

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-CV-01469-CMA-KLM

DAVID E. WILKENSON,

Plaintiff,

v.

STATE OF COLORADO, et al.,

MESA COUNTY, COLORADO, et al.

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN - 3 2014

JEFFREY P. COLWELL
CLERK

VERIFIED OBJECTION, AND RESPONSE TO THE 12/16/13 RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE KRISTEN L. MIX; and MOTION FOR REVIEW OF THE MAGISTRATE'S RECOMMENDATION BY PRESIDING JUDGE CHRISTINE M. ARGUELLO.

COMES NOW the Plaintiff, DAVID E. WILKENSON, pro se¹ — pursuant to Fed R. Civ. P. 12, Fed R. Civ. P. 72, the Court's inherent equity powers, and Magistrate Mix's 12/16/13 Notice of Recommendation — and hereby enters his timely objection (and the specific grounds upon which it is based) to the Magistrate's recommendation that Plaintiff's complaint against Colorado and Mesa County be dismissed without prejudice.

¹ *Haines v. Kerner*, 404 US 519 (1972), *Puckett v. Cox*, 456 F2d 233 (1972), *Pickering v. Pennsylvania Railway*, 151 F2d 24 (3d Cir. 1945), *Hall v. Bellmon*, 935F.2d 1106, 1110 (10th Cir. 1991): Liberally construing a pro se plaintiff's complaint means that "if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements."

**BRIEF STATEMENT OF OBJECTION REGARDING JUDICIAL CRIMES
UNCONSTITUTIONALLY DECIDING THE OUTCOME OF THE TITLE 14
STATE CASE**

1. In *Wilkenson vs. Colorado, et al*, state and federal crimes committed by state court trial judges/magistrates and first criminally doubled down on by Mesa County Attorney Maurice Lyle Dechant and various Mesa County Commissioners, and then criminally covered up, by unknown and unnamed employees of the state's appellate apparatuses are the direct cause of the plaintiff's injuries and the extremely prejudiced and unjust outcome of the inextricably entwined Colorado Title 14 dissolution of marriage and child custody Case No. 96 DR 372.
2. The judicial crimes and the attendant criminal cover ups adversely negatively affected everything that happened after them. Once the crimes had been committed, the cover up began, and everything else, rule of law, due process, the best interests of the children, parental rights, impartiality, etc., went right out the window. The highest-priority consideration became the local judicial officers' attempts to avoid embarrassment and protect their careers by covering up their crimes and making any meaningful "normal" appeals process impossible.
3. The attempts to cover up judicial crimes are the direct cause of custody being awarded to a mother with four DUI convictions (one involving injury to police officers), Mesa County changing its position on the illegality of the Title 19 support order, the children being allowed to relocated to England in the middle of an ongoing appeal, in violation of *Molitor*, and the denial of Plaintiff's statutory right to a custody hearing

based on his ex-wife's long pattern of blatantly flaunting disregard for the Mesa County District Court's final custody and parenting time order.

4. The original judicial crimes are still ongoing via the various continuing accessory-after the fact — (see C.R.S. 18-8-105 and 18 U.S. Code § 3) — cover ups, illegal child support assessments on Ben Wilkenson who is already twenty years of age, and the continued illegal seizure of Plaintiff's driver's license and passport.

5. Plaintiff objects to Magistrate Mix using the Eleventh Amendment to bar his 42 USC § 1983 suit against the Defendants under the facts of this case. Where the State violations of Plaintiff's most fundamental 1st, 5th, and 14th Constitutional guaranteed rights are criminal and exactly on point to the creation and intent of the history of 42 USC § 1983. To misuse the Eleventh Amendment under the factual circumstances of this unprecedented case to nullify the 1st, 5th, and 14th Amendments is untenable at law and makes the federal courts guilty of accessory after the fact to the crimes committed by the Defendants.

FACTS REGARDING JUDICIAL CRIMES

Dispositive Jurisdictional Facts asserted and proven through the appendices of Plaintiff's First Amended Complaint:

6. Mesa County District Court (MCDC) case no. 96 DR 372 was filed on 4/19/96 and is active and ongoing and continues to this day. The Mother and the children were given permission to permanently leave the jurisdiction of the Colorado courts and relocate in

England on 8/26/98 by MCDC Judge Nicholas Massaro, while the custody decision of 12/18/97 was still under ongoing appeal.

7. MCDC Magistrate Jane Westbrook on 8/15/97 signed an arrest warrant—allegedly “for Magistrate Cyphers” for Plaintiff’s illegal arrest and jailing for failure to appear on 8/13/97 to answer the allegations in a contempt citation which she knew were false and baseless. On 7/28/97 Plaintiff timely appeared in the filing of four motions addressing the allegations contained in the contempt citation and the summons commanding Plaintiff’s personal appearance in court.

