

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

S. MICHAEL KUNATH,

Plaintiff,

No. 17-2-18848-4 SEA

v.

CITY OF SEATTLE,

Defendant,

ORDER DENYING PLAINTIFF
KUNATH'S MOTION FOR
CIVIL RULE 11 SANCTIONS

and

ECONOMIC OPPORTUNITY
INSTITUTE,

Intervenor-Defendant.

SUZIE BURKE, *et al.*,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

DENA LEVINE, *et al.*,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

SCOTT SHOCK, *et al.*,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

1 This matter has come before the court for consideration of Plaintiff Kunath's Motion
2 for Civil Rule 11 Sanctions.

3 The Court has considered the pleadings and other documents filed by the parties, and
4 in particular the following items, including their attachments:
5

| <u>Pleading</u> | <u>Dkt. No.</u> |
|---|-----------------|
| 6 Plaintiff Mike Kunath's Motion for CR 11 Sanctions | 85 |
| 7 Declaration of Matthew Davis [in Support of Plaintiff Kunath's Motion 8 for CR 11 Sanctions] | 86 |
| 9 Burke/Levine Plaintiffs' Response to Plaintiff Mike Kunath's Motion 10 for CR 11 Sanctions | 91 |
| 11 Economic Opportunity Institute's Response to Plaintiff Kunath's 12 Motion for Sanctions | 92 |
| 13 City of Seattle's Opposition to Kunath's Motion for Sanctions | 94 |
| 14 Reply on Plaintiff Mike Kunath's Motion for CR 11 Sanctions Against 15 City of Seattle | 96 |

16 **1. Background**

17 On November 22, 2017, the court filed an Order on Parties' Cross-Motions for
18 Summary Judgment (Dkt. 84), which included rulings granting Plaintiff Kunath's Cross-
19 Motion for Summary Judgment (Dkt. 57), and denying Defendant City of Seattle's Motion
20 for Summary Judgment (Dkt. 47D).

21 On November 28, 2017, Plaintiff Kunath filed the motion under consideration here.
22 Kunath urges the court to impose sanctions in the form of an award of attorneys' fees and
23 costs against the two Defendants:

24 With respect to the City, this motion is limited to the [City's] net
25 income and excise tax arguments because the Court never reached
26 the constitutional questions. For EOI, this motion addresses its
entire case because all of its arguments relied on the false title of
SSB 4313.

1 This Court should find that those arguments were frivolous and
2 asserted without any justification. It should send the message that
3 [no] matter how noble a cause may be, the law still requires good
4 faith arguments.

5 Kunath's Motion, at 7.

6 2. Legal Standards

7 The signature of a party or attorney on a pleading constitutes a certificate by that
8 party or attorney that the pleading contains only factual contentions or denials that are based
9 upon the evidence; is warranted by existing law or a good faith argument for a change in
10 existing law, and is not interposed for an improper purpose, such as to harass or to cause
11 unnecessary delay or needless increase in the cost of litigation. CR 11(a)(1)-(3); *Bryant v.*
12 *Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992); *Hicks v. Edwards*, 75
13 Wn.App. 156, 162-163, 876 P.2d 953 (1994); *MacDonald v. Korum Ford*, 80 Wn.App. 877,
14 883-884, 912 P.2d 1052 (1996).

15 CR 11 is not meant to act as a "fee shifting mechanism," or to "chill an attorney's
16 enthusiasm or creativity in pursuing factual or legal theories," but to curb abuses of the
17 judicial system and to deter baseless filings. *Biggs v. Vail*, 124 Wn.2d at 197, 876 P.2d 448
18 (1994); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d at 219, 829 P.2d 1099; *Ames v. Pierce*
19 *County*, 194 Wn.App. 93, 120, 374 P.3d 228 (2016).

20 Courts should employ an objective standard in evaluating an
21 attorney's conduct, and the appropriate level of pre-filing
22 investigation is to be tested by "inquiring what was reasonable to
23 believe at the time the pleading, motion or legal memorandum was
24 submitted."

25 *Biggs v. Vail*, 124 Wn.2d at 197, 876 P.2d 448 (quoting *Bryant v. Joseph Tree, Inc.*, 119
26 Wn.2d at 220, 829 P.2d 1099). CR 11 establishes a high threshold for the court:

To avoid being swayed by the benefit of hindsight, the trial court
should impose sanctions only when it is " 'patently clear that a
claim has absolutely no chance of success.' " *Oliveri v. Thompson*,
803 F.2d 1265, 1275 (2d Cir.1986) (quoting *Eastway Constr.*

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-18848-4
Case Title: KUNATH ET AL VS CITY OF SEATTLE
Document Title: ORDER DENYING KUNATH'S CR 11 MOT
Signed by: John Ruhl
Date: 12/27/2017 3:32:30 PM

A rectangular box containing a handwritten signature in black ink that reads "John R Ruhl".

Judge/Commissioner: John Ruhl

This document is signed in accordance with the provisions in GR 30.

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