

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

CHARLES H. CLEMENTS

Plaintiff,

v.

1. JANIS E. CHAPMAN
  2. THOMAS C. 'DOC' MILLER, and
  3. KATHERINE GRIER,
- Defendants

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PLAINTIFF'S ANSWER TO DEFENDANT KATHERINE GRIER'S MOTION TO  
DISMISS

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Comes now Charles H. Clements, Plaintiff in pro se by doctrine of necessity and makes PLAINTIFF'S ANSWER TO DEFENDANT KATHERINE GRIER'S MOTION TO DISMISS, and prays the Honorable Court to DENY the Defendant's Motion and in support of that answer states as follows:

Plaintiff is respectful of the Honorable Court's valuable time and resources, and in the spirit of efficiency, submits as follows:

Plaintiff incorporates Plaintiff's Answer to Defendant Thomas C. Miller's Answer with Counterclaims herein as if fully reproduced.

Plaintiff incorporates Plaintiff's Answer to DEFENDANT CHAPMAN'S MOTION TO DISMISS herein as if fully reproduced.

Plaintiff incorporates EXHIBITS herein as if fully reproduced.

I. D.C. COLO. L. CIV. R. 7.1(A) STATEMENT OF CONFERRAL

Plaintiff denies; Plaintiff would have been agreeable and aided in Counsel's due diligence so as to aid in Defendant Grier's Answer to Complaint and to reach some resolution of this controversy before the Honorable Court.

II. JURISDICTION AND VENUE

All Defendants are State Actors and the Honorable Court has both personal and subject matter jurisdiction over all Parties

An allegation that a private person conspired with a state official satisfies the requirement that a defendant act under color of state authority. See *Adickes v. S. H. Kress & Co.*, [398 U.S. 144](#), 152 (1970) (holding that a conspiracy with a state official is sufficient to satisfy the state action requirement of § 1983); *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540 (9th Cir. 1989) (holding that "[p]rivate parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights").

Federal jurisdiction was asserted under RS § 1979, and 28 U.S.C. § 1343{ 1 } and 28 U.S.C. § 1331.{ 2 } [365 U.S. 170]

*Monroe v. Pape*, 365 U.S. 167 (1961)

(a) The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" do not exclude acts of an official or policeman who can show no authority under state law, custom or usage to do what he did, or even who violated the state constitution and laws. Pp. 172-187. [365 U.S. 168]

(b) One of the purposes of this legislation was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies. Pp. 174-180.

(c) The federal remedy is supplementary to the state remedy, and the state remedy need not be sought and refused before the federal remedy is invoked. P. 183.

(d) Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken "under color of" state law within the meaning of § 1979. *United States v. Classic*, 313 U.S. 299; *Screws v. United States*, 325 U.S. 91. Pp. 183-187.

3. Since § 1979 does not contain the word "willfully," as does 18 U.S.C. § 242, and § 1979 imposes civil liability, rather than criminal sanctions, actions under § 1979 can dispense with the requirement of showing a "specific intent to deprive a person of a federal right." P. 187.

Venue is proper pursuant to 28 U.S.C. §1391(b), as the Defendants reside in this judicial district and a substantial part of the events giving rise to the claims asserted by Plaintiff arose in this judicial district.

### III. STATEMENT OF THE CASE

Defendant Grier's conspiracy with Defendant Miller and Defendant Chapman, to deprive Plaintiff of due process of the law and the equal protection of the law, is founded in her participation in the ex parte modifications of Permanent Trial Orders of Magistrate Judge David Juarez in the combined cases without notice to Plaintiff or opportunity to participate in the hearing. (PLAINTIFF'S EXHIBIT 1)

Defendant Grier failed in her duty to report judicial misconduct rather than exacerbate and take opportunistic advantage of judicial bias and lack of jurisdiction occasioned by ruling ex parte, failing to notify Plaintiff of the purpose of hearings, failing to afford Plaintiff opportunity for preparation, subpoena of witnesses and discovery of evidence. (PLAINTIFF'S EXHIBIT 2)

An open, overt hearing before a fair tribunal is basic to due process. *Austin v. City & County of Denver*, 156 Colo. 180, 397 P.2d 743 (1964).

Ex parte adjudication without notice is not due process. *Dalton v. People ex rel. Moors*, 146 Colo.15, 360 P.2d 113 (1961).

What should be determined is that if the record does not establish that the error was harmless, the non-attendant litigant is entitled to presume harmful error when the events and circumstances were not factually available to him for record review or response. *Horton v. Driskell*, 13 Wyo. 66, 77 P. 354 (1904); *Sullivan*, 720 F.2d 1266.

Plaintiff's claims as well the collusion with Chapman's bias against 'common law litigants or 'pro se' litigants.

Defendant Grier self-identified as a participant in the conspiracy to deprive rights in her phone call to Defendant Miller of 4 March, 2004 when she asserted a special influence with Defendant Chapman.

Attorney Grier has presented false and misleading characterizations of Plaintiff as some sort of 'Posse Comitatus' or 'Patriot' adherent for the purposes of Fraud upon the Court and Plaintiff. That false accusation is the taint of Jefferson County Case 00CR3372 and its malicious/vindictive/retaliatory prosecution of Plaintiff for which Defendant Miller was engaged and retained to litigate on Plaintiff's behalf.

The claims arise out of the domestic dispute as regards Defendant Miller and in fact predate the Dissolution action by 18 months or so. His professional conduct in 00CR3371, on behalf of the State Attorney General's Office to perpetrate a Fraud upon Steve D. Gartin, and by deliberate and malicious Fraud, the Plaintiff as regards the associated case, 00CR3372 renders him a State Actor.

A Defense Attorney, such as Defendant Thomas C. Miller, who conspires with the Prosecution falls within the ambit of 1983.

Public defenders charged with conspiring with state officials in violation of 42 USCS § 1983 do not enjoy any immunity, qualified or absolute, from suit under § 1983. *Glover v Tower* (1983, CA9 Or) 700 F2d 556, affd, remanded (1984) 467 US 914, 81 L Ed 2d 758, 104 S Ct 2820.

Immunity of prosecutor does not extend to those persons who conspire with him to violate civil rights of others. *Goldschmidt v Patchett* (1982, CA7 Ill) 686 F2d 582, 1982-2 CCH Trade Cases P 64893. Absolute immunity in action under 42 USCS § 1983 is not applicable to state prosecutor who is performing investigative rather than advocacy functions. *Hampton v Hanrahan* (1979, CA7 Ill) 600 F2d 600, revd, in part on other grounds (1980) 446 US 754, 64 L Ed 2d 670, 100 S Ct 1987, reh den (1980) 448 US 913, 65 L Ed 2d 1176, 101 S Ct 33 and reh den (1980) 448 US 913, 65 L Ed 2d 1177, 101 S Ct 33.

Defendant Grier submitted false information to the Honorable Court in the Original Petition for Dissolution of Marriage under 14-10-107.8 - Required notice of prior restraining orders to prevent domestic abuse - petitions for dissolution of marriage or legal separation.

Defendant's filing knowingly concealed the broad history of physical, emotional and psychological abuse by her Client, Victoria L. Lawler upon the three members of the Clements Family in aid of Fraud upon Plaintiff and the Honorable Court.

Defendant took advantage of an unrepresented Party by participating in ex parte hearings, failing in the requirement for a McLendon hearing on child custody, demanding attorney fees for slight diligence and a failure to respond to questions of jurisdiction and subject matter.

When filing a petition for dissolution of marriage or legal separation pursuant to this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent restraining orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., any mandatory restraining orders issued pursuant to section 18-1-1001, C.R.S., and any emergency protection orders issued pursuant to section 14-4-103 entered against either party by any court within ninety days prior to the filing of the petition of dissolution of marriage or legal separation. The disclosure required pursuant to this section shall address the subject matter of the previous restraining or emergency protection orders, including the case number and jurisdiction issuing such orders.

The Adams County Court enterprise has a general animus towards pro se litigants, and that animus is in and of itself a denial of due process and equal protection guarantees. It presents a Literacy Test for the exercise of a Constitutional Right, favors a represented litigant over one who cannot afford representation regardless of the merits of the controversy at Bar.

Once facts have been set forth that create a reasonable inference of a "bent of mind" that will prevent the judge from dealing fairly with the party seeking recusal, it is incumbent upon the trial judge to recuse himself. See *People v. Botham*, 629 P.2d 589, 595 (Colo. 1981); C.J.C. Canon 3(C)(1).

Defendant Grier's assertion of a hitherto unknown and unpublished Common Law Marriage, as 'valid' under the Colorado Constitutional requirements for recognition, elicited a Common Law reply in Abatement.

"Abatement is ordinarily a matter of right" *Simmons v. Superior Court* (1943), 96 C.A. 2d 119, 214 P. 2d 844.

"Abatement at law is the overthrow or destruction of a pending action apart from the cause of action; in equity the suspension of the proceedings. The term 'abatement' is used, with reference to pending actions or suits, to designate the result upon a suit or action, of defects which vitiate the propriety of the suit as brought, in contradistinction to the existence or the statement of a cause of action; it looks to their effect; and consequently it is ordinarily defined descriptively in terms of the effect produced, so that the extending equitable doctrines to all suits or actions is spoken of." 1 C.J.S. Abatement, 1a, p. 27, quoted in *Burnand v. Irigoyen* (1943), 56 C.A. 2d 624, 629.

Where a husband, plaintiff in a divorce suit, is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. *Cairnes v. Cairnes*, 29 Colo. 260, 68 P. 233 (1902) (Emphasis added).

Defendant Grier's deliberate mis-association of Plaintiff with Senatorial Candidate Rick Stanley was based solely on some perceived commonality of language offensive to the Courthouse enterprise of associated legal professionals and staff.

Defendant Grier's misleading characterizations associate Plaintiff with some sort of threats and violence, and manifested itself in requests for increased security and treating Plaintiff, an elderly and frail man of 60, as if he were a threat to the Honorable Court.

The same animus had been directed at Plaintiff in a previous appearance before Hon. Harlan Bockman on behalf of son, Charles Hunter Clements, and Plaintiff immediately took counsel on his behalf through the Adams County Public Defender's Office when offered.

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. *Forrester v. White*, 484 U.S. at 227-229, 108 S. Ct. at 544-545 (1987); *Westfall v. Erwin*, 108 S. Ct. 580 (1987); *United States v. Lanier* (March 1997)

Constitutionally and in fact of law and judicial rulings, state-federal "magistrates-judges" or any government actors, state or federal, may now be held liable, if they violate any Citizen's Constitutional rights, privileges, or immunities, or guarantees; including statutory civil rights.

A judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. *Gregory v. Thompson*, F.2d 59 (C.A. Ariz. 1974)

Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction.

*Hoffsover v. Hayes*, 92 Okla 32, 227 F. 417

"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..."

"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." *Mireles v. Waco*, 112 S. Ct. 286 at 288 (1991)

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. A judge is not immune for tortious acts committed in a purely Administrative, non-judicial capacity. *Rankin v. Howard*, 633 F.2d 844 (1980)

The Ninth Circuit Court of Appeals reversed an Arizona District Court dismissal based upon absolute judicial immunity, finding that both necessary immunity prongs were absent; later, in *Ashelman v. Pope*, 793 F.2d 1072 (1986), the Ninth Circuit, en banc, criticized the "judicial nature" analysis it had published in *Rankin* as unnecessarily restrictive. But *Rankin's* ultimate result was not changed, because Judge Howard had been independently divested of absolute judicial immunity by his complete lack of jurisdiction. *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. U.S. v. Lee, 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882)

Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233

Plaintiff's pro se pleadings must be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520-21, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972).

This means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal theories or unfamiliarity with pleading requirements. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

To state a claim under 42 U.S.C.S 1983, a plaintiff must allege that (1) he or she was deprived of a right secured by the Constitution or federal law; and (2) the defendant acted "under color of state authority" in depriving the plaintiff of this right. See Hafer v. Melo, [502 U.S. 21, 25](#) (1991).

An allegation that a private person conspired with a state official satisfies the requirement that a defendant act under color of state authority. See Adickes v. S. H. Kress & Co., [398 U.S. 144, 152](#) (1970) (holding that a conspiracy with a state official is sufficient to satisfy the state action requirement of S 1983); United Steelworkers of America v. Phelps Dodge Corp. , 865 F.2d 1539, 1540 (9th Cir. 1989) (holding that "[p]rivate parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights").

Statute prohibiting "endeavor" to obstruct due administration of justice makes conduct punishable if defendant acts with intent to obstruct justice and in manner likely to obstruct justice, even if he or she is foiled in some way, but use of term does not require criminal liability for any act done with intent to obstruct justice. [18 U.S.C.A. § 1503. U.S. v. Aguilar, 115 S.Ct. 2357](#)  
U.S.Cal.,1995

Defendant Miller's Answer was struck by the Court, hence no Answer at all.

Plaintiff filed his Amended Complaint and Prayer for Leave to File an Amended Complaint prior to any answer by any Defendant.

Attorney Massaro has a long history of being involved in Defendant Miller's Fraud of 00CR3371.

Plaintiff resubmitted the Amended Complaint to comply with the Court's directive, citing multiple applications of FED. R. Civ. P. 15; (a) (b) (c) (2) or (d) See 'Amended Complaint, sec. 7)

A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

This broad reading of a pro se plaintiff's complaint does not, however, relieve him of the burden of alleging sufficient facts on which a cognizable claim could be based. Id. Even so, a pro se plaintiff who fails to allege sufficient facts is to be given a reasonable opportunity to amend his complaint if justice so requires. See *Roman-Nose v. New Mexico Dept. of Human Services*, 967 F.2d 435, 438 (10th Cir. 1992) (citing Fed. R. Civ. P. 15(a), "leave [to amend pleading] shall be freely given when justice so requires). [HN3] We review a district court's denial of a motion to amend for abuse of discretion. *Ketchum v. Cruz*, 961 F.2d 916, 920 (10th Cir. 1992).

It can be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would itself be violating of procedural due process as it would deprive a pro se litigant of equal protection of the law vis a vis a party who is represented by counsel.

In light of Plaintiff's pro se status, and in light of Fed. R. Civ. P. 15(a)'s requirement that leave to amend be "freely given," we hold that the court's refusal to grant Plaintiff leave to amend was an abuse of discretion. See *Foman v. Davis*, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962) (refusal to grant leave to amend without justifying reason is abuse of discretion and inconsistent with spirit of Federal Rules).

Plaintiff attempted to follow the Honorable Court's direction and resubmit in proper procedure. Plaintiff understood the attaching of the proposed Amended Complaint to be proper procedure.

A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). This broad reading of a pro se plaintiff's complaint does not, however, relieve him of the burden of alleging sufficient facts on which a cognizable claim could be based. Id. Even so, [HN2] a pro se plaintiff who fails to allege sufficient facts is to be given a reasonable opportunity to amend his complaint if justice so requires. See *Roman-Nose v. New Mexico Dept. of Human Services*, 967 F.2d 435, 438 (10th Cir. 1992) (citing Fed. R. Civ. P. 15(a), "leave [to amend pleading] shall be freely given when justice so requires).

Plaintiff has not been allowed to Amend the Complaint to reflect a more definite statement and specificity in charges and allegations of Fraud

The issue in reviewing the sufficiency of plaintiffs' complaint is not whether they will prevail, but whether they are entitled to offer evidence to support their claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974).

The Court may not dismiss a cause of action for failure to state a claim unless it appears beyond a doubt that plaintiffs can prove no set of facts in support of their theory of recovery that would entitle them to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence*, 927 F.2d 1111, 1115 (10th Cir. 1991).

Although plaintiffs need not precisely state each element of their claims, they must plead minimal factual allegations on those material elements that must be proved. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

... in a "motion to dismiss, the material allegations of the complaint are taken as admitted". From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see *Conley v. Gibson*, 355 U.S. 41 (1957)) *Walter Process Equipment v. Food Machinery*, 382 U.S. 172 (1965)

"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel 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. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957)

*Picking v. Pennsylvania Railway*, 151 F.2d. 240, Third Circuit Court of Appeals  
The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."

Plaintiff's response to Recommendation of United States Magistrate Honorable Boyd Boland, citing Plaintiff's position deny any such characterization.

Plaintiff further asserts that a Literacy Test necessary to exercise a Constitutional Right is improper and denies due process of the Law and its Equal Protection.

Plaintiff's pro se pleadings must be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972).

This means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the

plaintiff's failure to cite proper legal theories or unfamiliarity with pleading requirements. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

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

"Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient" ... "which we hold to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519 (1972)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

As pro se litigants, plaintiffs are entitled to invoke the familiar principle of liberal pleading construction. See *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996).

In determining whether a case is "exceptional" I look to whether the plaintiff's conduct in bringing the litigation is vexatious, unjustified, inequitable, willful, frivolous, or in bad faith. See *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed.Cir. 1989). Again, such conduct must be supported by clear and convincing evidence. See *id.*

Plaintiff's Amended Complaint cites the relevant cases, relates to the history well known to each Defendant, cites the details of the circumstances and makes an offer of proof by the Record, by documentation and timeline analysis, and by Third Party Eye-Witnesses to be named in Discovery.

To state a claim under 42 U.S.C.S 1983, a plaintiff must allege that (1) he or she was deprived of a right secured by the Constitution or federal law; and (2) the defendant acted "under color of state authority" in depriving the plaintiff of this right. See *Hafer v. Melo*, 502 U.S. 21, 25 (1991)

Individuals may be personally liable under § 1983 for acts under color of law that are not subject to qualified immunity and result in a violation of civil rights. 42 U.S.C.A. § 1983.

An allegation that a private person conspired with a state official satisfies the requirement that a defendant act under color of state authority. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144,152 (1970) (holding that a conspiracy with a state official is

sufficient to satisfy the state action requirement of S 1983); *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540 (9th Cir. 1989) (holding that "[p]rivate parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights").

*"Notice and an opportunity to be heard are the touchstones of procedural due process."*); *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 (10th Cir. 1979)

1983 Actions require the citing of the statutory laws that are alleged to have been well known to Defendant State Actors at the time of their abuse of the Plaintiff's civil rights.

Plaintiff cited crimes by name. The organization and filing system, arcana of citation and reference utilized in the Art of the Practice of Law requires an arduous advanced education and proof of competence before the Bar.

Plaintiff's description of the crimes committed is superordinate to the organizational system taught as a Skill in Art.

This section gives sufficient notice of the proscribed conduct and is not unconstitutionally vague. A person of reasonable intelligence could conclude that phone calls made with the intent to threaten the victim is prohibited. *People v. Czemerynski*, 786 P.2d 1100 (Colo. 1990).

Intent may be inferred. Intent to commit ....., official misconduct, ... may be inferred from the defendants' conduct and the circumstances of the case. *People v. Luttrell*, 636 P.2d 712 (Colo. 1981).

