

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

**STEWART A. WEBB**

*Plaintiff,*

v.

Case No: 09-2603

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

Jury Trial Requested

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

*Defendant,*

**PLAINTIFF’S MOTION FOR NEW TRIAL UNDER FRCP RULE 59**

Comes now the plaintiff Stewart A. Webb appearing *pro se* and makes the following motion for Rule 59 reconsideration over the trial court’s judicial treason and trespass at law. The plaintiff respectfully requests Hon. Judge Fernando J. Gaitan Jr. withdraw his order denying the plaintiff in forma pauperis status in violation of expressly controlling US Supreme Court law for the following reasons:

This 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).

This 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 plaintiff is solely the vindication of the rights of the plaintiff to have adequate legal representation in future separate 18 USC § 1981 *et seq.*, 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 gives 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 1<sup>st</sup> and 2<sup>nd</sup> 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 entitles the plaintiff to summary judgment in this jurisdiction: "...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 plaintiff is 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 plaintiff's 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 plaintiff 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.

The fourth criteria of *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1551-2 is substantially relaxed in this jurisdiction upon a showing the first three criteria have been met. *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 is an accompanying memorandum of support for summary judgment the plaintiff respectfully requests that this court reverse its order and permit the plaintiff to proceed with legal representation in his investigation of criminal conduct occurring in the State of Kansas and legal representation of the plaintiff's private civil racketeering claims under 18 U. S. C. § 1961, *et seq.*

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certified I have served the above motion on opposing parties by filing the motion December 14<sup>th</sup>, 2009 on the court's fax filing system.

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

<http://sites.google.com/site/stewwebbvjudgevratil>

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

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