

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-RB-2455 (BNB)

CHARLES H. CLEMENTS,

Plaintiff,

vs.

JANIS E. CHAPMAN, THOMAS C. "Doc" MILLER, and KATHERINE GRIER,

Defendants.

PLAINTIFF'S REPLY TO DEFENDANT THOMAS C. MILLER'S MOTION TO
DISMISS, AND PLAINTIFF'S MOTION TO DENY

Comes now Charles H. Clements, the Proper Person Injured, Plaintiff in pro se, and respectfully submits this PLAINTIFF'S REPLY TO DEFENDANT THOMAS C. MILLER'S MOTION TO DISMISS AND PLAINTIFF'S MOTION TO DENY and in support states as follows:

I. D.C. Colo. L. Civ. IL 7.1(a) Statement of Conferral

Any perceived futility in discussion with Defendant Miller or counsel may well have quite a lot to do with the necessary postures of defense that they must maintain, having to deal with the numbers of investigations, diverse criminal complaints and claims for damage to which Defendant Miller has exposed himself.

Additionally, Defendant Miller's introduction of some strawman requirement on a claim or cause of action that is missing from Plaintiff's Complaint, as well as the F.C.R.P., is no issue at all.

Defense Counsel's attempt to misconstrue Defendant Miller's actions as mere 'professional malpractice' is an attempt to mislead the Honorable Court and reflects Defendant Miller's long standing pattern of mendacity and active deceptions of the Courts as well as his clients. Plaintiff is prepared to offer proofs of such a pattern, all such proofs to be independent of Plaintiff's complaints at all. Plaintiff is only one of Defendant Miller's present Complainants, his pattern extending to numerous actions against numerous victims, and over a period of time, and multiple actions within that time.

Regarded in the light of Defendant Miller's testimony, given prior to the filing of the instant Motion to Dismiss, his assertions could well be construed as Fraud, as well as filing a knowingly false instrument to the Court, as well as failing to approach the Court in candor becoming an Officer of the Court, particularly whilst defending another Officer of the Court.

Whereas, as lately as 7 June, 2005, in Boulder County Court Case #04C1779, and prior to Defense Counsel Massaro's filing of Defendant Miller's instant Motion to Dismiss, Defendant Miller has been forced to acknowledge his deliberate deceptions as alleged by Plaintiff in this Original Complaint. That is to say that Defendant Miller had to admit, in open court, cross-examined under oath, that he had lied to and deliberately misled his Client, Steve D. Gartin, about the improper and illegal stipulation in the pertinent Probation Agreement.

Whereas it is, then, getting pretty undeniable that he was lying to me about it as well, as Plaintiff has alleged all along.

Additionally, it constitutes New Evidence. The transcript of the testimony has been ordered, and should be here in the due course of time to support Plaintiff's assertions and best belief.

If Miller has been lying, as the testimony of 7 June, 2005 would admit, it is pertinent to the futility of the duty to confer and the attendant difficulty of trustworthy communication with Defendant Miller or his Learned Counsel.

And whereas Defendant Miller admitted in the same testimony that he did it to 'control his client', in the interests of the Colorado State Attorney General's Office and their Clients, ostensibly to evade suit or obstruct suits pending, it is implicit that he defrauded me as well in order to advance those interests in collusion with, and on behalf of others and to my damage, deprivation and distress.

And whereas Defendant Miller's lies to Plaintiff, about his lies to Mr. Gartin, were in furtherance of the interests of the Colorado State Attorney General's Office and the various State Actors they represent as Defendants in those self-same Federal Complaints, and in the present one for that matter, his Fraud was accomplished as a State Actor for purposes of '1983', and as such is independent of his professional obligations and any sanction he may incur in addition as authorized by State statutes.

Plaintiff humbly and respectfully urges the Honorable Court to recall that Plaintiff is not accused of anything, nor seeking relief from some conviction, nor trying to evade justice, nor to gain advantage in some reply to charges.

Plaintiff was *solely* a Third Party Witness for the Complainant in Federal District Court. These actions by Defendant State Actors, for whom Defendant Miller is a self-identified and acknowledged agent, if are as alleged by Plaintiff, are outrageous, by the most rigorous definition of the word.

II. Statement of the Case

Plaintiff's literary style is not at issue in the controversy complained to the Honorable Court. However 'prolix' or 'tedious', the claims and charges by Plaintiff are

lucid, well founded in established law ,and present controversies before the Court that are supported and established by the evidence presented.

Ad hominem calumnies of some legal illiteracy, or feigned inconvenience caused by a pro se's failure to observe the punctilio of the Law simply exacerbates the outrage that it is done by the self-same Attorney, Defendant Miller, who had been engaged and retained, and subsequently defaulted to provide the professional technique Plaintiff is now mocked for lacking.

