IN THE

SUPREME COURT OF VIRGINIA

Record No. 110467

RICHARD TU, THAO PHUONG DANG, LAN CHAU TU, NU THI DANG AND TRAM BUI,

Appellants,

v.

VIETNAMESE MEDICAL SOCIETY OF NORTHEAST AMERICA,

VINH DUC NGUYEN, SANG VAN TRAN, LOC BICH NGUYEN, ANH HUU PHAM AND TRUONG SON VAN,

Appellees.

BRIEF IN OPPOSITION

TO THE PETITION FOR APPEAL

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STATEMENT OF THE CASE

The Appellee disagrees with the "Statement of the Case" of the "Corrected Petition for Appeal" as improperly containing argumentative assertions, references to unsworn and self-serving statements inaccurately reciting facts wholly outside of the record. Appellant's Statement of Facts should be stricken. The Appellee's Statement of the Case is as follows:

This case arises from a declaratory judgment action filed against the Vietnamese Medical Society of Northeast America, Inc. ("VMSNA") and five of its individual directors by members of the VMSNA who were seeking a declaratory judgment as well as injunctive relief stemming from a disputed corporate election. The VMSNA was represented at all times by Richard H. Nguyen, Esq. ("Mr. Nguyen") and Plaintiffs were represented at various times by Thomas E. Campbell, Esq. ("Mr. Campbell"), Jason F. Zellman, Esq. ("Mr. Zellman"), Due H. Tran, Esq. ("Mr. Tran") and Tim McGary ("Mr. McGary"). The five individual defendants were never served and none made an appearance in the trial Court.

The VMSNA demurred to the Plaintiff's case. Mr. Tran attempted to enter an appearance on behalf of the Plaintiffs in an adversarial role after having attempted to act as a neutral third party by attempting to mediate a resolution between the Plaintiffs and VMSNA. Mr. Nguyen objected and

opposed Mr. Tran's entry in the case due to his role as a neutral third party. A hearing was held on the VMSNA's demurrer in which Mr. Tran failed to appear despite being allowed to make a limited appearance by the Court. The Court sustained the demurrer without prejudice but without leave to amend and eventually sanctioned Mr. Tran pursuant to Va. Code § 8.01-271.1 for failing to withdraw several pleadings he had filed with the Court and for filing additional pleadings with the Court after being notified by the Court that he was not counsel of record. Mr. Tran was also sanctioned for his factually baseless allegations and denials in his written pleadings and oral motions before the Court as well as acting with improper motives in order to delay and needlessly increase the costs of litigation. Mr. Tran has not paid any portion of the VMSNA's reasonable attorney's fees and costs of $8,230.75 from which he now appeals.

STATEMENT OF FACTS

The VMSNA makes the following corrections and amplifications to Mr. Tran's Statement of Facts:

- This case does not presently involve any disciplinary action and the Court declined the initiate contempt proceedings against Mr. Tran.

- No Motion for Substitution was ever filed with the Court. Only an Order for Substitution was submitted which lacked endorsement by all

counsels of record. The Order was initially represented to the Court as an agreed order and was signed by the judge but when the Court realized that it was not an agreed order, the Order was stricken. The Court stated:

> THE COURT: As a matter of fact, what happened was I came out and I had been given this order as an agreed order. In fact, I hadn't been given it, Brad Henson, my prior law clerk, had been given it as an agreed order, and that was how it was represented to us. And so I took it and walked out and said, well, you know, I've got this agreed order of substitution of counsel, I know it was given to my clerk yesterday. And based upon those representations that it was an agreed order, I had signed it.
>
> …
>
> THE COURT: And so when it was related to me what had occurred, that order was stricken.
>
> …
>
> THE COURT: Because clearly it was not agreed.
>
> …
>
> THE COURT: So I've got three problems. Number one is he tried to intervene, number two, he represented an order as an agreed order when it was not an agreed order to me through my law clerk, and then the third thing is that he started filing pleadings in the case when he was not even counsel of record. (Sept 9 Tr. at 13-14)

- No Order of Substitution is in the file because it was stricken by the Court upon realization of Mr. Tran's misrepresentation.

