United States Court of Appeals
For the Tenth Circuit

Docket No. 04-03364 (10th Cir.)

Case No.: 04-cv-02215-DVB

BRET DAVID LANDRITH

v.

STANTON A. HAZLETT, HON. G. JOESEPH PIERRON, JR., HON. MARLA J. LUCKERT, HON. RICHARD D. ANDERSON, JONATHAN M. PARETSKY, SHERRI PRICE, BRENDEN LONG

Appeal from
the United States District Court
for the District of Kansas
Hon. Judge Dee V. Benson, Presiding

APPELLANT'S OPENING BRIEF

Law Offices of Bret D. Landrith, Esq.
Apt. # G33
2961 SW Central Park,
Topeka, KS 66611
1-785-267-4084
1-785-876-2233
Attorney for James L. Bolden

Bret D. Landrith, Esq.
Kansas Sup. Ct. Id. # 20380
Pro Se

APPELLANT

Oral argument requested.

Brief Table of Contents

PRIOR OR RELATED APPEALS 4

STATEMENT OF JURISDICTION 4

STATEMENT OF THE ISSUES 4

STATEMENT OF THE CASE 4

STATEMENT OF THE FACTS 6

SUMMARY OF THE ARGUMENT 49

ARGUMENT 52

Standard of Review 52

1. Whether Disciplinary Administrator Stanton Hazlett who is not a judge and functions as a prosecutor, has judicial immunity. 52

2. Whether the District Court's new law voiding earlier controlling Tenth Circuit authority that complaining witnesses do not enjoy absolute immunity is now the new law of the Tenth Circuit Court of Appeals. 52

3. Whether the trial court abused its discretion in denying preliminary injunctive relief when no controverted issues of fact existed over whether the plaintiff was being retaliated against for First Amendment protected Speech in support of an African American and American Indian being injured by violations of federal law and had already suffered the loss of his home and income. 54

4. Whether the trial court had a duty to make an independent evaluation of the plaintiff's claims under *Bright v. Westmoreland County*, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004). 55

CONCLUSION 58

STATEMENT REGARDING ORAL ARGUMENT 58

CERTIFICATE OF COMPLIANCE 61

CERTIFICATE OF SERVICE 62

ORDER APPEALED FROM 47

NOTICE OF APPEAL 48

TABLE OF AUTHORITIES

Case law

Lytle v. City of Haysville, 138 F.3d 857, 862 (10th Cir. 1998) 50
Revo v. Disciplinary Bd. of the Sup. Ct. for the State of N.M., 106 F.3d 929, 932 (10th Cir. 1997). 50
Brown v. Palmer, 915 F.2d 1435, 1441 (10th Cir. 1990), aff'd on reh'g, 944 F.2d 732 (10th Cir. 1991) (en banc). 50
Fleming v. Jefferson County School District R-1, 2002 C10 1418 at ¶29 (USCA10, 2002). 50
Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) 50
Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423 at 436, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) 50
Bishop v. State Bar of Texas, 736 F.2d 292 at 294 (C.A.5 (Tex.), 1984) 50
Antoine v. Byers & Anderson, Inc., 508 U. S. 429, 435-36 (1993) 51
Whitesel v. Sengenberger, 222 F.3d 861, 867 (10th Cir. 2000) 51
Lundahl v. Zimmer, 2002 C10 766 at ¶ 28 (USCA10, 2002) 51
Burns v. Reed, 500 U.S. 478, 486, 111 S.Ct. 1934, 1935, 114 L.Ed.2d 547 (1991) 52
Gerhardt v. Harris, 934 P.2d 976 at 980, 261 Kan. 1007 (Kan., 1997) 52
Jarvis v. Drake, 250 Kan. 645, 830 P.2d 23 at Syl. ¶ 1 (1992) 52
Elrod v. Burns, 427 U.S. 347, 373 (1976) 54
Utah Licensed Beverage, 256 F.3d at 1076 54
Homans v. City of Albuquerque, 264 F.3d 1240, 1243 & n.2 (10th Cir. 2001) 54
ACLU v. Johnson, 194 F.3d 1149, 1163 (10th Cir. 1999) 54
Community Communications Co. v. City of Boulder, 660 F.2d 1370, 1380 (10th Cir. 1981) 54
Heideman v. South Salt Lake City, No. 02-4030 (10th Cir. 11/5/2003) (10th Cir., 2003) 54
NAACP v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 54
Baggett v. Bullitt, supra, 377 U.S., at 378—379, 84 S.Ct., at 1326 54
Bush v. Orleans School Board, D.C., 194 F.Supp. 182, 185 54
Tugwell v. Bush, 367 U.S. 907, 81 S.Ct. 1926, 6 L.Ed.2d 1250 54
Gremillion v. United States, 368 U.S. 11, 82 S.Ct. 119, 7 L.Ed.2d 75 54
Dombrowski v. Pfister, 380 U.S. 479 at 487, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965) 55
Gitlow v. New York, 268 U.S. 652, 666 (1925) 55

Bright v. Westmoreland County, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004) 55
Heideman v. South Salt Lake City, No. 02-4030 (10th Cir. 11/5/2003) (10th Cir., 2003) 55
Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp., 15 F.3d 1222, 1227 (1st Cir. 1994) 56
Curtis v. Commissioner, 623 F.2d 1047, 1051 (10th Cir. 1980) 56
Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 at 1245 (10th Cir., 2001). 56
EEOC v. United Virginia Bank/Seaboard Nat., 555 F.2d 403, 406 (4th Cir. 1977) 56
Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 at 1246 (10th Cir., 2001). 57
Wolfe v. New Mexico Dept. of Human Services, 69 F.3d 1081, 1087 (10th Cir. 1995). 57
Otero v. Mesa County Valley Sch. Dist. No. 51, 568 F.2d 1312, 1316 (10th Cir. 1977). 57
Bright v. Westmoreland County, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004) 57
Chicopee Mfg. Corp. v. Kendall Co., 288 F.2d 719, 725 (4th Cir. 1961) 58

Statutes

42 U.S.C. § 1983 50

42 U.S.C. § 1983 51

Fed. R. Civ. P. 52(a) 56

Fed. R. Civ. P. 52(a) 57

PRIOR OR RELATED APPEALS

This action had a related Tenth Circuit appeal, *Bolden v. City of Topeka*, Case No. 04-03306 where the appellant represents James Bolden.

STATEMENT OF JURISDICTION

The final judgment and order being reviewed was filed and entered on the district court docket September 23, 2004. The appellant filed a timely notice of appeal under Fed. R. App. 4 (a)(1)(A) September 23, 2004.

STATEMENT OF THE ISSUES

Whether Disciplinary Administrator STANTON HAZLETT who is not a judge and functions as a prosecutor, has judicial immunity. Whether the District Court's new law voiding earlier controlling Tenth Circuit authority that complaining witnesses do not enjoy absolute immunity is now the new law of the Tenth Circuit Court of Appeals. Whether the trial court abused its discretion in denying preliminary injunctive relief when no controverted issues of fact existed over whether the plaintiff was being retaliated against for First Amendment protected Speech in support of an African American and American Indian being injured by violations of federal law and had already suffered the loss of his home and income. And, whether the trial court had a duty to make an independent evaluation of the plaintiff's claims under Bright v. Westmoreland County, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004).

STATEMENT OF THE CASE

Action to enjoin state attorney disciplinary administrator and complaining witnesses under 42 U.S.C.§1983 from prosecuting plaintiff in violation of First Amendment protections against prior restraint on speech for representing two controversial minority race clients in defense of their liberty interests from state agency takings over state agency officers' accusations of plaintiff's conduct that is not unethical and in fact is required by the Kansas Rules of Professional Conduct.

The trial court adopted by reference and without independent examination the opposing counsels' dismissal memorandums asserting the non judge disciplinary administrator was immune because he was a judge and that the complaining witnesses were immune because a state statute nullified 42 U.S.C.§1983's effect, despite Kansas Supreme Court and Tenth Circuit rulings requiring immunity to be determined by function and that the ethics complaint makers had only the limited immunity of complaining witnesses, insufficient to withstand injunctive relief upon the plaintiff's uncontroverted showing of good cause.

STATEMENT OF FACTS

The appellant averred the following facts in his complaint against the defendants Hon. Judge Richard D. Anderson, Stanton A. Hazlett, Hon. Judge Lee A. Johnson, Hon. Judge Marla J. Luckert, Jonathan M. Paretsky, Hon. Judge G. Joeseph Pierron Jr., Sherri Price and Brenden Long:

Defendant STANTON A. HAZLETT, Disciplinary Administrator, State of Kansas Office of the Disciplinary Administrator, 701 Jackson St., Topeka, Kansas

66603-3729. The investigation and prosecution of the complaint was first designed to disrupt the preparation of the brief of James Bolden's witness, David Martin Price and there is an eminent danger the defendant will cause the disruption of the plaintiff's preparation for James Bolden's federal jury trial. (Plaintiff's complaint ¶ 13, pg.s 5-6) Apdx pg. 16-17

Following the prevention of James Bolden's access to the Kansas Court of Appeals, the defendants Honorable G. JOESEPH PIERRON, JR., Honorable LEE A. JOHNSON, and JONATHAN M. PARETSKY, aiding the defendants Hon. MARLA J. LUCKERT, Hon. RICHARD D. ANDERSON, BRENDAN LONG, and SHERRI PRICE and acting with the assistance of STANTON A. HAZLETT retaliated against the plaintiff and James Bolden's witness David Martin Price, as they had done against James Bolden's witnesses Mark Hunt, Frank Kirtdoll and Fred Sanders and were continuing to do against David Martin Price. (Plaintiff's complaint ¶ 25, pg.s 10) Apdx pg. 21

David Martin Price's only son as an infant was taken across the state line to Colorado without a hearing or notice in a scheme to sell the child in violation or disregard for every statute created by the Kansas Legislature to prevent Kansas from being known as a "Supermarket" for babies. While this scheme was in large part carried out by an attorney whom the defendants Honorable G. JOESEPH PIERRON, JR. and Honorable LEE A. JOHNSON found had represented a couple who committed fraud in Interstate Adoption Compact filings using a similar misrepresentation of instate residence to obtain court paperwork transferring a

Kansas infant to his adoptive parent clients, the defendants Honorable G. JOESEPH PIERRON, JR., Honorable LEE A. JOHNSON, Hon. MARLA J. LUCKERT, Hon. RICHARD D. ANDERSON, JONATHAN M. PARETSKY, and STANTON A. HAZLETT and each used their knowledge of the violations to facilitate the kidnapping, obstruct the representation of David Martin Price and the investigation of the actions causing the infant to be transported. The defendants Honorable G. JOESEPH PIERRON, JR., Honorable LEE A. JOHNSON, Hon. MARLA J. LUCKERT, Hon. RICHARD D. ANDERSON, JONATHAN M. PARETSKY, and STANTON A. HAZLETT used their offices to deprive David Martin price of an appeal by right to the Kansas Supreme Court and to retaliate against David Martin Price for seeking to assert his parental rights. (Plaintiff's complaint ¶ 72, pg.s 30-31) Apdx pg. 41-42

The foreseeable result of the defendants' ethics complaints against the plaintiff was to cause the plaintiff to have to evaluate the potential for injury to the causes of new clients or potential employers from being associated with or represented by the plaintiff, especially when those causes may be resolved by the three appellate judges making the vicious accusations against the plaintiff, impugning the character of the plaintiff by alleging he was mentally unstable. (Plaintiff's complaint ¶ 73, pg. 31) Apdx pg. 42

The defendants constructively shut off the plaintiff's ability to earn an income with the filing of the first ethics complaint by the defendants Honorable G. JOESEPH PIERRON, JR.,, Honorable LEE A. JOHNSON, and JONATHAN

M. PARETSKY and the initiation of prosecution without independent evaluation or independent performance of their state office duties by the defendant STANTON A. HAZLETT. The plaintiff understandably suspended taking on new clients in his practice after receiving the ethics complaint, while he awaited the outcome. (Plaintiff's complaint ¶ 74, pg.s 31-32) Apdx pg. 42-43

The plaintiff attempted to find work in his trade as an attorney, clerk, or paralegal from established employers around the state, but the ethically required open disclosure of the first ethics complaint upon specific questioning of potential employers was a recognizable deterrent to obtaining an income. (Plaintiff's complaint ¶ 75, pg. 32) Apdx pg. 43.

The plaintiff's counsel also has two very large cases in addition to James Bolden federal case and David Martin Price's adoption appeal and alternate counsel could not be obtained. In addition to this loss of immeasurable time without compensation, to conduct James Bolden's and his witness David Martin Price's two case, the ethics complaint required an enormous amount of research and writing, to the exclusion of all other activities. (Plaintiff's complaint ¶ 76, pg. 32) Apdx pg. 43.

After many months and no action by the defendant STANTON A. HAZLETT the plaintiff discovered that Frank D. Diehl had investigated a very serious ethics complaint against the City of Topeka prosecutor John Knoll involving prosecutions of David Martin Price judicially noticeable for being on the same charge continually being refilled in violation of state speedy trial limits

and the constitutional bar to double jeopardy. The prosecutions themselves were based on false testimony solicited from two witnesses bribed by Topeka police officers with nonprosecution of violent offenses. The officers were acting on the instructions of Topeka Police Department Memos and pep talks at Fraternal Order of Police meetings targeting David Martin Price for his speech at the Topeka City Council critical of Mayor Joan Wagnon's (and the defendants') policies leading to high crime in the High Crest neighborhood and the theft of federal funds by city officials. The witnesses' testimony conflicted with physical facts and was false on its face. One of the witnesses would later commit manslaughter resulting from his frequent violent criminal conduct. (Plaintiff's complaint ¶ 77, pg.s 32-33) Apdx pg. 43-44.

Frank D. Diehl quickly dismissed the complaint, writing back to David Martin Price on July 3 rd, 2003, within 30 days of the filing of the complaint against John Knoll saying there was no basis for ethics prosecution against the prosecutor, but contradicting this assertion by suggesting David Martin Price consult a civil rights attorney about malicious prosecution, an articulation of probable cause that the actions complained of against David Martin Price by John Knoll did in fact interfere with the administration of justice, the most serious form of violation under the Kansas Rules of Professional Conduct. (Plaintiff's complaint ¶ 78, pg. 33) Apdx pg. 44.

Upon discovery of this disparate treatment of the disciplinary complaint against the plaintiff and the quick dismissal of the complaint against the City of

Topeka prosecutor John Knoll, the plaintiff notified the defendant STANTON A. HAZLETT that he would begin taking other clients. Shortly after this, the City of Topeka and the U.S. Magistrate O'Hara discovered at a pretrial hearing before Magistrate O'Hara, that the plaintiff had again started to accept new clients and the defendant SHERRI PRICE filed a second ethics complaint against the plaintiff for the purpose of suppressing the plaintiff's representation of James Bolden by constructively denying him the ability to earn a living from representing clients in federal court. (Plaintiff's complaint ¶ 79, pg. 33). Apdx pg. 44.

The plaintiff's $62,000.00 house has been foreclosed on (Crawford County, KS Case No. 03CV74P. (Plaintiff's complaint ¶ 80, pg. 33) Apdx pg. 44.

The plaintiff was denied a divorce in Shawnee District court, the judge inexplicably surrendering jurisdiction in comity to a later action in Crawford County District court (contrary to clear Kansas authority). The defendants benefited from the Crawford County judge's actions in a series of ex parte orders and unwillingness to yield to the court of original jurisdiction and which constructively deprived the plaintiff of parenting time or visitation with his children. The Crawford County judge told his estranged wife and children that the plaintiff is ordered not to take the children to his home on a visitation or anywhere out of Crawford County, while creating a separate written record that conceals this violation of equal protection. (Plaintiff's complaint ¶ 81, pg. 34) Apdx pg.45.

As a direct result of actions taken by the defendants to interfere with and prevent the plaintiff from representing James Bolden, the plaintiff earned only

one thousand eight hundred dollars in 2003. The foreseeable consequences of this suppression of the plaintiff's ability to earn a living is the inability to have a telephone and at times having to work on James Bolden's case without electricity and water, much less a residence. (Plaintiff's complaint ¶ 82, pg. 34) Apdx pg.45.

Many planned personal activities and relationships of the plaintiff have been destroyed by the actions of the defendants in seeking to prevent the effective representation of James Bolden in his claims for redress arising from the openly criminal activities of the City of Topeka and the efforts of the defendants to interfere with the administration of justice and commit repeated obstruction of justice. (Plaintiff's complaint ¶ 83, pg. 34) Apdx pg. 45.

The plaintiff has been unable to accept requests for representation by Mark Hunt, David Martin Price, Rosemary Price and two other civil rights actions as a result of the actions of the defendants. Quite literally, the plaintiff has nothing else left to be taken from him or destroyed by the defendants as their punishment and price extracted for engaging in the conduct required by the Kansas Rules of Professional Conduct and the oath of being a Kansas Attorney. (Plaintiff's complaint ¶ 84, pg.s 34-35) Apdx pg. 45-46.

State of Kansas Agencies Actions Against Plaintiff's First New Client

When the defendant SHERRI PRICE learned that the plaintiff had started to again take on new clients, even though he was without a phone and was being forced to stay in different basements of friends for shelter, SHERRI PRICE and the defendant STANTON A. HAZLETT caused a second ethics complaint to be

forwarded to the plaintiff, accusing the plaintiff of the non-ethical violation of publicly communicating the first ethics complaint (the defendant STANTON A. HAZLETT himself had advised the plaintiff on two separate occasions, once by phone and once by letter that the plaintiff was free to communicate about the first complaint) and accusing the plaintiff of committing legal malpractice for failing to serve the individual municipal officer in James Bolden's federal complaint when the City had voluntarily appeared and case law she herself used[1] showed that clear authority made only the City liable for the actions of its officers in their official capacity. (Plaintiff's complaint ¶ 85, pg.35) Apdx pg. 46.

The Injuries Defendants Are Inflicting Upon the Plaintiff's Client Melvin Johnson

On May 2 nd, 2004 at 7:55 pm., the night before STANTON A. HAZLETT's letter to the plaintiff announcing the intent of the State of Kansas agency Office of the Disciplinary Administrator to prosecute the plaintiff and warning that the plaintiff must answer the formal complaint within 20 days, the State of Kansas agency, Topeka Housing Authority had Lee McClinton, the wife of the Mayor of the City of Topeka serve a notice of eviction upon the plaintiff's first new client after ethics complaint DA8893. The reason for the eviction is believed to be animosity for Melvin Johnson's letter objecting to being prevented from assuming the Office of Treasurer of his building committee, a post created

[1] *Burns v. Board of County Commissioners of County of Jackson*, 197 F. Supp. 2d 1278 (D. Kan. 2002)

by federal housing regulation, to which he had been elected, as a result of the malicious use of the USA PATRIOT ACT and the desire of the City of Topeka and the Topeka Housing Authority to prevent the plaintiff from representing Melvin Johnson and the possibility that the banking relationships to purloined H.U.D. funds might be exposed. (Plaintiff's complaint ¶ 86, pg.35)

As a result of the defendants' announced and planned action to prosecute the plaintiff for ethics violations, the plaintiff will be unable to accept Melvin Johnson's request to represent him for this civil rights action involving a malicious use of the USA PATRIOT Act if this injunctive relief is not granted. The plaintiff gained experience that is unique in the Tenth Circuit and possibly the nation in litigating claims based on the intentional misuse of the USA PATRIOT Act in the Tenth Circuit Appellate cases, Medical Supply Chain, Inc. v. US Bancorp NA, et al. Case No.'s 02-3443, 03-3342 and Kansas District Course Case No. 02-2539. (Plaintiff's complaint ¶ 87, pg.36)

The defendants took actions taken against Melvin Johnson's witness Rosemary Price. Rosemary Price has knowledge of the wrongful purposes of the U.S. Postal Service in terminating Melvin Johnson for his disability endanger crucial testimony in his federal case for redress and to which his previous attorney and the Washburn Legal clinic had withdrawn from representation before the plaintiff had accepted Melvin Johnson's case. Following the appearance of Rosemary Price's husband David Price's attendance with Melvin Johnson, in a Topeka federal district courtroom where the plaintiff had called the African

American Mark Hunt to testify on the retaliation for protected speech by the state agency the City of Topeka, all observed by the Assistant City Attorney Sherri Price, also sitting in the courtroom, the defendants revealed that they had caused her infant stepson to be adopted out to another state without hearing her petition, her motion for recusal or following a single Kansas law or according any semblance of Due Process. (Plaintiff's complaint ¶ 88, pg.s 36-37)

This outside the courtroom action against Melvin Johnson's witness appears to have been a "two-for." The U.S. Attorney's office that consistently refused to investigate the malfeasance of Topeka officials in H.U.D. fund administration reported to them by James Bolden, even when the H.U.D. inspector Gary Deers was on tape saying the "program violations" of the City of Topeka officials were criminal felonies participated in the communication to the defendants that caused retaliation against Melvin Johnson and his witness Rosemary Price. Surprisingly, the U.S. Attorney's Topeka office hired the former City of Topeka Assistant Attorney Plinsky. Ed Bailey was called in as outside counsel to defend the City from David Martin Price's civil rights complaint against the three police officers who had unsuccessfully targeted him in retaliation for his protected speech. Much of the memos and self authenticating evidentiary documents turned over to David Martin Price in discovery were later fraudulently disputed as unauthenticated by then Assistant Attorney Plinsky (who had already been found to be testifying falsely under oath in the case) and Ed Bailey when

the latter found the deception useful to obtain summary judgment. (Plaintiff's complaint ¶ 89, pg. 37)

