

Appeals Court of the Commonwealth of Massachusetts

№ 2018-P-1605

Walter Tuvell

Plaintiff/Appellant

v.

Jack Marshall

Defendant/Appellee

On Appeal From A Judgment Of The
Middlesex Superior Court (№1781CV02701)

MOTION FOR SANCTIONS (CONTEMPT, PERJURY)

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MOTION FOR SANCTIONS (CONTEMPT, PERJURY)

Plaintiff/Appellant Walter Tuvell hereby moves that this Court levy appropriate¹ **sanctions** against Defendant/Appellee Jack Marshall, on charges of (i) **Contempt of Court**, and (ii) **Perjury**.

As reasons therefor, Tuvell states as follows:

A. Rule of Court MRAP13(d), **“Proof of Service,”** provides (emphasis added):

Papers presented for filing **shall** contain an acknowledgment of service by the person served or proof of service in the form of a statement **under the penalties of perjury** of the date and manner of service and of the name of the person served, signed by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk **may** permit papers to be filed without acknowledgment or proof of service but **shall require** such acknowledgment or proof to be filed promptly thereafter.

B. According to the **Docket** (“Dkt,” Exhibit A, ¶5 *infra*), Marshall *initially* filed a certain **Motion** (Dkt#7) absent proof of service, in disobedience of MRAP13(d);² he was rebuked thereupon (Dkt “RE#7”). *Subsequently* however, Marshall **never followed-up with service/proof** of that Motion to Tuvell, as **required** by MRAP13(d) (¶A *supra*).³ That

1. Concerning “appropriate” sanctions, see ¶H *infra*.

2. That *initial* Motion incident (first sentence of ¶B) is not a subject of complaint for this instant Motion, since it was adequately contemplated/handled by the clerk’s discretion clause of MRAP13(d).

subsequent disobedience of MRAP13(d) was **willful** on Marshall's part: it amounts to prejudice ("trick") against Tuvell, and to **Contempt of Court**.

C. Following that Motion incident (¶B *supra*), Marshall later filed his **Appellee's Brief** ("**ApleBrief**," Dkt#10). Again (as with the Motion incident), Marshall **did not serve** ApleBrief upon Tuvell. That "repeat offense" was *again willful* on Marshall's part: and it is *again* prejudicial to Tuvell, and to **Contempt of Court**.

D. Nevertheless, despite *not* actually serving ApleBrief upon Tuvell (¶C *supra*), Marshall *did falsely certify* (ApleBrief_{¶29}) that he *had* done so⁴ — pursuant to MRAP13(d), which provides for "**penalty of perjury**" (¶A *supra*). Thus: Marshall's false ApleBrief service certification statement amounts to **Perjury**.

E. Finally, we refer to our earlier Motion in Opposition Dkt#9 for *more examples* of **Perjury** by Marshall (where we prove he lied to the Court in his Dkt#8).

F. It is notable Marshall is a Massachusetts **lawyer** (BB0#321760); so he "knows the ropes." Although Marshall is *acting* (pseudo-) *pro se* (not as a representative of a third-party client) in the instant case-at-bar, he nonetheless remains subject to the **MRPC (Massachusetts Rules**

3. In fact, Tuvell has *never* received a copy of the Motion Dkt#7 (not even the Court has ever sent him one).

4. Tuvell was forced to discover/obtain by himself ("*no-tra sponte*") a copy of ApleBrief, directly from the Court.

of Professional Conduct, SJC Rule 3:07).^{5,6} Without going into exhaustive discussion here, we note that it would be unconscionable if Contempt of Court (including its present aspect of prejudice against Tuvell) and Perjury weren't prohibited by the MRPC. Indeed: (i) MRPC Rule 8.4(d) explicitly prohibits "engag[ement] in conduct that is prejudicial to the administration of justice;" and (ii) MRPC Rule 8.3 Cmt.3 explicitly lists "perjury before a tribunal" as an example of "reportable conduct."