Plaintiff respectfully prays the Honorable Court to recognize Plaintiff's diligence in striving to adhere to the Court's instructions, however incomplete the effort thus far. Any omissions or mistakes in forma or submission are certainly not meant disrespectfully nor for a vexatious purpose.

Plaintiff respectfully recalls to the Honorable Court's kind attention that I've been denied any opportunity to Amend the original Complaint to reflect new evidence or to more clearly specify the elements of the Fraud and Abuse and Denial by Defendants as alleged in my claims.

The self-serving, and misleading, restatement of the case by Defendant Miller, and indeed by Defendant Miller's counsel, Kevin C. Massaro, is a deliberate and conscious attempt to work a fraud upon the Court.

Starting from the inception of my complaints against now-Defendant Miller, and as recently as June 7th, 2005, in sworn testimony, under oath and during cross-examination in open court by the present counsel for Defendant Miller, and by testimony by other witnesses, Plaintiff's cause of action against Defendant Miller was thoroughly expressed, and in no way included some simple 'domestic relations matter'.

Plaintiff was been denied due process of the law by Defendants Grier and Chapman through ex parte hearing and judgments rendered without notice or opportunity to Plaintiff to give evidence or present testimony, in violation of Plaintiff's Constitutional Rights.

That action by those other Defendants constitutes an independent conspiracy from Defendant Miller's collusion with the Colorado State Attorney General's Office Prosecutor, Marleen M. Langfield. Actions on their parts were to deny Plaintiff the due process of the law, to Plaintiff's damage and detriment, and that of Plaintiff's minor children as well.

Defendant Miller embraced Defendants' conspiracy in his own interests, and contrary to the interests of Plaintiff, and enabling of the interests of the Colorado State Attorney General's Office and their Clients, all Defendant to pending complaints in Federal Court on behalf of Defendant Miller's Client, Steve D. Gartin, and to which actions Plaintiff was noted as a Third Party Witness.

The complimentary congruence of the two independent conspiracies by State Actors simply provided the grounds for a 'meeting of minds' between the several Actors, enabling them to work in common for mutually profitable goals in the Courthouse enterprise.

a. Plaintiff, and both of Plaintiff's children, and Plaintiff's Family Property, were

under the Protection by Permanent Restraining Orders against Defendant Grier's Client.

b. The same Trial Orders assigned Plaintiff custody of both minor children as well as orders Protecting them from their abuser, Defendant Grier's client, Victoria L. Lawler.

c. The Restraining orders were dismissed, ex parte to the Protected Parties Plaintiff and Plaintiff's children, by order of the Magistrate without notice or opportunity to the Protected Parties to give evidence or testimony.

d. The Custody Trial Order by the Trial Magistrate was modified without notice or opportunity to the Protected Parties to give evidence or to testify in defense of a proper Order of Protection against Defendant Grier's Client, Victoria L. Lawler .

Plaintiff further asserts that Defendant Miller is a de facto State Actor for purposes of '1983' by virtue of his collusion with the Prosecutor, Marleen M. Langfield and State Attorney General's Office and the Joint Terrorism Task Force in his deception of his Client, Mr. Gartin, and of his client Clements, Plaintiff, to defraud both on behalf of those Defendants to several pending Federal Actions.

Plaintiff asserts that Defendant Grier is a de facto State Actor for purposes of '1983' by virtue of her collusion with Defendant Miller in their phone call of 04 March, 2004 to agree to deny Plaintiff his Constitutional Rights.

Defendant Grier is further established as a State Actor in her complicity to effect ex parte hearings and the attendant judgments rendered by State Actor Defendant Janis Chapman, and her meeting of the minds with Defendant Miller to obstruct justice and to deny Plaintiff his rights of due process and to petition the government for redress of grievance, and the equal protection of the law, and to deny Plaintiff's right to equal application of the law.

Plaintiff alleges that Defendant Miller conspired with State Actors to commit

multiple criminal acts to further his continuing Fraud upon Plaintiff, including, but not limited to-wit: witness intimidation, evidence tampering, obstruction of justice, extortion, wire/mail fraud; independent of Attorney Massaro's identification of culpability for professional malpractice under State statutes, or indeed by some other disciplinary body as well.

No doubt Defendant Miller's actions also constitute 'malpractice' suitable for a State Action, but the overweening actions which constitute his violations of 42 U.S.C. §§ 1983 & 1985 are independent of his professional duties, obligations, ethical requirements or codes of professional responsibility.

III. Legal Argument

(1) Plaintiff's claims arise from Defendant Miller's fraud upon Plaintiff; failure to disclose his conflict of interest with the interests both of himself, and of his client, Steve Gartin, in case #00CR3371, and the Colorado State Attorney General's Office, and the Clients they represent who are Defendant to Federal actions and so named.