Mr. Plinsky of the Topeka office of the U.S. Attorney attended the hearing and saw Rosemary Price's husband, causing the chain of events which lead to the immediate retaliation against Melvin Johnson by the City of Topeka housing authority and against his witness Rosemary Price. (Plaintiff's complaint ¶ 90, pg.s 37-38)

Malicious Motive Of Defendants' Prosecution of the Plaintiff

There can be no presumption of good faith motive in the defendant STANTON A. HAZLETT's announcement in a letter to the plaintiff dated May 3 rd, 2004. The defendants are selectively prosecuting the plaintiff to prevent him from being able to effectively represent James Bolden. The timing of the announcement and its warning that the plaintiff must answer the formal complaint upon receipt in 20 days is designed to destroy the plaintiffs preparation for the complex jury trial in James Bolden's case starting July 6 th, a strategy the defendants Hon. G. JOESEPH PIERRON, JR., Hon. LEE A. JOHNSON and JONATHAN M. PARETSKY used to disrupt the plaintiff's brief in James Bolden's witnesses David Martin Price's appeal with the original filing of the ethics complaint. (Plaintiff's complaint ¶ 91, pg.s 38) Apdx pg. 49

The defendant STANTON A. HAZLETT failed to investigate the claims the state intended to prosecute the plaintiff for. In spite of STANTON A. HAZLETT's stated duties under the Kansas Rules of Professional Conduct and

the Kansas Supreme Court Rules on Attorney Discipline, Mr. HAZLETT did not obtain the records filed in the plaintiff's representation of James Bolden before the Shawnee District Court after the plaintiff's entry of a post judgment appearance. (Plaintiff's complaint ¶ 92, pg. 38) Apdx pg. 49.

The defendant STANTON A. HAZLETT did not interview the plaintiff, his clients James Bolden, David Martin Price or any of the witnesses that might have had material information of an exculpatory nature prior to presenting to the reviewing committee a case for causing a formal disciplinary complaint o be made against the defendant. Of particular note in giving a prima facie showing of malicious motive on the part of the defendant STANTON A. HAZLETT is the failure to interview witnesses or seek to hear recordings of the Shawnee District Court Clerk's office stating deliberate falsehoods to obstruct justice and prevent the plaintiff's access to court records required to represent David Martin Price in the appeal of the termination of his parental rights. (Plaintiff's complaint ¶ 93, pg. 38-39) Apdx pg. 49-50.

The conduct of the Shawnee District Court Clerk's personnel and related transcripts were submitted and discussed in motions by both counsel before the defendants Hon. G. JOESEPH PIERRON, JR. and Hon. LEE A. JOHNSON sitting as a motion panel in David Martin Price's case, prior to the defendants' Hon. G. JOESEPH PIERRON, JR., Hon. HENRY W. GREEN, Hon. LEE A. JOHNSON and JONATHAN M. PARETSKY's creation of an eight page ethics complaint viciously denouncing the ethics, competency and sanity of the plaintiff,

largely based on a conflicting and self contradictory account of the conduct of clerk's staff timed to disrupt the preparation of David Martin Price's appellate brief. Neither the defendant STANTON A. HAZLETT or interviewed witnesses that had a first hand and documented knowledge of the events the defendants intend to prosecute the plaintiff for in violation of STANTON A. HAZLETT's duty under Rule 205 (c) (2) and STANTON A. HAZLETT duties under KRPC 3.3(a)(2), 3.3(d) and 3.4(c). (Plaintiff's complaint ¶ 94, pg. 39) Apdx pg. 50.

The malicious motive of the defendants is further properly inferred from the failure of the defendant Hon. RICHARD D. ANDERSON to investigate or otherwise act on the formal complaint brought against violations of law and rights by the attorney Austin K. Vincent and judge Hon. William Lyle, occurring in the Shawnee trial court's termination of David Martin Price's parental rights, when as Shawnee District Court Administrative Judge he was in a position to do so. The defendant Hon. RICHARD D. ANDERSON did add this complaint to the official case record by order to the Shawnee District Court Clerk. However, this turned out to be a signal to attack the plaintiff and his counsel to protect the violations of law and prevent David Martin Price from having Due Process. Hon. G. JOESEPH PIERRON, JR., Hon. LEE A. JOHNSON and JONATHAN M. PARETSKY's made the complaint a basis for their vicious eight page ethics complaint against the plaintiff and referred to it in the closing paragraph of their order deliberately contradicting Kansas Supreme Court Case law under *Nunn v. Morrison*, 608 P.2d 1359, 227 Kan. 730 (Kan., 1980) determining a nondiscretionary duty to make

available SRS records used to terminate parental rights and for judges not to become embroiled in the controversies before their court as directed in *State v. Miller*, 2002 KS 197 (KS, 2002). That the defendants Hon. G. JOESEPH PIERRON, JR., and Hon. LEE A. JOHNSON went on to hear the appeal briefs and oral argument without disqualifying themselves was in violation of Kansas Judicial Cannon 3 C. 1. The plaintiff at the direction of his client gave the defendants Hon. G. JOESEPH PIERRON, JR., Hon. LEE A. JOHNSON the extraordinary post judgment opportunity to recuse themselves permitted under Kansas statute in a timely motion and again they failed to disqualify themselves in violation of Cannon 3 C. 1. (Plaintiff's complaint ¶ 95, pg.s 39-40) Apdx pg. 50-51.

The malicious motive of the defendants is further properly inferred from the failure of the defendant STANTON A. HAZLETT to investigate the wrong doing of other Kansas licensed attorneys whose conduct has become known to them through their diligence, albeit partial and incomplete, in investigating the complaint made by the defendants Hon. G. JOESEPH PIERRON, JR., Hon. HENRY W. GREEN, Hon. LEE A. JOHNSON and JONATHAN M. PARETSKY and in investigating the second ethics complaint made by the state agency The City of Topeka at the direction of federal Magistrate Judge O'Hara (while he was presiding over James Bolden's case represented by the plaintiff) and City Attorney BRENDEN LONG, but signed by Assistant City Attorney SHERRI PRICE, opposing counsel. (Plaintiff's complaint ¶ 96, pg.s 40-41) Apdx pg. 51-52.

The conduct defendant STANTON A. HAZLETT chose to endorse, support, aid and abet or ratify by discriminatorily not prosecuting was the violation of the Kansas Rules of Professional Conduct committed by opposing counsel in breaking Kansas and Federal Laws designed to protect the administration of justice from serious interference. (Plaintiff's complaint ¶ 97, pg. 41) Apdx pg. 52.

STANTON A. HAZLETT neither acted upon or presented to the review committee an ethics complaint made by David Price independent of counsel against the City of Topeka prosecutor John Knoll for repeatedly prosecuting him on false charges, violating state statutes guaranteeing a speedy trial and protection from double jeopardy. David Price prevailed. Also discriminatorily, Frank D. Diehl and STANTON A. HAZLETT dismissed the complaint within a month, while the defendants have either investigated the complaint against the plaintiff for over a year or in reality and more accurately used the threat of pending prosecution for over a year to wear down and discourage the plaintiff from effectively representing James Bolden. The defendant STANTON A. HAZLETT in correspondence to the plaintiff has argued that John Knoll, a government attorney had committed no ethics violations, whereas the plaintiff has committed serious violations. The weight of this evidence of malicious motive and discriminatory prosecution is further punctuated by the fact that Frank D. Diehl in his letter to David Price articulated probable cause for finding misconduct of John Knoll, even recommending David Price consult an attorney about John Knoll's

malicious prosecution of him. This conclusion by Frank D. Diehl of likely malicious prosecution of course is sufficient probable cause to find the most severely punished misconduct under the text of the Kansas Rules of Professional Conduct, violations of law that seriously interfere with the administration of justice, as stated in KRPC 8.4 (d) and the accompanying note. (Plaintiff's complaint ¶ 98, pg.s 41-42) Apdx pg. 52-53.

Similarly neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the testimony in the form of affidavits in James Bolden's case that the former City of Topeka Assistant City Attorney, David D. Plinsky instructed and assisted City of Topeka Police officers in falsely denying they had been served process and complaint in U.S. District Court Case No. 00 2193 and in causing the process servers to be harassed and stalked in violation of 18 U.S.C. § 1501 and later acted with counsel retained by the City of Topeka, Ed Bailey in a scheme to falsely represent to the federal court that documents turned over in discovery by the City of Topeka had not been, causing the City of Topeka to prevail on summary judgment and in an appeal before the Tenth Circuit of Appeals. See affidavits and evidentiary attachments contained in Objection to Magistrate's Report, Bolden v. City of Topeka, Case No. 02-2635, U.S. District Court for the District of Kansas. (Plaintiff's complaint ¶ 99, pg. 42) Apdx pg. 53

Neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the information contained in the plaintiff's answer to the defendants' Hon. G. JOESEPH PIERRON, JR., Hon. LEE A. JOHNSON and JONATHAN M.

PARETSKY ethics complaint that City of Topeka Assistant City Attorney Mary Beth Mudrick had contacted the plaintiff upon receipt of the James Bolden's notice of pending federal action and seeing for the first time that James Bolden had obtained new counsel for the sole purpose of convincing the plaintiff not to represent James Bolden because of "who he is." (Plaintiff's complaint ¶ 100, pg. 43) Apdx pg. 54.

Neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the information in the case Bolden v. City of Topeka that the City of Topeka Assistant City Attorney SHERRI PRICE learned in her deposition of James Bolden that his work van had been fire bombed and that the City of Topeka Police Department had refused to take his report. The testimony also indicated he feared for his safety because of the flammability of the trailer he slept in. Sherri Price was in a position to protect James Bolden's civil rights to security and equal protection under the law by informing the City of Topeka Police Chief Ed Klump of his department's responsibility not to discriminate against the African American James Bolden, yet she failed to do so. In fact, even after affidavits revealed that James Bolden's witness, David Martin Price's van had similarly been firebombed, the Topeka police still refused to take the report. While SHERRI PRICE's failure to act was a violation of 42 U.S.C.§ 1986, the deliberate infliction of emotional distress by causing James Bolden to continue to fear for his safety while he was seeking redress from the city was misconduct prejudicial to the administration of

justice in violation of KRPC 8.4 (d). (Plaintiff's complaint ¶ 101, pg. 43) Apdx pg. 54.

Neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the information that the City of Topeka City Attorney BRENDAN LONG had directed the Assistant City Attorney SHERRI PRICE to drive on to the property of James Bolden's key witness, the American Indian Fred Sanders with police cars and building code enforcement personnel and threaten him by stating so that James Bolden's witness, the African-American Frank Kirtdoll would clearly hear Fred Sanders was being threatened with criminal prosecution on building codes for testifying against the City of Topeka in federal court in violation of 18 U.S.C. § 1512 and Retaliating against a witness, victim, or an informant 18 U.S.C. § 1513. Most egregiously misconduct prejudicial to the administration of justice in violation of KRPC 8.4 (d). This effort to intimidate Fred Sanders into not testifying has been partially successful. Mr. Sanders had information that the City of Topeka had cleared (demolished) many, many homes in the minority neighborhood adjacent to James Bolden's without compensating the residents or land owners as City Attorney Brendan Long had contracted for with the Department of Housing and Urban Development. He had further information that the City of Topeka had miss-accounted for the CDBG funds it had received over the years. (Plaintiff's complaint ¶ 102, pg.s 43-44) Apdx pg. 54-55.

Neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the information that the government legal counsel for the Kansas Human Rights

Commission had declined to enforce the Fair Housing Act to protect James Bolden's civil rights when he sought to have state and federal laws enforced to restrain the City of Topeka from discriminating against him and preventing him from occupying his two dwellings. (Plaintiff's complaint ¶ 103, pg. 44) Apdx pg. 55.

Neither Frank D. Diehl, nor STANTON A. HAZLETT acted upon the information that the government legal counsel for the Topeka Equal Rights Commission had declined to enforce the Fair Housing Act to protect James Bolden's civil rights when he sought to have state and federal laws enforced to restrain the City of Topeka from discriminating against him and preventing him from occupying his two dwellings. (Plaintiff's complaint ¶ 104, pg. 44-45) Apdx pg. 55-56.

Likely Future Injury the Plaintiff Will Suffer If Defendants Are Not Enjoined

It is extremely improbable that the defendants will resign at this complaint's proffer of facts and witnesses to the defendants misdeeds, or the revelation that documentation contained in the record of James Bolden, Mark Hunt, David Price, Rosemary Price, Janice Lynn King's actions in Shawnee District Court and U. S. District court gives abundant evidence supporting claims the defendants' conduct outside of the courtroom violated laws protecting against interference with justice and that their conduct violated the rights of Kansas citizens, including the plaintiff and endangered their lives and property. Instead,

the defendants' conduct supports the probability they will use their office and power (both the power to influence other judges outside of the courtroom and to utilize government force) to further injure the plaintiff in a devastatingly successful effort to deprive James Bolden of the resources to prosecute his claims. (Plaintiff's complaint ¶ 105, pg. 45) Apdx pg. 56

Defendants' Criminal Violations Of Civil Rights

The defendants have engaged in a pattern of conduct violating the civil rights of the plaintiff and his client James Bolden by engaging in violence designed to injure the plaintiff and James Bolden, depriving them of their property, due process and equal protection. The defendants' violence against the plaintiff has been in retaliation for raising claims based upon James Bolden's rights as a member of a protected class (African American), that violence has included the actual demolition of his two houses under armed police force while a timely appeal suspended jurisdiction of the trial court, the constructive prevention of James Bolden's case being adjudicated in the Kansas Court of Appeals, the deprivation of the plaintiff's right to be heard in his divorce, the constructive deprivation of visitation of the plaintiff's children, retaliation against James Bolden's witnesses for their testimony, including the taking of their children, taking of their property and the prevention from obtaining federal and civilian employment. (Plaintiff's complaint ¶ 106, pg.s 45-46) Apdx pg. 56-57.

These actions, accomplished by breaking state and federal law, outside of court rooms and without jurisdiction of law, solely for the purposes of interfering

with the administration of justice by retaliating against witnesses and victims to prevent James Bolden from owning and enjoying two homes in the City of Topeka are a violation of : (Plaintiff's complaint ¶ 107, pg. 46) Apdx pg. 57.

18 U.S.C. 241, Criminal Civil Rights Conspiracy because the defendants have conspired to injure, oppress, threaten James Bolden, his witnesses and his attorney, the plaintiff because of James Bolden's exercise of his constitutionally protected right to seek redress in court. (Plaintiff's complaint ¶ 109, pg. 46) Apdx pg. 57.

42 U.S.C. § 3631. The defendants used force and the threat of force to injure, intimidate and interfere with James Bolden's right to occupy a dwelling, David and Rosemary Price's right to occupy a dwelling, and Melvin Johnson's right to occupy a dwelling because of their race and handicap and because of their purchase, occupancy and rent of their dwellings. (Plaintiff's complaint ¶ 110, pg.s 46-47) Apdx pg. 57-58.

STATEMENT OF FACTS RELATED TO THE DEFENDANTS' CONTINUED AND ONGOING VIOLATIONS OF FEDERAL LAW AFTER THE FILING OF THE ORIGINAL COMPLAINT CONTAINED IN MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTIVE RELIEF

The defendants' STANTON A. HAZLETT, Hon. Judge RICHARD D. ANDERSON, FRANK D. DIEHL, Hon. Judge LEE A. JOHNSON, MARLA J. LUCKERT, JONATHAN M. PARETSKY, Hon. Judge G. JOESEPH PIERRON JR.'s Motion to Stay *discovery and rule 26 activities* (doc. 26) and Memorandum

In Support Of Motion To Stay *discovery and rule 26 activities*(doc. 27) were docketed on 7/12/04 and are judicially noticeable acts to deprive the plaintiff of evidence obviously and forseeably required for defense of his license to practice law during the October 19th prosecution scheduled by STANTON A. HAZLETT while he asked the trial court to halt discovery. These acts are irrefutably evidence that the plaintiff would be denied a fair proceeding by STANTON A. HAZLETT and will have no Due Process or Constitutional rights.

The defendants' BRENDEN LONG and SHERRI PRICE's Motion to Stay *Proceedings* (doc. 30) was docketed on 7/13/04.

During the extensions granted to the defendants without opposition by the plaintiff, the defendants have took more actions under color of state law to harass and intimidate the plaintiff's witnesses, already identified in the complaint.

On 6/25/04 the defendants acting through Topeka City Homes sent a notice evicting the plaintiff's witness Mark J. Hunt who had testified against the City of Topeka in federal court and had provided an affidavit in James Bolden's case. Like the plaintiff's client Melvin Johnson, the plaintiff's witness Mark Hunt was current on his rent and had violated none of the provisions of the lease, an obstacle overcome by simply denying administrative due process. See Exhibit 1, Apdx pg. 248 Affidavit of Mark Hunt with attached eviction notice.

The defendants acting through the City of Topeka scheduled a hearing on July 12th, 2004 during the Bolden trial to prosecute Fred Sanders for having two fire trucks on heavy industrial zoned property, causing him distress and a feeling

of being entirely without rights as a result of being targeted by the defendants as a source of harmful testimony. See Exhibit 2 Apdx. Pgs. 248-377 Complaint Against Fred Sanders. The fact that the defendants' repeated prosecutions against him are without merit and this particular citation is entirely without jurisdiction or basis in the law (The City of Topeka, Kansas, does not require a license for outside storage on I-2 Heavy Industrial zone privately owned, i.e., wrecker tow lots, auto storage lots, accessory land parking lots, auto storage pools) does not mute their intended effect of depriving him of the right to own property and to otherwise punish and retaliate against him for being willing to testify in a federal court.

During the extensions granted to the defendants without opposition by the plaintiff, the defendants have taken additional action against the plaintiff. The defendant STANTON A. HAZLETT mailed the plaintiff an official notification that he will be prosecuted for the second ethics complaint authored by the defendant SHERRI PRICE. See Exhibit 3 Apdx. Pgs. 248-377.

The defendant STANTON A. HAZLETT through his agent, the defense counsel made a motion to dismiss with a supporting memorandum on behalf of the defendants Hon. Judge RICHARD D. ANDERSON, STANTON A. HAZLETT, Hon. Judge LEE A. JOHNSON, Hon. Judge MARLA J. LUCKERT, JONATHAN M. PARETSKY, Hon. Judge G. JOESEPH PIERRON JR. who have conflicting interests in defending against a complaint seeking that they be enjoined from ongoing violations of criminal civil rights law and enjoined under 42 U.S.C.¶ 1983

for intimidating and harassing witnesses to obstruct their testimony, a charge which "...necessarily alleges criminal activity in violation of 18 U.S.C. 1512-the criminal statute prohibiting tampering with a witness-and a criminal conspiracy in violation 18 U.S.C. 371." *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031 at 1039 (11th Cir., 2000).

The defendant STANTON A. HAZLETT through his agent, the defense counsel Steve Phillips misrepresented the plaintiff's complaint as attempting to enjoin the reporting and investigation of ethics complaints by stating disingenuously that "He apparently seeks an injunction to prevent some defendants from reporting him to the disciplinary administrator, and against the disciplinary administrator the (sic) prevent him from investigating the complaints." The action was filed after the reports had been made and the investigation concluded and seeks to enjoin future prosecution as plainly stated in the complaint.

The defendant STANTON A. HAZLETT through his agent, the defense counsel Steve Phillips misrepresented the plaintiff's complaint as being based on a claim for the failure to discipline others and "that Landrith has no standing to complain about other attorneys who were not disciplined." This mischaracterization and deliberate nullification of the plaintiff's constitutional right not to suffer discriminatory prosecution and to enjoy equal protection under the law clearly stated in ¶¶ 122 –124 of the plaintiff's claims is irrefutable proof

that the disciplinary prosecution will not afford Due Process to the plaintiff and will not allow him to raise constitutional defenses.

The defendant STANTON A. HAZLETT mailed the plaintiff a third letter dated July 22, 2004 stating he will formally prosecute the plaintiff and that a date, October 19th, 2004 for the hearing has been set. It is obvious and foreseeable that the plaintiff would require a minimum of three days of witness testimony to establish the evidentiary record relevant to STANTON A. HAZLETT's prosecution. STANTON A. HAZLETT's letter further advises that the plaintiff has to make all pretrial motions at least 10 days in advance. Only STANTON A. HAZLETT could conform to that deadline. No complaint has even specified professional rules the plaintiff is to be charged for having violated. This is the third letter STANTON A. HAZLETT has sent to the plaintiff, intentionally inflicting emotional distress with the threat that he will be formally prosecuted and will be required to make answer in 20 days to a formal complaint that has never come. During this time period STANTON A. HAZLETT has made two presentations to the Review Committee and has participated in two formal determinations, yet has forwarded no charges, information or petition. It is irrefutable that STANTON A. HAZLETT is acting to deprive the plaintiff of sufficiency of notice and due process, acting in bad faith to defeat the plaintiff's right to a fair hearing.

ADDITIONAL AVERMENT OF FACTS DERIVED FROM EVIDENCE ACQUIRED FROM THIRD PARTIES DURING THE DEFENSE OBSTRUCTED DISCOVERY

Without statutory or case law basis, STANTON A. HAZLETT through his agent, Steve Phillips delayed disclosure of evidence related to the defendants' conduct by filing a motion to stay discovery. The common representation of the defendants presents conflict of interest problems. The plaintiff though obstructed has obtained additional information related to STANTON A. HAZLETT's bad faith prosecution motive.