[Title 42 U.S.C. § 1983](#)--which provides that anyone who, under color of state statute, regulation, or custom deprives another of any rights, privileges, or immunities "secured by the Constitution and laws" shall be liable to the injured party--encompasses claims based on purely statutory violations of federal law, such as respondents' state-court claim that petitioners had deprived them of welfare benefits to which they were entitled under the federal Social Security Act. Given that Congress attached no modifiers to the phrase "and laws," the plain language of the statute embraces respondents' claim, and even were the language ambiguous this Court's earlier decisions, including cases involving Social Security Act claims, explicitly or implicitly suggest that the [§ 1983](#) remedy broadly encompasses violations of federal statutory as well as constitutional law. Cf., e. g., [Rosado v. Wyman](#), 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442; [Edelman v. Jordan](#), 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662; [Monell v. New York City Dept. of Social Services](#), 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611. Pp. 2503-2506.

The felony statutes for the same criminal conduct that invokes 42 U.S.C. 1986, 1985 & 1983 is 18 U.S.C. 241 & 242.

We conclude, therefore, that, if a complaint is filed within the time required by any controlling statute or rule and contains substantive allegations sufficient to invoke the court's jurisdiction on some basis, the fact that the pleader mistakenly relies upon an inapplicable statute or rule is not fatal to his cause. If the court would otherwise have authority to adjudicate the claim, it is not deprived of its jurisdiction simply because the plaintiff designates an inapplicable statute or rule. See *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961) (fact that complaint alleged that plaintiff was proceeding under a particular statute not controlling). See also *People v. District Court*, 200 Colo. 65, 612 P.2d 87 (1980).

The neglects of each of the Defendants violated Statutes that bind officers. The infractions by Defendants, each of them and all of them in conspiracy are self-explanatory, and the citing of Library References is subordinate to the citing of the actions themselves.

A. Conspiracy against rights: Defendants conspired to deprive Plaintiff of his Constitutional rights to Due Process and Equal Protection of the Law.

B. Deprivation of rights in color of authority: Defendants, each of them and all of them deprived Plaintiff of Constitutional Rights solely because they had the authority to do so.

C. Extortion in color of authority: Defendant Miller extorted Plaintiff as a State Actor in collusion with the Colorado State Attorney General's Office in the person of Senior Prosecutor Marleen M. Langfield.

D. Perjury of Oath of Office: Defendant Chapman perjured her Oath of Office by denying Plaintiff Due Process and Equal Protection of the Law by acting sans jurisdiction, failing to notify Plaintiff as to the purpose of hearing, failing to afford Plaintiff opportunity to prepare, to collect evidence, subpoena witnesses and get Discovery of evidence.

E. Relating to Fraud and false instruments: Defendant Grier filed a false instrument in the 'Dissolution of Marriage' pleading, asserting a 'marriage', asserting that it had been valid since 1984, failing to disclose the reasons for the three Permanent Restraining Orders

G. Lying to a Government Official: Defendant Grier lied to Magistrate Chapman about giving Plaintiff notice until she was forced to admit her failure in Court, on the Record.

H. Witness tampering: Defendant Miller's fraud upon Plaintiff, in collusion with the Colorado State Attorney General's Office was to intimidate and deter Plaintiff from testimony in State or Federal Court, and to deter Plaintiff from Petitioning the government for redress of grievance.

I. Extortion: Defendant Grier uses ‘attorney fees’ improperly granted by Defendant Chapman, sans notice, opportunity to present evidence or an explanation of their award.

J. Mail and Wire Fraud: Defendant Grier and Defendant Miller colluded in fraud by both phone and postal service.

K. Prohibiting transmission in interstate commerce of any communication containing any threat to kidnap any person or any threat to injure the person of another: Defendant Grier threatened Plaintiff with arrest, charges and incarceration on unknown charges.

L. Intimidating a witness or victim: Defendant Miller has been collusive with the Colorado State Attorney General’s Office to intimidate Plaintiff to refrain from testimony in Case 00CR3371

M. Retaliation against a witness or victim: Defendant Miller and the Colorado State Attorney General’s Office have colluded to cover up the Retaliatory Prosecution of Plaintiff in Jefferson County Case 00CR3372

N. Aggravated Criminal Extortion: Defendant Grier threatened arrest and confinement ostensibly for Plaintiff being accused of civil rights activism and appearing pro se

O. Offering a false instrument for recording: Defendant Grier’s filing of the action for Dissolution of Marriage is a false instrument, containing material misinformation for fraud.

P. Criminal extortion: Defendants, each of them and all of them, have extorted Plaintiff to refrain from exercising his Constitutional Rights to Free Speech and political commentary on Racial Equality. They have sought to intimidate Plaintiff from appearing pro se, even by necessity as Respondent.

#### IV. LEGAL ARGUMENT

Plaintiff’s harmless error in citing ‘R.C. 1979’, rather than ‘R.S. 1979’ is a typographical error cause by Plaintiff’s unfamiliarity with citing to the standards of a Legal Professional, and the paucity of Plaintiff’s research access and training in Legal Art.

Rev. Stat. § 1979, 42 U. S. C. § 1983 construction of RS § 1979, 42 U.S.C. § 1983, which reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any [365 U.S. 169] citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Monroe v. Pape, 365 U.S. 167 (1961)

(a) The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" do not exclude acts of an official or policeman who can show no authority under state law, custom or usage to do what he did, or even who violated the state constitution and laws. Pp. 172-187. [365 U.S. 168]

(b) One of the purposes of this legislation was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies. Pp. 174-180.

Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken "under color of" state law within the meaning of § 1979. United States v. Classic, 313 U.S. 299; Screws v. United States, 325 U.S. 91. Pp. 183-187.

Since § 1979 does not contain the word "willfully," as does 18 U.S.C. § 242, and § 1979 imposes civil liability, rather than criminal sanctions, actions under § 1979 can dispense with the requirement of showing a "specific intent to deprive a person of a federal right."

U.S. Code as of: 01/22/02

#### Section 1988. Proceedings in vindication of civil rights

##### (a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

## A. STANDARDS FOR A MOTION TO DISMISS

It can be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would itself be

violating of procedural due process as it would deprive a pro se litigant of equal protection of the law vis a vis a party who is represented by counsel.

Even so, a pro se plaintiff who fails to allege sufficient facts is to be given a reasonable opportunity to amend his complaint if justice so requires. See *Roman-Nose v. New Mexico Dept. of Human Services*, 967 F.2d 435, 438 (10th Cir. 1992) (citing Fed. R. Civ. P. 15(a), "leave [to amend pleading] shall be freely given when justice so requires). We review a district court's denial of a motion to amend for abuse of discretion. *Ketchum v. Cruz*, 961 F.2d 916, 920 (10th Cir. 1992).

Coverage of §1983 must be broadly construed. [Dennis v. Higgins, U.S.Neb.1991, 111 S.Ct. 865, 498 U.S. 439, 112 L.Ed.2d 969.](#)

This section should be interpreted with sufficient liberality to fulfill its purpose of providing federal remedy in federal court in protection of federal right. [Birnbaum v. Trussell, C.A.2 \(N.Y.\) 1966, 371 F.2d 672.](#) See, also, [Schorle v. City of Greenhills, D.C.Ohio 1981, 524 F.Supp. 821;](#) [Courtney v. School Dist. No. 1, Lincoln County, Wyoming, D.C.Wyo.1974, 371 F.Supp. 401;](#) [Nanez v. Ritger, E.D.Wis.1969, 304 F.Supp. 354.](#)

This Court must construe all reasonable inferences in Plaintiffs favor. See *Dill v. City of Edmond*, 155 F.3d 1193, 1201 (10th Cir. 1998).

"Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient" ... "which we hold to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519 (1972)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

We conclude, therefore, that, if a complaint is filed within the time required by any controlling statute or rule and contains substantive allegations sufficient to invoke the court's jurisdiction on some basis, the fact that the pleader mistakenly relies upon an inapplicable statute or rule is not fatal to his cause. If the court would otherwise have authority to adjudicate the claim, it is not deprived of its jurisdiction simply because the plaintiff designates an inapplicable statute or rule. See *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961) (fact that complaint alleged that plaintiff was proceeding under a particular statute not controlling). See also *People v. District Court*, 200 Colo. 65, 612 P.2d 87 (1980).

"... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws." *Elmore v. McCammon* (1986) 640 F. Supp. 905

"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game

of skill in which one misstep by counsel 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. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957)

This means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal theories or unfamiliarity with pleading requirements. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Privileges are to be narrowly, not expansively, construed, especially in federal civil rights actions, where assertion of privilege must overcome the fundamental importance of a law meant to insure each citizen from unconstitutional state action. [Mason v. Stock](#), D.Kan.1994, 869 F.Supp. 828.

## B. PLAINTIFF'S FEDERAL LAW CLAIMS

1. Plaintiff Denies: Plaintiff's Claims for Violation of his Alleged Constitutional Rights State clearly and succinctly the Claims Upon Which Relief Can Be Granted.
2. Defendant Grier is a State Actor under three theories
  - a. Defendant Grier conspired with Defendant Miller, a State Actor.
  - b. Defendant Grier conspired and colluded with Defendant Chapman, a State Actor.
  - c. Defendant Grier acted as a long time State Actor in the Courthouse enterprise in Adams County, calling for special security and threatening action by State Actors to deprive Plaintiff of his freedom, to make 'trumped up charges' (Defendant Miller's characterization), and to otherwise deprive Plaintiff of his Constitutional Rights to Free Speech, freedom to petition for redress of grievance, to be free of unreasonable seizure, to due process of the Law and its Equal Protection

Person may become state actor liable under §1983 by conspiring with state official, engaging in joint activity with state officials, or becoming so closely related to State that person's actions can be said to be those of State itself. [Price v. State of Hawaii](#), C.A.9 (Hawai'i) 1991, 939 F.2d 702, rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622.

