

Eighth Circuit Case No. 09-2198

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Harold R. Stanley,

Plaintiff-Appellant, *pro se*

v.

The Honorable Jack Grate, et al.

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Missouri
Honorable Gary A. Fenner, Presiding
Case Number 4:06-cv-0752-GAF

Appellant's Initial Brief

Harold R. Stanley, *pro se*, with assistance of
counsel
10707 E. 240th Street
Peculiar, Missouri
816-779-4284
hstanley@fairpoint.net

SUMMARY OF THE CASE AND WAIVER OF ORAL ARGUMENT

This Appeal is of the district court's orders in a 42 U.S.C. § 1983 action granting defendant state court judge's, an attorney's and his client's motions to dismiss entered January 9, 2007 and November 9, 2007, the November 13, 2007 Judgment; and the dismissal of the counterclaim of the defendant client entered April 20, 2009. Harold Stanley (Mr. Stanley) avers the district court erred by granting judicial immunity when pleadings allege and prove the judge defendant acted in the clear absence of jurisdiction. He avers also, despite proper pleadings, the district court erred dismissing the two lay defendants as not acting under color of state law.

Prior, Mr. Stanley, a former husband, had removed a Missouri state court alleged alimony arrearages action to federal court. After removal and before remand the defendants engaged in an ultra vires ex parte state court hearing. They entered a civil contempt/arrest order against Mr. Stanley. This is the conduct that is the basis of this 42 U.S.C. § 1983 lawsuit now appealed.

Mr. Stanley argued he had effected proper removal and 28 U.S.C. § 1446 (d) divested the state court of all jurisdiction until remand. He argued the state court proceedings lacked all jurisdiction and therefore judicial immunity did not apply. He argued the lay defendants, by conspiring with the judge, were state actors subject to 42 U.S.C. § 1983 claims.

Waiver of Oral Argument

The Appellant waives oral argument, but in the event this Court feels oral argument is beneficial to the resolution of this appeal the former husband is prepared to promptly appear, through counsel, at Oral Argument.

TABLE OF CONTENTS

SUMMARY OF THE CASE AND WAIVER OF ORAL ARGUMENT.....	i
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	1
STATEMENT OF THE ISSUES	5
A. Standard of Review.....	5
B. Issues and Arguments.....	5
I. Whether it is error to dismiss a defendant state court judge from a 42 USC § 1983 action when the complaint alleges and proves he acted in the clear absence of all jurisdiction under color of state law to deprive the plaintiff of his civil rights?	5
Argument: 28 U.S.C. 1446 (d) deprived the state court judge defendant of all jurisdiction, thus he had no immunity. <i>Stump v. Sparkman</i> , 435 U.S. 349 (1978).....	5
II. Whether it is error to dismiss an attorney and lay person defendants from a 42 USC § 1983 action when the complaint alleges they acted under color of state law by participating with a state court judge to deprive the plaintiff of his civil rights in a state court proceeding in the clear absence of all jurisdiction?.....	5
Argument: Attorneys and laypersons who act with a state official liable in 42 U.S.C. § 1983 actions. <i>Dennis v. Sparks</i> , 449 U.S. 24, 28 (1980). <i>Wyatt v. Cole</i> , 504 U.S. 158 (1992) , <i>Adickes v. S. H. Kress & Co.</i> , 398 U.S. 144, 152 (1970); <i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922, 941 (1982).....	6
ARGUMENT.....	6

I. 28 U.S.C. 1446 (d) Deprived the State Court Judge Defendant of All Jurisdiction, Thus He Had No Immunity	6
A. 28 U.S.C. § 1446 (d)	6
B. Facts in the Removed Action Relating to 28 U.S.C. § 1446 (d)	7
C. Law of 28 U.S.C. § 1446 (d)	9
D. Remand Mandatory—Dismissal Not Permitted.....	10
E. The Judge Defendant is Not Entitled to Immunity	11
F. Federal Court Dismissal Put An End to Removed State court Action ...	12
II. Attorneys and Laypersons Who Act with a State Official Are Liable in 42 U.S.C. § 1983 Actions	13
A. The Claims Raised Do Not Infringe Privilege	13
B. The Pleadings Are Sufficient to Support the Conspiracy Claim	14
C. The Attorney and Lay Person Defendants Acted Under Color of State Law and are Liable for Suit in a 42 U.S.C. § 1983 Action.....	14
D. All Counts State a Claim Upon which Relief Can be Granted	15
E. Mr. Stanley Stated Claims Upon Which Relief May be Offered	16
CONCLUSION	17
PRAYER FOR RELIEF.....	20
CERTIFICATE OF SERVICE.....	21
CERTIFICATE OF COMPLIANCE.....	21
ADDENDUM INDEX.....	22
APPENDIX INDEX	23