The Growing Notoriety of Kansas in Child Trafficking

A significant reason stated by the defendants for the first ethics complaint related to the plaintiff's representation of David Price was the plaintiff's discussion of the for profit adoption industry in Kansas. In his answer the plaintiff quoted the Kansas Appellate Court's own case law discussing infant trafficking in Kansas:

> "Mr. Paretsky appears disturbed by my reference to "the baby export industry." I chose this description because I felt the words softened the descriptions of Professor Larsen about the effect of general consent examined by Judge J.J. Spencer in *Adoption of Baby Girl Chance, Matter of*, 609 P.2d 232, 4 Kan.App.2d 576 (Kan. App., 1980), stating "The general consent is the greatest single tool of the 'gray' or 'black market' operator in babies." I would not call Mr. Vincent a "gray market operator."

Plaintiffs answer to first ethics complaint (DA 8893) at page 24. See Exhibit 5 Apdx 247-378. In actuality the private adoption market has spawned a multimillion dollar industry in the United States recognized by The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Mr. Juan Miguel Petit, in his report for the 59th session of the UN Commission on Human Rights:

> "Regrettably, in many cases, the emphasis has changed from the desire to provide a needy child with a home, to that of providing a needy parent with a child. As a result, a whole industry has grown, generating millions of dollars of revenues each year, seeking babies for adoption and charging prospective parents enormous fees to process paperwork."

Report submitted by M. Juan Miguel Petit, Special Rapporteur, on the sale of children, child prostitution and child pornography in accordance with Commission on Human Rights resolution 2002/92. ADVANCE EDITED VERSION 6 January 2003 at ¶ 110. The UN report was based on fraud and coercion taking place in private commercial adoptions with anecdotal information chiefly related to Kansas adoptions. See Exhibit 6 Apdx 247-378One underlying Kansas case where evidence had been manufactured and documents fraudulently submitted was the subject of a complaint to the Inter American Commission on Human Rights of the Organization of American States. See Exhibit 7 Apdx 247-378. The UN report and the extreme examples of some Kansas adoptions led to wide ranging press coverage including a Wichita KAKE television evening news series and a Russian newspaper story See Exhibit 8 Apdx 247-378.

Stanton A. Hazlett's Past Role in Suppressing Ethics Complaints Harmful to the Black Market Adoption Industry

STANTON A. HAZLETT became important to the defendants when the actions of Austin K. Vincent and Bruce Woolpert ran into problems. Austin K. Vincent, who had given a continuing legal education seminar on terminating parental rights in contested adoptions advertising adoption law practice as "gut wrenching" and raising weighty constitutional questions, stating "This is no place

for the faint hearted." See Exhibit 9 Apdx 247-378. Austin K. Vincent represented parties with conflicting interests in the private for profit adoption designed to deprive David Price of his infant son in retaliation for his protected speech criticizing the defendants.

Bruce Woolpert, Austin K. Vincent's racquetball partner, was appointed by the defendants to represent David Price in the defendants' scheme but was unsuccessful in getting David Price to surrender his challenge to the termination of paternal rights. The defendants were further threatened by the plaintiff's entry into the case. The defendants' actions to back date the appearance of a second appointed counsel was used by the trial judge in a telephone call designed to discourage the plaintiff from representing David Price but was unsuccessful. Several times Austin K. Vincent attempted to warn off the plaintiff by stating indirectly that his representation of David Price would lead to an ethics prosecution for professional violations. Mr. Vincent could not articulate what ethics violations had occurred or how the falsified adoption documents did not indicate fraud.

Bruce Woolpert received a princely sum for partially representing David Price during the trial phase of the termination of parental rights. See Exhibit 10 Apdx 247-378 This unusual payment however made Woolpert indebted to the defendants and he was forced to compromise his US Army commission as a Judge Advocate General Corps officer when the defendants sought to retaliate against the plaintiff's witness Mark Hunt by ensuring that his pay grade and housing

allowances were reduced on the Tuesday following STANTON A. HAZLETTS' letter threatening the plaintiff which also was the day Mark Hunt was questioned by the plaintiff as a witness on the stand in federal court. Woolpert, a JAG officer in Mark Hunt's US Army National Guard unit also assisted the defendants in preventing the underemployed Mark Hunt from receiving full time pay in a deployment to Kosovo. The seriousness of Woolpert's compromise of his duties to keep a former Army officer from serving his country overseas in a time of war to accomplish the corrupt goals of the defendants in obstructing justice is beyond comprehension.

The defendants' faith in STANTON A. HAZLETT when their taking of David Price's infant began to be effectively challenged was well placed. During his representation of David Price, the plaintiff used free research of appellate case law where Kansas appellate judges had questioned abuses in private adoptions. The plaintiff was unaware that Kansas had acquired a national reputation as a "baby supermarket" and that the legislative history in the last amendments to the adoption laws had attempted to address this problem by increasing the effect of the adoption code upon private agencies and the Kansas Social and Rehabilitation Services, the state agency charged with policing adoptions. As shown above, the legislature was unsuccessful in improving Kansas reputation in child trafficking.

In fact, another force defeated the legislature's efforts. The change in Kansas courts allowing private for profit adoption practitioners to escape compliance with Kansas and interstate adoption laws and compacts or even

Kansas Social and Rehabilitation Services agency regulations created a great boon for adoption attorneys. When Kansas judges disregarded obviously tampered adoption documents and false testimony and deny fraud and violations of criminal laws, they are protecting the for profit adoption industry's access to a scarce commodity.

STANTON A. HAZLETT is very closely connected to this industry. His brother, also a Kansas attorney has been president of the American Adoption Attorney Academy. See Exhibit 11 Apdx 247-378**.** The defendant STANTON HAZLETT has used his office to protect Kansas licensed attorneys engaged in deceptive and fraudulent practices to obtain infants for private for profit adoptions. An impartial observer would reasonably conclude that when STANTON A. HAZLETT declines to handle an ethics complaint against an adoption attorney when the complainant is aware of his close ties to the industry admitting a conflict of interest yet handles the complaint of a family who is unaware of his connections and no adoption attorney is sanctioned, that STANTON A. HAZLETT uses his office to protect adoption attorneys.

In an ethics complaint filed against the Kansas adoption attorney Jill Bremer-Archer, the complainant was unaware of STANTON A. HAZLETT's connection to the adoption industry and STANTON A. HAZLETT did not recuse himself, finding that misrepresentations by the attorney, the withholding of information under testimony and the creation of manufactured evidence to secure the termination of the birth mother's parental rights through deceit were entirely

ethical. Similarly, Jill Bremer-Archer's dual representation of both the parents and the adopters was not a conflict of interest despite the February 14, 1987 ABA opinion (#87-1533) to the contrary.

In a roughly contemporary proceeding, STANTON A. HAZLETT recused himself from a complaint against Richard A. Macias because of the conflict of interest he is under when investigating ethics complaints against Kansas attorneys in the adoption industry and the complainants were aware of that relationship.

The actual policies of the Kansas Bar and the bad faith conduct of STANTON A. HAZLETT has created an environment where the natural parent is often unable to obtain any legal counsel to challenge a termination of parental rights or a fraudulent adoption. See statement of Ann Parker, pg. 4 ¶ 13 of Exhibit 12. Apdx 247-378 There are no constitutional protections for lower level state employees even the daughter of a policeman is unable to obtain counsel in opposing adoption fraud in Kansas. See letter of Brandy Bottini-Elkins, Exhibit 13 Apdx 247-378**.** Similarly, the Interstate Compact signed by Kansas to prevent misconduct in placing children for custody and adoption is ignored. See the statement of Lynn Cicle, Exhibit 14 Apdx 247-378 where fraud was involved in an adoption arranged by the Kansas attorney Rachael Pirner.

Both STANTON HAZLETT and the industry he is closely associated with are indebted to the defendants' continued participation in laundering the documents required to have a marketable baby. STANTON HAZLETT has repeated used the trust placed in him by the people of Kansas to protect Kansas

adoption attorneys from prosecution from ethical violations and referral to law enforcement officials on criminal accusations. The defendants' safely placed their trust in STANTON HAZLETT in a scheme to scare off the plaintiff and to unsuccessfully prevent him from preparing an appellate brief in David Price's appeal that relied on the misuse of the Office of the Disciplinary Administrator by STANTON HAZLETT in forwarding the defendants' eight page complaint alleging that the plaintiff was mentally unfit to be a licensed attorney in an exceedingly derogatory and prejudicial manner. STANTON HAZLETT participated in the bad faith instigation of an investigation of the plaintiff's conduct. The scheme was not effective in preventing the plaintiff from zealously representing his client. Austin K. Vincent would later state during the appeal that David Price was very effectively represented by the plaintiff and that the advocacy of the plaintiff was zealous and challenging to defend against.

STANTON A. HAZLETT was unable to find in the complaint grounds to credibly assert the existence of probable cause for a violation of the Kansas Rules of Professional Conduct (KRPC). In fact, once the plaintiff had timely answered the complaint, it became clear that the conduct complained of was not conduct prohibited by the KRPC but in actuality, conduct required of all Kansas attorneys. An impartial observer familiar with the Model Rules would be disturbed at the complaint's completely inverted ethic, disbelieving that it was authored by three appellate judges and a government attorney. To compensate for the problem with the lack of jurisdiction over the plaintiff for a violation of the KRPC, STANTON

A. HAZLETT made the administrative decision to not assign the complaint to a peer of the plaintiff in Pittsburg, Kansas which was the normal procedure for the initial investigation of ethics complaints. Instead STANTON A. HAZLETT chose an investigator employed by the Office of the Disciplinary Administrator who was directly supervised by STANTON A. HAZLETT. STANTON A. HAZLETT directed him not to investigate by contacting the plaintiffs' clients, also deviating from the standard the procedure of ethics investigations. Furthermore, the investigator never contacted the plaintiff, a further deviation from the standard the procedure of ethics investigations. In an attempt to overcome the glaring problems of the ethics complaint, STANTON A. HAZLETT decided to forward the plaintiffs' answer back to the complaining judges to give them the chance to revise their accusations or add new ones. However, no further complaint was forthcoming from the state defendants and STANTON A. HAZLETT was unable to craft a formal ethics complaint, leaving the charges unprosecuted but at least causing the plaintiff emotional distress.

On one of the few successful attempts to contact STANTON A. HAZLETT by phone (many times the plaintiff was able to call the defendant STANTON A. HAZLETT in a non toll call when in Topeka on Fridays, the defendant was never in the office on those days), he told the plaintiffs that the judges would not sign the complaint they had forwarded to him, even if the plaintiff filed a motion to request it. STANTON A. HAZLETT also said the confidentiality requirement in the rule regarding ethics complaints applied only to the Office of the Disciplinary

Administrator and stated that the plaintiff was free to share the complaint with whoever he chose. The defendant STANTON A. HAZLETT would later declare publicly disclosing the first ethics complaint was a basis to both investigate and prosecute the plaintiff on a second ethics complaint created by the defendants SHERRI PRICE and BRENDEN LONG.

Even with manipulating the investigation to manufacture the best chance for probable cause, the defendant STANTON A. HAZLETT was still restrained by the problem that action against the plaintiff over the first complaint was so egregiously contrary to the very justification the defendants were pretextually employing-the need to protect James Bolden from inadequate representation-as to be an outrageous violation of James Bolden's constitutional rights by the State of Kansas, the real party in interest in both of the plaintiff's cases that the first ethics complaint encompassed. The defendant STANTON A. HAZLETT also postponed action because the defendants were forced to directly address David Price's appeal through the advocacy of the plaintiff and further action by STANTON A. HAZLETT could not spare them from having to hear the case filed with briefs and oral argument. The appellate judge defendants were forced to publicly diffuse the obviously fraudulent interstate compact document added to the record in the appeal by Austin K. Vincent (to the visible shock of the three judge panel) and who made evidentiary findings contrary to the sheer weight of facial fraud based upon their inspection of the document and without introduction by any witness. The defendant judges knew they were without jurisdiction to make evidentiary

findings during the appeal but were forced to take this extremely radical step to conceal the taking of the child by deceit to fulfill their scheme of retaliating against their perceived threat David Price. The defendant judges also ruled that the plaintiff had only sought the SRS documents (the ones the defendants directly denied the plaintiff in an appellate pretrial motion). This complicated the scheme to prosecute the plaintiff on violations of the KRPC because among the more than thirty documents attached to the ethics complaint were the numerous requests for other trial documents in the adoption case that David Price and his attorney the plaintiff were denied access to. The defendant Hon. Justice MARLA J. LUCKERT and the nondefendant Kansas Supreme Court Justices McFarland and Allegrucci acted to deny Supreme Court review of the appellate court's decision, even though the petition documented David Price's statutory right to appeal.

At the state defendants' direction, no further action was risked by STANTON A. HAZLETT on the first ethics complaint. The defendants SHERRI PRICE and BRENDEN LONG, working with Magistrate O'Hara were inspired by the first ethics complaint as a possible tool to prevent the plaintiff from effectively representing James Bolden in multiple claims against the city that were wholly inescapable in a legitimate proceeding. SHERRI PRICE and BRENDEN LONG sought to protect their state arm, the City of Topeka by filing a second ethics complaint once they discovered the plaintiff had begun to take on other clients and could conceivably have the funds to finish the prosecution of James Bolden's case against the city. The defendants SHERRI PRICE and BRENDEN LONG prepared

an ethics complaint against the plaintiff charging him with publicly disclosing the first ethics complaint in James Bolden's case and relaying Magistrate O'Hara's accusation that the plaintiff was incompetently representing James Bolden.

STANTON A. HAZLETT forwarded the complaint to the plaintiff who had without knowledge of the defendant SHERRI PRICE's utilization of the

The event that changed this effort to escape further exposure of the defendants' misconduct was the preliminary injunction hearing in an unrelated case where the plaintiff called Mark Hunt as a witness in a Topeka federal courtroom. Unknown to the plaintiff who had learned of Mark Hunt through James Bolden's case against the City of Topeka over misuse of housing funds, the defendants saw Mark Hunt as a threat to their use of Shawnee District court, potentially exposing their current scheme in child custody and the cover up of past judicial misconduct. The defendants directed STANTON A. HAZLETT to retaliate against the plaintiff. STANTON A. HAZLETT prepared and mailed the first of three letters threatening prosecution of the plaintiff, however no formal complaint accompanied the threat and the letter also stated a committee had reviewed STANTON A. HAZLETT's presentation and found probable cause to prosecute the plaintiff for the first complaint. The letter did not state when such a committee might have met for this purpose or who it was comprised of. The intent of the defendants carried out by STANTON A. HAZLETT was to repeat their effort to harass and intimidate the plaintiff in retaliation for his testifying as a prosecuting witness in the role of a plaintiff's attorney in procuring the testimony

of Mark Hunt, an African American for the court's consideration of what ironically was a First Amendment Free Speech case. STANTON A. HAZLETT is imputed to know that his conduct in threatening the plaintiff in retaliation for putting on the testimony of Mark Hunt that was harmful to the state agency the City of Topeka violated the plaintiff's First Amendment Right to Free Speech. STANTON HAZLETT also violated federal statutes protecting the right of the plaintiff to put on the testimony of an African American member of the U.S. Army National Guard, they include 42 U.S.C. §1981,42 U.S.C. §1985(1) and 42 U.S.C. §1985(2), all of which are protected under 42 U.S.C. § 1983. STANTON HAZLETT is also imputed to know that his conduct violated 18 U.S.C. §1512.

After making the threat, the defendant STANTON A. HAZLETT refamiliarized himself with the complaint against the plaintiff and was again confronted with the lack of conduct of the plaintiff that violated the KRPC. However, the plaintiff was preparing for James Bolden's jury trial. The plaintiff justifiably fearing that the defendant STANTON A.HAZLETT would issue the formal complaint at a key time before James Bolden's case was due to be tried as the defendants had done with the original filing of first ethics complaint, filed the present federal action seeking to enjoin the defendants from prosecuting him and taking his attorney's license while James Bolden and David Price still had actions in court so that the plaintiff could still prosecute James Bolden's claims and testify as a witness against the defendants for David Price without fear of further retaliation.

In response to the plaintiff's allegations against the state and city defendants, STANTON A. HAZLETT coordinated the review of the defendants SHERRI PRICE and BRENDEN LONG's complaint, securing the disciplinary committee's endorsement of his finding of "probable cause" that the plaintiff had violated the KRPC in a clumsy and misguided scheme to confer prosecutorial immunity upon the government attorney he utilized to investigate the complaint and the two defendants alleged to have made the complaint. No elaboration or explanation of how the complaint which described the plaintiff's use of the first complaint as an attachment in James Bolden's case could have been a violation or how the failure to serve defendants that by law were not liable for acts in their official capacity was made. The letter contained the same threat that a formal complaint was forthcoming and that the plaintiff would have a limited amount of time in which to answer it. STANTON A. HAZLETT mailed this letter to the plaintiff on the same day Mary Beth Mudrick filed a motion to dismiss the plaintiff's claims against SHERRI PRICE and BRENDEN LONG asserting "absolute judicial immunity" believing that their agreed common action had laundered the bad faith goal of the ethics complaint and the investigation and that the complainants were now immune. All contradicting clear current Tenth Circuit and Kansas Supreme Court authority applying functional immunity and Tenth Circuit authority stating that the presentation of incomplete and prejudicial information to a committee to obtain a determination of probable cause does not immunize the prosecutor.

The defendant STANTON A. HAZLETT through his agent Steve Phillips acting as defense counsel for the combined state defendants did not answer or deny the claims by the plaintiff of criminal violations and sought to dismiss the plaintiff's 42 U.S.C. § 1983 on wholly spurious arguments. The defendant STANTON A. HAZLETT also sought attorney's fees from the plaintiff and later filed to obstruct justice in seeking to delay discovery though no statute provided for delaying discovery and no argument was made addressing the issues required for discovery stays under Tenth circuit law. While this may have been within the litigation privilege of a defendant, STANTON A. HAZLETT's action seeking to delay discovery on behalf of combined defendants with conflicting interests when it cannot be reasonably refuted that they violated federal statutes having a criminal nature, was itself a very serious ethics violation.

FACTS CONTAINED IN MOTION FOR STAY PENDING APPEAL AND REPLY MEMORANDUM INCLUDING EVIDENCE OF STATE CHILD TRAFFICKING

While no opposition was presented to the motion for preliminary injunctive relief and the defendants have not controverted the averred facts of the motion for stay pending appeal, the plaintiff incorporated a second affidavit with evidentiary attachments that definitively resolves any pseudo-controversy over whether Steve Phillips clients are engaged in child trafficking. The motion for stay included an affidavit from Melinda Walmsley (See attachment Walmsley 1 text version and attachment 2, Walmsley photo copy) Apdx. Pg. 432-440 described STANTON HAZLETT's brother Alan Hazlett conduct and the practices of five other Kansas

licensed attorneys participating in a common enterprise engaged in the kidnapping and sale of Kansas of infants with the assistance of the captured state agency, the Office of the Kansas Disciplinary Administrator, headed by the defendant STANTON HAZLETT. Steve Phillips questioningly described the gravamen of the averments of that affidavit without countering them. For this purpose the plaintiff adds the affidavit of another of the twelve witnesses previously proffered showing the daughter of the first affiant was repeatedly drugged with a synthetic heroin during the period in which she supposedly gave a valid consent and that the common enterprise attorneys participated in a scheme to conceal these facts in adoptions. (See attachment Cicle 3 text version and attachment 4, Cicle photo copy including the hospital employee letter to the Kansas adoption attorney describing the drugging of Deanna Walmsley and requesting it be concealed (affidavit exhibit #3)) Apdx. Pg. 438

FACTS JUDICIALLY NOTICABLE
FROM APPELLANT'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS APPEAL AS MOOT

Appellant's complaint page 1-2. The complaint expressly sought relief from "future violations" including the certain disbarment of the appellant:

> "This action by the plaintiff is an attempt to enjoin the defendants from future violations of the plaintiff's civil rights, enforceable under 42 U.S.C. § 1983, delaying the certain retaliatory bad faith prosecution and ultimate disbarment of the plaintiff for acting as the Kansas Rules of Professional Conduct and the laws of Kansas require."

Appellant's complaint ¶ 3.

The appellant's action contemplated monetary damages against all or some of the appellees if Kansas took his license to practice law in retaliation for his protected speech:

> "A determination in this court (or as the defendants have already conceded through their failure to answer or to seek dismissal) that the defendants have violated 18 U.S.C. §§ 241, 242, or 245 as charged in ¶¶ 107 thru109 of the plaintiff's complaint will be relative to determining monetary damages for the loss of the property right in a license to practice law currently enjoyed by the plaintiff. "

Page 17 of Appellant's 8/3/04 Memorandum in Opposition to Steve Phillip' dismissal motion for dismissal.

The appellant's complaint expressly sought injunctive relief that was not limited to the current ethics prosecution:

> "The plaintiff seeks relief in the form of an injunction against prospective violation of the Civil Rights laws to which there is no requirement to show irreparable harm, in the form of an order preventing the defendants from attempting to prosecute the plaintiff for ethics violations during the period of time James Bolden, Mark Hunt, David Price, Rosemary Price, Melvin Johnson have actions in district or appellate court seeking redress for the actions of the City of Topeka or the personnel of Shawnee District Court committed before June 30 th, 2004."

Appellant's complaint ¶ A.

