IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 04-cv-02455-REB-BNB

CHARLES H. CLEMENTS,

Plaintiff,

v.

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

Defendants.

PLAINTIFF'S EXCEPTION TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE and PRAYER

Comes now Charles H. Clements, the Proper Party Plaintiff in Pro Se by Doctrine of Necessity and respectfully submits this PLAINTIFF'S EXCEPTION TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE, and PRAYS that

(1) Defendant Katherine Grier's Motion to Dismiss, filed January 19, 2005; and
(2) Defendant Thomas C. Miller's Concurrence with Defendant Katherine Grier's Motion to Dismiss and Motion for Judgment on the Pleadings Re: Counterclaim, filed January 26, 2005, be DENIED, and in support of that PRAYER states as follows;

I. STANDARD OF REVIEW

Plaintiff respectfully submits that the liberal standard set for any submission by a pro per plaintiff in pro se, particularly by Doctrine of Necessity, and more particularly as regards a '1983' complaint for abuse by Officers of the Court as is the case here, must be very generously interpreted insofar as Dismissal With Prejudice for reasons of forma, or some failure to cite the appropriate statutory description of the crimes committed, and particularly without leave to amend the Original Complaint for small matters of construction and harmless error.

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.

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; Stromberb v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449

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.

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).

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). (emphasis added)

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*." Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals (emphasis added)

Constitutional guaranties of due process of law, equal protection of law, of judicial process, and of certain inalienable rights operate only to prohibit deprivation of rights where such rights exist by substantive law. Const. art. 2, § § 3, 6; U.S.C.A.Const. Amend. 14. Faber v. State, 353 P.2d 609 Colo.,1960

The Honorable Court has twice Denied this pro se plaintiff any opportunity to Amend the Complaint in Good Faith; both for clarity and specificity, as in the First Proposed Amended Complaint, and because of New Evidence, in the Second Proposed Amended Complaint. Further New Evidence has revealed as well, and the interests of justice should not defer to Plaintiff’s admitted failures of performing at the standard of highly trained professional specialists.

The Honorable Court further seems to rely on the self-serving restatement of the circumstances of the case by Defendant Grier's Counsel in her first reply, and ignores the body of supplementary evidence and information contained in subsequent pleadings by Plaintiff. While Plaintiff's pleadings may fail because of some misunderstanding of procedural rules, that doesn't relieve all Parties to this action from being aware of the body of facts and responsible for that information. It is particularly germane as both Defendants have had complete and privileged access to Plaintiff's intimacies and Plaintiff's assertion of facts stands unrefuted to date.

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).
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> 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).
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> We also note that the district court dismissed Plaintiff's complaint without prejudice; however, given the applicable two-year statute of limitations, see Garcia v. University of Kansas, 702 F.2d 849, 850-51 (10th Cir. 1983) [*5] (two-year statute of limitations in § § 1983 and 1985 claims arising in Kansas), Plaintiff's complaint would probably now be barred. As a result, we hold that justice requires that the district court allow Plaintiff an opportunity to amend his complaint, if possible, to include a recounting of the facts surrounding his alleged injury, and the personal involvement of each Defendant in the alleged constitutional deprivations.

Defendant Miller's 'Concurrence' with Defendant Grier's self serving restatement of the case is a knowing and intentional Fraud, and an attempt to materially mislead the Court. Defendant Miller's testimony, given under oath as recently as in Boulder Case No. 04C1779, on June 7, 2005, materially contradicts the implications inherent in any such 'concurrence' as well as constituting an admission of being a State Actor on behalf of the Colorado State Attorney General's Office.

> When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." State v. Coddington, 662 P.2d 155, 135 Ariz. 480. (Ariz. App. 1983).
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> The Court must make all reasonable inferences in favor of plaintiffs, and the pleadings must be construed liberally. Id.; see also Fed. R. Civ. P. 8(a); Lafoy v. HMO Colorado, 988 F.2d 97, 98 [*1449] 10th Cir. 1993).
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> In ruling on a motion to dismiss, the Court must assume the truth of all well-pleaded facts in plaintiffs' complaint and view them in a light most favorable to plaintiffs. Zinermon v. Burch, 494 U.S. 113, 118, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990); California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 515, 30 L. Ed. 2d 642, 92 S. Ct. 609 (1972); see also Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984) (all well-pleaded facts, as distinguished from conclusory allegations, must be taken as true).