TABLE OF AUTHORITIES

Cases

<i>Adickes v. S. H. Kress & Co.</i> , 398 U.S. 144, 152 (1970)	6, 15
<i>Allman v. Hanley</i> , 302 F.2d 559, 562 (5 th Cir. 1962)	9
<i>Arango v. Guzman Travel Advisors Corp.</i> , 621 F.2d 1371, 1376 (5 th Cir. 1980)	9
<i>C.I.R. v. Sunnen</i> , 333 U.S. 591, 597 (1948)	12
<i>City of Gainesville v. Brown-Crummer Investment Co.</i> , 277 U.S. 54, 60 (1928)	9
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957)	16
<i>Cont'l Cablevision of St. Paul, Inc. v. United States Postal Serv.</i> , 945 F.2d 1434, 1441 n.3 (8th Cir. 1991)	11
<i>Cunningham v. BHP Petroleum Great Britain PLC</i> , 414 F.3d 1169, 1175 (10th Cir. 2005)	11
<i>Dennis v. Sparks</i> , 449 U.S. 24, 28 (1980)	6
<i>Filla v. Norfolk S. Ry. Co.</i> , 336 F.3d 806, 809 (8th Cir. 2003)	11
<i>First Nat'l Bank of Salem v. Wright</i> , 775 F.2d 245, 246 (8th Cir. 1985)	11
<i>Gardner v. First American Title Ins. Co.</i> , 294 F.3d 991 (8th Cir. 2002)	5

<i>Gomez v. Toledo</i> , 446 U.S. 635, 640 (1980).....	15
<i>Green v. Vickery</i> , 108 F. App'x 86, 86 (4th Cir. 2004).....	11
<i>Hartlein v. Illinois Power Co.</i> , 601 N.E.2d 720, 726 (Ill. 1992)	9
<i>Int'l Primate Prot. League v. Admin. of Tulane Ed. Fund</i> , 500 U.S. 72, 89 (1991)	11
<i>Levine v. Lacy</i> , 204 Va. 297, 300, 130 S.E.2d 443, 445 (1963)	9
<i>Loubser v. Thacker</i> , 440 F.3d 439 (7th Cir. 2006).....	14
<i>Lowe v. Jacobs</i> , 243 F.2d 432, 433 (5 th Cir. 1957).	10
<i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922, 941 (1982)	6, 15
<i>Maseda v. Honda Motor Co.</i> , 861 F.2d 1248, 1254 (11 th Cir. 1988).....	9
<i>Monroe v. Pape</i> , 365 U.S. 167, 171 (1961)	15
<i>Murphy v. Kodz</i> , 351 F.2d 163, 167 (9 th Cir. 1965)	9
<i>Northeastern Florida Chap. of Associated Gen. Contractors of Am. v. City of Jacksonville</i> , 508 U.S. 656, 663 (1993).....	17
<i>South Carolina v. Moore</i> , 447 F.2d 1067, 1073 (4 th Cir. 1971)	10
<i>Springdale Education Association v. Springdale School District</i> , 133 F.3d 649 (8th Cir. 1998)	5
<i>Steamship Co. v. Tugman</i> , 106 U.S. 118, 122 (1882)	10
<i>Stump v. Sparkman</i> , 435 U.S. 349 (1978).....	5
<i>Stump v. Sparkman</i> ,, 435 U.S. 349, 357 (1978).....	11
<i>United States v. Price</i> , 383 U.S. 787, 794 (1966)	15
<i>United States v. Silberglitt</i> , 441 F.2d 225, 227 (2d Cir. 1971)	10

<i>Virginia v. Banks</i> , 120 F. App'x 973, 973 (4th Cir. 2005).....	11
<i>Wyatt v. Cole</i> , 504 U.S. 158 (1992).....	6
<i>Yarnevic v. Brink's, Inc.</i> , 102 F.3d 753, 754 (4 th Cir. 1996)	9

Statutes

28 U.S.C. § 1291.....	1
28 U.S.C. § 1446 (d).....	passim
42 U.S.C. § 1983.....	passim

Rules

Fed. R. Civ. P. 12 (b) (6).....	5
Fed. R. Civ. P. Rule 8 (a)(2).....	15

JURISDICTIONAL STATEMENT

Mr. Stanley, *pro se*, with assistance of counsel, appeals from the district court's November 13, 2007 Judgment and the orders of dismissal of January 9, 2007 and November 9, 2007 entered in the United States District Court for the Western District of Missouri (Kansas City), the Honorable Gary A. Fenner presiding. The district court completed its work with dismissal of Marcia Stanley's counterclaim on April 20, 2009. The Notice of Appeal was timely filed on May 18, 2009. This court has jurisdiction to review this Appeal pursuant to 28 U.S.C. § 1291.

This action had been filed in the district court as a 42 U.S.C. § 1983 action. The basis for both the district court's and this court's jurisdiction is that the cause of action was brought under a federal statute (42 U.S.C. § 1983) and that it concerns a constitutional question of the Plaintiff's right to due process under the Fourteenth Amendment.

