LexisNexis®

Neutral
As of: May 12, 2026 2:29 AM Z

Sofaly v. Portfolio Recovery Assocs.

United States Court of Appeals for the Third Circuit

September 16, 2025, Submitted, Under Third Circuit L.A.R. 34.1(a); September 22, 2025, Filed

Nos. 24-2639 and 24-2640

Reporter
155 F.4th 289 *; 2025 U.S. App. LEXIS 24427 **; 2025 LX 496888; 122 Fed. R. Serv. 3d (Callaghan) 1540; 2025 WL 2691992

ROBERT SOFALY v. PORTFOLIO RECOVERY ASSOCIATES, LLC, JP WARD & ASSOCIATES; TRAVIS A. GORDON; JOSHUA WARD,* Appellants;DAMIEN MALCOLM v. PORTFOLIO RECOVERY ASSOCIATES, LLC JP WARD & ASSOCIATES; TRAVIS A. GORDON; JOSHUA WARD,* Appellants

Prior History: **[**1]** On Appeal from the United States District Court for the Western District of Pennsylvania. (D.C. Nos. 2:23-cv-02018 & 2:24-cv-00053). District Judge: Hon. Cathy Bissoon.

Sofaly v. Portfolio Recovery Assocs., LLC, 2024 U.S. Dist. LEXIS 138073, 2024 WL 3652866 (Aug. 5, 2024)

Core Terms

district court, portfolio, debt collector, inherent power, misrepresent

Case Summary

Overview
Key Legal Holdings

- The court held that *Rule 11* sanctions were proper because the attorneys misrepresented the dispute letters to harass the debt collector and generate fees.
- The court held that *Rule 11* covered the dispute letters because they were incorporated into and attached to the complaints.
- The court held that *Rule 11* applied even though complaints were initially filed in state court because attorneys later advocated them in federal court.
- The court held that inherent authority sanctions were proper because the attorneys intentionally engineered a scheme to mislead both the debt collector and the court.

Material Facts

* Under Fed. R. App. P. 12(a)

* Under Fed. R. App. P. 12(a)

- Attorneys created a template for confusing handwritten debt dispute letters designed to evade automated processing systems.
- Firm staff wrote and signed the letters without client involvement, though clients had signed agency agreements.
- Attorneys filed complaints falsely claiming clients personally sent the dispute letters.
- Attorneys admitted their scheme was designed to manufacture FDCPA violations to collect attorney's fees.

Controlling Law

- *Fed. R. Civ. P. 11(b)(1)*.
- *Fed. R. Civ. P. 10(c)*.
- *Fed. R. Civ. P. 11(b)*advisory committee's note to 1993 amendment.
- *Chambers v. NASCO, Inc., 501 U.S. 32, 46, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)*.

Court Rationale

Agency agreements did not license deception or justify misrepresentations to the court. Letters were part of pleadings under *Rule 10(c)*, not merely pre-litigation correspondence. Attorneys "later advocated" state-filed complaints by defending them in federal court. Courts may sanction prelitigation conduct intended to improperly influence judicial proceedings.

Outcome
Procedural Outcome

The Third Circuit affirmed the District Court's sanctions, which included dismissal with prejudice, attorney's fees and costs, required apology letters, and an order to attach the sanction order to future debt-dispute cases filed in the district.

LexisNexis® Headnotes

Legal Ethics > Professional Conduct > Illegal Conduct

Legal Ethics > Professional Conduct > Tribunals

Legal Ethics > Sanctions

HN1 **Professional Conduct, Illegal Conduct**

Courts depend on lawyers' honesty. Lies, misrepresentations, even half-truths corrode the rule of law. Courts may sanction lawyers who violate their duty of candor.

Business & Corporate Compliance > Banking & Finance > Consumer Protection > Fair Debt Collection
Banking Law > Consumer Protection > Fair Debt Collection

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN2 Consumer Protection, Fair Debt Collection

Under the FDCPA, when a creditor notifies credit bureaus about a consumer's debt, it must disclose whether the debt is disputed. *15 U.S.C. § 1692e(8)*. If the creditor fails to do so, the consumer can sue and recover up to $1,000 in statutory damages plus costs and reasonable attorney's fees. *15 U.S.C. § 1692k(a)(2)*, *(3)*.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

HN3 Standards of Review, Abuse of Discretion

Courts review *Fed. R. Civ. P. 11* sanctions and, ordinarily, inherent-authority sanctions for abuse of discretion.