Plaintiff has made forthright allegations that can, and will, be proven by any standard the Court sees fit to impose. Plaintiff's claims are not 'frivolous', neither made for a vexatious purpose, nor unfounded in settled law, nor devoid of legal theory for the Honorable Court's proper jurisdiction over relief of damages in the controversy before it.

> 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 [**4] 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).
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> 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).

Plaintiff has refuted Defense Counsel's fantasy re-statement in numerous submissions to the Honorable Court, and has presented New Evidence come to light after the filing of the Original Complaint which directly supports Plaintiff's claims and assertions as recently as the 16th of June, 2005 in PLAINTIFF'S REPLY TO DEFENDANT THOMAS C. MILLER'S MOTION TO DISMISS AND PLAINTIFF'S MOTION TO DENY.

> 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).

Particularly in the nature of a 42USC§§1986, 1985, 1983, 1981, 1979 action, as Plaintiff's Original Complaint is entitled, and implementing its means to exercise Plaintiff's First Amendment Right to Petition the government for redress of grievance by the very individual who has been harmed by the abuse by State Actors,

a wide latitude for forma and punctilio should append to the submissions by the Proper Party Injured pro se Plaintiff and Plaintiff so PRAYS the Honorable Court.

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

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).

"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)

> 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).

Plaintiff respectfully submits that New Evidence in this case, to wit; Defendant Miller's admission in Court that he had materially deceived his Client, Steve D. Gartin, about the improper and illegal stipulation in the Probation Agreement in Jefferson County Case 00CR3371, and his sub-rosa agency on behalf of the Interests of State Actors of the Colorado State Attorney General's Office; Marleen M. Langfield, Gary Clyman and the Clients Defendant to 01ES1145, constitute material support for Plaintiff's claims and allegations, constituting subject matter over which the Honorable Court does, in fact, have jurisdiction.

Defendant Miller's Fraud upon Mr. Gartin is also the admission of his Fraud upon Plaintiff. Plaintiff engaged and retained Mr. Miller to prosecute the very same Defendants as had Mr. Gartin.

The signal difference in the quality of the Fraud by Defendants as State Actors in conspiracy to Violate Plaintiff's Civil Rights, is that Plaintiff was a Witness for Mr. Gartin, and the Injured Party as represented by Defendant Miller.

The full weight of Law is supposed to protect the Witness in Federal Court from intimidation by Defendants or their agents under color of authority.

Plaintiff is entitled to an actual defense, actual representation. Defendant Miller's deception, covert interests and mendacity on behalf of State Actors in the Colorado State Attorney General's Office strike at the very heart of the Rule of Law and the denial to Plaintiff of its due process, its equal protection and its equal application.

Plaintiff has not been convicted of anything, no charges are pending, no allegations stand unrefuted, no victims present; Plaintiff is an innocent praying for relief from the Honorable Court after having exhausted other means of relief in other venue.

> 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.
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> 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
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> 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

II. BACKGROUND

Plaintiff filed his Original Complaint with Jury Demand (the "Original Complaint") on November 26, 2004.

Plaintiffs claims in this instant case arise out of two separate Adams County cases wherein Magistrate Judge David Juarez presided as Trial Judge in Case No. 03C5606, and defendant Chapman was the magistrate judge in Case No. 03DR1773; defendant Miller was the Attorney for Plaintiff in other matters including; a '1983' action for Vindictive Prosecution against the Colorado State Attorney General's Office, their Clients, and such other Defendants, as well as the domestic case; defendant Grier was the opposing counsel in 03DR1773.

Plaintiff seeks monetary judgment for damages.

Plaintiff alleges that the cited criminal codes apply directly to the Defendants' abuse of process, denial of rights, conspiracy to deny; are not frivolous at all, and exacerbate the culpable infractions by Defendants. The 'laundry list' of claims against Officers of the Court, State Actors all, includes all manner of felony crimes incident to their denial of Constitutional Rights to Plaintiff.

Reducing Plaintiff's claims to some sort of failure of library science skill seems, again, to deny Plaintiff his First Amendment Right to recourse to the government by virtue of some sort of literacy test for an advanced professional skill presently denied to Plaintiff. Plaintiff was remiss to use statutes that describe 'United States' employees, but the infractions remain.