STATEMENT OF THE CASE AND FACTS

This appeal is of a 42 U.S.C. § 1983 action against a state court judge (the Honorable Jack Grate [Judge Grate]), a former wife (Marcia E. Stanley [Mrs. Stanley]) and her counsel (Les Wight, III, Esq. [Mr. Wight]) who initiated and participated in state court proceedings that lacked all jurisdiction. In the proceeding the defendants entered a civil contempt/arrest order (still active) that

are a deprivation of Mr. Stanley's Fourteenth Amendment due process civil rights.

Mr. and Mrs. Stanley were divorced in Jackson County Missouri state court in December 2000. The yoke of lifetime alimony was levied against Mr. Stanley. In 2004 Mrs. Stanley filed proceedings for alleged alimony arrearages.

On March 24, 2005 Mr. Stanley removed the state action to federal court predicated on the federal question that the state court proceedings to enforce the alimony statute and the alimony statute itself violated his Thirteenth and Fourteenth Amendment rights. He added a 42 U.S.C. § 1983 claim against third party state officials on the same grounds, i.e. that the alimony statute and its enforcement violated his federal constitutional rights.

On March 24, 2005 he filed in the United States District Court for the Western District of Missouri (Kansas City) a Notice of Removal. On the same day, in the Jackson County state court he filed a Notice of Filing of a Notice of Removal along with a copy of the Notice of Removal with the clerk of state court pursuant to 28 U.S.C. § 1446 (d). (Appendix # 1, Notice of Removal; Appendix # 2, Notice of Filing of Notice of Removal).

On March 25, 2005 counsel for Mr. Stanley phoned Mr. Wight and informed him the action had been removed to federal court (Complaint # 11 hereafter C.#). Counsel also appeared before Judge Grate on the same day, advising him of removal and provided him documentation (C. # 12).

Mr. Dodig, Mrs. Stanley's federal attorney, filed a Motion to Dismiss in the federal district court.

On October 25, 2005, in the removed action, the district court (The Honorable Gary A. Fenner) dismissed all claims (C. # 14; Appendix # 3, Order of Dismissal, and Appendix # 4, Judgment in a Civil Case). The action was not remanded. Mr. Stanley did not appeal the ruling because in his view the motion and the district court dismissal order were to his benefit.

On November 15, 2005 Judge Grate set a state court hearing for alleged civil contempt based on alleged alimony arrearages (C. #15, Notice of Hearing). On November 28, 2005 Mr. Stanley noticed the state court it lacked jurisdiction for any proceedings because of 28 U.S.C. § 1446 (d) (C. # 16, Appendix # 6, Former Husband's Answer to Application for Review of Contempt and Answer to Notice of Hearing). December 9, 2005 Judge Grate, Attorney Wight and Mrs. Stanley participated in an ex parte state court proceeding and entered a civil contempt/arrest order (C. # 17 and Appendix # 7, Judgment Entry Review of Contempt and Arrest Order). The arrest order is still active three and one half years later, despite attempts by Mr. Stanley to have it vacated.

On September 6, 2006 Mr. Stanley filed this 42 U.S.C. § 1983 action in the United States District Court for the Western District of Missouri (Kansas City), the Honorable Gary A. Fenner, again, presiding judge. Mr. Stanley's complaint provides details of time, place and conduct of all defendants that resulted in the deprivation of his civil rights. He alleged that the state court

acted in the clear absence of all jurisdiction after his state action had been removed to federal court on March 24, 2005, after it was dismissed, and long, long before it was subsequently remanded on January 9, 2007. He alleged Attorney Wight and Mrs. Stanley acted together with the state court judge, Judge Grate, to deny him his Fourteenth Amendment due process civil rights (C. # 15, 17, 18, 19, 20, 25, 28, 29 inter alia).

The defendants filed motions to dismiss. Judge Grate argued immunity. Attorney Wight and Mrs. Stanley argued there was no cause of action upon which relief could be granted and that they did not act under color of state law. On January 9, 2007 the district court dismissed Judge Grate under immunity and Attorney Wight under attorney privilege and that he was not acting under color of state law.

Mr. Stanley filed a Motion for Summary judgment against remaining defendant Mrs. Stanley. She argued in opposition. On November 9, 2007 the court dismissed Mrs. Stanley as she was not deemed to have acted under color of state law. November 13, 2007 the district clerk of court entered judgment. The orders were appealed here. This court dismissed the appeal as untimely (Case Number 07-3728). The district court dismissed Mrs. Stanley's counterclaim April 20, 2009. This appeal was filed May 18, 2009.

Concomitant with his January 9, 2007 partial dismissal in this action, the Honorable Gary A. Fenner in the separate removed action at issue in this action

sua sponte entered a post judgment order to remand fifteen months after he had dismissed the action and all claims.¹

STATEMENT OF THE ISSUES

A. Standard of Review

This Court of Appeals reviews motions to dismiss under FRCP 12(b)(6) *de novo*. *Springdale Education Association v. Springdale School District*, 133 F.3d 649 (8th Cir. 1998); *Gardner v. First American Title Ins. Co.*, 294 F.3d 991 (8th Cir. 2002).

B. Issues and Arguments

- I. Whether it is error to dismiss a defendant state court judge from a 42 USC § 1983 action when the complaint alleges and proves he acted in the clear absence of all jurisdiction under color of state law to deprive the plaintiff of his civil rights?

Argument: 28 U.S.C. 1446 (d) deprived the state court judge defendant of all jurisdiction, thus he had no immunity. *Stump v. Sparkman*, 435 U.S. 349 (1978)

- II. Whether it is error to dismiss an attorney and lay person defendants from a 42 USC § 1983 action when the complaint alleges they acted under color of state law by participating with a state court judge to deprive the plaintiff of his civil rights in a state court proceeding in the clear absence of all jurisdiction?

¹ Mr. Stanley alleges the federal district court judge compounded his error of this appealed case by his sua sponte, without any supporting authority, entrance of his order to remand in the removed action. Mr. Stanley lacks a remedy to right that judicial wrong. His pleas for the order to be vacated-supported by existing law-have been denied by the district court and this court. In his attempts to have the ultra vires untimely post judgment order vacated no court has offered a reasoned opinion for its denial to vacate. Regrettably, this order of remand entered without jurisdiction cannot be an issue in this appeal.

Argument: Attorneys and laypersons who act with a state official liable in 42 U.S.C. § 1983 actions. *Dennis v. Sparks*, 449 U.S. 24, 28 (1980). *Wyatt v. Cole*, 504 U.S. 158 (1992), *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982)

ARGUMENT

I. 28 U.S.C. 1446 (d) Deprived the State Court Judge Defendant of All Jurisdiction, Thus He Had No Immunity

A. 28 U.S.C. § 1446 (d)

28 U.S.C. § 1446 (d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded.**

28 U.S.C. § 1446 (d) states the terms to *effect* a proper removal. Removal is *effected* if the procedural steps in this statute are followed. Whether or not a federal court has *jurisdiction* to entertain a removed action relates to different statutes, e.g. 28 U.S.C §1441, 28 U.S.C. § 1331. State actions may be *properly removed* and removal may be *effected* and yet a federal court may claim it lacks *jurisdiction* and thereby remand for lack of subject matter jurisdiction.

Removal is *effected* by the removing party filing a copy of the notice of removal with the clerk of the relevant state court where the action was pending. The Appendix # 2, Notice of Filing of Notice of Removal date stamped is proof removal was effected. The Notice was attached to the complaint in this action.

28 U.S.C. § 1446 (d) is further supported by 28 U.S.C. § 1447 (c),

(c) 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). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. **A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.**

B. Facts in the Removed Action Relating to 28 U.S.C. § 1446 (d)

In the removed action (Case No. 05-0281-CV-W-GAF Mr. Stanley Plaintiff, Mrs. Stanley et al Defendants 28 U.S.C. § 1446 (d) and 28 U.S.C. § 1447 (c) were triggered by the March 24, 2005 filing of the Notice of Filing of Notice of Removal with the Jackson County clerk of court. Subsequently the removed action, at the motion of the defendant was dismissed October 25, 2005.

The Appendix # 3 Order to dismiss, Appendix # 4 Judgment in a Civil Case, Appendix # 10 Order of Remand show not only that the removed action was dismissed but was not remanded until January 9, 2007—fifteen months after dismissal via an ultra vires sua sponte post judgment order in a closed case by the same district court judge reviewing this action.²

² Because remand of a removed action is not reviewable pursuant to 28 U.S.C. § 1447 (d) and because the remand order (a sua sponte post judgment order) was entered ultra vires after dismissal and fifteen months later, Mr. Stanley instead filed a Writ of Mandamus with this court to vacate the ultra vires sua sponte post judgment order. (Eighth Circuit Case No. 07-2069) This court denied the writ without opinion. Mr. Stanley did not appeal the original order of dismissal because the order was to his benefit, i.e. it resulted in a dismissal of the antecedent state court proceeding against him.

1. Case Number 05-0281-CV-W-GAF Was a Removed Action

The case at issue in this 42 U.S.C. § 1983 lawsuit that triggered the voluntary knowing ultra vires conduct of the Defendants is Case Number 05-0281-CV-W-GAF of the same district court below. It was a state court action removed to federal court when in the course of the state court proceedings Mr. Stanley's federal constitutional rights were placed at issue by a state proceeding to enforce a statute, Missouri alimony statute, that he alleged violated the United States Constitution.

All filings in Case Number 05-0281-CV-W-GAF support that the action was a removed action. Evidence of Removal is distinct, repetitive and unambiguous, i.e.,

a. A Notice of Removal was filed with the district court March 24, 2005 citing removal of state court case Number 16D96-08993-02, -04.

