

MOTION FOR EN BANC REHEARING

**United States Court of Appeals
For the Tenth Circuit**

Docket No. 09-3371 (10th cir)

Formerly United States District Court Case
Case No: 09-CV-2603 JTM/DJW

STEWART A. WEBB

Plaintiff,

v.

HON. JUDGE KATHRYN H. VRATIL, in her
Official capacity as Chief Judge
for the United States District Court for

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Appeal from
the United States District Court for the District of Kansas

MOTION FOR EN BANC REHEARING

The plaintiff /appellant seeks review of a panel decision that appears to violate the Supreme Court's mandate.

ISSUE: Whether the hearing panel could over rule the U.S. Supreme Court in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007).

The trial court is prohibited from *sua sponte* dismissal of the plaintiff's cause or denial of the plaintiff's in forma pauperis status under the US Supreme

Court's overturning of the Tenth Circuit Court of Appeals in *Erickson v. Pardus*, 511 U.S. 9 (2007).

The trial court is prohibited from *sua sponte* dismissal of the plaintiff's cause based on earlier decisions of the Kansas District Court where the plaintiff was not a party or in privity including *David Martin Price v. Kathryn H. Vratil, et al.*, No. 09-2198 under the 2008 controlling law of the US Supreme Court in *Taylor v. Sturgell* where the court specifically held that "...such 'nonparty preclusion' runs up against the 'deep-rooted historic tradition that everyone should have his own day in court.'" *Taylor v. Sturgell* 553 U.S. ____ (2008).

The relief sought in equity by the appellant was solely the vindication of the rights of the appellant to have adequate legal representation in future separate racketeering proceedings against defendants not a party to this action in equity.

The memorandum in support of the plaintiff's motion for summary judgment specifically gave the trial court evidence of injury to similarly situated individuals who were retaliated against through extrinsic fraud over federal court proceedings to meet the burden of proving the 1st and 2nd criteria for injunctive relief under *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1548, 1551-2 (D.Kan. 1993).

The evidence of retaliation against similarly situated victims prevails in summary judgment: "...evidence of a similarly situated individual who was

retaliated against "might also be sufficient to show the existence of an unconstitutional municipal policy giving rise to section 1983 liability." *Id.* at 725 n.26" *Melton v. City of Oklahoma City*, 879 F.2d 706, 725 n.26 (10th Cir. 1989).

The appellant's cause was not frivolous and he was entitled to summary judgment for injunctive relief to proving the 1st and 2nd criteria for injunctive relief under *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1548, 1551-2

The appellant was entitled to summary judgment for injunctive relief under the third criteria of *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1551-2 because the injunction would not be adverse to the public interest.

The public interest in the appellant obtaining the representation of Landrith is not dependant on the Kansas Supreme Court and is separate from any state action after Landrith was admitted to the Kansas District Court. "The two judicial systems of courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. " *Theard v. United States*, 354 U.S. 278, 281 (1957). Thus, for example, "disbarment by federal courts does not automatically flow from disbarment from state courts." *Id.* at 282; accord *In re Ruffalo*, 390 U.S. 544, 547 (1968). This is true even when admission to a federal court is predicated upon admission to the bar of the state court of last resort. See *Selling v. Radford*, 243 U.S. 46, 49 (1916); see also *Theard*, 354 U.S. at 281 ("While a lawyer is admitted into a federal court by

way of a state court, he is not automatically sent out of the federal court by the same route."). Once federal admission is secured, a change in circumstances underlying state admission – such as a shift in domicile -- is "wholly negligible " on the right to practice before a federal court. *Selling*, 243 U.S. at 49.

The appellant's cause is not frivolous and he is entitled to preliminary injunctive relief allowing him the representation of Landrith and summary judgment for injunctive relief having met the first three criteria of *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1551-2 and because the plaintiff is readily able to meet the standard in this jurisdiction for the fourth criteria that there is a strong likelihood the plaintiff will ultimately prevail in his investigation of criminal conduct and in the plaintiff's private civil racketeering claims under 18 U. S. C. § 1961, *et seq.*

The proffered evidence and testimony of the plaintiffs racketeering claims have been found by US District Court for the District of Colorado Senior Judge, Hon. Richard Matsch then adopted the findings of Wyoming District Judge Hon. Clarence Addison Brimmer, Jr. after a deposition of the plaintiff that public interest requires summoning a grand jury in a telephone hearing with the plaintiff and the plaintiff's fellow relator Lt. Commander USN Ret., Office of Intelligence Al Martin.

Star Fuel Marts, LLC v. Sam's East, Inc., 362 F.3d 639, 653 (10th Cir. 2004).

Whereas for the above stated reasons which are supported with legal arguments and factual evidence in the Motion for Summary Judgment and accompanying Memorandum of Support for Summary judgment the appellant respectfully requests that this court issue an order permitting the plaintiff to proceed with legal representation by Landrith in the US District Court for the District of Kansas in his investigation of criminal conduct appellant occurring in the State of Kansas and legal 1961, *et seq.* representation of the plaintiff's private civil racketeering claims under 18 U. S. C. § 1961 et seq.

Respectfully submitted,

S/ Stewart A. Webb

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CERTIFICATE OF SERVICE/COMPLIANCE

I certify the brief in body is 10 pages meeting the length requirement

and that the electronic file is virus scanned and free from CA Internet Security Suite 2010 Edition Antivirus software.

I hereby certified I have served the above motion on opposing parties by filing the motion April 19, 2010 on the court's ECMF electronic filing system.

I further certified I have served the Memorandum and exhibits by US Mail containing a link to an html version of the same available online at

http://www.stewwebb.com/stew_webb_grand_jury_demand_vs_bush_millman_clinton_etal_09142009.htm

http://www.stewwebb.com/stew_webb_vs_bush_millman_lindner_clinton_crime_syndicate_122009.htm

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to the following by depositing it in the US Mail with First Class postage affixed:

U.S. District Court for the District of Kansas
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On this 19th day of April 2010.

Respectfully submitted,

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