



DEPARTMENT OF REVENUE  
CENTRE COUNTY, PA  
2013-2707  
11/28/13

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – LAW

---

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH AND FREEH SPORKIN  
& SULLIVAN, LLP,

Defendants.

---

Docket No. 2013-2707

Type of Pleading:  
**Memorandum of Law in Support of  
Preliminary Objection to  
Plaintiff's Amended Complaint  
by Defendants Louis J. Freeh  
and Freeh Sporkin & Sullivan LLP**

Filed on behalf of Defendants

Counsel of Record for this Party:

Robert C. Heim (Pa. 15758)  
Michael L. Kichline (Pa. 62293)  
DECHERT LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-4000 (phone)  
(215) 994-2222 (facsimile)

David S. Gaines, Jr. (Pa. 308932)  
Miller, Kistler & Campbell  
720 South Atherton Street, Suite 201  
State College, PA 16801-4669  
(814) 234-1500 (phone)  
(814) 234-1549 (facsimile)

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – LAW

---

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH AND FREEH SPORKIN  
& SULLIVAN, LLP,

Defendants.

---

Docket No. 2013-2707

**MEMORANDUM OF LAW IN SUPPORT OF  
PRELIMINARY OBJECTION TO PLAINTIFF’S  
AMENDED COMPLAINT BY DEFENDANTS  
LOUIS J. FREEH AND FREEH SPORKIN & SULLIVAN LLP**

Plaintiff’s Amended Complaint is rife with wholly irrelevant, impertinent allegations seemingly calculated to attract maximum media attention by impugning the character of Defendants. It resembles a lengthy press release more than it does a legal pleading. Were the inclusion of theatrical yet immaterial matter not enough, Plaintiff’s Amended Complaint also fails to comply with Pennsylvania’s pleading requirements.

Plaintiff’s Amended Complaint does not comport with Pennsylvania Rule of Civil Procedure 1019, which requires that “[t]he **material facts** on which a cause of action or defense is based shall be stated in a **concise and summary** form.” Pa.

FILED  
2013.09.11 PM 2:41  
CENTRE COUNTY, PA

R. Civ. P. 1019(a) (emphasis added). Furthermore, Plaintiff's Amended Complaint combines numerous allegations in each paragraph, violating Pennsylvania Rule of Civil Procedure 1022 and rendering any answer to Plaintiff's Amended Complaint difficult if not impossible. It also violates Pennsylvania Rule of Civil Procedure 1028(a)(2) by its wholesale inclusion of impertinent matter. As a result, Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP ("FSS") respectfully request that this Court strike Plaintiff's Amended Complaint and require Plaintiff to file a Second Amended Complaint that complies with Pennsylvania pleading requirements.

### **ARGUMENT**

This Court's recent October 28, 2016 Order is not the first time that this Court has raised the unusual and unnecessary length of Plaintiff's pleading. During a hearing held over a year ago, this Court encouraged the parties to meet and confer regarding narrowing the scope of Plaintiff's then-Proposed Complaint.<sup>2</sup> In a hearing held in October 2015, counsel for Defendants raised the fact that Plaintiff's counsel had not yet conferred with Defendants' counsel regarding streamlining the Proposed Complaint.<sup>3</sup>

---

<sup>2</sup> The Court may recall that this case had been stayed, and Plaintiff originally filed a Proposed Complaint as an attachment to his Motion to Join Additional Parties in March 2015.

<sup>3</sup> See Oct. 28, 2015 Hearing Tr. at 55:16-56:25, attached as Ex. A.

Following that hearing, on November 30, 2015, counsel for Defendants proposed several allegations that counsel for Defendants suggested should be removed from the Proposed Complaint as irrelevant, unnecessary, and overly dramatic. Despite this overture, when Plaintiff formally filed his Complaint on February 10, 2016, the Complaint contained the same irrelevant and impertinent matter found in Plaintiff's Proposed Complaint. And despite the fact that this Court's September 27, 2016 Order granting in part and denying in part Defendants' Preliminary Objections to Plaintiff's Complaint significantly narrowed the issues involved in this case, Plaintiff has filed an Amended Complaint that is hardly changed from the original Complaint that Plaintiff filed, and that contains the same extraneous subject matter.<sup>4</sup>

Plaintiff's Amended Complaint is neither "concise" nor "summary." Nor does it consist of the "material facts on which [Plaintiff's] cause of action . . . is based." Pa. R. Civ. P. 1019(a). Instead, it contains allegations far afield from the questions at issue in this case, including wholly irrelevant and impertinent matter impugning the character of Defendants or concerning third parties who are not a part of this case.<sup>5</sup> None of these allegations has *anything whatsoever* to do with

---

<sup>4</sup> As this Court has noted, Plaintiff's original Complaint consisted of 344 paragraphs and 395 pages, while Plaintiff's Amended Complaint is 310 paragraphs and 387 pages. *See* October 28, 2016 Order at 1.