Civil Procedure > Sanctions > Baseless Filings > Bad Faith Motions

HN4 Baseless Filings, Bad Faith Motions

Fed. R. Civ. P. 11 authorizes sanctioning lawyers who file pleadings for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. *Fed. R. Civ. P. 11 (b)(1)*. Implicit in *Fed. R. Civ. P. 11* is a duty of candor, which attorneys violate whenever they misrepresent the evidence supporting their claims.

Civil Procedure > Sanctions > Baseless Filings

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

HN5 Sanctions, Baseless Filings

Under *Fed. R. Civ. P. 10*, a copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes. *Fed. R. Civ. P. 10 (c)*. So *Fed. R. Civ. P. 11* covers letters as pleadings and other papers filed with the court.

Civil Procedure > Sanctions > Baseless Filings

HN6 Sanctions, Baseless Filings

Fed. R. Civ. P. 11 covers even later advocating a paper that was presented to the court if after a notice of removal is filed, a party urges in federal court the allegations of a pleading filed in state court.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

Governments > Courts > Authority to Adjudicate

HN7 Basis of Recovery, Bad Faith Awards

The Supreme Court has long recognized federal courts' inherent power to protect the integrity of their proceedings. That includes awarding fees and costs against lawyers who act in bad faith or commit fraud on the court.

Civil Procedure > Sanctions

Governments > Courts > Authority to Adjudicate

HN8 Civil Procedure, Sanctions

Courts may sanction prelitigation conduct intended to improperly influence the judicial process.

Civil Procedure > Sanctions

Governments > Courts > Authority to Adjudicate

HN9 Civil Procedure, Sanctions

Before utilizing its inherent powers, a district court should consider whether any Rule- or statute-based sanctions are up to the task.

Counsel: Ryan James, JAMES LAW LLC, White Oak, PA, Counsel for Appellants.

Lauren M. Burnette, MESSER STRICKLER BURNETTE, Jacksonville, FL, Counsel for Appellee.

Judges: Before: BIBAS, MONTGOMERY-REEVES, and AMBRO, Circuit Judges.

Opinion by: BIBAS

Opinion

[*292] OPINION OF THE COURT

BIBAS, *Circuit Judge*.

HN1 Courts depend on lawyers' honesty. Lies, misrepresentations, even half-truths corrode the rule of law. So courts may sanction lawyers who violate their duty of candor. Here, two lawyers sent made-up, handwritten dispute letters to manufacture violations of the Fair Debt Collection Practices Act by a debt collector, hoping to recover statutory attorney's fees. Once the District Court smelled the scheme, it properly sanctioned the attorneys for engaging in a "campaign of deception." App. 29. We will affirm.

I. The Dispute Letters Designed to Fail

HN2 Under the FDCPA, when a creditor notifies credit bureaus about a consumer's debt, it must disclose whether the debt is disputed. *15 U.S.C. § 1692e(8)*. If the creditor fails to do so, the consumer can sue and recover up to $1,000 in statutory damages **[**2]** plus costs and reasonable attorney's fees. *§ 1692k(a)(2)*, *(3)*.

J.P. Ward & Associates is a debt-defense law firm that handles many *§ 1692e(8)* claims. To "scal[e]" up its practice and get more fees, named partner Joshua Ward and lawyer Travis Gordon hatched a scheme. Appellants' Br. 4. If a client approached the firm to dispute a debt, the firm would get his permission to send the creditor a handwritten letter supposedly signed by the client himself.

Each "client letter" used the same template. Most of it was gibberish, alluding to "confusing times," lamenting how "difficult [it was] for [the writer] to stay on top of everything," and complaining that someone was trying to sell the writer a "crazy XR 65A80K thing" (presumably a TV). *See* ***[*293]*** *infra* A1-A2. Nestled amid this nonsense, the form letter obliquely referred to disputing a potential debt: "I saw that your company is reporting that I owe you a sum of money, but I just don't think that is correct." *Id.* The firm would then sign the client's name and send the disorienting letter to his creditor. If the creditor or the debt collector who bought the debt did not then mark the debt as disputed, the firm would sue.

Why handwrite a stream of consciousness? Why ape Joyce, **[**3]** not Hemingway? Ward and Gordon told the District Court exactly why. Debt collectors get floods of debt disputes. Ward and Gordon theorized that debt collectors process the deluge by using software. They assumed that software could flag clear, meritorious disputes, especially in typed letters, but not in handwritten ones stuffed with fluff and guff. So they wrote letters by hand to boost the chances of *not* getting a response. That would create a successful *§ 1692e* claim and a payday. In other words, the letters were designed not to succeed in disputing a debt, but to fail.

Gordon and Ward's scheme started to unravel after they filed state-court complaints for two debtors: Robert Sofaly and Damien Malcolm. The complaints are identical in substance. Each attaches a handwritten letter using the firm's template, varying only the client's name, personal information, handwriting, and pen color. *See infra* A1-A2. And each asserts that even though the debtor had sent a letter disputing a debt to Portfolio Recovery Associates, a debt collector, Portfolio had failed to mark the debt disputed.

Portfolio removed both cases to federal court. The District Court promptly ordered an evidentiary hearing "to explore **[**4]** the truth or fiction of [the] letters and the purpose behind them." App. 135. At the hearing, Gordon and Ward explained their debt-defense practice and admitted having the firm's staff handwrite, sign, and send the letters. A paralegal said he had written and signed both letters before ever speaking with Sofaly or Malcolm.

Dissatisfied, the court ordered the lawyers to show cause why it should not sanction them. But the lawyers failed. After briefing, the court dismissed both cases with prejudice under *Rule 11*, awarded Portfolio attorney's fees and costs under its inherent authority, and ordered the lawyers to write apology letters and attach the court's sanction order to future debt-dispute cases filed in the district. The lawyers and firm now appeal.

HN3 We review *Rule 11* sanctions (and, ordinarily, inherent-authority sanctions) for abuse of discretion. *Wharton v. Superintendent Graterford SCI, 95 F.4th 140, 147 (3d Cir. 2024)*; *Chambers v. NASCO, Inc., 501 U.S. 32, 55, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)*. But because the lawyers never challenged the inherent-authority sanctions below, we review those only for plain error. *See Fashauer v. N.J. Transit Rail Ops., Inc., 57 F.3d 1269, 1289 (3d Cir. 1995).*

II. The Court Properly Sanctioned the Lawyers for Their Half-Truths

A. The nonmonetary sanctions were proper under *Rule 11*

HN4 *Rule 11* authorizes sanctioning lawyers who file pleadings for an "improper purpose, such as to harass, cause unnecessary **[**5]** delay, or needlessly increase the cost of litigation." *Fed. R. Civ. P. 11(b)(1)*. Implicit in *Rule 11* is a "duty of candor, which attorneys violate whenever they misrepresent the evidence supporting their claims." *Wharton, 95 F.4th at 148* (internal quotation marks omitted).

As the District Court found, Ward, Gordon, and their firm violated *Rule 11* by **[*294]** submitting complaints based on misrepresentations and half-truths to harass Portfolio, increase its litigation costs, and gin up attorneys' fees. *Fed R. Civ. P. 11(b)(1)*. The complaints, which the lawyers verified under penalty of perjury, claimed that Sofaly and Malcolm had personally sent Portfolio letters disputing their debts. But those letters were really written, signed, and sent by the firm. And the firm used a script with "oddly specific" and "strange" details designed to confuse. App. 21. At root, the complaints were not what they purported to be—claims by frustrated debtors who had tried unsuccessfully to dispute their debts. The letters' real goal was just the opposite: to *fail* at disputing those debts, teeing up *§ 1692e* violations to benefit the firm. So the court did not abuse its discretion by dismissing with prejudice and imposing non-monetary *Rule 11* sanctions. *Cf. Scott v. Vantage Corp., 64 F.4th 462, 472-73 (3d Cir. 2023)* (affirming *Rule 11* sanctions where lawyer filed complaints lacking **[**6]** factual support with the improper purpose of forcing settlements).

