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COURT OF CHANCERY
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March 5, 2019

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RE: *Charter Communications Operating, LLC v. Optymyze LLC*
 C.A. No. 2018-0865-JTL

Dear Counsel, Former Defense Counsel, and Entity Defendants:

By order dated January 14, 2019, I directed the law firms then representing defendants Optymyze LLC and Optymyze PTE Ltd. (respectively, "Former Defense Counsel" and the "Entity Defendants") to address whether they had violated Rule 11 when making statements to the court in connection with the plaintiff's second motion to enforce the court's temporary restraining order. Former Defense Counsel have made the requested submissions. In addition, both firms moved to withdraw from the case, while agreeing to remain subject to the court's jurisdiction for purposes of the Rule 11 proceedings. I granted the motions.

Shortly thereafter, the court received an *ex parte* email from Mark A. Stiffler, the Chairman and CEO of the Entity Defendants. Stiffler claimed that the court's temporary restraining order "was based on false information." He then leveled the following serious accusations against Former Defense Counsel:

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[A]ttorneys that I did not engage and that never consulted with me then proceeded to propagate those falsehoods with their own ignorance, and they failed to ascertain the truth from me and the communicate that truth to you.

Dkt. 79 at 1.

Given these developments, I believe the proper course is to dispense with further proceedings on the order to show cause and refer this matter to the Office of Disciplinary Counsel.

Trial courts in Delaware “retain their traditional powers, which are indeed potent, to address, rectify and punish conduct of a party or counsel which threatens the legitimacy of judicial proceedings.” *In re Infotechnology, Inc.*, 582 A.2d 215, 221–22 (Del. 1990). But “[a]bsent conduct that prejudicially disrupts the proceeding, trial judges have no independent jurisdiction to enforce the Rules of Professional Conduct.” *Crumplar v. Superior Court ex rel. New Castle County*, 56 A.3d 1000, 1009 (Del. 2012). These principles apply equally to Rule 11 sanctions. *Id.* “[R]eferral to the Office of Disciplinary Counsel, not Rule 11 sanctions, is the proper recourse in the absence of prejudicial disruption of the proceeding.” *Id.*

The Delaware Supreme Court’s instructions to trial courts regarding how to proceed reflect “the fundamental constitutional principle that [the Delaware Supreme Court], alone, has sole and exclusive responsibility over all matters affecting governance of the Bar.” *Infotechnology*, 582 A.2d at 220. They also reflect the fact that “[t]he Office of Disciplinary Counsel is well equipped to investigate attorneys and recommend appropriate action.” *Crumplar*, 56 A.3d at 1010. Channeling concerns to the Office of Disciplinary Counsel “prevents wasteful, duplicative, and potentially inconsistent enforcement of the Rules of Professional Conduct.” *Id.*

When the court initiated the Rule 11 process, Former Defense Counsel were actively representing the Entity Defendants, and the court was concerned that if Former Defense Counsel had violated Rule 11, then a failure to address that behavior could undermine the fairness of the proceeding. Since then, Former Defense Counsel have withdrawn from the case, and the principal of their erstwhile clients has leveled serious allegations of misconduct against them. At this point, completing the Rule 11 process would require investigating Stiffler’s allegations, but a trial judge has neither the resources nor the institutional competence to conduct an investigation. The court conceivably could appoint special counsel or a master to act as an arm of the court, but that would increase exponentially the court’s involvement in what is now predominantly a disciplinary matter.

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As the Delaware Supreme Court explained in *Crumplar*, the Office of Disciplinary Counsel is well equipped to conduct the type of investigation that is necessary in this instance. The Office of Disciplinary Counsel can explore Stiffler's allegations, make determinations, and evaluate the totality of Former Defense Counsel's conduct, including the issues that originally caused the court to harbor concern about counsel's representations.

I am therefore vacating that aspect of my order on January 14, 2019, that directed Former Defense Counsel to address issues under Rule 11. Because the Entity Defendants have offered creative readings of past rulings, I hasten to clarify that I am not vacating any other aspect of the January 14 order, which otherwise remains in effect. In making this ruling, I am not expressing any view, one way or another, on counsel's submissions in response to the order to show cause. For me to express any opinion, favorable or unfavorable, would be inconsistent with my decision to refer this matter to the Office of Disciplinary Counsel.

By making this decision, I am not suggesting that it will always be appropriate for a Delaware court to hand off a Rule 11 proceeding to the Office of Disciplinary Counsel whenever the lawyers involved have withdrawn from the case. There may well be cases in which the issues implicated in the Rule 11 proceeding could affect the fairness of the litigation such that the trial court should proceed.

Sincerely yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor