UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

Civil Docket No. 1:09-CV-1133

Stephen Ulrich, Plaintiff vs. David W. Butler, individually, and in his official capacity as Associate Circuit Judge of the Eleventh Circuit of Illinois, Woodford County, Defendant	VERIFIED COMPLAINT

The Plaintiff, Stephen Ulrich, without the benefit of counsel, enters a Motion to Dismiss the Order of May 4, 2009 and reinstate case number 1:09-CV-1133.

Case Law has proven that judicial immunity is not absolute. The following statements and case law will highlight limits to judicial immunity:

1. Judicial immunity is lost when a Judge lacks jurisdiction.

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

Some Defendants urge that any act "of a judicial nature" entitles the Judge to absolute judicial immunity. But in a jurisdictional vacuum, (that is, absence of all jurisdiction) the second prong necessary to absolute judicial immunity is missing. Stump v. Sparkman, id., 435 U.S. 349.

Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872).

A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938).

"No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it betond these boundaries is nothing less than lawless violence." Ableman v. Booth, 21 Howard 506 (1859).

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it.
United States v. Lee, 106 U.S. 196, 220, 1 S.Ct. 240, 27 L.Ed. 171 (1882).
Buckles v. King County 191 F.3d 1127, *1133 (C.A.9 (Wash.),1999)

Purpose of statute that mandated that any person who under color of law subjected another to deprivation of his constitutional rights would be liable to the injured party in an action at law was not to abolish immunities available at common law, but to insure that federal courts would have jurisdiction of constitutional claims against state officials. Act March 3, 1875, 18 Stat. 470.
Butz v. Economou 438 U.S. 478, 98 S.Ct. 2894 (U.S.N.Y.,1978)

Case law HAS held that judges are accountable. See Com. v. Ellis, 429 Mass. 362, 371 (1999), where the Supreme Judicial Court of Massachusetts recognized that "Article 5 . . . provides that officers of government `are at all times accountable to [the people]

"The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." 435 U.S. 349, 362 (emphasis added).

The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law. See OLD COLONY TRUST COMPANY v. CITY SEATTLE ET AL. (06/01/26) 271 U.S. 426, 46 S.Ct. 552, 70 L. Ed at page 431. No officer of the law may set that law at defiance with impunity. See United States v. Lee, 106 U.S. 196, 220

and Burton v. united States, 202U.S. 344.

The Court in Yates v. Village of Hoffman Estates, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in the exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse. When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect."

Simmons v. United States, 390 U.S. 377 (1968) "The claim and exercise of a Constitution right cannot be converted into a crime"... "a denial of them would be a denial of due process of law".

Butz v. Economou, 98 S. Ct. 2894 (1978); United States v. Lee, 106 U.S. at 220, 1 S. Ct. at 261 (1882). "No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it."

*Cannon v. Commission on Judicial Qualifications, (1975) 14 Cal. 3d 678, 694. Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process.

*Gonzalez v. Commission on Judicial Performance, (1983) 33 Cal. 3d 359, 371, 374. Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process.

Owen v. City of Independence. "The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury."

Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974). Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). When a judge acts as a trespasser of the law, when a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect.
The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes

into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

U.S. Fidelity & Guaranty Co. (State use of), 217 Miss. 576, 64 So. 2d 697. When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction.

Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828). Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that "if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."

2.Federal tort law states that Judges cannot invoke judicial immunity for acts that violate litigant's civil rights.

The following case law and case notes support this:

CASE NOTE: "Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights; Robert Craig Waters. Tort & Insurance Law Journal, Spr. 1986 21 n3, p509-516"

"... the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." Marbury v. Madison, 1 Cranch 137 (1803).

See also Thomas v Collins, supra, 323 US 516, 531. Hence, the act of filing suit against a governmental entity represents an exercise of the right of petition and thus invokes constitutional protection." City of Long Beach v Bozek, 31 Cal.3d 527, at 533-534 (1982).

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws when he receives an injury." 1 Cranch 137 at 163 (1803).