It is obvious that the Honorable Court has jurisdiction. It is obvious that the Defendants' have abused Plaintiff's constitutional rights- by the most charitable reading, much less one of more rigor. It is obvious that the Defendants joined in a conspiracy and a meeting of minds to move towards the common goal of violating and denying Plaintiff his rights. It is obvious that none of the Defendants exercised their affirmative duty to stop such abuses, correct them, report them or rectify them. It is obvious that the restatement by Defense Counsel is self-serving and doesn't speak to Plaintiff's Original Complaint at all, much less New Evidence well known to the Court and to Counsel.

> 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).
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> 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." Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals
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> The Court must make all reasonable inferences in favor of plaintiffs, and the pleadings must be construed liberally. Id.; see also Fed. R. Civ. P. 8(a); Lafoy v. HMO Colorado, 988 F.2d 97, 98 [*1449] (10th Cir. 1993).
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> In ruling on a motion to dismiss, the Court must assume the truth of all well-pleaded facts in plaintiffs' complaint and view them in a light most favorable to plaintiffs. Zinermon v. Burch, 494 U.S. 113, 118, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990); California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 515, 30 L. Ed. 2d 642, 92 S. Ct. 609 (1972); see also Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984)(all well-pleaded facts, as distinguished from conclusory allegations, must be taken as true).
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> 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).
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> 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).
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> 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 [**4] 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).
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> 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

6. The plaintiff seeks monetary damages from the defendants.

III. ANALYSIS

A. Rooker-Feldman Doctrine

The Rooker-Feldman Doctrine would not seem to the eye to apply to judgments made ex parte, sans jurisdiction and void of due process, thus not ‘actually decided’ by any standard of jurisprudence. Defendant Chapman had no jurisdiction to go forward without all Parties duly notified of the hearings, or notified of the true nature of the hearings, and no ‘state court’ judgment, in fact, exists.

> We have considered the effect of a void judgment on numerous occasions and have consistently held that a judgement entered where a jurisdictional defects exist is a nullity. See, e.g., People v. Dillon, 655 P.2d 841 (Colo. 1982)
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> ("It is axiomatic that any action taken by a court when it lacked jurisdiction is a nullity." (citations omitted)); Davidson Chevrolet, Inc. v. City and County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958) [**24] (same), cert. denied 359 U.S. 926, 3 L. Ed. 2d 629, 79 S. Ct. 609 (1959); see also In re Marriage of Pierce, 720 P.2d 591 (Colo. App. 1985) (same).
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> “We were emphatic about the effect of a void judgment in Davidson:
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> > A judgment entered where such a defect exists [lack of subject matter jurisdiction] has neither life nor incipience, and a court is impuissant to invest the judgment with even a fleeting spark of vitality, but can only determine it to be what it is -- a nothing, a nullity.
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> > Being naught, it may be attacked directly or collaterally at any time. Davidson Chevrolet, Inc. v. City and County of Denver, 138 Colo. 171, 175, 330 P.2d 1116, 1118-19. [*229] Further, we have explained that a trial court has no discretion in setting aside a judgment that is void. Stroud, 631 P.2d 168 at 170 n.5 (A "judgment either is void or it isn't and relief must be afforded accordingly.").

Plaintiff seeks redress, in part but not limited to, for injuries from ex parte judgments rendered void of jurisdiction, and for the denial of equal protection under the Law, and the equal application of the Law for Plaintiff by the three Defendants in concert and in collusion, a conspiracy and meeting of minds between Defendants to obstruct justice, extort by threat, conduct Frauds by deceit and intimidate a Witness from giving testimony in Federal Court against State Actors.

[HN8]Like actions under 42 U.S.C.S. § 1981, there is no requirement for the exhaustion of state judicial or administrative remedies before commencing an action under 42 U.S.C.S. § 1983

[HN13] - The existence of state judicial or administrative remedies is irrelevant if a complaint under 42 U.S.C.S. § 1983 alleges either a substantive due process violation or a deprivation of some other constitutional or statutory right, rather than the right to procedural due process. Mosher v. Lakewood, 807 P.2d 1235, 1991 Colo. App. LEXIS 11 (Colo. Ct. App., January 17, 1991, Filed)

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

Admittedly, plaintiffs' pro se complaint is poorly structured and difficult to follow. The Court is nonetheless required to liberally construe plaintiffs' pro se pleadings, Hughes v. Rowe, 449 U.S. 5, 9-10, 66 L. Ed. 2d 163, 101 S. Ct. 173 (1980); Carpenter v. Williams, 86 F.3d 1015, 1016 (10th Cir. 1996), and under this standard plaintiffs have stated a claim. They have identified a federal constitutional right which they claim has been violated and alleged facts which if proven establish a violation of that right. Milam v. Doering C.A. No. 97-2203-KHV UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS 997 F. Supp. 1445; 1998 U.S. Dist. LEXIS 1680

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

Plaintiff alleges that Defendants Chapman and Grier conducted a knowing fraud upon Plaintiff to deny Plaintiff recourse to the Courts by pro se action. Defendants held ex parte hearings; implemented orders rendered ex parte to Plaintiff, and to Plaintiff's damage; failed to notify Plaintiff of hearings as admitted by Defendant Grier in open Court; failed to notify Plaintiff of the true nature of hearings; failed in their duties and obligations as Officers of the Court, and all in conspiracy to deny Plaintiff his Constitutional Rights to due process, equal protection, equal application and to petition the government for redress of grievance.

No 'actual decision' obtains in this instance, and Rooker-Feldman Doctrine would not seem to apply at all.

Subsequent to the filing of the Original Complaint, Plaintiff has found that his Attorney-of-Record, Defendant Miller, was proceeding in a conscious defrauding of Plaintiff as an Agent of the Colorado State Attorney General's Office, and his entire representation was a sham and inimical to Plaintiff's interests. Defendant Miller's admissions whilst being cross-examined under oath are irrefutable admissions of his activity as an agent for State Actors against the interests of his Client, Mr. Gartin, and by implication a Fraud upon Plaintiff, as well as upon the Honorable Court itself.

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.

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.

Causal connection can be established when the constitutionally protected activity is followed closely by adverse action. Lee v. Board of County Com'rs of Arapahoe County, Colo., 18 F.Supp.2d 1143 D.Colo.,1998

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

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

A complaint charging conspiracy, carried into effect, by state's attorney, two deputy sheriffs and sheriff to injure, threaten and intimidate plaintiff because of his plea of not guilty to indictment for murder, need not be treated by court as filed strictly under §1985 of this title, authorizing action for conspiracy to interfere with civil rights, but may be treated as stating cause of action for deprivation of such rights in violation of this section, if plaintiff was deprived of any rights, privileges or immunities secured by Constitution and laws. Lewis v. Brautigam, C.A.5 (Fla.) 1955, 227 F.2d 124.

Defendant Miller's self-admitted Fraud was in aid of two distinct goals; to intimidate Plaintiff's testimony as a Third-Party Eye witness in Federal Cases already in progress by his Client, Steve D. Gartin; and to keep Plaintiff from filing suit for damages against the Colorado State Attorney General's Office as Defendant Miller was retained and agreed so to do.

Defendant Miller's Fraud and deception of Plaintiff complimented Defendant Grier's need to conceal her own, and Defendant Chapman's, ongoing conspiracy to conceal ex parte hearings; to conceal the Fraud

reported to the Supreme Court by Habeas Corpus petition, to defend their procedural omissions and their failure to report or correct or stop such denials of Plaintiff's Rights to the legitimate process of the Law.

Plaintiff's attempts to Amend the Complaint have been in aid of clarity, specificity and to bring New Evidence to the attention of the Honorable Court. Defendants' attempts to restate the case in the face of those facts, as well as the material information contained in Plaintiff's subsequent filings, both unstricken and unanswered, flies in the face of justice and equitable treatment.

Plaintiff's first attempt to Amend the Original Complaint was made when Defendant Miller's Answer was stricken by the Court, and before Defendant Grier's answer was made. Plaintiff was never served with any 'request for extension of time', and hasn't yet been so served as of today.

Plaintiff's second attempt to Amend was on the basis of New Evidence, and Plaintiff read the appropriate Rule to state that application could be made to the Court to so do.

Defendants have self-asserted that any compromise or council with them is futile, so even if Plaintiff had read the Rules correctly, asking them for Leave to Amend would have likely been fruitless in any case.

Plaintiff's subsequent submissions to the Honorable Court have supplemented the information available to both the Court and to the Defendants, and their failure to speak to the questions raised, in a timely manner, would seem to admit Plaintiff's allegations and deem them to be unanswerable, thus true.

> 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).
>
> "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)

B. Claims for Violations of 42 U.S.C. 8 1983

Defendant Miller has admitted to representing the interests of the State Attorney General's Office contrary to the interests of his Client, Mr. Gartin, while being paid by the State's Alternative Defense Counsel as a Public Defender for Mr. Gartin.

Any representation of Plaintiff by Defendant Miller was as a clandestine State Actor, deceiving Plaintiff on behalf of the Colorado State Attorney General's Office to obstruct Plaintiff from either witnessing in Federal Court on behalf of Miller's client, Mr. Gartin, or proceeding with action against the Colorado State Attorney General's Office on Plaintiff's own behalf for vindictive prosecution in 00CR3372 as a means of intimidating a witness from proceeding in Federal Court.

> 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
>
> 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").

Plaintiff alleges, and Defendant Miller's sworn testimony admits, that State Actors conspired to deceive Steve D. Gartin in the matter of the resolution of case 00CR3371 by stipulating that Mr. Gartin could not sue them, the very State Actors making the agreement, for a period of two years, as a condition of his release from a long time in jail waiting for trial and the contemplation of another year whilst Attorney Miller familiarized himself with the case, formulated a defense strategy and implemented it.

Defendant Miller insinuated himself into Plaintiff's contemplated action against, again, the self-same State Actors already complained in a number of Federal Cases. Defendant Miller actively concealed his agency on behalf of the State Actors from Plaintiff; actively deceived Plaintiff on behalf of the self-same State Actors; actively obstructed Plaintiff by acting contrary to Plaintiff's interests in the domestic case, and actively

conspired with Defendant Katherine Grier to 'control' Plaintiff in the face of Defendant Grier's threats of being able to use States assets as if they were her own and an undue influence with Defendant Chapman.

Defendant Miller and Defendant Grier conspired by wire, on March 4th, 2004, to defraud Plaintiff; to deny Plaintiff actual representation in questions before the Bar; to refrain from correcting civil rights abuses on Plaintiff; failing to report such abuses as the ex parte hearings/judgments and extorting the Plaintiff by the threat of false arrest, false charges and undue influence upon the very jurist complained of by Plaintiff as proceeding without jurisdiction,

> CONSPIRACY - 18 U.S.C. §371: makes it a separate Federal crime or offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would amount to another Federal crime or offense, to-wit 18 U.S.C. §§ 1621, 1622, 1001, 872, 241 & 242. So, under this law, a "conspiracy" is an agreement or a kind of "partnership" in criminal purposes in which each member becomes the agent or partner of every other member); and prima facie intentional and malevolent violation of Ethical Rule 8.4 (a) & (b).
>
> 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).
>
> "A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means." Pettibone v. U.S., 148 U.S. 197, 203, 13 Sup. Ct. 545, 37 L. Ed. 422

Inherent in Defendant Miller's presentation for Plaintiff was the agreed-upon obligation to proceed with Plaintiff's complaints of ex parte hearings, ex parte judgments, an invidious and discriminatory animus towards a class of civil rights advocates as well as pro se defendants in general, presentation of Fraud allegations against Counselor Grier and her client, and the Constitutional rights denials, actions and omissions by Defendants Grier and Chapman as inherent in Plaintiff's Petition for Writ of Habeas Corpus submitted to the Colorado State Supreme Court.

> 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).
>
> 1. 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.

C. Claims for Violations of 42 U.S.C. §§ 1985 and 1986

While the defendants further argue that the claims asserted against them under 42 U.S.C. §§ 1985 and 1986 must be dismissed because they are not state actors, the overwhelming evidence, particularly considering Defendant Miller's admissions of June 7, 2005, wherein he admits his agency on behalf of State Actors, under color of their authority, is that they, in fact, are.