- The VMSNA is a corporation which is required by law to be represented by counsel during court proceedings. When Mr. Tran spoke to Mr. Nguyen to mediate a resolution of the case as a neutral third party, he knew he was speaking to the VMSNA through its counsel of record at the time and it is disingenuous for him to represent that he had no past

dealings with the VMSNA when it is clear from his own testimony and email made part of the record that he did have substantial dealings with the VMSNA.

- Mr. Tran was notified of the briefing schedule for the Motion for Sanctions and was aware that it was to be decided on briefs without a hearing. Mr. Tran never raised any timely objection to the briefing schedule except for a claim that it was held *ex parte* after which the Court determined it was not and granted him an extension of time to file his response brief.

- The Court declined to sanction Mr. Tran based on his "mis-calendaring" and further declined to initiate contempt proceedings.

- The Court did sanction Mr. Tran for filing pleadings filed in violation of Va. Code § 8.01-271.1 and for statements made during an oral motion.

STANDARD OF REVIEW

The applicable standard of review with respect to an award of sanctions is an abuse of discretion standard using an "objective standard of reasonableness in determining whether a litigant and his attorney, after reasonable inquiry, could have formed a reasonable belief that the pleading was well grounded in fact." *Ford Motor Company v. Benitez,* 273 Va. 242, 253 (2007) *quoting Flippo v. CSC Associates,* 262 Va. at 65-66 (2001).

Despite the clearly defined standard of review as set forth by this Court in its prior decisions, Mr. Tran assigns moot errors that do not allege any abuse of discretion by the trial Court in its award of sanctions. As such, the standard of review is set forth above, but the arguments shall primarily address other infirmities of the Petition for Appeal that necessitate dismissal of the appeal.

ARGUMENT

1. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error I.

Mr. Tran's Assignment of Error I violates Rule 5:17(c)(1)(iii) because it "does not address the findings or rulings in the trial court". Rule 5:17(c)(iii) further provides that "[i]f the assignments of error are insufficient, the petition for appeal shall be dismissed."

In order to determine what rulings were made by the court and what errors may be assigned, an appellant may look only to the lower court's written orders. *Hill v. Hill*, 227 Va. 569, 578 (1984) ("A court of record speaks only through its written orders.") (citations omitted); *McMillion v. Dryvit Systems. Inc.,* 262 Va. 463, 469 (2001).

Unless a hearing transcript is expressly incorporated into the trial Court's written order, they are not to be considered. *Upper Occoquan Sewage Authority v. Blake Construction Co.,* 266 Va. 582, 587-89 (2003);

McMillion v. Dryvit Systems. Inc., supra; 262 Va. at 468-70; *Hill v. Hill*, supra: 227 Va. at 578.

While Mr. Tran makes several references to oral testimony contained in transcripts, including his own testimony on August 13, 2010, it is important to note that the transcript was never incorporated into the Court's written Order entered that day. The Order entered on August 13, 2010 consisted of three rulings. Specifically, the Court ruled that: 1) "Defendant's Motion for Order to Show Cause against Plaintiffs is withdrawn…" 2) "Defendant's Demurrer shall be re-scheduled on 9/7/10…" 3) "Plaintiffs' anticipated Motion to Substitute Counsel and Defendant's opposition thereto [to be heard] on 9/7/10…" and further provided a briefing schedule.

Mr. Tran's assignment of error based upon the Court "failing to render any finding regarding attorney Due Tran's request to enter his appearance on August 13, 2010" fails to address any of the three rulings of the Court. While it is true that, the Court did not rule on Mr. Tran's oral Motion to Substitute Counsel on that day, it clearly provided a separate hearing date and briefing schedule solely for argument of the issue substitution of counsel and the opposition thereto. The scheduling of a new date was required as a result of Mr. Tran's failure to submit a fully endorsed order of

substitution or to properly notice the disputed motion for a hearing prior to the demurrer hearing.

Mr. Tran's Assignment of Error I is insufficient as it does not address any of the Court's rulings contained in the written Order of August 13, 2010 and violates Rule 5:17 which precludes it from this Court's consideration.

2. Mr. Tran's Failure to Preserve any Issue for Review Precludes the Consideration of Assignment of Error I.

In addition to failing to address any specific ruling, Assignment of Error I also violates Rule 5:25 because no "objection was stated with reasonable certainty at the time of the ruling". In fact, no objection was ever raised by Mr. Tran with respect to any of the August 13, 2010 rulings. This is evidenced by the Order which indicates that Mr. Tran "declined signature" and that the Court was required to waive his signature pursuant to Rule 1:13.

Despite Mr. Tran's reference to three documents that purportedly contain the preservation of error, no objections appear in any such documents that would indicate any objections to the August 13, 2010 Order. Mr. Tran's failure to state timely objections with reasonable certainty as required by Rule 5:25 precludes the Court's consideration of Assignment of Error I.

3. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error II.

The first part of Assignment of Error II alleges that the Court erred by "delaying making a finding regarding Mr. Tran's appearance". The analysis here is similar to that applied to Assignment of Error I. Specifically, Mr. Tran fails to address any specific ruling of the Court and also failed to raise any objection to the Order of August 13, 2010 thereby waiving his objection to the scheduling of the hearing and the briefing schedule.

The second part of the Assignment of Error II alleges that the Court erred by "ordering Mr. Tran to confer with opposing counsel". This alleged error has no basis in fact because no written order was ever entered by the Court ordering any parties to confer with one another. Based upon Mr. Tran's Statements of Facts, it can be inferred that this assignment of error arises from his statement that: "Nevertheless, on August 30, the parties were ordered to go to conciliation." (Pet. for Appeal at 12) Mr. Tran's references to the documents that supposedly contain the preservation of error contain no indication of any such order for conciliation. In fact, two of Mr. Tran's referenced documents contradict Mr. Tran's statement that there was any such order for "Mr. Tran to confer with opposing counsel". Specifically, the Response to Sanctions states that "the Court scheduled a later hearing on the matter of Mr. Tran's disqualification and the Demurrer,

and directed Mr. Tran and Mr. Nguyen to attempt to resolve the matter via the Fairfax County Bar Association's conciliation program." (Resp. to Motion for Sanctions at ¶3) The "Motion for Reconsideration" states that "The Court referred this matter to conciliation." (Mot. for Reconsideration at 2¶1) Mr. Tran's mischaracterization that Court was ordering Mr. Tran to confer with opposing counsel through conciliation has no objectively reasonable basis in fact. It was merely suggested by the Court and the parties willingly consented to the conciliation for their own respective benefit. Mr. Tran was free to decline participation, but instead insisted on in-person conciliation while the other counsels were satisfied with a teleconference.

Assignment of Error II fails to assign error to any specific ruling, fails to reference any preservation of that error and is based on a misrepresentation that the parties were ordered to confer through conciliation and is thus precluded from this Court's consideration.

4. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error III.

Mr. Tran alleges that the Court erred by "not doing an analysis of any alleged conflict regarding Mr. Tran under Virginia's four prong test". This assignment of error presumes that the Court was required to do an analysis of conflict regarding Mr. Tran's involvement in the case below. The Court

was never faced with having to make any such analysis because the hearing for Mr. Tran's motion for substitution and the opposition thereto never occurred. The hearing never occurred because Mr. Tran failed to appear for the demurrer hearing on September 9, 2010 due to his purported "disconnect" in "mis-calendaring" during which the Plaintiffs' case was dismissed by a written Order entered on September 13, 2010.

Additionally, the Court in its September 13, 2010 Order "made a finding that the facts as set forth in the Defendant's Opposition to Plaintiffs Motion for Substitution of Counsel were indeed the facts reflecting Due H. Tran, Esq.'s involvement". Mr. Tran endorsed the Order "Seen and Objected to:" with nothing more. Under Rule 5:25, Mr. Tran was required to state his objection "with reasonable certainty at the time of the ruling" in order to preserve an issue for appellate review and that "[a] mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review." Simply stating "Seen and Objected to:" falls well short of the requirements of Rule 5:25 and fails to preserve any issues in the September 13, 2010 Order for review by this Court.

5. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error IV.

Mr. Tran initially alleges in Assignment of Error IV that the Court erred in "determining that Mr. Tran acted as an attorney mediator". As in all of the assignments of error, Mr. Tran's fails to provide any specific page references to the record where the alleged errors were preserved which further violates Rule 5:17. The Court made a finding in the November 8, 2010 Letter Opinion that "the Court is persuaded by the Emails and phone records Defendants have submitted that Mr. Tran did in fact attempt to serve as a neutral third party prior to entering his appearance on behalf of the Plaintiffs." (Nov 8 Letter Op. at 6-7) This Letter Opinion was expressly incorporated into the December 10, 2010 Order. An examination of that Order shows that Mr. Zellman endorsed the Order as "Seen and Objected to Regarding Demurrer:" which may be sufficient to preserve the issue of the sustained demurrer for appellate review under Rule 5:25. However, Mr. Tran is not seeking to reverse the Court's ruling on the demurrer so Mr. Zellman's objection is to no avail in this assignment of error. Mr. Tran endorsed the order as "Seen and objected to:" without stating any specific ruling to which he was assigning error. This clearly falls short of the "reasonable certainty" required by Rule 5:25 and is equivalent to, if not less than, "[a] mere statement that the judgment or award is contrary to the law

and the evidence" which "is not sufficient to preserve the issue for appellate review".

Secondly, Mr. Tran alleges that the Court "improperly concluded that he should be disqualified as the attorney for the Plaintiffs." An examination of the referenced documents which purportedly preserve the errors for review reveals that Mr. Tran actually contradicts himself by admitting several times that the Court never made a ruling disqualifying him. Mr. Tran actually uses the lack of disqualification to support his argument that sanctions were not warranted in this case. Mr. Tran's pleadings in the trial Court seem to indicate his understanding and acceptance of the Court's actions in deferring the ruling on the disqualification grounds until a later hearing as well as the fact that the Court never ruled on his disqualification. Specifically, it is stated that "Since Mr. Tran had not been disqualified by the court, nor had he been removed as the attorney of record, Mr. Tran did not improperly represent Plaintiffs at the August 13,2010 hearing." (Resp. to Sanctions at ¶4). Mr. Tran further states "[a]t the September 13, 2010 hearing, this court again declined to exercise its inherent powers under *Peatross* to remove, disqualify, or discipline Mr. Tran for misconduct." (Resp. to Sanctions at ¶5) Mr. Tran additionally states that he "was never removed or disqualified as Plaintiffs' counsel by this court exercising its

inherent powers under *Peatross*… Therefore, sanctions under Va. Code § 8.01-271 are improper." (Resp. to Sanctions at ¶7) Nearly the same statement is included in his Conclusion to his Petition for Appeal. (see Pet. for Appeal at 35-36.)

To come before the Supreme Court of Virginia and allege that he was disqualified from the case after making the foregoing statements in signed pleadings is a continuation of the same pattern of factually baseless and confusing actions that warranted the award sanctions against him in the Court below.

The record clearly indicates that this assignment of error was not preserved and, more importantly, it has no basis in fact and is contradicted by Mr. Tran's own pleadings that he now references for the preservation of said error. Based on the foregoing, Assignment of Error IV is precluded from this Court's consideration by Rule 5:17 and Rule 5:25 and may be grounds for additional sanctions against Mr. Tran.

6. Mr. Tran's Assignment of Error IV is Irrelevant to a Reversal of the Sanctions Awarded and No Abuse of Discretion Was Alleged.

Mr. Tran's Conclusion to his Petition for Appeal states his request for relief. Mr. Tran states that "sanctions under Va. Code § 8.01-271 are

improper. For the reasons set forth above, the circuit court's decision should be REVERSED." (Pet. for Appeal at 36)

The Court's basis for awarding sanctions against Mr. Tran was set forth in detail in the nine page Letter Opinion that was incorporated into the December 10, 2010 Order.

