

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Richard L. White

Petitioner,

V.

Case Number: CIV-08-381 WJ/ACT

FILED
08 MAY 12 2008

Terri White

Respondent, Movant and Plaintiff,

MOTION TO RECONSIDER DISMISSAL OF COMPLAINT AND POSED FEDERAL
QUESTIONS

COMES NOW, Movant/Plaintiff, pursuant to Fed. R. Civ.P. 60(b)(6) submits this Motion to Reconsider the court's May 1, 2008 sua sponte order dismissing Plaintiff's complaint for lack of subject matter jurisdiction (Doc. No. 5).

I. Facts Pertaining To This Case

- On April 11, 2008 the Plaintiff filed a Notice of Removal which posed several federal questions (Doc. No. 1), Motion to Proceed In Forma Pauperis (Doc. No. 2) and an Application For Temporary Restraining Order (TRO) against the Second Judicial District Court (Doc. No. 3) which stated some initial reasons in support of the Application for TRO.
- On April 15, 2008, two business days later, this court denied the Plaintiff's Application For TRO (Doc. No. 3) stating "*Application for TRO fails to set forth any grounds that would justify the Court entering a TRO*" (Doc. No. 4).
- During the business week of April 21, 2008 the Plaintiff received a correspondence addressed to "*Honorable William P. Johnson, Pete V. Domenici U.S. Courthouse, 333*

Lomas Blvd., NM Suite 270 Albuquerque NM 87102" issued by the New Mexico Attorney Generals Office, **Exhibit 1**, stating "*The New Mexico Attorney General's Office represents the Second Judicial District Court (SJDC) when it is sued in federal court*" and "*request[ed]... .. the Court sua sponte remand the above-mentioned case back to state court or ask that the Court permit the SJDC through the Attorney General's Office file a motion to remand and/or motion to dismiss the case*".

- On May 1, 2008 this court, apparently acting "*sua sponte*", stated "*...the United States District Court for the District of New Mexico has no subject matter jurisdiction whatsoever to consider any issues pertaining to Terri White's pending divorce action.*" thus dismissed the Plaintiff's complaint for "*lack of subject matter jurisdiction*" (Doc. No. 5).
- On May 2, 2008 the Plaintiff file her initial response (Doc. No. 6) to the New Mexico Attorney Generals Office April 21, 2008 issued correspondence, **Exhibit 1**.
- As of the date of this document the court has not ruled on the Plaintiff's Motion to Proceed In Forma Pauperis (Doc. No. 2).
- As of the date of this document this court has not file the New Mexico Attorney Generals Office April 21, 2008 issued correspondence, **Exhibit 1**, which requested the court act sua sponte, simply as a Notice for those properly declared parties.
- As of the date of this document the court docket reflects no entry(ies) of appearance(s) have been filed by any other party of any party type.

II. Arguments and Authorities

- Legal definition of sua sponte:

"meaning on one's own volition, usually referring to a judge's order made without a request by any party to the case. These include an order transferring a case to another judge due to a conflict of interest or the judge's determination that his/her court does not have jurisdiction over the case."

- Federal Rules of Civil Procedure Part IV Parties Rules 17 thru 25

- *Atwood v. Fort Peck Tribal Court* United States Court of Appeals For The Ninth Circuit Case No. 06-35299 Filed January 18, 2008
- *Bulloch v. United States of America* 153F.2d 1015 at 1127

A. The New Mexico Attorneys Generals Office is Not Representing The Second Judicial District Court As Alleged.

The Plaintiff can only presume the New Mexico Attorneys Generals Office understands the importance of honoring Federal Rules of Civil Procedure, specifically Part IV Parties Rules 17 thru 25, and unquestionably respects federal jurisdiction *void* of sua sponte. Issuing a correspondence to this court outside of record proper, **Exhibit 1**, with no filed notice of appearance for a party the New Mexico Attorneys Generals Office is allegedly representing (the Second Judicial District Court) coupled with other known active cases in the United States District Court District of New Mexico where the Second Judicial District Court is a named Defendant and the New Mexico Attorneys Generals Office is not representing (the Second Judicial District Court) is an action that warrants a complaint submission, on the part of the Plaintiff, to the New Mexico Disciplinary Board. Presumably the New Mexico Attorneys Generals Office is able but apparently is not willing to honor Federal Rules of Civil Procedure, specifically Part IV Parties Rules 17 thru 25.

B. Plaintiff's Notice of Removal and Posed Federal Questions Should Not Be Dismissed, Sua Sponte, For Lack of Subject Matter Jurisdiction.

This court's May 1, 2008 order (Doc. No. 5) only suggested the Plaintiff's Notice of Removal was to accomplish "*remove to federal court her pending state court divorce action*", the Plaintiff's Notice of Removal posed several federal questions in order to definitively establish the basis for the Plaintiff's petition of Notice of Removal under federal jurisdiction. Now, contrary to this court's, acting sua sponte, claim of lack of subject matter jurisdiction, *Atwood v. Fort Peck Tribal Court*

established *"We hold that the "domestic relations exception," a doctrine divesting the federal courts of jurisdiction, applies only to the diversity jurisdiction statute, 28 U.S.C. § 1332, and that the district court erred by applying the domestic relations exception because federal question jurisdiction exists in this case under 28 U.S.C. § 1331."*

In addition to the Plaintiff's previously submitted *"Response To Letter Dated April 21, 2008 From Attorney General"* (Doc. No. 6) and the above, the Plaintiff adds *Bulloch v. US "It is beyond question that a federal court may investigate a question as to whether there was fraud in the procurement of a judgment."*, citing *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447 and *"Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It has been held that allegations of nondisclosure in pretrial discovery will not support an action for fraud on the court. H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115 (6th Cir.). *It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted."*

The jurisdiction and competence of the state court is legitimately challenged under the federal questions presented (Doc. No. 1), thereby granting this court jurisdiction. Permitting the state court to continue its abuses against any citizen of the United States residing in New Mexico presents this court with further innumerable questions which it must be prepared to answer. Based on the above, this Court's basis for dismissal of the Plaintiff's complaint and posed federal questions is erroneous and should therefore be reversed. We demand this court ponder and answer the federal questions presented as a matter of justice under the Establishment Clause of the U. S. C. and the 14th Amendment.

WHEREFORE, the Movant/Plaintiff respectfully request that this honorable Court reconsider the Court's May 1, 2008 Order Dismissing Complaint For Lack Of Subject Matter Jurisdiction.

Exhibit Summary

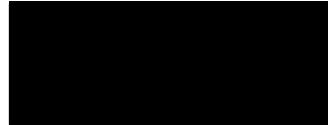
Exhibit 1

April 21, 2008 Correspondence From New Mexico Attorney Generals Office
stating "The New Mexico Attorney General's Office represents the Second Judicial District Court (SJDC) when it is sued in federal court"
and "request(ed)... the Court sua sponte remand the above-mentioned case back to state court or ask that the Court permit the SJDC through the
Attorney General's Office file a motion to remand and/or motion to dismiss the case"

Respectfully submitted,



Terri White,
Movant/Plaintiff, *Pro se*



CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed/hand delivered, or faxed to the below parties entitled to notice on or before the 13th day of May 2008. .

Second Judicial District Court
PO Box 488
Albuquerque, New Mexico 87102
Attn: Juanita Duran

Joyce M. Gentry
Attorney for Richard L. White
1100 Tijeras NW
Albuquerque, NM 87102



Attorney General of New Mexico
April 21, 2008

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

Honorable William P. Johnson
Pete V. Domenici U. S. Courthouse
333 Lomas Blvd. NW Suite 270
Albuquerque, NM 87102

Re: White v. White
No. CIV 08-00381 WJ/ACT

Dear Judge Johnson:

The New Mexico Attorney General's Office represents the Second Judicial District Court (SJDC) when it is sued in federal court. On April 11, 2008, Defendant Terri White filed a Notice of Removal of her state court divorce action to federal court and also applied for a temporary restraining order against the SJDC. On April 15, 2008, this Court denied Ms. White's TRO request. Although the SJDC is not a named party in the above-mentioned case now pending in federal court, it obviously has an interest in being able to have the necessary jurisdiction to issue orders and enforce those orders in the state court case. However, it is the SJDC's understanding that once removal occurs all jurisdiction relating to that case remains in federal court until the case is remanded back to state court.

On behalf of the SJDC, I would request that the Court sua sponte remand the above-mentioned case back to state court or would ask that the Court permit the SJDC through the Attorney General's Office file a motion to remand and/or motion to dismiss the case.

Please let me know if there is anything further the Court wants me to do or if there are any questions.

Thank you for your attention to this matter.

David Tourck
Assistant Attorney General
New Mexico Attorney General's Office
111 Lomas Blvd. NW
Albuquerque, NM 87102
(505) 222-9087

cc: Terri White, Joyce Gentry