"As the U.S. Supreme Court has held, the right to petition for redress of grievances is 'among the most precious of the liberties safeguarded in the bill of rights'. (Cites) Inseparable from the guaranteed rights entrenched in the First Amendment, the right to petition for redress of grievances occupies a 'preferred place' in our system of representative government and enjoys a 'sanctity and a sanction not permitting dubious intrusions.' Thomas v Collins, 323 US 516; 65 S.Ct 315, 322. Indeed, 'It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances.' Id. at 323."

It seems to reason that if the filing is protected, then surely the object of the protected right -- of obtaining a due process guaranteed fair hearing of the grievance and redress thereon -- is the very essence of the Petition Clause.

In fact, the characteristic which distinguishes petitioning through courts from other forms of petition is the access to compulsory process of law, wherein the parties are equal before the law. Without ultimate recourse to that compulsory process, there is no reason for government to listen to grievances at all, let alone to redress them fairly.

"The purpose of the statute was to deter public officials from using the badge of their authority to violate persons' constitutional rights and to provide compensation and other relief to victims of constitutional deprivations when that deterrence failed." Carey v Piphus, 435 US 247, 253 (1978).

"On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. .....If the law was clearly established, the immunity defense ordinarily should fail." Harlow et al v Fitzgerald, 457 U.S. 800, 818 (1981).

Definition of Due Process of Law

"The essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in an orderly proceeding." Fiehe v. R.E. Householder Co., 125 So. 2, 7 (Fla. 1929).

"To dispense with notice before taking property is likened to obtaining judgement without the defendant having ever been summoned." Mayor of Baltimore vs. Scharf, 54 Md. 499, 519 (1880).

"An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 Ill.2d 405, 259, N.E.2d 282, 290." Black's Law Dictionary, 6th Edition, page 500.

"Aside from all else, 'due process' means fundamental fairness and substantial justice. Vaughn v. State, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary, 6th Edition, page 500.

Owen v. City of Independence. "The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury."

*Ryan v. Commission on Judicial Performance, (1988) 45 Cal. 3d 518, 533. Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor.

Duncan v. Missouri, 152 U.S. 377, 382 (1894). Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

Giozza v. Tiernan, 148 U.S. 657, 662 (1893), Citations Omitted. "Undoubtedly it (the Fourteenth Amendment) forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights... It is enough that there is no discrimination in favor of one as against another of the same class. ...And due process of law within the meaning of the [Fifth and Fourteenth] amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

Truax v. Corrigan, 257 U.S. 312, 332. "Our whole system of law is predicated on the general fundamental principle of equality of application for the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute and apply laws. But the framers and adopters of the (Fourteenth) Amendment were not content to depend... upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty."

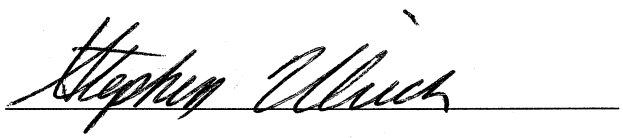
may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.

This is supported by Davis v. Wechler, 263 U.S. 22, 24; Stromberb v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449:

"The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice.

Relief in this matter is possible in both declaratory and injunctive forms that are founded from a jury after the prepondence of the evidence.

The Plaintiff, in this matter, does pray the Court allow this matter to be heard and allow statutory and Constitutional provisions to be observed.



Stephen Ulrich

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH DISTRICT

Stephen Ulrich, Plaintiff	Docketing Statement
vs.	
David W. Butler, individually, and in his official capacity as Associate Circuit Judge of the Eleventh Circuit of Illinois, Woodford County, Defendant	Appeal Numbers 09-2414,09-2610 Civil Docket No. 1:09-CV-1133

The Plaintiff ,Stephen Ulrich ,without benefit of counsel, enters a Petition under Rules 35 and 40 of the Federal Rules of Appellate Procedure for Rehearing En Banc .