The first basis for the sanctions was Mr. Tran's failure to withdraw his pleadings filed prior to August 13, 2010 after having been notified by the Court that he was not counsel of record and after having been requested by Mr. Nguyen to withdraw such pleadings pursuant to Va. Code § 8.01-271.1. The Court held that under the objective standard of reasonableness that "it was unreasonable for Mr. Tran to think that these previous filings were still properly before the Court" and awarded sanctions on that basis.

The second basis for the sanctions was Mr. Tran's filing of additional pleadings after August 13, 2010. The Court held that "[i]f it was not apparent prior to the August 13 hearing, it became clear by the Court's Order…that Mr. Tran's status as counsel was in dispute…Filing an Entry of Appearance of Counsel is in direct contradiction to the Court's August 13th Order". This was the Court's reiteration of Mr. Tran's lack of objective reasonableness in filing the pleadings. The Court went on to find an additional ground for sanctions by stating that Mr. Tran's "Motion to Strike

Defendants' Counsel's Appearance is baseless and clearly interposed for an improper purpose, to needlessly create delays and increase costs of litigation" which further supported the award of sanctions under Va. Code § 8.01-271.1.

The Court's third and final basis for the award of sanctions was Mr. Tran's lack of factual basis in his oral statements in open Court on August 13, 2010. These statements are quoted in Mr. Tran's Statement of Facts to his Petition for Appeal:

> MR. TRAN: I have read it, Your Honor. I deny all the allegations in there. I have no dealings with his prior clients, I have never represented them.
>
> I was in the Marine Corp for 10 years and I came back, never represented these individuals. I have never had a private practice until --I just opened up my practice in June. (8/13/10 Tr. at 3)

The Court stated that "Mr. Tran's oral motion for substitution and his supporting statements regarding Mr. Nguyen's allegations are sanctionable because they are directly contradicted by evidence Mr. Nguyen has submitted to the Court." In essence, the Court held that there was no objectively reasonable factual basis for Mr. Tran's oral motion for substitution and his denial of allegations on the record and that sanctions were warranted under Va. Code § 8.01-271.1.

Assignment of error IV demonstrates a clear misunderstanding on Mr. Tran's part of the Court's basis for awarding sanctions. While the Court stated that it "is persuaded by the Emails and phone records Defendants have submitted that Mr. Tran did in fact attempt to serve as a neutral third party prior to entering his appearance on behalf of the Plaintiffs", this finding of fact (referencing the September 13, 2010 Order), is intended to show the lack of factual basis for Mr. Tran's oral motion and denials before the Court and is not, by itself, a basis for the Court's award of sanctions. The sanctions were awarded because of Mr. Tran's oral motion and denials of allegations that were later proven to be baseless and not because of his prior actions as a mediator or neutral third party.

Assignment of Error IV is irrelevant in reversing the award of sanctions as it was not the determination that Mr. Tran acted as a mediator or neutral third party that supported the award but rather that Mr. Tran's prior statements to the Court did not meet the standard of objective reasonableness required of him. Therefore, this Court need not consider Assignment of Error IV as it is irrelevant and does not form a basis for reversing the award of sanctions against Mr. Tran.

More importantly, Mr. Tran has never alleged an abuse of discretion by the trial Court in applying the objective reasonableness standard so the

issue of sanctions is precluded from this Court's consideration in its entirety.

7. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error V.

A review of the record shows no ruling by the Court "prohibiting Mr. Tran from filing a response to the demurrer" as alleged by Mr. Tran. In fact the November 8, 2010 Letter Opinion that was incorporated into the December 10, 2010 Order states that "[a]t conciliation Mr. Tran, Mr. Nguyen, and Mr. Zellman agreed that if the Court was inclined, it could allow Mr. Tran a limited appearance solely for the purposes of arguing the opposition to the demurrer". Based on Mr. Tran's, Mr. Zellman's and Mr. Nguyen's agreement, the Court rescheduled the demurrer hearing for September 9, 2010 and notified all three attorneys. The Court's rescheduling of the demurrer indicated a willingness to allow the limited appearance by Mr. Tran to argue the opposition to the demurrer. The Court also intended to consider the written Opposition to the Demurrer Mr. Tran had already filed. The Court never struck Mr. Tran's written Opposition to the Demurrer and did not award sanctions based on that pleading. In fact, the record reflects that the Court did in fact consider Mr. Tran's Opposition to the Demurrer when it inquired into the derivative action theory put forth solely by Mr. Tran for the first time in his written

pleading. The Court most clearly indicates that it considered the Opposition to the Demurrer in its September 13, 2010 Order in which the Court stated "that Plaintiffs' stated desire for a shareholders' derivative action precludes the possibility of any amendment to their pleadings, as filed".

