

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA**

CIVIL CASE NO. 6:04-CV-30 (WLS)

DENNY C. CORMIER

Plaintiff, Pro Se (Defendant in State action)

vs.

NANCY B. CORMIER

Defendant (Plaintiff in State action)

_____ /

**PLAINTIFF'S MOTION TO DENY DEFENDANT'S MOTION TO
REMAND**

Comes now the Plaintiff, pro se, to request this Court Deny the Defendant's Motion to Remand. In support he offers:

1. This action was removed to this Federal Court on June 22, 2004.
2. Defendant's Motion to Remand was filed with this Federal Court on September 14, 2004.
3. Defendant's Motion to Remand is based on 28 U.S.C. 1446 (b).
4. However, 28 U.S.C. 1447(c) states in part:

"A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)..."
5. Defendant's Motion to Remand is untimely under 28 U.S.C. 1447 (c) and must be denied.

6. Defendant further alleges this court lacks subject matter jurisdiction of this action.
7. Plaintiff's Notice of Removal states a 42 U.S.C. 1983 claim.
8. Plaintiff's Notice of Removal contains a claim under a Federal statute, i.e. a Federal question under 28 U.S.C. 1331.
9. Plaintiff's 42 U.S.C. 1983 claim can be made in Federal Court and is not mandated to be made in state court.
10. Plaintiff need not exhaust his state court remedies before bringing his 42 U.S.C. 1983 claim in Federal Court.
11. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. 1331.

Prayer for Relief

WHEREFORE, for the above reasons, the Plaintiff requests this Court

- a. Deny Defendant's Motion to Remand, and
- b. Find the Plaintiff's Notice of Removal makes a 42 U.S.C. 1983 Federal question claim for which Congress has authorized jurisdiction of this Court.

Respectfully submitted,

DENNY C. CORMIER, pro se
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Dated: September 21, 2004

Memorandum of Law in Support of Denial of Motion to Remand

Defendant's Motion to Remand is based partly on 28 U.S.C. 1446 (b), alleging that Plaintiff's Removal was procedurally defective.

Plaintiff replies that a Motion to Remand is subject to 28 U.S.C. 1447 (c) and that Defendant's Motion to Remand was not timely and must therefore be denied.

In Re. Bethesda Memorial Hospital, (11th Cir 1997) (a motion to remand by the opposing party or the court must be entered within thirty days of the removal pursuant to 28 U.S.C. 1447.)

The Plaintiff further states that said Removal was procedurally correct as it fell within the purview of 28 U.S.C. 1446 (b) being predicated on the state court Order on Motion for Contempt dated May 26, 2004 in the Superior Court of Colquitt County.

Defendant's Motion to Remand also alleges that an opportunity for Remand beyond the thirty-day limit exists because Plaintiff's Removal case lacks subject matter jurisdiction, which circumvents time limits in 28 USC 1447(c) and is further cause for dismissal and remand.

Plaintiff replies that his Notice of Removal is predicated on a 42 U.S.C. 1983 claim stated therein. This claim is linked to the state Order on Motion for Contempt.

Congress has granted jurisdiction to this Court to hear claims related to Federal statutes pursuant to 28 U.S.C. 1331. Based on the 42 U.S.C. 1983 claim this Court has subject matter jurisdiction.

In conclusion, Plaintiff maintains that this Court has subject-matter jurisdiction over Plaintiff's claims pursuant to 42 U.S.C. 1983, 28 U.S.C. §§1331, 1441 (a) (b) in that the claim involves a Federal question and a subsequent violation of his Liberty Interest, plus infringement upon his fundamental Federal constitutional rights,

especially the Right to Privacy inter alia, which entitles him to jurisdiction of this Court under 42 U.S.C. 1983.

Respectfully submitted,

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Dated: September 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2004, I caused a true and accurate copy of the foregoing to be sent by U.S. Mail to:

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