motion. This process should not require substantial time or resources. The interests of justice in deterring frivolous and vexatious litigation outweigh any minimal prejudice that arises from requiring Plaintiffs to articulate a legitimate justification for the statements in paragraphs 52 and 53 of the CVRA Motion.

In a further example of their "hit and run" litigation tactics, Plaintiffs now assert that they met with representatives of the United States Attorney's Office prior to filing the CVRA Motion. They state that Movant's "involvement in the Epstein investigation was discussed." Response at p. 6. Nevertheless, in neither the CVRA Motion nor the Response do they state any facts learned in those discussions that would support their assertion that Movant violated the Florida Bar rules or the Department of Justice regulations. The Court should infer, therefore, that no supporting facts exist. The absence of these facts is a further reason the Court should exercise its discretion to permit intervention or should *sua sponte* convene a sanctions hearing.

Plaintiffs also assert that the Intervention Motion should be denied because Movant is not the real party-in-interest in the CVRA litigation. They suggest, without any factual support, that Movant is acting as a surrogate for Jeffrey Epstein in attempting to "undercut the victims [sic] CVRA lawsuit without Epstein himself becoming involved." Response at pp. 2-3. This conspiratorial assertion is baseless. Movant does not seek to intervene in any way on the merits of the CVRA claim. Plaintiffs are correct that "[i]t is of no concern to [Movant] whether or not the Court rules that the Government violated Jane Doe #1 and Jane Doe #2's rights under the Crime Victims' Rights Act." Response at p. 1. Movant had nothing to do with whether or not the Government complied with the CVRA. It is for precisely this reason that Plaintiffs and their counsel should be sanctioned for including gratuitous personal attacks on Movant in the CVRA Motion.

Plaintiffs summarily assert that Movant's motion is untimely. As noted in the Intervention Motion, and not refuted in the Response, Movant did not receive a copy of the CVRA Motion until April 20, 2011. The Intervention Motion was filed on May 3, 2011, which is within the two week time period normally applicable to a motion response. Plaintiffs have not pointed to any prejudice from this allegedly late filing.

Although it has no relevance to the Intervention Motion currently pending before the Court, the Response notes that Plaintiffs requested an interview with Movant after they received the Intervention Motion and that Movant declined to be interviewed. The belated request was made after Plaintiffs received the Intervention Motion and a sworn declaration from Movant. It is further evidence that Plaintiffs did not comply with their Rule 11 obligations before filing the CVRA Motion.[1]

Plaintiff's alternative request for relief – taking Movant's deposition -- is premature and irrelevant to whether intervention is proper. Should the Court grant intervention, Movant will serve the proposed Rule 11 motion pursuant to Rule 5. *See* Fed. R. Civ. P. 11(c)(2). Plaintiffs will then have 21 days to withdraw or amend their underlying motion. *Id.* Should they decline to withdraw or amend the motion, Movant would then file the Rule 11 motion with the Court. At that time, Plaintiffs would be entitled to respond and to seek whatever discovery is warranted. Until the Rule 11 motion is filed, it is premature for the Court to decide what discovery, if any, would be appropriate.

[1] The request for interview went far beyond the question of whether Movant had any role in the Government's alleged non-compliance with the CVRA.

This Court should exercise its discretion to permit intervention under Fed. R. Civ. P. 24(b), or in the alternative should *sua sponte* convene a sanctions hearing.

Respectfully submitted,

/s/ Bruce E. Reinhart
BRUCE E. REINHART, [redacted].
Florida Bar # [redacted]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Intervene or in the Alternative for a *Sua Sponte* Rule 11 Order was served on all counsel of record by CM/ECF on May 23, 2011.

/s/Bruce Reinhart
BRUCE REINHART