

Pursuant to 12(b)(6), Affirmative Defenses, Counterclaim, & Third-Party Complaints.

- 1.03 Third Party Defendants served this motion on Simon on November 29, 2007, 21 days before filing the motion with the court. Fed. R. Civ. P. 11(c)(1)(A). Simon has not withdrawn this document.

II. Argument

- 2.01 The court may impose sanctions on a pro se party for presenting a pleading, written motion, or other paper for an improper purpose, such as to harass or cause unnecessary delay or expense. Fed. R. Civ. P. 11(b)(1). Additionally, the court may impose sanctions on a pro se party for presenting a pleading, written motion, or other paper that includes any of the following: (1) claims or defenses unsupported by existing law or by a good-faith argument for a change in existing law; (2) allegations that do not have, or are unlikely to have after a reasonable investigation, evidentiary support; or (3) denials unwarranted by the evidence. Fed. R. Civ. P. 11(b)(2)-(4).

- 2.02 Simon's filing of his third party complaint against Judges Higginbotham and McMaster violated Rule 11 because:

A) Simon filed the document for an improper purpose, such as to harass or to cause an unnecessary delay. Fed. R. Civ. P. 11(b)(1); *Mercury Air Group, Inc. v. Mansour*, 237 F.3d, 542, 548 (5th Cir. 2001). Specifically, Simon and Lincoln improperly removed this case and then brought in third parties in their continuance of harassment of public officials. The persistent filing of frivolous and harassing lawsuits demonstrates the harassment of public officials. Simon

and/or Lincoln have been involved in the following cases which have harassed public officials:

Cause No.	Style	Type of Action	Public Officials Harassed	Status of Case
4:06CV220 SDTX	LMN Mortgage v. Atalay	Removal to Fed Dist Ct. from Tex. J.P. Ct.	William Yeoman, J.P. Pct. 5, Harris County, Texas	Case remanded \$4500 in sanctions for improper removal
4:06CV1479 SDTX	Jaikaran v. U.S. Bank <i>et al</i>	Civil Suit	113th District Court Judge Patricia Hancock	Contempt orders issued for Lincoln's side
2:07CV0258 ¹ SDTX	Sibley v. Lincoln	Removal to Fed. Ct. from 94 th Tex. Dist. Ct.	See 1:07-CV 001LY	Case remanded. Motion for sanctions for improper removal pending; criminal contempt order issued.
2:07MC0075 SDTX	USA v. Lincoln	Criminal Contempt Proceeding	U.S. Dist. Judge Janis Graham Jack	Arrest warrant pending; Lincoln has fugitive status.
1:07CV0699LY WDTX	State of Texas v. Lincoln	Removal from Williamson County Court at law No. 3	None	Capias issued for failure to appear for appeal of minor traffic violation (seat belt) USDC Case Pending
1:07CV0842LY WDTX	Lincoln & Simon v. Williamson County <i>et al</i>	Civil	Lucas Wilson (prosecutor); Municipal Judge Kathleen Riedel; Arturo Ramierz	Order for show cause issued on bounced filing fee check

¹ Lincoln retained David Sibley to appear in 1:07-CV 001LY. When Sibley appeared and did not get paid by Lincoln, Sibley filed suit.

			(Prosecutor); Jana Duty (County Attorney); Col. Thomas Davis (Director DPS); Mary Peters (U.S. Secretary of transportation); Lafayette Collins (U.S. Marshall for the Western District of Texas)	
1:07CV0001LY	Simon <i>et al</i> v. Williamson County, <i>et al</i>	Civil	Judges Don Higginbotham, John McMaster, and Michael Jergins; Jana Duty (County Attorney); John Bradley (District Attorney); James Wilson (Sheriff); and Greg Abbott (Attorney General)	Dismissed
1:07CV0315LY	Simon <i>et al</i> v. Williamson County, <i>et al</i>	Civil	Judges Tim Wright, Don Higginbotham, John McMaster, Don Morgan, James Clawson, B.B. Schraub, Michael Jergins; Jana Duty (County Attorney); John Bradley (District Attorney); James Wilson (Sheriff); and Greg Abbott (Attorney	Order to show cause from this Court by December 17, 2007 for vexatious litigation pending.

			general	
05-973-C395 in the 395 th Texas Judicial Court ²	Lincoln <i>et al.</i> v. Williamson County <i>et al.</i>	Civil	Judges Tim Wright, Don Higginbotham, Suzanne Brooks, Michael Jergins, Burt Carnes, Billy ray Stubblefield, and Ken Anderson.	Court ordered \$60,500 in sanctions against Lincoln and a prohibition from filing suit in Texas courts until sanctions are paid.

(B) Simon’s third party complaint contains claims that are not warranted by existing law or by a good-faith argument for an extension or change in existing law. Fed. R. Civ. P. 11(b)(2); *Truesdell v. S. Cal. Permanente Med. Group*, 293 F.3d 1146, 1153 (9th Cir. 2002); *Zuk v. E. Pa. Psychiatric Inst.*, 103 F.3d 294, 299 (3d Cir. 1996). Furthermore, Simon’s complaint contains allegations or other factual contentions that lack evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for discovery. Fed. R. Civ. P. 11(b)(3); see *Mercury Air Group, Inc. v. Mansour*, 237 F.3d 542, 548 (5th Cir. 2001); *O’Brien v. Alexander*, 101 F.3d 1479, 1489 (2d Cir. 1996). Specifically, Simon has made broad and unwarranted conspiratorial allegations against public officials. Moreover, the sum and substance of Simon’s complaint challenges an *agreed* order of child support which Judge Higginbotham entered. Simon has not made any good-faith arguments for the modification or reversal of the doctrine of judicial immunity and the Texas family code.

² There have been numerous other state court cases involving these same parties including many appeals. They have not been listed for brevity’s sake.

(C) Before imposing sanctions, the court should determine whether the party made a reasonable inquiry into the facts or the law before signing and presenting the offensive document. *See* Fed. R. Civ. P. 11(b); *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1364-65 (9th Cir. 1990). The court should impose sanctions against Simon because he did not make a reasonable inquiry into the facts or law before filing his third party complaint against Judges Higginbotham and McMaster. There is no explanation for this continuous barrage of frivolous lawsuits and pleadings filed by Simon and Lincoln. This conduct needs to stop the harassment of public officials and the gross abuse of this Court's judicial time and Williamson County resources.

2.03 The Court should impose the following sanctions: (a) monetary sanctions in the amount of \$250,000, (b) striking of Simon's pleadings and dismissal of this and every other cause that Simon or Lincoln have pending the Western District of Texas, and (c) a prohibition of further filings and lawsuits by Simon and/or Lincoln in the Western District of Texas until the sanctions are paid in whole to the Court's registry. Judges Higginbotham and McMaster's believe that this request for sanctions is sufficient to deter repetition of the sanctionable conduct.³ Fed. R. Civ. P. 11(c)(2); *Fries v. Helsper*, 146 F.3d 452, 458-59 (7th Cir. 1998).

³ However, the \$50,000 sanction from the 395th District Court was insufficient to deter the same sanctionable conduct in the federal system.