(Appendix # 1, Notice of Removal)

b. A Notice of Filing of Notice of Removal was filed with the Clerk of the Court of Jackson County Missouri pursuant to 28 U.S.C. § 1446 (d) on March 24, 2005. A dual date stamped copy—federal court case number stamp and Jackson County Clerk of Court stamp is part of the removed action record. (Appendix # 2 Notice of Filing of Notice of Removal)

c. Form JS44 part V has an "x" marked immediately with #2 Removal from State Court. (Appendix # 1, Civil Cover Sheet JS 44 Form)

Form JS 44 part VI Cause of Action includes 28 U.S.C. § 1446.

d. The Removed Complaint cites jurisdiction pursuant to 28 U.S.C. § 1441 (a)(b)(c) and 28 U.S.C. § 1446.

e. The district court Order dismissing comments on the removed action.

C. Law of 28 U.S.C. § 1446 (d)

The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court. *City of Gainesville v. Brown-Crummer Investment Co.*, 277 U.S. 54, 60 (1928); *Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1376 (5th Cir. 1980); *Murphy v. Kodz*, 351 F.2d 163, 167 (9th Cir. 1965); *Hartlein v. Illinois Power Co.*, 601 N.E.2d 720, 726 (Ill. 1992). A defendant, upon filing a notice of removal, “shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk” of the state court, which effects the removal. 28 U.S.C. § 1446 (d). At that point, “the [s]tate court shall proceed no further unless and until the case is remanded.” *Id.*

“After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand.” *Levine v. Lacy*, 204 Va. 297, 300, 130 S.E.2d 443, 445 (1963); accord *Yarnevic v. Brink’s, Inc.*, 102 F.3d 753, 754 (4th Cir. 1996); *Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1254 (11th Cir. 1988); *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir. 1962). “Any subsequent proceedings in state court on the case are void ab initio.” *Maseda*,

861 F.2d at 1254-55 (citing *Steamship Co. v. Tugman*, 106 U.S. 118, 122 (1882)); accord *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971).

Even if the district court considered it lacked jurisdiction in Case Number 05-0281-CV-W-GAF, nonetheless removal of the action was *effected*. The state court lacked all jurisdiction to proceed until and if *remanded*. A later determination that the removal petition was not proper does not change that outcome. See *Maseda*, 861 F.2d at 1254 n.11; *Moore*, 447 F.2d at 1073; *United States v. Silberglitt*, 441 F.2d 225, 227 (2d Cir. 1971); *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957).

A proper filing of a notice of removal immediately strips the state court of its jurisdiction. 28 U.S.C. § 1446(d), *State of South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971).

D. Remand Mandatory—Dismissal Not Permitted

The governing statute, 28 U.S.C. section 1447(c) provides as follows: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case *shall* be remanded.” 28 U.S.C. § 1447(c) (emphasis added). This language leaves no room for discretionary dismissal [on personal jurisdiction grounds] once a court concludes it lacks jurisdiction over the subject matter of a case. Instead it “mandates a remand of the case (to the state court from which it was removed) whenever the district court concludes that subject-matter jurisdiction is nonexistent.” *Filla v. Norfolk S. Ry. Co.*, 336 F.3d 806, 809 (8th Cir. 2003); accord *Cont’l Cablevision of St. Paul, Inc. v. United*

States Postal Serv., 945 F.2d 1434, 1441 n.3 (8th Cir. 1991) (“When a federal court to which a case has been removed from a state court determines that it lacks jurisdiction, the proper action is not dismissal of the complaint, but remand to the state court.”); *First Nat’l Bank of Salem v. Wright*, 775 F.2d 245, 246 (8th Cir. 1985) (“If the federal court determines that no federal jurisdiction exists, it must remand the case back to state court.”). Remand is therefore required. See *Int’l Primate Prot. League v. Admin. of Tulane Ed. Fund*, 500 U.S. 72, 89 (1991) (noting that “the literal words of § 1447(c) . . . give . . . no discretion to dismiss rather than remand an action” (quotation marks omitted; second omission in the original)), superceded on other grounds 28 U.S.C. § 1442(a)(1); accord *Cunningham v. BHP Petroleum Great Britain PLC*, 414 F.3d 1169, 1175 (10th Cir. 2005); *Virginia v. Banks*, 120 F. App’x 973, 973 (4th Cir. 2005); *Green v. Vickery*, 108 F. App’x 86, 86 (4th Cir. 2004).

Dismissal is not permitted—remand is mandatory and was not done. The dismissal was not appealed by the defendants.

E. The Judge Defendant is Not Entitled to Immunity

The Defendant the Honorable Jack Grate knowingly acted in the clear absence of all jurisdiction regarding well known and well settled law. This unlawful conduct divested him of immunity for suit and liability in this 42 U.S.C. § 1983 action. *Stump v. Sparkman*, 435 U.S. 349, 357 (1978).