The Panels decision conflicts with Constitutional Articles , Constitutional Amendments ,and Federal Code of Civil Procedure .Further it addresses only a minor part of the suit and dismisses the entire suit without allowing evidence or even a brief to be entered in support of relief sought .

RULE OF LAW

1. Can a Judge disregard the Rule of Law and the Constitution, his Oath of Office and his Code of Conduct and be granted immunity by a paragraph in a U.S. Code that is subservient to, and therefore void, if it comes into conflict with the Constitution?

2. In the event that a Judge can be elevated above the law and somehow be granted immunity for actions well beyond his jurisdiction, can orders and judgments that violate statutory and Constitutional law be allowed to stand; including those installed to replace previous judgments without hearing?

3. Can federal Judges, in violation of Canon 3 A (4) of the Federal Code of Conduct, deny the full right to be heard according to law, including submittal of evidence?

4. In a limited government, the question here should be, "Are this citizen's rights being violated by these actions?", and not, "Is the violation of this citizen's rights justified because of overriding government goals and objectives?"

5. By what authority do you, by oath, servants of the Constitution, ignore its laws and guidelines and govern by rule of man rather than rule of law?

Statement

The order entered by Judge Mihm on May 4, 2009 states in his Discussion, *Even in construing the complaint in the light most favorable to the Plaintiff, no sets of facts would entitle him to relief because Defendant was performing his judicial functions in State Court, and is therefore entitled to absolute immunity.* (underline added)

I contend, with substantial case law and Constitutional fact, that a focused campaign to deny a person of their rights under statutory and Constitutional law is not a judicial function, and is beyond judicial capacity.

Absolute immunity, without reasonable limits, allows for Judges and their decisions to be elevated above the Constitution. This would void a Constitutional government and allow dictatorship (government without the people's consent).[1]

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[1] Note: [Copied verbiage.] Judges have given themselves judicial immunity for their judicial functions. Judges have no judicial immunity for criminal acts, aiding, assisting, or conniving with others who perform a criminal act or for their administrative/ministerial duties, or for violating a citizen's constitutional rights. When a judge has a duty to act, he does not have discretion - he is then not performing a judicial act; he is performing a ministerial act.

Nowhere was the judiciary given immunity, particularly nowhere in Article III; under our Constitution, if judges were to have immunity, it could only possibly be granted by amendment (and even less possibly by legislative act), as Art. I, Sections 9 & 10, respectively, in fact expressly prohibit such, stating, "No Title of Nobility shall be granted by the United States" and "No state shall... grant any Title of Nobility." Most of us are certain that Congress itself doesn't understand the inherent lack of immunity for judges.

Article III, Sec. 1, "The Judicial Power of the United States shall be vested in one supreme court, and in such inferior courts, shall hold their offices during good behavior."

Article six of the United States Constitution clearly states, *Where there are conflicts of law, the U.S. Constitution is the Supreme Law of the Land because it was created first by the sovereign people. It says so right in the document itself.*

> *"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."* [Article VI United States Constitution]

Therefore, Judges are bound by the Constitution, and a paragraph in a U.S. Code does not relieve a Judge of this duty or allow for unconstitutional judgments to stand.[2]

Tort & Insurance Law Journal, Spring 1986 21 n3, p 509-516, "Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants' civil rights." - Robert Craig Waters.

[2] Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)

Note: Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason.

The U.S. Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer,* 124 U.S. 200 (188); *U.S. v. Will,* 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); *Cohens v. Virginia,* 19 U.S. (6 Wheat) 264, 404, 5 L. Ed 257 (1821).

Pulliam v. Allen, 466 U.S. 522 (1984); 104 S. Ct. 1781, 1980, 1981, and 1985

In 1996, Congress passed a law to overcome this ruling which stated that judicial immunity doesn't exist; citizens can sue judges for prospective injunctive relief.

"Our own experience is fully consistent with the common law's rejection of a rule of judicial immunity. We never have had a rule of absolute judicial immunity. At least seven circuits have indicated affirmatively that there is no immunity... to prevent irreparable injury to a citizen's constitutional rights..."