The lawyers resist *Rule 11* sanctions three ways, but all fall short. *First*, they stress that Sofaly and Malcolm had signed agency agreements letting the firm write and send letters for them. That is irrelevant. Agency law lets lawyers act for their clients, but it does not license deception. Put another way, agency has nothing to do with the misrepresentations the lawyers made to Portfolio and to the court; it just means that Sofaly and Malcolm gave their lawyers permission to make those misrepresentations.

Second, the lawyers claim that *Rule 11* does not cover such "pre-litigation correspondence." Appellants' Br. 26. That is beside the point. The complaints expressly incorporated both letters and attached them as exhibits. They are not pre-litigation documents at all. ***HN5*** Under *Rule 10*, "[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading *for all purposes."* *Fed. R. Civ. P. 10(c)* (emphasis added). So *Rule 11* covers the letters as "pleading[s]" and "other paper[s]" filed with the court. *See King v. Fleming, 899 F.3d 1140, 1148 (10th Cir. 2018)* (upholding *Rule 11* sanctions for doctoring email attached to complaint); *see also Tejero v. Portfolio Recovery Assocs., LLC, 955 F.3d 453, 460 (5th Cir. 2020)* (noting that *Rule 11* could apply to a debt-dispute letter incorporated into **[**7]** a complaint).

Third, the lawyers try to get around *Rule 11* because they first filed the complaints in state court—beyond the reach of the Federal Rules. But they forfeited this argument by not raising it below. ***HN6*** Plus, *Rule 11* covers even "later advocating" a paper that was "present[ed] to the court" if "after a notice of removal is filed, a party urges in federal court the allegations of a pleading filed in state court." *Fed. R. Civ. P. 11(b)* & advisory committee's note to 1993 amendment; *see also Buster v. Greisen, 104 F.3d 1186, 1190 n.4 (9th Cir. 1997)*. Both Ward and Gordon "later advocate[d]" the complaints in their response to the District Court's show cause order, as well as at the sanctions hearing, by asserting that they had done nothing wrong; that the complaints raised real FDCPA claims; and that the letters reflected genuine efforts to dispute a debt. *See, e.g.*, App. 116-22 (Ward defending letters on agency grounds, categorically denying their falsity, and stating that everything in the letters besides the debt-dispute sentences reflected the client's "opinion"), App. 125-26 (Gordon defending scheme as proper and echoing agency arguments), App. 129 (Gordon stating that "a lot of the sentiment in [the letters] is what a lot of our clients feel generally").

[*295] And while **[**8]** the lawyers dredge up a handful of cases holding that *Rule 11* never applies to complaints that are removed, those cases involve the pre-1993 version of *Rule 11*, which applied to papers only at the moment of filing. *Cf. Meyer v. U.S. Bank, N.A., 792 F.3d 923, 928 (8th Cir. 2015)*. So the District Court properly imposed the nonmonetary sanctions under *Rule 11*.

B. The monetary sanctions were proper too under the court's inherent authority

The District Court was equally right to use its inherent authority to award attorney's fees and costs. ***HN7*** The Supreme Court has long recognized federal courts' inherent power to protect the integrity of their proceedings. *United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32, 34, 3 L. Ed. 259 (1812)*; *Ex parte Burr, 22 U.S. (9 Wheat.) 529, 531, 6 L. Ed. 152 (1824)*. That includes by awarding fees and costs against lawyers who act in bad faith or commit fraud on the court. *Chambers, 501 U.S. at 46*. That is exactly what the court did. It found that the

lawyers had intentionally engineered a scheme to mislead Portfolio into violating the FDCPA—misleading the court into believing that the letters were legitimate attempts to dispute a debt in the process. App. 29; *see also* App. 21-22, 26. Such conduct "defile[s]" the "temple of justice" and mocks the adversarial process. *Universal Oil Prods. Co. v. Root Refin. Co., 328 U.S. 575, 580, 66 S. Ct. 1176, 90 L. Ed. 1447 (1946)*. The court properly awarded fees and costs to compensate Portfolio for the expense of defending these contrived cases.