G. Anent ¶F *supra*, we observe that Rule 2.15(B) of the MCJC (Massachusetts Code of Judicial Conduct, SJC Rule 3:09) requires that judges having knowledge of lawyers who commit Marshall-level MRPC violations "*shall* inform the Office of Bar Counsel."

H. Thus, by ¶F,G *supra*, "appropriate" sanctions against Marshall *should include* — in addition to whatever case-specific sanctions this Court finds appropriate — reporting/referring him to the BBO, for bar discipline.⁷

5. MRPC Preamble ¶6: "A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious." This is particularly pertinent in Marshall's case, as he peddles himself as a self-styled "legal ethicist," and even *teaches* MRPC/ethics to lawyers in Massachusetts.

6. It is especially important that Marshall's behavior be regulated ethically in the instant case-at-bar, given that Tuvell is a genuine *pro se* litigant (hence afforded extra protection by the legal system against unethical lawyers).

7. See <https://www.massbbo.org/Complaints>. The available disciplines are Admonition, Public Reprimand, Suspension, and Disbarment.

EXHIBIT A: DOCKET

APPEALS COURT
Full Court Panel Case
 Case Docket

WALTER E TUVELL vs. JACK MARSHALL
 2018-P-1605

CASE HEADER			
Case Status	Red & Blue briefs filed	Status Date	02/26/2019
Nature	Tort	Entry Date	11/28/2018
Sub-Nature	defamation, plaintiff's complain	SJ Number	
Appellant	Plaintiff	Case Type	Civil
Brief Status		Brief Due	
Panel		Argued/Submitted	
Citation		Decision Date	
Lower Court	Middlesex Superior Court	TC Number	
Lower Ct Judge	Christopher Barry-Smith, J.	TC Entry Date	09/13/2017
FAR Number		SJC Number	

INVOLVED PARTY	ATTORNEY APPEARANCE
<p>Walter E Tuvell Pro Se Plaintiff/Appellant Blue brief & appendix filed</p> <p>Jack Marshall Pro Se Defendant/Appellee Red brief filed 2 Exts, 44 Days</p>	

DOCKET ENTRIES		
Entry Date	Paper	Entry Text
11/28/2018	#1	Lower Court Assembly of the Record Package
11/28/2018		Notice of entry sent.
11/28/2018	#2	Civil Appeal Entry Form filed by Walter E Tuvell.
12/04/2018	#3	Docketing Statement filed by Walter E Tuvell.
12/13/2018	#4	Notice of rejection of e-filed brief/appendix of Walter E Tuvell as noncompliant for the reasons indicated on the checklist: 3, 27 (missing both the items required in Rule 16(a)(6) and 16(f)), other: page 26 of the brief contains an image described in footnote 30 as a cartoon, and not apparently included in the record. Such an image is not permitted to be included in the argument section of the brief by the Rules of Appellate Procedure. Accordingly, on or before 01/07/2019, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix or may file a motion to file a non-conforming brief.*Notice sent.
12/17/2018	#5	Appellant brief filed by Walter E Tuvell.
12/17/2018	#6	Appendix filed by Walter E Tuvell.
01/07/2019		Copy of appendix sent to Jack Marshall.
01/22/2019	#7	MOTION to extend Appellee brief due date filed by Jack Marshall
01/23/2019		RE#7: Allowed to 01/28/2019. Any future filing shall be accompanied by a certificate of service. See Mass. R.A.P. 13(d). Notice sent.
01/30/2019	#8	MOTION to extend brief due date by Jack Marshall.
01/31/2019	#9	OPPOSITION to Paper#8 Motion to Extend brief due date filed by Walter E Tuvell.
02/05/2019		RE#8: Allowed to 03/01/2019. (Milkey, J.). Notice sent.
02/05/2019		RE#9: See action on paper #8. *Notice.
02/26/2019	#10	Appellee brief filed by Jack Marshall.

As of 02/26/2019 20:00

CERTIFICATE OF SERVICE

Pursuant to MRAP 13(d), I hereby certify, under the pains and penalties of perjury, that I have served notification of and access to this document upon Defendant, via email and first-class U.S. Mail.



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