ARGUMENT

The Defendant, individually and in his capacity as Associate Circuit Judge, using the power given to him by the state of Illinois, did violate the Plaintiff's Constitutional and civil rights as defined in the verified complaint.

Relief is possible when a person in the position of a Judge does knowingly disregard Constitutional and civil rights of others, his Oath of Office, and the Illinois Supreme Court Rules Code of Conduct. When a Judge steps beyond the boundaries that define his powers as a Judge, he then becomes an individual and is therefore responsible for his actions as such.[3]

Constitution Supreme Clause Article VI, Clause 2 of the Constitution (This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.) Absolute immunity is

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"Subsequent interpretations of the Civil Rights Act by this Court acknowledge Congress' intent to reach unconstitutional actions by all state and federal actors, including judges... The Fourteenth Amendment prohibits a state [federal] from denying any person [citizen] within its jurisdiction the equal protection under the laws. Since a State [or federal] acts only by its legislative, executive or judicial authorities, the constitutional provisions must be addressed to those authorities, including state and federal judges..."

"We conclude that judicial immunity is not a bar to relief against a judicial officer acting in her [his] judicial capacity."

[3] This is defined by law as the *Stripping Doctrine.*

In *Ex Parte Young*, 209 U.S. 123 (1908), the Supreme Court provided an important exception to the 11th Amendment sovereign immunity States enjoy: the Stripping Doctrine.

The Stripping Doctrine is a legal fiction which allows injunctive relief against what are essentially state actions. While the 11th Amendment immunizes States from actions by private parties, the Stripping Doctrine argues that when a state officer takes an unconstitutional action, he acts beyond the scope of his authority, as no State could have authorized him to act unconstitutionally. When acting outside such authority the officer was "stripped" of his official power and cannot invoke the State's immunity, although he remains subject to the consequences of his official conduct.

The doctrine is a legal fiction because the officer, in acting unconstitutionally, was outside his official duties, but the citizen can now sue him for injunctive relief in her official capacity. Unless a citizen can enjoin the action the officer took in her official capacity, no remedy could be provided for an otherwise unconstitutional action (as the State itself is immune from prosecution).

contrary.

The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function.

U.S. Supreme Court Reports, PIERSON v. RAY, 386 U.S. 547 (1967)

386 U.S. 547 PIERSON ET AL. v. RAY ET AL.

When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. [386 U.S. 547, 568].

The Judge, by ignoring guidelines as set by law, did lose jurisdiction in the matter. His acts then became ultra vires or outside of the powers of his jurisdiction.

"Jurisdiction, although once obtained, may be lost, and in such case proceedings cannot be validly continued beyond the point at which jurisdiction ceases". Federal Trade Commission v. Raladam Co., 283 U.S. 643, 75 L.Ed. 1324, 51 S.Ct. 587.

For the purposes of review, it has been said that clear violations of laws on reaching the result, such as acting without evidence when evidence is required, or making a decision contrary to all the evidence, are just as much jurisdictional error as is the failure to take proper steps to acquire jurisdiction at the beginning of the proceeding. Borgnis v. Falk Co., 133 N.W. 209.

"No sanction can be imposed absent proof of jurisdiction". Stanard v. Olesen, 74 S.Ct. 768. "Once jurisdiction is challenged, it must be proved". Hagans v. Levine, 415 U.S. 533, n. 3.

Without jurisdiction, the acts or judgments of the court are void and open to collateral attack. McLean v. Jephson, 123 N.Y. 142, 25 N.E. 409.

Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is *"without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."*

Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges orders are void, of no legal force or effect.

The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that *"when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."* [Emphasis supplied in original]. By law, a judge is a state officer.

The judge then acts not as a judge, but as a private individual (in his person).

The U.S. Supreme Court has stated that *"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."*

While in the discussion segment of the May 4, 2009 order it states that "Judges performing judicial functions enjoy absolute immunity," this suit contends and offers evidence that the Defendant acted outside his judicial function by disregarding the civil rights of the Plaintiff.

When judges act when they do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason.

