

In The Supreme Court of the State of Missouri

STATE OF MISSOURI EX REL.,)	
SAMUEL K. LIPARI,)	
<i>Relator,</i>)	
v.)	
)	No. _____
THE HONORABLE)	
JUDGE JOHN M. TORRENCE, CIRCUIT)	
COURT OF JACKSON COUNTY,)	
MISSOURI,)	
<i>Respondent.</i>)	

WRIT SUMMARY

Summary For Original Remedial Writs

Identity of parties and their attorneys in the underlying action, if any:

Samuel K. Lipari, relator appearing pro se
Honorable Judge John M. Torrence, respondent

Nature of underlying action, if any:

Seeking enforcement of Change of Venue

Action of Respondent being challenged, including date thereof:

Refuses to docket plaintiff's Motion for Change of Venue dated Friday May 28th, 2010.

Relief sought by Relator or Petitioner:

Order requiring respondent to perform his ministerial duty of docketing the Motion to Change Venue required by Rule 43.02 Filing Of Pleadings And Other Papers so that the plaintiff's appeal Legal File will be complete or alternatively a Criminal Referral under 18 USC § 2.

Date case set for trial, if set, and date of any other event bearing upon relief sought (e.g., date of deposition or motion hearing):

Legal file due July 1st, 2010

Date, court and disposition of any previous or pending writ proceeding concerning the action or related matter: N/A

ORIGINAL PROCEEDING IN MANDAMUS

Comes now the relator Samuel K. Lipari appearing pro se and makes this application for a writ of mandamus to order respondent The Honorable Judge JOHN M. TORRENCE of the Circuit Court Of Jackson County, Missouri to docket plaintiff's Motion for Change of Venue in the underlying action, *Lipari v. CHAPEL RIDGE MULTIFAMILY LLC, et al*; 16th Cir. Case No. 0916-CV38273 by Rule 43.02 Filing Of Pleadings And Other Papers under Supreme Court rule 94.

I. SUMMARY OF UNDERLYING ACTION

Missouri licensed attorneys have committed felonies on behalf of defendants seeking to obstruct justice and prevent the plaintiff from entering the Missouri and national markets for hospital supplies which are monopolized by the Novation LLC cartel. The defendants are alleged to be part of the Novation LLC cartel as latecomer co-conspirators put up to racketeering acts against the plaintiff by the US Department of Justice US Attorney Office for the Western District of Missouri. The felonies including Mail and Wire Fraud create private causes of action charged by the plaintiff under RICO 18 U. S. C. § 1962 (c) and (d). The plaintiff also merged his state law contract related claims against the Novation LLC cartel members the General Electric defendants.

The Honorable Judge JOHN M. TORRENCE of the Circuit Court Of Jackson County, Missouri is currently refusing to docket plaintiff's Motion for Change of

Venue dated Friday May 28th, 2010 in the underlying action, *Lipari v. CHAPEL RIDGE MULTIFAMILY LLC, et al*; 16th Cir. Case No. 0916-CV38273 by Rule 43.02 Filing Of Pleadings And Other Papers under Supreme Court rule 94.

The relator respectfully seeks to have the respondent Honorable Judge JOHN M. TORRENCE be ordered to perform his ministerial duty of docketing the Motion to Change Venue required by Rule 43.02 Filing Of Pleadings And Other Papers so that the plaintiff's appeal Legal File will be complete.

Alternatively, the relator seeks to have the interference by the respondent Honorable Judge JOHN M. TORRENCE to prevent redress for documented violations of 18 U. S. C. § 1341 Mail Fraud and 18 U. S. C. § 1343 Wire Fraud by the Missouri licensed officers of the court CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPPILO, NICHOLAS L. ACKERMAN, and TONY R. MILLER be referred along with the respondent Honorable Judge JOHN M. TORRENCE to the US Attorney and the Federal Bureau of Investigation Public Corruption Task Force for criminal prosecution.