Public defenders charged with conspiring with state officials in violation of 42 USCS § 1983 do not enjoy any immunity, qualified or absolute, from suit under § 1983. *Glover v Tower* (1983, CA9 Or) 700 F2d 556, affd, remanded (1984) 467 US 914, 81 L Ed 2d 758, 104 S Ct 2820.

Defendant Grier has colluded and conspired with, and reached a meeting of minds and a common purpose in denying Plaintiffs Constitutional rights, guarantees, privileges,

and immunities in an extended conspiracy between the Colorado State Attorney General's Office, Jefferson County Colorado, Defendant Chapman, the Alternate Defense Counsel, and the State Public Defender's Office through the Alternate Defense Counsel agent, Defendant Thomas C. Miller.

Person may become state actor liable under §1983 by conspiring with state official, engaging in joint activity with state officials, or becoming so closely related to State that person's actions can be said to be those of State itself. [Price v. State of Hawaii, C.A.9 \(Hawaii\) 1991, 939 F.2d 702](#), rehearing denied, certiorari denied 112 S.Ct. 1479, 503 U.S. 938, 117 L.Ed.2d 622, certiorari denied 112 S.Ct. 1480, 503 U.S. 938, 117 L.Ed.2d 622.

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. [Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326](#)

An allegation that a private person conspired with a state official satisfies the requirement that a defendant act under color of state authority. See [Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 \(1970\)](#) (holding that a conspiracy with a state official is sufficient to satisfy the state action requirement of S 1983); [United Steelworkers of America v. Phelps Dodge Corp. , 865 F.2d 1539, 1540 \(9th Cir. 1989\)](#) (holding that "[p]rivate parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights").

This section relating to civil actions for deprivation of rights applies only to conduct under color of state law whereas §1985 of this title giving right of action to recover damages for conspiracy to deprive persons of rights and privileges applies to purely private conspiracy. [Flores v. Yeska, E.D.Wis.1974, 372 F.Supp. 35](#).

Pursuant to supremacy clause, California litigation immunity statute did not apply to shield from liability in federal civil rights action attorneys accused of conspiring with judge to deprive party of constitutional rights, inasmuch as existence of immunities in action was matter of federal law. [Kimes v. Stone, C.A.9 \(Cal.\) 1996, 84 F.3d 1121](#).

B. Defendant Grier knew of the Adams County Courthouse Enterprise conspiracy to deny 1<sup>st</sup> Amendment right to petition to pro se litigants, common law litigants, and supposed 'Posse Comitatus' participants.

Grier's conspiracy with Chapman yielded her over a thousand dollars.

Grier's conspiracy with Chapman relieved her of the responsibility to answer the Abatement.

Grier's conspiracy with Chapman gave her credible threats as made to Defendant Miller and used on Plaintiff on 4 March, 2004

Defendant Miller had an ongoing Fraud, as a State Actor in collusion with the Colorado State Attorney General's Office in the person of Senior Deputy Attorney General Marleen M. Langfield, which became known to Plaintiff on or about the 13<sup>th</sup> of April, 2004.

Marleen Langfield acted as a Special Prosecutor Deputy District Attorney for Jefferson County Colorado, for which Office Janis Chapman worked and to the Jefferson County Courthouse Enterprise made up of legal professionals and staff.

Under Fed. R. Civ. P. 9(b), an allegation "on information and belief" may be sufficient, if accompanied by a statement on which the belief is founded, when the facts in question are peculiarly within the opposing party's knowledge and the complaint sets forth the factual basis for the plaintiff's belief. See *Scheidt v. Klein*, 956 F.2d 963 (10th Cir. 1992); see also *Thompson v. Beck*, 92 Colo. 441, 21 P.2d 712 (1933).

To state claim for malicious prosecution as constitutional tort under § 1983, plaintiff must demonstrate that: requirements of state law cause of action for malicious prosecution have been met; malicious prosecution was committed by state actor; and plaintiff was deprived of liberty within meaning of Fourth Amendment. [Treece v. Village of Naperville, N.D.Ill.1995, 903 F.Supp. 1251.](#)

"Personal involvement," such as will support liability under § 1983, means direct participation, failure to remedy alleged wrong after learning of it, creation of policy or custom under which unconstitutional practices occurred, or gross negligence in managing subordinates. [Black v. Coughlin, C.A.2 \(N.Y.\) 1996, 76 F.3d 72, on remand 15 F.Supp.2d 311.](#)

Defendants are not removed from purview of § 1983 action simply because they are professionals acting in accordance with professional discretion and judgment; there is no rule that professionals are subject to suit under § 1983 unless professional was exercising custodial or supervisory authority. [West v. Atkins, U.S.N.C.1988, 108 S.Ct. 2250, 487 U.S. 42, 101 L.Ed.2d 40.](#)

Joint conspiracy between federal and state officials may carry same consequences under this section as joint action by state officials and private persons. [Kletschka v. Driver, C.A.2 \(N.Y.\) 1969, 411 F.2d 436.](#)

Fact that a state official is immune from liability under this section does not mean that his actions are not sufficiently improper to fall within rule that acts of private parties acting jointly with state agents constitute state action for purposes of this section. [Gresham Park Community Organization v. Howell, C.A.5 \(Ga.\) 1981, 652 F.2d 1227.](#)

In determining whether a private individual, actively conspiring with an absolutely immune state official with the intent to purposely and knowingly deprive another of his rights secured under the Constitution and laws of the United States, is acting under color of law as required by this section, the critical inquiry is whether plaintiff has demonstrated the existence of a significant nexus or entanglement between the absolutely immune state official and the private party in relation to the steps taken by each to fulfill the objects of their conspiracy. [Norton v. Liddel, C.A.10 \(Okla.\) 1980, 620 F.2d 1375.](#)

To act under color of state law for purposes of this section does not require that the defendant be an officer of the state; it is enough that he is a willful participant in joint action with the state or its agents; private persons, jointly engaged with state officials in the challenged action, are acting under color of law for purposes of this section. [Dennis v. Sparks, U.S.Tex.1980, 101 S.Ct. 183, 449 U.S. 24, 66 L.Ed.2d 185.](#)

Although appointed counsel in state criminal prosecution does not act "under color of" state law in normal course of conducting defense, otherwise private person acts "under color of" state law when engaged in conspiracy with state officials to deprive another of federal rights. [Tower v. Glover, U.S.Or.1984, 104 S.Ct. 2820, 467 U.S. 914, 81 L.Ed.2d 758.](#)

Private parties who corruptly conspire with judge in conjunction with judge's performance of official judicial act are acting under color of state law for purposes of federal civil rights statute, even if judge himself is immune from civil liability. [Kimes v. Stone, C.A.9 \(Cal.\) 1996, 84 F.3d 1121.](#)

Allegations that a public defender has conspired with judges or other state officials to deprive a prisoner of federally protected rights may state a claim under § 1983. [Manis v. Sterling, C.A.8 \(Mo.\) 1988, 862 F.2d 679.](#)

Where defendant's lawyer, investigator, and prosecutor allegedly conspired to deprive criminal defendant of his civil rights, private conduct was converted to "state action" for purposes of bringing action under this section. [Black v. Bayer, C.A.3 \(Pa.\) 1982, 672 F.2d 309, certiorari denied 103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182.](#)

Allegations of conspiratorial conduct between a state court judge and plaintiffs in a nonjury state court libel action stated a procedural due process violation which could be addressed in a § 1983 action; civil rights plaintiffs alleged covert ex parte meetings and telephone conversations during course of trial in which plaintiffs and judge conspired to produce a verdict based on extra-judicial considerations. [Lipson v. Snyder, E.D.Pa.1988, 701 F.Supp. 541.](#)

Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction.

Hoffsomer v. Hayes, 92 Okla 32, 227 F. 417

Due process notice and hearing requirements met. The basic requirements of the due process clause of our constitution are that no person be deprived of valuable rights without adequate notice and opportunity for hearing, and the divorce statute does make provision for such notice and hearing before the termination of the marriage. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

"But there cannot be due process of law unless the party to be affected has his day in court. Yet, a careless construction and application of this constitutional provision might lead to the ex parte adjudication of private rights by means of a legislative or executive question, without giving the party interested a day or voice in court. In re District Attorneys, 12 Colo. 466

These code requirements are jurisdictional. Except upon proper notice, the court was without power to make the order; and, having been made ex parte, it is void. Mallan v. Higenbotham, 10 Colo. 264, 15 P. 352; Troth v. Crow, 1 Colo. App. 453.

The crimes of mail and wire fraud encompass two well-defined elements: (1) the defendant must first have devised a scheme or artifice to defraud, and (2) then used the mails or wires for the purpose of executing the scheme. *Pereira v. United States*, 347 U.S. 1, 8, 98 L. Ed. 435, 74 S. Ct. 358 (1954).

#### C. The Court Should Not Dismiss Plaintiff's State Law Claims.

We conclude, therefore, that, if a complaint is filed within the time required by any controlling statute or rule and contains substantive allegations sufficient to invoke the court's jurisdiction on some basis, the fact that the pleader mistakenly relies upon an inapplicable statute or rule is not fatal to his cause. If the court would otherwise have authority to adjudicate the claim, it is not deprived of its jurisdiction simply because the plaintiff designates an inapplicable statute or rule. See *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961) (fact that complaint alleged that plaintiff was proceeding under a particular statute not controlling). See also *People v. District Court*, 200 Colo. 65, 612 P.2d 87 (1980).

#### D. Plaintiffs' Complaint Must Be Dismissed Pursuant to FED. R. Civ. P. 8.

The issue in reviewing the sufficiency of plaintiffs' complaint is not whether they will prevail, but whether they are entitled to offer evidence to support their claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974). The Court may not dismiss a cause of action for failure to state a claim unless it appears beyond a doubt that plaintiffs can prove no set of facts in support of their theory of recovery that would entitle them to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence*, 927 F.2d 1111, 1115 (10th Cir. 1991). Although plaintiffs need not precisely state each element of their claims, they

must plead minimal factual allegations on those material elements that must be proved. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

... in a "motion to dismiss, the material allegations of the complaint are taken as admitted". From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see *Conley v. Gibson*, 355 U.S. 41 (1957)) *Walter Process Equipment v. Food Machinery*, 382 U.S. 172 (1965)

"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel 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. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957)

*Picking v. Pennsylvania Railway*, 151 F.2d. 240, Third Circuit Court of Appeals  
The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."

#### **FED. R. Civ. P. 8 (2004).**

This rule should be interpreted so that common sense and ends of justice are not circumvented. *Powers v. Troy Mills, Inc.*, 303 F. Supp. 1377, (D.C.N.H. 1969).  
The purpose of this rule is to protect defendants from undefined charges and to keep federal courts free of frivolous suits. *Howard v. Koch*, 575 F. Supp. 1299 (E.D.N.Y.1982).

Moreover, when a Plaintiff submits a complaint that does not comply with Rule 8, the **district judge can order the plaintiff** to submit an amended complaint complying with Rule 8. *Vakalis v. Shawmut Corp.*, 925 F.2d 34 35 (1St Cir. 1991).

#### **Plaintiff has not been allowed to file an Amended Complaint, nor been invited to submit one to comply with any infraction of Rule 8.**

Even so, a pro se plaintiff who fails to allege sufficient facts is to be given a reasonable opportunity to amend his complaint if justice so requires. See *Roman-Nose v. New Mexico Dept. of Human Services*, 967 F.2d 435, 438 (10th Cir. 1992) (citing Fed. R. Civ. P. 15(a), "leave [to amend pleading] shall be freely given when justice so requires). We review a district court's denial of a motion to amend for abuse of discretion. *Ketchum v. Cruz*, 961 F.2d 916, 920 (10th Cir. 1992).

"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel 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. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957)

"Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519 (1972)

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

Plaintiff has not yet been allowed, or ordered, to submit an Amended Complaint to more ably comply with the skills demanded of Attorneys in Rule 8

Due diligence by Counsel to the cases cited in the proposed Amended Complaint details the facts in support of Plaintiff's claims in the Original Complaint.

Rule 8 is a standard of art for Attorneys, and is the first Rule set aside as regards 'pro se' litigants. A charge of tedious prolixity from an Bar Admitted Attorney is a legitimate criticism, for a pro se litigant, not.

There are significant and material differences between the Original Complaint and the Amended Complaint as the facts are detailed more specifically. The Defendants' Fraud and deprivation of Plaintiffs Constitutional Guarantees

Conspiracy is not necessary element of § 1983 claim, but proof of civil conspiracy may broaden scope of liability under § 1983 to include individuals who are part of conspiracy and who do not act directly to deprive plaintiff of federal statutory or constitutional rights. [Pryor v. Cajda, N.D.Ill.1987, 662 F.Supp. 1114.](#)

Private party involved in conspiracy with state official may, even though not himself official of state, be liable under this section. [Adickes v. S. H. Kress & Co., U.S.N.Y.1970, 90 S.Ct. 1598, 398 U.S. 144, 26 L.Ed.2d 142.](#)

A § 1983 conspiracy claim may arise when a private actor conspires with a state actor to deprive a person of a constitutional right under color of state law. [Dixon v. City of Lawton, Okl., C.A.10 \(Okla.\) 1990, 898 F.2d 1443.](#)

Private individuals who conspire with state officials are acting "under color of state law," for purposes of this section whether or not the state official is actually joined in the suit arising from such conspiracy. [Slotnick v. Staviskey, C.A.1 \(Mass.\)](#)

[1977, 560 F.2d 31](#), certiorari denied [98 S.Ct. 1268, 434 U.S. 1077, 55 L.Ed.2d 783](#).

Where state officers conspire with private individuals to defeat or prejudice litigant's rights in state court, litigant is thereby denied equal protection of laws by persons acting under color of state law, and cause of action is created cognizable by federal courts under this section. [Dinwiddie v. Brown, C.A.5 \(Tex.\) 1956, 230 F.2d 465](#), certiorari denied [76 S.Ct. 1041, 351 U.S. 971, 100 L.Ed. 1490](#), rehearing denied [77 S.Ct. 29, 352 U.S. 861, 1 L.Ed.2d 72](#).

The decision to dismiss a pleading pursuant to Rule 8 rests within the sound discretion of the trial court. *Atkins v. Northwest Airlines, Inc.*, 967 F.2d 1197, 1203 (8<sup>th</sup> Cir. 1992); *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9<sup>th</sup> Cir. 1969).

The standard as applied to an attorney might be appropriate but Plaintiff is none such.

The issue in reviewing the sufficiency of plaintiffs' complaint is not whether they will prevail, but whether they are entitled to offer evidence to support their claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974).

Dismissal is a harsh remedy to be used cautiously so as to promote the liberal rules of pleading while protecting the interests of justice. *Cayman Exploration Corp. v. United Gas Pipe Line*, 873 F.2d 1357, 1359 (10<sup>th</sup> Cir. 1989).

Plaintiff asserts that he has had contact with Attorney Massaro on the Jefferson County Case 00CR3372, having consulted with him in privilege, received his recommendations to engage and retain Defendant Miller, and knows that Attorney Massaro is privy to the Fraud perpetrated by Defendant Miller in deceiving Plaintiff for two years and more.

Even slight diligence by counsel would have revealed that Plaintiff has had a relationship with Attorney Massaro, concerning the instant case 00CR3372 for over two years. Attorney Massaro has worked with Steve Gartin on DocsLaw projects to include the original Fraud in 00CR3371.

Plaintiff denies all allegations both specifically and generally and avers that Defendant Grier's answers fall short as she is a State Actor under multiple associations and through demonstrated conduct.

Plaintiff asserts that the Honorable Court has personal and subject matter jurisdiction. Plaintiff asserts that the Complaint is sufficient to proceed. Plaintiff asserts that an Amended Complaint has not yet been made. Plaintiff asserts that the Record, Discovery, Evidence and Testimony will support Plaintiff's contentions.

Plaintiff's Complaint is made in good faith, and for the purposes of significant justice and the resolution of the controversy at Bar.

Wherefore Charles H. Clements, Plaintiff in pro se prays the Honorable Court to Deny Defendant Katherine Grier's Motion to Dismiss.

Respectfully Submitted this 22 day of February, 2005

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CERTIFICATE OF SERVICE  
Civil Action No. 04-RB-2455 (BNB)

I, Charles H. Clements, undersigned hereby certify that a true and correct copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT KATHERINE GRIER'S MOTION TO DISMISS dated \_\_\_\_ \_\_\_\_, 2004, was served by (\*) delivery to or (\*\*) depositing the same in the United States mail, first class postage prepaid, or subject to service of process (\*\*\*), this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to the following:

CLERK OF THE FEDERAL DISTRICT COURT \*  
ALFRED A. ARRAJ UNITED STATES COURTHOUSE  
901 19<sup>TH</sup> STREET  
DENVER, COLORADO 80294-3589

THE HONORABLE JANIS E. CHAPMAN \*\*  
1100 JUDICIAL CENTER DRIVE  
BRIGHTON, COLORADO 80601

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

TRACI VAN PELT, ESQ \*\*  
MEGHAN E. POUND \*\*  
MCCONNELL, SIDERIUS, FLEISCHNER,  
HOUGHTALING & CRAIGMILE, LLC.  
DENVER CORPORATE CENTER, TOWER I  
4700 S. SYRACUSE ST., STE 200  
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Attorney's full name; Thomas Cecil Miller, J.D. Register Number 22652  
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Attorney's full name; Katherine Grier, J.D. Register Number 30948  
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Denver, CO 80211  
303-477-3980

Attorney's full name: Glen Roscoe Anstine II, Esq. Register Number 14384  
4704 Harlan Street Suite 320  
Denver, Colorado 80212

Attorney's full name: Marleen M. Langfield, Esquire, Registration Number 10355  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203

Instant Case:  
03 DR 1773- Adams County Div. B-1  
Janis E. Chapman, Magistrate

Date of occurrence 20 Jan 03 (as regards original retainer of services deriving from  
00CR3371-2-3 Jefferson county)

Date of awareness; 4 Mar 04 (conversation with Katherine Grier)

Date of retainer; 15 Aug 03 (as regards original agreement)

Expiration of Statute of Limitations; about mid-October 2003

In the Original Agreement:

Attorney Thomas Cecil Miller, Register Number 22652 was retained on 20 Jan 2003 to pursue a malicious prosecution claim against the Bonilla Family and Attorney Glen Roscoe Anstine II, #14384, deriving from 00CR3371-2-3 Jefferson County.

1. Attorney Miller failed to inform me that he had a conflict of interest as concerning Glen Roscoe Anstine II, as Attorney Anstine supervises Attorney Miller in a bankruptcy judgment, and presently.

2. Attorney Miller deliberately destroyed crucial files, evidence and information germane to my claim by leaving them on the sidewalk for 're-cycling'.

3. Attorney Miller deliberately exposed client's privileged information, work product and evidence to public view on the sidewalk.

3. Attorney Miller deliberately deceived me about 'needing to wait until Gartin's case resolves'. Attorney Miller stated that one of the conditions of Mr. Gartin's probation was that he would not file any lawsuits. Attorney Miller maintained that my filing of a civil rights action would adversely impact Mr. Gartin's probation and that Marlene Langfield would violate his probation as a retaliatory and vindictive response to my filing suit.

4. Attorney Miller deliberately misled me about the Statute of Limitations. Attorney Miller often reassured me that everything was well under control as he continued to accept my services as "payment forward" for his continuing work on my case.

5. Attorney Miller allowed the Statute of Limitations to expire without action. When Attorney Miller returned the case file to me, everything was un-opened and un-read.

6. Attorney Miller continued to mislead me for six months after expiration of the two year statute of limitations on 42 U.S.C. § 1983 actions.

7. On 04 March 2004, just prior to the resolution of Gartin's case, Attorney Miller abandoned me, saying that he was 'welshing', and 'reneging on our agreement'.

8. Attorney Miller stated that he had already spent the money and had no way to repay me for the retainer and offered to work on some other case to satisfy his obligation; a defamation complaint, theft of intellectual property complaint, or an employment dispute and malicious prosecution. Mr. Miller failed to proceed or perform on any of them.

9. Attorney Miller continued to accept services as payment forward, solicit and receive small amounts of money 'for gas', solicited money to file a motion to seal (\$136) and then failed to file, or even write, the motion.

10. Attorney Miller failed to read any of the file; study any of the material or familiarize himself with the circumstances of the case for which I retained him on 20 January 2003.

11. Attorney Miller failed to supervise Attorney Caroline Stapleton or to keep her informed, or to delegate tasks, and summarily dismissed her without consulting me.

12. Attorney Miller failed to delegate reading to his paralegal, Pamela Hadas, for a preparation of her usual synopsis that Attorney Miller commonly used in preference to personal diligence. Attorney Miller has been very candid about his refusal to read case files or applicable law and statutes. He considers his refusal to read and slight diligence as inconsequential.

13. Attorney Miller failed to disclose his adverse interests to me as regards his improper relationship with the Colorado State Attorney General's Office agent, Marleen M.

Langfield, Esquire, Registration Number 10355. I have recently discovered that Attorney Miller has been vying for a position with the Colorado State Attorney General's Office.

14. Attorney Miller deceived me on behalf of Marleen Langfield, Glenn Anstine, and the associated prospective Respondents to my claim, and knowingly and intentionally represented their interests, to my damage, from the inception of our agreement.

In the Divorce Case:

1. Attorney Thomas Cecil Miller, Register Number 22652, has repeated that pattern of professional neglect and sloth as regards the instant case: 03 DR 1773 Adams County as well as regards the case he was retained to prosecute regarding civil rights violations in cases 00CR3371, 00CR3372 & 00CR3373 in Jefferson County.

2. Attorney Miller has deliberately and intentionally failed or neglected to question in Court, or to report to the Attorney Regulatory Counsel, the ex parte decisions, admitted on the Court's record, by Attorney Katherine Grier # 30948 and of her deliberate failure to notify Respondent of pending hearings in order to gain an advantage over an unrepresented party.

3. Attorney Miller failed or neglected to question or report the ex parte dropping of Permanent Restraining Orders against Victoria Leslie Lawler, failing to notify Respondent, and failing to address the Court to serious issues of Ms. Lawler's penchant for violence against Relator and Relator's children in Relator's absence.

4. Attorney Miller deliberately failed or neglected to address or report ex parte change of custody order depriving Relator's son, Mason, of a safe haven and sufficient parenting time from his primary caregiver, this Relator.

5. Attorney Miller has deliberately failed or neglected to address Victoria Leslie Lawler's heartless abandonment of, dire emotional abuse towards, and physical violence against our eldest son Hunter.

6. Attorney Miller has deliberately failed or neglected to address Victoria Leslie Lawler's domestic violence police record or her breaking of the Permanent Restraining Orders on some two dozen occasions noted to the Court of original jurisdiction to the Permanent Restraining Orders.

7. Attorney Miller deliberately failed or neglected to report to the Court or the Supreme Court Attorney Regulatory Commission Attorney Grier's failure to respond to Relator's common law response to Attorney Grier's common law complaint, and her ex parte applications to the Court without notice to Relator, as well as her attempt to profit by her default by charging fees to Relator for simply reading his common law response to her common law "divorce" action.

8. Attorney Miller deliberately failed or neglected to report to the Attorney Regulatory Counsel or to the Court, Attorney Grier's attempt during the phone call of 4 March 20March 04 to use threats of criminal prosecution and imprisonment, and citing a known bias by the entire Adams County Judiciary, and in the person of the Magistrate, to gain improper advantage in the civil matter and extort compliance to Attorney Grier's demands;

9. Attorney Miller failed to respond in a timely manner for Relator's Petition for Writ of Habeas Corpus as submitted to the Colorado Supreme Court, allowing valuable time to expire without any proactive response from Attorney Miller.

10. Attorney Miller failed to address, in the existing Habeas Corpus original action in the court of competent jurisdiction, the denial of Relator's First Amendment right to Petition the Government for Redress of Grievance; Fifth Amendment Right to due process; Sixth Amendment right to be aware of these threatened criminal charges, any evidence, any witnesses, as well as his effective counsel; Seventh Amendment right to common law process in a common law venue; Fourteenth Amendment right to due process of the law and it's equal protection.

11. Attorney Miller deliberately failed to file a refusal of the expedited divorce process and a Motion for Change of Venue due to judicial bias and prejudice and a motion to vacate voidable judgments made by the Adams County Judiciary in Attorney Grier's favor, unopposed by Relator, as no notice was provided as required by law.

Attorney Miller has intentionally failed or neglect to order transcripts, or do even the slightest diligence on Relator's behalf and has abandoned Relator and refused to pursue legal matters entrusted to Attorney Miller.

Relator believes and therefore alleges that Attorney Miller has been consorting and conspiring with the opposing attorneys to the detriment and damage of this Relator in all of the cases noted herein.

Truly yours,

A handwritten signature in black ink, appearing to read "Charles H. Clements", is written over a horizontal line. Below the line, there is a small vertical tick mark.

Tuesday, June 01, 2004  
Charles H. Clements

**To the Attorney Regulation Committee: Regulation Counsel Office**  
**Request for Investigation, Verified Notice of Misconduct, and**  
**Petition to Suspend the License to Practice of**  
**Katherine Grier for Cause**

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Complainant:

**Charles Harry Clements**  
1741 Dallas Street  
Aurora, Adams County, Colorado

against

Respondent:

**Katherine Grier, J.D.** Register Number 30948  
2701 Alcott St. #482  
Denver, CO 80211

**Rule 241.12. Complaint** (2) Pursuant to C.R.C.P. 241.11 (a)(2), (a)(3), or (a)(4) by any complainant in the complainant's own name. Complainant Charles Harry Clements is an adult; of sound mind and tells the truth, has firsthand knowledge and respectfully declares as follows;

**Pursuant to C.R.C.P. Rule 241.9 (1)**, Charles Harry Clements requests the Attorney Regulatory Counsel to initiate an investigation of the above listed party, Katherine Grier, a lawyer, for unethical behavior by act or omission and professional misconduct.

**Pursuant to C.R.C.P. Rule 241.8** "...or because *he has engaged in conduct which poses an immediate threat to the effective administration of justice*, the Supreme Court may order the lawyer's license to practice law immediately suspended."

Charles Harry Clements recommends and requests the immediate suspension of the License to Practice Law of the above listed party, Katherine Grier, as her continued practice of law constitutes an immediate threat to the effective administration of justice.

**Rule 241.9. Request for Investigation (b) (1)** The above listed attorney Katherine Grier is subject to the jurisdiction of the State Supreme Court of Colorado; the lawyer, Katherine Grier, is before the Colorado Bar

**Rule 241.9. Request for Investigation (b) (2)** The allegations, when proved, will constitute grounds for severe disciplinary action against Katherine Grier.

**Rule 241.12. Complaint (b) Service of Complaint.** The Disciplinary Counsel shall promptly serve the respondent, Katherine Grier, J.D., as provided in C.R.C.P. 241.25 (b), a citation and a copy of the complaint filed against the respondent.

**Rule 241.6. Grounds for Discipline**

Misconduct by a lawyer, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

- (1) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;
- (2) Any act or omission which violates accepted rules or standards of legal ethics;
- (3) Any act or omission which violates the highest standards of honesty, justice, or morality;

(6) Any act or omission which violates these Rules or which violates an order of discipline or disability;

**Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the act of another;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (g) engage in conduct which violates accepted standards of legal ethics;

The enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

**Exhibits:**

- 1. All documentation is presently being held by Attorney Thomas Cecil Miller, #22652 and access is denied to Complainant.
- 2. Complainant offers testimony by:  
**Thomas Cecil Miller**, J.D., #22652; as to his witness of Court proceedings, documentation, and the conversations of 4 March, 2004  
**Steve Douglas Gartin**, Docslaw Research Assistant; as to the phone conversation, subsequent discussion in the vehicle, subsequent discussion with Complainant at Complainant's home.  
**Charles Harry Clements**, Complainant
- 3. Time stamped copies of e-mail from the span of time to present

**Complainant Charles Harry Clements states the following as fact;**

- 1. Complainant obtained **Permanent Restraining Order against Attorney Katherine Grier's Client, Victoria Leslie Lawler**, on behalf of Complainant and Complainant's progeny; Charles Hunter Clements and Mason William Clements, in Adams County Colorado. Complainant presented witnesses and testimony sufficient for the Judge to issue a Permanent Restraining Order. Complainant makes proffer of proof by Court's record in possession of Attorney Thomas C. Miller.
- 2. Complainant obtained a **Custody Order** for both boys incident to the **Permanent Restraining Order** in Adams County Colorado
- 3. Complainant noted some three dozen violations of the Permanent Restraining Order in two Complaints to the Court and by Police Report.
- 4. Katherine Grier, J.D., had one or more **ex parte meetings with one or more Adams County Judges** concerning both the Permanent Restraining Order and the Custody Order, and the Complaints of Contempt of the Court's Order. Complainant makes proffer of proof by Court record of about 13 April, 2003 in possession of Attorney Thomas C. Miller, the recorded admissions by Respondent Grier, and the Orders issued by the Court.

5. Katherine Grier, J.D., failed and **neglected to notify** Complainant of the pending meetings to his detriment and damage as well as to the detriment and damage of the two minor-aged boys.

6. Katherine Grier has admitted on the Court's record of about 13 April, 2004, her **failure and neglect to notify Complainant** on each and every occasion of such pending meetings. Complainant makes a proffer of proof by the court transcript in possession of Thomas C. Miller, and by eye-witnesses Thomas C. Miller and Complainant

7. Attorney Thomas C. Miller is Complainant's counsel of record.

8. Katherine Grier, J.D., made a **phone call** to Complainant's attorney, Thomas C. Miller on Saturday, 4 March, 2004, which **phone call was witnessed** by a third party.

Complainant makes a proffer of proof by the above listed witnesses and by copy of electronic mail as time stamped and dated.

9. Katherine Grier's phone call to Attorney Miller related the active prejudice and bias by the Adams County Judiciary towards Complainant; **threatened criminal charging** by the judge and immediate incarceration of Complainant for any failure to appear without a lawyer, or to file pro se submissions to the Court, or to file pro se submissions to the Supreme Court; and Attorney Grier's willingness to exploit that bias to extort significant amounts of money and compliance from Complainant. Proffer of proof by testimony from Thomas C. Miller, Steve D. Gartin and Complainant; and time stamped electronic transfer documentation detailing the procession of events.

10. Attorney Miller acted collusively upon Attorney Grier's information, actively soliciting Complainant's decisions as based on **Attorney Grier's threats** and the **bias** of the Adams County judiciary, as identified from **Chief Judge Harlan Bockman** on to the presiding Magistrates.

#### **Allegations of Misconduct:**

Complainant, Charles Harry Clements, relies on the above noted facts and alleges the following is true and constitutes cause for the Attorney Regulatory Counsel to sanction Respondent Katherine Grier;

1. Katherine Grier intentionally failed and neglected to notify Complainant about any pending meetings to alter or adjust the Court's Permanent Restraining Order in order to gain an advantage over an unrepresented party as well as to **actively conceal Ms. Lawler's penchant for violence and emotional and physical abuse of her family**, and her continuing heedless contempt for the Court's Order, so as to materially mislead the Court, and is a violation of Rule 8.4, Rule 3.5 (a) (b)

2. Katherine Grier intentionally failed and neglected to notify Complainant about any pending meeting to change the Court's Custody Order in order to **gain an improper advantage over an unrepresented party**, and to actively and deceptively mislead the Court about material evidence, and is a violation of Rule 8.4 (c), (d) (g)

3. Katherine Grier intentionally failed and neglected to notify Complainant about any pending meeting for her Client, **Victoria Leslie Lawler, to answer some three dozen charged incidents of contempt of the court's Restraining Order, in order to gain an improper advantage over an unrepresented party**, and to actively and **deceptively mislead the Court** about material evidence, and is a violation of Rule 8.4 (c), (d) (g)

4. Katherine Grier's phone conversation to Attorney Thomas C. Miller, of 4 March, 2004, was to **threaten unfounded criminal prosecution** unrelated to the instant question, as well as instant, malicious and unwarranted incarceration, *in order to gain improper*

*advantage* in a civil action and to **extort Complainant to accede to her demands for money**, goods and acquiescence, and is a violation of Rule 8.4. Misconduct. (a through (h) inclusive, Rule 4.5 (a)

5. Katherine Grier's phone conversation of 4 March, 2004, was an assertion of her improper influence on, as well as judicial bias by, one or more **judicial officers of the County of Adams** in violation of Rule 8.4 (e) and (f), Rule 8.2 (a)

6. The failure to report the judicial officer or officers is a violation of Rule 8.3. (b), Rule 8.4 (e) and (f)

7. The **failure to report** herself, Katherine Grier, for improprieties admitted to in Court, is a violation of Rule 8.3 (a)

From Commentary

*"Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense."*

8. The failure of Katherine Grier to report Thomas C. Miller for his **collusion** with her, adverse his client's interests, is a violation of Rule 8.3

9. Katherine Grier has **failed or neglected to keep her Client, Victoria Leslie Lawler, apprised of current and material information** necessary for her considered and deliberate decisions as regards our progeny, their welfare and care in violation of Rule 1.3 (a) (b) as including information about her conversation with Thomas Miller, and the real reasons for his request to withdraw, sanctions against visiting with Marilyn Murray, and others.

The above enumerated Rules are simply suggestions for investigation, and other and further rules may find appropriate application to the circumstances.

Complainant includes the forgoing in its entirety and incorporates it as if fully reproduced herein and declares;

Katherine Grier has failed to conduct herself, by both commission and omission, to even the minimal standards of professional conduct and ethical rigor, so as to demonstrate an unfitness to practice, unsupervised, amongst ethical practitioners; and to impede, mislead, injure and defame the legal process and administration of justice by malfeasance as an honored representative of the Legal Profession.

Her continued practice would tend to bring opprobrium upon the Legal Profession, to hold our system of jurisprudence to ridicule, and to add to the widespread and unfortunate public perception of the integrity of the system and its Senior administrators.

**This Request for Investigation, Verified Notice of Misconduct, and Petition to Suspend the License to Practice of Katherine Grier for Cause** is based on the very best of my firm belief and attested by the record of the Court, eye-witness, and the practical applications of the Orders of the Court.

**I declare it** to be truthful and without any intent to deceive or mislead.

Complainant: **Charles Harry Clements**

**Sunday, June 27, 2004**

From: "Chas Clements" <chasclementsFLAME@comcast.net>  
To: "Judith Phillips" <juphillips@comcast.net>; "steve gartin"  
<stevegartin@yahoo.com>; "Frank Pugliese" <f.pugliese@comcast.net>  
Subject: Katherine Grier Conversation  
Date: Friday, March 05, 2004 1:06 PM

Hi Doc:

5 MAR 04

I am very disturbed after our talk yesterday; agitated and sleepless over the idea that the court considers me to be a menace and plans to jail me. You know I'm terrified of jail, and of having my life and health threatened by another false and unjust arrest. I'm having heart palpitations and panting for breath- anxiety stuff; sitting in my front room, waiting to be hauled away.

What statutory or criminal acts did Attorney Grier accuse me of- or anyone else for that matter? I need to prepare a defense for that, particularly seeing as I have already filed legal processes, if that's what they're accusing me of. Is the Supreme Court mad at me for filing a Writ of Habeus Corpus- even though denied, I'd be prepared to defend that one at any time. It wasn't lightly done, Doc, and you know what it cost me to even do it.

How much jail time am I in hazard of?

Is there some sort of Warrant out?

Who is the complainant?

Would you please make an official note of your conversation with Attorney Grier, detailing the nuance and implications of her tone and inflexion. Your account of the conspiracy against me by the various judges is truly frightening- all the deputies in the court to guard against something undefined- quotes from Judge Chapman about 'knowing where this comes from' as regards my responses to an unsolicited overture about a contract of which I had no knowledge.

I'm considering filing for sanctions against Grier based on her ex parte applications to David Juarez (the restraining order judge), and to Magistrate Chapman (the custody order on Mason), and her lying about informing me- in court, on the record. That's fraudulent as hell- particularly if she found an easy ear from administrators that she's cozened with tales of Patriotism. I have never had any contact with 'Patriots' more extensive than using the same water fountain or something.

This attempt to associate me with people who menace a judge is unconscionable. I know no such people; I do no such thing. I have appeared in front of Harlan Bockman with my son Hunter- last year, right after Vicky and I split, so trying to link me with someone who threatened his wife is utterly improper and unethical and I deny any such thing unequivocally. I hold no view that even remotely includes such a thing.

We made a common law reply to charges (by Victoria against Hunter), and as soon as it was possible to retain counsel, Hunter did. We immediately accommodated the convenience of the Court in all things, including agreeing to an expedited judgment.

We/I have always proceeded with counsel when able, and the only legal process I've filed has been in response to material submitted to me, and for purposes of clarification and definition of the legal process under which I've encountered. Nothing has been frivolous, vexatious, harassing, malicious, or ill-founded.