The lawyers offer **[**9]** two responses, but neither persuades. *First*, they stress that most of the "conduct at issue occurred before the existence of any court proceeding." Appellants' Br. 42. True but irrelevant. ***HN8*** Courts may sanction prelitigation conduct "intended to improperly influence the judicial process." *Xyngular v. Schenkel, 890 F.3d 868, 873 (10th Cir. 2018)*; *see also Snider v. L-3 Commc'ns Vertex Aerospace, LLC, 946 F.3d 660, 680 (5th Cir. 2019)*, *abrogated on other grounds by Ben E. Keith Co. v. Dining All., Inc., 80 F.4th 695, 701 (5th Cir. 2023)*. The letters fit that description. They were meant to sway the court by deceiving it and meddling with the record.

Second, the lawyers claim that the District Court should have considered its statutory authority before exercising its inherent power. ***HN9*** True, we have emphasized, following *Chambers*, that "before utilizing its inherent powers, a district court should consider whether any Rule- or statute-based sanctions are up to the task." *Montrose Med. Grp. Participating Sav. Plan v. Bulger, 243 F.3d 773, 785 (3d Cir. 2001)* (citation omitted). But here, the District Court *did* consider *Rule 11*—and concluded that it would not permit monetary sanctions. Even if the District Court erred in failing to consider alternative statutory sources of sanctioning authority, that error was harmless. As the attorneys acknowledge, *28 U.S.C. § 1927* and *15 U.S.C. § 1692k(a)(3)* would have supported the same sanctions that the court imposed on its inherent authority.

* * * * *

Actions have consequences. Gordon and Ward used **[**10]** their clients to bring contrived lawsuits and make easy money. Even after the District Court sanctioned them and their firm, they still refuse to admit that they lied. Instead, they deflect blame, gesturing at "mistakes" and "imprecise drafting" to avoid accountability. Appellants' Br. 20, 27, 42. We expect more from members of the bar, and we will affirm the sanctions.

[*296] Appendix: Sofaly and Malcolm Debt-Dispute Letters

Case 2:23-cv-02018-CB Document 1-1 Filed 11/22/23 Page 14 of 42

Portfolio Recovery
120 Corporate Blvd, Suite 100
Norfolk, VA 23502

8/14/2023

Dear Sir or Madam,

These are confusing times indeed and it has become more and more difficult for me to stay a top of everything as things become more complex and digital and altogether tricky. I remember when things were simple and you could count on the fingers of one hand all of the accounts and [illegible] dealings that I had to keep track of. Now everything is online and it is so hard to find out what's going on [illegible]. Apparently, my finances are far more [illegible] than I thought. I see that your company is recording that I owe you a [illegible] sum of money, but I just don't think that is correct. I am very sure that I have never been a customer or a client of yours and I don't [illegible] how I could owe you anything and I don't [illegible] think this is right. In addition, have you tried to [illegible] and find a new computer or a new TV or anything like that recently? It is [illegible] hard, everything is "high tech" and there are so many letters and numbers attached to everything! I just want a TV to watch the games on Sunday and meanwhile they're trying to sell me some crazy XR-65A90K thing and I just don't understand... Thanks for the help anyway!

Sincerely,

Robert Sofaly

Robert Sofaly

DoB: [redacted]

SSN: [redacted]

Appx56

[*297]

Portfolio Recovery
140 corporate Blvd
Norfolk, VA 23502

9/28/23

Dear Sir or Madam,

These are confusing times indeed and it has become more and more difficult for me to stay on top of everything as things become more complex and digitize and altogether tricky. I remember when things were simple and you could count on the fingers of one hand all of the accounts and business dealings that you had to keep track of. Now everything is online and it is so hard to find out what's going on. For instance apparently my finances are far more involved than I thought. I saw that your company is reporting that I owe you a sum of money, but I just don't think that is correct. I am very sure that I have never been a customer or a client of yours and so I can't imagine how I could owe you anything and I don't think this is right. In addition have you tried to go and find a new computer or a new TV or anything like that recently? It is so hard, everything is "high tec" and there are so many letters and numbers attached to everything! I just want a TV to watch the games on Sunday and meanwhile they're trying to sell me some crazy XR-65A80K thing and I just don't understand... Thanks for the help anyway

Sincerely,

Damien Malcolm

Damien Malcolm

DOB [redacted]

SSN: [redacted]

End of Document