II. PETITION

The petitioner respectfully requests relief in the form of a Mandamus order for the following reasons:

(A) Statement of Facts

1. Two defendants CHRIS M. TROPPILO, and NICHOLAS L. ACKERMAN have not been served according to the appearance docket

and the defendant WELLS FARGO COMPANY has asserted it has not been served, preventing the trial court from dismissing the plaintiff's action with prejudice under controlling Western District precedent in *Habahbeh v. Beruti*, 100 S.W.3d 851 (Mo. App., 2003).

2. The plaintiff filed a timely motion for change of venue, along with a motion for interpleader and a response to WELLS FARGO's Motion for order on Friday May 28th, 2010 and no ruling had been made in the present action. See Exhibit 1 appearance docket at 930 am Friday May 28th, 2010.
3. The ministerial function of the 16th Circuit Clerk's office at the direction of the respondent Honorable Judge JOHN M. TORRENCE interfered with docketing the Motion to Change Venue received and file stamped by clerks of the court in the Independence Annex. See Exhibit 2 appearance docket showing plaintiff's motions docketed *before* the court's purported order.
4. The plaintiff obtained a file stamped copy of his Motion to Change Venue filed with the other motions. See Exhibit 3 file stamped copy of Motion to Change Venue.
5. The contents of the Motion to Change Venue details repeated and continuing ministerial interference by the 16th Circuit Clerk's office and other state agencies in Jackson County requiring change of venue.

6. The timely Motion to Change Venue was automatic in effect and deprived the trial court of the jurisdiction to enter dismissals of parties in this action under *State Lebanon School District III v. Winfrey State ex rel. Lebanon School District R-III, v. The Honorable Larry WINFREY*, Case No. SC 86873 (January 31, 2006).

(B) Relief relator seeks from Supreme Court;

The relator respectfully seeks to have the respondent Honorable Judge JOHN M. TORRENCE be ordered to perform his ministerial duty of docketing the Motion to Change Venue required by Rule 43.02 Filing Of Pleadings And Other Papers so that the plaintiff's appeal Legal File will be complete.

Alternatively, the relator seeks to have the interference by the respondent Honorable Judge JOHN M. TORRENCE to prevent redress for documented violations of 18 U. S. C. § 1341 Mail Fraud and 18 U. S. C. § 1343 Wire Fraud by the Missouri licensed officers of the court CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER be referred along with the respondent Honorable Judge JOHN M. TORRENCE to the US Attorney and the Federal Bureau of Investigation Public Corruption Task Force for criminal prosecution.

(C) The legal reasons for the challenge to respondent's action;

Mandamus under Missouri Supreme Court Rule 94 is the relator's appropriate remedy for the trial court's violation of RULE 43.02 FILING OF PLEADINGS AND OTHER PAPERS.

Article V, Section 4 of the Missouri Constitution vests jurisdiction in this court to hear original remedial writs. This court has original jurisdiction because subsection 1 provides that the Supreme Court will have superintending control over all courts and tribunals. This court has a duty mandated by the Constitution of Missouri to ensure that the subordinate courts comply with the Missouri Constitution, Missouri Rules of Court, and Missouri Statutes. This court also has a duty mandated by the 14th Amendment of the United States Constitution to ensure due process of law. This court has direct supervisory control over the administrative procedures of the Missouri 16th Circuit Court.

The petition for mandamus conforms to Missouri Supreme Court Rule 84.22. Granting Original Writs (a) and (b). The Western District of Missouri Appellate Court on the signature of Clerk Terrance Lord denied my motion to order the docketing of the Motion for Change of Venue by the 16th Circuit Court. The trial court case continues against 3 defendants who have not yet been served process and a copy of the petition. See the Petition for Mandamus Statement of Facts.

The trial court has a clear non discretionary duty to comply with Rule 43.02:

RULE 43.02 FILING OF PLEADINGS AND OTHER PAPERS

(a) Filing When Required. All papers after the petition required to be served upon a party and filed with the court shall be filed either before service or within five days thereafter.