The Court in Yates v. Village of Hoffman Estates, Illinois, 209 F.Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse."

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958). Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason.

If a judge does not fully comply with the Constitution, then his orders are *void*, In re Sawyer, 124 U.S. 200 (1888), he is without jurisdiction, and he has engaged in an act or acts of treason.

Whenever a judge acts where he does not have jurisdiction to act, the judge is engaged in an act or acts of treason. S. v Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

The use of garnishment is governed by federal (there may be some state codes too) statutes such as 15 USC 1673, and its companion law,15 USC 1675 pertaining to the very existence, or potential existence of enforcement of any order violating the maximum certain percentages of actual disposable income-- rendering the support and/or garnishment order in violation of the law, Whichever statute that provides greater protection to the Respondent, prevails.

These federal statutes guarantee protection (to the Respondent) from having "imputed income" orders.

Furthermore, these statutes provide (to the Respondent) protection of his rights to be free from

unlawful spousal maintenance or any kind of garnishment.

Spousal maintenance is a civil matter and there is no probable cause to seek or issue body attachment, bench warrant, or arrest in spousal maintenance matters because it is a civil matter. The use of such instruments (body attachment, bench warrants, arrests, etc) presumably is a method to "streamline" arresting people for spousal maintenance and circumventing the Fourth Amendment to the United States Constitution, and is used as a debt-collecting tool using unlawful arrests and imprisonment to collect a debt or perceived debt.

There is no escaping the fact that there is no probable cause in a civil matter to arrest or issue body attachment. "Probable cause" to arrest requires a showing that both a crime has been, or is being committed, and that the person sought to be arrested committed the offense. U.S.C.A. Const.Amend. 4. In the instant case, no probable cause can exist, because the entire matter has arisen out of a civil case.

Therefore, seeking of body attachment, bench warrant, or arrest by the Petitioner (and her attorney), and/or issuing of the same by the court, in this civil case would be against the law and the Constitution.

Under U.S. v. Rylander ignorance of the order or the inability to comply with the order, or as in this case, to pay, would be a complete defense to any contempt sanction, violation of a court order or violation of litigant's rights.

Every U.S. Court of Appeals that has addressed this issue, has held that child support/spousal maintenance is a common, commercial (and civil) debt, See, U.S. v. Lewko, 269 F.3d 64, 68-69 (1st Cir. 2001)(citations omitted) and U.S. v. Parker, 108 F.3d 28, 31 (3rd Cir. 1997). Allen v. City of Portland, 73 F.3d 232 (9th Cir. 1995), the Ninth Circuit Court of Appeals (citing cases from the U.S. Supreme Court, Fifth, Seventh, Eighth and Ninth Circuits)"by definition,

probable cause to arrest can only exist in relation to criminal conduct; civil disputes cannot give rise to probable cause"; Paff v. Kaltenbach, 204 F.3d 425, 435 (3rd Cir. 2000) (Fourth Amendment prohibits law enforcement officers from arresting citizens without probable cause. See, Illinois v. Gates, 462 U.S. 213 (1983), therefore, no body attachment, bench warrant or arrest order may be issued.

If a person is arrested on less than probable cause, the United States Supreme Court has long recognized that the aggrieved party has a cause of action under 42 U.S.C. §1983 for violation of Fourth Amendment rights. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967).

Harlow v. Fitzgerald, 457 U.S. 800, 818 (there can be no objective reasonableness where officials violate clearly established constitutional rights such as--

(a) United States Constitution, Fourth Amendment (including Warrants Clause), Fifth Amendment (Due Process and Equal Protection), Ninth Amendment (Rights to Privacy and Liberty), Fourteenth Amendment (Due Process and Equal Protection).

Relief is available in many forms here. Declaratory relief, rulings by another Judge in the form of opinions establishing the Constitutionality or lack of Constitutionality of another Judge's actions; and Injunctive relief, a command or order for an action or inaction, are just two of the possibilities here, and both can be born from a jury's decision after the preponderance of evidence.