Plaintiff asserts Defendant Miller's fraud benefited the State Attorney General's Office, and his collusion with Defendant Grier to fail to contest void and voidable orders made without jurisdiction in ex parte hearing by the Magistrate was to the mutual benefit of all related attorneys in the Courthouse enterprise and all of it to Plaintiff's damage.

(2) While it is Defendant Miller's privileged class as an 'Esquire' Juris Doctor that gives him the special opportunity to exercise authority on behalf of State Actors and the Courthouse enterprise, his actions alleged by Plaintiff are crimes when perpetrated by anyone. It is a crime to destroy evidence. It is a crime to extort. It is a crime to obstruct justice, intimidate a witness; to do fraud by wire or mail, by trickery, deceit and deception. All describing the essence of RS § 1979.

(3) Defendant Miller admitted, on 7 June, 2005, in Boulder County Court Case #04C1779, that he had deliberately misrepresented to his Client, Steve D. Gartin, that there was a stipulation in his probation agreement which was, in fact, not there at all.

That his intention, under direction from the State Attorney General's Office, was to control his client(s) petitioning the government for redress of grievance, to wit: suing the Attorney General's Office and its client State Actors in '1983' action; or to successfully prosecute, or to witness at, Federal actions against the self-same Defendants already in progress. Plaintiff, also a client of Defendant Miller's, was lied to and defrauded by Defendant Miller, in aid of his fraud upon Client Gartin and in conspiracy to protect State Actors from legal liability.

Plaintiff was denied his First Amendment right to petition for redress of grievance by fraud; told he could not access the Court for a due process of the law without hazard to Mr. Gartin and a violation of his probation in retaliation against me, which defines yet another Fraud.

Plaintiff was denied the Law's equal protection against abuse of the State's authority; of the equal application of the law as complained of by Plaintiff against State Actors.

Plaintiff was thereby denied his rights under, but not limited to, the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and such others as applicable.

(4) Defendant Miller has a civic as well as professional duty to refrain from perpetrating criminal acts against Plaintiff that caused damage Plaintiff.

Plaintiff's detrimental reliance on Defendant Miller's professional integrity; Defendant Miller's various lapses in professional ethics; his poor professional performance, slight diligence, and his failure to discharge his professional obligations are not presently at

issue.

(5) To engage in a conspiracy to defraud Plaintiff of his rights to the due process of the law, by extortion, deception and intimidation, are criminal actions independent of the profession of the perpetrators. The fact that the actions are further prohibited by professional and ethical codes of conduct simply exacerbates the culpability of the Defendants.

(6) Defendant Miller's professional negligence is incidental to his actions as complained by Plaintiff.

(7) Defendant Miller's Attorney suggests a further cause of Plaintiff's action in a State Court, or before some other disciplinary body, but it is irrelevant to Plaintiff's cause of action and standing under 42 U.S.C. §§ 1983 & 1985 and particularly the scope of RS § 1979

(8) Plaintiff's claims and complaints are independent of Defendants' professional standing, except as they exercise the authority of the State and have abused that authority.

(9) No 'Expert Testimony' is required to prove Plaintiff's claims. Defendant Miller either destroyed evidence, or he did not. Defendant Miller either lied to Plaintiff, for purposes of Fraud on behalf of the State Attorney General's Office, or he did not. Defendant Miller either colluded with the opposing attorney, Defendant Grier in the phone call of 04 March 2004 to deceive, intimidate and extort Plaintiff, or he did not.

(10) Plaintiff's complaint and claims are about Thomas C. 'Doc' Miller's Fraud.

The manner in which Defendant Miller effected his Fraud; his co-conspirators in the Fraud; the implications to Plaintiff's Civil Rights, and the applicable sanctions against Defendant Miller, are independent of applicable additional professional sanctions, however damning to Defendant Miller the additional opprobrium generated by his sub-standard professional performance. He may well have also been negligent, lazy, ill-prepared or ill-educated, and under the influence of Paxil, alcohol and marijuana, but that is immaterial to

his culpability under '42USC1983 et seq'. The Title reads 'any person', and doesn't confine itself to infractions of professional conduct or performance.

(11) No 'Expert Testimony' is necessary to establish that Defendant Miller had lied to Plaintiff as regards the Probation Agreement Contract in Jefferson County Case # 00CR3371 for purposes of Fraud, and it is immaterial that it also may constitute professional negligence.

Defendant Miller further lied to Plaintiff about Miller's representation of Client Clements in action deriving from 00CR3372, which constitutes yet another and separate Fraud.

Defendant Miller, *being close to the exposure of his deception on 08 April, 2004*, extorted Plaintiff to accept representation in the domestic case, to refrain from filing pro se, or to follow up on the Habeas Corpus petition to the Colorado Supreme Court, or to file sanctions against Defendant Grier and Defendant Chapman and such others as appropriate, for the ex parte hearings and rulings made to Plaintiff's damage and without notice or opportunity to Plaintiff to present evidence before the Court, which constitutes yet another separate and distinct Fraud.

(12) Learned Counsel submits an impossible date for any past event.

(13) Defendant's Counsel's mathematics are as suspect as his calendar skills.

(14) No 'Certificate of Review' is mandated, warranted, necessary, or required by Federal Rules of Civil Procedure, nor is it inherent in the requirements for satisfaction of 42 U.S.C. § 1983 et seq sec. R.S. § 1979.

Plaintiff thinks that it is pertinent to the instant question that Defendant Miller's familiarity with 'Certificates of Review' has its genesis as applicable in the Allan K. Anderson Case, 01Z1271[BNB], and the fraudulent Certificate he, himself, submitted to this very Court. Plaintiff makes an offer of proof speaking to that question if the Court so desires

as concerning the credentials of the signing ‘authority,’ Defendant Miller’s father.

(15) As no Certificate of Review is required, either as a matter of necessary evidence, nor by the fact pattern of the controversy, nor by Federal Rules of Civil Procedure, nor by Local Rules, dismissal is inappropriate and the Defendant’s Motion to Dismiss is an entire waste of the Court’s time and resources and yet another attempt to defraud and mislead the Court.

(16) Plaintiff reserves the right to file appropriate State actions against Defendants as regards their professional performance, but that in no way speaks to the Claims by Plaintiff as regards their abuse of authority as State Actors, or in conspiracy and to the benefit of State Actors in numerous cases before this very Court.

IV. Plaintiff’s Legal Argument

1. Plaintiff incorporates the foregoing by reference and as if fully reproduced herein.
2. No Certificate of Review is required in a ‘1983’ action.
3. No opportunity to Amend the Original Complaint has been allowed by the Court.
4. Dismissal is not a remedy in the interests of justice.
5. A failure to include some Certificate of Review would not be sufficient to fatally flaw any further action against Defendants.

The overriding intent of 1983 is to give recourse to the individual for abuses by the very administrators of the governmental authority that is exercised to damage the Complainant.

Abusing that authority to intimidate a witness in a pending Federal case is further outrageous. Intimidating a Witness, by the Defendants in a pending Federal case, to escape conviction by overwhelming evidence and testimony by that self-same Witness, the Plaintiff Charles H. Clements, is utterly unconscionable and a tremendous injustice would be done,

not only to Plaintiff, but to the Trust of the people in their authorities and protectors if this action were Dismissed.

Plaintiff further asserts that any dismissal by the Court that barred the re-filing of a complaint attended by some required certificate would further be an injustice to both the Plaintiff and to the Public Weal.

WHEREFORE the Plaintiff, Charles H. Clements, the Proper Party Injured and complaining in pro se by doctrine of necessity, Prays the Honorable Court to Deny Defendant Miller's Motion to Dismiss

Respectfully submitted this 16th day of June, 2005,

Charles H. Clements
1741 Dallas Street
Aurora, Colorado
80010-2018
(303) 364-0403
chasclements@comcast.net

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of June, 2005, a true and correct copy of the foregoing Plaintiff's Reply to Defendant Thomas C. Miller's Motion to Dismiss and Plaintiff's Motion to Deny was sent via US Mail, first class postage prepaid, to the following:

CLERK OF THE FEDERAL DISTRICT COURT
ALFRED A. ARRAJ UNITED STATES COURTHOUSE
901 19TH STREET
DENVER, COLORADO 80294-3589

PATRICK L. SAYAS
ASSISTANT ATTORNEY GENERAL, LITIGATION SECTION
1525 SHERMAN STREET, 5TH FLOOR
DENVER, CO 80203

KEVIN C. MASSARO, ESQ
COLORADO REGISTER NO. 24682
ENGLEWOOD LAW BUILDING
3780 SOUTH BROADWAY, SUITE 111
ENGLEWOOD, CO 80113

TRACI VAN PELT, ESQ
MEGHAN E. POUND, ESQ
MCCONNELL SIDERIUS FLEISCHNER
HOUGHTALING & CRAIGMILE, LLC.
DENVER CORPORATE CENTER, TOWER I
4700 S. SYRACUSE ST., STE 200
DENVER, CO 80237

Charles H. Clements
1741 Dallas Street
Aurora, Colorado
80010-2018
(303) 364-0403
chasclements@comcast.net