Section 1985 provides in pertinent part (emphasis added) that the Defendants are subsumed to the provisions by both direct and indirect complicity, conspiracy, collusion and enabling of such deprivation of Plaintiff*:*

> *If two or more persons in any State or Territory* ***conspire*** *or go in disguise on the highway or on the premises of another,* ***for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws****; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy;* ***in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.*** (emphasis added)

42 U.S.C. § 1985(1).

Plaintiff makes a cognizable claim for a Conspiracy to deprive Plaintiff of his civil rights between Defendants Chapman, an acknowledged State Actor, and Grier and Defendant Grier's agency on behalf of Defendant Chapman by conspiring with Defendant Miller; between Defendants Miller and Grier to deprive Plaintiff of actual representation by counsel in Plaintiff's interests, and between Defendant Miller and the State Actors of the Colorado State Attorney General's Office, and thus satisfies the requirements of § 1985 (3) claim on all levels.

Plaintiff has also alleged with specificity in both the Original Complaint, more specifically in the First Amended Complaint, moreso in the Second Amended Complaint; refined and supplemented in further submissions to the Honorable Court, and admitted to by logical inference by one of the participant Defendants, Mr. Miller, in court, under oath on June 7th, 2005, as cited.

None of the Defendants have contested or rebutted Plaintiff's assertions that their deprivation of Plaintiff's rights was motivated by their self-identified and vocal animus towards Plaintiff as an accused civil rights' activist, on behalf of Negroes and other indigent involuntary pro se respondents, responding to infractions by the Courthouse enterprise and its administrators; their corrupt acts, each on his own, and mutual cover-up of abuses under color of their authority and administration, and in advocacy of their exercise and application of legal guarantees, immunities, duties, obligations and protections.

Section 1986 provides in pertinent part to Plaintiff's Complaint:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action;

All of the Defendants are Juris Doctors and Officers of the Court having an independent affirmative duty by both the Statute and their Professional Codes to Plaintiff to safeguard his Constitutional Rights within the enterprise they labor for and from which they personally benefit.

They further have an affirmative duty to stop such abuses as they are able, to correct such abuses insofar as they are able, to report such abuses to a regulatory and disciplinary body, and to refrain from committing or benefiting from such abuses and deprivations of rights as has been visited upon Plaintiff.

42 U.S.C. § 1986.

Plaintiff respectfully submits that § 1986 is satisfied by the facts within the Honorable Court's knowledge, and evidenced, again, by Defendant Miller's admissions in the above cited testimony. This New Evidence from Defendant Miller gives the lie to every submission from him; a motive for every failure to act;

every complicit action to his fellow Defendants' actions contrary to Plaintiff's interest and in deprivation of his Rights.

Defendant Grier's complicity in Defendant Miller's fraud on behalf of State Actors in the Colorado State Attorney General's Office and their Defendant Clients assists a State Actor.

Her complicity with Defendant Chapman to conceal ex parte judgments made void of jurisdiction, and the Fraud as alleged in Plaintiff's Habeas Corpus Petition as well as in filings before the Court, required complicity by a fellow Officer of the Court, co-beneficiary of the Courthouse enterprise to conceal, and she found a willing co-conspirator in Defendant Miller to their mutual aggrandizement.

D. Claims Under "R.C. 1979"

Plaintiff claims in his Original Complaint Title Bar are "COMPLAINT WITH JURY DEMAND Complaint of Civil Rights Violations pursuant to 42 USC §§1986, 1985, 1983, 1981, 1979". Plaintiff's citing of "R.C. 1979." in the body *Complaint*, ¶ ¶ 6, 22, 23, 27, 28, 32, 35, 37, 40, 43, 46, and 49 was an insignificant and harmless typographical error obvious to anyone, and was corrected immediately by Plaintiff as 42USC§1983, R.S.§1979 in the subsequent submissions by Plaintiff to the Honorable Court, both stricken by the Court and not so stricken.

Plaintiff reasserts the Original Complaint ¶ ¶ 6, 22, 23, 27, 28, 32, 35, 37, 40, 43, 46, and 49 as with the typographical error corrected as harmless, and as if fully reproduced herein.