8. MCDC Magistrate Jane Westbrook falsified the Register of Actions in case No. 96 DR 372 by entering the false date of the issuance of a Warrant for Plaintiff’s arrest of 8/13/97. (see Appendix C, register of actions for case 96 DR 372, and compare the date with a copy of the Warrant for Plaintiff’s arrest dated 8/15/97 contained in Appendix A, appendix page 175)

9. MCDC Magistrate Cynthia Cyphers falsified the Register of Actions in case No. 96 DR 372 by entering a false date of the issuance of her denials of Plaintiff’s, 7/28/97 Verified Motion for Magistrate Cynthia Cyphers to Reconsider her 7/9/97 Order to Issue (Contempt) Citation; and Quash Summons, and 7/28/97 Verified Motion to Dismiss Contempt Citation, of 8/25/97. The transcript of Plaintiff’s advisement hearing on 8/26/97 shows that Magistrate Cyphers knew nothing about the motions she falsely dated as being denied on 8/25/97 the day before the 8/26/97 advisement hearing. (see Appendix A, appendix pgs. 198 and 199, and compare the transcript of the 8/26/97 advisement hearing before Magistrate Cyphers, Appendix A, appendix pg, 249)

10. MCDC Magistrate Cynthia Cyphers falsified the court record of case No. 96 DR 372 when she filed her predated denial of Plaintiff's 7/28/97 Verified Motion for Magistrate Cynthia Cyphers to Reconsider her 7/9/97 Order to Issue (Contempt) Citation; and Quash Summons, and 7/28/97 Verified Motion to Dismiss Contempt Citation into the court record of case No. 96 DR 372. (see Appendix A, appendix pgs. 198 and 199)

11. Sometime after 10/27/97 and 1/16/03, MCDC Magistrate Jane Westbrook falsified the Register of Actions in case No. 96 DR 372 by making an entry of an order for the pay over of child support into the Register of Actions dated 6/10/97. Plaintiff never received a copy of that order and has been unable to get one from the MCDC clerk because that is part of the falsified and now destroyed court record of the case.

Magistrate did not make that order on that date she alleged. The 5/6/97 title 19 support order was under review by the district court judge and the Magistrate had already terminated that order by her 5/21/97 title 19 case no. 96 JV 180 termination order. In addition Magistrate Westbrook, on the same day (6/10/97), granted Mesa County Human Services (MCHS) contract child support enforcement attorney Stuart Jones' motion to withdraw from the case. Magistrate Westbrook would not have granted Stuart Jones' motion to withdraw and on the same day issue a pay over of child support for him to collect. (see Appendix C, Register of Actions in case No. 96 DR 372 on 6/10/97 and Register of Actions in case no. 96 JV 180 on 5/29/97.)

12. MCDC Magistrate Jane Westbrook falsified the court record in case No. 96 DR 372 when she filed her falsely dated as 6/10/97 order to pay over child support into the court record sometime between 10/27/97 and 1/16/03.

13. MCDC Magistrate Jane Westbrook falsified the Register of Actions in case No. 96 DR 372 when she withheld the entry of her, 1/16/03 Order, her 5/8/03 Order, and her 7/21/03 Order from the Register of Actions in case No. 96 DR 372. (see Appendix C, Register of Actions in case No. 96 DR 372 on 1/16/03, 5/8/03, and 7/21/03.)
14. MCDC Judge Nicholas R. Massaro falsified the Register of Actions in case No. 96 DR 372 when he withheld the entry of his 12/23/98 Order from the Register of Actions in case No. 96 DR 372. (see Appendix C. Register of Action in case No. 96 DR 372 on 12/23/98.)
15. Sometime before 9/25/12 unknown, unnamed employees of the Colorado courts extensively and selectively falsified the court record by removing approximately 100 entries constituting thousands of pages from the court file in 96 DR 372. (see Appendix C, Register of Actions and the Certified 9/25/12 Index of the Record on Appeal in district court case no. 96 DR 372, and Colorado Court of Appeals case No. 2012CA696, and note the high-lighted portions therein.)
16. Sometime in October 2012 unknown, unnamed employees of the Colorado courts destroyed the court record in case No. 96 DR 372 that was sent to the Colorado Court of Appeals Court in Denver by Mesa County District Court clerk Linda Quarles.
17. Sometime in October 2012 unknown, unnamed employees of the Colorado courts conspired with unknown, unnamed employees of the United State Postal Service to delete the computer tracking record of the certified mailed package containing the court record from case no. 96 DR 372, thereby attempting to covering up for the destruction of the court record in that case.