“The Court of Appeals correctly recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action

he had jurisdiction over the subject matter before him. Because ‘some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction . . .,’ Bradley, supra, at 352, the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be **subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’** 7 13 Wall., at 351.” [Emphasis added]

All Defendants had been properly and timely noticed of the action’s removal. Mr. Stanley again informed all defendants in his Motion to Deny Contempt (Appendix # 6, Former Husband’s Answer to Application for Review of Contempt and Answer to Notice of Hearing)

F. Federal Court Dismissal Put An End to Removed State court Action

Whether the removal of the state court action at issue was proper or improper did not change the legal rule that the state court was divested of all jurisdiction pursuant to 28 U.S.C. § 1446 (d). The federal district court had jurisdiction over the state court proceeding prior to remand. If the federal court concluded it lacked removal jurisdiction then its proper course of action was remand. Instead it chose to order dismissal. The effect of dismissal is noted in *C.I.R. v. Sunnen*, 333 U.S. 591, 597 (1948),

“The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See von Moschzisker, 'Res Judicata,' 38 Yale L.J. 299; Restatement of the Law of Judgments, 47, 48.”

Mrs. Stanley's Attorney in the removed action apparently, mistakenly and erroneously moved the federal court for dismissal instead of remand of the removed action. The federal court granted the defendant's request for dismissal. Remand never occurred until fifteen months later when in this appealed action district court Judge Fenner realized all the mistakes in the removed action. Judge Fenner's ultra vires sua sponte post judgment order remanding the removed case while he was deliberating on this action is further proof the defendants lacked all jurisdiction.

Mrs. Stanley's Attorney's unfamiliarity, or error, with the law of removal by requesting dismissal instead of remand, and the error's compounding by the district court judge do not diminish the fact Mr., Stanley was denied his civil rights by the defendants conduct in state court to issue an ultra vires arrest warrant against him—an arrest warrant that is active and live today!

II. Attorneys and Laypersons Who Act with a State Official Are

Liable in 42 U.S.C. § 1983 Actions

A. The Claims Raised Do Not Infringe Privilege

Nothing in the complaint and claims remotely infringes the attorney client privilege.

See *Wyatt v. Cole*, 504 US 158 (1992), a 42 U.S.C. § 1983 case where attorney and client were co-defendants and attorney client privilege was not an issue.

Litigation privilege is limited to *lawful* conduct by an attorney in the process of representation. Here the conduct of the Defendant is alleged to be *unlawful*, i.e. repeated ultra vires ex parte conduct-noticed to them- with a state

official in the clear absence of all jurisdiction to deliberately effect a deprivation of the constitutional rights, liberty interest and freedom of Mr. Stanley.

B. The Pleadings Are Sufficient to Support the Conspiracy Claim

Loubser v. Thacker, 440 F.3d 439 (7th Cir. 2006),

“Although conspiracy is not something that Rule 9(b) of the Federal Rules of Civil Procedure requires be proved with particularity, and so a plain and short statement will do, *Hoskins v. Poelstra*, 320 F.3d 761 (7th Cir. 2003); *Walker v. Benjamin*, 293 F.3d 1030, 1039 (7th Cir. 2002); *Walker v. Thompson*, 288 F.3d 1005, 1007 (7th Cir. 2002); see generally *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 512, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002); *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993), it differs from other claims in having a degree of vagueness that makes a bare claim of "conspiracy" wholly uninformative to the defendant. Federal pleading entitles a defendant to notice of the plaintiff's claim so that he can prepare responsive pleadings. Fed. R. Civ. P. 8(a); *Doe v. Smith*, 429 F.3d 706, 708 (7th Cir. 2005); *Lotierzo v. A Woman's World Medical Center, Inc.*, 278 F.3d 1180, 1183 (11th Cir. 2002). **That is why courts require the plaintiff to allege the parties, the general purpose, and the approximate date of the conspiracy.** *Walker v. Thompson*, supra, 288 F.3d at 1007-08; *Ryan v. Mary Immaculate Queen Center*, 188 F.3d 857, 858-60 (7th Cir. 1999).” [Emphasis added]

The complaint readily meets the above test to inform the defendants of their alleged improper conduct as well as the time and place of the conduct.

(C # 15, 17, 18, 19)

C. The Attorney and Lay Person Defendants Acted Under Color of State Law and are Liable for Suit in a 42 U.S.C. § 1983 Action

“Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful

participant in joint activity with the State or its agents," quoting *United States v. Price*, 383 U.S., at 794 . [457 U.S. 922, 942]" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982)

Dennis v Sparks, 449 U.S. 24, 27-28 (1980) settled the law that lay persons are proper defendants in a 42 U.S.C. § 1983 action.

“As the Court of Appeals correctly understood our cases to hold, to act ‘under color of state law for 1983 purposes 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 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966)...Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability... Private parties who corruptly conspire with a judge in connection with such conduct are thus acting under color of state law within the meaning of 1983 as it has been construed in our prior cases”

The complaint is replete with statements of fact that Attorney Wight and Mrs. Stanley were wilful participants in a joint activity with the state official Judge Grate. (Complaint # 17, 19, 20, 25, 28, 29, 31)

D. All Counts State a Claim Upon which Relief Can be Granted

Gomez v. Toledo, 446 U.S. 635, 640 (1980),

“By the plain terms of [42 U.S.C.]1983, two - and only two - allegations are required in order to state a cause of action under that statute. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law. See *Monroe v. Pape*, 365 U.S. 167, 171 (1961).”