E. Claims Under Title 18 of the United States Code

Plaintiff's Original Complaint with Jury Demand asserts that "the neglects of each of the Defendants" violated the following statutes in addition to the "Civil Rights Violations pursuant to 42 U.S.C. §§ 1986, 1985, 1983, 1981, 1979" of the title bar: 18 U.S.C.A. §241 Conspiracy against rights; 18 U.S.C.A. § 242 Deprivation of rights in color of authority; 18 U.S.C.A. § 872 Extortion in color of authority; 18 U.S.C.A. § 1621 Perjury of Oath of Office; 18 U.S.C.A. § 1001 Relating to Fraud and false instruments; 18 U.S.C.A. 572 Lying to a Government Official; 18 U.S.C.A. § 1512 Witness tampering; 18 U.S.C.A. § 1951(B)(2) Extortion; 18 U.S.C.A. § 1341; 18 U.S.C.A. § 1343 Mail and Wire Fraud; 18 U.S.C.A. § 875(c) prohibiting transmission in

interstate commerce of any communication containing any threat to kidnap any person or any threat to injure the person of another, and Plaintiff makes a 'Criminal Complaint' pursuant to those alleged violations.

The only misstatement of the wrongdoing was the identifier of the employer of the Actors before the Court as Defendant. In point of fact, Defendant Miller and the Colorado State Attorney General's Office may well have been creatures of the Joint Terrorism Task Force of the Federal Bureau of Investigation, and thus agents of the United States government as well as acting with State authority. Leave to Amend the Complaint would give Plaintiff an opportunity to re-state with specificity the claims and Defendants in a more acceptable and cognizable manner.

> 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 Plaintiff didn't assert any 'private right of action', but simply reported crimes as required under State Law C.R.S. 18-8-115. The criminal acts by Defendants were perpetrated within their ongoing Civil Rights Violations as State Actors perpetrating a fraud upon Plaintiff, if evidence be our guide, and would seem to exacerbate their abuse under color of authority while administrating the Courthouse enterprise in the public trust.

6. Plaintiff's claim gain standing under Title 42, § 1983, R.S. 1979

> Ex rel.: for the people of the united states defined: "...But it is the manner of enforcement which gives 42 U.S.C. 1983 its unique importance, for the enforcement is placed in the hands of the people." Each citizen, "*acts as a private attorney general who takes on the mantle of the sovereign, guarding for all of us the individual liberties enunciated in the constitution.*" Section 1983 represents a balancing feature in our governmental structure whereby *individual citizens are encouraged to police those who are charged with policing us all*. Thus, it is of *special import that suits brought under this statute be resolved by a determination of truth*." Wood v. Breier, 54 F.R.D. 7, (1972). (emphasis added)
>
> (for purposes of Section 1983, acting under color of state law is misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law) Norton v. Liddel, 620 F.2d 1375, 1379-80 (10th Cir. 1980); Brown v. Chaffee, 612 F.2d 497, 501 (10th Cir. 1979)
>
> "Our whole system of law is predicated on the general fundamental principle of equality of application fo the law. 'All men are equal before the law,' "This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute and apply laws. But the framers and adopters of the (Fourtheenth)

> Amendment were not content to depend... upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty." Truax v. Corrigan, 257 U.S. 312, 332

Particularly in the unique nature of a '1983' action, as considered in the light of R.S. §1979, and its means to exercise Plaintiff's First Amendment Right to Petition the government for redress of grievance by the very individual who has been harmed by the abuse by State Actors, particularly Officers of the Court, a wide latitude for forma should append to the submissions by the Proper Party Injured pro se Plaintiff, and Plaintiff respectfully so PRAYS the Honorable Court.

> (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.

18 U.S.C. § 242 makes it a crime to wilfully deprive persons under color of law of their rights under the constitution or laws of the United States.

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

Plaintiff's mis-citation of statutes that bind United States Government employees only mis-states the employer of the Actors misusing their authority and committing infractions against Plaintiff. Applicable statutes binding State Actors surely exist, and Leave to Amend the Complaint would allow Plaintiff to satisfy that requirement of forma and be in the interest of justice and the deserved sanctions against Defendants that justice demands.

> 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).

Section 572, 18 U.S.C., does not exist.

> Plaintiff's charge in the Original Complaint is 'Lying to a Government Official'.

> 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).

> 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. 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)

> Plaintiff's standing to present Federal crimes committed within the scope of 1983, stand as well as regards State Codes violated by the State actors..

