

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

v. :

C.A. No: PC-2017-3856

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND RETIREMENT PLAN, :
as amended :

**REPLY MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL'S
MOTION TO STRIKE PORTIONS OF THE RECEIVER'S REPLY**

The Receiver seems to argue that since his unsupported allegations of criminal and otherwise illegal conduct were made in a document filed with this Court but not listed in Rule 7(a) of the Rules of Civil Procedure, the instant Motion should be denied.¹ This is not, and should not be, the law in this jurisdiction.

The only Rhode Island case relied on by the Receiver, Rosano v. MERS, et al., 2012 WL 2377517 (R.I. Super. June 19, 2012) involved a pro se plaintiff seeking to avoid foreclosure. In his complaint, he alleged that the assignment of the mortgage interest on his property was invalid. In a subsequent memorandum he elaborated and said the assignment was not valid, as the signatory lacked authority. In an argument more appropriately labeled as a “raise or waive” situation, the Court indicated in *dicta* that it would not strike the argument in the memorandum in those circumstances. That case does *not* hold that a court-appointed receiver can casually lob irrelevant and untrue accusations of criminal and other illegal conduct at the staff attorneys of a non-party

¹ Rule 7(a) refers to a number of pleadings that are allowed to be filed with the Superior Court to initiate a dispute, and then states that “no other pleading shall be allowed.” That does not mean that other filings are not accepted by this Court. Indeed, Rule 7(b) clearly allows for “Motions and Other Papers.” Recently Rule 7 was updated to require Electronic Filing of Pleadings, Motions, and Other Papers. Rule 7(c). It is not at all settled that the designation of a document as a “pleading” in Rule 7 carries over into other parts of the Rules, including Rule 12(f).

regulatory agency and later claim that such conduct is permissible, because a “Memorandum” is not a “pleading.”² This “form over substance” argument did not carry the day in The Estate of Yaron Ungar v. The Palestinian Authority, 2003 WL 21076981 (D.R.I. March 13, 2000). Before that court was a Motion to Strike “frivolous, irrelevant, and scandalous statements prohibited by Fed.R.Civ.P. 11 and 12(f).” The material was contained in a memorandum and exhibits filed with the Court, and was deemed to be “irrelevant and constitutes an effort to malign Plaintiffs by association.” Id. at *1. The federal court ordered the material in the memorandum stricken from the record. The Receiver plainly acknowledges that other jurisdictions also review memoranda and motion papers under Rule 12(f); *see, e.g., Pigford v. Veneman*, 215 F.R.D. 2, 4 (D.C.D.C. 2003); *Nault’s Auto. Sales, Inc. v. American Honda Moto Co., Inc., Acura Auto. Div.*, 148 F.R.D. 25 (D. N.H. 1993) *overruled on other grounds by Colonial Imports Corp. v. Volvo Cars of North America, Inc.*, 2001 WL 274808 (D. N.H. 2001).

Although in the context of a Rule 11 Motion, the Rhode Island Supreme Court’s admonition in Michalopoulos v. C&D Restaurant, 847 A.2d 294 (R.I. 2004) is instructive and supports the instant Motion: “[A]n attorney is not free to say literally anything and everything imaginable in a courtroom under the pretext of protecting his client’s rights to a fair trial and fair representation.” Id. at 302 (citation omitted).

The instant Motion should be granted. Because of the nature of this case, and because the record is publicly available anywhere in the world to anyone with access to the internet, it should be accurate, focused and reliable. At this point, someone in Nevada, or a pensioner in North Providence could be led to believe that the Receiver, who has been appointed by this Court to

² The Court could also order the gratuitous language stricken pursuant to its inherent power to control proceedings before it.

investigate and make findings, has investigated and found criminal conduct by civil division staff members in the Office of the Rhode Island Attorney General. As the records of this Court are permanent, someone five, fifteen, or fifty years in the future could be misled into coming to that same conclusion. This Court should not allow that, and the instant Motion should be granted.

Respectfully submitted,

**RHODE ISLAND OFFICE OF THE
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 1st day of November 2018, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Diane B. Milia

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