The appellant's complaint expressly sought injunctive relief while he was representing James Bolden, an action currently before the Tenth Circuit:

> "The plaintiff seeks relief in the form of an injunction prohibiting the defendants' arbitrary and discriminatory attempts to prevent the plaintiff from effectively representing his client James Bolden, from effectively representing James Bolden's witness, David Martin Price, from securing the testimony of African American and American Indian witnesses and from practicing law as an attorney are violating the plaintiff's First Amendment right to free expression and Fourteenth Amendment rights to procedural due

> process, substantive due process, and equal protection of the law secured under 42 U.S.C. § 1983 which will result in irreparable injury to the plaintiff and James Bolden."

Appellant's complaint ¶ B.

The appellant's complaint sought costs, money for litigation including filing fees, materials and sometimes incidental payments that has not yet been determined and awarded.

The appellant's litigation against the appellees as a private attorney general has resulted in partial success.

In addition to the appellant's protected speech criticizing the failure of Kansas judicial branch officials to hold for profit adoption agencies to regulatory standards determined by the Kansas Social and Rehabilitation Services (SRS) and to make SRS interstate adoption records available to natural parents challenging parental rights terminations, Group home operators required to be regulated by the Kansas Social and Rehabilitation Services were raided by federal law enforcement officials and charged October 28, 2004 with human slavery, the holding or selling of persons against the 13th Amendment. The operators were indicted by a grand jury on 11/04/2004.

The states top SRS official, Secretary Janet Schalansky announced her unplanned retirement October 26, 2004.

The City of Topeka murder rate dropped by half when local law enforcement agencies used federal courts when possible and avoided Shawnee District court due to the payment to judges in lieu of bail bonds described in ¶¶ 36-

42 of the appellant's complaint. Topeka Capital Journal, "The death of homicide," January 2, 2005.

The appellee Hon. G. JOESEPH PIERRON, Jr. is no longer on the board of directors of Kansas' largest commercial contractor adoption agency, the Kansas Children's Service League (KCSL) while he sits in judgment over adoption cases.

During the third day of the appellant's ethics prosecution trial, the appellee Hon. G. JOESEPH PIERRON, Jr.'s corporation, KCSL lost "$30 million in adoption payments" Lawrence Journal World, "SRA announces changes to foster care services" Friday 21, 2005.

The Appellees are continuing their actions against the appellant, his clients and witnesses.

The state sought to seize AT&T stock from Frank Williams on a long dormant and unrevived judgment immediately after the appellant named Frank Williams as a witness with knowledge of appellee Stanton Hazlett's failure to read or research ethics complaint responses before conducting prosecutions, continuing the retaliatory actions by the state agencies against appellant, his clients and witnesses described in Appellant's complaint ¶¶ 68-90.

On January 14th, 2005, Andrew DeMarea was directed to file an ethics complaint against the appellant. Like the "complaint" filed by Sherri Price, no allegations of misconduct appear in DeMarea's complaint, it merely incorporates by reference attached appellant filings in the District Court and the Tenth Circuit along with court orders.

Even though the appellant answered the complaint, referencing underlying judicial misconduct reported to the circuit executive (The sole relief from judicial misconduct is appeal. *Ramirez v. Oklahoma Dept. of Mental Health*, 41 F.3d 584 at 589-90 (C.A.10 (Okl.), 1994) and there is clearly no misconduct in the form of a "frivolous appeal" associated with filing an appeal where the appellate makes findings of law consistent with arguments of the appellant on the issues appealed and that contradict the trial court, the appellees' investigating attorney John J. Ambrosio on February 10, 2005 sent the appellant a letter requiring his appearance at an investigatory interview.

The continuing baseless investigations and prosecutions of the appellant are preventing him from earning a living and from paying his school loan payments, the forseeable results of the appellees as they seek to intimidate and harass the appellant to hinder justice.

The appellant is being injured and prevented from adequately representing his remaining civil rights client James Bolden in an appeal before this court as a result of the continuing actions of the appellees.

SUMMARY OF THE ARGUMENT

The appellant was entitled to injunctive relief against the appellee's unlawful restraint of the appellant's protected speech addressing illegal practices in Kansas adoptions and policy issues regarding neighborhood crime and public housing on behalf of protected class clients who were being injured by the state and employed the appellant to seek redress.

ARGUMENT

The standard of review in First Amendment Cases, like the standard for reviewing judgments restricting protected speech is de novo:

> "In cases involving activity that may be protected under the Free Speech Clause, "an appellate court has an obligation to make **an independent examination of the whole record** in order to make sure that the judgment does not constitute a **forbidden intrusion on the field of free expression**." *Lytle v. City of Haysville*, 138 F.3d 857, 862 (10th Cir. 1998) (internal quotation marks omitted). The district court's findings of constitutional fact are reviewed de novo, as are its ultimate conclusions of constitutional law. *Revo v. Disciplinary Bd. of the Sup. Ct. for the State of N.M.*, 106 F.3d 929, 932 (10th Cir. 1997). Other factual findings, however, are reviewed for clear error. *Brown v. Palmer*, 915 F.2d 1435, 1441 (10th Cir. 1990), aff'd on reh'g, 944 F.2d 732 (10th Cir. 1991) (en banc)." [Emphasis added]

Fleming v. Jefferson County School District R-1, 2002 C10 1418 at ¶29 (USCA10, 2002).

1. Whether Disciplinary Administrator Stanton Hazlett who is not a judge and functions as a prosecutor, has judicial immunity.

The plaintiff's complaint asserts that these actions injured the plaintiff and the plaintiff's property in violation of federally guaranteed rights and seeks prospective injunctive relief against impending bad faith prosecution by the defendants under 42 U.S.C. § 1983, conforming to the bad faith prosecution exception to *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) and justifies federal intervention in a pending state bar proceeding *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 at 436, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) and *Bishop v. State Bar of Texas*, 736 F.2d 292 at 294 (C.A.5 (Tex.), 1984).

The defendants Stanton A. Hazlett, Jonathan M. Paretsky, Brenden Long and Sherri Price are not judges, magistrates or administrative hearing officers. Stanton A. Hazlett, Jonathan M. Paretsky are however judicial branch employees. Jonathan M. Paretsky comes the closest to being in a class of non judge court related employees as a motion attorney for the Kansas Court of Appeals. The defendants Hon. Judge Richard D. Anderson, Hon. Judge Lee A. Johnson, Hon. Judge Marla J. Luckert, and Hon. Judge, G. Joeseph Pierron Jr. are state judges but the requested injunctive relief does not seek to enjoin their exercise of judicial authority. The plaintiff's complaint does not seek relief barred by 42 U.S.C. § 1983.

Judicial immunity may extend to Jonathan M. Paretsky but the appellant asserts that as a motions attorney to the state Supreme Court clerk, his work is not integrally related to the function of judging. However, Hazlett, Long and Price neither resolve disputes or adjudicate private rights. Clearly these appellees are not immune from injunctive relief:

> "The doctrine of judicial immunity applies not only to judges but also to any judicial officer who acts to either "resolv[e] disputes between parties or . . . authoritatively adjudicat[e] private rights." *Antoine v. Byers & Anderson, Inc.,* 508 U. S. 429, 435-36 (1993). "[I]mmunity which derives from judicial immunity may extend to persons other than a judge where performance of judicial acts . . . is involved. . . . [A]bsolute judicial immunity has been extended to non-judicial officers where their duties had an integral relationship with the judicial process." *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000) (internal quotation marks omitted)."

Lundahl v. Zimmer, 2002 C10 766 at ¶ 28 (USCA10, 2002). In *Lundahl*, the Tenth Circuit definitively resolves whether Paretsky as a motions attorney working in the clerks' office absorbs her immunity. The Kansas Supreme Court Clerk, like a Kansas District court clerk derives her immunity from the function of her work. The *Lundahl* court observed one of the functions of a clerk in particular entitles her to immunity: "The entry of a default judgment unquestionably constitutes a judicial act; indeed, little could be thought a more quintessential judicial act than the entry of a legal judgment." *Lundahl v. Zimmer*, 2002 C10 766 at ¶ 31. Paretsky as a motions attorney performs no such function determining the rights of any party.

The conduct of the defendant judges, outside of any courtroom, in causing an ethics complaint to be filed and prosecuted against the appellant for conduct required by the Kansas Rules of Professional Conduct and for the purpose of prior restraint against the appellant's speech on behalf of protected class clients seeking redress from state agency wrong doing in violation of Kansas law is similarly distantly removed from a judicial act or the judicial function as the *Lundahl* court precisely defined it in terms of determining the rights of parties. The defendant judges were instead functioning as complaining witness or a prosecutor and intended that the Kansas Disciplinary Tribunal or the Kansas Supreme Court would make the determination or judgment regarding the rights of a party.

2. Whether the District Court's new law voiding earlier controlling Tenth

Circuit authority that complaining witnesses do not enjoy absolute immunity is now the new law of the Tenth Circuit Court of Appeals.

In adopting by general reference the memoranda of the defendants, the trial court has created a new rule doing away with the functional analysis of immunity. However if the trial court should have followed state and Tenth Circuit controlling authority, the defendant appellees have no judicial immunity for making ethics complaints designed t restrain protected speech.

Rule 223 was discussed in the Kansas Supreme Court case *Gerhardt v. Harris*, 934 P.2d 976 at 980, 261 Kan. 1007 (Kan., 1997). The Kansas Supreme Court doesn't assert "absolute judicial immunity" for ethics complainants and instead has conformed to the federal functional interpretation of immunity (supra), stating: "When judicial immunity is applied to someone other than a judge, a 'functional approach' to determining the scope of immunity should be used. *Burns v. Reed*, 500 U.S. 478, 486, 111 S.Ct. 1934, 1935, 114 L.Ed.2d 547 (1991) ('[T]he official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question.')." *Gerhardt v. Harris*, 934 P.2d 976 at 980, 261 Kan. 1007 (Kan., 1997). It is clear that the *Jarvis* court when stating "...and precludes a civil action by an attorney against a complainant" (*Jarvis v. Drake*, 250 Kan. 645, 830 P.2d 23 at Syl. ¶ 1 (1992)) could not have been asserting a bar to prospective injunctive relief against any obstruction of justice, victim intimidation or witness harassment by a complainant for the following reasons: Under the functional approach, and without the

possibility of a state statute derived immunity, the defendants have only the functional immunity of complaining witnesses.

3. Whether the trial court abused its discretion in denying preliminary injunctive relief when no controverted issues of fact existed over whether the plaintiff was being retaliated against for First Amendment protected Speech in support of an African American and American Indian being injured by violations of federal law and had already suffered the loss of his home and income.

The appellees advocate that they are absolutely immune from the prior restraint of protected speech.

> “The Supreme Court has made clear that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.); see also *Utah Licensed Beverage*, 256 F.3d at 1076 (noting presumption when infringement of First Amendment rights is alleged); *Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 & n.2 (10th Cir. 2001); *ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999); *Community Communications Co. v. City of Boulder*, 660 F.2d 1370, 1380 (10th Cir. 1981).”