All of the State authorities have declined jurisdiction over Actors for the Colorado State attorney general's Office, to include Defendant Miller, a self-confessed agent on behalf of interests held by the Colorado State Attorney General's Office.

Even if Defendant Miller's actions towards his client Gartin could somehow be justified, that fails to justify his Fraud of Plaintiff, a client as well or his complicity in the Civil Rights Violations perpetrated upon Plaintiff.

Defendant Miller's self-confessed fraud of Client Gartin additionally seems to constitute Witness Intimidation as regards Plaintiff, a Third Party Eyewitness for the Complainant in a number of Federal Cases filed

I PRAY the Honorable Court to exercise jurisdiction over these crimes by State Actors, committed under color of their authority, depriving Plaintiff of substantial rights and violative of Plaintiff's Civil Rights.

IV. CONCLUSION

Plaintiff respectfully PRAYS that the Honorable District Judge DECLINE the Honorable Magistrate Judge's RECOMMENDATION that Defendant Katherine Grier's Motion to Dismiss be GRANTED and that all Plaintiff's federal claims against defendant Grier be allowed to go forward to trial.

Plaintiff very respectfully submits to the Honorable Court that justice will not be served by a Dismissal; would reward Defendant Grier for her infractions and fail to dissuade her from similar actions in the future, and would tend to hold the Legal Community up to a high standard of integrity to justify our public trust.

> Motions to dismiss are generally viewed with disfavor. NL Industries, Inc. v. Gulf & Western Industries, Inc., 650 F. Supp. 1115, 1122 (D. Kan. 1986).
>
> 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 (10th Cir. 1989)
>
> ... 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)

Plaintiff very respectfully submits that the instant case is exceptional in that it doesn't come from a convicted criminal; is a controversy between State Actors and Plaintiff; is a complaint of abuse by Officers of the Court; which abuses span a length of time and of cases and of various jurisdictions. Plaintiff noted each abuse at its inception, documented it, reported it and sought relief in each of the appropriate administrative and judicial venue. Each of Plaintiff's allegations has been proven and supported when challenged, and the burden for 'frivolous' allegations and 'vexatious' bad faith is presently upon Defendants.

> 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 very respectfully submits to the Honorable Court that justice will not be served by a Dismissal of these claims and charges and allegations against Defendant Thomas C. 'Doc' Miller, particularly 'with

prejudice'. Dismissal would reward Defendant Miller for Fraud upon Plaintiff as well as his agency on behalf of State Actors of the Colorado State Attorney General's Office to Obstruct Justice and to Violate Plaintiff's Civil Rights, and to Intimidate Plaintiff's Witness in Federal Court.

Disciplinary actions have failed to dissuade Defendant Miller from similar actions in the past, and a Dismissal With Prejudice would allow him to escape without sanctions due to Plaintiff's harmless errors in citation or applying for Leave to Amend the Original Complaint with the proper procedural punctilio or some small failure in Library Science.

The Honorable Court's implicit ratification of Miller's self-admitted Fraud upon Plaintiff as if on the merits of the facts rather than a failure in proper citation would tend to hold the Legal Community up to a question as to the high standard of integrity soas to justify our public trust. Plaintiff understands how the Honorable Court would detest any such action by a Juris Doctor, and the difficulty in believing that such behaviour obtains, and the high standard of proof that is expected with any such allegations.

In light of that understanding, Plaintiff reiterates his claims and complaints, inclusive of Plaintiff's supplementary evidence and statements of facts, both stricken for forma and not so stricken, and of the New Evidence revealed by Defendant Miller's testimony under oath, to the attention of the Honorable District Judge of the Federal Court and humbly PRAYS that the truth is so self-evident and compelling that the Honorable Judge allow Plaintiff's Complaint to go forward to trial on its merits in the interests of justice.

Respectfully submitted this 27th day of June, 2005,

_____

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CERTIFICATE OF MAILING

Civil Action No. 04-cv-2455-REB-BNB

I hereby certify that a copy of this PLAINTIFF'S EXCEPTION TO THE RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE and PRAYER dated June 17, 2005, depositing the same in the United States mail, postage prepaid, this day of June, 2005, to the following persons:

CLERK OF THE FEDERAL DISTRICT COURT
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901 19TH STREET
DENVER, COLORADO 80294-3589

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