Assignment of Error V is not assigned to any specific ruling of the Court as no such ruling was ever pronounced in the record. Mr. Tran has made yet another allegation in a pleading that has no objectively reasonable basis in fact. This precludes this Court from considering this assignment of error and supports an award of additional sanctions against Mr. Tran.

8. Mr. Tran's Failure to Assign Any Specific Error to a Ruling of the Court Precludes the Consideration of Assignment of Error VI.

Mr. Tran alleges that the Court erred in "prohibiting Mr. Tran from entering his appearance". No ruling was ever handed down by the Court prohibiting Mr. Tran from entering his appearance. Mr. Tran's failure to properly follow local court rules and procedures was the reason for his inability to enter an appearance at the August 13, 2010 demurrer hearing. Va. Code § 8.01-4 delegates to circuit courts the authority to establish rules regarding the management of their courts and the cases handled therein so as not to deprive any party from having a case heard on the merits. *Collins*

v. Shepherd, 274 Va. 390, 399 (2007). To that end, the 2010 Fairfax Circuit Court Practice Manual reflects the best practices under the local court rules and accepted procedures and provides:

> 2.05 Orders
>
> A. Most agreed matters can be submitted as agreed orders if signed by counsel for all parties without the need for a court appearance. The Court will not simply enter all agreed orders and is likely to require an appearance for certain matters including trial continuances and withdrawal of counsel.
>
> B. Be sure that any order you submit is endorsed by all counsel and or parties and include bar numbers.

Mr. Tran did not have an agreed order signed by counsel for all parties, in fact, he acknowledges that only Mr. Zellman endorsed the Order of Substitution while Mr. Nguyen refused to sign and Mr. Campbell had not yet signed. As a result, the Court could not properly enter the order as it was not an agreed order. It was solely this procedural problem caused by Mr. Tran that prevented his entry as counsel of record on August 13, 2010. The Court even went out of its way to schedule a hearing for the Plaintiffs' Motion to Substitute Counsel at a time convenient for Mr. Tran. The Court also referred the parties to conciliation in which the parties agreed to allow Mr. Tran a limited appearance to argue against the Plaintiffs' opposition to the demurrer. Despite the Court making such accommodations to expedite the fair hearing of the case, Mr. Tran squandered all of the opportunities

given to him to enter an appearance when he did not appear at the September 9, 2010 hearing during which the Plaintiffs' case was dismissed which rendered the issue of Mr. Tran's disqualification moot. Contrary to Mr. Tran's allegation that the Court prohibited him from entering an appearance, the record is clear that the Court did quite the opposite and that it was he who prevented himself from entering an appearance and not any ruling by the Court. Assignment of Error VI does not address any ruling of the Court and is thus precluded from this Court's consideration. To the extent it is not based on an objectively reasonable interpretation of facts reflected in the record, it supports an award of additional sanctions against Mr. Tran.

9. Mr. Tran's August 13, 2010 Testimony Contains a Clear Misrepresentation Made to the Court Below.

As cited in the Statement of Facts to the Petition for Appeal, Mr. Tran made the following statement at the August 13, 2010 hearing:

> MR. TRAN: I have read it, Your Honor. I deny all the allegations in there. I have no dealings with his prior clients, I have never represented them.
>
> I was in the Marine Corp for 10 years and I came back, never represented these individuals. I have never had a private practice until --I just opened up my practice in June. (8/13/10 Tr. at 3)

The Court sanctioned him based on the first part of the statement which contains a denial of allegations. However, it has become apparent upon

reviewing the record that the second part of the statement also contains a clear misrepresentation by Mr. Tran. While he represented that he "never had a private practice until…June [2010], his Response to Sanctions indicates otherwise. Specifically, Exhibit A of that pleading contains Mr. Tran's *Curriculum Vitae* ("CV") which shows that Mr. Tran has indeed had quite a substantial private practice before, contrary to his statements:

> *PRIVATE PRACTICE, NOVEMBER* 1997 *TO NOVEMBER 2000*
>
> **Solo Practitioner**
>
> • Represented over 200 clients in Washington, D.C. metropolitan
> …
> • Victories include *Basu* v. *USDA,* which resulted in E.E.O.C. class action settlement that recognized difficulties of reverse discrimination
> …

Clearly, Mr. Tran's history of candor to the tribunal and the lack of factual basis for statements before the Court raise questions as to his credibility. This issue is raised primarily in order to assist this Court in resolving any disputes as to the facts of the case but also in response to the ethical duty of counsel to report incidents of attorney misconduct including lack of candor to the tribunal as required by Prof. Conduct Rule 8.3. Additionally, it serves as support for an award of sanctions by this Court as Mr. Tran continues in the course of conduct for which he has been sanctioned and from which he now appeals.

10. Mr. Tran's Petition for Appeal Amounts to Plagiarism of a Circuit Court Opinion and Should Not be Considered Due to Ethical Violations.

The vast majority of the paragraphs in the Argument section of Mr. Tran's Petition for Appeal are copied verbatim from a written opinion from the Circuit Court of the City of Portsmouth in the case of *Sharp v. Sharp,* 3 Cir. C0274 (2006) without any indication that the material is being quoted verbatim. Only one mention is made of the *Sharp* opinion but in no way constitutes the proper citation or justification for incorporating nearly the entire opinion text verbatim down to the identical sub-headings and the use of entire footnotes as his own arguments.

What is more troubling is that this Court provided Mr. Tran an opportunity to address this issue if it were somehow inadvertent when it informed him that there were formatting errors that needed to be corrected. Mr. Tran's first Petition for Appeal revealed his high level of plagiarism by its inclusion of the names of attorneys "Rinehart" (5 references) and "Wegman" (3 references). A review of the record reveals that no such "Rinehart" or "Wegman" were ever mentioned in this case.

This is because those are the names of counsels in *Sharp* whose names were not deleted or changed by Mr. Tran before he incorporated the opinion into the first Petition for Appeal. However, in his Corrected Petition for Appeal, Mr. Tran realizes a problem and to correct it, simply removes

the names of “Rinehart” and “Wegman” and adds his own where appropriate. The vast majority of the *Sharp* opinion text remains, to this day, in the Corrected Petition for Appeal. This clearly evidences knowledge and intent by Mr. Tran of his actions which amount to plagiarism, for failing to cite or attribute the work to its proper author while presenting it as his own work. Mr. Tran has clearly violated Prof. Conduct Rule 8.4 by intentionally misrepresenting the opinion of the Portsmouth Circuit Court as his own.

As a result of the plagiarism and the ethical concerns raised with respect to Mr. Tran’s Petition for Appeal and in light of the clear misrepresentations made by Mr. Tran in this Court throughout his Petition for Appeal, it would be improper for his appeal to proceed and it must therefore be dismissed amidst the obvious ethical concerns.

RELIEF REQUESTED

The VMSNA having fully set forth its opposition to the Petition for Appeal, prays that this Court dismiss, in full, Mr. Tran’s Petition for Appeal for the reasons set forth above and further prays that this Court report Mr. Tran’s actions to the Virginia State Bar pursuant to Rule 5:1A upon dismissal of the appeal in accordance with Prof. Conduct Rule 8.3.

Dated: April 15, 2011

Respectfully submitted,

Vietnamese Medical Society of Northeast America

By Counsel

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CERTIFICATE OF SERVICE

Pursuant to Rule 5:18(b) of the Rules of the Supreme Court of Virginia, I hereby certify that seven (7) copies of this Brief in Opposition to the Petition for Appeal have been filed via Federal Express overnight, postage prepaid to the Clerk's office of the Supreme Court of Virginia and a true and accurate copy of the foregoing was served by Federal Express overnight, postage prepaid, and electronic mail this 15th day of April, 2011, to:

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