Trial by jury should be allowed here to preserve the Plaintiff's right to due process. Together with the due process clause of the Fifth Amendment, the Seventh Amendment guarantees civil litigants the right to an impartial jury.[4]

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[4] McCoy v. Goldston, 652 F. 2d 654 [6th Cir. 1981], Page 40
Snider v. Consolidation Coal Co. 973 F. 2d 555 [7th Cir. 1992], Page 42
Rivas v. Brattesani, 94 F. 3d 802 [2nd Cir. 1996], Page 41

When a lawsuit involves mixed questions of law and equity, litigants may present the legal questions to a jury under the Seventh Amendment.[5]

There may be issues of partisanship, as a Judge is asked to judge the actions of another Judge. A jury would guard against partisanship, be it conscious or subconscious, in that a Judge may not interject their personal opinions or observations to such an extent that they impair a litigant's right to a fair trial.[6]

The Plaintiff, a Pro se litigant, in pursuit of what is defined in the Federal Rules of Civil Procedure 8(f) as substantial justice, takes steps to make the Court aware of the following:

The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

Pro se litigants' Court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements.[7]

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[5] McCoy v. Goldston, 652 F. 2d 654 [6th Cir. 1981], Page 40
Snider v. Consolidation Coal Co. 973 F. 2d 555 [7th Cir. 1992], Page 42
Rivas v. Brattesani, 94 F. 3d 802 [2nd Cir. 1996], Page 41

[6] McCoy v. Goldston, 652 F. 2d 654 [6th Cir. 1981], Page 40
Snider v. Consolidation Coal Co. 973 F. 2d 555 [7th Cir. 1992], Page 42
Rivas v. Brattesani, 94 F. 3d 802 [2nd Cir. 1996], Page 41

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974). Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of White v. Bloom. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

GOALS OF THIS SUIT

This suit is not about monetary gain – it is about the preservation of an individual's Constitutional rights and how an individual citizen should be shielded from the government's arbitrary abuse of power.

Although a monetary amount is a condition to allow the Seventh Amendment (trial by jury) to come to bear, it cannot, however, be removed from consideration here. The monetary issue will mainly be realized through the hearing of denied motions and petitions.

This suit is to remove/reverse orders obtained by unconstitutional methods, and to allow motions and petitions that were filed properly and in a timely manner to be heard by a non-bias

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[7] Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).

entity.[8] Further, it is to relieve the Plaintiff from arrest and incarceration, or various other sanctions upon reasonable assertion of his rights under the Constitution.[9]

This suit seeks to punish no one – it simply seeks to obtain the rights that under Constitutional theory, should already be the Plaintiff's.

Once again, I am not asking that anyone be punished – I am asking for the overturning of judicial orders that should have been legally and Constitutionally impossible to enter.

Conclusion

In Conclusion , the Plaintiff does pray that this Court observe the practice of fundamental fairness that is Substantial Justice and not act as Bystanders while a citizen is denied the right to redress when life, liberty ,and property have been denied under color of law .

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[8] Elrod v. Burns, 427 U.S. 347; 6 S. Ct. 2673; 49 L/ Ed/ 2d (1976)
"Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

United States Constitution, First Amendment: Right to petition; Freedom of association

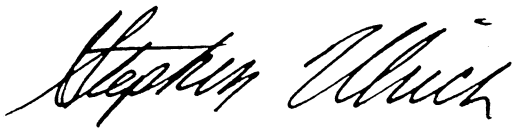
Ryan v. Commission on Judicial Performance, (1988) 45 Cal. 3d 518, 533
Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor.

[9] Davis v. Wechler, 263 U.S. 22, 24; Stromberb v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449
"The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice."

Sherar v. Cullen, 481 F. 2d 946 (1973)
"There can be no sanction or penalty imposed upon one because of his exercise of Constitutional rights."

Simmons v. United States, 390 U.S. 377 (1968)
"The claim and exercise of a Constitutional right cannot be converted into a crime"... "a denial of them would be a denial of due process of law."

Respectfully Submitted



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