I'm trying to make arrangements for bond, and to cover any needs of my children if I'm imprisoned, but I'd appreciate a little more detail about what it is they're trying to charge me with.

Thanks Doc

From: "Chas Clements" <chasclementsSPOOF@comcast.net>

To: "Katherine Grier" <katherinegrier@msn.com>

Subject: Conversation with Thomas Miller

Date: Friday, July 16, 2004 9:34 PM

Ms. Grier:

In the interests of forthright disclosure, and considering that your account, today in Court, of your conversation with Miller differs from his, the witness', and the documented account of the event, perhaps you'd like to set the record straight as to the content and context of the conversation.

I'd also invite you to contextualize the colloquy in the previous Status Conference that you had with Magistrate Chapman in which you characterized my filings and she replied; 'Yes; we know where these come from.', seeming to have a presupposition as regards my submissions.

Please feel free to copy in Attorney Regulatory Counsels Sapakoff and Samuelson if choose. I certainly wouldn't want them left out of any information loop as concerns these questions.

Chas Clements

From: "Steve Gartin" <gartin@intergate.com>  
To: "Chas Clements" <chascléments@comcast.net>  
Subject: Doc Miller  
Date: Monday, March 15, 2004 8:17 PM

Dear Mr. Pugliese,

On the Third of March I attended a LexisNexis training session with Doc Miller. Upon leaving the training session, sometime around 10:30 AM, Doc received a call on his cell phone from someone he identified as "Kathy." During the course of this conversation Doc remarked, "well, don't worry, there will be no more of those filings." He also remarked, "well, we are the professionals here and we will diffuse the anger" which by the context of several other things said made me believe that they were speaking of Victoria Lawler's denigrating comments to Doc during the last court appearance in Adams County. Doc explained to me when he hung up that he had made notice of Victoria's lewd comment to the judge and Ms. Grier as they were all walking out of court. Doc then commented on Victoria's terrible anger and how it was complicating "Kathy's" case. Doc then suggested that we go to Chas' house to tell him the news. We continued eastward to 1741 Dallas Street in Aurora, where Chas lives.

When we arrived Doc began relating the substance of the conversation he had with "Kathy" to Chas and I. Doc's story confirmed my suspicion that he and "Kathy" were discussing Victoria's inappropriate behavior. He then stated that "Kathy" had also told him that the judge's wife had been victim to some sort of "patriot tactics" and that everytime Chas showed up at the Adams County Courthouse, security was alerted and standing by with orders to kill in case of any conflict. He then stated that the judge would "throw Chas in jail" if he continued to file motions in the Supreme Court.

Chas asked what charges they were capable of filing. Doc replied that as long as he was Chas' lawyer and Chas did not file any more motions, "they" would not throw him in jail.

Chas explained that Victoria Lawler's attorney, Ms. Katherine Grier, had filed an IN RE: divorce action presuming a common law marriage that did not exist and that he simply questioned the validity of the purported marriage that both he and Victoria Lawler had always agreed never existed. Doc explained that it did not matter and that "they" would throw Chas in jail if he did not hire Doc as his lawyer.

Chas then explained that he did not pay Doc the \$1500 retainer a year ago to go after his companion of over a decade, but to seek redress of grievance in the form of damages against the people who unlawfully charged and incarcerated Chas on the dismissed Jefferson County Case 00-CR-3372, wherein

Chas felt he was due damages for false imprisonment, unlawful arrest and other civil rights torts.

Doc then replied that he was "welching" on the deal and since he did not have the money to return to Chas, that he would handle the divorce action, and that if Chas refused to allow him to work off the debt that Chas would go to jail.

Chas asked why Doc would think that he would pay Doc to consume the substance of his family, no matter how estranged for the moment.

Doc replied that it was Chas' retirement plan. Chas explained to Doc that proceeding against tortfeasors who had continually damaged Chas' business and reputation and had conspired to throw him in jail would provide the means for Chas to insure his own retirement without adversely affecting his family.

Doc again retorted that Chas was going to jail if he did not hire Doc to prosecute his divorce and that Doc was not going forward on any of the suits from which he and Chas had originally negotiated as the foundation for the advance of \$1500, the custom leather chair, the leather jacket, and repair of several of Doc's leather accoutrements.

Doc said that he had lied to Chas and that he was broke and could not repay the \$1500, nor could he provide services for the services Chas had rendered in advance of Doc's anticipated prosecution of several tort actions available for Doc to choose from.

Chas then asked Doc why he had spent money that was supposed to be held in trust until the cases were commenced. Doc explained that Judith Phillips had spent the money on her credit cards and Doc simply did not have the money to repay and firmly refused to commence any case for which Chas had provided the retainer. He stated that he would do the divorce and nothing else.

Chas then asked why Doc asked to take the divorce case in return for Chas' professional leathersmith services and now wanted to convert that agreement into payment for the \$1500 that Chas had provided as the retainer for other tort cases?

Doc replied that he would do the divorce, but none of the other cases and that he was not going to give the money back either.

Chas appeared confused and incredulous and suggested that Doc and I leave and give him some time to assimilate the new information Doc had just given him about "welching" on the deal and Chas in danger of going to jail.

Doc and I departed.

I attempted to find some other case that Doc could work off the \$1500 retainer on, but he was adamantly opposed to commencing any tort action what-so-ever. He was focused upon "going after" Victoria Lawler and kept repeating to me that he was not going to do anything else. He repeated many times that Chas was going to jail if he did not do what Doc demanded. When I asked Doc what they planned to charge Chas with, he told me "patriot activity" and whatever else they wanted to.

The foregoing is true, correct and complete to the best of my recollection.

Steve Gartin 720-404-1812  
2363 1/2 South Decatur Street  
Denver, Colorado 80219

Dear Doc: ( 30MARO4)

Just to note our phone discussion of today, and in the spirit of covering our collective asses <g>

As regards the Child Custody Evaluation; from your first mention of it, I have maintained that I do not have the money for such a thing. I have told you at each juncture that I don't have the money for it, and you have gone so far as to say that you would lend the money for the CCE, to which offer I demurred, saying I didn't contemplate either having the money to repay, nor have I thought that Victoria would have it.

You were asked to contest the marriage ruling- and demurred to do it. I had to accept that, as I had accepted your generous offer to represent me as a gift of friendship, a gift in the adat of hormat and would not strain that hospitable gift.

I told you that I had spoken to Victoria insofar as her wanting a quick settlement, but I told you it was a rumor that she had met someone new. A rumor she told my son Hunter at the St. Patrick's Day Parade, in his conversation with Victoria. He also told me of the reputed cancer, and the driving while drunk. I do not have direct knowledge of that, and told you so at the time, repeatedly. She may well have been just hurting his feelings deliberately.

Your initial offer to me included a position relative my marriage with Victoria that would provide for me as I grow older. I have acquiesced to each diminution of settlement you have advised, and watched as you have restated our relationship and the options open to me, as well as the content of the counsel given me.

My concern with a drunk; a terminal cancer patient, inflicting his slow torturous death on my son, Mason, is a very real concern. If they are to marry, let them say so, and give me some assurances of minimizing his exposure to the slow death and personal disorders of this person. I have no animus towards either of them, and wish them well in all things.

I have made no demands.

You have identified options to me, and I have expressed my preferences, but I've made no demands at all. My preferences for parenting time were expressed, but no demands were made. No offers of maintenance have been made, in the alternative to your stated goals of the past, so my meager efforts to try to support myself are the least options I have.

Your implication that I would try a 'fraud upon the court' are unfounded, as I have done nothing without your counsel and leadership in the intricacies of the case.

Your threats about 'contempt of court' and them jailing me for being somehow associated with a Patriot movement, are also very troubling. The conversation with Katherine Grier about a conspiracy in the courthouse, and a prejudgment of my case, remain unreported and unaddressed. You had opined that a change in venue was appropriate, but that remains undone also. There must be some resolution to any judicial misunderstanding of me, as per our extended conversation.

You offered me, gratis as a gift and an honor to our friendship, that you would work this for a year. You looked forward to righting the wrongs done me, and thrust yourself into the case unasked. Since that moment, you've attempted to re-characterize the relationship into something it was not agreed upon to be. I honor your gift in great gratitude, but I don't want this to rise up and bite me in the ass either.

I've made no effort to 'stay in touch with Victoria', and in fact have a restraining order against her. You'll remember that her counsel got ex parte hearings, another point unaddressed by you.

Your recommendations are generally well received, although you should particularly reparse the #3 to reflect that the money is to be paid to me, and not to Victoria as it might now be construed with an unknowing scan for meaning.

When you entered my case, you commented on the quality and cogency of the filings I'd made, and vowed to protect my 1<sup>st</sup> Amendment Right to petition for redress of grievance. I've never responded to anything except with the best response I could muster without resorting to counsel that I can't pay for. Your outrage at Katherine Griers report of the judicial conspiracy seemed genuine at the time, I am troubled that you now speak of them as 'absurd' and speak of yourself as the only thing saving me from jail. I've done nothing by deed or intent that would put me in any class like that, and a judicial bias is unfair, and utterly groundless.

I trust in our conversation of today to reflect that I am amenable to settlement, insofar as #3 is redacted to reflect the proper recipient of the settlement.

Thanks for your continuing assistance in this matter and preserving my trust in our relationship. It's important to me, Doc. I want you to keep your license, avoid embarrassment and censure, and will work with you any way I can to help you to sustain your good efforts on behalf of your clients. Please depend on me to lend more than a hand.

Chas Clements

Note the 'spoof' in my reply address, and remove it.

