

**United States District Court
District of New Mexico**

Civil Case Number: CIV – 06 – 0350 ACT LAM

STEVE DOUTGLAS GARTIN,

Plaintiff,

v.

Thomas C. Miller,

Dennis Hall,

Gary Clyman,

Donald Estep,

Margie Enquist,

Judy Archuleta,

Tina Olsen,

Crissy Schaudt, and

County of Jefferson, State of Colorado, First Judicial District

Defendants.

Defendant Miller's Motion to Dismiss

The Defendant, Thomas C. "Doc" Miller, *pro se*, moves this Honorable Court to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(3) and 12(b)(6), and in support submits the following.

Introduction

Proceeding *pro se* in this case, Plaintiff levies a number of allegations that are universally confusing and legally unsound. The ambiguity of the document makes it difficult to adduce specifically what the Plaintiff is

claiming. One thing is clear, Plaintiff was found guilty at trial and is dissatisfied with the verdict.

Thomas C. "Doc" Miller is a lawyer who represented the Plaintiff in the District Court of Jefferson County, First Judicial District, State of Colorado in 02 CR 3371 through the Alternative Defense Counsel. During that representation, Plaintiff Gartin provided a document to Defendant Miller for filing in the underlying matter. The document proved to be false and resulted in new criminal charges being filed against Plaintiff for Attempt to Influence a Public Official, 04 CR 2541.

Standard of Review

Under Fed. R. Civ. P. 12(b)(3) a defendant may challenge improper venue. As decided under *Richards v. Lloyd's of London*, 135 F.3d 1289, 1292 (9th cir. 1998), Plaintiff's pleadings need not be accepted as true under a challenge to venue under 12(b)(3). And, further, the court may consider facts outside of the pleadings. *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). As to Fed. R. Civ. P. 12(b)(6), the court must assume as true all well-pleaded facts, as distinguished from conclusory allegations, and view those facts in the light most favorable to the non-moving party. See *Mayer v. Durango Metals, Inc.*, 144 F. 3d 1302, 1304 (10th Cir. 1998).

In reviewing a motion to dismiss a *pro se* plaintiff's complaint under Fed. R. Civ. P. 12(b)(6), the complaint is to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Nonetheless, "[t]he broad reading of the plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991). A *pro se* litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." *Id.* A court must dismiss a *pro se* complaint when its legal theories are not supported by well-pleaded facts. *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996).

First Argument: Fed. R. Civ. P. 12(b)(3): Plaintiff has no basis for venue in New Mexico pursuant to 28 U.S.C. 1331, 1332, 1343, and 1391.

Plaintiff bases jurisdiction upon diversity of citizenship and claims a sum in excess of \$100,000.00, pursuant to 28 U.S.C. § 1332. Curiously, plaintiff states he "is a natural born California Inhabitant [sic] currently residing in New Mexico." An inhabitant is defined as "One who resides actually and permanently in a given place, and has his domicile there." *Ex Parte Shaw*, 145 U.S. 444, 12 S.Ct. 935, 36 L.Ed. 768. Plaintiff cannot have it both ways with a domicile in California and New Mexico.

All defendants are domiciled in Colorado. Pursuant to 28 U.S.C. 1391 (a)(1), a civil action based upon diversity of citizenship requires filing in the state where all defendants reside. The events giving rise to the underlying claim occurred in Colorado. Pursuant to 28 U.S.C. 1391 (a)(2), Defendants Hall, Clyman, Estep, Enquist, Archuleta, Olsen, Chault, and the 1st Judicial District of Jefferson County in the State of Colorado are all state actors in their official capacity, except for Defendant Miller, Plaintiff was also domiciled in Colorado at the time a substantial part of the events occurred as described in the Complaint pursuant to 28 U.S.C. 1391(a)(2).

A civil rights claim under 28 U.S.C. 1343 by Plaintiff does not provide a basis for venue in New Mexico. All federal district courts have original jurisdiction in such matters, but do not require abrogation of the guidelines and requirements found in 28 U.S.C. 1391 to accomplish justice. The U.S. District Court in Colorado can just as effectively and adequately resolve Plaintiff's issues as the U.S. District Court in New Mexico, without violating rules of civil procedure, nor waste the time and resources of defendants and the judiciary.

Second Argument: Fed. R. Civ. P. 12(b)(6):

A. Plaintiff lacks standing to bring claims under Title 18 of the United States Code.

Standing is a jurisdictional requirement. See *Nova Health Systems v. Gandy*, 388 F.3d 744, 749-50 (10th Cir. 2004). “the ‘gist of the question of standing’ is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete averseness which sharpens the presentations of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Flast v. Cohen*, 392 U.S. 83, 99(1968) quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962).

In his complaint, Plaintiff alleges federal criminal violations under 18 U.S.C. 241, 18 U.S.C. 242, 18 U.S.C. 1503, 18 U.S.C. 1512, 18 U.S.C. 1513, 18 U.S.C. 1621, and 18 U.S.C. 1622. Title 18 of the United States Code is a criminal code. Only under limited circumstances does it provide a private cause of action. See e.g. *Kratzer v. Colorado Governmental Risk Share Agency*, 18 P. 3d 766, 799, (Colo. App. 2001) (holding that 18 U.S.C. §§ 241, 242, and 245 impose criminal penalties for violations of their provisions and do not form a basis for civil liability). Title 18 is for use by the United States Government to prosecute individuals indicted on federal crimes. It is wholly irrelevant to the complaint. This is a civil action. Plaintiff cannot rely on criminal law to establish his cause of action. He has

no standing and his claims under Title 18 must be dismissed as a matter of law.

B. Plaintiff lacks standing to bring claims under the Colorado Criminal Code.

Plaintiff also alleges a laundry list of criminal violations under the Colorado Revised Statutes. Just as Plaintiff confuses federal criminal statutes with federal civil actions, contra to 28 U.S.C. 1301, he fails to distinguish between federal versus state criminal authority and jurisdiction. As discussed above, the claims asserted against Defendants under title 18 of the Colorado Revised Statutes arise in criminal law, as distinguished from civil actions. This honorable court has no original jurisdiction over actions arising in state criminal courts. Plaintiff has no standing to claims arising from Title 18 of the Colorado Revised Statutes against Defendant Miller.

C. Plaintiff has no standing for claims under Title 42 of the United States Code.

While Plaintiff bases his complaint on the quicksand of criminal jurisdiction, he suffocates the principles of civil rights as he bases his claims for relief on 42 U.S.C. 1979 [sic], 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C. 1986, and 42 U.S.C. 1988. (A review of title 42 of the United States Code fails to provide any information on a 42 U.S.C. 1979).

Plaintiff fails to understand Defendant Miller is a private party. He is wholly without governmental authority and is unable to act under color of law as averred in Plaintiff's complaint, page 5, and paragraph 2. Simply holding a license to practice law that is granted by the state is not sufficient to constitute state action for purposes of 42 U.S.C. § 1983. See e.g. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 175, 92 S. Ct. 1965, 32 L.Ed 2d 627 (1972). Plaintiff lacks a state actor in Defendant Miller for relief in a 1983 violation.

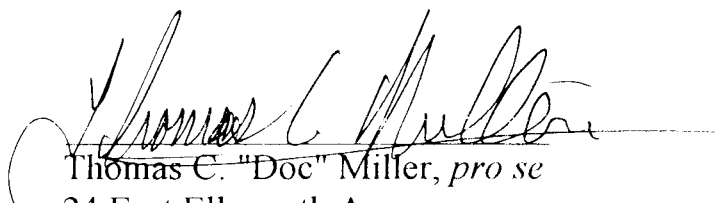
Section 1985 requires a race based discrimination. *Lavickey v. Burnett*, 758 F.2d 468, 471 (10th Cir. 1985). Plaintiff makes no allegation of racial discrimination. His claim cannot stand. Further, claims arising under section 1986 require, "refusal to take positive action where the circumstances demand to prevent acts which give rise to a cause of action under Section 1985." *Taylor V. Nichols*, 561 F.2d 558, 568 (10th Cir. 1977). Accordingly, no claim exists under section 1986 in absence of a valid claim under section 1985. *Id.*

Of course, absent any valid claims under sections 1983, 1985 and 1986, no claim for attorney's fees arises under section 1988, nor are pro se litigators entitled to attorney's fees.

Conclusion

Plaintiff's claims against Defendant Miller must be dismissed with prejudice. His complaint asserts an improper venue as a vehicle of petty harassment and expense for defendants. He makes no claim for relief based upon a reading of the complaint or in law. He lacks standing for his assertions under criminal statutes either in title 18 the United States Code or title 18 of the Colorado Revised Statutes. He can state no claim for relief under title 42 of the United States Code. He is, as a matter of fact, a convicted felon who attempted to influence a public official with false court documents, and continues the same conduct through frivolous, groundless and vexations law suits.

Respectfully submitted,



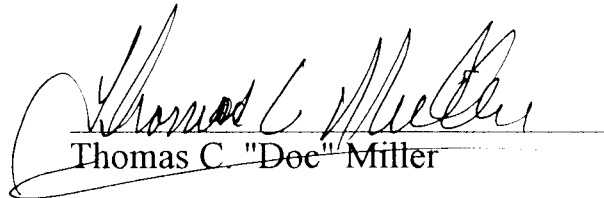
Thomas C. "Doc" Miller, *pro se*
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Certificate of Service

I, Thomas C. "Doc" Miller, hereby certify that I deposited a copy of **Defendant Miller's Motion to Dismiss** upon all parties known herein by depositing the aforesaid in the United States Mail, first class postage prepaid on May 19, 2006, and addressed to the following:

Clerk of the U.S. District Court
District of New Mexico
333 Lomas Blvd., NW, Ste. 270
Albuquerque NM 87102

Steve Douglas Gartin
P.O. box 70185
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Thomas C. "Doc" Miller