The Defendants' assertions and the district court's order is in error when they conclude the complaint should be dismissed for failure to state a cause of action. The complaint more that satisfies the *Monroe v. Pape* 365 U.S. criteria restated in *Gomez* 446 U.S. (Complaint II, #15, 17, 18, 19, 20, 25, 28, 29, 31, 32, 34, 35)

E. Mr. Stanley Stated Claims Upon Which Relief May be Offered

Fed. R. Civ. P. Rule 8 (a) (2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." In *Conley v. Gibson*, 355 U.S. 41 (1957), the U.S. Supreme Court said in effect that the Rule meant what it said:

"[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.*, at 47 (footnote omitted).

Under 42 U.S.C. § 1983, plaintiffs have a remedy for the violation of any rights, privileges or immunities secured by the United States Constitution. *See Lynch v. Household Fin. Corp.*, 405 U.S. 538 (1972). The Complaint is replete with factual allegations, i.e. persons, times, events, and the constitutional rights of which the Plaintiff is deprived. The complaint is sufficiently detailed to give all defendants a clear understanding of their conduct at issue and the civil rights deprivation such conduct effected.

Mr. Stanley met standing requirement for his claims, i.e. to have standing, a party seeking to invoke federal court jurisdiction must demonstrate three things: (1) injury in fact, which means the invasion of an interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. *Northeastern Florida Chap. of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 663 (1993).

All Defendants/Appellees initiated and participated in repeated ultra vires state court proceedings resulting in the issuance of arrest warrants against the Plaintiff for civil contempt. After Mrs. Stanley through her attorney moved for dismissal and the federal district court (The Honorable Gary A. Fenner) dismissed the removed action they returned to state court to seek and get an arrest warrant with full knowledge the state court lacked all jurisdiction.

CONCLUSION

I don't know what you mean by "glory",' Alice said.

Humpty Dumpty smiled contemptuously. `Of course you don't -- till I tell you. I meant "there's a nice knock-down argument for you!"'

`But "glory" doesn't mean "a nice knock-down argument",' Alice objected.

`When I use a word,' Humpty Dumpty said, in rather a scornful tone, `it means just what I choose it to mean -- neither more nor less.'

`The question is,' said Alice, `whether you can make words mean so many different things.'

`The question is,' said Humpty Dumpty, `which is to be master -- that's all.'

Through the Looking Glass, Lewis Carroll CHAPTER VI Humpty Dumpty

Despite Judge Fenner's belated attempts to recharacterize the words and his intentions in the removed action--they are what they are. Words have meaning. Judges cannot be Lewis Carroll characters. To be so weakens the very core of the judicial system—integrity and credibility. This court should not compound the district court's linguistic error.

Judges are granted enormous immunity from lawsuit and liability. Because they are granted this enormous societal privilege, when they cross the bounds of it they must be held accountable. Sadly, and with pain, it is judicial colleagues such as this appellate panel who must endure the emotional burden to enforce the intellectual burden.

The only situation in which judges are denied immunity is when they act in the clear absence of jurisdiction. 28 U.S.C. § 1446 (d) unambiguously and crisply divests the state court of jurisdiction when a state action is removed. The statute is simple and its supporting law is unanimous in finding complete severance of state court jurisdiction. The state can only resume jurisdiction under one circumstance—remand. The conduct at issue took place in the clear absence of jurisdiction. It is not conduct exercised in excess of jurisdiction. Were this court to conclude the latter it destroys the simple clear meaning of 28

U.S.C. § 1446 (d), established a precedent that unleashes a whirlwind of future ambiguities and inconsistencies.

The defendants were repeatedly informed of the removal of the action. Despite their receiving the Notice of Removal, personal calls and appearance notifying them as well as Mr. Stanley's suggestion to the state court to deny contempt. All the defendants chose to ignore the law and unjustly with malice deny Mr. Stanley his civil rights and freedom from fear of impermissible arrest.

The irony is if the defendants merely abided by 28 U.S.C. § 1446 (d) no harm would come to any of the parties. Requesting a rehearing on dismissal v. remand or appealing the defendants had the full power to get it right the first time. They did not.

Waiting till remand would not in any way have harmed or prejudiced Mrs. Stanley. The defendants wilfully chose to act contrary to well established law. They should not be shielded from accountability by an error of the district court—an error of their own inducement.

It is the duty of this court to protect the rights of citizens—even when those rights are denied by this court's colleagues of the judiciary and the bar. It is the duty of this court to uphold the integrity of the judiciary and all judges by permitting this lawsuit to continue.

In the rare instances in which the judicial process deviates from known well established law it must be held accountable. Permitting this action to proceed is the only deterrence against judicial conduct that deprives citizens of

their rights. Permitting this action to continue further points out that the power of the judiciary comes from citizens and the judicial role is to follow the laws of the nation.

If citizens are expected to follow laws, so are judges and attorneys.

PRAYER FOR RELIEF

Wherefore Mr. Stanley prays this court will reverse the district court's dismissal of all the defendants; find Mr. Stanley pleads a valid cause of action of all claims upon which relief can be granted against all defendants and reinstate the action by remanding the action to the district court for discovery and all further proceedings.

Respectfully submitted,

June 28, 2009

Harold R. Stanley, Plaintiff, *pro se*
10707 E. 240th Street
Peculiar, Missouri 64078
816-779-4284
hstanley@fairpoint.net

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Appellant's Initial Brief, Addendum and Appendix was mailed via commercial carrier, prepaid, this 28th Day of June, 2009 to the clerk of the U.S. Court of Appeals for the Eighth Circuit and to:

Michael S. Dodig, Esq.
The Dodig Law Firm, LLC
609 N. M-291 Hwy, Suite 225
Lee's Summit, Missouri 64086
E-mail: mdodig@kc.rr.com
Attorney for Marcia E. Stanley

Daniel E. Hamann, Esq.
Deacy & Deacy, LLP
920 Main Street, Suite 1900
Kansas City, MO 64105
Attorney for Lester Wight, Esq.

Emily A. Dodge
Attorney General
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102
Attorney for the Honorable Jack
Grate

Spencer J. Brown, Esq.
Deacy & Deacy, LLP
920 Main Street, Suite 1900
Kansas City, MO 64105
Attorney for Lester Wight, Esq.

Harold R. Stanley, Plaintiff, *pro se*
10707 E. 240th Street
Peculiar, Missouri 64078
816-779-4284
hstanley@fairpoint.net

CERTIFICATE OF COMPLIANCE

I certify, pursuant to F.R.C.P. 32 (a) (7), that this principal brief contains no more than 14,000 words as indicated by the word-processing program used to prepare this brief, Microsoft Word, excluding any addendum containing decisions, statutes, rules, or regulations. This brief was prepared with 14-point Times New Roman font.

I also certify, pursuant to Local Rule 28A(d), that the CD-ROM tendered with this brief has been scanned and is virus-free.

Harold R. Stanley, *pro se*, with assistance of counsel

ADDENDUM INDEX

1.	28 USC § 1446	1-2
2.	28 USC § 1447	3
3.	ORDER to dismiss Judge Grate and Attorney Wight – 9 January 2007 - U.S. District Court Case 4:06-cv-00752-GAF, Document 32,.....	4-14
4.	ORDER to dismiss Marcia Stanley - 9 November 2007 - U.S. District Court Case 4:06-cv-00752-GAF, Document 43,.....	15-16
5.	JUDGMENT IN A CIVIL CASE - 13 November 2007 - U.S. District Court Case 4:06-cv-00752-GAF, Document 44,.....	17
6.	PLAINTIFF’S AFFIDAVIT OF MATERIAL FACTS – 14 August 2007 - U.S. District Court Case 4:06-cv-00752-GAF, Document 39-1	18-21
7.	OPINION dismissing Plaintiff’s appeal – 17 March 2009 – U.S. Court of Appeals for the Eighth Circuit Case 07-3728	22-23
8.	ORDER directing Defendant Marcia Stanley to file a status report – 17 March 2009 - U.S. District Court Case 4:06-cv- 00752-GAF, Document 53	24
9.	ORDER dismissing Defendant Marcia Stanley’s counterclaim for failure to respond to status report directive – 20 April 2009 - U.S. District Court Case 4:06-cv-00752-GAF, Document 56.....	25

APPENDIX INDEX

1.	Civil Cover Sheet and Notice of Removal - 24 March 2005 - U.S. District Court Case 4:05-0281-cv- GAF.....	1-9
2.	Notice of Filing of Notice of Removal – 24 March 2005 – U.S. District Court Case 4:05-0281-cv- GAF, as filed with Jackson County Missouri Circuit Court on 24 March 2005 ...	10-13
3.	Order to dismiss - 25 October 2005 - U.S. District Court Case 4:05-cv-0281-GAF.....	14-18
4.	Judgment in a Civil Case - 25 October 2005 - U.S. District Court Case 4:05-cv-0281-GAF	19
5.	Notice of Hearing - 15 November 2005 - Missouri Case No. 16DR96-08993	20
6.	Former Husband’s Answer to Application for Review of Contempt and Answer to Notice of Hearing - 28 November 2005 - Missouri Case No. 16DR96-08993	21-23
7.	Judgment Entry-Review of Contempt, and arrest order – 9 December 2005 - Missouri Case No. 16DR96-08993 -	24-27
8.	Order to Show Cause - 5 January 2006 - Missouri Case No. 16DR96-08993	28-31
9.	Refusal of Order to Show Cause - 13 January 2006 - Missouri Case No. 16DR96-08993	32-34
10.	Order of Remand – 9 January 2007 - U.S. District Court Case 4:05-0281-cv- GAF.....	35