Heideman v. South Salt Lake City, No. 02-4030 (10th Cir. 11/5/2003) (10th Cir., 2003)

“For '(t)he threat of sanctions may deter * * * almost as potently as the actual application of sanctions. * * *'” *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405.

> “The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure. See *NAACP v. Button, supra*, 371 U.S., at 432 433, 83 S.Ct., at 337—338; cf. *Baggett v. Bullitt, supra*, 377 U.S., at 378—379, 84 S.Ct., at 1326; *Bush v. Orleans School Board*, D.C., 194 F.Supp. 182, 185, affirmed sub nom. *Tugwell v. Bush*, 367 U.S. 907, 81 S.Ct. 1926, 6 L.Ed.2d 1250; *Gremillion v. United States*, 368 U.S. 11, 82 S.Ct. 119, 7 L.Ed.2d 75.”

Dombrowski v. Pfister, 380 U.S. 479 at 487, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965)

> "We conclude that on the allegations of the complaint, if true, abstention and the denial of injunctive relief may well result in the denial of any effective safeguards against the loss of protected freedoms of expression, and cannot be justified. "

Dombrowski v. Pfister, 380 U.S. 479 at 492, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).

The Appellant could not find a 2004 Tenth Circuit case where dismissal, summary judgment or denial of prehearing relief including stay of proceedings pending appeal related to First Amendment spoken expression and written testimony was not reversed by the appellate court upon review over even the strongest of state interests:

> "Since *Gitlow v. New York*, 268 U.S. 652, 666 (1925), the Supreme Court has held that the liberty of expression which the First Amendment guarantees against abridgment by the federal government is within the liberty safeguarded by the Due Process Clause of the Fourteenth Amendment from invasion by state action."

Heideman v. South Salt Lake City, No. 02-4030 (10th Cir. 11/5/2003) (10th Cir., 2003).

4. Whether the trial court had a duty to make an independent evaluation of the plaintiff's claims under *Bright v. Westmoreland County*, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004).

The appellant and the appellate panel will face significant obstacles in reviewing the trial court's decision not to grant an injunction against the appellee's retaliatory prosecution of the appellant for protected speech on behalf of protected class citizens seeking redress for state actions against their recognized liberty interests. As such, the appellant's action to enjoin the state officials was neither

frivolous nor a patently flawed claim. The court must, at a minimum, explain its reasons for denying relief.

The problem of no findings of fact or law has been previously recognized by the Tenth Circuit:

> “However, we are compelled to address the issue because, without adequate findings of fact and conclusions of law, appellate review is in general not possible. *Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp.*, 15 F.3d 1222, 1227 (1st Cir. 1994) (noting that Rule 52(a) requires a trial court to "set forth the findings of fact and conclusions of law which constitute the grounds of its action" and that the rule "reflects the importance of injunctions and of providing an adequate basis for their appellate review") (internal quotation marks omitted); *Curtis v. Commissioner*, 623 F.2d 1047, 1051 (10th Cir. 1980) (noting that a trial court's findings of fact "may be challenged as inadequate to give a clear understanding of the process by which the court's ultimate conclusions were reached and thus inadequate to permit appellate review").”

Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 at 1245 (10th Cir., 2001).

The trial court’s ruling necessitates a remand for clarification because it is without detail and exactness in that it incorporates by reference conflicting and confusing dismissal attempts by two different groups of defendants with independent counsel:

> “Although Rule 52(a) does not require "over-elaboration of detail or particularization of facts," conclusory findings are not sufficient compliance with the Federal Rules of Civil Procedure. Knapp, 15 F.3d at 1228 (internal quotation marks omitted); see also *EEOC v. United Virginia Bank/Seaboard Nat.*, 555 F.2d 403, 406 (4th Cir. 1977) ("When the trial court provides only conclusory findings, illuminated by no subsidiary findings or reasoning on all the relevant facts, . . . there is not that 'detail and exactness' on the material issues of fact necessary for an understanding by an appellate court of the factual basis for the trial court's findings and conclusions . . . .").

Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1234 at 1246 (10th Cir., 2001).

> Under Rule 52(a), a district court must "find the facts specially and state separately its conclusions of law . . . in granting or refusing interlocutory injunctions." Fed. R. Civ. P. 52(a). The Rule seeks "to (1) engender care on the part of trial judges in ascertaining the facts; and (2) make possible meaningful appellate review." *Wolfe v. New Mexico Dept. of Human Services*, 69 F.3d 1081, 1087 (10th Cir. 1995). "Findings of fact by a trial court should be sufficient to indicate the factual basis for the court's general conclusion as to ultimate facts, . . . should indicate the legal standards against which the evidence was measured[, a]nd . . . should be broad enough to cover all material issues."

Otero v. Mesa County Valley Sch. Dist. No. 51, 568 F.2d 1312, 1316 (10th Cir. 1977).

In *Bright v. Westmoreland County*, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004), the Third Circuit discussed a District Court opinion that is essentially a verbatim copy of the appellees' proposed opinion having similar effect to the present case the trial court merely incorporated by general reference the opposing counsel's arguments of law and fact. The Bright court agreed with the Fourth Circuit in *Chicopee Mfg*:

> "There is authority for the submission to the court of proposed findings of fact and conclusions of law by the attorneys for the opposing parties in a case, and the adoption of such of the proposed findings and conclusions as the judge may find to be proper. . . . But there is no authority in the federal courts that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function."[Emphasis added]

Chicopee Mfg. Corp. v. Kendall Co., 288 F.2d 719, 725 (4th Cir. 1961) . The Bright court stated:

> "Judicial opinions are the core workproduct of judges. They are much more than findings of fact and conclusions of law; they constitute the logical and analytical explanations of why a judge arrived at a specific decision. They are tangible proof to the litigants that the judge actively wrestled with their claims and arguments and made a scholarly decision based on his or her own reason and logic. When a court adopts a party's proposed opinion as its own, the court vitiates the vital purposes served by judicial opinions. We, therefore, cannot condone the practice used by the District Court in this case."

Bright v. Westmoreland County, No. 03-4320 (Fed. 3rd Cir. 8/24/2004) (Fed. 3rd Cir., 2004)

CONCLUSION

Whereas the appellee defendants were clearly violating the appellant's right to freedom of speech and are threatening his property interest in the proceeds from his legal work and in his Kansas law license for conduct that is irrefutably required of an attorney under the Kansas Rules of Professional Conduct, no immunity and no interest of the state was subject to the action to enjoin state officials misusing their official positions to accomplish unlawful acts. The appellan respectfully request that the court grant his injunctive and declaratory relief, or in the alternative remand the case back for findings of fact and law.

STATEMENT REGARDING ORAL ARGUMENT

Counsel respectfully requests the opportunity to orally present arguments required to understand the issues presented by this appeal.

S/Bret D. Landrith
Bret D. Landrith
Kansas Supreme Court ID # 20380

CERTIFICATE OF COMPLIANCE

Section 1. Word count
As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced and contains 13,852 words.
Complete one of the following:
X I relied on my word processor to obtain the count and it is [name word processor software]:_MS Word for Mac OS X
9 I counted five characters per word, counting all characters including citations and numerals.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

S/Bret D. Landrith
Bret D. Landrith
Kansas Supreme Court ID # 20380

CERTIFICATE OF SERVICE

I certify I have provided a copy of this opening brief to each of the following via e-mail on December 12th, 2005.

Stephen O. Phillips
Kansas Attorney General- 10th Ave
120 S.W. 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
785-296-2215
Fax: 785-296-6296
Email: phillips@ksag.org

Mary B. Mudrick
City of Topeka, Kansas - Legal Department
215 SE 7th

Topeka, KS 66603
785-368-3883
Fax: 785-368-3901
Email: mmudrick@topeka.org

S/ Bret D. Landrith

____

Bret D. Landrith
Kansas Supreme Court ID # 20380
G33,
2961 SW Central Park,
Topeka, KS 66611
1-785-267-4084
landrithlaw@cox.net

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

<table>
<tr><td>BRET DAVID LANDRITH,

Plaintiff,

vs.

STANTON A. HAZLETT,
HON. G. JOESEPH PIERRON, JR.,
HON. HENRY W. GREEN,
HON. LEE A. JOHNSON,
HON. MARLA J. LUCKERT,
HON. RICHARD D. ANDERSON,
FRANK D. DIEHL,
JONATHAN M. PARETSKY,
SHERRI PRICE,
BRENDEN LONG,

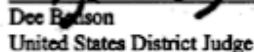
Defendants.</td><td>ORDER

Case No. 04-2215-JWL</td></tr>
</table>

Presently before the Court is Defendants' Motion to Dismiss Complaint. Having reviewed the parties briefs, the record, and relevant law, the Court GRANTS Defendants' motions and DISMISSES Plaintiff's Complaint WITH PREJUDICE. The Court adopts defendants' memoranda in support of defendants' motions to dismiss as the legal basis for this Order.

IT IS SO ORDERED.

DATED this 22nd day of September, 2004.



Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

BRET DAVID LANDRITH *Plaintiff* v.	)	
	)	Case No. 04-2215-DVB
HON. G. JOESEPH PIERRON, JR HON. HENRY W. GREEN, HON. LEE A. JOHNSON, HON. MARLA J. LUCKERT, HON. RICHARD D. ANDERSON, STANTON A. HAZLETT, FRANK D. DIEHL, JONATHAN M. PARETSKY, SHERRI PRICE BRENDEN LONG *Defendants*	)	

NOTICE OF APPEAL

Comes now the plaintiff Bret D. Landrtith and makes this notice of appeal of the court's September 23rd decision for the following reasons:

1.Plaintiff was not part of any communications between Hon. Judge Dee Benson and officials of the state of Kansas concerning this action that caused Steve Phillips to stop advocacy within these proceedings.

2. Plaintiff was not part of any communications between the defendant, the Hon. Judge G. JOESEPH PIERRON, JR. on behalf of the defendants and Hon. Judge Sam Crow representing the US District Court for the District of Kansas via telephone concerning the merits of the present action occurring prior to the recusal of Judge Vratil and the entry of Hon. Judge Dee Benson.

3. The plaintiff is not part of any settlement by the State of Kansas to avoid constitutional injury and the overt bad faith prosecution committed by the defendants

limit sanctions against him in the October 19th hearing of Attorney Disciplinary panel and the panel members should be free to weigh the facts in a due process proceeding.

4. The plaintiff will seek to have the law and constitution of the United States honored.

Respectfully submitted,

S/ Bret D. Landrith

____

Bret D. Landrith
Kansas Supreme Court Number 20380
12820 SW Hwy 4,
Topeka, KS 66610
785-256-6508
eposone@mobil1.net

Certificate of Service

I certify the above motion has been served upon the opposing counsel listed below via CM/ECF electronic filing on September 23, 2004.

Mary Beth Mudrick
Steve Phillips