(b) Filing With the Court Defined. **The filing of pleadings and other papers with the court as required by Rules 41 through 101 shall be made by filing them with the clerk of the court**, except that a judge may permit the papers to be filed with the judge, who shall note thereon the filing date and forthwith transmit them to the office of the clerk.” [Emphasis added]

Missouri Rule of Civil Procedure RULE 43.02

A mail fraud violation occurs when someone "for the purpose of executing [a] scheme or artifice[to defraud] or attempting . . . to do [so],"places in the mails something to be delivered by a mail carrier. 18 U.S.C. sec. 1341; see *United States v. Keane*, 522 F.2d 534, 551 (7th Cir.1975). 18 U. S. C. § 1343 Wire Fraud has the same requirements for transmitting a document electronically as Mail Fraud. See *United States v. Lothian*, 976 F.2d 1257, 1262 (9th Cir. 1992) (noting that the elements of mail and wire fraud are the same).

The underlying case is an action against defendants including the Missouri licensed attorneys CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER for civil liability under the Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO) including violations of 18 U. S. C. §§ 1962 (c) and (d) for CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER’s use of the mails to defraud the relator/petitioner and the 16th Circuit Court.

The crime is punishable by up to twenty years in prison. 18 U.S.C. § 1341.

As such, mail fraud is a felony. See 18 U.S.C § 3559(a). Missouri Rules of Professional Ethics for Attorneys Rule 4- 8.4(b) prohibits "conduct". As such, neither a conviction nor criminal charges are necessary for there to be a violation of Rule 4-8.4(b). See *People v.Odom*, 941 P.2d 919 (Colo. 1997); *In re Hassenstab*, 934 P.2d 1110 (Or.1997).

The continuing violation by the respondent Honorable Judge JOHN M. TORRENCE of the respondent's duty to docket the pleadings filed by the relator/petitioner in the 16th Circuit Court for the purpose of protecting CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER's violations of 18 U. S. C. § 1341 Mail Fraud and 18 U. S. C. § 1343 Wire Fraud and therefore defeat the petitioner's lawful entitlement to damages under 18 U. S. C. §§ 1962 (c) and (d) is itself a criminal act under 18 U.S.C. § 2- Aiding and Abetting and contrary to Missouri Judicial Canon 2.03 which also is a "conduct" prohibition in the nature of Rule 4-8.4(b) and states:

"Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

A. **A judge shall respect and comply with the law** and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." [Emphasis added]

Missouri Judicial Canon 2.03.

In addition to the continuing violation by the respondent Honorable Judge JOHN M. TORRENCE of the respondent's duty to docket the pleadings filed by the relator/petitioner in the 16th Circuit Court for the purpose of Aiding and Abetting the Mail Fraud and Wire Fraud being itself a federal felony violation of 18 U.S.C. § 2, the failure of the record to include the timely Motion to Change Venue effectively deprives the relator/petitioner of his Due Process right to meaningful appellate review in the Western District of Missouri Court of Appeals.

PRAYER FOR RELIEF

The relator respectfully seeks to have the respondent Honorable Judge JOHN M. TORRENCE be ordered to perform his ministerial duty of docketing the Motion to Change Venue required by Rule 43.02 Filing Of Pleadings And Other Papers. Alternatively, the relator seeks to have the appropriate parties referred along with the respondent Honorable Judge JOHN M. TORRENCE to the US Attorney and the Federal Bureau of Investigation Public Corruption Task Force for criminal prosecution.

Respectfully Submitted,

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Index of Exhibits

Exhibit 1 Docket Report – Motions Not Filed

Exhibit 2 Docket Report – Motions Filed Before Order

Exhibit 3 Motion For Change of Venue

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 21st day of June 2010 by hand delivery, by first class mail postage prepaid, or by email to:

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