<sup>5</sup> *See, e.g.,* Am. Compl. ¶¶ 57, 61-66.

whether Plaintiff can show the falsity of the few allegedly defamatory statements that remain in the case, or whether Defendants published statements pertaining to Plaintiff with actual malice. They are nothing more than baseless ad hominem attacks substituted in the place of factual allegations. Defendants should not be required to respond to intemperate assertions having no bearing on the merits of the case.

Moreover, the paragraphs of the Amended Complaint that do in fact contain allegations relevant to this case are pled in such a combative manner that they resemble attorney argument rather than the facts required to be pled in a complaint. As numerous courts have recognized, pleadings that are “argumentative, prolix, [and] replete with redundancy” are not only disfavored, but subject to dismissal. *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996); *see Collura v. City of Philadelphia*, 590 F. App’x 180, 185 (3d Cir. 2014) (affirming dismissal of complaint that was “replete with abusive language and ad hominem attacks, [and] was ‘outrageous and wholly inappropriate.’”); *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 703 (3d Cir. 1996) (affirming dismissal of complaint that was “unnecessarily complicated and verbose”). As one such court observed in dismissing such pleadings:

In their current form, the complaints all contain material that is inappropriate in a complaint. For example, many of the complaints quote extensively from newspaper articles or list detailed biographical information about the

parties that are too far removed from any of the causes of action in Plaintiffs' complaints. . . . The pleading process is not an opportunity for the parties to pursue other objectives or to indulge in general disparagement of other parties. Lengthy, irrelevant narrative material is not justified, exceeds the privileges of court pleadings, and should not be included in any future pleadings.

*Donahoe v. Arpaio*, No. CV10-2756-PHX-NVW, 2011 WL 5119008, at \*3 (D. Ariz. Oct. 28, 2011); see *Estate of Goldberg ex rel. Goldberg v. Nimoityn*, No. CIV.A. 14-980, 2014 WL 6908013, at \*13 (E.D. Pa. Dec. 9, 2014) (striking paragraphs of complaint constituting “derogatory attacks [that] do nothing to illuminate the real issues before the Court . . . [and] serves only to improperly disparage Defendants and to detract from the dignity of the Court.”) Plaintiff’s Amended Complaint is subject to the same failings. In short, Plaintiff’s submission is more suited for media consumption than it is as a pleading filed of record in a court of law.

Furthermore, Plaintiff’s Amended Complaint repeatedly combines multiple allegations in a single paragraph, perhaps due to the media-focused nature of the Amended Complaint (or a desire to reduce the already-large number of paragraphs in his pleading). It therefore violates Rule 1022’s mandate that each paragraph of a pleading “shall contain as far as practicable only one material allegation.” Pa. R. Civ. P. 1022. The failure of the Amended Complaint to comply with Rule 1022 renders any response by Defendants exceedingly difficult, if not impossible. To

answer such a pleading, Defendants would need to file a response easily double the length of Plaintiff's Amended Complaint. Expending the work and attorney time, and incurring the concomitant legal expense, to do so would prejudice Defendants, who would be diverted from the actual defense of this case. Moreover, Defendants believe that filing a lengthy series of denials and averments to the contrary is unlikely to aid this Court or the progress of this action.

It is eminently "practicable" for Plaintiff to plead a single allegation per paragraph, in compliance with Rule 1022, and an effort to do so may also result in streamlining the allegations in the Amended Complaint. Having made this choice of forum, Plaintiff should be required to comply with its rules.

### **CONCLUSION**

Wherefore, Defendants Louis J. Freeh and FSS respectfully request that this Court strike Plaintiff's Amended Complaint and order Plaintiff to file a Second Amended Complaint that complies with Pennsylvania's pleading requirements.

Respectfully submitted,

Dated: November 3, 2016



Robert C. Heim (Pa. 15758)  
Michael L. Kichline (Pa. 62293)  
DECHERT LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-4000 (phone)

(215) 994-2222 (facsimile)

David S. Gaines, Jr. (Pa. 308932)  
Miller, Kistler & Campbell  
720 South Atherton Street, Suite 201  
State College, PA 16801-4669  
(814) 234-1500 (phone)  
(814) 234-1549 (facsimile)

*Attorneys for Defendants Louis J.  
Freeh and Freeh Sporkin & Sullivan,  
LLP*




**CERTIFICATE OF SERVICE**

I, David S. Gaines, Jr., hereby certify that I caused to be served on November 3, 2016, a true and correct copy of the foregoing by first-class mail upon the following:

Kathleen V. Yurchak  
GOODALL & YURCHAK P.C.  
328 South Atherton Street  
State College, PA 16801  
(814) 237-4100  
(814) 237-1497 (fax)  
yurchak@centrelaw.com

Thomas A. Clare  
Elizabeth M. Locke  
Andrew C. Phillips  
CLARE LOCKE LLP  
902 Prince Street  
Alexandria, VA 22314  
(202) 628-7400  
tom@clarelocke.com  
libby@clarelocke.com  
andy@clarelocke.com

*Attorneys for Plaintiff*

  
\_\_\_\_\_  
David S. Gaines, Jr.