

**IN THE SUPERIOR COURT OF RICHMOND COUNTY  
STATE OF GEORGIA**

GEORGIACARRY.ORG, INC.,	and	)	
IZIAH SMITH,		)	
Plaintiff,		)	
		)	Civil Action No. 2014-RCCV-92
v.		)	
		)	
HARRY B. JAMES III, individually and		)	
in his official capacity		)	
as Judge of the Probate Court of Richmond		)	
County,		)	
Defendant		)	

**BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION TO STRIKE COUNTERCLAIMS**

Plaintiffs move for an order to strike Defendant’s counterclaims, pursuant to O.C.G.A. § 9-11-11.1(b).

**Argument**

Plaintiffs bring this action against Defendant, who is the sitting judge of the Probate Court of Richmond County, seeking relief for Defendant’s refusal to issue temporary renewal Georgia weapons carry licenses as required by O.C.G.A. § 16-11-129.

Defendant filed counterclaims against Plaintiffs, alleging that Plaintiff Smith “knew or should have known” Smith’s allegations in the Verified Complaint were false. Defendant also alleges that Smith “called at least three Probate Courts in Georgia and gave false information and made slanderous statements about the Defendant.”

It is well-settled that a civil complaint cannot form the basis for a defamation action, because they are absolutely privileged:

All charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the

relief sought, whether legally sufficient to obtain it or not, are privileged. However false and malicious such charges, allegations, and averments may be, they shall not be deemed libelous.

O.C.G.A. § 51-5-8. *See also Shiver v. Valdosta Press*, 82 Ga.App. 406 (1950). It is therefore clear that Defendant may not maintain a counterclaim for defamation for anything stated in the Verified Complaint.

Moreover, it likewise is clear that a complaint filed in court is an “act in furtherance of the right of free speech or the right to petition government for a redress of grievances,” as that term is defined in O.C.G.A. § 9-11-11.1(c) (“any written ... statement, writing, or petition made before or to a ... judicial proceeding...”) Because the Verified Complaint is such an act, Defendant was required by O.C.G.A. § 9-11-11.1(b) (the “anti-SLAPP” statute) to file with his counterclaim a verification that certifies “that the [counter]claim to the best of [Defendant’s counsel’s] knowledge, information, and belief formed after reasonable inquiry [the counter claim] is well grounded in fact and is warranted by existing law....” If the verification is not filed with the counterclaim, or within 10 days after the failure to file one is brought to Defendant’s attention, the Court is obligated to strike the counterclaim. *Id.*

Plaintiffs’ counsel wrote a letter to Defendant’s counsel on April 17, 2014, pointing out the failure to file a verification. Affidavit of John Monroe, ¶ 3. To date, no verification has been filed or served on Plaintiffs’ counsel. *Id.*, ¶ 4. The failure to file the verification is not amendable after the 10-day period has expired. *Davis v. Emmis Publishing Corp.*, 244 Ga.App. 795 (2000).

This Court is therefore obligated to strike Defendant's counterclaims. Furthermore, this Court is obligated to hold a hearing on this Motion within 30 days of service upon Defendant. O.C.G.A. § 9-11-11.1(d). Lastly, discovery is stayed pending resolution of this Motion. *Id.*

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Attorney for Plaintiffs  
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Roswell, GA 30075  
678-362-7650  
State Bar No. 516193

**CERTIFICATE OF SERVICE**

I certify that on May 8, 2014, I served a copy of the foregoing via U.S. Mail upon:

Harold V. Jones II  
407 6<sup>th</sup> Street  
Augusta, GA 30901

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John R. Monroe